

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY,

FEBRUARY 19, 2008

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:00 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER	Chairperson
MARC D. LOUD	Vice Chairman
MARY OATES WALKER	Board Member
SHANE L. DETTMAN	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES	Vice Chairman
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Spec.
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
STEPHEN RICE

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

10:43 a.m.

CHAIRPERSON MILLER: This hearing will, please, come to order. Good morning, ladies and gentlemen. This is the February 19, 2008 Board of Zoning Adjustment Public Hearing. My name is Ruthanne Miller. I'm the Chairperson of the BZA. To my right is Mr. Marc Loud, who is the Vice Chair, and next to him is Mr. Greg Jeffries from the Zoning Commission. To my left is Mary Oates Walker, Board Member, and Shane Dettman, Board Member, and next to Mr. Dettman is Mr. Cliff Moy from the Office of Zoning, Ms. Sherry Glazer, Office of Attorney General, and Ms. Beverley Bailey, Office of Zoning.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door. Please, be advised that this proceeding is being recorded by a Court Reporter and is also webcast live. Accordingly, we must ask you to

1 refrain from any disruptive noises or actions
2 in the hearing room.

3 When presenting information to the
4 Board, please, turn on and speak into the
5 microphone, first, stating your name and home
6 address, and when you are finished speaking,
7 please, turn your microphone off, so that your
8 microphone is no longer picking up sound or
9 background noise.

10 All persons planning to testify
11 either in favor or in opposition are to fill
12 out two witness cards. These cards are
13 located to my left on the table near the door
14 and on the witness tables. Upon coming
15 forward to speak to the Board, please, give
16 both cards to the reporter sitting to my
17 right.

18 The order of procedure for special
19 exceptions and variances is as follows: One,
20 statement and witnesses of the applicant.
21 Two, Government reports, including Office of
22 Planning, Department of Public Works, DDOT,

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1 etcetera. Three, report of the Advisory
2 Neighborhood Commission. Four, parties or
3 persons in support. Five, parties or persons
4 in opposition. Six, closing remarks by the
5 applicant.

6 Pursuant to Section 3117.4 and
7 3117.5, the following time constraints will be
8 maintained: The applicant, persons and
9 parties, except an ANC, in support, including
10 witnesses, 60 minutes collectively. Persons
11 and parties, except an ANC, in opposition,
12 including witnesses, 60 minutes collectively.
13 Individuals 3 minutes.

14 These time restraints do not
15 include cross examination and/or questions
16 from the Board. Cross examination of
17 witnesses is permitted by the applicant or
18 parties. The ANC within which the property is
19 based is automatically a party in a special
20 exception or variance case.

21 Nothing prohibits the Board from
22 placing reasonable restrictions on cross

1 examination, including time limits and
2 limitations on the scope of cross examination.

3 The record will be closed at the
4 conclusion of each case, except for any
5 material specifically requested by the Board.
6 The Board and the staff will specify at the
7 end of the hearing exactly what is expected
8 and the date when the persons must submit the
9 evidence to the Office of Zoning. After the
10 record is closed, no other information will be
11 accepted by the Board.

12 The Sunshine Act requires that the
13 Public Hearing on each case be held in the
14 open before the public. The Board may,
15 consistent with it's rules of procedure and
16 the Sunshine Act, enter Executive Session
17 during or after the Public Hearing on a case
18 for purposes of reviewing the record or
19 deliberating on the case.

20 The decision of the Board in these
21 contested cases must be based exclusively on
22 the public record. To avoid any appearance to

1 the contrary, the Board requests that persons
2 present not engage the Members of the Board in
3 conversation.

4 Please, turn off all beepers and
5 cell phones, at this time, so as not to
6 disrupt these proceedings.

7 The Board will now consider any
8 preliminary matters. Preliminary matters are
9 those which relate to whether a case will or
10 should be heard today, such as requests for
11 postponement, continuance or withdrawal or
12 whether proper and adequate notice of the
13 hearing has been given. If you are not
14 prepared to go forward with a case today or if
15 you believe that the Board should not proceed,
16 now is the time to raise such a matter.

17 Does the staff have any
18 preliminary matters?

19 MS. BAILEY: To everyone good
20 morning. Yes, staff does, Madam Chair. And
21 it has to do with Application No. 17717,
22 Central Union Mission. There is a request for

1 this hearing -- for the case to be postponed
2 from today's hearing.

3 CHAIRPERSON MILLER: Are the
4 parties in this case here? Okay. So we will
5 take that preliminary matter first.

6 MS. DUMAS: Good morning. This --
7 my name is Kinley Dumas of the Law Firm of
8 Arent Fox on behalf of the Central Union
9 Mission. And we respectfully request a
10 postponement in this case. We have been
11 actively working with members of the
12 community, the Office of the Deputy Mayor for
13 Planning and Economic Development and Council
14 Member Graham's office to refine the plan in
15 response to many of the concerns, which have
16 already been expressed in the record, on this
17 matter.

18 And we unfortunately do not have a
19 date right now by which we expect to have a
20 revised plan, but would request that this
21 matter be postponed for not more than six
22 months.

1 CHAIRPERSON MILLER: Not more than
2 six months? Is that what you said?

3 MS. DUMAS: That's --

4 CHAIRPERSON MILLER: Not more than
5 six months?

6 MS. DUMAS: -- correct.

7 CHAIRPERSON MILLER: Okay. And
8 are any of the other parties in this case
9 here? Is the ANC here? Oh, good, come
10 forward, please.

11 MR. VALENTI: Hi, my name is Cliff
12 Valenti. I live at 3648 Park Place, N.W., a
13 member of ANC-1A08. I'm designated by the ANC
14 to represent the report that was submitted.
15 While we support the applicant's right to
16 request a postponement, we also believe that
17 we're totally prepared and ready to go
18 forward. Unless they -- we believe they need
19 to significantly revise their application.
20 And we would like to determine party status,
21 if we could today.

22 CHAIRPERSON MILLER: Well, you

1 know the ANC is automatically a party. You
2 know that.

3 MR. VALENTI: Right.

4 CHAIRPERSON MILLER: So you're not
5 talking about that. How many people are here,
6 maybe you can raise your hands if you are here
7 seeking party status, in this case? Okay. We
8 do that some times. Ms. Dumas, do you have --

9 MS. DUMAS: Well, I just note that
10 there is a large showing of hands and the
11 record only has four requests for party
12 status, many of which were untimely filed.

13 CHAIRPERSON MILLER: Certainly.
14 And none of them would be untimely if this is
15 postponed, so that won't be an issue later.
16 But, Mr. Valenti, could you just articulate
17 why we should decide party status today as
18 opposed to when this case comes before us the
19 next time if the continuance is granted?
20 Which is most likely it would be.

21 You know, whenever an applicant is
22 trying to revise plans in order to accommodate

1 concerns of the community, we usually like to
2 give that a chance. So why would it be better
3 to do the party status today as opposed to
4 then when there is maybe a different plan?

5 MR. VALENTI: Well, the
6 neighborhood has overwhelmingly come out in
7 opposition of this application. And there are
8 so many people that have been involved that
9 are very close to this and want to make sure
10 that their voices are heard. And we have got
11 people who are experts in various areas and
12 they would just like to determine that now, so
13 that we can be better prepared, you know, when
14 we move forward as well.

15 This is the first time the
16 neighborhood has gone through this kind of a
17 hearing process. And I think it would just be
18 of value to be able to know ahead of time, you
19 know, which of our community leaders and
20 people are actually able to be party status.

21 CHAIRPERSON MILLER: Okay.

22 MR. VALENTI: And parties get

1 notification, that's another reason.

2 ZC VICE CHAIRMAN JEFFRIES: Yeah,
3 Mr. Valenti, actually, I remember you from
4 Georgia Street Overlay, Georgia Street
5 Corridor Overlay. It sounds to me that the
6 applicant is looking to make a fairly invasive
7 change to the drawings and plans and so forth.
8 And I just think, you know, we would be
9 probably getting ahead of ourselves if we were
10 to do party status today.

11 We would like to -- you know, it
12 would seem that, you know, those who are
13 seeking party status would want to be clear
14 about exactly what the project is. I mean,
15 some of those people might decide they don't
16 need party status. So I would just rather
17 have the file complete and make certain that
18 those who are seeking party status, you know,
19 are very clear about exactly what they are
20 opposing or supporting or whatever.

21 Right now, from what I sense and
22 also given the amount of time that they are

1 looking, six months, not more than six months,
2 it seems to me they are doing major surgery
3 perhaps. And so I just don't think we should
4 be getting ahead of ourselves. That's where
5 I would sit, Madam Chair.

6 MR. VALENTI: I actually thought
7 their letter said not less than six months.

8 MS. DUMAS: I just wanted to
9 clarify that. I did misspeak. I looked back
10 at our request. It did say not less than six
11 months. That is what we are requesting.

12 ZC VICE CHAIRMAN JEFFRIES: Okay.

13 MS. DUMAS: So we would anticipate
14 being back here in September.

15 ZC VICE CHAIRMAN JEFFRIES: Yes.
16 I would still -- you know, it's still the
17 same. I mean, my suspicion, I mean, it would
18 be different if they were coming to say look
19 we want to come back next month, but it sounds
20 to me that they are looking to make -- be
21 somewhat responsive to the community and so
22 forth. And not to say that, you know, you

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1 look at things differently, but I still -- I
2 don't want to have there be a different
3 project in front of us and we have granted
4 party status to people who, you know, might
5 not necessarily be opposed.

6 MR. VALENTI: Okay. All right.
7 The only other concern that residents have
8 expressed and Chairwoman Dotti Love Wade just
9 asked me to bring this to your attention. But
10 what are they going to be doing with this
11 property in the next six months? Right now,
12 it's very poorly maintained and it's a concern
13 for the neighborhood.

14 MS. DUMAS: Well, I don't really
15 have a detailed answer for that. But I know
16 that the mission has an obligation to maintain
17 its property in a safe manner. And there is
18 every intention to do so. So I'll take that
19 back to the mission and make sure that they
20 are aware that to the extent there are any
21 unsafe conditions on the property, that they
22 need to maintain them.

1 CHAIRPERSON MILLER: I just want
2 to address the question of party status also.
3 I mean, I agree with what Mr. Jeffries said,
4 but, in general, a lot of times members of the
5 community aren't exactly sure even what party
6 status means. And so since there are a lot of
7 individuals here who are seeking party status,
8 I just want to let you know that anybody can
9 testify in the case, that you don't need to
10 seek party status to testify in the case.
11 Anybody can testify.

12 What party status means is that
13 that person establishes themselves as uniquely
14 impacted, different from the general public,
15 by the application. And therefore, they can
16 get greater privileges of participation in the
17 hearing, which means cross examining
18 witnesses, presenting evidence, things like
19 that like all the other parties, like the ANC
20 and the applicant get.

21 So I just want to make sure
22 everybody is clear on that. And so, you know,

1 with a change in the application, the party
2 status, if you want party status, that might
3 also change how you are affected. You know,
4 it's hard to tell.

5 The question about service of
6 notice on things, I just want to hear just a
7 tiny bit more about that, because sometimes
8 even though we don't grant -- we don't decide
9 party status at a hearing like this one that's
10 going to be continued, we can ask the
11 applicant to serve some individuals who may
12 have applied, if there is a specific
13 compelling reason to do so.

14 If, for instance, they have to
15 serve the ANC anyway, so if these individuals
16 can get the information from the ANC, that's
17 fine. But if there is somebody who is in a
18 unique situation that you want to bring to our
19 attention that should be served, you could
20 raise that or that person could come forward,
21 at this time.

22 We just don't want to waste a lot

1 of time, you know, going through party status,
2 etcetera, when maybe six months down the line
3 everybody is in agreement or something, you
4 know.

5 ZC VICE CHAIRMAN JEFFRIES: So,
6 Madam Chair, I just think it would be good for
7 Mr. Valenti, I mean, given you have stated
8 that, you know, a lot of the people are not
9 familiar with the process, obviously, you
10 know, take this time to get yourself organized
11 and understand the process and so forth. And
12 particularly, listen to what Madam Chair
13 discussed about, you know, so often we see
14 here as well as the Zoning Commission so many
15 people ask for party status and it's not
16 necessary.

17 But, you know, I just think it
18 would be good to take this time to really, you
19 know, familiarize yourself with, you know, the
20 process and also the neighbors and so forth,
21 so that you are better equipped when the time
22 comes.

1 MR. VALENTI: Well, we have
2 actually had meetings where we have watched
3 BZA hearings and, you know, like I said, we
4 are very prepared for this meeting if it were
5 to go forward today. It's just a matter of
6 knowing which of your assets are going to be
7 used. You know, we have people who live
8 within the 200 foot perimeter. We also have
9 other people who are business owners that may
10 be outside of that.

11 There is kind of a gray zone, so
12 it's that kind of thing that we were
13 interested in. But we respect the, you know,
14 BZA in this matter.

15 CHAIRPERSON MILLER: Okay. I
16 mean, I don't, you know, want to leave any
17 questions unanswered, but if you do have other
18 questions later that come up in the meantime,
19 you should direct them to Mr. Moy. He will be
20 happy to let you know the rules and what do to
21 and things like that. So you do have this
22 extra time. And we will, you know, welcome

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1 hearing from everyone.

2 MR. VALENTI: Great. Thank you.

3 CHAIRPERSON MILLER: Okay. So I
4 think there is a consensus on continuing this
5 case. I think we're probably looking at no
6 earlier than September. Is that six months
7 from now? You said no earlier than six
8 months. Is that correct?

9 MS. DUMAS: Right. Not less than
10 six months. So six months and I think that
11 would put us into August, which the Board
12 doesn't meet, so early September.

13 MR. MOY: Madam Chair, the staff
14 would suggest either the Tuesday of September
15 the 9th or September the 16th in the afternoon.

16 CHAIRPERSON MILLER: Let me also
17 ask the applicant, you know, if we pick one of
18 those dates in September, you would be serving
19 the ANC well in advance. I want to make sure
20 that the ANC doesn't get, you know, caught in
21 their break in August or whatever and then
22 they don't have a chance to meet on it and

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1 here we are in September, you know. I don't
2 know if it would get down to the wire, at that
3 point. But why don't we set some dates for
4 that as well?

5 MS. DUMAS: That would be fine.

6 MS. WADE: We would have our
7 meeting at --

8 CHAIRPERSON MILLER: You can come
9 forward to the microphone and introduce
10 yourself.

11 MS. WADE: I'm Dotti Love Wade and
12 I'm Chairman of ANC-1A. Our September meeting
13 occurs on September the 10th. We are also in
14 recess the month of August. So the 9th would
15 not be sufficient for us to have taken an
16 action. The 16th would be or the next month.

17 CHAIRPERSON MILLER: I mean, I
18 don't know whether how far down the line, how
19 closely the applicant is going to cut it, but,
20 you know, you don't want to be giving -- we
21 don't want to set up a schedule also where you
22 are given something, you have a meeting on the

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1 10th and then you also want to be able to
2 prepare for the case.

3 MS. WADE: Right.

4 CHAIRPERSON MILLER: So unless you
5 are going to say, you know, you'll give it to
6 them in July and then we'll do it early in
7 September or else we should probably do it
8 later in September.

9 MS. DUMAS: Well, we may be able
10 to do it in -- to give it to them in advance
11 in July, but may I ask when the July meeting
12 is scheduled?

13 MS. WADE: Yes, the 9th. Yes, July
14 9th. So we would have to have it the latter
15 part of June for us to have -- or at least
16 mid-June for us to have an opportunity to
17 review it and if it's a substantial change
18 from what you have already submitted to us, we
19 may require it sooner. So I would rather wait
20 on the late side than the early side.

21 MS. DUMAS: I would agree, because
22 I think that that would sort of defeat the

1 purpose of why we're asking for six months, at
2 this point. So I would propose that either
3 later in September or in early October.

4 CHAIRPERSON MILLER: What's our
5 dates either late September or early October?

6 MR. MOY: Well, we have a
7 September 23rd and a September 30th. So
8 September 30th would be the last Tuesday in
9 September.

10 MS. DUMAS: I think the 23rd.

11 MS. WADE: Not a good day.

12 MS. DUMAS: No? I personally am
13 not available on the 30th. That's not to say
14 somebody with my firm would not be, but --

15 CHAIRPERSON MILLER: Do you want
16 to go to the next week in October?

17 MS. DUMAS: I think, yeah, the 7th
18 of October.

19 CHAIRPERSON MILLER: Is that
20 available, Mr. Moy?

21 MR. MOY: Yes, Madam Chair.

22 CHAIRPERSON MILLER: Okay.

1 MR. MOY: In the afternoon, I
2 would suggest.

3 CHAIRPERSON MILLER: First in the
4 afternoon?

5 ZC VICE CHAIRMAN JEFFRIES: I
6 mean, I would imagine the ANC, I mean, if
7 you're going to get something to them early
8 September and if it's a --

9 MS. DUMAS: Um-hum.

10 ZC VICE CHAIRMAN JEFFRIES: --
11 wholly different program, they are going to
12 need time to -- obviously, with the members
13 and the community and so forth.

14 MS. WADE: I would still hope that
15 they would get it to us in July to give us
16 opportunity to review it, hold community
17 meetings, etcetera.

18 ZC VICE CHAIRMAN JEFFRIES: Right.

19 MS. WADE: That is why I thought
20 that later would be better. Not later for
21 them to get it to us.

22 ZC VICE CHAIRMAN JEFFRIES: Um-

1 hum.

2 MS. WADE: But later for us to
3 have to respond to it.

4 ZC VICE CHAIRMAN JEFFRIES: Right,
5 right. You're right, absolutely.

6 MS. DUMAS: Well, I think that's
7 possible. I think we could get something to
8 the ANC in the last week of July, which would
9 give you the entire month of September to
10 review it.

11 ZC VICE CHAIRMAN JEFFRIES: Yes, I
12 mean, just keep in mind, I mean, obviously --

13 MS. DUMAS: And it could be
14 earlier.

15 ZC VICE CHAIRMAN JEFFRIES: -- I
16 mean, this file is voluminous with, you know,
17 opposition.

18 MS. DUMAS: Right. Well, and we
19 do intend to continue meeting with the Deputy
20 Mayor, Council Member Graham and community
21 members in the intervening months.

22 ZC VICE CHAIRMAN JEFFRIES: Okay.

1 MS. WADE: Well, when you say
2 evening on the 7th of October, what time?

3 CHAIRPERSON MILLER: No, we didn't
4 say evening. First in the afternoon.

5 MS. WADE: Afternoon? Oh, okay.

6 CHAIRPERSON MILLER: Um-hum. It
7 would be around 1:00.

8 MS. WADE: 1:00, okay.

9 CHAIRPERSON MILLER: But I think
10 Mr. Jeffries is making an important point and
11 so let's be careful here in the scheduling.
12 You have to leave -- it looks to us, based on
13 the issues that are surfacing in this case,
14 it's very important to have time for the
15 community to get this and work with you all,
16 so that if you gave it to them in September,
17 there is going to be a problem.

18 I mean, and then in August they
19 are in recess, so --

20 MS. DUMAS: Right. No, I was
21 suggesting that we provide something in the
22 last week of July.

1 ZC VICE CHAIRMAN JEFFRIES: Okay.

2 MS. DUMAS: Which would give them
3 the entire August recess and all of September.

4 CHAIRPERSON MILLER: Okay.

5 MS. DUMAS: Prior to the meeting.

6 MS. WADE: Well, we are in recess
7 in August. We don't do community meetings
8 either. I mean, we are -- recess is just
9 that. We're closed for that month. So that
10 our first meeting with the public could be
11 scheduled in September.

12 VICE CHAIRMAN LOUD: Well, would
13 you be able, Madam Chair, to provide your
14 membership with the copies of the submission
15 that she is going to give you the last week of
16 July in July?

17 MS. WADE: Well, actually, they
18 are responsible for providing each ANC
19 Commissioner a set, so the Commission itself
20 is not responsible for the distribution, but
21 Central Union is responsible for providing.

22 MS. DUMAS: We would be happy to

1 provide copies, but that's not our
2 understanding of what the Board's rules
3 provide. We would be happy to provide
4 individual copies for all of the ANC's
5 members.

6 VICE CHAIRMAN LOUD: Okay. So let
7 me go back to my question. So if they do
8 that, and it sounds like they are willing to
9 do that, does that give you enough time to get
10 it disseminated and have some informal
11 dialogue over the summer, but then have a real
12 vetting session in September? Because by that
13 time, you have had it for at least six, seven
14 weeks.

15 MS. WADE: Yes.

16 VICE CHAIRMAN LOUD: Okay.

17 MS. WADE: Um-hum.

18 CHAIRPERSON MILLER: Okay. When
19 is your ANC meeting in September?

20 MS. WADE: Again, that's the 10th
21 of September.

22 CHAIRPERSON MILLER: The 10th.

1 Okay. I just want to be clear that it's okay
2 if these materials are given to you at the end
3 of July or do you need them for your July 9th
4 meeting?

5 MS. WADE: For our July 9th meeting
6 would be ideal.

7 MS. DUMAS: I just don't know that
8 we can get them to the ANC in advance of the
9 July 9th meeting to give them appropriate time
10 to digest the materials. July 9th would be
11 one thing, but then we're losing an entire
12 month.

13 ZC VICE CHAIRMAN JEFFRIES: This
14 is looking like late October.

15 MS. DUMAS: Yes.

16 MS. WADE: Yes, I do agree.

17 MS. DUMAS: But we would not be
18 opposed to a late October date if that makes
19 it easier on everybody.

20 CHAIRPERSON MILLER: Let's do
21 that. I mean, I think they might want two
22 opportunities. One to share -- I was on the

1 ANC at some point.

2 MS. WADE: Right.

3 CHAIRPERSON MILLER: Okay. One to
4 share with the community and get feedback.

5 MS. WADE: Right.

6 CHAIRPERSON MILLER: And then work
7 with it and then the next one to come up with
8 your decision.

9 MS. WADE: That's great.

10 CHAIRPERSON MILLER: So would the
11 September 9th --

12 MS. WADE: So we can take a --

13 CHAIRPERSON MILLER: -- October 9^h
14 and then prepare for the hearing at the end of
15 October.

16 MS. DUMAS: That would be fine.

17 CHAIRPERSON MILLER: Does that
18 work? All right. What's at the end of
19 October?

20 MR. MOY: The last two Tuesdays in
21 October is October the 21st and the 28th.

22 MS. DUMAS: And when is the ANC

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1 meeting for October?

2 MS. WADE: The 8th.

3 MS. DUMAS: The 8th. Either one is
4 fine with us.

5 MS. WADE: Fine with us, too.

6 CHAIRPERSON MILLER: Either one is
7 fine? Okay. I guess the 21st.

8 MS. WADE: Let's take the 21st or
9 the 28th. Which is --

10 CHAIRPERSON MILLER: Well, let's
11 give it a cushion.

12 MS. WADE: The 28th --

13 CHAIRPERSON MILLER: Let's do
14 October 28th.

15 MS. WADE: -- instead of 21st.
16 Okay.

17 MS. DUMAS: And would that be in
18 the morning or the afternoon?

19 MR. MOY: I would schedule it in
20 the afternoon, just in case.

21 MS. DUMAS: Okay.

22 ZC VICE CHAIRMAN JEFFRIES: That's

1 going to be the only case?

2 MR. MOY: The staff is mindful of
3 scheduling other cases for that day.

4 ZC VICE CHAIRMAN JEFFRIES: Okay.

5 MS. WADE: But they will have the
6 material to us prior to our July 9th meeting?

7 MS. DUMAS: No.

8 ZC VICE CHAIRMAN JEFFRIES:
9 Prompting the --

10 MS. WADE: She's not?

11 MS. DUMAS: We will have it to you
12 by the end of July.

13 MS. WADE: Okay.

14 CHAIRPERSON MILLER: Can we put in
15 a fixed date, even if it's July 30th or
16 whatever?

17 MS. DUMAS: Sure, July 31st.

18 CHAIRPERSON MILLER: Okay. All
19 those seeking party status, if you have
20 already put the application in, it's not going
21 to change. It doesn't -- you don't have to do
22 anything else, if it's not going to change.

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1 But you can revise it if circumstances change
2 and you want to, you know, change your
3 application.

4 I don't have in front of me
5 exactly what the deadline is for party status
6 applications to be in, but they are in our
7 regs. You can check with Mr. Moy. It might
8 be two weeks ahead of time or something like
9 that, so we don't have a question of late
10 filings and have to decide whether we're going
11 to waive that or not. Okay.

12 So do you want to come forward?
13 Do you want to introduce yourself for the
14 record?

15 MS. RAM: Sure. My name is Pavi
16 Mohan Ram. I am actually going to --

17 ZC VICE CHAIRMAN JEFFRIES: Turn
18 the mike on.

19 MS. RAM: Is this on? Okay. My
20 name is Pavi Mohan Ram and I'm actually going
21 to be seeking party status. I just wanted to
22 clarify, earlier you mentioned that you had

1 received four applications for party status.
2 Could we just get clarifications on who those
3 applications are for, just so that we're not
4 resubmitting or just so that we know which
5 ones have actually been received?

6 CHAIRPERSON MILLER: My notes show
7 we have requests for party status from Darren
8 Jones, Council Member Muriel Bowser, Clarence
9 Moore and Patricia Mohan Ram. That's what's
10 in our file to date.

11 MS. RAM: Okay. Thank you.

12 CHAIRPERSON MILLER: Okay.

13 VICE CHAIRMAN LOUD: Madam Chair,
14 do you think now would be an appropriate time
15 just to mention that persons can participate
16 in the proceeding without necessarily being a
17 party? The advantages to being a party are
18 that you get an opportunity to be noticed on
19 the pleadings, of course, but also to cross
20 examine witnesses. And I notice that I do see
21 Council Member Bowser's staff representative
22 there, so it's just something to think about.

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1 You can still participate as a
2 witness in the proceeding and still be kept up
3 to date on what is happening, but you would
4 not necessarily have to be a party to do that.

5 CHAIRPERSON MILLER: Okay. Are
6 there other questions?

7 MS. DUMAS: No. Thank you.

8 MS. BAILEY: Yes, Madam Chair, I
9 have a question. You indicated that the
10 applicant is to provide the ANC with revisions
11 by July 31st. Do you want that revision to be
12 filed in the record at that time as well? Our
13 records.

14 CHAIRPERSON MILLER: No, it
15 doesn't have to be. I don't know whether you
16 might change it again after you talk to them.
17 I don't know. It has to be filed in our
18 record under the normal rules --

19 MS. BAILEY: Two weeks ahead.

20 CHAIRPERSON MILLER: -- for
21 prehearing statements?

22 MS. BAILEY: Two weeks ahead of

1 time.

2 CHAIRPERSON MILLER: Two weeks
3 ahead of time. Okay.

4 MS. DUMAS: I think we would
5 reserve our right to do a traditional
6 prehearing statement not less than two weeks
7 ahead of time, but I would be happy to submit
8 some sort of acknowledgement into the record
9 that we had provided copies, as requested, to
10 the ANC by July 31st and have a copy of what
11 it is we submit.

