

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

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IN THE MATTER OF :
   
E.L. Haynes Public Charter School :
   
:
   
1366 Irving Street, N.W. :
   
Washington, D.C. :
   
District C-3-A :
   
:
   
Application No. :
   
17376 :
   
-----:

Tuesday  
October 4, 2005

Formal Council Chamber  
441 4<sup>th</sup> Street, N.W.  
Washington, DC

The Public Hearing convened in the Formal Council Chamber, 441 4<sup>th</sup> Street, N.W., Washington, D.C., pursuant to Notice at 1:00 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member (NCPC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

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TRACEY W. ROSE                      Senior Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.  
LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS

This transcript constitutes the minutes  
from the public hearing held on October 4, 2005.

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

(11:02 A.M.)

1  
2  
3 MR. GRIFFIS: A very good afternoon to  
4 everybody. Let me call to order the public meeting of  
5 the 4<sup>th</sup> of October, 2005. This is, of course, our  
6 afternoon public hearing of the Board of Zoning  
7 Adjustments of the District of Columbia. My name is  
8 Geoff Griffis, Chairperson. Joining me today is Mr.  
9 Etherly and representing the National Capital Planning  
10 Commission is Mr. Mann. Our Vice-Chair, Ms. Miller,  
11 will not be with us this afternoon for these  
12 proceedings and the Zoning Commissioner is also  
13 unavailable. Copies of today's hearing Agenda are  
14 available for you. They are located on the table  
15 where you entered into the hearing room.

16 We acknowledge that we are not in our normal  
17 hearing room, and we appreciate everyone's patience in  
18 finding us and also in getting through any technical  
19 aspects that we may have to be flexible with today.

20 We are, of course, being recorded as all  
21 public proceedings are before the Board of Zoning  
22 Adjustments. We are being recorded by the Court  
23 Reporter sitting on the floor attending to that. I  
24 would ask that, of course, you fill out two witness  
25 cards and provide it to the Reporter. We are not

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1 being broadcast live on the Office of Zoning's website  
2 as we do not have those capabilities in this hearing  
3 room, but we'll resume that broadcast when we move  
4 back upstairs.

5           There is a procedure for Special Exception  
6 and Variances is, first we will hear from the  
7 Applicant, second, we will hear from any agencies that  
8 have put in analysis and memos on each of the  
9 Applications. We will then hear from the Advisory  
10 Neighborhood Commission. Fourth, we will hear from  
11 persons or parties in support of the Application.  
12 Fifth would be persons or parties in opposition to an  
13 Application. Then finally we will return to the  
14 Applicant for any rebuttal witnesses or closing  
15 remarks that they might have. Cross-examination is  
16 permitted by the Applicant and parties in a case. The  
17 ANC within which the property is located is  
18 automatically a party in the case and will be able to,  
19 therefore, conduct cross-examination. Other parties  
20 will be established by the Board as preliminary  
21 matters when a case is heard.

22           The record will be closed at the conclusion  
23 of the hearings today, except if we continue any  
24 cases, which we don't anticipate with our schedule  
25 this afternoon, or if the Board keeps the record open

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1 in order to receive additional information. If the  
2 Board does so, we will be very specific as to what  
3 information is to be provided to the Board and when it  
4 is to be provided into the Office of Zoning.

5 The Sunshine Act requires that we hold all  
6 our proceedings in the open and before the public.  
7 This Board does enter into Executive Session during  
8 and/or after a hearing on cases and our Executive  
9 Session is utilized for the purposes of reviewing  
10 records or deliberating on cases, and it is in  
11 accordance with our Rules, Regulations, Procedure, and  
12 most importantly, it is also in accordance with the  
13 Sunshine Act.

14 The Decision of the Board in contested cases  
15 must be based exclusively on the record. That is,  
16 that public record that the Sunshine Act requires us  
17 to produce, but our deliberations must be based on the  
18 record that's created before us. So, importantly, we  
19 ask that people make sure that they have put in the  
20 record all the evidence that you would like us to look  
21 at and decide upon, whether it be in written testimony  
22 and/or in oral testimony today.

23 Let me say a very good afternoon to all  
24 those who are with us today. The Office of Zoning is  
25 represented by Ms. Bailey, who is on my right, and Mr.

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1 Moy on my left. Ms. Monroe from OAG and Ms. Rose from  
2 the Office of Zoning is also with us.

3 A very good afternoon to you all.

4 I'm going to ask if those people present  
5 today who are planning to give testimony would please  
6 stand and give your attention to Ms. Bailey, she's  
7 going to swear you in.

8 (Whereupon, the witnesses were sworn in.)

9 MS. BAILEY: Do you solemnly swear or affirm  
10 that the testimony that you will be giving today will  
11 be the truth, the whole truth, and nothing but the  
12 truth?

13 (WITNESSES ANSWER AFFIRMATIVELY.)

14 MR. GRIFFIS: Good, thank you all very much.

15  
16 With that, we can move to preliminary  
17 matters. Preliminary matters are those which relate  
18 to whether a case will or should be heard today.  
19 Elements of preliminary matters include whether you  
20 are postponing, continuing or withdrawing an  
21 Application, whether proper and adequate notice of an  
22 Application has been provided. These are elements.  
23 If you have a preliminary matter for the Board's  
24 attention today, if you're unprepared to move ahead  
25 with a case, or you believe a case should not be heard

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1 this afternoon, I would ask that you come forward and  
2 have a seat at the Witness Table as an indication of  
3 a preliminary matter.

4 First, I will go to Ms. Bailey to ask if  
5 she's aware of any preliminary matters for the Board's  
6 attention at this time?

7 MS. BAILEY: Mr. Chairman, and to everyone,  
8 good afternoon. There is, and it has to do with one  
9 of the cases on the Docket, Appeal Number 17356 of  
10 Bannum, Inc. There is a Request for Postponement and  
11 there's also a Request for An Interveno Status of this  
12 case.

13 MR. GRIFFIS: I'm sorry, what was the last  
14 thing that you said?

15 MS. BAILEY: There's a Request for Interveno  
16 Status, Interveno.

17 MR. GRIFFIS: Oh, indeed. Is anyone here  
18 attendant to that Application? If anyone is present  
19 today in Case Number 17356, would come forward and  
20 have a seat at the table?

21 Not noting anybody here. We had given  
22 Notice. Of course, with today, holidays, if you were  
23 unable or even tentative with being able to proceed  
24 with a case, that we would entertain a postponement  
25 and grant it. I don't want to take up the Interveno

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1 test at this test, as we don't have participants that  
2 will obviously take some discussion, if not just some  
3 brief questions, and deliberation by the Board. I  
4 would suggest that we just postpone this to a new date  
5 and take up all those elements. We also have  
6 attendant to it, which came in, I believe, today, if  
7 not yesterday, represented to the Board, another  
8 Motion in that, which would be a preliminary matter,  
9 again, which we would take under consideration today.

10 Mr. Moy, why don't we look at the calendar  
11 and, Ms. Bailey, what you all suggest as setting a  
12 date for this.

13 MR. MOY: Yes, sir, Mr. Chair. The staff  
14 has been in contact with the Appellants and the three  
15 potential dates shared with staff are November 15<sup>th</sup>,  
16 in the afternoon, or December 13<sup>th</sup>, in the afternoon,  
17 or December 20<sup>th</sup>, in the afternoon.

18 MR. GRIFFIS: Very well, Mr. Moy. I think  
19 the 15<sup>th</sup> in the afternoon looks to be the most free,  
20 in a very packed afternoon schedule, of all those  
21 dates, and I would suggest that we set it there.  
22 Unless you're aware of any other difficulties in doing  
23 it at that time?

24 MR. MOY: No, sir, that's manageable.

25 MR. GRIFFIS: Excellent. Then we'll take

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1 this as a public notice that we have continued this to  
2 the 15<sup>th</sup> of November. Of course, we will make all  
3 efforts in terms of contacting those that are  
4 participating in this case, and that which we do have  
5 an Intervening Request, we would obviously, hopefully,  
6 make phone calls to those folks.

7 Very well. Are there any other preliminary  
8 matters for the Board's attention at this time, Ms.  
9 Bailey?

10 MS. BAILEY: No, Mr. Chairman, not at this  
11 time.

12 MR. GRIFFIS: Excellent. Then why don't we  
13 call our first case for the afternoon?

14 MS. BAILEY: Application Number 17376 of E.  
15 L. Haynes Public Charter School, pursuant to 11.d St.  
16 Mark 31.3.2 for a variance from the requirement for an  
17 accessory use to be located on the same lot as the  
18 principal use that's provided in Definition of  
19 Accessory Use, Section 199, to allow the lot to be  
20 approved for use as a play area for E. L. Haynes  
21 Public Charter School located on an abutting lot. The  
22 property is located in the C-3-A District at 1366  
23 Irving Street, N.W., Square 2849, Lot 98.

24 MR. GROSS: Good afternoon, Mr. Chairman and  
25 members of the Board. I'm Nathan W. Gross of the law

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1 firm of Arnold and Porter, a city planner there,  
2 representing the applicant in this case, the E. L.  
3 Haynes Charter School.

4 First, let me just identify the property  
5 briefly. On the photograph on the Board, you can see  
6 the brick building on the right. That's the CVS  
7 Building at the corner of 14<sup>th</sup> and Irving Street, N.W.

8 MR. GRIFFIS: Mr. Gross, let me interrupt  
9 you just briefly and just make a quick disclosure. Of  
10 course, I live in this neighborhood, not a block and  
11 a half away and frequently walk by this, as it's my  
12 route to the Metro. So I would ask you and your  
13 clients whether they would have any difficulty in  
14 having me sit on this case. I do believe that I can  
15 hear this impartially, and render a judgment  
16 judiciously. But I avail myself to any questions that  
17 you might have or any objections.

18 MR. GROSS: We would have no objections  
19 whatsoever, Mr. Chairman.

20 MR. GRIFFIS: I see. Okay.

21 MR. GROSS: We're very comfortable with  
22 that.

23 MR. GRIFFIS: Board members, are there any  
24 clarifications or questions that you might have of me?  
25 Noting if I don't hear this, we don't hear the case

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1 today, but that should not, in any way, sway you.

2 (NO RESPONSE.)

3 MR. GRIFFIS: Very well. Let's proceed.

4 MR. GROSS: Okay. The brick building, the  
5 CVS Building, built in 2002 at the corner of 14<sup>th</sup> and  
6 Irving Street, N.W. You can see the second story  
7 windows there. That's where the E. L. Haynes Charter  
8 School is located, on about 12,000 square feet. It  
9 has a separate entrance off of 14<sup>th</sup> Street. To the  
10 left or east of the building is the concrete driveway.  
11 That is on the same lot as the CVS. Immediately to  
12 the left, or the east of that, is the vacant lot  
13 covered with stone and with informal parking on it, 20  
14 feet wide and a 100 feet deep. That is the subject  
15 lot in the Application where we would propose the  
16 accessory use to be located.

17 MR. GRIFFIS: A hundred feet?

18 MR. GROSS: Yes.

19 MR. GRIFFIS: Continue.

20 MR. GROSS: And with that introduction, let  
21 me then introduce the presenters. First is, to my  
22 right, Humber Villareal, the Director of Operations  
23 and Finance at the school. To his right is Natalie  
24 Addison, the Project Manager and Designer of the play  
25 area from Brailsford and Dunlavey Facility Planners.

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1 Following Ms. Addison, I will address the zoning  
2 issues, and then we have three parents who would like  
3 to testify briefly, Tawana Waugh, Nina Spatlana  
4 (phonetic 1:21:06) and Mr. Wilson, I believe it is.

5 With that, I will turn to Mr. Villareal.

6 MR. VILLAREAL: Good afternoon, members of  
7 the Board. My name is Humber Villareal. I'm the  
8 Director of Operations and Finance at E. L. Haynes.  
9 Let me just tell you a little bit about E. L. Haynes.  
10 E. L. Haynes is a public charter school that is in its  
11 second year of operation. We have a year-round  
12 calendar and we have an extended day program,  
13 providing basically 1,000 additional hours of  
14 educational programs. We currently have 162 students.

15 The purpose of the playground is to  
16 basically have outdoor activities, including recess,  
17 to be used for the extended day program, health and  
18 fitness, and sometimes for science. Right now,  
19 implementation of this means that the students don't  
20 have to walk to nearby playgrounds. That usually  
21 takes about 20 to 30 minutes. If you think about the  
22 numbers, if we have our students not only walk to  
23 these nearby playgrounds, it takes about 20 minutes.  
24 If you add those times, it takes us basically 80 hours  
25 from educational programs inside the classroom. We

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1 have 162 students times 80 a year, that's over 12,000  
2 hours that the students are walking to these parks.

3 I was a teacher last year, second grade  
4 teacher, and I can tell you that we need our students  
5 in the classrooms. So having this playground nearby  
6 makes a lot of sense in terms of achieving -- having  
7 the students reach the academic achievement that we  
8 want. Also this has been a joint project with our  
9 parent community. They have provided tremendous  
10 leadership to get this project completed. So it is a  
11 great project for us and for our students.

12 E. L. Haynes plans to -- we are going to be  
13 pre-K to 12<sup>th</sup> Grade. So right now, we will probably  
14 only stay in this location for three more years. In  
15 three years, we will basically take the playground  
16 apart and move it to whatever location we find.

17 MS. ADDISON: Good afternoon, Mr. Chairman  
18 and members of the Board. My name is Natalie Addison.  
19 I'm the Project Manager working with the school to  
20 develop the play area. I'm with Brailsford and  
21 Dunlavey, an educational facility-planning firm based  
22 out of Washington, D.C. I did work with the school to  
23 develop this preliminary plan. I will take you  
24 through the basic elements of the landscape plan.

25 As Mr. Gross mentioned earlier, the

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1 dimensions of the playground are 20 feet fronting on  
2 Irving Street, by 100 feet deep. The play area  
3 consists of two gardens at either end. On the Irving  
4 Street side, that will be a dedicated space for the  
5 community. That space will just be covered in light  
6 gardening. It will not be enclosed or fenced in.  
7 There will be a fence at the perimeter of the play  
8 area, starting -- set back 15 feet from the existing  
9 sidewalk. That fence will be 7 feet high. It will  
10 wrap around the entire play area. The second garden  
11 is at the back of the site. It involves an existing  
12 mature tree, which the school plans to keep. It will  
13 retain it. It will plant a bed, use mulch, and not  
14 disturb the existing tree. That will be more of a  
15 hands-on participatory space for children to be  
16 involved in gardening activities.

17 The predominant surface of the play area  
18 will be a rubber safety tile. That will occupy about  
19 20 feet by 70 feet of the space, or approximately 1400  
20 square feet. It's a very resilient surface that is  
21 safe for children. It meets industry standards and  
22 meets the critical fall height requirements for  
23 children.

24 The fence will also have post-mounted solar  
25 lamps to provide night lighting and bring an element

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1 of safety to the area after school hours. There will  
2 also be a retaining wall at the back and rear of the  
3 site and wrap around on the predominant rubber safety  
4 tile area. The retaining wall will be approximately  
5 three feet high.

6 The project will be built predominantly by  
7 the parents and friends of the school. It will be a  
8 hands-on community oriented project and we are hoping  
9 that should this happen, it will be before the cold  
10 weather really sets in, which would make it a more  
11 difficult endeavor for the school community to  
12 undertake.

13 Also, one thing, with the existing row house  
14 directly adjacent to the area, there is a bit of a  
15 gap. There are plans to provide some landscaping in  
16 the form of hedgerows to provide a screen to separate  
17 the play area from the activity at the adjacent row  
18 house.

19 MR. GROSS: I'm going to put the photo up  
20 again.

21 As to the zoning relief, Test Number 1 for  
22 the variance, the exceptional condition and practical  
23 difficulty resulting from the exceptional condition is  
24 simply that the CVS Building and then the driveway  
25 occupy 100 percent of the lot. The driveway is

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1 concrete. It's required for access to the dumpster  
2 that you can see at the rear of the driveway, and then  
3 also for evening deliveries to the CVS. So it's off  
4 the picture in terms of being able to be converted to  
5 the play area. So the existing CVS use occupies 100  
6 percent of the property. We do have this vacant 20  
7 foot by 100 foot lot available, so that's -- the  
8 practical difficulty is that simply, physically the  
9 play area can't be on the lot with the principal use  
10 as required normally for an accessory use under the  
11 definition in Section 199.

12 As to no substantial detriment to the public  
13 good, typically there would only be 24 kids using the  
14 space at one time. The environment, as you can see  
15 there is very intensely commercial and mixed usage  
16 right across the street from the subway station. You  
17 can see a high-rise apartment building immediately to  
18 the south of the school. It's a high intensity mixed  
19 use area in which the minor level of noise and  
20 activity in the daytime on this play area will not  
21 really be noticeable or have an adverse effect on  
22 anyone.

23 The only abutting property is actually the  
24 row house or townhouse that you see on the left there  
25 to the immediate east. The property owner there has

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1 submitted a letter to the record of the case in  
2 support of the Application.

3 As Mr. Villareal pointed out, this will be  
4 much safer than having the kids walk to the park,  
5 which is actually quite a substantial distance away,  
6 and on the other side of 14<sup>th</sup> Street. So it's very  
7 beneficial to the school activities and saving the  
8 parents' and children's time for educational values.

9 In our statement in the record, there are  
10 some numbers as to the growth trends of the school in  
11 terms of numbers of students and adding one grade per  
12 year, so it's a certainty that they have to leave in  
13 three years to find a larger facility. Then there's  
14 the License Agreement with the property owner, which  
15 is included with the Application, which specifies that  
16 at the conclusion of the play area use, the property  
17 will be put back to crushed stone and then it will be  
18 available for normal development under C-3-A at that  
19 time.

20 Finally, as to the intent of the zone plan,  
21 I would just note that the school and accessory uses  
22 thereto are a matter of right use in the C-3-A zone,  
23 so we don't see any inconsistency there.

24 That concludes the presentation from the  
25 three of us. We have the three parents. If you would

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1 like to ask questions of us first, or hear from them,  
2 we're happy to proceed however you would like, Mr.  
3 Chairman.

4 MR. GRIFFIS: Did you want to call them as  
5 witnesses, Mr. Gross, or are they here to testify as  
6 persons?

7 MR. GROSS: Part of our presentation.

8 MR. GRIFFIS: Okay. Well, why don't we do  
9 that? Let's take some quick questions and then we can  
10 bring them up.

11 Mr. Mann, did you want to start the  
12 questions?

13 MR. MANN: Yes. First of all, towards the  
14 end of your presentation, Mr. Gross, what did you say  
15 is a matter of right use in the C-3-A zone?