12 CHAIRPERSON MILLER: Fine. That's
13 ideal, I think. Okay. Anything else? Okay.

14 MS. DUMAS: Thank you very much.

15 CHAIRPERSON MILLER: We will see
16 you in October.

17 MS. WADE: Thank you.

18 CHAIRPERSON MILLER: Okay. Thank
19 you. Ms. Bailey, do we have any other
20 preliminary matters?

21 MS. BAILEY: Not for this case,
22 Madam Chair.

1 CHAIRPERSON MILLER: Thank you.
2 At this point, whoever is going to be planning
3 on testifying today, either in support or in
4 opposition to an application, can rise and Ms.
5 Beverley Bailey will give you the oath.

6 MS. BAILEY: Would you, please,
7 raise your right hand?

8 (Whereupon, the witnesses were
9 sworn.)

10 MS. BAILEY: Thank you.

11 CHAIRPERSON MILLER: We can
12 proceed.

13 MS. BAILEY: Application No. 17718
14 of the Archdiocese of Washington, on behalf of
15 the Shrine of the Most Blessed Sacrament,
16 pursuant to 11 DCMR 3104.1, for a special
17 exception to construct a new residential
18 playing field to serve an existing private
19 school, under section 206, at premises 3637
20 Patterson Street, N.W. The property is Zoned
21 R-1-B. It is located in Square 1863 on Lots
22 824, 825 and 826, also known as Lots of Record

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1 6, 7 and 8.

2 Madam Chair, Members of the Board,
3 this morning I received an additional filing
4 from the applicant and also I have proposed
5 conditions from members of the community that
6 I'll pass out at this time. And as a final
7 note, there are two requests for party status
8 in this application.

9 CHAIRPERSON MILLER: Thank you
10 very much. So would the two applicants for
11 party status come forward, if you are here?
12 No, no, I'm sorry, at the table. Take a place
13 at the table. And is the ANC representative
14 here? No? Okay.

15 Why doesn't the applicant
16 introduce yourself first and then the party
17 status applicants?

18 MR. FREEMAN: Good morning,
19 Members of the Board, Madam Chair, my name is
20 Kyrus Freeman with the Law Firm of Holland and
21 Knight. To my immediate right is Father John
22 Enzler on behalf of the applicant. And just

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1 for the record, we do not object to any of the
2 requests for party status.

3 CHAIRPERSON MILLER: Okay.

4 MS. MacCOLL: My name is Gail
5 MacColl. I live at 3623 Patterson Street,
6 N.W., one of the properties adjacent to the
7 proposed playing field and I'm here in
8 support, but I have also proposed some
9 conditions.

10 CHAIRPERSON MILLER: Thank you.

11 MR. WELLBORN: My name is Clay
12 Wellborn and with me is my wife, Edna
13 Wellborn. We are -- we reside at 5829 Chevy
14 Chase Parkway, N.W. We are co-trustees of the
15 trust that owns the house, which is Wellborn
16 Family Trust. Basically, we are the owners of
17 that property.

18 CHAIRPERSON MILLER: And do you
19 live in that property as well?

20 MR. WELLBORN: Yes, we do.

21 CHAIRPERSON MILLER: Okay.

22 MR. WELLBORN: It's our home.

1 CHAIRPERSON MILLER: Okay.

2 MR. WELLBORN: And we are here, we
3 have filed as opponents, but conditionally.
4 And in my comments, I'll make some -- I will
5 explain that, what that situation is. We are
6 in the sandwich house right next to it.

7 MS. WELLBORN: We are the sandwich
8 house. A very peculiar situation.

9 CHAIRPERSON MILLER: Did you say
10 you filed as proponents or opponents?

11 MR. WELLBORN: Opponents.

12 CHAIRPERSON MILLER: Opponents.

13 ZC VICE CHAIRMAN JEFFRIES: Excuse
14 me, can you speak into that mike, because I'm
15 having a little difficulty.

16 MR. WELLBORN: Yes, sir.

17 ZC VICE CHAIRMAN JEFFRIES: Thank
18 you.

19 MR. WELLBORN: Yes, sir.

20 CHAIRPERSON MILLER: Okay. And
21 there is no opposition to your party status
22 for either of you all. And I think it's the

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1 consensus of the Board that we concede that
2 you are uniquely impacted by this application.
3 So I don't -- is it the consensus of the Board
4 to grant party status to these individuals?
5 Okay. So that's done.

6 I would like to say that we have
7 not seen now the documents that Ms. Bailey
8 made reference to, so we're not yet on the
9 page where you all are. Perhaps we will take
10 a moment to look at what has been filed today.
11 Have all Board Members received the recent
12 filings?

13 ZC VICE CHAIRMAN JEFFRIES: Like a
14 minute ago?

15 CHAIRPERSON MILLER: Do you want
16 to take a minute and look at it?

17 ZC VICE CHAIRMAN JEFFRIES: The
18 ones like a minute ago?

19 CHAIRPERSON MILLER: Yeah. I
20 think I want to take a quick look at it, at
21 least, before we proceed.

22 MR. FREEMAN: If I may, Madam

1 Chair, unfortunately our architect could not
2 be here today, so I just submitted a copy of
3 his resume, which is the first two pages of
4 the document. The second two pages are a
5 narrative description of the proposal, which
6 is very similar to what is included in our
7 prehearing statement.

8 The next page is just a printout
9 of our proposed plan, which is what's there on
10 the board, but I wanted to make sure you guys
11 had a version handy for yourselves. The next
12 page is just a --

13 CHAIRPERSON MILLER: Different
14 from -- is the landscaping plan different from
15 what was in the record earlier?

16 MR. FREEMAN: The only difference
17 is that the stairwell on Patterson Street has
18 been moved 30, 40 feet to the right or east,
19 if you will, at the request of the Wellborns.
20 So that's the only difference. And the next
21 page is just a detail of the type of proposed
22 metal fence that would be installed along the

1 northeast and south walls or property lines.

2 And the last page is just an
3 example of the proposed or the type of fence
4 that would perhaps be installed along the
5 western boundary.

6 ZC VICE CHAIRMAN JEFFRIES: The
7 movement of the steps off of Patterson, was
8 that direct response to neighborhood concerns?

9 MR. FREEMAN: Yes, sir, that was
10 in direct response to the Wellborns.

11 ZC VICE CHAIRMAN JEFFRIES: Okay.

12 VICE CHAIRMAN LOUD: You've gotten
13 a copy of these conditions as well?

14 MR. FREEMAN: Yes, sir. I got a
15 copy of that this morning. I understand my
16 client got a copy of it yesterday.

17 VICE CHAIRMAN LOUD: Okay.

18 MR. FREEMAN: But we'll address
19 that.

20 VICE CHAIRMAN LOUD: Thank you.

21 CHAIRPERSON MILLER: Okay. Well,
22 we've had a chance just to see what's before

1 us, but I think what we need to do is hear
2 from you all. So, Mr. Wellborn, did you want
3 to clarify anything before we proceed? The
4 applicant, you know, usually begins with the
5 presentation of the case and then we hear from
6 the ANC and the other parties, which would be
7 you all. But I wasn't sure whether you wanted
8 to clarify something up front first?

9 MR. WELLBORN: No, thank you very
10 much. I think much of our comment will refer
11 to what Ms. MacColl is going to say as well as
12 to what the applicants are going to say. So
13 we're content going last.

14 CHAIRPERSON MILLER: Fine. Okay.
15 Then --

16 MR. WELLBORN: Could you hear me
17 all right? Am I close enough to the
18 microphone?

19 CHAIRPERSON MILLER: Yes.

20 MR. WELLBORN: Okay. Thanks.

21 CHAIRPERSON MILLER: Okay. Mr.
22 Freeman, I guess, we're ready for you to

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1 proceed.

2 MR. FREEMAN: Good morning.
3 Again, as I stated, I'm Kyrus Freeman with the
4 Law Firm of Holland and Knight. To my
5 immediate right is Father John Enzler on
6 behalf of the applicant. Again, our architect
7 could not be here, which is why we distributed
8 just some information regarding the current
9 plan.

10 I would just like to note the
11 Office of Planning's report in support of our
12 application, which is marked as Exhibit 29 of
13 the record, of the case. I believe you will
14 see OP agrees that we meet each of the
15 conditions of section 206. We do want to
16 clarify a few of their proposed conditions,
17 but I think we can address that at a
18 subsequent point.

19 I would also like to note the
20 ANC's support of our application, which I
21 believe is marked as Exhibit No. 25 of the
22 record of this case.

1 The manner in which we meet our
2 burden of proof is set forth in our statement,
3 which is -- was filed on February 5th in
4 accordance with the rules and marked as
5 Exhibit No. 28. And I might want to draw your
6 attention to Tab G of that. We prepared just
7 a list of frequently asked questions, which
8 would get into some of the operational aspects
9 of the proposed playing field that might be
10 useful for today's hearing, subject to a few
11 modifications, based on further conversations
12 with the neighbors as recently as yesterday.

13 I would just like to cover a few
14 points. As stated in our prehearing
15 statement, the purpose of this application
16 today is to provide a new recreational space
17 for the students of the school, which is
18 located to the west of the property at 5831
19 Chevy Chase Parkway. It has been there since
20 1928, for approximately 80 years at this
21 point.

22 The proposed uses of the field are

1 for phys ed, recess and other basic outdoor
2 activities. It will not be an athletic field
3 for football games or baseball games. It's a
4 small, small field. The maximum number of
5 student that will use the field at any given
6 time is 90 students. Father John will discuss
7 this in more detail. There won't be 90
8 students there throughout the period, but 90
9 students at various intervals.

10 I think it's also important to
11 note that this application will not result in
12 any new permanent construction on the field,
13 other than four benches. There will be no new
14 traffic, because it's just to serve the
15 existing school. There will be no increase in
16 the approved student enrollment. And there
17 will be no increase in the approved number of
18 staff.

19 Again, we believe the project is
20 in full compliance with the applicable legal
21 standards of section 206 of the Zoning
22 Regulations.

1 Turning now to just the design of
2 the field, and again, our architect is not
3 here, so I'll just hit some of the key
4 features of it. As you can see, the field is,
5 approximately, 140 feet by 136 feet, which is
6 again not a large -- large enough size for
7 like a football field.

8 There is a 20 foot landscape
9 buffer on each side of the property as has
10 been requested by each of the -- all of the
11 property owners actually. We have three
12 entrances, two on the alley, one off of
13 Patterson Street. The Office of Planning
14 initially requested that the Patterson Street
15 entrance be the main focal point, the main
16 exit/entry, but we believe the proposal had
17 access off the alley as well as Patterson
18 Street and is the most efficient in terms of
19 location of the students and safety of the
20 alley. But we could talk about that in a
21 little more detail.

22 We again proposed fencing, about a

1 5 foot metal fence on the north, east and
2 south side of the property. We proposed a 7
3 foot wood panel fence on the west side of the
4 property. I know the Wellborns initially
5 wanted a 7 foot fence, but I think as of
6 yesterday, they might not want a fence. So
7 I'll let them address that.

8 We're also calling for
9 reconstruction of the public sidewalk along
10 Patterson Street, which we think is a vast
11 public space improvement, as well as we are
12 reconstructing the -- about 90 feet of the
13 retainer wall along Patterson Street.

14 And again, we are providing a
15 detailed landscaping plan. That pretty much
16 covers everything I wanted to say in my
17 opening statement and I would like to proceed
18 with Father John and he can talk more about
19 the operational aspects of the school, as well
20 as his work with the community. Thank you.

21 FATHER ENZLER: Good morning. My
22 name is Father John Enzler. I live at 3630

1 Quesada Street, which is our street address
2 for our offices and the parish. I've been in
3 the parish for now about almost, well, two and
4 a half years, not quite three years. And a
5 year and a half ago, we purchased this
6 property, it was a single house on what could
7 be three buildable lots, with the intention,
8 really the only intention of trying to find
9 recreational space for our children.

10 Our children right now and for the
11 last 80 years have been playing sports and,
12 you know, throwing footballs and kicking
13 soccer balls and running around playing tag on
14 concrete and on blacktop. And it is our hope
15 that, if this be approved, we would be able to
16 use this space for the children to have a
17 safer environment to play and I think,
18 frankly, more friendly -- children-friendly
19 environment to play.

20 The children have recess
21 activities in the morning and also early
22 afternoon around lunchtime. And we also have

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1 some physical education activities throughout
2 the day. During the wintertime, of course,
3 they will be in our gym. We have a gym in the
4 school, but we would love to have a chance to
5 be able to have the children outside in
6 beautiful weather in the fall and spring when
7 the children are there.

8 The ANC recommended, I think this
9 was, unanimously that it would be approved to
10 you, but with the condition that the neighbors
11 would agree. The neighbors would come to an
12 understanding and accept. So we have worked
13 with the neighbors with a great deal of effort
14 over the last number of weeks to try to make
15 sure that we're accommodating both the
16 neighbors and children.

17 I have said to neighbors and I say
18 it again today, there really are two goals
19 here for me. One goal is the children have a
20 place to play. The second is the neighbors
21 not be duly burdened by the children. And
22 we're trying to -- in our agreement,

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1 conditions that I have signed off on, approved
2 that I'll be able to talk about in a few
3 moments.

4 We have agreed to all those
5 conditions, because again, we're trying to be
6 a good neighbor, but also provide a place
7 where the children can play during their
8 school days.

9 Basically, I think there's a basic
10 agreement, I think, among everyone very simply
11 that it's not a problem to use this facility
12 during the school day when children are in
13 school. Where there has been some need to put
14 some conditions and accommodations are we have
15 had some neighbors say well, could we use it
16 for our children? It would be open to them
17 and is that possible?

18 And that's where a lot of the
19 accommodations that we have talked about and
20 the conditions come forward. Things like a 90
21 day trial period. Things like making sure the
22 gates are always locked. Things like only

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1 approved people could use the field under the
2 authorization of myself, as a pastor, and then
3 also if there are any problems that came up in
4 that situation, we would work with those to
5 make sure those problems would cease and
6 desist, because we want to make sure the
7 neighbors are pleased.

8 So basically, you know, from
9 Monday through Friday, from 10:00 to 6:30, we
10 have, I think, basically all -- that's for the
11 children. The issues of question come up on
12 weekends or summertime or holidays and those
13 situations. We're not talking about any
14 organized activities. We agreed no organized
15 activity. No, you know, groups, even -- or
16 not the school -- these could be possibly
17 approved, based upon, you know, family use,
18 children use, local family use in the
19 community.

20 A couple of other things we talked
21 about. Number one, there will be no organized
22 competitive games, meets or leagues on this

1 property. It's not big enough for that. It's
2 a play area. We have agreed with the
3 neighbors and we want to enforce this, no
4 cheerleading, no spectator gatherings, not for
5 that type of thing. Not for people to be out
6 there, you know, making a fair amount of
7 noise, cheering on their children. It's a
8 place for children to play.

9 In terms of the special uses, by
10 the way, we are saying, basically, we see this
11 to be very rare and, basically, probably not
12 soon at all and have agreed with the
13 Wellborns, for instance, to say we will --
14 let's get this settled in for, you know, six
15 months to a year before we do anything like
16 that, if at all, to make sure we've got the
17 basic foundation set for what we really want,
18 most of all which is a children's place to
19 play during their school hours.

20 In terms of traffic, again, the
21 children don't drive cars, thank goodness.
22 And the parents, we have a parking lot. I

1 mean, there are some issues of parking in
2 other areas when the kids are picked up from
3 school when the carpools are dropped off.
4 That's an issue we work with the neighbors on,
5 too, but there is no additional parking here
6 that will be needed, because of this playing
7 space.

8 We have agreed in terms of noise
9 that there will be no whistles, no bells, no
10 amplified sounds, no generators or similar
11 noise machinery that might disrupt the
12 neighbors. We have agreed that there will be
13 landscape buffers of 20 feet on both sides of
14 the property and also the back of the property
15 to make sure, again, neighbors have some rest
16 from noise and children.

17 We have talked about, basically,
18 the entrance. Again, if you could see on our
19 -- over here, our children -- on the top left
20 hand side is where we have, basically, our
21 parking lot where the children play. The
22 alley is right really next to that. That's

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1 our gym to the far left. The alley is right
2 there. We would rather have the children come
3 down the alley, because, frankly, I think it's
4 more dangerous, that's where there is more
5 traffic, and to come in, in other words, on
6 the north side. I guess it would be right
7 there. Yes, exactly. Thank you.

8 Thank you. Yes. So and while I
9 think the -- one of the groups suggested that
10 we might have an entrance by Patterson Street.
11 In talking to the Wellborns, they would prefer
12 we did not do that. It's -- for their own, I
13 think, quiet and comfort, but also I think for
14 safety. It's walking across maybe 30 feet
15 versus walking down the alley that maybe is
16 150 feet. I don't know, it's ballpark.

17 So we would rather the children be
18 up, we can watch over them, good supervision,
19 so that's why we have had a change in that.

20 Security. The play area will be
21 locked when it is not being used. It will not
22 be open for any other outside uses. So when

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1 it is not being used, it will be completely
2 locked on all entrances. That the -- it will
3 be officially opened when, again, approved
4 hours are agreed upon.

5 In terms of lighting, we're open
6 to whatever light is necessary. We have
7 talked about the minimum amount of lighting,
8 because there was lighting from the streets,
9 but again, talking to Gail MacColl and Alan
10 Campbell, they might like some lighting that
11 would allow us to make sure that, at least
12 some motion detectors, nothing happens at the
13 field when the field is not open.

14 There will be no permanent
15 structures, no soccer stanchions, no LaCrosse
16 stanchions. It's not, again, for that
17 purpose. And in terms of keeping the place
18 clean, there are maintenance staff that takes
19 care of the property. We also have a
20 landscaping company that watches over our own
21 property. They will be assigned to take care
22 of this property as well.

1 But also, in terms of every day
2 cleanliness, our maintenance crew would make
3 sure that is taken care of, not just the
4 field, but the streets and the sidewalks
5 around the field.

6 Okay. So I think those are the
7 comments I wanted to make. I think that I
8 would just want to say one other thing. I'm
9 very grateful to the neighbors who I think
10 have been very understanding, very
11 accommodating and this is scary for them. I
12 understand it. It's scary. It's scary for
13 them.

14 And I want to just say publicly
15 again, that we intend to work as best we can
16 to make sure that any issues that might arise
17 are taken care of expeditiously, so they don't
18 have to worry about their safety, their
19 comfort, their quiet, their basic, you know,
20 value of life in their own home.

21 The two values again are children
22 to be able to play, but neighbors have to be

1 protected and watched over to make sure we are
2 able to work that out. And I think I can say
3 that our immediate neighbors, in fact, there
4 may be other neighbors who did not come today,
5 because they feel we have met their concerns,
6 neighbors right here who are most affected,
7 are here, I think, to speak to the issue.

8 CHAIRPERSON MILLER: Thank you. I
9 think the Board Members probably would just
10 want to, you know, ask you a few questions to
11 begin with, so we understand. Right now,
12 children play on the blacktop? There are up
13 to 90 on the blacktop at one time?

14 FATHER ENZLER: Well, there can be
15 more than 90 if it's during recess, but we
16 want to -- we have basketball hoops there. We
17 have -- you know, so we don't have all the
18 children playing on the field at the same
19 time. We have to limit the number of
20 children, to make sure, again, for the
21 neighbors' sake we don't have all of them
22 there at the same time. There might be 200

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1 children at one time playing outside. Maybe
2 150.

3 CHAIRPERSON MILLER: Where is that
4 in relation to the residences?

5 FATHER ENZLER: On the blacktop.
6 It's the -- it's off the map there. All that
7 over there.

8 MR. FREEMAN: Exactly.

9 CHAIRPERSON MILLER: So that's not
10 next to a residence? Is that right?

11 FATHER ENZLER: No, that's right
12 between our church and our school. It's kind
13 of -- it's boxed in all but on the alley side.

14 CHAIRPERSON MILLER: And you said
15 that the field isn't big enough for any
16 structured play? I mean, could there be
17 soccer on the field or, I mean, it's not big
18 enough for a football field, but could you
19 explain a little bit more how it will be used?

20 FATHER ENZLER: Sure. You know,
21 the children right now might kick a soccer
22 ball on the blacktop. They may play kickball

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1 on the blacktop. They may be out there
2 throwing the football on the blacktop. What
3 I meant by structured play was this would not
4 be organized, you know, with, you know,
5 coaches and athletic directors and referees.

6 It's children play in a place
7 where they have green space to play. And
8 that's the intention. In fact, so it's not
9 big enough to do any type of really organized
10 activity. And, you know, you could never play
11 a game there, because it doesn't fit the
12 legitimate size of fields that are for soccer
13 or football, LaCrosse, other sports.

14 MEMBER WALKER: Would there be any
15 playground equipment on the field?

16 FATHER ENZLER: Not at this point,
17 no, because we have it at the other -- we have
18 it up on the playground, on the blacktop. And
19 again, that's because I don't want that
20 additional noise of basketballs bouncing of,
21 you know, things that could make even more
22 noise. So that will keep that where we have

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1 it right now. It's the wide open free space
2 that the children do not have.

3 VICE CHAIRMAN LOUD: So would the
4 young people continue to use, for example, the
5 basketball court on the blacktop?

6 FATHER ENZLER: Yes, that's
7 correct.

8 VICE CHAIRMAN LOUD: And so with
9 the proposed 90 that would be on the open
10 field, would there also be an additional
11 number of young people that are out for
12 recreational play simultaneously?

13 FATHER ENZLER: Yes.

14 VICE CHAIRMAN LOUD: But on the
15 surface?

16 FATHER ENZLER: Yes. They are out
17 there right now. In other words, during
18 recess, during lunchtime, they are out there
19 right now. But they are all in that confined
20 space of the blacktop.

21 VICE CHAIRMAN LOUD: Okay.

22 FATHER ENZLER: This would allow

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1 us to have -- well, for instance, we might
2 have fourth graders with eighth graders in the
3 same place, same blacktop. We would love to
4 have a way to get the fourth and third graders
5 or fourth and fifth graders in different
6 space, more safe and go back and forth
7 sometimes. But we would be able to control
8 that with our physical education teachers and
9 our supervision to make sure that the field is
10 not overly used, but also the children are
11 spread out to get more safety as well.

12 VICE CHAIRMAN LOUD: All right.
13 Just walk me through, I think in your
14 testimony, you mentioned that the young people
15 would be out there very specific hours like
16 morning recess, afternoon recess and the
17 physical ed in the afternoon. But just walk
18 me through the time periods that they will be
19 out there and then how many young people will
20 be combined, both on the surface lot and the
21 recreational play area at one time.

22 FATHER ENZLER: Okay. For a

1 normal phys ed class, say seventh grade, we
2 have 50 children. For a normal fourth grade,
3 we might have 60 children. Our numbers
4 decrease a little bit as the children get over
5 in the upper grades by middle school. But in
6 kindergarten through, I think, fourth grade,
7 we have 60 children per grade.

8 So the physical education class
9 would be one grade, at 60 children, either on
10 the blacktop or on the field. I don't think
11 they would be split, because -- I think
12 supervision-wise. The area where you might
13 have a little bit more question about numbers
14 of children, so that's throughout the day, by
15 the way.

16 That's like, you know, there is
17 phys ed. I think the children have phys ed
18 twice a week. We have 488 -- 480 kids, so,
19 you know, to be -- throughout the day,
20 probably there would be four phys ed classes
21 on a Monday and a Tuesday and Wednesday, right
22 on through.

1 The question I think that's maybe
2 the most problematic is lunchtime, recess,
3 which isn't long. It's 15 or 20 minutes. But
4 that's where we have to make sure that we
5 protect, you know, the neighbors from a lot of
6 extra noise. But that would be, basically,
7 lunchtime, not, you know, throughout the day.

8 So maybe, you know, there is two
9 lunch -- actually, three lunch periods, so
10 between 11:30 and 1:00, there might be, you
11 know, 60 or 70 kids at 11:30, another 60 or 70
12 kids they come in at 12:00, another one at
13 12:30, so it's spread out between that hour
14 and a half. But again, it's -- it would not
15 all be at the same time.

16 VICE CHAIRMAN LOUD: So when your
17 pleadings say in the, I think it is, Tab G,
18 frequently asked questions, that the maximum
19 number of students at any one time would be
20 90, you are including both the hardtop young
21 people --

22 FATHER ENZLER: Yes.

1 VICE CHAIRMAN LOUD: You know, I'm
2 just talking about the recreation.

3 FATHER ENZLER: Just talking about
4 the field.

5 VICE CHAIRMAN LOUD: Okay. Okay.

6 FATHER ENZLER: Because we have --
7 right now, we probably have during lunchtime,
8 I'm going to guess, 120, 130, I don't know
9 exactly kids out there during the lunchtime,
10 at one particular time.

11 VICE CHAIRMAN LOUD: And I believe
12 you said or I thought I heard you say that you
13 had consented to the conditions that are being
14 -- that were being passed around this morning?

15 FATHER ENZLER: That's correct.

16 VICE CHAIRMAN LOUD: From Mrs.
17 MacColl?

18 FATHER ENZLER: That's correct.

19 VICE CHAIRMAN LOUD: Okay.

20 FATHER ENZLER: I have. Just Gail
21 and I met on Saturday and I met with the
22 Wellborns yesterday. We have been meeting a

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1 lot, but we kind of closed both negotiations,
2 if you will, both agreements were finished
3 over the weekend.

4 VICE CHAIRMAN LOUD: Okay.

5 FATHER ENZLER: And I'm in full
6 agreement with both sets.

7 CHAIRPERSON MILLER: Do we have
8 two sets --

9 MR. FREEMAN: Just for the
10 record --

11 CHAIRPERSON MILLER: -- in front
12 of us? I only have one, I think.

13 MR. FREEMAN: There's just one.

14 CHAIRPERSON MILLER: I have one
15 dated February 17, 2008 from Gail MacColl.
16 What's the other one? Do we have another set?

17 MR. FREEMAN: There's just one
18 set. I think it's misstated.

19 FATHER ENZLER: Duplicate copies
20 maybe.

21 CHAIRPERSON MILLER: Just one set?

22 MR. FREEMAN: Yes, that's correct.

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1 CHAIRPERSON MILLER: This is from
2 both the neighbors?

3 MR. FREEMAN: This is from --

4 MR. WELLBORN: May I explain?

5 CHAIRPERSON MILLER: Yes, please.
6 Yes, you are right here.

7 MR. WELLBORN: We have entered
8 into a private agreement with Washington
9 Sacrament. We have not filed it with the
10 District.

11 CHAIRPERSON MILLER: Okay. You
12 haven't filed it with the Board?

13 MR. WELLBORN: We have not.

14 CHAIRPERSON MILLER: You're not
15 required to file it with the Board.

16 MR. WELLBORN: And we don't plan
17 to.

18 CHAIRPERSON MILLER: But it would
19 be helpful, you know, for us in evaluating
20 adverse impacts, just to be aware of, you
21 know, the agreement that you have. Like, you
22 know, if you want to say more about it in a

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1 little bit when we get to you?