16 MR. GROSS: The charter school itself and  
17 then any accessory uses to the charter school, which  
18 would include the play area, would be as a matter of  
19 right if it was on the same lot as the principal use.

20 MR. MANN: Okay. I have a couple of  
21 questions though. I'm a little bit confused about  
22 something and maybe you can help me understand this  
23 Application. The property is owned by the Shenandoah  
24 Corporation, correct?

25 MR. GROSS: Right.

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1 MR. MANN: So the applicant is the  
2 Shenandoah Corporation? The Shenandoah Corporation is  
3 seeking relief from the zoning regulations? They're  
4 asking for the variance?

5 MR. GROSS: Right.

6 MR. MANN: Okay. Is a garden and play area  
7 a matter of right use in the C-3-A zone?

8 MR. GROSS: I would imagine it is. But  
9 we're not raising the question of garden or play area  
10 as a principal use. We're treating this as a play  
11 area, as a normal accessory use to a school use. And  
12 we're just -- the variance is just simply to locate it  
13 on an adjacent lot instead of the same lot that the  
14 school is on.

15 MR. MANN: But wouldn't the path of least  
16 resistance then be to use the property as a matter of  
17 right use and then for the Shenandoah Corporation and  
18 the school to enter into their own private agreement  
19 on how that property is shared?

20 MR. GROSS: Well, the applicants approached  
21 the DCRA about getting use as a matter of right and  
22 were really told that they needed to go to the Board  
23 of Zoning Adjustment. They were told that they could  
24 erect a fence, but not --

25 MR. MANN: The Shenandoah Corporation went

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1 to DCRA?

2 MR. GROSS: Well, as happens in many  
3 Applications, under -- by agreement, the applicant is  
4 the school on behalf of the property owner. Of  
5 course, we have the letter of authorization from the  
6 property owner in the record. So, in effect, the  
7 contract user is prosecuting the case on behalf of the  
8 property owner.

9 MR. MANN: Okay. I guess I still don't  
10 understand then, if a play area and garden is a matter  
11 of right use, why a variance is being sought.

12 MR. GROSS: Maybe I should retract a little  
13 bit. I wasn't at the meetings. I wasn't involved at  
14 the time of the meetings with DCRA. But they were  
15 told that all that they could get approved as a matter  
16 of right was to build a fence and -- Natalie, do you  
17 have any more that you would want to add?

18 MS. ADDISON: Yes. I met with Faye Ogunneye  
19 with the Department of Zoning at DCRA and she informed  
20 me that the lot, Lot 98, is actually a separate lot  
21 than the principal lot which the school is located on  
22 and that the school would have to actually apply for  
23 a subdivision plat. That would be the only way the  
24 school could build the play area, if it were  
25 considered that both uses were on one lot. There is

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1 no way for the school to do that because the school  
2 sits on a lot that has a different owner than the lot  
3 of the play area. The school does have a Lease  
4 Agreement with Shenandoah Corporation and in the  
5 Agreement, Shenandoah Corporation states that the  
6 school may use the area as a play area.

7 MR. GRIFFIS: That's all understood. I  
8 think to answer the question is what's the regulation?  
9 What's the cite that tells you that they have to be on  
10 the same lot? That's where you're going, is that not  
11 correct?

12 MR. MANN: Well, I --

13 MR. GRIFFIS: You don't even call it an  
14 accessory use. You've got separate lots. You build  
15 it as an independent use and you lease it back to the  
16 school.

17 MR. MANN: That's right.

18 MR. GRIFFIS: Why are they even tied for  
19 zoning purposes?

20 MR. MANN: Yes.

21 MR. GRIFFIS: I don't agree, but that's his  
22 question.

23 MS. ADDISON: Yeah, we were told -- this is  
24 from Mr. Bellow who was the lead administrator at the  
25 time, and Faye Ogunneye, that we would have to apply

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1 for an accessory use, a variance to locate an  
2 accessory use on a separate lot than the lot that the  
3 school is located on.

4 MR. GROSS: This is going back to the  
5 original question, Mr. Mann. I guess, in effect, they  
6 were saying this cannot really be just a garden and a  
7 play area sort of independently on its own. It is  
8 inherently part of the school use and, therefore, it  
9 is an accessory use. And then so they told them, you  
10 know, we can give you a permit to build a fence, but  
11 not a playground.

12 I think the other thing that Ms. Addison is  
13 saying between the lines is in a more commercial  
14 venture, you might have the two owners cooperate to  
15 create a single lot of record and then, too,  
16 assessment and taxation laws, and then they would both  
17 be on the same lot of record and you could do it. But  
18 for a 3-year period and I guess, basically, zero rent  
19 involved, it's too much legal work in all that.

20 MR. GRIFFIS: And that's in your written  
21 submission. This doesn't make any sense to me because  
22 you don't own the property, do you? That would just  
23 add another layer of --

24 MR. GROSS: Right. It was too complex for  
25 this situation.

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1 MR. GRIFFIS: Okay. Do you have any follow-  
2 up?

3 MR. MANN: Well, I guess just to summarize  
4 then, the reason you're here is because DCRA  
5 instructed you to proceed in a certain way then. Is  
6 that right?

7 MR. GROSS: Yes.

8 MS. ADDISON: Yes.

9 MR. MANN: Okay. And -- well, I guess I  
10 didn't ask your opinion on whether or not you think  
11 that's correct, but you're here because you received  
12 guidance from DCRA to proceed in this way?

13 MR. GROSS: Yes. I couldn't see it that  
14 way, that the play area is inherently related to the  
15 school rather than being a freestanding use. I had an  
16 exchange with Faye Ogunneye on that about whether she  
17 could just see it as a separate school use, but they  
18 just see it as an accessory to the principal use of  
19 the school.

20 MR. MANN: Do the zoning regulations require  
21 a play lot for this charter school?

22 MR. GROSS: They don't require it. I guess  
23 the normal definition of accessory use is a use  
24 customarily incidental and subordinate to the  
25 principal use, just like weddings at a church and many

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1 other uses you're all familiar with. So, I mean, I  
2 just tend to see that as logical in this case, also.  
3 If you had a public school and larger property, it  
4 would have its playground on the same property and so  
5 on. This just happens to be a more tight urban  
6 situation.

7 MR. GRIFFIS: Well, I don't think anyone's  
8 questioning the fact that schools need play areas.

9 MR. GROSS: Yes.

10 MR. GRIFFIS: But the question is directly,  
11 is a play area, an outside play area like a  
12 residential rec or parking? Is it required in the  
13 zoning regulations? Which would then lead you to the  
14 idea that in order to not -- when you're not able to  
15 provide it on your site, you would have to get some  
16 relief from the regulations and then this accessory  
17 use has to go on a site that isn't located on the same  
18 lot. Then we would be where we are. I'm just not  
19 sure how we get to where we are. If you can't provide  
20 the parking, you could get a variance for parking or  
21 you could get a special exception or a variance for  
22 accessory parking on a separate lot or however you  
23 might do it, but it would be because the parking was  
24 required in the zoning regulations.

25 MR. GROSS: Yeah. All I can say is -- I

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1 think I may have the e-mail from Faye here. But I did  
2 ask DCRA after Ms. Addison told me about the result,  
3 I got in touch with them and asked whether we couldn't  
4 just simply apply for a playground as a charter school  
5 use. She said no.

6 MR. GRIFFIS: That's okay. Well, I don't  
7 think we need to take up your time in doing this. I  
8 think it should be clear why we are --

9 MR. GROSS: I do have it, Mr. Chairman, for  
10 what -- we're putting it in the record, if you would  
11 like. This is from Faye Ogunneye to me, an e-mail  
12 dated May 3, 2005. "Point Number 1, Public School and  
13 Public Charter School are allowed as a matter of right  
14 in a C-3-A." "Point 2, the playground cannot have a  
15 Certificate of Occupancy as a public school without it  
16 building on the lot. If the work to be done is simply  
17 the erection of a fence, we can approve such an  
18 Application. However, to get a Certificate of  
19 Occupancy will be complicated, as the proposed use  
20 will be difficult to qualify. Going to the BZA will  
21 result in seeking relief to provide an accessory use  
22 on a lot other than that of the principal use. Mr.  
23 Bell and I discussed this issue late yesterday..." and  
24 so on. So that's basically what the Zoning  
25 Administrator told us.

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1 MR. GRIFFIS: Mr. Gross, why don't you put  
2 that in. If you could leave a hard copy for the  
3 record of that, that would be appropriate. But as I  
4 understand what you just read into the record, it's  
5 going to being able to provide a Certificate of  
6 Occupancy for this lot and this use that has to tie  
7 towards something else. And that's what the Zoning  
8 Administrator is looking at. They could not issue  
9 their approval for permitting that would then go to a  
10 Certificate of Occupancy without tying it back to the  
11 school, which is why perhaps we are where we are.

12 MR. GROSS: Right. That's exactly right,  
13 Mr. Chairman.

14 MR. GRIFFIS: Okay. Very well. Let's  
15 proceed then and we'll just take a couple more, a  
16 couple of quick questions. A couple of questions,  
17 first of all, you indicated that there is this  
18 driveway there, as your drawings have indicated --  
19 they're not numbered -- however, there's a trash  
20 enclosure wall. Is that a new wall that's being  
21 proposed?