2 MR. WELLBORN: Well, I can -- I
3 would be happy to make a copy available, but
4 I don't feel that any particular relief is
5 sought.

6 CHAIRPERSON MILLER: Well, you
7 know, I think I just want to hear you talk
8 about it a little bit without, you know, your
9 disclosing more than you want to disclose.
10 Because whatever you put in the record does
11 become public record and you're not required
12 to do that. I just wanted to make sure that
13 I understood, you know, what was before us,
14 what we were supposed to have and then when we
15 are evaluating whether there is an adverse
16 impact to your property, you can reference
17 that to the extent you want to. Okay.

18 MR. FREEMAN: Madam Chair, if I
19 might? In terms of the conditions of the
20 agreement with the Wellborns, it's pretty much
21 the same thing in terms of no whistles, loud
22 bells or other type of noise making controlled

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1 devices. Fences will be installed, there will
2 be locks, access will be along Patterson
3 Street.

4 They were more concerned about the
5 access of the kindergartners as they were
6 closer to the entry. No lighting on the
7 field. In terms of the buffer, 20 feet -- 20
8 foot buffers. Pretty much the same, there are
9 just some specific conditions specific to the
10 Wellborns. But again, everything in this is
11 pretty much the same as what's in the other
12 agreement.

13 CHAIRPERSON MILLER: Well, let me
14 just ask you this though, the document that we
15 do have before us, are these proposed
16 conditions for the BZA order or are these just
17 proposed conditions for the school to abide
18 by? I mean, why is there like a private
19 agreement with one resident and not with the
20 other?

21 MR. FREEMAN: Right.

22 CHAIRPERSON MILLER: Or is there

1 one?

2 MR. FREEMAN: In my view, some of
3 these would rise to the level of being BZA-
4 type conditions, some of them would not. And
5 we can go through what we think would rise to
6 the level.

7 CHAIRPERSON MILLER: Is there
8 going to be a private agreement with Ms.
9 MacColl?

10 MS. MacCOLL: Let me just tell you
11 how I regard this. I regard what is in our
12 conditions as maximums. We also have
13 protections for the neighbors that if any of
14 these maximums are beyond what the neighbors
15 can tolerate, then what the neighbors agree to
16 will govern. So we have two time frames that
17 we need to think about in this action.

18 One is the time frame in which the
19 Wellborns are still in their house and that
20 house is still a residence. Then we also have
21 the longer time frame in which those
22 conditions may have changed and our approach

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1 was to go for the longer time frame with the
2 understanding that if at any time there are
3 conditions that make these maximums
4 objectionable, that the agreement with the
5 neighbors will prevail.

6 We have laid out processes for
7 review and that objectionable uses will be
8 discontinued.

9 CHAIRPERSON MILLER: Okay. This
10 is the point I'm kind of going to and I don't
11 want to, you know, circumvent your hearing and
12 everything from you. But, you know, I'm
13 hearing that there is a private agreement and
14 that's fine. And the Board can take that into
15 consideration in determining, you know,
16 adverse impacts to the property, you know,
17 what is being mitigated.

18 And then there are proposed
19 conditions for the Board. And as I look
20 through these conditions, these are much more
21 extensive and short-term, long-term, 90 day
22 trial, that kind of stuff that is difficult

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1 for a BZA order, because a BZA order is more
2 set and it goes with the property and it
3 doesn't usually change. You know, it doesn't
4 usually have that flexibility.

5 And that's why private agreements
6 sometimes can work better for that kind of
7 thing.

8 MS. MacCOLL: Well, you realize
9 that those of us that are not zoning attorneys
10 work with what we have in terms of this is
11 what we would like to see. You know, what you
12 are really saying is that you are not -- your
13 structure doesn't allow for these kinds of
14 procedural protections and contingencies. And
15 if we need to make those aspects of it a
16 private agreement, we can work that out.

17 But this is really just, you know,
18 anything in there that can be incorporated as
19 a condition under your framework, we would
20 like to see if there are things that cannot be
21 incorporated and we need to work those out
22 privately. But this does represent what the

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1 neighbors feel would be an appropriate
2 framework and -- as long as there are these
3 provisions for notice and for expression and
4 for, essentially, a veto power that the
5 question of what is objectionable may change
6 from time to time.

7 And, you know, we would like to
8 allow that kind of flexibility in the
9 arrangement that we come to.

10 CHAIRPERSON MILLER: Exactly. I
11 mean, that's why there are kind of these two
12 types of procedures. And I don't want to
13 speak unilaterally for the Board yet. I mean,
14 we will certainly, you know, look over all
15 these conditions. But from my experience, you
16 know, something like no organized activities
17 on this field, that's very clear. It's very
18 simple. It's very enforceable. It's probably
19 not going to change.

20 So, you know, those are the kind
21 of things, you know, locked at midnight or,
22 you know, really clear enforceable conditions.

1 So I think you pretty much know my point. I
2 just wanted to kind of get a feel also what
3 was going on, because I know you're dealing,
4 I think, with a very honest applicant. And
5 you can work out things that are flexible for
6 the community. Because that's important, too,
7 to have that flexibility.

8 ZC VICE CHAIRMAN JEFFRIES: So,
9 Father Enzler, I just want to be clear about
10 has there been complaints or any concern from
11 neighbors around the use of the blacktop or is
12 it just that it's so far from the residential
13 homes that you have not gotten any, you know,
14 concern from neighbors in terms of noise?
15 Particularly, during recess, you know, when
16 you are trying to accommodate 120 kids.

17 FATHER ENZLER: Right. I've been
18 there for two and a half years. I think it is
19 important to us that neighbors be -- feel like
20 we are accommodating their needs. Are there
21 a complaint occasionally? There surely could,
22 but there's not certainly a grounds for

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1 complaints or worries or concerns.

2 In two and a half years, I have
3 not had one complaint come to me about, you
4 know, would you, please, do something about
5 this parking lot and this noise and this
6 recess. I am cautious to the fact we had a
7 gym for a while that had open windows and it
8 was a real struggle for the wellborns.

9 ZC VICE CHAIRMAN JEFFRIES: Okay.

10 FATHER ENZLER: But those windows
11 were closed and sealed off. And I think that
12 began to take -- that helped a lot to take
13 care of those concerns.

14 ZC VICE CHAIRMAN JEFFRIES: So the
15 school does not keep any log of any complaints
16 that might come in?

17 FATHER ENZLER: I think I would
18 hear about them pretty quickly. I don't have
19 any. Actually, I don't know the answer to
20 that question, but I don't have any complaints
21 that come.

22 ZC VICE CHAIRMAN JEFFRIES: That's

1 all right. Okay.

2 MR. WELLBORN: May I just add to
3 that?

4 ZC VICE CHAIRMAN JEFFRIES: Sure.

5 MR. WELLBORN: The closing of the
6 windows on the gym made an enormous difference
7 for us. And we thank the previous leadership
8 at Blessed Sacrament for undertaking that and
9 we thank the Board of Zoning Adjustment for
10 their instrumental help in making sure that
11 that happened.

12 MS. WELLBORN: That was an
13 acoustic --

14 MR. WELLBORN: There was -- it was
15 a horrible, horrible problem that has left
16 wounds that are still felt. Let me say that
17 that was a turning point in our relationship
18 with Blessed Sacrament, which had been
19 horrible beforehand. They had been ironically
20 uncharitable to their neighbors, actively
21 uncharitable to their neighbors. That has
22 changed and we are grateful for that.

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1 ZC VICE CHAIRMAN JEFFRIES: So
2 when the --

3 MR. WELLBORN: But with regard to
4 specific problems on the current blacktop, in
5 the past, we have had a few instances in which
6 the lunchtime gatherings in the alley that
7 separates the gym from our house, the paved
8 area in the alley immediately behind our
9 property, where there have been noisy
10 disruptive gatherings of kids.

11 MS. WELLBORN: Kids playing.

12 MR. WELLBORN: And kids climbing
13 the fence. But it hasn't happened recently
14 that I know of. Has it happened recently?

15 MS. WELLBORN: I am the one home,
16 so I am the one who is the bad person in this.
17 The problems -- we have been there since 1972.
18 It was horrendous, to say the least. No
19 registry of complaints, absolutely anything.
20 We -- our weekends, they had dances, they were
21 awful. I've had a heart attack, so I can't
22 get more emoted about it.

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1 But what I'm trying to say is
2 finally when they had work in the school in
3 2000, we requested that instead of pretending
4 to close windows from the gym, some
5 soundproofing take place, because a gym that
6 has windows and that soundproofing, in effect,
7 a very good -- Father Duffy was then the
8 pastor there had to listen, I suppose. Thanks
9 to you guys, I suppose.

10 And there was very good and
11 efficient soundproofing. And I feel I wasted
12 30 years of worry with something that could
13 have been done. When the sale took place, you
14 can see how we felt. We are tax payers in the
15 city. We are sandwiched. Okay. This is
16 called the field of dreams. We are on their
17 way to the field of dreams, because we have an
18 alley that all of the access to the school, to
19 the parking lot, to everything is through that
20 alley. 4:00 you have deliveries to the
21 school.

22 MR. WELLBORN: 4:00 in the

1 morning.

2 MS. WELLBORN: 4:00 in the morning
3 we have deliveries to the school, everything
4 is through that. All the trucks that deal
5 with construction goes through that alley, not
6 through -- comes through the back, pass
7 through that alley.

8 Our house shakes during the
9 process of leveling the house, which was done
10 very nicely, I have to say, those trucks idled
11 in illegal parking place in front of my house
12 for two or three hours at a time. I went out
13 complained, no avail. Finally, we complained
14 to Blessed Sacrament.

15 I do not -- I'm sorry, I'm a wife.
16 I don't like to nag, but I felt that our
17 position in relation to Blessed Sacrament has
18 been nagging. I'm sorry I'm saying this
19 openly, but I have to. My husband is a
20 diplomat in the family. I pass it to you.

21 MR. WELLBORN: Well, you can see--

22 MR. FREEMAN: Madam Chair?

1 MR. WELLBORN: You can see --

2 MR. FREEMAN: Madam Chair, if I --
3 where are we in the proceedings? I'm a little
4 confused.

5 CHAIRPERSON MILLER: I don't know.
6 We did get sidetracked, but --

7 MR. FREEMAN: I thought we were on
8 the applicant's case.

9 CHAIRPERSON MILLER: No. Oh, I
10 thought you had finished. You hadn't
11 finished?

12 MR. FREEMAN: You were asking us
13 questions.

14 ZC VICE CHAIRMAN JEFFRIES: Yeah,
15 yeah.

16 CHAIRPERSON MILLER: Okay.

17 ZC VICE CHAIRMAN JEFFRIES: Yes, I
18 did. I asked Mr. -- I mean, the Father a
19 question and I believe that they sort of felt
20 like -- and then I had another question for
21 you. I'm still just diagrammatically trying
22 to understand how the school and the field are

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1 going to interface with the house sandwiched
2 in between along with the alley.

3 I mean, like I'm trying to
4 understand so these kids are going to come
5 out, they're going to go down the alley and
6 then go onto the field to play. I mean, I'm
7 just trying to understand the movement, the
8 migration and, you know, how everything works.

9 MR. FREEMAN: Do you want to point
10 to it?

11 ZC VICE CHAIRMAN JEFFRIES:
12 Because all I've gotten was --

13 MR. FREEMAN: Father John will
14 point to the flow of traffic, student traffic,
15 sorry.

16 FATHER ENZLER: This is our church
17 right here.

18 ZC VICE CHAIRMAN JEFFRIES: You
19 need to be on a mike and I don't know, you
20 know.

21 FATHER ENZLER: Our church is
22 right here.

1 ZC VICE CHAIRMAN JEFFRIES: Um-
2 hum.

3 FATHER ENZLER: Okay. In between
4 here there is a blacktop and our school is
5 right here going almost up the church's
6 parkway, almost to the church's circle. So
7 basically, the school is here. The western
8 area comes here and then the church is here.
9 This area all in here is blacktop between the
10 church and the school. So it's all -- it's
11 surrounded by, frankly, buildings.

12 ZC VICE CHAIRMAN JEFFRIES: Okay.
13 Okay.

14 FATHER ENZLER: All right.

15 ZC VICE CHAIRMAN JEFFRIES: Okay.

16 FATHER ENZLER: There is an
17 entrance way in the parking lot through where
18 -- between the church and the school, but
19 otherwise it is a blocked area and we can't
20 use.

21 ZC VICE CHAIRMAN JEFFRIES: Okay.

22 FATHER ENZLER: One lane to get

1 through there. And then so all the -- oh,
2 it's over here. Then when the children come
3 out to the playground, they are playing right
4 in here, this area here.

5 ZC VICE CHAIRMAN JEFFRIES: Right.

6 FATHER ENZLER: And then it
7 would --

8 ZC VICE CHAIRMAN JEFFRIES: I
9 think you are off mike again.

10 MR. FREEMAN: While you are
11 working on the microphone, if you take a look
12 at our statement, Exhibit A, it shows a little
13 -- it's a little dated. It's a base, so the
14 lot lines are not congruent with the existing
15 lot lines. But the black play top area that
16 Father John is referencing, it's between the
17 church and the school where it says Most
18 Blessed Sacrament, that's the black play top
19 area that he is referencing.

20 And the access would be down to
21 the right or to the east, if you will, down
22 that alley.

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1 ZC VICE CHAIRMAN JEFFRIES: So,
2 okay. Where the word is Sacramento, that's the
3 blacktop area?

4 MR. FREEMAN: Yes, sir.

5 ZC VICE CHAIRMAN JEFFRIES: Okay.
6 And then I'm going to go -- I'm looking north.
7 North is up here, right?

8 MR. FREEMAN: North is at the top,
9 yes.

10 ZC VICE CHAIRMAN JEFFRIES: Is the
11 top. Okay. And so if I go to the east, I'm
12 going to cut through -- yes, so, I see. So I
13 go east from the blacktop and then I'm in the
14 alley, effectively, and I'm passing the
15 Davenports?

16 MR. WELLBORN: Wellborns.

17 MR. FREEMAN: When you go east,
18 you can --

19 ZC VICE CHAIRMAN JEFFRIES: Not
20 Davenports. I'm sorry.

21 MR. FREEMAN: -- continue east
22 along that alley and the first house that you

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1 see kind of the rear yard of are the
2 Wellborns.

3 ZC VICE CHAIRMAN JEFFRIES: I'm
4 sorry, I meant the Wellborns.

5 MR. FREEMAN: Right.

6 ZC VICE CHAIRMAN JEFFRIES: Okay.
7 Okay.

8 MR. FREEMAN: And then you come to
9 our playing field and then the house to the
10 immediate east or right of our playing field
11 is the MacColls.

12 ZC VICE CHAIRMAN JEFFRIES: Okay.
13 Okay.

14 MR. FREEMAN: And the alley that
15 Ms. Wellborn was talking about in terms of
16 traffic or access, I believe, is the north/
17 south alley off of Patterson Street.

18 FATHER ENZLER: The windows that
19 were a problem are right here that we have
20 sealed off. Those are the windows. That's
21 our gym right there. Which you can see comes
22 right up against the Wellborn's house.

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1 ZC VICE CHAIRMAN JEFFRIES: Okay.

2 FATHER ENZLER: And that's why
3 that was sealed off. I think I can say also
4 from talking to the Wellborns, they much
5 prefer that the traffic would be here, which
6 is away from their house, than here, which is
7 so close to their house. And we prefer it,
8 too, because we don't want our children coming
9 down this alley if we can avoid it.

10 We want to come just right across
11 here. Here is our parking lot, a little space
12 right there, and they are now on the alley
13 heading for the -- there is very little -- by
14 the way, we cone this alley during the school
15 day, so people can't drive down it, because we
16 don't want traffic, so it's coned off.

17 So you can drive not during school
18 days, but after school. During school days
19 you can't drive through it.

20 ZC VICE CHAIRMAN JEFFRIES: So,
21 Father, when -- and this is probably not part
22 of the case, but just a quick question. When

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1 you close the door to the gymnasium, was it
2 you had to address ventilation? I mean, is
3 that what happened? Okay.

4 FATHER ENZLER: I think that was--
5 before my time, there was just wide open
6 windows. Hot gymnasium, a lot of kids in
7 there.

8 ZC VICE CHAIRMAN JEFFRIES: Right.

9 FATHER ENZLER: Open those windows
10 wide open.

11 ZC VICE CHAIRMAN JEFFRIES: Right.

12 FATHER ENZLER: We have the
13 Wellborns here. Basketballs, whistles,
14 screaming, yelling, cheering and that all, I
15 think, has basically stopped. I think that
16 stopped with the --

17 ZC VICE CHAIRMAN JEFFRIES: You've
18 got air conditioning?

19 FATHER ENZLER: Oh, yeah.

20 ZC VICE CHAIRMAN JEFFRIES: Right.

21 I just wanted to make certain you can close
22 the door with the kids.

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1 FATHER ENZLER: Yes, yes.

2 ZC VICE CHAIRMAN JEFFRIES: Okay.
3 Close the window and they're dying of heat.
4 So okay. I think it would have been helpful,
5 just for the record, and I see, counsel
6 Freeman, I actually saw your Tab A and I was
7 trying to make heads or tails. It would have
8 been nice if we could have just blown this up,
9 because, effectively, what we are doing here
10 is we are creating a bit of a campus that has
11 the Wellborns sandwiched in between and I just
12 think we just -- you know, at least for me, I
13 just needed to clearly understand the
14 interplay between that.

15 Because you do have a campus here
16 now with a residential house in between it.
17 So I just -- you know, if I had had like some
18 diagram, probably you didn't want to do that,
19 but, you know, that's what I'm seeing here.
20 So I think it's like the best in the five
21 years that I have been, this is like the best
22 case of party status I think I have ever seen.

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1 Anyway, so you get the award.

2 MR. FREEMAN: Just one, another
3 additional useful piece of information. The
4 Office of Planning report actually also has a
5 pretty good aerial photograph of the existing
6 structure, the Wellborn's house, where the
7 field will be and the MacColl's house as well.

8 ZC VICE CHAIRMAN JEFFRIES: Yes, I
9 understand that. I saw that as well. And I
10 just want to make certain I'm clear for the
11 record. I'm really looking for a real
12 diagrammatic site plan that really -- you
13 know, that I don't have to look at, you know,
14 trees. I mean, I just need to understand how
15 everyone is moving and interacting between
16 this field and the school with the house in
17 the middle.

18 I mean, you know, that's sort of
19 what I was trying to deal with here. So, yes,
20 I saw this, but it still doesn't really give
21 me the kind of detail that I need to
22 understand how this campus works. And I think

1 effectively you are creating a campus.

2 CHAIRPERSON MILLER: Is that brown
3 box in the top left corner the Wellborn's
4 garage or what is that?

5 Okay. I'm just wondering if you
6 could explain further what accommodations are
7 being made to protect the Wellborn's home,
8 given as Mr. Jeffries says, it looks like they
9 are in the middle of your campus to a certain
10 extent.

11 FATHER ENZLER: Right.

12 CHAIRPERSON MILLER: With respect
13 to privacy and noise and things like that.

14 FATHER ENZLER: A number of things
15 that we tried to accomplish. One, we have
16 limited the time for use to make sure it's not
17 being used all the time on weekends and, you
18 know, organized activities. It can be used.

19 CHAIRPERSON MILLER: Is that in
20 the record?

21 FATHER ENZLER: It's in the
22 agreement, yes.

1 CHAIRPERSON MILLER: But we don't
2 have the agreement.

3 MR. FREEMAN: Our proposed hours
4 are on the frequently asked questions sheet.

5 CHAIRPERSON MILLER: Frequently
6 asked questions.

7 MR. FREEMAN: It's in the record.

8 CHAIRPERSON MILLER: Okay.

9 MR. FREEMAN: 6:30, yes.

10 FATHER ENZLER: There is a 20 foot
11 buffer of landscaping on both sides of the
12 property to again give some relief from noise.
13 And we are still negotiating about, frankly,
14 what kind of fence. There will be a fence.
15 Wood was one possibility. I think more
16 recently maybe it would be metal-type, but the
17 clear issue there will be a fence, just what's
18 the best for the Wellborns. Whatever it is,
19 we'll do, you know. And they know that.
20 Whatever makes best sense for them.

21 We have a number of -- we have
22 agreed that if there is any problems that come

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1 up, that we would sit down and work those out
2 together. We would make sure there is no
3 problems. And this would be more on, again,
4 the area of children want to play there on a
5 Saturday or on a weekend and might cause some
6 problems.

7 And so those are the kind of
8 things we have done. And I think that both
9 Edna and Clay have worked through those
10 issues. We have sat down and talked about
11 them. I think we have got -- on those kind of
12 issues, that are hard to put into writing
13 maybe for, you know, the Zoning Adjustment
14 Board, but there are things we have agreed to.
15 And I think -- I hope they will speak to it
16 that we feel are important.

17 CHAIRPERSON MILLER: Well, we just
18 want to make sure that what we do put in ours
19 are conditions that we want to make certain
20 are necessary for mitigating --

21 FATHER ENZLER: Yes.

22 CHAIRPERSON MILLER: -- any

1 adverse impacts. And then the rest, you know,
2 is to be agreed, but --

3 FATHER ENZLER: Just one other
4 thing. The Patterson Street entrance was one
5 that was a concern and we have moved that,
6 basically, we all agree on that would be a
7 better idea. So again, it was something that
8 they were concerned about and we moved the
9 entrance from Patterson Street for the
10 kindergarten about 30 feet down, rather than
11 right next to their property. Again, based
12 upon their request.

13 CHAIRPERSON MILLER: Now, we don't
14 have the landscape architect here, but can
15 either of you, you know, address the
16 confidence we can have in the buffering? Like
17 what -- about what is it going to be? Is it
18 a visual buffering as well as a sound
19 buffering or, you know, what's --

20 MR. FREEMAN: Madam Chair, the
21 proposed landscape plan consists of -- and I'm
22 reading from what we filed today, it's the

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1 one, two, three, the fourth page in, the
2 second full paragraph that describes the
3 landscape plan. And if I might add, I believe
4 the neighbors have seen the landscape plan.

5 I don't want to speak for them,
6 but when they testify, I think, they will
7 agree that we have taken adequate measures to
8 address their concerns or some might agree.

9 ZC VICE CHAIRMAN JEFFRIES:
10 Anyway, I'm not looking at Mrs. Wellborn, it
11 didn't seem like she is completely on board,
12 but I have to -- I do think, you know,
13 landscape architect, you know, here would have
14 been critical. I mean, you know, they are the
15 expert in these matters. And, obviously, you
16 know, the landscaping is somewhat of a
17 critical feature of the success of this. And
18 so I think it's a bit unfortunate that he is
19 not here.

20 MR. FREEMAN: We had a conflict
21 and we were going to try to switch our case to
22 the afternoon. He couldn't be here in the

1 morning. And we wanted to try to do that,
2 because we were also doing an afternoon case.

3 ZC VICE CHAIRMAN JEFFRIES: Oh, I
4 see.

5 MR. FREEMAN: But we could not do
6 that. But if the Board, not to schedule
7 things for you, but if you wanted to continue
8 this until later, we could definitely have our
9 landscape architect here in the afternoon. He
10 just could not be here this morning. And
11 we're getting close to your lunch break. If
12 you wanted to -- again, not to schedule the
13 case for the Board, but we could definitely
14 try to get him down here to answer any
15 questions you might have or we could continue
16 and have him come during rebuttal to address
17 any questions you might have also.

18 ZC VICE CHAIRMAN JEFFRIES: Well,
19 I -- listen, from where I sit, you know, I
20 mean, you know, the Wellborns have party
21 status here and they are in the middle of
22 this, and so I have to really look to them,

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1 quite frankly. I mean, when I see Mrs.
2 Wellborn not so concerned, I mean, you know,
3 I have -- I just have to pause.

4 I mean, it would be different if,
5 you know, they were standing up and cheering
6 this, but -- and I don't see here a lot of --
7 I think they are working with you, but, you
8 know, I think it would have been helpful to
9 have the landscape architect here. Because I
10 actually have a couple of questions about some
11 of the trees as well.

12 Yeah, however you want to do it, I
13 mean, you know.

14 CHAIRPERSON MILLER: When could
15 your landscape architect be here?

16 FATHER ENZLER: He was due back in
17 town this morning at 9:30 from Baltimore, so
18 he couldn't get here by 12:00, but we thought
19 we would be on earlier, too. He probably
20 could have come if he thought we would be
21 still meeting at 12:00 or so. He is back in
22 town.

1 MR. FREEMAN: Actually, I can give
2 him a call and shoot him an email if we take
3 a quick recess. He is -- should hopefully be
4 able to get here pretty shortly. But if you
5 want to, I can take a recess, go do that and
6 then we could continue, so that the Wellborns
7 and the other parties can -- whatever you --

8 CHAIRPERSON MILLER: All right.
9 We would like to hear from the landscape
10 architect. We think that's an important part,
11 if he is available. We could -- I mean, we're
12 already getting towards the afternoon, so what
13 my Board is saying is though in the meantime,
14 they would like to continue with the rest of
15 the case and then if you can see when he might
16 be here, we might just be able to finish up,
17 you know, in the early afternoon, if he can be
18 here, you know. We might just be able to
19 continue with this case before we get to our
20 next case.

21 MR. FREEMAN: If we could take a 2
22 second recess so I can have someone from my

1 office call and email him and ask him --

2 CHAIRPERSON MILLER: Right. See
3 how soon he could get here.

4 MR. FREEMAN: If that's okay?

5 CHAIRPERSON MILLER: Yes. So why
6 don't we take a five minute break?

7 ZC VICE CHAIRMAN JEFFRIES: Well,
8 just one question. I see that there is no
9 lighting proposed for the sight, but it will
10 be used up until 6:30, so during the -- so the
11 assumption is that, obviously, when the day
12 gets short, you know, those kids will be off
13 the site and so forth. Okay. Thank you.

14 CHAIRPERSON MILLER: Okay. So
15 we'll take a five minute break and you can
16 give a call. And I think it's preferable if
17 he comes sooner rather than later, because
18 then everybody else doesn't have to wait
19 around longer. Okay. So we'll take at least
20 a five minute break.

21 (Whereupon, at 12:06 p.m. a recess
22 until 12:31 p.m.)

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1 CHAIRPERSON MILLER: Okay. We're
2 back on the record. Mr. Freeman, were you
3 able to reach your landscape architect?

4 MR. FREEMAN: Madam Chair, we sent
5 him some emails and left him some voice mails,
6 but have not heard back from him directly, so
7 we are subject to any questions the Board
8 might have, ready to just proceed and if there
9 are specific questions we could either do that
10 in a post-hearing submission as well as the
11 diagraming plat that you asked for in a post-
12 hearing submission or if he calls back in the
13 next 10 minutes or so, but we are ready to
14 proceed.

15 CHAIRPERSON MILLER: Okay. What
16 we would like to do is proceed with the rest
17 of the case. And then when we are finished,
18 we'll see whether you have heard from him or
19 whether the Board feels, at that point, that
20 we might continue the case to hear from him.
21 I think we have, you know, all the
22 submissions. I think that wasn't the issue.