22 MS. ADDISON: That's an existing wall. It's  
23 just a concrete block wall.

24 MR. GRIFFIS: I see, okay. And then you  
25 said the front portion was the community garden?

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1 MS. ADDISON: Yeah, that's the concept that  
2 the school has, not to fence off that area, but to  
3 leave it open perhaps, say a bench and a path and some  
4 gardening, that it would become a community asset  
5 because it would kind of beautify that location and  
6 keep it accessible and keep it open without closing it  
7 off by erecting a fence around it.

8 MR. GRIFFIS: Interesting thought. Are  
9 there any gardens like that in the neighborhood that  
10 you're familiar with or anywhere else in an urban area  
11 that work well?

12 MS. ADDISON: I can't say in that specific  
13 neighborhood that I'm familiar with.

14 MR. GRIFFIS: Have you designed any others  
15 like that?

16 MS. ADDISON: I have not. But again, this  
17 is coming from --

18 MR. GRIFFIS: That's okay.

19 MS. ADDISON: -- part of the mission of the  
20 school. Humber can speak more about this than I can,  
21 but about serving the community in the best way they  
22 can.

23 MR. GRIFFIS: Good, okay. You indicated  
24 that there were going to be post-mounted solar lamps  
25 and fixtures?

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1 MS. ADDISON: Yeah. They would be motion  
2 sensory so they would just be mounted to the posts of  
3 the fence.

4 MR. GRIFFIS: How many and do you know the  
5 locations of them?

6 MS. ADDISON: Yes. Locations would be at  
7 the perimeter, the side that aligns with the service  
8 alley. They would be located 14 feet on center. So  
9 just down that long side, starting from 15 feet back,  
10 all the way down.

11 MR. GRIFFIS: So there's one on the first  
12 post, is that correct?

13 MS. ADDISON: Yes.

14 MR. GRIFFIS: And then --

15 MS. ADDISON: Fourteen feet on center. They  
16 continue down.

17 MR. GRIFFIS: On center of the posts?

18 MS. ADDISON: Of the fence. So the posts  
19 would have to be located --

20 MR. GRIFFIS: I see. And what you're  
21 showing -- just for clarification, you're showing the  
22 posts on this drawing, how far apart?

23 MS. ADDISON: They should be located 14 feet  
24 on center.

25 MR. GRIFFIS: Each post is?

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1 MS. ADDISON: Each post. That has the  
2 fence-mounted solar lamp on it. I imagine it would be  
3 --

4 MR. GRIFFIS: Right, so each post is how far  
5 apart?

6 MS. ADDISON: Let me see.

7 MR. GRIFFIS: You have eleven posts.

8 MS. ADDISON: There are probably more --  
9 there's probably more than 14 right now. There is,  
10 one, two, three, four, five, six, seven, eight --  
11 yeah, there's eleven posts. There's a small symbol  
12 that's hard to read. It's a circle with four little  
13 lines that come off the circle. Those posts would  
14 have the solar lamps. So not every single post that's  
15 shown in the plan. It would be every other post that  
16 would have the lamp.

17 MR. GRIFFIS: Every other one, okay.

18 MS. ADDISON: Yes.

19 MR. GRIFFIS: So they're about a seven-foot  
20 separation. And then what is the fencing made of?

21 MS. ADDISON: It'll be made of a chain link.

22  
23 MR. GRIFFIS: A 7-foot high chain link?  
24 Where are the gates then?

25 MS. ADDISON: The gate -- that's one thing

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1 I did forget to mention when I first spoke. It would  
2 be located on the front when you go 15 feet back from  
3 Irving Street, it would be located directly across  
4 from an adjacent path, stone path that's currently on  
5 the site.

6 MR. GRIFFIS: Okay.

7 MS. ADDISON: And it's dotted in. It shows  
8 as Number 1. I'm not sure if you have the plan that  
9 has the legends to the side. Number 1 would be the 7-  
10 foot entry gate. You might have --

11 MR. GRIFFIS: Good.

12 MS. ADDISON: I think these plans have been  
13 re-worked a little bit since the initial submission,  
14 but the one that's shown on the board. It's Number 1  
15 on the Landscape Plan. That's the location of the  
16 entry gate.

17 MR. GRIFFIS: Good. Because I'm looking at  
18 17S.1, which has the legend on it. What type of  
19 activities -- I know there were some listed, but what  
20 type of specific activities does this space work for?  
21 Obviously, not playing baseball on it, but as a  
22 designer --

23 MS. ADDISON: Right, right.

24 MR. GRIFFIS: -- what other types of  
25 activities?

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1 MS. ADDISON: Right. There definitely are  
2 no plans to have playground equipment. There  
3 obviously isn't buffer space to allow that. But the  
4 school will have dance, some dance activities --  
5 Humber can probably speak more to that.

6 MR. VILLAREAL: Basically we have -- right  
7 now, we are only pre-K to 3<sup>rd</sup> Grade so our kids cannot  
8 play basketball. But we definitely have different  
9 activities where we have different games that we  
10 basically help our students interact with each other  
11 and learn how to work together. Right now we have  
12 dance that we can't actually have in there because our  
13 space right now is very limited. So we can use that  
14 for health and fitness. That's basically it and also  
15 to have some -- we are a project-based school so we  
16 actually get our students out and we are thinking that  
17 we can actually use the play area for some science  
18 classes if necessary.

19 MR. GRIFFIS: Are you going to need to go to  
20 other playgrounds with the grades that you have  
21 currently, even with this?

22 MR. VILLAREAL: We're hoping not to, but if  
23 that's the case, yes. It will be very convenient for  
24 us because we can just open the door and it will be  
25 right there. It is the back door to our school and

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1 there is a lot of different safety issues. There area  
2 also -- we have some of the parents here who are  
3 actually going to speak about how we -- right now, we  
4 send two teachers with each class. Each class is  
5 about 22 students. Even with two teachers right now,  
6 there are other students in the local parks and  
7 playgrounds which happen to bully our kids. We cannot  
8 actually, you know, try to teach these other kids and  
9 we can't really stop them from just bothering our  
10 kids. So this playground means a lot to us, and for  
11 all the different activities that we're going to have.

12

13 MR. GRIFFIS: Do you have anything else?

14 MR. MANN: If we could go back for a minute  
15 again to your argument for the exceptional  
16 circumstance, could you restate that again for me?

17 MR. GROSS: Simply that the accessories  
18 can't be on the same lot as the principal use because  
19 the CVS Building occupies virtually all of the lot and  
20 then the concrete driveway occupies the remainder of  
21 it, and the concrete driveway can't be re-used for it  
22 because it's needed for evening delivery to CVS and  
23 then also collection of the trash from the receptacle  
24 that's at the back of the photograph.

25 MR. MANN: I guess the problem that I'm

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1       having then is I don't understand -- does an  
2       exceptional situation go to the property that's the  
3       subject of the Application or the property that's not  
4       the subject of the Application?

5               MR. GROSS: Well, it's a tricky case in that  
6       regard, for use. I guess it goes back to kind of what  
7       we encountered at DCRA. It's kind of a Catch-22. You  
8       can't have a separate C of O for it, so it's an  
9       accessory to the school, so go to the Board. I mean,  
10      that's the long and short of it from our standpoint.  
11      I guess it is -- I would say it speaks well of the  
12      school that they didn't follow the possible route of  
13      getting a permit to build the fence and then just  
14      informally putting in the coating on the ground, you  
15      know, and proceed that way. They said we'll play by  
16      the rules and come to the Board.

17             MR. MANN: Okay, thank you.

18             MR. ETHERLY: Mr. Gross, just a very quick  
19      question to follow-up on the issue of the driveway and  
20      also trash collection. You noted that deliveries to  
21      the CVS store take place typically during evening  
22      hours, so you would not anticipate that interfering in  
23      any way with potential use, movement of your young  
24      charges to the playground area, is that correct?

25             MR. GROSS: That's correct, Mr. Etherly. My

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1 understanding is that deliveries are only after 6:00  
2 p.m.

3 MR. ETHERLY: Okay. With respect to trash  
4 pick-up, what's your sense or understanding of that  
5 schedule as well? Is it a similar understanding that  
6 you also would not encounter any conflict with trash  
7 collection in the alley while moving students to and  
8 from the proposed site?

9 MR. GROSS: Let me make the general  
10 observation that it's a lot safer than the kids  
11 crossing 14<sup>th</sup> Street and walking six or eight blocks  
12 every day. But let me ask Mr. Villareal if he knows  
13 more about the timing of trash collection.

14 MR. VILLAREAL: The trash collection usually  
15 happens right in the morning. It normally happens --  
16 and we actually know a related time. I can't remember  
17 if -- it's around nine, so we know exactly when it's  
18 coming so we can -- you know, it's very safe for us to  
19 hold our kids while the trash comes in.

20 MR. ETHERLY: Okay. And just -- this is  
21 perhaps not necessarily on a specific question, but  
22 just out of curiosity and because it's something that  
23 many of us deal with not only in the District, but  
24 elsewhere, and that is the issue of rodents and things  
25 like that. Is there any concern in the alley because

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1 of the proximity of the proposed play area to the  
2 trash receptacles, any concern along those lines?

3 MR. VILLAREAL: I'm sorry, can you --

4 MR. ETHERLY: What I'm inquiring about is  
5 just any concern regarding rodents or other pests that  
6 may be active in that particular alley area. It's not  
7 so much a zoning related inquiry, but it's perhaps  
8 just a natural question, given that there will be a  
9 close proximity to a trash receptacle. What type of  
10 trash receptacle is at the rear? Is it your typical  
11 commercial type of dumpster at the rear of the alley?