1 The issue was to be able to discuss with the
2 landscape architect concerns.

3 So why don't we proceed and then
4 we'll see. Maybe you will hear in the
5 meantime or else we will decide at the end of
6 the hearing how we want to proceed.

7 MR. FREEMAN: Thank you, Madam
8 Chair.

9 CHAIRPERSON MILLER: Okay. So
10 now, where are we? We're still on the
11 applicant's case, if I'm correct. Is that
12 right?

13 MR. FREEMAN: Yes.

14 CHAIRPERSON MILLER: Have you
15 finished or are you just --

16 MR. FREEMAN: We finished our
17 direct and we were responding to questions of
18 the Board.

19 CHAIRPERSON MILLER: Exactly.
20 Okay. Are there more questions for the
21 applicant, at this point? Yes, Mr. Dettman?

22 MEMBER DETTMAN: Just two quick

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1 questions. I noticed in your filing that the
2 hours of operation for the play area will be
3 10:00 to 6:30. Is that for school, after
4 school and the public use or is that sort of
5 for school functions?

6 FATHER ENZLER: Just for school
7 functions.

8 MEMBER DETTMAN: Just for school
9 functions. And so I am wondering, you know,
10 that's a period of 8.5 hours. And but what I
11 heard you say is, I think, four phys ed
12 classes a day and then maybe some lunch
13 periods. And so how much are we -- how much
14 of that 8.5 hours are we talking?

15 FATHER ENZLER: Well, there is
16 also after care between 3:00 and 6:00.

17 MEMBER DETTMAN: Okay.

18 FATHER ENZLER: So to answer your
19 question the 8.5 hours, I would say about
20 maybe 4 and 5, ballpark.

21 MEMBER DETTMAN: Okay. And the
22 other question I had was concerning the access

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1 using the alleys, the northern alley as well
2 as the one running north and south next to the
3 Woodburn -- or Wellborn's property. If we
4 were to just sort of explore this and say
5 alley access is a public safety concern, as
6 well as a concern with respect to noise. Is
7 there another way you can get the students to
8 the play area along Patterson Street?

9 For example, is there a way
10 further to the west that you can get the
11 students out to Patterson Street and bring
12 them down? Just looking for options.

13 FATHER ENZLER: Yes, there are
14 entrances that way, but again, I think that
15 both we and the Wellborns both agree that
16 would be a fair amount of confusion and noise
17 and problems, so we have stayed away from
18 that.

19 MEMBER WALKER: I just had one
20 question. You mentioned, Father, that the
21 alley is coned during the day. And I
22 wondered if you could tell me a little bit

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1 more about the background of that? Is that
2 something that you've done through working
3 with the Police Department or DDOT or how did
4 that come about?

5 FATHER ENZLER: Okay. I think
6 what happens is the neighbors on the alley
7 have agree to allow us to block that to make
8 sure the children are safe during that time.
9 It's -- so I don't know if we have a permit
10 for it. I don't know if we do or don't, but
11 I know that -- what they neighbors think, they
12 are happy to have the protection for the
13 children in that one direction.

14 You can go other directions, but
15 you can't go through that one -- you can't
16 come right down the alley. You can go -- you
17 can take a right hand turn to go straight
18 through, but you can't go right behind the
19 houses that -- you know, where the alley is.

20 MEMBER WALKER: So where are the
21 cones physically located? Are they on the
22 Patterson Street entrance? Thank you.

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1 ZC VICE CHAIRMAN JEFFRIES: So if
2 there is an emergency situation, people just
3 get out of the vehicle and move the cones and
4 move through?

5 FATHER ENZLER: This is not all
6 day long. It's when the children are out
7 playing.

8 ZC VICE CHAIRMAN JEFFRIES: Right,
9 right, right.

10 FATHER ENZLER: And they are out
11 to protect the children.

12 ZC VICE CHAIRMAN JEFFRIES: Right,
13 right.

14 FATHER ENZLER: Actually, during
15 recess. During recess there are cones here,
16 because the majority of children -- excuse me
17 again. But there is also a set of cones down
18 here to make sure that people aren't driving
19 through there to make sure kids aren't hurt.

20 ZC VICE CHAIRMAN JEFFRIES: See,
21 this continues to make the case for -- I just
22 -- you know, a diagram in terms of both site

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1 plan that just shows all this, just to get a
2 better understanding of how this is working.
3 But I understand that. I mean, you know,
4 obviously, for the, you know, kids' safety and
5 so forth and as long as -- I mean, I guess
6 that's not our jurisdiction here.

7 CHAIRPERSON MILLER: It is our
8 jurisdiction if we are going to be having --
9 if they are going to have kids walking from,
10 you know, the school to the playground.

11 ZC VICE CHAIRMAN JEFFRIES: Oh,
12 no, no.

13 CHAIRPERSON MILLER: We have to
14 make sure that it's safe as well.

15 ZC VICE CHAIRMAN JEFFRIES: Well,
16 no, but I was --

17 CHAIRPERSON MILLER: Okay.

18 ZC VICE CHAIRMAN JEFFRIES: --
19 just dealing with, you know, vehicular
20 traffic. You know, we need to have clear and
21 unobstructed access of the alley and so forth.
22 But I was, you know -- even if you have kids

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1 there, you know, because there might be an
2 emergency situation, but, you know.

3 MEMBER WALKER: And what about
4 people who are trying to access their garages
5 along the opposite side of the back alley?

6 MR. FREEMAN: Members of the
7 Board, if the access off the alley is a
8 problem, we'll just have access off of
9 Patterson Street. I'm not sure if that's what
10 the community would -- assuming you approve
11 the field.

12 MEMBER WALKER: Well, I'm just
13 trying to get -- counsel, I'm just trying to
14 get a sense of how things work right now.

15 MR. FREEMAN: Right.

16 MEMBER WALKER: So I just want to
17 understand if there are cones at the end of
18 the alley, how is it that people who are
19 trying to access their garages on the opposite
20 side of the alley -- I mean, how do they get
21 there?

22 FATHER ENZLER: To tell you the

1 truth, no one has ever asked about it. There
2 have never been any issues about it. There is
3 hardly any traffic there, so it's not --

4 CHAIRPERSON MILLER: No, wait a
5 second. You have to wait your turn.

6 MS. MacCOLL: Okay. I will
7 comment on it.

8 CHAIRPERSON MILLER: Yes, hold it.

9 MS. MacCOLL: The garages are not
10 what they seem, let me just say that now.

11 CHAIRPERSON MILLER: Okay. I
12 think we probably have to try to stay in
13 order, but hold it, okay. Thanks. Okay. I
14 just have a question. There's not going to be
15 an issue with respect to crossing that other
16 alley, with respect to safety? I understand
17 what you're saying here is that you have these
18 cones and so no cars are going to be coming
19 through there that the kids will come in
20 contact with.

21 And the Board is not saying that's
22 a problem. They just want to understand, you

1 know, what the situation is. So then there is
2 the other alley, right, that they have to
3 cross, but why is -- are there any precautions
4 taken there for their safety?

5 FATHER ENZLER: The children are
6 under supervision of teachers as well as phys
7 ed teachers as well as, you know, monitors, so
8 yes, they can't just walk down on their own.
9 They have got to have monitors to walk with
10 them through that portion of the alley.

11 CHAIRPERSON MILLER: It doesn't
12 look like there would be many cars going down
13 that though, because that's really your school
14 and the Wellborns, right, on each side?

15 FATHER ENZLER: Right.

16 CHAIRPERSON MILLER: Okay. Just
17 so that's the case. Okay.

18 ZC VICE CHAIRMAN JEFFRIES: But
19 were you saying that no one else would really
20 be using that alley?

21 CHAIRPERSON MILLER: I'm asking,
22 because I don't --

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1 ZC VICE CHAIRMAN JEFFRIES:
2 Because, I mean, I would -- all those garages
3 that are off the alley, why would they not use
4 that? They could get access to patterson.

5 FATHER ENZLER: I'll let my
6 neighbors who are more in contact with that.
7 I don't think it has been a problem in the
8 past, is all I can tell you. It has not been
9 a problem. There's been no questions about
10 access or garages. It just hasn't come up.

11 CHAIRPERSON MILLER: All right.
12 We will definitely get to the neighbors on
13 that. Okay. I have a question. I think that
14 you said that there really hasn't been much
15 issue with use of the field during the school
16 hours, but actually, the neighbors had
17 concerns about the after hours and on weekends
18 and everything.

19 Those kind of hours aren't even
20 necessarily, I would think, the school's
21 concern. It sounds like those hours are for
22 the benefit of somebody else, like neighbors

1 or whatever. So I guess my question is are
2 there conflicts out in the neighborhood as to
3 some people wanting greater access to the
4 grounds and some people not? And do we -- are
5 there some people we're not hearing from?

6 MR. FREEMAN: Madam Chair,
7 actually, if I could answer that, you'll --
8 even today you will hear a difference of
9 opinion on how the school should -- how the
10 field should be used during non-school hours.
11 The applicant is literally in the middle
12 trying to work out a solution with different
13 people with different interests.

14 But from the perspective of
15 section 206.2, in terms of the schools use of
16 the field, we think that we meet the legal
17 standard for the schools use of the field.
18 Now, how things work out in terms of
19 neighborhood use, quite frankly, as his
20 attorney, I could say well, it would only be
21 used for the school and that would be the way
22 to address that situation.

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1 However, we're trying to work with
2 the neighbors to have more people use the
3 school during non-school hours. And those are
4 -- that's what this is reference to. I think
5 again, not to speak for the neighbors, no one
6 has said the schools use itself is
7 objectionable. I think not to speak for
8 everybody, but I think most of the objections
9 are centered along what happens when the
10 school is not using the field.

11 So you're right. There is a
12 disconnect between what the standard of
13 section 206 -- Chapter 206 of the Zoning
14 Regulations. Again, I think we meet the
15 standard with respect to the schools use of
16 that. Then a lot of questions with respect to
17 how other people in the neighborhood would
18 want to use it.

19 Not to speak for the Wellborns,
20 but they want very limited use of the field,
21 because they are the most directly impacted.
22 Whereas, people who live across the alley

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1 might want more use of the field, because they
2 don't live right next to it. So the applicant
3 in trying to work with everybody and I'll let
4 Father John talk about his work in trying to
5 work with everybody to try to accommodate
6 everybody's different interests. That's kind
7 of where we are today.

8 But in terms of, again, the
9 school's application for use of this field, I
10 think -- and we can go through conditions,
11 which would be applicable to the schools use
12 of the field. I think we clearly meet that
13 standard.

14 CHAIRPERSON MILLER: I guess my
15 question though is, and I'm certainly going to
16 hear from Ms. MacColl, because these
17 conditions were prepared by you, so we're
18 going to go. We're going to spend some time
19 with you. But I'm just wondering that if the
20 statement was made that that's, you know, what
21 is hard to decide upon, and I know that's
22 really understandable in the community, this

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1 document, I'm just wondering, who does it
2 represent in your view?

3 I mean, are there -- I don't see
4 anybody else in the audience, so I don't see
5 that people are clamoring to make their
6 arguments. But I guess I want to know, and
7 Ms. MacColl will address this, too, but does
8 this represent, you know, everybody, the view
9 out there or it's just one view?

10 MR. FREEMAN: I would have to let
11 Ms. MacColl speak for herself.

12 CHAIRPERSON MILLER: Okay.

13 MR. FREEMAN: But it says it's
14 prepared after consultation with residents of
15 the 3600 Block of Patterson Street. I'm not
16 sure who she met with.

17 CHAIRPERSON MILLER: Okay.

18 MR. FREEMAN: But she could
19 describe.

20 CHAIRPERSON MILLER: Okay. Okay.
21 I just wanted to see if you all had any more
22 comments on that. Okay. Anything else?

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1 Now, you two are -- you have party
2 status in this case. That means that you can
3 cross examine the applicant. If you have any
4 questions about the testimony that you heard
5 today or, you know, the evidence that was
6 submitted by them, you can cross examine.
7 It's not the time to give your testimony yet.

8 ZC VICE CHAIRMAN JEFFRIES: It's
9 based purely on what they have actually
10 testified to and what's been submitted by
11 them.

12 CHAIRPERSON MILLER: Right.

13 MS. MacCOLL: I do have one
14 question. Could you let us know,
15 approximately, how many children participate
16 in the after school program and what
17 recreational activities are a part of that?

18 FATHER ENZLER: About 120 children
19 total, so about 1/4 the school. And the
20 children are in class for study time. They do
21 their homework during that time and they have
22 some recreation time during that 2.5 to 3

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1 hours after school. And generally, they are
2 up on the parking lot. If we had the field,
3 there would probably be some activity on the
4 field, too, of games like kickball, games
5 like, you know, throwing the ball and things
6 like that.

7 MS. MacCOLL: And currently, do
8 those outdoor games extend -- how close to
9 6:00 do those outdoor games extend?

10 FATHER ENZLER: Well, it's open
11 until 6:00, but I think the majority of the
12 children are out from about between maybe 4:00
13 and 5:00.

14 MS. MacCOLL: Okay. So 5:00 is
15 really, in practical terms, your cutoff time
16 of that after school outdoor use?

17 FATHER ENZLER: Yes, that's fine,
18 yes.

19 CHAIRPERSON MILLER: Okay. And do
20 you all have any cross examination?

21 MR. WELLBORN: I do have one
22 question, that's with regard to the number of

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1 children that would be using the playground
2 during school hours. You said up to 90 at a
3 time. This is a -- it's on? This is -- this
4 strikes me as a lot of people at once. Could
5 you comment on how you will deal with the
6 noise and that sort of activity?

7 FATHER ENZLER: The children are
8 all out at the same times right now, but they
9 are on the blacktop. So right now, if nothing
10 is changed in our schedule, the children on
11 the blacktop right now, the question would be
12 being able to be able to use also the field as
13 a possible place to play. When the children
14 are out on the blacktop, there is supervision,
15 there are teachers, there are phys ed
16 teachers.

17 The biggest worry, frankly, for me
18 in terms of big numbers, because a class of 60
19 would be if we had -- or a grade is 60, if we
20 had during the recess/lunchtime recess, that's
21 when it could be a little more activity there,
22 because there's again, you know, a number of

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1 children out for lunchtime over free periods.
2 But again, all with teacher supervision and
3 with monitoring.

4 MR. WELLBORN: And well us again
5 about how long that lunch period is.

6 FATHER ENZLER: It's from 11:30 to
7 1:00 and there will be three different
8 periods. So about a half an hour each lunch
9 period, but the little guys a half hour, then
10 the middle group and then the older group,
11 half an hour each.

12 MS. MacCOLL: And could you
13 clarify that that half hour includes the time
14 for them to actually consume their lunch? I
15 know when I was in grade school, the principal
16 stood in the door of the lunchroom and
17 everybody had to spend at least 10 minutes
18 eating before we could go outside. So each
19 group would be out there for about 15 minutes
20 or so.

21 FATHER ENZLER: That's my belief,
22 yes.

1 VICE CHAIRMAN LOUD: Just to
2 follow-up that question, so I'm clear, I'm
3 pretty sure that I didn't misunderstand it.
4 But they would not be bringing food to the
5 play field, right? I didn't think so.

6 FATHER ENZLER: No, that's
7 correct, no.

8 CHAIRPERSON MILLER: And during
9 the lunch hour, is it 90 is the maximum or
10 more during lunch hour?

11 FATHER ENZLER: Well, there is 480
12 children in school and they are spread out
13 over those periods of, you know, between 11:00
14 and 11:30 and 1:00. But again then, there is
15 different -- you know the children in the
16 lunch room, the children outside, some
17 children are -- you know, so it spreads out.
18 It pretty well fans out with some children
19 staying inside for study period, so it fans
20 out over that period of time between 11:30 and
21 1:00.

22 CHAIRPERSON MILLER: Okay.

1 Thanks. Any other questions?

2 VICE CHAIRMAN LOUD: Just one
3 final question. So as I understand from the
4 applicant, you are agreeing to all of the
5 conditions in toto in this document here,
6 which is the Gail MacColl statement of
7 conditions.

8 MR. FREEMAN: We haven't had -- I
9 haven't had a chance to go through all of
10 these. I just got this today.

11 VICE CHAIRMAN LOUD: But your
12 client said he agreed to it.

13 MR. FREEMAN: Some of these are--

14 VICE CHAIRMAN LOUD: He testified.

15 MR. FREEMAN: -- not what I would
16 deem BZA-related conditions.

17 VICE CHAIRMAN LOUD: Okay.

18 MR. FREEMAN: For example, I'm not
19 sure how anybody could really enforce some of
20 these. So if now is the right time, I could
21 go through and say what I think are things
22 that would be appropriate for a BZA order.

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1 VICE CHAIRMAN LOUD: Well, I don't
2 -- I'm not going to invite that right now. I
3 don't know about my colleagues, if you guys
4 want to go through that right now. I just
5 wanted to get -- before you close your case,
6 I wanted to get a sense of the conditions that
7 there is agreement on, you know, and not
8 necessarily the parts --

9 MR. FREEMAN: Right.

10 VICE CHAIRMAN LOUD: -- where
11 there are not conditions.

12 MR. FREEMAN: Here is what I think
13 are conditions that we all agree on. The
14 hours would be --

15 CHAIRPERSON MILLER: Can I --
16 excuse me. Okay. I just want to know when
17 you are doing this whether you are saying
18 that, you know, these are things you agree on
19 versus that these are things that you might as
20 well do it at the same time, but are only
21 appropriate for BZA order.

22 MR. FREEMAN: Okay.

1 CHAIRPERSON MILLER: You know, you
2 may be agreeing to a lot of these things --

3 VICE CHAIRMAN LOUD: Right.

4 CHAIRPERSON MILLER: But they are
5 not necessarily what you think we should be
6 considering for our conditions, right?

7 FATHER ENZLER: Can I say for the
8 record, I agree with all of it.

9 CHAIRPERSON MILLER: Um-hum.

10 FATHER ENZLER: But my attorney
11 feels maybe some would not maybe bit into BZA
12 restrictions.

13 CHAIRPERSON MILLER: Okay.

14 FATHER ENZLER: That's all I'm
15 saying.

16 CHAIRPERSON MILLER: Okay.

17 FATHER ENZLER: But I agree with,
18 to answer your question, everything on that
19 piece of paper.

20 CHAIRPERSON MILLER: Okay.

21 FATHER ENZLER: As written.

22 CHAIRPERSON MILLER: So --

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1 VICE CHAIRMAN LOUD: And for my
2 purposes -- oh, I'm sorry, go ahead.

3 CHAIRPERSON MILLER: No, I'm just
4 asking, Mr. Loud, since he has just said that,
5 you were really asking about the substance, I
6 think. And that you didn't want to
7 necessarily get into what's appropriate for
8 BZA orders, at this point.

9 VICE CHAIRMAN LOUD: No, no.

10 CHAIRPERSON MILLER: Because we
11 can do that later after we have heard from
12 everybody and then zero in.

13 VICE CHAIRMAN LOUD: Yes, I don't
14 want to do that. But before he closes his
15 case, I just want to be clear on -- I think I
16 understand that in toto, at least, the
17 applicant, himself, not counsel agrees on all
18 of this. You also are in agreement with the
19 conditions that are in a private arrangement
20 that we haven't talked about yet. And then
21 you are also in agreement on the conditions
22 that are in the Office of Planning's report,

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1 at least specifically, the one about the
2 Patterson Street access gate being used as the
3 primary entrance point.

4 FATHER ENZLER: Actually --

5 VICE CHAIRMAN LOUD: You are not
6 in agreement on that?

7 FATHER ENZLER: No.

8 VICE CHAIRMAN LOUD: Okay. That's
9 fine. Again, I just wanted to make sure that
10 I know where we are. All right. So I guess
11 we will hear more about that when you have an
12 opportunity to cross examine OP. Okay.

13 CHAIRPERSON MILLER: Okay.
14 Anything else? All right. Why don't we turn
15 now to Office of Planning?

16 MR. RICE: Good afternoon, Madam
17 Chair, Board, my name is Stephen Rice with the
18 Office of Planning. OP recommends approval
19 for the requested variance for Application
20 17718. The property was improved with the
21 single-family structure, which was recently
22 demolished prior to their proposal, I assume

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1 in anticipation for the proposal.

2 As the -- for the site to be used
3 as a play field. The proposed location of
4 this field should not create any new
5 objectionable conditions to the greater
6 neighborhood, since it is relocated only 140
7 feet, approximately, from where it exists
8 today, which is on the blacktop behind the
9 school -- well, in front of the school, behind
10 the church, if I'm not mistaken, in the
11 parking lot.

12 The number of students or staff
13 should not/would not increase and should not
14 create any increase in traffic volume. The
15 field would be void of any permanent
16 equipment, except for a few benches. These
17 plans are new to me, as well.

18 The original plan had a few more
19 benches. I don't think that that should be a
20 concern. I only see two on these plans. But
21 the original plans had four, which are located
22 on the west side of the property. But other

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1 than that, I don't think they are proposing
2 any new permanent equipment.

3 The plans also show various types
4 of trees and shrubs which would surround the
5 property, both in the interior and exterior --
6 on the interior and exterior of the fence that
7 is proposed, which is 5 feet high. The new
8 fence would be separated from the retaining
9 wall creating a setback of nearly 20 feet from
10 Patterson Place. That portion of the
11 retaining wall would be replaced.

12 The property -- again, this is
13 something new, but the submission that I had
14 proposed no new lighting. I don't know if
15 that's going to be the situation today, but
16 either way OP is not opposed to any sensor
17 monitors or any type of lighting that is
18 appropriate or no lighting.

19 Regarding the primary entrance, at
20 the time of submission, which was a while ago,
21 OP didn't have a real feel as to how or what
22 the traffic situation on those alleys would be

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1 or has been in the past. If you take a look
2 at the image that I have on the front page, I
3 think my thinking was that if there is an
4 entrance from Patterson Place, it would make
5 more sense to have the students exit that
6 entrance and to go east to the entrance to the
7 site, assuming that there is a significant
8 amount of traffic on either the east/west or
9 north/south alleys.

10 But it's now my understanding that
11 those alleys are not -- well, maybe the east/
12 west alley is not really heavily used.
13 Perhaps the north/south alley is used more
14 often. OP is not tied to this condition. It
15 does not -- that's not something that's
16 preferred by the applicant and the immediate
17 neighbors. So I wouldn't want the Board to
18 feel that that's something we were really
19 extending on necessarily.

20 Regarding Mr. Wellborn's property,
21 which is the west property, I visited the site
22 and I have spoken with both the neighbors and

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1 the applicant on several occasions. And his
2 property is slightly higher elevated than the
3 field. And he also has a screened porch.

4 I do think it would be appropriate
5 to have the 20 foot buffer, which is proposed.
6 And after speaking with Mr. Wellborn, at the
7 time, I think he wanted some sort of fence, a
8 solid fence of some sort, the details of the
9 materials weren't laid out at the time. But
10 something to just dampen or reduce the noises.

11 OP believes that that's something
12 that should be worked out with the neighbors
13 and the applicant. We haven't heard from
14 them, so we'll see how that plays out. But we
15 do think that that is a valid concern given
16 the location of his porch and his property.

17 So the other specific conditions
18 that are listed in Mrs. MacColl's submission,
19 OP feels that these are things, and hopefully
20 we get to which should be included in the
21 conditions of the BZA order, assuming it's
22 approved, and some I agree with Mr. Kyrus

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1 about -- I'm not sure if some of these can be
2 enforced or monitored through BZA.

3 Again, this should be something we
4 talk about when we get to that point. But
5 overall OP is in support of the application.
6 We feel that the applicant has met the burden
7 of proof or the criteria for section 206 as it
8 relates to the uses by the private school.
9 Outside of the private school use, those are
10 probably things that should be addressed
11 through the conditions.

12 The ANC also voted in favor, 7-0,
13 on October the 22nd, I think, of 2007. I'm
14 open for questions.

15 CHAIRPERSON MILLER: Thank you. I
16 basically have, you know, this question. I
17 think that I and the Board can certainly
18 appreciate that the kids need a place to play
19 and everything and, you know, here it is, but,
20 basically, it's before us because we have
21 this, I think, quiet residential street and
22 these two homes that had a house in between

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1 them.

2 Now, all of a sudden they are
3 being asked to be next to a playing field and
4 there is going to be, you know, a big
5 difference in noise, one would think. So I
6 want to ask you how you can evaluate the
7 confidence that we can have in this buffering.
8 And that's why we wanted to have the landscape
9 architect here.

10 It's kind of like, you know, will
11 it make a big difference? I mean, can you
12 kind of capture for us your opinion as to how
13 great a buffer it will be, you know, with a
14 fence and the greenery?

15 MR. RICE: Regarding the fence,
16 I'm not a specialist. I don't know if a 7
17 foot high fence would be enough for Mr. Well--
18 the Wellborns. And we spoke with him and my
19 impression was that, at the time, he wasn't
20 necessarily opposed to the day school, the
21 private school using this site.

22 I don't know specifically how will

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1 the noise be impacted with or without the
2 fence. I don't have -- I don't know. I just
3 don't know. But I do think the 20 foot buffer
4 is -- would be appropriate or it could be
5 something that we would not be opposed to.

6 CHAIRPERSON MILLER: Any other
7 questions for now?

8 ZC VICE CHAIRMAN JEFFRIES: Thank
9 you, Mr. Rice. You started off, I think,
10 inadvertently saying variance case and I think
11 you meant special exception here. So let me
12 understand your comment that the Wellborn's
13 house is slightly elevated. And actually,
14 that's another thing we could use is probably
15 a section through all of this, in terms of for
16 the record.

17 But with the Wellborn's house
18 being somewhat elevated, what impact does that
19 have on, you know, sort of the acceptability
20 of this field being next to it?

21 MR. RICE: It is a very slight
22 elevation. It's not anything -- I don't know

1 exactly what the grade change is, but I think
2 with his screened porch being on that side, if
3 the fence is there, perhaps he would be able--
4 would not be able to see over into the field.
5 I think the max height of that fence would be
6 7 feet. So I mean, it could have an impact as
7 far as visibility certainly.

8 ZC VICE CHAIRMAN JEFFRIES: Um-
9 hum.

10 MR. RICE: But as far as the noise
11 is concerned, I don't know. But if it's
12 there, if the fence is there, he certainly
13 would have a greater chance to see -- if it
14 wasn't there, a better chance to see, to sort
15 of monitor the activity on the field.

16 ZC VICE CHAIRMAN JEFFRIES: Okay.
17 And the 20 foot in depth retainer is -- that
18 was driven by the landscape architect?

19 MR. RICE: From Patterson Place?

20 ZC VICE CHAIRMAN JEFFRIES: Yes.

21 MR. RICE: Patterson Street. That
22 was always in the proposal. That wasn't

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1 anything -- as far as I know, something that
2 was created as a result of an issue with any
3 of the neighbors. I may be wrong. I'm not
4 sure, but my -- the plans that I have always
5 showed that 20 foot buffer from the retaining
6 wall.