12 MR. VILLAREAL: It is.

13 MR. ETHERLY: Okay. But you haven't had any  
14 indication that there's any kind of problem that would  
15 be a cause for concern?

16 MR. VILLAREAL: Right now, we don't. And we  
17 do have a contractor that normally takes care of that.  
18 If there was a problem, I'm sure, we can find a  
19 solution, but right now, we are now aware of any type  
20 of problems.

21 MR. ETHERLY: Okay, thank you.

22 Thank you, Mr. Chair.

23 MR. GRIFFIS: Anything else?

24 MR. GROSS: I'd like to have the parents  
25 come forward for a couple of minutes, Mr. Chairman.

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1 MR. GRIFFIS: Good afternoon to you all.  
2 I'm just going to have you state your name and your  
3 address for the record and then you can proceed. Why  
4 don't we start at my right?

5 MS. WAUGH: My name is Tawana Waugh. My  
6 address is 919 Hamilton Street, N.W., Washington, D.C.

7 MR. GRIFFIS: Go ahead.

8 MS. WAUGH: I can proceed?

9 MR. GRIFFIS: Yes.

10 MS. WAUGH: I'm sorry. Okay. I am a parent  
11 of twin girls at the E. L. Haynes School. We were  
12 there last year and it is very important to me that  
13 they do have a place that's close to the school for  
14 the play area. As was mentioned, the currently now  
15 walk down 14<sup>th</sup> Street o Girard Street and back towards  
16 15<sup>th</sup> Street and it is very dangerous to me, taking the  
17 kids down to that area, especially for the smaller  
18 kids because we do have kids there ages 4 through 8.  
19 So I'm somewhat concerned about the safety with what  
20 they currently do.

21 I'm also concerned, and that was one of the  
22 issues for my daughters when they first started the  
23 school -- they used to attend Stevens Elementary and  
24 they were used to having a playground at their  
25 facility. So that was kind of one of the major

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1 drawbacks for them at the school, as they mentioned as  
2 well, for their other friends; that it is a problem  
3 sometimes walking down and how much they missed  
4 playground time because they get a lot cut, spending  
5 the time walking down to the other location.

6 My other concern is the safety and security  
7 of having it nearby. As Mr. Villareal mentioned, just  
8 last night at the parents' meeting, there was an issue  
9 at the current playground that they attend. There are  
10 other students who also use this play area and there  
11 was a problem of bullying taking place at this  
12 playground from a kid who was not a member of the E.  
13 L. Haynes School. Our teachers were not able to  
14 discipline that kid. That's just a recent issue, but  
15 it is a major issue of concern that currently where  
16 they attend this play area, our teachers and teachers'  
17 aids don't have jurisdiction over other kids at that  
18 play area. This would be one thing that would be  
19 avoided if they did enter that space that's right  
20 beside the school.

21 So I guess for me, it is a better place to  
22 be able -- even though there will not actually be  
23 playground equipment, they do a lot of activities with  
24 the children inside now with games and that sort of  
25 thing, which could be better done outside, as well as

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1 that garden space is very important because the kids  
2 -- the school does a lot of activities teaching  
3 science and et cetera using gardening and that sort of  
4 thing. So it would definitely be a better situation  
5 having that space directly beside the school as  
6 opposed to what they have currently.

7 MR. GRIFFIS: Thank you very much.

8 MS. SMITH: Hi, my name is Nina Smith. My  
9 address is 244 Walnut Street, N.W., Washington, D.C.  
10 I'm also a parent of a child at E. L. Haynes Public  
11 Charter School and I completely agree with everything  
12 Ms. Waugh just said.

13 I just wanted to say a couple of things  
14 about the lot that we're trying to develop this play  
15 area on. The school is really surrounded by a lot of  
16 construction, a lot of chain link fence, a lot of  
17 dust, a lot of traffic and right next to our school,  
18 there is also that -- what exists in that lot right  
19 now. It's ugly. If there's rodents there, there's --  
20 I just wanted to say I think there's just as many at  
21 the public playgrounds as there are in the lot next  
22 door to the building. So I don't think we're pinning  
23 them up in an area that's less hygienic than where  
24 they're playing now. And it's almost -- it's so close  
25 to the back of the school, and we have to almost keep

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1 our kids out of there because there's loose gravel.  
2 If they walk there now, they're picking it up and  
3 throwing it sometimes. I mean, just playfully, but  
4 it's just -- it's an empty lot that's sitting there  
5 and not being used well. People dump trash there.

6 I think that if we enclosed it, it would  
7 benefit the community because we would maintain it.  
8 We would sort of be the chaperones of the space to  
9 collect the trash out of there and make sure people  
10 don't come in there and just dump their trash.

11 Also, I just wanted to say one thing about  
12 the design that we came up with. Since that block of  
13 Irving Street has nice front yards -- it's a  
14 residential street. We did want to set our chain link  
15 fence back from the street front so that it wouldn't  
16 appear as just another chain link fence in your face  
17 in Columbia Heights.

18 That's all I have to say. Thank you.

19 MR. GRIFFIS: Thank you very much.

20 MR. WILSON: Good afternoon. My name is  
21 James Wilson. My address is 1610 Tuckerman Street,  
22 N.W., Washington, D.C.

23 Mr. Chairman and the Board, I'm just here to  
24 say that I've been involved in the meetings to plan  
25 this playground ever since it was first suggested that

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1 this lot could be used for that. And I have noticed  
2 that throughout the entire process, the needs of the  
3 community and the safety of the children have been the  
4 paramount considerations by everyone involved. We  
5 want to do something that's a benefit to the community  
6 and also to help our children to get the exercise that  
7 they need without spending time out of the classroom  
8 walking to and from playgrounds that are rather  
9 distant. Also, there would be a place to have  
10 experiments. Already one of the -- one of the classes  
11 last year that was studying native flora and invasive  
12 species used the area, such as it is, to put some  
13 seeds and some invasive species to see if they would  
14 survive there. Well, they did because, you know,  
15 they're invasive species. But that was a good lesson  
16 for them.

17 We have had a temporary garden there in  
18 containers for the past four months and we do know  
19 from that that a garden area would be beneficial and  
20 also there was no -- we have some trees there and no  
21 one disturbed the trees. So we feel secure that  
22 whatever we put there will be beautifying and also  
23 will be able to be removed and the lot returned to its  
24 original condition as per the agreement with the lot's  
25 owners.

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1 Thank you.

2 MR. GRIFFIS: Thank you very much. Are  
3 there any questions?

4 MR. ETHERLY: I just have a quick question.  
5 You said early on something about how you've been  
6 involved in this ever since it was first suggested.  
7 I was just wondering how that suggestion came about,  
8 to use this area as a play area?

9 MR. WILSON: When the -- my understanding,  
10 and I'm sure Mr. Villareal can possibly correct me if  
11 I say anything wrong, but it's my understanding that  
12 the lease arrangement for use of the lot came at about  
13 the same time as the lease arrangement for use of the  
14 space in the CVS Building. It's just been a matter of  
15 trying to come up with a design and to move it through  
16 the process and it's been just a little over a year.  
17 So I think we're doing pretty well.

18 MR. ETHERLY: Okay, thank you.

19 MR. PARTICIPANT (2:01:14): It's not a  
20 question, Mr. Chair, but more so a comment. A number  
21 of us here are -- and I'll say it as impartially as I  
22 can, as a number of us are familiar with charter  
23 schools here are on the Board, so we definitely  
24 appreciate your time as parents and your support for  
25 the institution because that's what truly makes a

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1 difference.

2 I will just float the question that I  
3 engaged Mr. Gross and Mr. Villareal in very briefly,  
4 and that is the issue of any concern that you might  
5 have. Obviously this could conceivably be an  
6 improvement over having to walk the distance that your  
7 young people are currently walking. Are there any  
8 concerns that you may have regarding any of the  
9 driveway traffic that they may encounter if this were,  
10 if this Application were to be approved, or any  
11 concerns that you might have regarding proximity to  
12 the trash dumpster or receptacle at the alley?  
13 Anyone? Feel free to respond.

14 MS. WAUGH: Well, initially when we started  
15 at this school, we were a little concerned about the  
16 congestion and traffic in that area. But I have  
17 noticed basically it appears that really only E. L.  
18 Haynes parents kind of park up there in dropping off  
19 and picking up their kids. So I don't see a regular  
20 use of it. I do see that the majority of the  
21 deliveries that come during the day, they actually  
22 park on Irving Street. So I've only seen trucks park  
23 there kind of after hours in the actual alley.

24 The thing about the rodents, I didn't think  
25 about that, but I do note that the dumpster is very

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1 far back from where the actual spot of the playground  
2 space is. So although you see it, I've never smelled  
3 it or anything like that in pulling my car into that  
4 space to pick up children. So while I know there is  
5 an issue with rodents in this area, I, myself have not  
6 seen anything specifically there and I know the  
7 dumpster are back far enough that the smell or the  
8 trash or anything related to it has not been an issue  
9 for me in pulling in to pick up and drop off my kids  
10 there. So I don't anticipate a problem, but I do  
11 think that the school is very community focused in the  
12 sense that we do want to provide service and we do  
13 want to be good stewards in this community. So if  
14 there was a problem, I'm sure that not only the Board  
15 and school people, but the parents as well, would get  
16 active to do whatever we have to do to work on those  
17 issues.

18 MS. SMITH: All right. I just want to add  
19 to what she said. There's, I think, at the  
20 playgrounds that they're going to now, we can't really  
21 be custodians of those areas. We don't know what's  
22 going to be on the playgrounds when they arrive and --  
23 also in terms of other people, but also trash and so  
24 forth and what they're going to encounter along the  
25 way.

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1 I think it's as much -- the difference  
2 between crossing the driveway to get into the space as  
3 opposed to crossing 14<sup>th</sup> Street and several other side  
4 streets, is, you know, I think much safer. As far as  
5 the trash goes, I think that if we do -- when we can  
6 enclose the area, and it's very definite that the area  
7 that our play space is in, is -- the space that we  
8 take care of, we will pick up the trash there. But  
9 right now, there's sort of -- the trash sometimes  
10 overflows from the dumpster that's there now. It just  
11 overflows into the space, and I don't think CVS feels  
12 like they need to deal with that because it's not  
13 their space. They're just dealing with it on that  
14 driveway. Nobody's really inclined to clean up all  
15 the debris that does build up towards the back of that  
16 lot. I think that if we have our children in that  
17 space, we're going to be inclined as a school  
18 community to clean up that space. I think that will  
19 improve the conditions of the area.

20 MR. WILSON: One quick note about the way  
21 the gate will be and the children will go from the  
22 building to the playground. It will be -- there is a  
23 back door which is now used for pick up of children at  
24 the end of the day. I pick up my children there every  
25 day and I have never seen children being let out of

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1 the door without at least one, and often two, staff  
2 people there with the children. In the meetings, it's  
3 my understanding that when the children are released  
4 for the playground, they will go down with two people,  
5 one who will open the door and make sure everything is  
6 clear and then stand to essentially block the alley so  
7 if anyone were to turn in there, and another person to  
8 open the gate and let the children in to the  
9 playground area. So I'm perfectly satisfied with the  
10 way they have the plan now.

11 MR. ETHERLY: Thank you, Mr. Chair.

12 MR. GRIFFIS: Is there anything else?

13 I'm not sure if I heard you correctly. Do  
14 you drive in to that driveway area and on that site to  
15 drop your children off?

16 MS. WAUGH: I have on pick-up, not on drop-  
17 off because, as he mentioned --

18 MR. GRIFFIS: On pick-up?

19 MS. WAUGH: Right, because the door is  
20 secure.

21 MR. GRIFFIS: Is that the program for the  
22 school for drop-off and pick-up?

23 MS. WAUGH: Well, no. The problem is they  
24 --

25 MR. GRIFFIS: When you drive in, do you

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1 drive in and you have to back out onto Irving or can  
2 you turn around in there?

3 MS. WAUGH: No, you cannot turn around. You  
4 have to back out.

5 MR. GRIFFIS: So you're driving in, and  
6 you're driving in onto the adjacent property and not  
7 the CVS or school property?

8 MS. WAUGH: No, I'm driving in to the  
9 service alleyway of CVS, not on --

10 MR. GRIFFIS: So you drive just straight into  
11 the service?

12 MS. WAUGH: Right.

13 MR. GRIFFIS: And you're surely not alone in  
14 doing that?

15 MS. WAUGH: Right. And then, in essence,  
16 kind of parents sort of watch for other parents to  
17 back out. Like, there will be a parent to tell me  
18 when to --

19 MR. GRIFFIS: Mr. Wilson, when you pick up  
20 your child, do you drive into that area also?

21 MR. WILSON: No, I park on 13<sup>th</sup> Street.

22 MR. GRIFFIS: There's been testimony now  
23 that there's an overflow of trash into the adjacent  
24 property, but you're thinking with a 7-foot chain link  
25 fence there, that that will be remedied? Or are you

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1 anticipating that parents who have to drop-off and  
2 pick-up will go pick up the trash also?

3 MS. SMITH: Our intention is to keep the  
4 playground clean and safe for our children. So we  
5 will have a program to make sure that the trash is  
6 collected.

7 MR. GRIFFIS: Is that the school's trash  
8 receptacle?

9 MS. SMITH: No, it's not. It's the CVS' and  
10 I'm not saying that, you know -- what I'm saying is  
11 trash will sometimes float out of the dumpster and go  
12 over into the lot, and right now there's -- CVS has no  
13 reason to go pick it up from there, I don't think.

14 MR. WILSON: I don't -- it's not actually  
15 trash. It's a huge roll-off dumpster. So trash --  
16 and it has lids on top of it, so trash isn't  
17 literally, you know, piled so high that it falls over  
18 sideways; it's just that sometimes that they choose  
19 not to put things in it or set things beside it. And  
20 they're also people who are going back and picking  
21 through the dumpster and who will take things out of  
22 the dumpster and who will leave it on the vacant lot.

23 MR. GRIFFIS: All right. I guess I don't  
24 understand, not that I need to push this very much  
25 further. I just want to get clarification, but I'm

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1 not sure that having your playground there is  
2 persuading me that that will change the mind of CVS to  
3 make sure that that's kept clean.

4 MS. SMITH: No, I just think that the fence  
5 barrier is actually going to help with papers flowing  
6 off into space. Number One, if it should go over the  
7 fence, we'll pick it up. I don't think -- I don't  
8 expect CVS to do anything differently, but I'm just  
9 saying that the way that the lot is being used  
10 currently, which is for basically nothing, nobody has  
11 any inclination to go clean it up.

12 MR. GRIFFIS: And I think that's an  
13 important point that you've brought up several times  
14 now, that it will now be controlled space, is your  
15 terminology, and I would tend to understand that.

16 Let me ask, Mr. Wilson, in terms of --  
17 you've indicated in your testimony that you were a  
18 participant in the design of this from its onset. Was  
19 there -- in my reading of this drawing on S-1, north  
20 is up. The garden that is going to be the school's  
21 garden and utilized for projects and such, which is an  
22 excellent idea, is obviously on the south side of  
23 that. The pictures and the testimony in the record  
24 show a large apartment building on the direct side.  
25 I'm assuming that that's close to, if not on that

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1 property line. How much sun actually gets in there  
2 with the existing tree?

3 MR. WILSON: There's a -- the tree is a  
4 Mulberry tree and is somewhat -- it doesn't have a  
5 full leaf canopy. The apartment building is, I  
6 believe, six stories, and so I've been out there a lot  
7 generally between the months of May and July and into  
8 August, it does get -- that area does get sun. I was  
9 able to grow Marigolds back there.

10 MR. GRIFFIS: Excellent.

11 MS. SMITH: And I just want to say that  
12 there are a number of outdoor activities, nature  
13 based, that can be conducted in the shade and there  
14 are also shade plants.

15 MR. GRIFFIS: Yeah, not all science projects  
16 require sun.

17 MS. SMITH: Worm bins and things like that.

18 MR. GRIFFIS: Okay. And last, just for  
19 clarification, I think you've all, if not several of  
20 you, have mentioned the playground that was walked to  
21 on 14<sup>th</sup> and Girard, is that correct?

22 MS. WAUGH: It's actually 15<sup>th</sup> and Girard.  
23 I think it's closer to 15<sup>th</sup> Street.

24 MR. GRIFFIS: 15<sup>th</sup> and Girard.

25 MS. WAUGH: It's between 14<sup>th</sup> and 15<sup>th</sup> on

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1 Girard.

2 MR. GRIFFIS: Okay. Which, I believe is the  
3 subject of an Application next week, if I'm not  
4 mistaken. Maybe not. Maybe not that one.

5 Okay. Excellent. And then security, I  
6 think we've hit that because you've all indicated that  
7 security in terms of crossing streets, if I understand  
8 your testimony correctly, and also in terms of who  
9 else is utilizing the playgrounds that are public that  
10 the children are going to. Are there other aspects of  
11 that element of security that I'm not understanding?

12 MS. WAUGH: No.

13 MR. GRIFFIS: Okay. Are there any other  
14 follow-up questions?

15 (NO RESPONSE.)

16 MR. GRIFFIS: Excellent. Thank you all very  
17 much. We appreciate you taking the effort and time to  
18 be down here today.

19 MS. WAUGH: Thank you.

20 MR. WILSON: Thank you.

21 MS. SMITH: Thank you.

22 MR. GRIFFIS: Mr. Gross, is there anything  
23 else for your presentation at this time?

24 MR. GROSS: That concludes our presentation,  
25 Mr. Chairman.

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1 MR. GRIFFIS: Excellent. Thank you very  
2 much.

3 If there is nothing further for the Board  
4 for clarification, let's move ahead to -- Yes, Mr.  
5 Etherly, did you have something?

6 MR. ETHERLY: Just very quickly. In the  
7 submittal, Mr. Gross, there is a letter from Mr.  
8 Escobar of 1364 Irving Street. I just wanted to  
9 confirm Mr. Escobar is the owner of the adjacent  
10 property immediately to the side of the proposed play  
11 area, correct?

12 MR. GROSS: That is correct, Mr. Etherly.  
13 Yes, that row house that showed in the photograph when  
14 it was up.

15 MR. ETHERLY: Okay. And Mr. Escobar  
16 indicates that he has no objection to the proposed  
17 playground being cited at that location?