7 ZC VICE CHAIRMAN JEFFRIES: So
8 Madam Chair started off with this and it's
9 just of a basic gut test, and that is, again,
10 these two homes had a house between them and
11 now the house is gone. We're superimposing a
12 school field onto it. And Office of Planning
13 is supportive. I just want to be clear about,
14 you know, just your understanding of how this
15 could not be sort of aversive.

16 MR. RICE: I think --

17 ZC VICE CHAIRMAN JEFFRIES: I
18 mean, I know you have known -- I know you have
19 stated some things, but I'm still just trying
20 to get my arms around -- I mean, as I continue
21 to hear this case, I'm just trying to get my
22 arms around how this works.

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1 MR. RICE: I think in general, the
2 fact that the children currently play only,
3 you know, 140 feet away from where the site is
4 proposed, from a larger standpoint, I don't
5 think that should create a new burdensome
6 condition to the neighborhood as a whole. I
7 certainly do believe that the two neighbors
8 will be most directly impacted.

9 It's hard to say. I think after
10 we hear the testimony from both of the
11 neighbors, it would be probably more clear as
12 to what those exact issues will be from a
13 general standpoint. The relocation of those
14 students, I don't -- I think the applicant has
15 met the test of 206.

16 ZC VICE CHAIRMAN JEFFRIES: Yes,
17 because, you know, I look at the configuration
18 of the existing school and the blacktop is
19 surrounded by buildings and so that's a clear
20 buffer. But now, you have introduced some of
21 that use, you have superimposed it on a
22 residential portion of this neighborhood. So

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1 you have lifted some of it, it's almost an
2 overflow and it goes here between these two
3 homes. And I'm just wondering -- you know, it
4 just seems like that's sizeable, a substantial
5 difference. I mean, I think the make-up
6 changes.

7 So in terms of how they dealt with
8 children, I mean, before and how -- what is
9 being proposed here, I mean, this is a very
10 different configuration. So, I mean, I
11 understand all the safeguards and all of the
12 things, but I'm just -- and you're right,
13 maybe I should just hear from the property
14 owners, but I'm just really dealing with what
15 I consider to be, you know, a fairly
16 substantial leap from a prior condition to a
17 new condition.

18 MR. RICE: Is there a question in
19 there?

20 ZC VICE CHAIRMAN JEFFRIES: No,
21 there's no question.

22 MR. RICE: Okay.

1 CHAIRPERSON MILLER: I have a
2 question.

3 MR. RICE: Okay.

4 CHAIRPERSON MILLER: And yeah, we
5 definitely need to hear from the neighbors.
6 But certainly one of the neighbors said she is
7 in support with conditions. And then the
8 other is opposition, but with conditions. And
9 I'm not exactly sure what that means, but it
10 sounds a little bit like maybe support.

11 So my question to you, I guess, is
12 is Office of Planning's position somewhat
13 influenced by the position of the two
14 neighbors? For instance, if the neighbors
15 were opposed, would that influence the Office
16 of Planning's position?

17 MR. RICE: I think in some ways it
18 probably could have. This is -- my
19 understanding wasn't that Mr. Wellborn was
20 opposed to the project. I felt -- and maybe
21 I'm wrong. Maybe I should be corrected. But
22 my understanding was that he was conditionally

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1 in support of it, given certain things were
2 worked out.

3 But today, it sounds as if he is
4 opposed with conditions, with the hope of
5 things -- and I'm not -- this is sort of new
6 to me as well, but to answer your question, I
7 do think if the applicant -- if both neighbors
8 were opposed, it would play a significant role
9 in OP's view and certainly the scrutiny of
10 this case.

11 But as of drafting this report, I
12 felt that neighbors were generally in support.

13 CHAIRPERSON MILLER: Thank you.

14 ZC VICE CHAIRMAN JEFFRIES: Madam
15 Chair, that's a very good question, because it
16 really goes to, you know, policy issues, you
17 know, special exception issues and so forth.
18 If you had both these neighbors saying, you
19 know, we're very much opposed, you know, how
20 OP would actually fall out in something like
21 this, because there are, obviously, situations
22 where, you know, neighbors are opposed to

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1 things and OP is still in favor, because they
2 think it's good planning policy and it would
3 not have aversive impact. So I just -- yeah,
4 I thought that was an interesting question.

5 CHAIRPERSON MILLER: Well, I would
6 just say this and then we're going to get to
7 the neighbors really quickly.

8 ZC VICE CHAIRMAN JEFFRIES: All
9 right. Fine.

10 CHAIRPERSON MILLER: Because we
11 think that there -- I think what the Board --
12 we haven't heard from them yet. What the
13 Board is seeing looks like gee, there very
14 well could be some adverse impacts looking at
15 this. But if the neighbors next door are
16 going to say well, it might look like that,
17 but there really aren't and this is why, then
18 that might, you know, give us a different
19 point of view.

20 ZC VICE CHAIRMAN JEFFRIES: And
21 part of it -- now, see, part of this is just
22 really illustrating, you know, and

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1 demonstrating to the Board. You know, I can
2 say the section would be good, you know,
3 seeing how this field interacts with the
4 school, the houses and so forth. I mean, so
5 I think, you know, this does sort of weigh on
6 the neighbors and their view of the universe
7 here.

8 CHAIRPERSON MILLER: Any other
9 Board questions for Office of Planning? Does
10 the applicant have any questions for Office of
11 Planning?

12 MR. FREEMAN: No, Madam Chair.

13 CHAIRPERSON MILLER: Do the
14 neighbors have any questions for Office of
15 Planning? You have seen the Office of
16 Planning report? Yes? Okay. Is anyone here
17 from the ANC? Okay. And then we go to
18 parties or persons in support of the
19 application.

20 MS. MacCOLL: Okay. My name is
21 Gail MacColl. I and my husband, Alan
22 Campbell, own and reside in the property to

1 the east of the property that is being
2 discussed. I bring you this discussion and
3 this list of conditions, partly on our behalf,
4 and also as a result of discussion with
5 neighbors primarily on the Patterson Street
6 block of which I am the Block Captain, but
7 also I have been in communication with the
8 Block Captain for Quesada and I have taken
9 this proposal around to those neighbors and
10 homes that have addresses on Chevy Chase
11 Parkway, but are within, you know, sight of
12 that playground.

13 So you should know that we, on the
14 Patterson Street Block, have been meeting
15 about this issue since the very first
16 intimations that Blessed Sacrament might
17 purchase the property. We discussed things
18 like the 20 foot buffer on the front, at that
19 time, and a number of the other issues. So
20 this goes back a long way.

21 A number of drafts of this
22 communication have been circulated among the

1 neighbors. And as has been mentioned, there
2 are differences of view in the neighbors.
3 Some of them would like to have the thing
4 almost as a public park that would be open to
5 them day and night. Some of them don't want
6 any access at all.

7 But this was something that people
8 generally could agree on. And now, I do
9 recognize that the Wellborns have a special
10 interest and, but we were thinking in terms of
11 a broader framework and realizing that if we
12 say 6:30 that doesn't mean they have to use it
13 until 6:30, that just means 6:30 would be the
14 outer limit.

15 If, indeed, their activities stop
16 at 5:00, first of all, we could -- anybody, I
17 think, would be amenable to that change or
18 secondly, it would be just we would know that
19 between 5:00 and 6:30, generally, there would
20 be -- it would be a rare exception that the
21 school would be using the property during that
22 time.

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1 I think as everybody recognizes
2 here, the simplest issue is recreational play
3 when the children -- when the school is in
4 session and we have proposed a bunch of
5 limitations on whistles and all that sort of
6 stuff, which would apply primarily to that
7 kind of play.

8 And when I looked at the zoning
9 ordinance before starting in on all of this,
10 I saw that the uses defined for a school
11 playground are very broad. It doesn't really
12 say what is allowed and what is not allowed.
13 And our feeling was that even though right now
14 with the playground space that they have now,
15 they only use it for recess and school and so
16 on.

17 But you know if you build it, they
18 will come. And we could foresee that once
19 this natural setting was available, that there
20 might be pressures to use it for other things.
21 And so we thought it would be useful for us to
22 address the question now in terms of what

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1 additional uses would be comfortable for us
2 and under what circumstances, rather than have
3 it arise in some other manner, so that we know
4 what the ground rules are in these grey areas
5 before we go forward.

6 The first one that we discussed
7 was the use of Saturdays during the school
8 year. Now, this is -- right now, because
9 their playground area doesn't accommodate
10 that, Blessed Sacrament does not use the
11 property on Saturdays. And they have no
12 immediate plan to. But Father John did
13 mention to me that they have school teams that
14 sometimes need a little drill and practice.
15 And we thought that it would be -- might be
16 appropriate to permit that on an occasional
17 basis for periods of no longer than two hours
18 on Saturdays.

19 This again is something that the
20 Wellborns may have a different view on this
21 and I don't know whether their private
22 agreement covers that or not. And we also put

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1 in that no organized cheering and that sort of
2 thing provision to make sure that these are in
3 turn really practices and that we don't get a
4 lot of spill over from that.

5 Now, the thing about weekends,
6 holidays and weekdays when the school is not
7 in session, you all know that we -- there will
8 be an impact on the immediate neighbors from
9 this. And it doesn't matter how many bushes
10 you put in or how many fences, there is going
11 to be noise.

12 And some of the neighbors who have
13 small children felt that in partial redress to
14 them for their willingness to put up with this
15 noise, wouldn't it be nice if they could have
16 some use of the field, some access to the
17 field, which seems like a good kind of thing,
18 as long as it can be controlled.

19 Some people wanted it like a
20 public park, which they could go any time,
21 including evening. Other people wanted to
22 have limits on the hours and the level of use,

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1 such that the use that would be -- the private
2 use of it would be no different than it would
3 be if three families with children were living
4 on that field.

5 And as we have discussed this, the
6 proposal that we came up with to handle this
7 was that the use would be permitted only under
8 controlled access conditions in which it would
9 be up to Blessed Sacrament. I think Father
10 John was thinking limit this only to people
11 who are really in the very most immediate
12 neighborhood, those that do have the greatest
13 impact from the noise on the field, that they
14 would have to apply and be granted permission
15 by the school, that they would have to abide
16 by the set of conditions for the use of the
17 school, that they would not violate the hours
18 or the uses.

19 For example, we don't want people
20 with baseball bats, because I don't want to be
21 going to the store for more glass for my
22 windows all the time. And that is what we had

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1 discussed. So that we were hoping that these
2 provisions would limit the use to something
3 that you would expect for a residential
4 neighborhood and yet would still give the
5 neighbors that wish this opportunity, you
6 know, the possibility of using that.

7 We do have other playgrounds in
8 the area, Lafayette School is two blocks away,
9 and people do go up there. But I think people
10 were thinking of just running across the -- to
11 the playground and having a little time with
12 their families. And so we proposed that. But
13 all of these things, we were proposing on a
14 trial basis.

15 And if it turns out to be more
16 than we expected, we would say that that would
17 not happen. We do have the experience of how
18 many kids go up to Lafayette. And in the
19 Lafayette School playground, that is adjacent
20 to residences as well, often with very little
21 buffer, but the kids are spread out and it's
22 not a whole bunch at any one time, except in

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1 the little playground where the tiny kids are.

2 So that was what we had proposed.
3 We had wanted to open those possibilities. It
4 also occurred to us that the school might want
5 to use the field for special uses, the kind of
6 thing that would be an outdoor event that
7 might involve, for example, more than just a
8 couple of classes at the school, by having
9 some sort of a ceremonial event or some type
10 of thing up there.

11 And we also are aware that the
12 school does fund raisers and that sort of
13 thing. And somebody might think it would be
14 a good idea to have one of those outside.
15 Because of the concern about traffic in the
16 neighborhood, we felt that Blessed Sacrament
17 is a property owner like any other in our
18 neighborhood.

19 Any of the property owners may
20 have a large party in their home every once in
21 a while and as long as these things are
22 handled with consideration for those around

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1 them and that adjustments can be made, that
2 those are the rights that any property owner
3 would have.

4 And so we wanted to again allow
5 that as a possibility, but only under
6 conditions that would -- where there would
7 have to be a written notice to the neighbors
8 and if there were objections and they couldn't
9 be resolved, then, of course, traffic is a big
10 issue here, that the use would not be held.

11 So that was our -- those were our
12 objectives in laying out these things. We
13 weren't thinking in terms of exactly what can
14 be in the Zoning Ordinances, except that we
15 wanted to try to avert future conflicts if
16 they come and they want to use the field for
17 something and there isn't any process for us
18 to say wait a minute, no, this isn't something
19 that we are comfortable with.

20 On the noise and all that, I think
21 that's probably pretty clear what we have put
22 in here and that's kind of the standard stuff

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1 that you deal with. Landscape buffers, as I
2 say, let's face it, no matter how many bushes
3 you have, we're still going to hear what's
4 going on, but I think we go into that knowing
5 that there are going to be noise levels there
6 and being willing to bear that for the sake of
7 the good of the Blessed Sacrament children, as
8 long as within -- as long as it's within the
9 kinds of limits that we have talked about
10 here.

11 Security. One of my questions is
12 -- one of our big concerns in the neighborhood
13 is we don't want people who want to undertake
14 activities that shouldn't be seen to be
15 getting in there, either in the landscaped
16 areas or within the fenced area. And so we
17 want to make sure that that fence is tall
18 enough to keep out adults.

19 And I'm not sure, being 5 foot
20 tall myself, I can envision adults being able
21 to get over a 5 foot tall fence. So I think
22 that's something that we'll want to think

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1 about, whether that will be sufficient.

2 Lighting. I looked out my window
3 last night. It is pretty dim out there with
4 just the light from the street lamps, which
5 are all oriented outward, rather than inward.
6 So what we had put in is security lighting if
7 the additional -- if the present lighting, the
8 ambient lighting is not adequate. And I think
9 that may not be.

10 The annual review thing is
11 something that I think we would like to do
12 with Blessed Sacrament in any case, just
13 because there are many other issues, mostly
14 having to do with traffic and parking that
15 affect our neighborhood.

16 I want to say just another thing
17 about the access towards the back. One thing
18 that you need to consider. First of all, I
19 looked all -- I was sitting in the back of my
20 house all day yesterday. I saw one car go
21 down the alley. You ought to realize that a
22 lot of those things that show up as garages

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1 are not used as garages.

2 There are really just a couple of
3 homes at the top of the alley that have --
4 that use their parking pad or garage and go in
5 and out. And many of them are not there
6 during the day. There are a couple of others
7 at the very bottom of the alley. Our garage
8 is not usable. The wellborn's garage is not
9 usable. So there really is a very minimal of
10 traffic there. Sometimes if somebody has
11 their house under remodeling and there is --
12 there will be contractor trucks that come in
13 once or twice a day.

14 But you should also consider
15 trying to get up the sidewalk of Patterson
16 Street when school is letting out or if there
17 is a parade of children coming down. And even
18 to the -- the way -- the Patterson Street gate
19 would be between my home and the crosswalk
20 that lets you cross over to the other side,
21 you have to cross first Patterson Street and
22 then Chevy Chase Parkway.

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1 There are no ramps at that
2 crosswalk. The only ramp that you can get to
3 is on Chevy Chase Circle. So if we had a
4 situation where large numbers of children were
5 occupying that sidewalk throughout the day, it
6 really would pose problems for people with
7 grocery carts, people with kids in strollers,
8 anybody with a handicap.

9 And I do think that as much as we
10 pay attention to vehicular traffic, we -- I
11 would like the impact of pedestrian traffic
12 and the limited space on the sidewalk to be a
13 consideration in your decision as well.

14 CHAIRPERSON MILLER: Any
15 questions? Okay. Just with respect to these
16 proposed conditions, I think we're going to
17 probably get to them after we hear from the
18 Wellborns.

19 MS. MacCOLL: Okay. That's fine.

20 CHAIRPERSON MILLER: And then we
21 can look at the conditions. But I mean, I
22 think that it's a, you know, major task to try

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1 to accommodate, you know, all the neighbors'
2 desires. And so I mean, I'm certainly
3 interested in hearing a little bit from, you
4 know, what the rest of the neighborhood feels
5 and we do have an ANC report, though they
6 don't go into detail at all about conditions.

7 I think what's very important is
8 protecting your privacy and noise, which is
9 your -- you and the Wellborns are going to be
10 most impacted by that.

11 MS. MacCOLL: Well, I will say,
12 too, that because there is no school use
13 during the summer, I mean, that -- the summer
14 months are the ones when noise is the most of
15 an issue for us, because, first of all, you
16 have your windows open. And secondly, in the
17 winter months, lots of times the weather is
18 bad and the kids aren't going to be out there
19 anyway.

20 So I think as Father John thought,
21 the peak times are going to be in the spring
22 and fall and if it's just no more noise than

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1 would be there from the families on the other
2 side of my house which have kids that run
3 around and play in each others yards, and as
4 long as it's not in the evening, I have no
5 problem with that.

6 CHAIRPERSON MILLER: Yes. I mean,
7 I think we can, you know, get to this later,
8 too, because like in the summer what you have
9 is this wide open green space, which is
10 something that, you know, neighbors like as
11 well. And I think part of the question is,
12 you know, can it be used not too noisily. I
13 mean, if somebody wanted to take a stroller
14 and read a book in there, you know, is that an
15 option?

16 But anyway, okay. There is just a
17 few comments about the space. Are there other
18 Board questions?

19 ZC VICE CHAIRMAN JEFFRIES: Yes.

20 CHAIRPERSON MILLER: Yes.

21 ZC VICE CHAIRMAN JEFFRIES: Just
22 one question. So you feel that, you know, on

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1 weekends, holidays and weekdays after 6:30, I
2 guess --

3 MS. MacCOLL: No, never after
4 6:30.

5 ZC VICE CHAIRMAN JEFFRIES: Never
6 after 6:30, okay. The school will sort of
7 monitor and be responsible for control of this
8 field, let's say on a weekend or a Saturday?

9 MS. MacCOLL: The school will keep
10 that field locked.

11 ZC VICE CHAIRMAN JEFFRIES: Okay.

12 MS. MacCOLL: Unless it is being
13 used by the school. Our proposal for
14 neighbors use was that neighbors who are on
15 the approved list would have an entry, a means
16 of entry, whatever lock system they count.

17 ZC VICE CHAIRMAN JEFFRIES: Okay.

18 MS. MacCOLL: So they would go on
19 the field, do what they are going to do, leave
20 the thing locked while they are -- you know,
21 be sure that the doors are locked. I mean, I
22 assume you would have to have a kind of gate

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1 that locks automatically when it is closed.

2 ZC VICE CHAIRMAN JEFFRIES: Um-
3 hum, um-hum.

4 MS. MacCOLL: But we would not in
5 any way propose that there be open access to
6 anybody who walked by.

7 ZC VICE CHAIRMAN JEFFRIES: Um-
8 hum.

9 MS. MacCOLL: That's why we're
10 very insistent it should be a controlled
11 access, only for individuals on this list.
12 Now, you know that this is not in sight. The
13 only people that are going to be looking down
14 on that field are ourselves and the Wellborns.
15 So we are going to be the first ones that are
16 going to be aware if anybody has been
17 obnoxious.

18 So we need to be able to work with
19 the church, if somebody is abusing their
20 privilege to know who that person is and get
21 them taken off the list.

22 ZC VICE CHAIRMAN JEFFRIES: Okay.

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1 Thank you.

2 CHAIRPERSON MILLER: Is that
3 approved list concept in the -- reflected in
4 these conditions somewhere?

5 MS. MacCOLL: Yes, it is. It's
6 under the weekends, holidays. It says
7 "Blessed Sacrament allows access only by
8 authorized and listed families who agree to
9 abide by and who actually observe the
10 restrictions on use." And we had proposed a
11 trial period just to see whether this turned
12 out to be a viable arrangement or not.

13 CHAIRPERSON MILLER: Oh, I have
14 another question. You made reference to some
15 Zoning Ordinance that talked about use of the
16 playground.

17 MS. MacCOLL: I just looked up on
18 the Internet where you go and you say what is
19 allowable, what are the allowable uses and
20 then I couldn't tell, because there are two
21 provisions in there. One applies to public
22 school playgrounds and the other just applies

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1 to community playgrounds. And this isn't
2 really either one.

3 This is a private school
4 playground, so I wasn't sure. But it didn't
5 describe the uses at all. For example, I know
6 a lot of schools do have fund raising events
7 on their playgrounds, but there is nothing at
8 all mentioned in those ordinances about
9 whether that is an allowable use or not. They
10 just sort of assume that you know what a
11 playground is and what happens there.

12 But I don't think that -- that, to
13 me, is very vague. We wanted to be a little
14 more specific about what was an allowable use
15 and what was not. And that the only allowable
16 use aside from the special events would be
17 children playing, either the children from the
18 school or children from neighborhood families.

19 CHAIRPERSON MILLER: Okay. Yes, I
20 wanted to make sure there wasn't some
21 ordinance that I should be aware of. But
22 we're looking at 206 for the standard for

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1 review, which is pretty general. Okay. Is
2 there anybody else here in support of the
3 application who wishes to testify?

4 Before we go on to the Wellborns,
5 I just wanted to reference the ANC report,
6 since no ANC Commissioner is here. We do have
7 an ANC report in support. I just want to read
8 the relevant paragraph.

9 It says "At the ANC meeting, the
10 attorney for the diocese and Father John of
11 Blessed Sacrament Church spoke on the proposal
12 and agreed to consider a number of concerns
13 raised by Commissioners, including hours of
14 construction and limiting playground usage, as
15 well as providing neighbors with adequate
16 buffers.

17 It is understood that the public
18 attending the meeting supported the new
19 playground and the need to accommodate the
20 nearby neighbors by working closely with them.
21 The applicant agreed to include in the
22 presentation to the BZA such remedies as may

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1 have been agreed to by the neighbors."

2 Okay. That's basically the
3 relevant part and it was approved by a vote of
4 7-0. Okay. Now, we are at the Wellborns.

5 MR. WELLBORN: Thank you very
6 much, Madam Chairman, Members of the Board.
7 As you can imagine, when we learned of all of
8 this, the purchase of the property, the
9 proposal to use it as a school playground, we
10 were filled with alarm, because we know how
11 large numbers of children can behave. They
12 will behave like normal healthy children and
13 they will make a lot of noise.

14 And so we have -- we are -- our
15 instant reaction was we don't really like this
16 idea at all. We have discussed it in great
17 length, you know, repeatedly with the folks at
18 Blessed Sacrament. Our concern was always
19 flavored by that initial experience that we
20 had with Blessed Sacrament, which, as I
21 mentioned earlier, were not really very good
22 neighbors. And they are pretty bad neighbors.

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1 And as I mentioned earlier, we
2 were concerned that it would be difficult to
3 deal with problems that we could not entirely
4 anticipate and expect to have Blessed
5 Sacrament respond positively and in a helpful
6 way, because our earlier experience had been
7 that they had not.

8 So we regarded all this with great
9 alarm and that's the basis for our having
10 filed as parties in opposition. That said, we
11 have been involved in long discussions with
12 Father John, with Gail and other neighbors.
13 And I think we have reached an agreement
14 through which Blessed Sacrament recognizes our
15 special concerns, things where we are even
16 more sensitive than anybody else. Not merely
17 because we have been sensitized by that
18 history, but because of the location of our
19 property, as Mr. Jeffries so clearly pointed
20 out.

21 So we have hammered out a private
22 agreement with Blessed Sacrament through which

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1 we think most of our concerns can be dealt
2 with. Either because of the specific terms of
3 the agreement or because we have incorporated
4 a mechanism within that agreement to handle
5 emerging problems should they arise.

6 That said, I would like to make a
7 couple of comments though. First of all, this
8 is not a public park. And I understand why
9 neighbors might be interested in using it, so
10 one of the things that we really spent a lot
11 of time on with Father John was how to -- if
12 that use is to be permitted, how it is going
13 to be controlled.

14 So that it may be that there is no
15 problem at all, but on the other hand, it
16 might be a big problem. And it's a special
17 concern, because we're going to have school
18 children there five days a week, as many as 90
19 at a time making a lot of noise. And we know
20 that.

21 So, you know, you just want to
22 have some relief. If we're willing to put up

1 with the inevitable noise from the kids
2 playing, from which we are currently
3 sheltered, because now they are, as Mr. Rice
4 points out, 140 feet away more or less, but
5 there is a big difference being on the other
6 side of the buildings than being right under
7 our noses. That's an enormous difference.
8 And it's one that we are extremely sensitive
9 to.

10 So in our discussions with Father
11 John, we have worked out an agreement through
12 which we can deal with -- we believe we can
13 deal effectively with problems that may come
14 up. He mentioned to you earlier that these
15 new uses will be introduced gradually, that
16 will incorporate trial periods, that if there
17 are problems, then Blessed Sacrament has
18 agreed as part of the private agreement that
19 they will curtail those things that are --
20 that do present problems that they can't
21 control or prevent.

22 Let me say what with regard to the

1 point of access to the field, access --
2 primary access from Patterson Street to us
3 will be totally unacceptable. Having 90 kids
4 treading up and down the street, that's a --
5 that would be a big problem. The back alley
6 access point, which he and I have discussed
7 since the matter first came up, I think would
8 be acceptable. And I do not think that it
9 would present any real danger problems for the
10 children.

11 Let me describe what our
12 observations have been, both in our side alley
13 and in the back alley. Let's say the alley
14 that separates Blessed Sacrament's School
15 building from our property and the alley along
16 the north side, there is some traffic in both
17 of those. What has happened, their delivery
18 trucks who come sometimes as early as 4:00 in
19 the morning, they bring milk. They bring
20 stuff for the school. Sometimes they wake us
21 up.

22 As I have gotten older, I wake up

1 anyway at that time, that time of the day, so
2 it's not so much a big problem. But sometimes
3 it's hard for us to get back to sleep. That's
4 different. There is also a garbage truck that
5 comes through once a week sometimes. And that
6 comes usually by 6:30 in the morning. There
7 is very little other traffic.

8 There are a few people who use
9 their garages, as Gail pointed out. A few
10 people who use their garages along that north
11 alley. You very seldom see any cars. And
12 when there are cars going through there, it is
13 before and after school hours.

14 I can't speak for the people who
15 live down at the bottom of the hill, because
16 I don't see them, but certainly immediately
17 behind our property and behind the playground,
18 there is very little traffic, almost none to
19 speak of. So if I can offer some reassurance
20 to the Board about that access point, I'm
21 prepared to do that.

22 A number of things have been

1 talked about today about the fencing, about
2 the buffer zones. Yes, when we first started
3 talking about creating some sort of barrier
4 between the playground and our house, I was
5 really concerned, because as a result of our
6 earlier experience of the noise from the gym,
7 we basically have sealed off the western side
8 of our house. We keep those windows closed
9 all the time.

10 And our living space is opened now
11 to the opposite side of the house, toward what
12 is scheduled to become the playground. We
13 have a screened porch out there, which is open
14 all -- if it's not cold, that screened porch
15 is open, because it's a wonderful place to
16 live and it has a nice green open space
17 outside there.