18 MR. GROSS: Right.

19 MR. ETHERLY: Excellent. Thank you.

20 Thank you, Mr. Chair.

21 MR. GRIFFIS: Very well. Let's move ahead  
22 then to the Office of Planning Support Exhibit Number  
23 27.

24 MS. THOMAS: Good afternoon, Mr. Chairman,  
25 members of the Board. I'm Karen Thomas with the

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1 Office of Planning. OP is recommending approval of  
2 this Applicant's Variance Request to permit the  
3 establishment of the play area as an accessory use on  
4 the neighboring lot for a period of no more than three  
5 years from the date of approval by the Board.

6 This school entered into a 3-year agreement  
7 for the use of the vacant property as a play area.  
8 The school's lot does not have additional land area to  
9 support a play area and students now use an off-site  
10 area located further away than the lot in question.  
11 This creates a practical difficulty for the Applicant  
12 in coordination of its play and curriculum activities.  
13 We do not believe that the proposed accessory use  
14 would cause substantial detriment to the public good.  
15 Temporary use as a play area represents a visual  
16 improvement as well as a public good, since most of  
17 the attendees of the charter school live in the  
18 Columbia Heights neighborhood.

19 Therefore, we would recommend approval of  
20 this Request for the establishment of the play area  
21 for a period of no more than three years from the date  
22 of the Board's approval.

23 Thank you.

24 MR. GRIFFIS: Thank you very much.

25 Are there any questions from the Board? Mr.

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1 Mann?

2 MR. MANN: Do you believe that this should  
3 be a variance from Section 199 or should it be a  
4 variance from Section 2500?

5 MS. THOMAS: We did not look at 2500. We  
6 missed that, if that was the case. We looked at it as  
7 it appeared before us. We did request advice from  
8 Corp. Counsel on it and he did not lead us any other  
9 way but to say that -- but we would have to look at  
10 it. We didn't -- we looked at it as an area variance.  
11 We didn't want to look at it as a variance from the  
12 definition, as such. We just looked at it as an area  
13 variance because the lot could not support that  
14 accessory use, but not specifically from the  
15 definition requirement.

16 MR. MANN: I guess I understand the problem  
17 there was that you were trying to analyze the  
18 Application that was put before you, right. But the  
19 -- what I don't -- what I'm not fully understanding  
20 necessarily is how you analyze an area variance when  
21 you're actually talking about the definition rather  
22 than the accessory use itself under 2500?

23 MS. THOMAS: I can't remember the exact  
24 argument, but we just looked at it as -- it ended up  
25 with just focusing on the fact that, as an accessory

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1 use, it wasn't accommodated on its principal lot.

2 MR. MANN: Were you able to --

3 MS. THOMAS: Because the Zoning Regs does  
4 not have a specific thing for play area.

5 MR. MANN: Right.

6 MR. GRIFFIS: Yeah, that's the confounding  
7 aspect of this, is that "playground" or "play area"  
8 isn't a defined use.

9 MS. THOMAS: Yeah, playground area.

10 MR. GRIFFIS: I guess the direction -- maybe  
11 a more general question I hear Mr. Mann asking is are  
12 you aware of any variances from 199 that you maybe in  
13 your profession, may have been involved with, or have  
14 known about? The only way I see as conclusive, is  
15 whether one can bring a variance on 199.

16 MS. THOMAS: Yeah. I was concerned about  
17 that, too. We never really encountered that per se  
18 from a definition sense.

19 MR. GRIFFIS: Okay.

20 MS. MONROE: Mr. Chairman, can I interject  
21 on that?

22 MR. GRIFFIS: Yes.

23 MS. MONROE: I don't know who you talked to  
24 in Corp. Counsel, but I think that because the  
25 language is essentially substantively the same in 199

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1 and 2500.1 --

2 MR. GRIFFIS: Actually, it's identical to  
3 2500.1.

4 MS. MONROE: If you feel uncomfortable --  
5 almost. I mean, if you feel uncomfortable going under  
6 the definition, go under 2500.1. I don't know how the  
7 Applicant feels about that, but it's the same test;  
8 it's the same variance; it's the same facts.

9 MR. GRIFFIS: That's right.

10 MS. MONROE: It's the same language. I  
11 don't see that it would matter.

12 MR. GRIFFIS: No.

13 MS. MONROE: Again, if you don't feel  
14 comfortable with the definition, go under 2500, the  
15 first test, the first phrase of 2500.1, where it has  
16 to be on the same lot, because the second phrase has  
17 nothing to do with the student parking.

18 MR. GRIFFIS: Right.

19 MS. MONROE: That way, it works out as an  
20 area variance because you're under a regulation. You  
21 might feel more comfortable with that.

22 MR. GRIFFIS: I think that is actually the  
23 appropriate way, and actually Ms. Thomas from the  
24 Office of Zoning also looked at that in terms of the  
25 regulations in 2500.1, and I tend to agree with that

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1 analysis of where or what the relief should be coming  
2 from. I'm not aware of how we would get into granting  
3 some sort of relief from a definition, as it doesn't  
4 play into a requirement within a zoned district.

5 Okay. Are there any other questions to the  
6 Office of Planning?

7 (NO RESPONSE.)

8 MR. GRIFFIS: Very well. Does the Applicant  
9 have any cross-examination of the Office of Planning,  
10 Mr. Gross?

11 MR. GROSS: No, Mr. Chair.

12 MR. GRIFFIS: No cross.

13 Moving right ahead then. I don't have any  
14 record of any other Government reports attendant to  
15 this Application. This is not located in a historic  
16 district. We can move ahead to the Exhibit Number 26,  
17 which is from the ANC-1A. I would ask if any ANC  
18 representatives are here today? I think we have  
19 exhausted all those who are here and have already been  
20 at the table.

21 (NO RESPONSE.)

22 MR. GRIFFIS: Not noting any ANC member  
23 present, we can take note of their submission in  
24 support of the Application.

25 Let me open up and ask for anyone here

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1 present to provide testimony either in support or in  
2 opposition to Application 17376. Now would be the  
3 time to come forward to provide testimony as persons.

4 (NO RESPONSE.)

5 MR. GRIFFIS: Not noting any others present  
6 to provide testimony as persons, Mr. Gross, we'll turn  
7 it over to you for any rebuttal testimony or closing  
8 remarks that you have. I think it might be  
9 appropriate if you just want to address this quickly,  
10 199 and 2500.

11 MR. GROSS: Yes. Thank you, Mr. Chairman.

12 Actually Ms. Bailey had called me a few days  
13 ago about the alternative Section 2500.1 and we have  
14 no objection with that. I suppose it does fit better  
15 to make it an area variance from a substantive  
16 provision.

17 I had heard many years ago from the  
18 legendary Whayne Quin, he told a group of us at the  
19 Office of Planning that he can apply for a variance  
20 from absolutely anything. Be that as it may, 2500.1  
21 makes a lot of sense, I believe, and so we have no  
22 problem going in that direction if the Board so  
23 chooses.

24 MR. GRIFFIS: Excellent.

25 MR. GROSS: The last thing I would say is I

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1 realize there is some complexity here with the nature  
2 of the variance and so on. We were hoping to ask for  
3 a Bench Decision in view of all support and no  
4 opposition, particularly in view of the growing season  
5 concerns. So I'll just leave it at that. If you can  
6 see your way clear to do a Bench Decision, that would  
7 be great.

8 That would conclude my remarks. Thank you.

9 MR. GRIFFIS: Excellent. Thank you very  
10 much, Mr. Gross, and certainly far be it for me to  
11 take on Mr. Quin, especially when he's not here.  
12 However, I don't disagree with that. I guess looking  
13 at the 199 and just finding the substance of what the  
14 relief would be more than what the vehicle would be,  
15 and especially when the clarify of 2500.1 is there for  
16 us, I think it's appropriate to move it into Chapter  
17 25.

18 That being said, we are going to recess for  
19 ten minutes and we'll resume.

20 (Whereupon, the above-entitled matter went  
21 off the record at 2:21 p.m. and resumed at 2:51 p.m.)

22 MR. GRIFFIS: Okay, let's resume. I think at  
23 this time, let me open it up for a brief discussion on  
24 where we are and whether we would proceed today with  
25 a deliberation.

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1 MR. MANN: Mr. Chairman?

2 MR. GRIFFIS: Yes, Mr. Mann?

3 MR. MANN: I actually think that there are  
4 several confusing aspects to this case that, despite  
5 the fact that it might have seemed fairly  
6 straightforward in certain respects. There are  
7 certain things that I am confused about and maybe I  
8 can try to articulate what some of those are and  
9 perhaps you can jump in if you have some  
10 clarification.

11 The first thing that I'm a little bit  
12 confused on is how and why it's the school that's  
13 applying for this Application when the property is  
14 actually owned by another entity and it's not even the  
15 same entity that owns the property that the school is  
16 located on. Now, I know that there is a letter of  
17 authorization, but I don't think that it fully  
18 explains how it is that the school is able to apply on  
19 a property owner's behalf for the relief that's being  
20 sought. That's the first thing that I have a little  
21 bit of trouble with.

22 MR. GRIFFIS: Okay, so you're saying that  
23 you would like to leave the record open for  
24 clarification of authorization for the school to bring  
25 the Application based on the fact that the principal

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1 use should be the lot, that the lot owner should be  
2 the Applicant where the principal use occurs?

3 MR. MANN: That's right.

4 MR. GRIFFIS: Okay.

5 MR. ETHERLY: Well, just to clarify that.  
6 I believe I agree with Mr. Mann, and I just want to be  
7 sure as we move through Mr. Mann's recitation of some  
8 of the concerns that we're clear about what we're  
9 looking for. Is the complication the fact that we  
10 have the school, which is in a location that's owned  
11 by one owner, separate and distinct from the ownership  
12 of the subject property, i.e., Shenandoah? And so  
13 what you would be looking for is an authorization from  
14 Shenandoah that speaks specifically to the school's  
15 ability to request this variance or CVS? Or both?

16 MR. MANN: Well, I think that raises an  
17 interesting issue right there, although I hadn't  
18 specifically thought of bringing CVS into it.

19 MR. ETHERLY: And once again, I think I  
20 understand the concern or the issue, and without  
21 getting ahead of ourselves, I view it perhaps as an  
22 important piece that needs to be clarified, not  
23 necessarily as a hindrance to the overall Application  
24 that's in front of us. But I think just the issue of  
25 how the Application gets handled and how it gets --

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1 shall we say, referenced in the record, so just to be  
2 clear, what you're looking for is perhaps something  
3 that speaks from Shenandoah directly to the school, or  
4 perhaps, if I could, Mr. Chairman, let me invite OAG's  
5 --

6 MR. GRIFFIS: Let me see if I can address it  
7 first before we do embark on that. Shenandoah is the  
8 lot owner that the play area is proposed at where the  
9 accessory use is to be provided in this Application?

10 MR. ETHERLY: Correct.

11 MR. GRIFFIS: What I understand Mr. Mann's  
12 concern is, is doesn't the Application arise from the  
13 property where the principal use takes place? That's  
14 Lot 108 on Square 2849. Irregardless of CVS or the E.  
15 L. Haynes Charter School, that's the lot of which  
16 authorization to bring an Application should come.

17 MR. ETHERLY: Okay.

18 MR. GRIFFIS: In previous times, we've often  
19 had the agreement of the adjacent lot that the  
20 accessory use would take place, agreement in order to  
21 secure the fact, or even in some of the regulations,  
22 it's required to have a lease or some sort of  
23 document. That's in there, but authorization to bring  
24 the Application or tying it wouldn't necessarily need  
25 to be provided outside of what the Board thought. So

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1 it's the Lot 108, Mr. Mann, that you're looking at,  
2 having authorization from?

3 MR. MANN: I hadn't specifically thought of  
4 it in those terms, but yes, I can understand. I mean,  
5 anything -- I think it achieves the same end.

6 MR. GRIFFIS: Okay. Ms. Monroe?

7 MS. MONROE: I basically was just going to  
8 agree. I think Mr. Gross said before, and I think  
9 it's right, that the variance goes to Lot 108 because  
10 that's the lot with the principal use on it. So the  
11 owner of Lot 108 is the one that has to authorize the  
12 school to go for the variance in its stead. And  
13 that's, I think, what you said, right?

14 MR. GRIFFIS: Right.

15 MR. MANN: And I think that actually goes  
16 directly and summarizes the second point, which I'm  
17 not certain that I want to restate here.

18 MR. GRIFFIS: Well, I think it is important  
19 to restate it. If I understand what you're saying, is  
20 what we've done is advertised this for relief of 1366  
21 Irving Street, which is, my understanding, is the lot  
22 of which the playground is going to -- is proposed.

23 MR. MANN: Yes, it's the target lot.

24 MR. GRIFFIS: And so it's actually been  
25 advertised incorrectly. The point is I don't know.

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1 I'll open it up for you. I don't think we need to re-  
2 advertise. It's the proximity and the relief is  
3 fairly clear. But the importance would come in  
4 issuing any sort of order, where does that order go  
5 to? And it does, as Mr. Mann, you said, it ties it  
6 right back to what we were trying to clarify in the  
7 first part, but it then goes to the legal aspect of  
8 what land this variance would run with.

9 MR. MANN: Exactly. And then I think the  
10 third point that that would tie into is then the test.  
11 Are the -- do the tests -- which land does the test  
12 apply to and where are those, especially with the  
13 exceptional circumstances and the other problems of  
14 the test? I mean does that go to Lot 108 or Lot 98?

15 MR. GRIFFIS: Okay. So you're proposing and  
16 requesting that the Board keep the record open for  
17 written submission on the reiteration of the test?

18 MR. MANN: Yes.

19 MR. GRIFFIS: Okay. And if there's evidence  
20 in the record, they could point to it or they can  
21 provide new?

22 MR. MANN: Absolutely.

23 MR. GRIFFIS: Okay.

24 MR. MANN: Yes.

25 MR. GRIFFIS: Is there anything else then?

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1           MR. ETHERLY: I'm in agreement with the  
2 direction, Mr. Chair. I think it's -- just from this  
3 Board member's perspective, I think these are  
4 important questions to help just clarify the nature of  
5 the relief that's being sought and perhaps, more so,  
6 how that relief gets colored or gets defined in terms  
7 of what this Board is looking at. I just think those  
8 are important issues to clarify. I think, once again,  
9 from one Board member's perspective, I feel fairly  
10 comfortable about the substance of what we've talked  
11 about, where the need is and what the school is  
12 endeavoring to do. I think the important issue is  
13 just making sure that we go about doing it in the  
14 right way.

15           MR. GRIFFIS: Thank you, Mr. Etherly. Good.

16

17           Is there anything further then?

18           (NO RESPONSE.)

19           MR. GRIFFIS: Very well. I think it benefits  
20 us all if we do this as expeditiously as possible, as  
21 next week we have a very difficult schedule, and we  
22 also are keeping the record open for additional  
23 information. I would like to set this for October  
24 18<sup>th</sup>, which is fast becoming our public meeting, with  
25 all the decisions that we have on it, but we can put

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1 it in that morning.

2 Mr. Gross, let me ask you if that's ample  
3 time to provide the information that the Board has  
4 requested and then they also allow you to ask any  
5 questions for clarification, if we have not been  
6 clear, on what should be submitted.

7 MR. GROSS: Would you want our submission,  
8 what, a week ahead of the October 18<sup>th</sup> meeting or  
9 when?

10 MR. GRIFFIS: I think we could do it --  
11 well, is it possible to get it in in a week?

12 MR. GROSS: Yes, yes, it is.

13 MR. GRIFFIS: Okay. I think we can keep it,  
14 you know, as expeditiously as possible. I would  
15 certainly suggest that we could have it in by, you  
16 know, 3:00 p.m. on that Wednesday next. That would  
17 obviously ensure that it actually gets to the Board  
18 for deliberation before the 18<sup>th</sup>.

19 MS. THOMAS: Mr. Chairman, just for  
20 clarification, that's the 12<sup>th</sup> of October.

21 MR. GRIFFIS: The 12<sup>th</sup>, thank you.

22 MR. GROSS: Okay. The only other comment I  
23 would have, having heard the discussion, would be  
24 whether somehow the License Agreement helps address  
25 one of Mr. Mann's concerns about relating to the

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1 letter of authorization and why not the property owner  
2 as the Applicant and so on. I guess one comment I  
3 would have -- well, and the License Agreement, which  
4 specifically specifies that the school can do this  
5 play area, I wonder if that isn't a step beyond the  
6 letter of authorization that might help address that  
7 to a degree. But I'll kind of leave it there and  
8 we'll just do our best in the written submission to  
9 address these issues.

10 MR. GRIFFIS: Okay.

11 MR. GROSS: Okay, thank you.

12 MR. GRIFFIS: Excellent. Thank you.

13 MS. MONROE: Mr. Chairman?

14 MR. GRIFFIS: Yes?

15 MS. MONROE: Can I ask a question?

16 MR. GRIFFIS: Of course.

17 MS. MONROE: I have a question about the  
18 License Agreement. I'm trying to maybe solve this  
19 problem. Is the License Agreement between Shenandoah  
20 and the school?

21 MR. GROSS: Yes.

22 MS. MONROE: And does Shenandoah own the lot  
23 that CVS is on?

24 MR. GROSS: They do not.

25 MS. MONROE: That's, I think, the crux of

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1 the question here. We need something from the owner  
2 -- I mean, I hate to say this, but -- from the owner  
3 of the lot that the principal use is on.

4 MR. GROSS: I see.

5 MS. MONROE: And if they're not involved  
6 with this License Agreement, then it wouldn't solve  
7 that issue.

8 MR. GROSS: Okay. I think we can probably get  
9 that. I mean, one obvious fact is that the school is  
10 in the CVS Building, so they're already on a leasing  
11 basis. Then maybe we can get a letter from the owner  
12 of that property in addition. I don't know if we can  
13 do that in a week. We can try.

14 Thank you.

15 MR. GRIFFIS: Thank you.

16 Okay, is there anything else then? Are  
17 there any other clarifications?

18 (NO RESPONSE.)

19 MR. GRIFFIS: Very well. Then we'll set  
20 this for decision on the 18<sup>th</sup>. We'll keep the record  
21 open until the 12<sup>th</sup> for that information that was now  
22 enumerated.

23 Ms. Bailey and Mr. Moy, are you aware of  
24 anything else for the Board's attention in this  
25 afternoon's session?

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1 MS. BAILEY: No, sir.

2 MR. GRIFFIS: Excellent. If there's nothing  
3 further, then let's adjourn this afternoon.

4 Thank you all.

5 (Whereupon, the above-entitled matter was  
6 concluded at 3:03 p.m.)

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