18 The first idea of the fence struck
19 me as probably a good idea. But then upon
20 reflection, we said well, you know, on the
21 other hand a fence is not necessarily going to
22 stop the noise. So as part of our private

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1 agreement with Blessed Sacrament, Blessed
2 Sacrament has agreed to put the metal fence
3 that they have proposed on their side of the
4 buffer zone.

5 There is already a fence, my fence
6 along that property line, so that we would
7 have as a buffer my fence, the planting and
8 their fence and that would keep little
9 children from burrowing under the bushes,
10 which little children sometimes like to do.

11 So that's -- they are open to
12 that. We're going to look at that and do it
13 on a kind of trial basis. If a wooden fence
14 should become necessary, then Blessed
15 Sacrament has agreed to put that along the
16 property line. So that's the point I wanted
17 to make with regard to the fencing, with
18 regard to the access.

19 With regard to use outside of the
20 normal classroom time, there are two
21 questions. There is an after school program
22 and then there is the weekend and summer use.

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1 The after school program might be no problem
2 at all, but we don't know. They don't know.
3 We don't know. So as part of our private
4 agreement, we're going to try it for a while.
5 If it creates a problem, then Blessed
6 Sacrament has agreed that they will move the
7 kids back inside.

8 With regard to summer and weekend
9 use, to be frank, I don't like the idea at
10 all. But I recognize that it might be that
11 it's not a problem. So we're willing to
12 explore it, to try it out. And we would not
13 do that right away. We would sort of let the
14 school being doing this stuff and Father John
15 has said let's do a first trial period in the
16 summer and we can see how it works.

17 We can see if we can -- if there
18 really is a problem. We can see how the
19 control mechanism work. And if they -- if
20 what we expect to happen isn't in fact what
21 happens, there may occasionally be some
22 families or groups of kids that do create

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1 problems, then we will deal with that
2 explicitly with regard to those who are
3 engaging in objectionable activity.

4 If a more complicated problem
5 arises, something more serious, something that
6 is more difficult to deal with, we have
7 established a way to deal with that problem to
8 find a solution. If a solution can't be
9 found, the church has agreed well, we will
10 just stop making it available. So we would
11 deal with it on a gradual basis.

12 I think that Father John has
13 demonstrated a degree of good neighborliness
14 that continues what had been started with his
15 predecessor, which was a great break from our
16 experience earlier, which I have said
17 repeatedly was dreadful. I mean it got to the
18 point where I was preaching to people about
19 don't forget how you are supposed to treat
20 your neighbor.

21 But I think that we have gotten
22 off to a good start with Father John and I

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1 think that we can deal with any problems that
2 arise. That's my hope. Except my wife, who
3 is doubtful about the whole thing.

4 MS. WELLBORN: Well, I am the one
5 home. And nobody can be naive enough to think
6 that having 90 children, teenagers and little
7 kids at one time, eight hours a day does not
8 drive you insane. So you may end up putting
9 me some place else. But anyway, we have --
10 you know, we are at the stage in our lives, I
11 feel, in a cage. I feel that I am taken the
12 right of living in my own house where I have
13 raised my family. And if that's American
14 democracy, so be it. So I am just being a
15 wife that is going along with good bill right
16 now.

17 CHAIRPERSON MILLER: Okay. I just
18 want to ask you a few questions. I don't know
19 whether you are, you know, officially split in
20 this case. Do we have opposition in this case
21 or do we not have opposition?

22 MS. WELLBORN: We have

1 cooperation.

2 MR. WELLBORN: Well, we are
3 skeptical collaborators, at this point. We
4 are grateful for the Board's concern about our
5 welfare sincerely. We don't -- we would --
6 being a good neighbor cuts both ways. We
7 would like to be a good neighbor to Blessed
8 Sacrament. We would like to be a good
9 neighbor to our other neighbors.

10 We are sensitive on this point,
11 because of being, as Mr. Jeffries pointed out,
12 suddenly in the middle of a campus that
13 belongs to somebody else.

14 MS. WELLBORN: And everybody deals
15 with us as if we have not lived there or we
16 don't own the house.

17 MR. WELLBORN: Yes. The neighbors
18 say well, when are you going to sell the place
19 to Sacrament? I say well, I may live there
20 until I die. Maybe this will kill me. I
21 don't know.

22 CHAIRPERSON MILLER: Well, let me

1 ask you this question. We can get back to
2 that later. But how do you really feel? Do
3 you have some feeling like maybe this buffer
4 will help a lot and it just might be that bad?
5 And that's why, you know, you're willing to
6 give it a try or do you really think it's
7 going to be terribly noisy?

8 MR. WELLBORN: Well, I think we
9 have to anticipate a lot of noise. I think
10 that what we hope is that we will be given
11 some visual privacy through appropriate
12 selection of plant materials, for example.
13 And Blessed Sacrament has agreed that --

14 ZC VICE CHAIRMAN JEFFRIES: Excuse
15 me, can you get closer to the mike?

16 MR. WELLBORN: I beg your pardon.

17 ZC VICE CHAIRMAN JEFFRIES: Okay.

18 MR. WELLBORN: You would think I
19 would learn after once or twice. We have
20 talked to Blessed Sacrament about how the
21 landscaping plan is going to be developed
22 beyond its initial stage. They have agreed

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1 that we will be consulted about the selection
2 of plant materials that will be used and the
3 criteria for making those selections.

4 And that they will take our views
5 seriously into consideration for the
6 development of that buffer strip. I take them
7 at their word for that. And I have some
8 ideas.

9 CHAIRPERSON MILLER: Okay. Good.
10 I mean, it sounds like you are being an
11 extremely good neighbor.

12 MR. WELLBORN: May I?

13 CHAIRPERSON MILLER: Yes.

14 MR. WELLBORN: I think so. I
15 think we are. I hope Father John feels that
16 way. I think he does, too. I had originally
17 been proposing a 40 foot buffer zone. And
18 I've sort of backed off of that to be
19 accommodating and because -- I don't know that
20 a 40 foot buffer zone is going to help the
21 noise any. And what we are really concerned
22 about is protecting privacy.

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1 And we are, as my wife points out,
2 concerned about the noise, but I'm not sure
3 that the -- I don't think that the planting is
4 going to stop the noise. It can keep the
5 noise farther away from us. And we know that
6 the intensity of sound is inversely
7 proportional to the square of the distance
8 between the source and the human ear. So you
9 get twice as far away then it's only a fourth
10 as bad. That's a little bit of acoustics I
11 can offer.

12 CHAIRPERSON MILLER: Okay. Do you
13 have concerns about putting into the record
14 your agreement?

15 MR. WELLBORN: Only this. I don't
16 mind it being in the record. I think probably
17 it's not appropriate for the Board's order.
18 And I'm perfectly happy to submit it to you if
19 you would like to have it.

20 CHAIRPERSON MILLER: Okay. This
21 is where I'm coming from. If you have an
22 agreement, you already have enforceable

1 conditions. And it's actually better than
2 what the Board could do, because you can have
3 whatever flexibility you want and it sounds
4 like this kind of case may call out for
5 flexibility. Ideally, oh, we'll try this. If
6 it's not a problem, that's fine. If it is a
7 problem, we won't do it.

8 When you have a Board order, it's
9 you have got to come back to the Board again
10 to change the conditions and it's a big deal.
11 So also, the other reason I would be
12 interested in it is because I don't think this
13 -- you know, when the Board -- if the Board is
14 considering additional conditions and we don't
15 want it to be contrary perhaps to what you
16 have already agreed to.

17 So we need to be aware at least of
18 the conditions that you have agreed to, if not
19 the agreement.

20 MR. WELLBORN: I'll be happy to
21 leave a copy with whoever you designate.

22 CHAIRPERSON MILLER: Mr. Freeman?

1 MR. FREEMAN: Why don't we do
2 this? Why don't the parties submit proposed
3 conditions, which would be consistent with, to
4 the greatest extent possible, Ms. MacColl's
5 proposed conditions as well as the Wellborn's
6 conditions, so that you don't have to go
7 through trying to figure out what are
8 appropriate conditions. We will commit to
9 work with the neighbors to submit proposed
10 conditions within a couple of days. I think
11 we could do that pretty easily.

12 CHAIRPERSON MILLER: Well, wait.
13 Before -- separate from that, that is -- the
14 Board always welcomes proposed conditions.
15 But even what I see in Ms. MacColl's is a lot
16 of this, you know, like we'll give it a 90 day
17 trial period and all that kind of stuff.
18 Which I think is very positive and if there
19 are written agreements with the school and the
20 neighbors or whatever, then that takes away
21 the need for the Board to impose separate
22 conditions.

1 I wouldn't want it to be instead
2 of these agreements, is my point. I would
3 encourage further agreements for anything that
4 is not covered and then we can, you know,
5 entertain other comments from Board Members.
6 But that just might leave to the Board then
7 any other areas you couldn't agree on or
8 something like that that the Board might look
9 at.

10 MR. FREEMAN: I'll just give an
11 example. For example, one of the provisions
12 in the agreement, which I'm looking through,
13 is that during the initial period we would use
14 the field until 4:30. And if, during the
15 course of that first 90 day period, everything
16 works out okay, then we would have the right
17 to use it up until 6:00, which would be the
18 official condition of the Board.

19 Whereas submitted, it says the
20 hours would be up until 4:30 would not be
21 consistent with what we would ultimately be
22 asking the Board to approve.

1 MR. WELLBORN: May I comment about
2 that? I'm not concerned about that, because,
3 you know, this is part of this sort of
4 experimental period that we're going through
5 and that's exactly the point that the
6 agreement that we have with Blessed Sacrament
7 is that within the larger envelope that we
8 would deal with things, frankly, in perhaps a
9 more stringent way, because of the peculiar
10 circumstances of our property. And so I don't
11 perceive a problem there.

12 MS. MacCOLL: I think what Clay is
13 saying is we have worked together on this. I
14 mean, he has seen what I have done and I have
15 seen what he has done. And so the envelopes
16 are the same, it's just that the level of
17 stringency is different in the two. The one
18 dilemma about having a private agreement with
19 the larger neighborhood is there is no entity
20 there.

21 If there is an agreement with me
22 as an individual, if I move away, the

1 agreement moves away with me. You know, we
2 don't have any corporate entity called "the
3 neighbors" that can enter into an agreement,
4 unless we may want to incorporate and that
5 starts to get, you know, so complicated that,
6 you know, that's hard to implement.

7 MR. FREEMAN: We'll submit the
8 agreement. We're fine.

9 CHAIRPERSON MILLER: Okay. I
10 understand what you are saying. Yours
11 represents a more general neighborhood.

12 MS. MacCOLL: Right.

13 CHAIRPERSON MILLER: And you
14 really -- they are not a party to the case, at
15 this point, either. And the ANC hasn't
16 proposed conditions. My point is though, I
17 don't know how much more work you can do out
18 there, is that I think it's hard for the Board
19 to have a condition that says, you know, trial
20 period 90 days, blah, blah, blah.

21 I mean, our kind of conditions
22 usually run with the land like no organized

1 activity, no play after 6:30, things that are
2 very specific that aren't going to be
3 influenced by any 90 day trial period or
4 whatever.

5 So I don't know. You know,
6 outside of this hearing, we will probably
7 continue this until decision making, but you--
8 I mean, for decision in a few weeks or
9 whatever. In the meantime, you might still be
10 able to work with the school and get their
11 agreement to certain conditions.

12 MS. MacCOLL: Well, it's the ones
13 that are contingent, where we really don't
14 know how it will work out. Now, the other way
15 that it could play out would be that since the
16 Wellborns are still on the scene, that the
17 contingency could play out underneath -- under
18 their agreement and then --

19 CHAIRPERSON MILLER: Okay. Let
20 me, I have one other thought. I think we're
21 getting close to like our break. But I
22 understand what you are saying. You're not in

1 a position to negotiate on behalf of the
2 neighborhood. However, the applicant, you can
3 still talk with the applicant about all the
4 concerns. The applicant also has an option of
5 making representations to us that, you know,
6 they will do this for 90 days or whatever.

7 MS. MacCOLL: Okay.

8 CHAIRPERSON MILLER: And we could
9 incorporate that into the order as well. I
10 just -- you know, if other Board Members
11 disagree with me, you should speak up. But it
12 has been my experience that it's not a type of
13 condition to have something like this. Like
14 we will try for flexibility. It just doesn't
15 usually work in a BZA condition.

16 MS. MacCOLL: Okay. But you are
17 saying that if it comes in a representation
18 from Blessed Sacrament, it would have force?

19 CHAIRPERSON MILLER: Yes.

20 MS. MacCOLL: Okay.

21 CHAIRPERSON MILLER: And they can
22 make --

1 MS. MacCOLL: That's something we
2 need to know.

3 CHAIRPERSON MILLER: And I believe
4 if they make certain commitments regardless of
5 whether you make commitments back, that they
6 would keep them. You know, that they commit
7 to do these things. But anyway, that is
8 something that we can consider in deciding
9 whether to grant or deny the relief.

10 ZC VICE CHAIRMAN JEFFRIES: What
11 happens if you, after your year probation or
12 90 day probation, agree on everything with the
13 church and then things change with the church
14 or different people move into the neighborhood
15 and then what is your redress? I mean, you
16 know, if something is in the order, that's one
17 thing. You know, a side agreement and I guess
18 you do whatever the agreement would state, but
19 it just --

20 MS. MacCOLL: Well, I think part
21 of it is caveat emptor. If we leave -- if
22 there is a playground next to our house and we

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1 sell our house, the person who buys that house
2 buys that house knowing that there is a
3 playground next to it and that the kids play
4 during certain hours of the day.

5 ZC VICE CHAIRMAN JEFFRIES: Well,
6 that's one thing. I'm just saying there is a
7 host of things that could occur over the
8 course of a year or two. I mean, you know,
9 and I'm just --

10 MS. MacCOLL: Well, that's what --

11 ZC VICE CHAIRMAN JEFFRIES: Yes?

12 MS. MacCOLL: That's why we had
13 put in these. All of the ones that we could
14 think of were Saturday uses, Saturday and, you
15 know, Saturday uses by the school, private
16 uses -- uses by private individuals under
17 controlled conditions and special events. So
18 we were hoping that we had the contingencies
19 covered that any one of those types of things,
20 we would be able to have some input on.

21 ZC VICE CHAIRMAN JEFFRIES: Madam
22 Chair, I think I agree with you. I mean, I

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1 think, you know, obviously, this Board is
2 going to, you know, sort of look at the things
3 that we normally look at in these types of
4 situations. I mean, obviously, it gets us in
5 a little bit of an awkward place, because we
6 would -- we want to accommodate you as best as
7 possible.

8 But, you know, the moving targets
9 are just things that, you know, are just hard
10 for us to sort of grapple with. So but I --

11 MS. MacCOLL: Yes, that's the
12 problem with the standard of objectionability.
13 What's objectionable today may not be
14 objectionable in five years.

15 ZC VICE CHAIRMAN JEFFRIES: Right,
16 right.

17 MS. MacCOLL: And vice versa.

18 ZC VICE CHAIRMAN JEFFRIES: Right,
19 right, right.

20 MR. WELLBORN: May I ask a
21 question? Are you suggesting that Ms. MacColl
22 and her husband should enter into a private

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1 agreement with Blessed Sacrament as we have
2 entered into?

3 ZC VICE CHAIRMAN JEFFRIES: No.
4 I'm not making any such suggestions of any
5 type. I mean, I'm just -- you know, we're
6 here as the Board of Zoning Adjustment, you
7 know, really looking at a special exception
8 case and, you know, looking and making certain
9 that this is -- you know, that by installing
10 this play lot or, I'm sorry, this green space
11 or whatever we're calling it, playing field,
12 you know, it doesn't have any aversive impact
13 on the neighborhood.

14 And that's all we're dealing with.
15 And we will just make certain that there are
16 certain things in place if we choose to vote
17 in favor, things that we normally look at in
18 terms of control mechanisms and things of that
19 sort. But any side agreements that you make,
20 you know, I mean, we just have no jurisdiction
21 over that.

22 It's just that, you know,

1 obviously, you know, when we get proposed
2 conditions like what was presented by Ms.
3 MacColl, I mean, you know, we try to take some
4 of this in, but then some of it, as Mr.
5 Freeman says, it's just not enforceable. You
6 can't really, you know, use it within the
7 confines of our orders.

8 And so but, you know, have at it.
9 Whatever you need to do, just make certain you
10 understand that, you know, people change,
11 places change, all kind of things happen in
12 the course of a lifetime. So and you know
13 that better than anyone.

14 CHAIRPERSON MILLER: I think the
15 things that the Board can easily include in
16 conditions, you know, are hours of operation,
17 for instance, or, you know, no organized play
18 or things -- if you think there are things
19 that will not change, you know, that you're
20 not afraid to be locked into, the 20 feet
21 buffer zone, you know, things like that, are
22 very appropriate for our conditions.

1 And the other things where you
2 want flexibility, but you want to have some
3 rules, so that people, you know, know what
4 they can do and can't do, I guess, I would
5 suggest that, you know, perhaps the neighbors
6 can meet with the school one more time and try
7 to figure out. You could do your own
8 agreement or however.

9 If they seem important, I don't
10 see why you shouldn't be able to come to
11 agreements on them. But you can try. You
12 know, I'm not saying -- we can look at them in
13 the context of the BZA order, but we're just
14 trying to be honest with you that we don't
15 normally do things like that with flexibility
16 and stuff, because then they are very
17 difficult to enforce.

18 VICE CHAIRMAN LOUD: Madam Chair,
19 just to be clear now. Mr. Freeman had offered
20 a little while ago to sort of harm -- you
21 know, look at all of the different conditions
22 from the parties and them harmonize and submit

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1 it to us by way of proposed conditions. And
2 I assume to sort of parse in his submission
3 those that would traditionally fit our
4 definition of conditions from those that are
5 a little more soft.

6 Are we still going to ask Mr.
7 Freeman to do that? I personally would find
8 that helpful moving forward.

9 CHAIRPERSON MILLER: Yes, I think
10 all the parties should do that, either
11 separately or you can work together. We don't
12 -- we would like to, when we impose
13 conditions, really get as much information
14 from everyone as we can, because you all will
15 have to live with them.

16 And then Mr. Wellborn has
17 indicated that he would put into the record
18 your agreement with the school. And so if
19 that's an official filing, then you would need
20 to also serve the ANC and the applicant.
21 Well, they have it and then Ms. MacColl.

22 MR. FREEMAN: I can do that.

1 CHAIRPERSON MILLER: Yes.

2 MR. WELLBORN: So I'm sorry, just
3 to summarize. Where should I submit this then
4 to?

5 CHAIRPERSON MILLER: You can
6 submit it to Ms. Bailey, but you would also
7 have to serve the other parties is what I'm
8 saying.

9 MR. WELLBORN: Well, that's only
10 Blessed Sacrament.

11 MS. MacCOLL: And me.

12 MR. WELLBORN: And you.

13 CHAIRPERSON MILLER: And the ANC.

14 MR. WELLBORN: All right. That's
15 fine.

16 MS. MacCOLL: And the ANC.

17 MR. WELLBORN: And the ANC?

18 CHAIRPERSON MILLER: Yeah. Okay.
19 So we talked about submitting proposed
20 conditions. And then you can comment, you
21 know, with your submittal, if you would like.
22 You don't have to. You can either just, you

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1 know, submit proposed conditions, but if you
2 think any deserve an explanation, feel free to
3 provide that.

4 MR. FREEMAN: Thank you, Madam
5 Chair.

6 MR. RICE: Madam Chair, I have a
7 question. Just for clarity, I think I heard
8 that you are proposing to have two fences on
9 your side? One before the 20 foot buffer and
10 one after?

11 MR. WELLBORN: There is already --
12 there is now a fence.

13 MR. RICE: Um-hum.

14 MR. WELLBORN: A metal fence along
15 the property line. That's my fence. And I've
16 proposed to leave that there and Blessed
17 Sacrament has agreed to put their fence along
18 the eastern boundary of the buffer zone to
19 provide an additional protection for that
20 zone.

21 MR. RICE: Okay.

22 MR. WELLBORN: So as I said, so

1 little children won't burrow under it.

2 MR. RICE: Okay.

3 MR. WELLBORN: As little children
4 like to do. So and then if for some reason
5 the need arises, they have agreed that they
6 will come in and put in the wooden fence along
7 our property.

8 MR. RICE: Okay. And it would be
9 fenced in on all sides?

10 MR. WELLBORN: That's correct.

11 MR. RICE: Okay.

12 MEMBER DETTMAN: The metal fence
13 that you were just discussing, which is sort
14 of on the bottom portion of the buffer, it's
15 not indicated on the latest plans, so as part
16 of your post-hearing filings, if you wouldn't
17 mind updating the plans, it would be
18 appreciated.

19 CHAIRPERSON MILLER: We also
20 talked about any further input from the
21 landscape architect, who apparently is not
22 going to make this hearing. I think that

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1 that's the consensus of the Board, I think at
2 this point, that he could submit something in
3 writing.

4 You know, I would have to go back
5 and look and see what you recently submitted,
6 but the question in our case really was how
7 much buffering does the landscaping do? You
8 know, what kind of confidence can we put in
9 that, that that will mitigate, to some extent,
10 the noise from the playing --

11 MS. MacCOLL: Can I?

12 CHAIRPERSON MILLER: Yes.

13 MS. MacCOLL: There are really two
14 considerations about the landscape buffering.
15 You would like it to be thick to mitigate
16 noise. You would like it to be seeable
17 through for purposes of security.

18 CHAIRPERSON MILLER: True. You
19 know, and I was thinking the other way, that
20 how much does it, you know, give the neighbors
21 privacy.

22 MS. MacCOLL: Well, from our point

1 of view, we don't use our backyard that much
2 anyway. It's just the front of the property.
3 We have a stairway window where we can see
4 down. But believe me, if anybody is monkeying
5 around underneath those bushes, we want to be
6 able to see it. And the other neighbors feel
7 the same way.

8 We have had -- there were problems
9 at Lafayette a number of years ago with drug
10 dealers and one thing and another hiding out
11 in the landscaping and we're very anxious that
12 there be no possibility of that on this site.

13 ZC VICE CHAIRMAN JEFFRIES: And
14 also lights, you know, give some -- they --
15 have the landscape architect, you know, really
16 revisit whether there is a need, because, I
17 mean, it starts to get dark around, what 5:00,
18 4:30. I mean, you know, once, you know,
19 daylight savings. So just, you know, to the
20 extent that -- I mean, just revisit that.
21 Have the landscape architect revisit that.

22 CHAIRPERSON MILLER: Mr. Freeman,

1 I have another question for you that you might
2 want to just address this later, but I don't
3 know. The OAG has brought to my attention
4 2500.1, which says "Any accessory use or
5 accessory building shall be located on the
6 same lot with the use of the building to which
7 it is accessory."

8 And this looks like an accessory
9 use. And it may be that private schools have
10 treated this issue, you know, differently.

11 MR. FREEMAN: Right.

12 CHAIRPERSON MILLER: But --

13 MR. FREEMAN: I actually met with
14 the Zoning Administrator on the appropriate
15 form of relief that we're asking for. Section
16 206 actually doesn't talk to private schools.
17 It actually only talks of public schools. So
18 when you look at the definition of public
19 schools in the Zoning Regulations --

20 CHAIRPERSON MILLER: I'm sorry,
21 206 doesn't talk to what?

22 MR. FREEMAN: Section 206 doesn't

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1 talk to use as just like a recreational
2 playing field for a private school. So if you
3 look at the definition of school, which is the
4 most school, public, the term includes
5 "Educational functions, the building or
6 structure required to house them, all the
7 accessory uses normally incidental to the
8 public school, including, but not restricted
9 to athletic fields, field houses, gymnasiums,
10 parking lots, greenhouses, playgrounds,
11 stadiums and open space."

12 So under our reading of the
13 section 2500.1, it's permitted there, subject
14 to special exception. And that's -- we
15 confirmed that with the Zoning Administrator
16 before we even filed the application, because
17 one argument could be you could do it as a
18 matter-of-right, since section 206.2 doesn't
19 necessarily give standards for a -- since the
20 Zoning Regulations doesn't include a
21 definition for private schools.

22 So we met with him to confirm that

1 we were seeking the right relief.

2 CHAIRPERSON MILLER: I'm sorry,
3 I'm not following you. 206.1 says, you know,
4 "Use as a private school shall be permitted as
5 a special exception in the R-1 District, if
6 approved by the Board of Zoning Adjustment,"
7 right?

8 MR. FREEMAN: I guess my point is
9 a playing field is not an accessory use. It's
10 part of the primary use of that school. If
11 you use the definition of public school as a
12 reference to how you define private schools.
13 Since there is no definition for private
14 school in the Zoning Regulations.

15 MEMBER WALKER: The definition of
16 public school found at what provision?

17 MR. FREEMAN: Chapter 199, section
18 199.

19 CHAIRPERSON MILLER: School,
20 public. Let me say this, I don't mean to give
21 you a hard time, we just wanted to get this
22 covered correctly.

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1 MR. FREEMAN: Right.

2 CHAIRPERSON MILLER: But even
3 under that definition, it seems to be listed
4 as an accessory use. It says "The term shall
5 include all educational functions, a building
6 or structure required to house them in, and
7 all accessory uses normally, incidental to a
8 public school, including, but not restricted
9 to athletic fields, field houses, gymnasiums,
10 parking lots, greenhouses, playgrounds,
11 stadiums and open space."

12 MR. FREEMAN: Right. I would --

13 CHAIRPERSON MILLER: So this would
14 be an accessory use.

15 MR. FREEMAN: -- have focused --

16 CHAIRPERSON MILLER: Not a primary
17 use.

18 MR. FREEMAN: I would have focused
19 it on the term "shall include." So what that
20 means is private, public school, the term
21 public school is -- if you're using it as an
22 analogy for private school, the term public

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1 school includes this, a recreational playing
2 field. That's my interpretation of that
3 section, as well as, again, I didn't get a
4 written interpretation from the Zoning
5 Administrator, but --

6 ZC VICE CHAIRMAN JEFFRIES: Mr.
7 Freeman, just for the non-attorney up here, I
8 just want to be clear. So you are saying that
9 this excludes you, because it is meant really
10 only for public schools?

11 MR. FREEMAN: No. What I'm saying
12 is a recreation -- under this -- under, I
13 think, my reading and the Zoning
14 Administrator's reading of the definition of
15 school, public, a recreational playing field
16 is -- falls under a normal use and not an
17 accessory use.

18 ZC VICE CHAIRMAN JEFFRIES: So
19 that would be a matter-of-right situation?

20 MR. FREEMAN: Right. Not an
21 accessory use.

22 ZC VICE CHAIRMAN JEFFRIES: Um-

1 hum.

2 MR. FREEMAN: Of the school.

3 CHAIRPERSON MILLER: Okay. Okay.

4 The way this paragraph reads to me is like
5 it's normally an accessory use. It says it
6 includes accessory uses such as playing
7 fields, blah, blah, blah. But what you are
8 saying is that for schools, schools encompass
9 all these accessory uses.

10 ZC VICE CHAIRMAN JEFFRIES: These
11 things come with the schools.

12 CHAIRPERSON MILLER: Right. Okay.

13 MR. FREEMAN: That's right.

14 CHAIRPERSON MILLER: Okay. And
15 that's what the Zoning Administrator said.

16 MR. FREEMAN: Right. Which is why
17 we're filing an application for a school.
18 Technically, we're not building a school on
19 the site, but it's a -- it comes under section
20 206, because that's the closest, most
21 applicable section of the Zoning Regulations.

22 CHAIRPERSON MILLER: Right. It's

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1 like an addition to a school. An addition to
2 the school, basically, it's expanded. Do you
3 disagree?

4 MR. FREEMAN: I think of addition
5 as a physical --

6 CHAIRPERSON MILLER: As a
7 structure?

8 MR. FREEMAN: -- improvement, yes.

9 CHAIRPERSON MILLER: Okay. We
10 won't go there then.

11 ZC VICE CHAIRMAN JEFFRIES: I
12 didn't think he was buying what you were
13 saying.

14 CHAIRPERSON MILLER: All right.
15 Are there any other questions? Okay. So
16 we're going to leave the record open now for
17 proposed conditions, any other agreements that
18 you all might make. Not that we are asking
19 you to, but in the event that that happens and
20 you want to put that in for us to -- that
21 would go to our consideration of conditions to
22 mitigate adverse impacts. And if we see

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1 agreements that already do that, we wouldn't
2 be imposing further conditions for that.

3 So we will leave the record open
4 for that. We will leave the record open for
5 the landscape architect to provide any further
6 comments on the buffering of the landscaping.

7 ZC VICE CHAIRMAN JEFFRIES: A
8 large site plan.

9 CHAIRPERSON MILLER: Right.

10 ZC VICE CHAIRMAN JEFFRIES:
11 Include the existing sacred school along with
12 the Wellborns, school and the field together.

13 CHAIRPERSON MILLER: And as far as
14 the entrance to the playground, is that set or
15 is that going to show up in the latest -- in
16 the next filing?

17 MR. FREEMAN: It should show up.

18 CHAIRPERSON MILLER: Okay. So
19 that would show up, definitely where the
20 entrance is going to be. And then whatever
21 kind of fencing there is going to be. Is the
22 applicant going to be ready to identify that

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1 or no?

2 MR. FREEMAN: I think we agree, at
3 this point, that it would be a 7 foot metal
4 fence initially, along the western boundary,
5 I think that's --

6 MR. WELLBORN: Along the
7 playground.

8 CHAIRPERSON MILLER: You have to
9 turn your mike on.

10 MR. WELLBORN: Right. It would be
11 a fence along the playground side of the
12 buffer zone on our side of the property.
13 Although, it could be a continuation of the
14 same height as the rest of the fence around
15 the site, because there is -- if the decision
16 is for a 5 foot fence, it can -- since it's
17 not going to be right adjacent to my property,
18 I'm not concerned about the height.

19 MR. FREEMAN: Okay.

20 CHAIRPERSON MILLER: That's
21 something that is going to be finalized that
22 you can put in the plan or --

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1 MR. FREEMAN: Yes --

2 CHAIRPERSON MILLER: Okay.

3 MR. FREEMAN: -- Madam Chair.

4 CHAIRPERSON MILLER: Okay.

5 ZC VICE CHAIRMAN JEFFRIES: Um, I
6 mentioned a section before, but if you don't
7 think and that -- Mr. Rice, that there is
8 really that much of an elevation difference
9 between the field and the Wellborn's house, I
10 mean, I don't need to see that. But I just --

11 MR. WELLBORN: May I comment on
12 that?

13 ZC VICE CHAIRMAN JEFFRIES: Sure.

14 MR. WELLBORN: My observation is
15 that there is a very noticeable change in
16 elevation. We really look down on that.

17 ZC VICE CHAIRMAN JEFFRIES: Okay.
18 Well, then I would like to see. Then let's
19 just see if we can just do a section through
20 between the two adjacent houses and the field
21 and just get a sense of, you know, visibility
22 and, you know, what you are seeing, what the

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1 neighbors are seeing into the field.

2 MR. RICE: One thing I would also
3 add is I think the site will be graded, at
4 some point, too, or is that --

5 MR. FREEMAN: Yes, it will be
6 graded.

7 MR. RICE: So that should also be
8 something that is made clear and how that will
9 impact the fence or the height of the fence.

10 MEMBER DETTMAN: Madam Chair, I'm
11 wondering, since sort of privacy came up as a
12 primary concern, would it help the Board in
13 their deliberations if their landscape
14 architect could address the maturity level and
15 the size of the plantings that are going to be
16 put on the west and east side? You know, no
17 doubt privacy will come in the long run, but
18 I think it's something that we want to
19 establish right up front.

20 ZC VICE CHAIRMAN JEFFRIES: I
21 think they talked about types of trees. They
22 have done that. But you are saying in terms

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1 of?

2 MEMBER DETTMAN: I mean for a
3 particular tree.

4 ZC VICE CHAIRMAN JEFFRIES: Oh.

5 MEMBER DETTMAN: I mean, it's got
6 a caliber side, it's got a canopy diameter.

7 ZC VICE CHAIRMAN JEFFRIES: Yeah,
8 okay.

9 MEMBER DETTMAN: So we want to
10 make sure that we put in some mature trees, so
11 that privacy --

12 ZC VICE CHAIRMAN JEFFRIES: Um-
13 hum.

14 MEMBER DETTMAN: -- we can have
15 privacy right up front.

16 VICE CHAIRMAN LOUD: Madam Chair,
17 also for me, it would be helpful since both
18 Mr. and Mrs. Wellborn and Mrs. MacColl
19 testified that it would really be burdensome
20 for them if the primary access was on
21 Patterson Street. However, I think it is OP's
22 -- and there was also testimony that the east/

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1 west alley and the north/south alley, but
2 particularly the east/west alley, does not
3 have a lot of vehicular traffic.

4 So it would be helpful for me to
5 get a sense from OP of its continuing
6 statement of that condition that the primary
7 access be reoriented to Patterson Street, so
8 I can sort that out as we deliberate. I don't
9 know if we should ask them for a supplemental
10 or the --

11 CHAIRPERSON MILLER: Mr. Rice, do
12 you have an opinion right now? I was under
13 the impression you didn't feel strongly about
14 that, but what's your position?

15 MR. RICE: Well, if the alley
16 situation is an -- big of an issue as I sort
17 of presumed, I could submit something if the
18 Board wants that. Again, that was not a
19 concern. At the point of submission, I wasn't
20 sure if that would be an issue. But after
21 speaking with the neighbors, apparently those
22 alleys aren't really necessarily used as often

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1 as I thought that they were. But I can submit
2 something.

3 VICE CHAIRMAN LOUD: Thank you.

4 MR. RICE: Did that answer your
5 question, Madam?

6 CHAIRPERSON MILLER: Me? Well, I
7 wasn't sure if your answer was going to change
8 from today, whether you need to submit
9 something or do you, that you want to think it
10 through a little bit and address it in writing
11 or not?

12 MR. RICE: Well, I'm willing to
13 change it, if that's what is best for the
14 neighbors and the applicant.

15 CHAIRPERSON MILLER: Okay. So my
16 question is though do you want to -- do you
17 need to submit something in writing or do we
18 have this on the record that, you know, this
19 is your provision/

20 ZC VICE CHAIRMAN JEFFRIES: Use
21 some time.

22 MR. RICE: And I think I'm saying

1 if needed, I will submit something. If not,
2 I'm -- it's not necessary.

3 CHAIRPERSON MILLER: Okay.

4 VICE CHAIRMAN LOUD: You're saying
5 consider your testimony changed?

6 ZC VICE CHAIRMAN JEFFRIES: Or so
7 you're saying for the record, right now --

8 MR. RICE: That's enough, unless
9 you need something from me.

10 ZC VICE CHAIRMAN JEFFRIES: Okay.

11 CHAIRPERSON MILLER: Okay.
12 Anything else? Anybody? Well, let me just
13 say this. I don't think I asked if there was
14 anybody else here who wanted to testify in
15 opposition to this case. Okay. Good. I
16 didn't think there was anybody else here.

17 All right. Is there any other
18 information anyone else wants to put into the
19 record, because after this, we're going to
20 close the record.

21 MR. WELLBORN: May I ask one quick
22 question? You said the record would be left

1 open until we can make the additional
2 submissions. Is there a time period that we
3 should be --

4 CHAIRPERSON MILLER: Yes. Okay.
5 Now, we're going to go to the time. Okay.
6 And I'm going to ask you also if this works
7 for everybody or not. Our next decision
8 meeting is March 4th and so we could schedule
9 your submissions to be due a few days before
10 that, if that's going to be enough time for
11 everyone, that's what we will do. Otherwise,
12 we'll push our decision later and then
13 schedule back. Is that okay with everyone?

14 MR. FREEMAN: We are good with
15 March 4th and whatever date we need to file
16 by, we can make that date as well.

17 CHAIRPERSON MILLER: Okay. Ms.
18 Bailey, if we have our decision date on March
19 4th, I think the filings are just going to be
20 all at one time. I don't believe that anyone
21 is going to want be responding, because you
22 are all talking together anyway, right? Okay.

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1 So we will have one filing date. When would
2 that be?

3 MS. BAILEY: I would suggest,
4 Madam Chair, the 28th, February 28th.

5 CHAIRPERSON MILLER: Is that all
6 right with you all?

7 MR. FREEMAN: Yes.

8 CHAIRPERSON MILLER: Do you need
9 Ms. Bailey to read the list of what's coming
10 in or do you have an understanding of what it
11 is?

12 MR. FREEMAN: I'm pretty clear.

13 CHAIRPERSON MILLER: Anybody want
14 it read? You got it? Okay.

15 MR. MOY: Madam Chair, if the
16 parties are agreeable, would one day make a
17 difference, to the 27th? Because typically,
18 the 28th, which is a Thursday, is when we
19 deliver the packages to the Board.

20 MR. FREEMAN: That's fine.

21 MR. WELLBORN: That's fine with us
22 as well.

1 CHAIRPERSON MILLER: Okay.

2 Anything else? Thank you very much.

3 MR. WELLBORN: Thank you.

4 CHAIRPERSON MILLER: Okay. That
5 finishes our morning session. Oh, you can go.
6 Just for the other people who are waiting,
7 we're going to start our afternoon session at
8 about 2:45. And so the morning hearing is
9 adjourned.

10 (Whereupon, the Public Hearing was
11 recessed at 2:15 p.m. to reconvene at 2:58
12 p.m. this same day.)

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

2:58 p.m.

CHAIRPERSON MILLER: This hearing will, please, come to order. This is the February 19th afternoon Public Hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller. I'm the Chair of the BZA. To my right is the Vice Chair, Mr. Marc Loud, and next to him is Mr. Greg Jeffries joining us from the Zoning Commission. To my left is Mary Oates Walker and next to her is Mr. Shane Dettman, Board Members, and next to Mr. Dettman is Mr. Cliff Moy from the Office of Zoning, Sherry Glazer, Office of Attorney General, and Ms. Beverley Bailey, Office of Zoning.

Copies of today's hearing agenda are available to you and are located to my left in the wall bin near the door. Please, be aware that this proceeding is being recorded by a Court Reporter and is also webcast live. Accordingly, we must ask you to

1 refrain from any disruptive noises or actions
2 in the hearing room.

3 When presenting information to the
4 Board, please, turn on and speak into the
5 microphone, first, stating your name and home
6 address, and when you are finished speaking,
7 please, turn your microphone off, so that your
8 microphone is no longer picking up sound or
9 background noise.

10 All persons planning to testify
11 either in favor or in opposition are to fill
12 out two witness cards. These cards are
13 located to my left on the table near the door
14 and on the witness tables. Upon coming
15 forward to speak to the Board, please, give
16 both cards to the reporter sitting to my
17 right.

18 The order of procedure for special
19 exceptions and variances is as follows: One,
20 statement and witnesses of the applicant.
21 Two, Government reports, including Office of
22 Planning, Department of Public Works, DDOT,

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1 etcetera. Three, report of the Advisory
2 Neighborhood Commission. Four, parties or
3 persons in support. Five, parties or persons
4 in opposition. Six, closing remarks by the
5 applicant.

6 Pursuant to Section 3117.4 and
7 3117.5, the following time constraints will be
8 maintained: The applicant, persons and
9 parties, except an ANC, in support, including
10 witnesses, 60 minutes collectively. Persons
11 and parties, except an ANC, in opposition,
12 including witnesses, 60 minutes collectively.
13 Individuals 3 minutes.

14 These time restraints do not
15 include cross examination and/or questions
16 from the Board. Cross examination of
17 witnesses is permitted by the applicant or
18 parties. The ANC within which the property is
19 located is automatically a party in a special
20 exception or variance case.

21 Nothing prohibits the Board from
22 placing reasonable restrictions on cross

1 examination, including time limits and
2 limitations on the scope of cross examination.

3 The record will be closed at the
4 conclusion of each case, except for any
5 material specifically requested by the Board.
6 The Board and the staff will specify at the
7 end of the hearing exactly what is expected
8 and the date when the persons must submit the
9 evidence to the Office of Zoning. After the
10 record is closed, no other information will be
11 accepted by the Board.

12 The Sunshine Act requires that the
13 Public Hearing on each case be held in the
14 open before the public. The Board may,
15 consistent with it's rules of procedure and
16 the Sunshine Act, enter Executive Session
17 during or after the Public Hearing on a case
18 for purposes of reviewing the record or
19 deliberating on the case.

20 The decision of the Board in these
21 contested cases must be based exclusively on
22 the public record. To avoid any appearance to

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1 the contrary, the Board requests that persons
2 present not engage the Members of the Board in
3 conversation.

4 Please, turn off all beepers and
5 cell phones, at this time, so as not to
6 disrupt these proceedings.

7 The Board will make every effort
8 to conclude the Public Hearing as near as
9 possible to 6:00 p.m. If the afternoon cases
10 are not completed at 6:00, the Board will
11 assess whether it can complete the pending
12 case or cases remaining on the agenda.

13 At this time, the Board will
14 consider any preliminary matters. Preliminary
15 matters are those that relate to whether a
16 case will or should be heard today, such as
17 requests for postponement, continuance or
18 withdrawal or whether proper and adequate
19 notice of the hearing has been given. If you
20 are not prepared to go forward with a case
21 today or if you believe that the Board should
22 not proceed, now is the time to raise such a

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1 matter.

2 Does the staff have any
3 preliminary matters?

4 MS. BAILEY: Madam Chair, good
5 afternoon, staff does have a preliminary
6 matter and it has to do with Appeal No. 17671.
7 This is the Appeal of Advisory Neighborhood
8 Commission 1A. That appeal was withdrawn.

9 CHAIRPERSON MILLER: Thank you.
10 And my understanding is that there is no
11 action required from the Board on that.

12 MS. BAILEY: No action is
13 required.

14 CHAIRPERSON MILLER: Okay. Great.
15 Then we are ready for all individuals who are
16 going to be testifying today, if you would
17 rise to take the oath, Ms. Bailey will
18 administer it.

19 MS. BAILEY: Would you, please,
20 raise your right hand?

21 (Whereupon, the witnesses were
22 sworn.)

1 MS. BAILEY: Thank you.

2 CHAIRPERSON MILLER: We're ready
3 for the first case then.

4 MS. BAILEY: Madam Chair, the only
5 case this afternoon is Application No. 17753
6 of W Street Acquisitions LLC, pursuant to 11
7 DCMR 3104.1 and 3103.2, for a variance from
8 the lot area requirements of section 401.3, a
9 variance from the lot occupancy requirements
10 of section 403.2, a variance from the rear
11 yard requirements of section 404.1, a variance
12 from the size of the parking space
13 requirements of section 2115.1, a variance
14 from the front yard requirements of section
15 2516.5(b) and a special exception from section
16 2516, which authorizes exceptions to building
17 lot control in residence districts to permit
18 the construction of a new residential
19 development. The property is located at 1226-
20 1252 W Street, S.E. It is also known as
21 Square 5782, Lots 98, 99, 694, 810, 811, 812
22 and 1022. The property is Zoned R-4/R-3.

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1 There are two requests for party
2 status, Madam Chair.

3 CHAIRPERSON MILLER: Thank you.
4 Would you all introduce yourselves for the
5 record, first, please?

6 MR. FREEMAN: Good morning,
7 Members of the Board, my name is Kyrus
8 Freeman. I'm an attorney with the Law Firm of
9 Holland and Knight on behalf of the applicant.
10 To my immediate right is Mr. Stan Voudrie, the
11 applicant. Jeff Goins is the architect and
12 Steve Sher are -- who we intend to submit as
13 an expert in zoning and land use.

14 CHAIRPERSON MILLER: Okay. Well,
15 I guess we will qualify him when we get to
16 that point. We do have two applications for
17 party status in the record. One from Ms.
18 Greta Fuller and one from Cynthia Davenport.
19 They are Exhibit Nos. 28 and 29. I don't see
20 them in the audience. I don't see any women
21 in the audience, so I assume you are not them.

22 Okay. However, we also have

1 Exhibit 30, which is a letter from Ms.
2 Davenport in support and then we have Exhibit
3 21, which is a letter from Greta Fuller as
4 Commissioner of ANC-8A03. They not being here
5 and these additional letters leads me to
6 conclude that they don't want to pursue their
7 party status applications. So I would suggest
8 that we deny the party status and accept,
9 well, they are already into the record,
10 Exhibits 28, 29, 21 and 30 as testimony.

11 Okay. Not hearing anything
12 otherwise from the Board, I think that's the
13 consensus of the Board. We will do that and
14 now turn to the applicant.

15 MR. FREEMAN: Again, Members of
16 the Board, my name is Kyrus Freeman. I would
17 just like to make a quick opening statement.
18 First, I would like to note the Office of
19 Planning's report in support of the
20 application which is marked as Exhibit No. 33
21 of the record, and we appreciate OP's support
22 and assistance as we have processed this

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1 application.

2 As you indicated, I would also
3 like to note the various letters of support
4 filed for the project, including a letter from
5 Ms. Davenport, which is marked as Exhibit 30,
6 a letter from Commissioner Jackie Ward, which
7 is marked as Exhibit 27, a letter of support
8 from Commissioner Greta Fuller marked as
9 Exhibit 21, and I also understand that there
10 is a letter of support filed by Ms. Yavocka
11 Young filed today. I'm not sure of the
12 exhibit number yet.

13 The manner in which the applicant
14 meets its burden of proof is set forth in
15 detail in the statement of the applicant
16 marked as Exhibit 32 of the record of the
17 case. We will also supplement and expand upon
18 that today through the testimony of our zoning
19 expert and his report, which will also be
20 submitted.

21 If there are no preliminary
22 questions, I would like to proceed with the

1 testimony of the witnesses and call Mr. Stan
2 Voudrie.

3 CHAIRPERSON MILLER: Okay. I just
4 have a couple of -- I don't believe we have
5 the letter from Ms. Young that you are
6 referring to.

7 MS. BAILEY: Madam Chair, I have
8 some filings that I'm putting together right
9 now and I'll be bringing it to you shortly.

10 CHAIRPERSON MILLER: Okay. Okay.
11 Thank you. And then I was wondering, is there
12 a landscaping plan in the record?

13 MR. FREEMAN: Yes, Madam Chair,
14 there is a landscaping plan included in our
15 February 4th filing.

16 MR. VOUDRIE: I don't think there
17 is actually. I don't think there is.

18 MR. FREEMAN: It's not on the site
19 plan? I believe our landscaping comes up on
20 the site plan. But there is not a detailed
21 landscaping plan.

22 MR. VOUDRIE: It's not a detailed

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1 landscape plan. We have landscaping shown on
2 the site plan, but --

3 ZC VICE CHAIRMAN JEFFRIES: An
4 enlarged site plan, A5?

5 MR. VOUDRIE: Yes, sir.

6 ZC VICE CHAIRMAN JEFFRIES: That's
7 -- okay, that's good.

8 CHAIRPERSON MILLER: Is there a
9 landscaping plan that is being submitted to
10 HPRB or no?

11 MR. VOUDRIE: No, ma'am. We have
12 completed the review with HPRB and we were not
13 required to submit a landscaping plan for that
14 hearing.

15 CHAIRPERSON MILLER: Okay. So
16 where I should look for landscaping is on the
17 site plan where there is some landscaping
18 shown, is that it?

19 MR. VOUDRIE: Yes.

20 CHAIRPERSON MILLER: Okay. Are
21 there any other preliminary questions? Okay.
22 I'm not hearing any.

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1 MR. VOUDRIE: Good afternoon. My
2 name is Stan Voudrie. I'm here on behalf of
3 the owners and applicant. And I would like to
4 thank you for this opportunity to present this
5 project. It's a parcel that has long been
6 undeveloped since the homes that were
7 originally built on this site were torn down
8 many years ago and there is one home that is
9 still partially standing that is -- you know,
10 it will be rebuilt as part of this project,
11 based upon our agreement with the Historic
12 Preservation Review Board.

13 We bought this property, assembled
14 it early last year and immediately began
15 working with the community, the neighborhood
16 and sort of the stakeholders in the area. We
17 are immediately across W Street from the Union
18 Temple, which is a large landowner and a
19 significant stakeholder in this community and
20 certainly is concerned about the use of this
21 property, as they have been using it as a
22 parking lot for the past 10 or 15 years.

1 We have -- we are proposing a
2 project that we believe will enhance the
3 neighborhood as well as meeting some of the
4 important objectives of the, certainly,
5 Mayor's Administration and the goals of this
6 body and others, as well as Office of
7 Planning. I think the Office of Planning
8 report details that.

9 We are working closely with the
10 Deputy Mayor's Office For New Communities and
11 as such are proposing a number of affordable
12 housing units that will be a part of this
13 project. The affordability will be 25 percent
14 of the 40 units. So 10 units will be
15 affordable, based upon the agreement that we
16 have with the New Communities Office.

17 The details of which are not
18 finalized and so we are saying that there
19 going to be 10 affordable units. The levels
20 of affordability and the final makeup of that
21 are still being negotiated with the Deputy
22 Mayor's Office For New Communities. But we

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1 have been working closely with them as well as
2 the other bodies. And as I mentioned, we have
3 been-- the plan has been approved as you see
4 by Historic Preservation Review Board.

5 With that, I'll turn it over to
6 Jeff Goins, who is the architect, and he can
7 go through the site plan and the architecture
8 in more detail. Thank you.

9 MR. GOINS: Good afternoon,
10 Members of the Board. I'm Jeff Goins with PGN
11 Architects. And just a little background on
12 us, because I think this might be our first
13 time in front of BZA and the new Board.

14 We were established in 2002. We
15 are an LSDB firm and we are currently working
16 on over about 500 different types of
17 residential units, including about 60 row
18 house-type developments of the similar type in
19 nature to this project.

20 When this project was first
21 presented to us, we were very excited, both my
22 partner and myself live in Southeast on

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1 Capitol Hill side, but we were very excited to
2 be part of Anacostia and part of -- we're
3 working on several projects over there as
4 well. So this was a very exciting opportunity
5 for us.

6 The project presented several
7 challenges at the beginning. The first,
8 obvious, was the irregular site and lot size
9 itself and working within the R-3 and R-4
10 Zones. The next was the historic house that
11 was desired by HPRB to be kept. And we looked
12 at several different scenarios from locating
13 that within the zone and different areas
14 within the property.

15 It was desired to be kept close to
16 its current location and as a, you know,
17 historic house with side yards, which created
18 another challenge. So we started diagramming
19 the site and just started breaking out the
20 site and how we could break out the site and
21 have, basically, a series of row houses right
22 in the middle, like a historic house, you

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1 know, still standing and relocated.

2 So what we basically did, we
3 started off with Type I, which is the first
4 seven homes that you will see, which resemble
5 the Anacostia historic nature of the single-
6 family homes there. Those are all single-
7 family homes with three bedrooms, you know,
8 and they each have a parking spot and a front
9 yard.

10 And then you will see the historic
11 house, which we have relocated. It will be
12 pulled forward to maintain a consistent line
13 with the rest of the neighborhood -- with the
14 rest of the block that we are creating. And
15 it has side yards on both sides, which that
16 was through HPRB and working with them.

17 The next is the Type II, which is
18 an introduction to a historic house that you
19 don't see a whole lot of it at Anacostia, but
20 -- because it has bays, but we're trying to
21 continue strong harness lines through ornate
22 details with that house all the way to the

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1 block. And there is four of those that are
2 broken up with the entrance to the private
3 yard or the private road, excuse me, which
4 will -- we'll get to the Type III units in a
5 second.

6 And then you have two more of
7 those Type II units along W Street. So it's
8 a nice break within the block and the historic
9 house located in the center.

10 CHAIRPERSON MILLER: Can I ask you
11 something?

12 MR. GOINS: Sure.

13 CHAIRPERSON MILLER: Type II is
14 different from Type I, because it has bays?

15 MR. GOINS: Yes, and it is also
16 within the R-4, so it's two units per
17 dwelling.

18 CHAIRPERSON MILLER: Okay.

19 MR. GOINS: And those are three
20 levels with a cellar, so those will be, you
21 know, two units per dwelling. And then the
22 private road breaks up the series of those.

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1 And within the private road that you go, you
2 see Type III, which is a little different,
3 unique in character. We wanted those to be,
4 you know, something a little different, since
5 they were off the main street of W Street.

6 So we created a different type of
7 architectural style and those are also two
8 units per dwelling. Each of the Type III --
9 each of the three types will be similar in
10 nature. In fact, there will be a masonry
11 base, cementitious or hearty panel and hearty
12 siding details and we're going to have strong
13 cornice lines and I think there are some site
14 sections in the back of -- where we have wall
15 sections detailing and some of the
16 architectural elements, I'll be happy to
17 answer questions about.

18 But I think overall what we tried
19 to do is capture along W Street the historic
20 nature of Anacostia and then also create
21 something unique for the neighborhood in
22 developing the Type III units, while also

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1 maintaining a historic house that we are
2 relocating. So we are very proud of the
3 design and look forward to answering
4 questions.

5 CHAIRPERSON MILLER: Well, are you
6 going to show where the landscaping is? It's
7 not up there, I don't think, so I think it's
8 within the plan here.

9 ZC VICE CHAIRMAN JEFFRIES: We
10 have landscaping on the brain here.

11 MR. GOINS: Well, along W Street,
12 each of the Type I, Type II and the historic
13 house will have front yards. And there is a
14 series of trees that will be planted along W
15 Street as well. In the rear of the Type I and
16 Type II units, there is a parking space for
17 each of those dwellings, each of the units.
18 Not each of the units, each of the houses.

19 And we are going to have as much
20 of a berm of a side yard next to the parking
21 as we can create there. There is also a
22 sidewalk. Stan, can you show the site

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1 section? In the site section, you can see
2 that there is a sidewalk on both the north and
3 the south side of the private road and the
4 rear.

5 I think it's there, Stan. Yeah.
6 Which we're hoping to provide as much
7 landscaping as possible.

8 ZC VICE CHAIRMAN JEFFRIES: Excuse
9 me, for the old man here, can you pull those
10 around, so I can -- I can't quite -- in fact,
11 we -- I have that. Okay. No, that's all
12 right.

13 MR. GOINS: You got it?

14 ZC VICE CHAIRMAN JEFFRIES: I'm
15 sorry, I have those. I have both of those.
16 Okay.

17 CHAIRPERSON MILLER: Can you
18 explain the parking spaces more, where they
19 are going to be and if any of them are going
20 to be hidden or not?

21 MR. GOINS: Yeah. If you go to
22 A5A, what we basically did is we grade out the

1 landscape plan and kind of numbered the
2 parking spots. It kind of gives you a frame
3 of reference there. So basically, we have 27
4 parking spots. So we have four over the
5 required.

6 CHAIRPERSON MILLER: Okay. I see
7 the numbers. All right.

8 MR. GOINS: Okay.

9 CHAIRPERSON MILLER: All right.
10 So when I look at A5A, is that it for the
11 trees or whatever? So where this is just open
12 green space, it's just grass and that's
13 basically it?

14 MR. GOINS: Yes.

15 CHAIRPERSON MILLER: But were you
16 saying that you had plans to do more than was
17 necessarily depicted here or is that not
18 right?

19 MR. GOINS: This is the detailed
20 plan where we are right now, yes.

21 CHAIRPERSON MILLER: I thought you
22 were just saying something about -- maybe it's

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1 reflected here. Say for instance, the 1
2 through 7, it looks like they have got trees
3 and stuff in between, right?

4 MR. GOINS: Yes.

5 CHAIRPERSON MILLER: Is that where
6 you were saying --

7 MR. GOINS: Yes, that's what I was
8 saying.

9 CHAIRPERSON MILLER: Okay.

10 MR. GOINS: Yes.

11 CHAIRPERSON MILLER: Okay. Okay.

12 Any other questions?

13 ZC VICE CHAIRMAN JEFFRIES: Well,
14 I have an observation. I just -- being on the
15 Zoning Commission, I just keep looking at this
16 and it just looks like a PUD case to me where
17 you have affordability. You have historic
18 structure. You've got -- you know, it has all
19 the markings of it. I know exactly, you know,
20 what's -- you know, that -- what you are here
21 for and so forth.

22 But that's actually meant as a

1 compliment. Because, I mean, there is a lot
2 of things that this program is achieving,
3 affordability, historic structure being
4 relocated and so forth. So anyway, just an
5 observation. No questions really.

6 CHAIRPERSON MILLER: Well, I think
7 it's a good observation. Why did it come in
8 this form as opposed to a PUD?

9 MR. SHER: For the record, my name
10 is Steven E. Sher, the Director of Zoning and
11 Land Use Service with the Law Firm of Holland
12 and Knight. We thought we could make the case
13 for the relief that we need from the Board and
14 not have to go to the Zoning Commission to get
15 the zoning changed or which is what often
16 accompanies a PUD and/or to seek the kind of
17 relief that one might think we would need
18 under a PUD.

19 I don't think we have the minimum
20 area for a PUD in these zones. We could have
21 conceivably asked for a waiver, but we just --
22 looking at the options and we did discuss with

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1 Office of Planning what was the best way to
2 proceed and I will just without going into it
3 at all, when we started out with this, we had
4 a very different plan.

5 And it was not this kind of a
6 development at all. And after meeting with
7 Office of Planning, they said no, that's not
8 going to fly in this situation, so we came
9 back to a series of row house-type units that
10 are more consistent with the general flavor of
11 R-3 and R-4 and here we are.

12 CHAIRPERSON MILLER: Okay. Thank
13 you. Any other questions? Okay.

14 MR. FREEMAN: Actually, on that
15 note, I would like to have Mr. Sher go through
16 his presentation.

17 MR. SHER: Here I am. As I was
18 just referring, we have a site that's a land
19 area of, approximately, 35,660 square feet, so
20 it's not an acre in size. It is split zoned
21 between R-3, which has about 7,700 square feet
22 and R-4, which has about 27,900 square feet.

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1 And what we have -- and that zone boundary
2 line, essentially, runs about in this location
3 right here. It sort of follows the line of
4 this and comes down through the W Street.

5 So what we have done is we have
6 put the single-family dwellings in the Single-
7 Family Zone R-3 and we have put the flats and
8 the one existing house to be relocated in the
9 Flat Zone, which is R-4. So there is no
10 interchanging of the uses there. The uses are
11 all permitted in the zone in which they are
12 located.

13 So again, what we have is a total
14 of 40 units, eight single-family dwellings,
15 seven row houses and the one detached house
16 that is existing and will be reconstructed and
17 16 flats, two units each, so 32 and 8 are the
18 40 units. And we have, as Jeff has described,
19 units that front on W Street. We actually, he
20 didn't mention it, have one unit that has been
21 placed here to front on V Street, as you can
22 see from the site diagram, which is now

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1 covered up.

2 But there is an extension of the
3 site which goes out to V Street, which is
4 narrow, and in the original, well, maybe not
5 the original original plan, but in the first
6 plan we filed with the BZA, there was a
7 driveway that came in from V Street and exited
8 out to 13th Street. And in meetings with
9 neighbors and the community, there were a lot
10 of concerns about that circulation pattern.

11 So what we did, and the fact that
12 this would leave a gap in the street frontage,
13 at point, was we took a house that had been
14 here, put it there, broke up this gap some,
15 put the driveway entrance in off W Street with
16 the exit still going out to 13th Street. So
17 there is a flat in this location on the V
18 Street side as well.

19 And what we are here for for
20 relief from the Board is one special
21 exception, that is for the theoretical
22 building site, multiple buildings on a single

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1 record lot, and then a series of variances.
2 And I would note that as Ms. Bailey read the
3 advertisement, one of the variances she read
4 had to do with the size of parking spaces. We
5 have made everything 9 x 19, at this point, so
6 that relief is not necessary.

7 I think we withdrew that in the
8 prehearing statement, but that's -- we got
9 them all in there at 9 x 19, so that's not
10 what we need.

11 So what we do need are -- and they
12 are shown in detail on Sheet C5 of the plans
13 that you have before you. For each lot with
14 each of the criteria of the regulations, there
15 is a series of calculations. We show the lot
16 area, the lot width, lot occupancy and so
17 forth.

18 And what we need in the way of
19 variances on lot area are on almost all the
20 lots. I've colored mine in in blue, but this
21 is what that table looks like. I actually
22 have copies if it would be easier for you to

1 have a single sheet. Would that help? Just
2 hand that in. They have it right in front of
3 them.

4 This is exactly the same as sheet
5 5, the only difference is I have colored them
6 in blue and they were shaded in the original
7 package, but that's what this is.

8 VICE CHAIRMAN LOUD: This is
9 different than what's in OP's report?

10 MR. SHER: Yes, this was our chart
11 from the plans that you will have in front of
12 you. Their report is -- has a different table
13 formatted in a different way. I think the
14 information is, essentially, the same. And I
15 would note that there is one error on this
16 report and that is with respect to Lot 8,
17 which is the existing single-family dwelling.

18 This chart shows it to be the same
19 height as the -- as all the row houses. It's
20 not. The row houses are three stories. The
21 existing house is two stories. So the height
22 of that is 26.5 feet instead of 35.5 feet.

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1 But I didn't change the chart, because this is
2 the same chart that was in the prehearing
3 statement. So the same error carried through.

4 Okay. What do we need? We need
5 variances on lot area, which is, basically,
6 because we do not include in any of the
7 individual lots the area of the common
8 driveway. So that together is almost 10,000
9 square feet out of the lot, which is not
10 included in any of the individual lots on
11 which the units sit. So the units themselves,
12 the lots that the units themselves sit on are
13 smaller, because the common driveway is what
14 is taking up the rest.

15 ZC VICE CHAIRMAN JEFFRIES: What's
16 the -- and if you were to give that back to
17 the individual units, how large would the lots
18 be?

19 MR. SHER: Well, we have
20 calculated that the density would be about the
21 same. If we were able to take the whole thing
22 and not have the common driveway, we would be

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1 at about the same 40 units that we're at now.
2 So the lot area has changed, because it would
3 depend on how you allocated them, frankly, but
4 and then part again, this lot is very -- is
5 much bigger than any of the other lots,
6 because it's got all that area behind it.

7 So you can't really -- it's not an
8 average per se, but the total density would be
9 about the same. Okay?

10 CHAIRPERSON MILLER: Well, I'm not
11 sure how you intend to present this, so if I'm
12 interrupting you at the wrong place, feel free
13 to say you're going to get to this. But
14 basically, if you -- I understand that the
15 common driveway takes up a lot of space. If
16 you were to comply with the regulation, what
17 would the impact be then? Fewer units,
18 narrower units, what?

19 MR. SHER: I'll get to that.

20 CHAIRPERSON MILLER: Okay.

21 MR. SHER: Okay.

22 CHAIRPERSON MILLER: That's what I

1 thought. Okay.

2 MR. SHER: That comes under -- I
3 will get to that. It's in the outline, but
4 we'll talk about that in a little bit.

5 So again, the variances are lot
6 area, percentage of lot occupancy, rear yard,
7 side yard and front yards for these units,
8 because where these units front the street and
9 this units fronts the street, no front yard is
10 required. The front yard is required only for
11 the lot which doesn't have street frontage.

12 So these here, these five and
13 these four do not have street frontage, so
14 when you divide it up, theoretical building
15 sites, they need a front yard and we don't
16 comply with those requirements either.

17 So with respect to the
18 requirements for the special exception. Okay.
19 We have shown the site plan and Jeff has
20 talked about that some. We're going to take
21 this existing single-family dwelling, pull it
22 closer to the street, so that it lines up

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1 better with the houses here and HPRB didn't
2 want it to sit back and sort of get lost in
3 that row.

4 And so we pulled it forward. It's
5 basically going to be reconstructed, because
6 when you look at the photographs and the
7 house, it's in pretty poor condition and that
8 was the agreement we came to with HPRB.

9 And then again, we have these Type
10 I, three story, single-family dwellings, the
11 Type II, three story plus cellar flats and
12 this one also, and then the Type III, three
13 story plus cellar flats as well. The total
14 again of 40 units in the buildings.

15 15 of the buildings have street
16 frontage. And then the remainder are on the
17 interior and that's 9. With respect to the
18 net density, again, we have excluded the
19 coveted means of ingress, which is the area
20 shown in white, basically, which is devoted to
21 parking and to actual vehicular travel way.
22 Those are excluded from the individual lots.

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1 The width of the private driveway,
2 this is designed to be a one way driveway with
3 entrance in from W and exit out to 13th Street
4 and then this piece over here is, obviously,
5 a two way piece, so that these folks can get
6 in and out through that one stretch.

7 Coming in from W Street, it's a 13
8 foot paved roadway, a 22 foot total width.
9 The regulations require 25 feet total, so we
10 are 3 feet short of that, but the Board is
11 able to approve that as part of the special
12 exception under section 2516.

13 And then again in front of the
14 houses here, it widens to an excess of 30
15 feet. So it is just, at this point here,
16 where that narrow -- that width is only 22
17 feet. In the east/west direction going out to
18 13th Street, this right-of-way in total is 27
19 feet. 16 feet of travel way, 8 feet of cars
20 parked on the north side here and then a 3
21 foot sidewalk on the south side. So 27 feet
22 from side to side with a 16 foot one way

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1 roadway.

2 And 16 feet is greater than the
3 width, typically, expected for an alley system
4 in a Residential Zone where DDOT would
5 generally be looking for 15 feet. 20 feet in
6 a Commercial Zone, but only 15 feet in a
7 residential area.

8 MR. FREEMAN: Mr. Sher, could you,
9 please, talk about how section 2516.6(d)
10 operates in this case and why relief is not
11 required from that section?

12 MR. SHER: Well, relief is
13 required from the Board, but it's -- I don't
14 believe it is a variance. 2516.6(d)
15 specifically "Allows the Board to modify that
16 requirement, and one of those requirements is
17 the 25 foot width, if the Board finds that the
18 lesser width will be compatible with and will
19 not be likely to have an adverse effect on the
20 present character and future development of
21 the neighborhood and the Board shall give
22 specific consideration to the spacing of

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1 buildings and the availability of parking."

2 Again, what we have done is,
3 essentially, we took out -- well, let me back
4 up again. What is happening here is you have
5 got these three unit types, but the single-
6 family unit types are 16.5 feet wide. The row
7 house units types are 18 feet wide. The goal
8 here was to come up with a plan that had a
9 consistent minimum lot width all the way
10 across, so that when you build these things,
11 you're not having to deal with an 18 foot wide
12 lot over here, a 17 foot 9 wide lot next to it
13 and an 18 foot 3 wide lot on the other side.

14 You want to try and get as
15 consistent a width as you can for your
16 suppliers, for your materials, for your
17 construction people, so they are not wondering
18 am I supposed to cut the board this long or
19 that long.

20 So we have come up with 18 foot
21 wide lots on the flat, 16.5 foot wide lots on
22 the single-family. So when you lay those lots

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1 out, when you take the existing width of the
2 one detached single-family dwelling, when you
3 put the two 8 foot side yards on it, and you
4 take that whole width along W Street, what you
5 basically have left is a 22 foot space that is
6 in that row where a house, otherwise, would
7 have been, except it is now up on the other
8 side and the spacing would have been a little
9 different if that house were still here,
10 because again, it wouldn't have been 22 feet
11 wide. It would have been 18 feet wide.

12 So that's why it is 22 feet and
13 not 25 feet. It works within the framework of
14 the template of houses we're trying to build
15 here and it also serves to break up that role
16 and not create that continuous line along that
17 frontage on W Street there.

18 Okay. The heights are measured
19 from the middle of the front of each of the
20 buildings. As I said, the existing house is
21 two stories. The row houses are three
22 stories. The flats are three stories, plus a

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1 cellar. The heights of the units facing the
2 street is 35.5 feet. The height of the
3 interior units is 38 feet 3 inches.

4 And if you need to see more detail
5 on what the designs of those are, Jeff can go
6 through those. You've got them all in your
7 package elevation sections, floor plans on all
8 of those units. So we have given a complete
9 set of what the houses will look like.

10 In terms of not having an adverse
11 impact on the present character and future
12 development of the neighborhood, you have in
13 your package and we had up here an aerial
14 photograph of the area, which shows that as
15 you go to the west, you've got much more
16 intensive development fronting on Martin
17 Luther King, Jr. Avenue.

18 You've got commercial development,
19 four story office buildings, much bulkier,
20 bigger buildings. When you get off of MLK and
21 you look at that area otherwise, what you see
22 is a mix of residential institutional and a

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1 fair amount of unbuilt on or vacant property.
2 So what we're trying to do is to create the
3 street walls that are typical of Washington
4 row house neighborhoods.

5 But it's also typical if you look
6 at the top of the photograph here, you can see
7 areas of row houses which very much front on
8 and define the street character in this
9 vicinity. Some of that happens a little bit
10 here, but some of these are also semi-detached
11 dwellings. Again, the more intensive
12 commercial to the west along Martin Luther
13 King.

14 And the residential neighborhood,
15 which is also characterized and, to an extent,
16 defined by a fairly large number of sizable
17 churches, they tend to dominate that landscape
18 when you go out and look at it, not only the
19 Union Temple Baptist Church, which is right
20 here diagonally across from the site, but
21 others in that neighborhood that are fairly
22 sizable buildings, bigger than row house type

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1 things.

2 So what you've got when we're
3 doing this is buildings that conform with the
4 height requirements of both R-3 and R-4, but
5 will help to create that definition of the
6 streetscape which is typical of Washington row
7 house type neighborhoods.

8 I would also add that, as we
9 pointed out before, HPRB has approved the
10 relocation of the single-family dwelling, but
11 they have also approved the design of the new
12 units in the Historic District, which they
13 have the obligation and the opportunity to
14 review as they relate to both the existing
15 house and the Historic District at large.

16 And I know that Office of Planning
17 had attached to its report the two HPRB
18 reports which define what they found when they
19 reviewed the project. With respect to
20 planning policies, the future Land Use Map or
21 the Comprehensive Plan designates the site for
22 moderate density residential. And moderate

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1 density residential is, essentially, defined
2 to be row house and flat plat neighborhoods
3 and here we are.

4 And again, the Office of Planning
5 has submitted its report dated February 12,
6 2008 in which it recommends favorably on the
7 application and we appreciate that
8 recommendation.

9 Okay. With respect to the
10 variance standards, I think the Board is
11 familiar with the three part test for a
12 variance, exceptional or extraordinary
13 situation or condition, practical difficulty
14 upon the owner, no detriment to the public
15 good.

16 Okay. We've got a bunch of
17 variances here and it sounds like a lot. But
18 what happens again with this site is it's
19 clearly an unusual and irregular shape.
20 You've got lot lines or property lines going
21 all over the place. But at the same time,
22 it's deeper here and shallower here and it's

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1 narrow here, but wider across here.

2 So when you come to that
3 situation --

4 CHAIRPERSON MILLER: Excuse me.

5 MR. SHER: Sorry?

6 CHAIRPERSON MILLER: Were you
7 trying to -- were you pointing a light where
8 you are here?

9 MR. SHER: Yes, I'm on the third--
10 I'm on the aerial photograph.

11 CHAIRPERSON MILLER: Oh, you're
12 over there.

13 MR. SHER: All right. I can be
14 over --

15 CHAIRPERSON MILLER: Would you do
16 it again, because --

17 MR. SHER: I can come over here.

18 CHAIRPERSON MILLER: -- we were --

19 MR. SHER: I'm sorry. I'll come--

20 CHAIRPERSON MILLER: Some of us
21 were looking at the wrong one.

22 MR. SHER: All right.

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1 CHAIRPERSON MILLER: And didn't
2 see the light.

3 MR. SHER: I'll stay close.

4 CHAIRPERSON MILLER: Now, we see
5 the light.

6 MR. SHER: All right.

7 CHAIRPERSON MILLER: Okay.

8 MR. SHER: It's deeper here in
9 this part if you were going to try and carve
10 that out as single-family or flat lots each
11 with its own street frontage, each meeting the
12 width requirements, you would wind up having
13 very deep lots here. And then you get to this
14 part and it is shallower and if you did the
15 same -- if you took the same lot width and
16 divided it up, you wouldn't have enough lot
17 area to get -- the lots would have to be wider
18 than these would in order to be here.

19 And then again, you've got this
20 lot, which is about 22 point something feet
21 wide, which is basically only wide enough for
22 one lot, but if you put the 18 foot wide row

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1 house lot on it, you're not going to fill up
2 the whole 22.3 feet width.

3 So again, given the desire and the
4 practical reality of trying to keep these lots
5 to a reasonable single template for the flats
6 and a single template for the row houses, you
7 wind up with a whole series of variances to
8 make this thing fit.

9 As Jeff mentioned earlier, we've
10 got the one single-family detached dwelling,
11 so that, if it were -- again, if you were just
12 doing this without regard to anything else,
13 that lot would have to be 4,000 square feet
14 and 40 feet wide and you would have to have
15 the 8 foot side yards on each side, which we
16 have got, we have the 8 foot side yards, but
17 when you put that house in the context of
18 everything else that's going on around it,
19 it's smaller than that and it's narrower than
20 that, so you can't get the rear yard in the
21 back, even though we've got the side yards on
22 each side.

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1 And then the last thing again, in
2 many neighborhoods, you would find a public
3 alley running through them. I'm back on the
4 aerial photograph now, second from the left.
5 You would find a public alley running through
6 the middle of that square where the houses, as
7 is the case in the square to the north, back
8 up to the alley.

9 In this square, there is no alley.
10 So we have to provide that rear loaded access
11 on our own property. And that, as I said,
12 knocks 10,000 square feet out of the site area
13 that would otherwise be available for building
14 purposes and it's all open, because its
15 driveway parking and sidewalk.

16 So those are the factors which
17 together create the exceptional or
18 extraordinary situation or condition.

19 The practical difficulty again
20 comes from the, and I'm on the right hand
21 drawing now again, total width, the total
22 length, the need to fit these units on this

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1 site in a consistent manner. Redesigning
2 those lots to meet the area requirements would
3 result in the loss of enough units that this
4 development probably doesn't happen.

5 Those changes would also result in
6 under utilization of the land, because you're
7 going to wind up with all this stuff in the
8 back that you can't do anything with, because
9 there is no access to them other than the way
10 we designed them. There are variations on how
11 to get access. We had a different one, but
12 you've got to have some private access through
13 the property to get to that, otherwise,
14 unusable space in the rear.

15 And as to the detriment to the
16 public good, as I said earlier, the number of
17 units is, approximately, equal to the density
18 allowed as a matter-of-right. If you were to
19 -- if you were able to devise a matter-of-
20 right scheme without regard to lot width and
21 so forth, if you just took the land area and
22 divided by the respective zoning districts,

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1 you would get to about 40 units and that's
2 what we have here.

3 And then the concept has been
4 approved by HPRB and so forth. So without
5 belaboring the thing a whole lot further, I
6 think we have shown that the -- that we have
7 met the standards for relief under the special
8 exception and that we have shown what the
9 exceptional situation, practical difficulty
10 and other conformance with the variance
11 standards are.

12 And while it sounds like a lot of
13 relief, we think it's for an appropriately
14 designed project that makes sense on this site
15 and in this neighborhood. And we would,
16 therefore, suggest that it ought to be
17 approved.

18 MR. FREEMAN: Could you quickly
19 just comment on the fact that it will be a
20 single record lot and all the parking provided
21 is on the record lot and, therefore, no relief
22 is required for off-site parking?

1 MR. SHER: Do I need to say what
2 you just said? I think that's in part a
3 reference to Office of Planning's suggestion
4 that perhaps a variance is needed for location
5 of parking spaces. I don't believe that
6 that's the case. As Mr. Freeman just said,
7 this is a single record lot. And when you
8 read the requirements of 2516 it is required
9 to a portion area and density requirements for
10 the regulations.

11 But the Zoning Administrator has
12 never, in my experience, required that the
13 parking be on each one of those individual
14 theoretical lots. As long as the required
15 parking was on the record lot and clearly as
16 long as arrangements were made to be sure that
17 each unit had the appropriate apportionment of
18 parking, having to have the parking on each
19 individual theoretical building site is not
20 something that I understand to be required.

21 So we have 24 flats. They require
22 one space for each two units. So each flat,

1 each two-family dwelling only requires one
2 space. And then we have the eight single-
3 family dwellings and they -- well, I said it
4 wrong.

5 We have 16 flats requiring. Let
6 me rewind one more time. We have 32 units in
7 16 flats that requires 16 parking spaces. We
8 have eight single-family dwellings, the seven
9 new row houses, plus the one detached dwelling
10 to be remain -- to be retained, that requires
11 eight. So between the 16 and the 8, that's
12 24. We have 27. So we have three extra
13 parking spaces above the minimum required by
14 the regulations. And they are all located on
15 the same -- or to be created, not yet existing
16 record lot.

17 CHAIRPERSON MILLER: Which was the
18 regulation that was being invoked?

19 MR. FREEMAN: 2116.1.

20 MR. SHER: 2516. Okay. There are
21 two pieces to that. One is the requirement of
22 the parking regulations that parking be

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1 located on the same lot that the use is -- to
2 the use which they serve. And the other is in
3 -- back in 2516 where it talks about what you
4 have to show under the theoretical building
5 site regulations and that is that "Provided
6 that the applicant submits satisfactory
7 evidence that use, height, bulk and open
8 spaces around each building and limitations on
9 so forth are met." But it doesn't refer to
10 parking. And the parking will be on the same
11 record lot.

12 CHAIRPERSON MILLER: Okay. Mr.
13 Sher, could you indulge me for one second? I
14 think you can do this simply again, but I
15 didn't totally follow your explanation, though
16 I remember when I was reading the application,
17 I did, but in general, you know, you were
18 saying that putting the same number of units
19 in general that you could fit as a matter-of-
20 right, but you need all these variances,
21 because of, I believe, the way they have to be
22 positioned in there, because of the

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1 configuration of the lot and the driveway and
2 things like that.

3 But could you explain that one
4 more time, as to, you know, what about the
5 configuration is leading to those variances?

6 MR. SHER: If you look solely at
7 the lot area, the total lot area of the lot,
8 the number of units that we are providing is
9 roughly the same as the number of units that
10 are permitted by the total land area of the
11 site.

12 Obviously, if we could meet all
13 the requirements of the regulations, we
14 wouldn't be here. We wouldn't be needing the
15 variances that we seek. But because of the
16 configuration of the site, because it is at
17 the same time shallower at one part and
18 narrower at another, deeper at another, wider
19 and narrower, when you actually try and lay
20 those lots out, you can't get the same number
21 of lots with the same number of units without
22 the variances that we seek, because, again,

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1 the lots on the east end of the site would be
2 wider and shallower.

3 The lots in the middle can't get
4 any narrower than they are, because of the
5 minimum lot requirements. So they are going
6 to have more land area in them, because the
7 lot would extend all the way back to here. So
8 he's pointing to roughly the middle of the
9 square. So it is not that we can meet all the
10 requirements, we can't do that or we wouldn't
11 be here.

12 But the land area, the total
13 density on this site is roughly equivalent to
14 what the land would support. But we need the
15 variances, because of the shape and nature and
16 layout of the site.

17 CHAIRPERSON MILLER: That's fine.
18 Yes. I thought it was, I just wanted a review
19 of what about the shape and the nature of the
20 site. But what I hear you saying is reminding
21 me that yes, it's narrow over here. It's
22 deeper over here. Okay. And then there would

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1 be under utilized area over here, etcetera.

2 Okay. Thank you.

3 ZC VICE CHAIRMAN JEFFRIES: A
4 question maybe -- I don't -- whoever wants to
5 take it. My understanding is that Union
6 Temple, is it Union Temple, uses this as
7 parking. So what are they using now for
8 parking?

9 MR. VOUDRIE: Union Temple uses
10 this as overflow parking.

11 ZC VICE CHAIRMAN JEFFRIES:
12 Overflow.

13 MR. VOUDRIE: They have a parking
14 lot. If Steven can point to it, behind their
15 church. He is pointing to the church on the
16 aerial plan there. Behind the church and then
17 going -- and they continue, they own the bulk
18 of that block, so they have paved parking back
19 there. They also have parking on the other
20 side of Martin Luther King. So they have
21 quite a bit of parking.

22 But for events where they

1 otherwise would be parking on the street, they
2 -- we have allowed them to use this site and
3 they had used it before. The previous owner
4 allowed them to use it for overflow parking.
5 But they have -- with some -- they have got
6 plenty of parking, otherwise, that they
7 currently own or that they otherwise have
8 arrangements with other business owners.

9 ZC VICE CHAIRMAN JEFFRIES: So but
10 it was deemed overflow parking, so, obviously,
11 there must be times when they actually needed
12 that parking. I'm just trying to figure out
13 where those -- you know, where would that
14 parking now go, overflow parking, now that,
15 you know, we have a development here?

16 MR. VOUDRIE: They have an
17 arrangement with the Salvation Army to use
18 some of the Salvation Army Headquarters
19 parking, which is a block -- I mean, which is
20 the same distance from their church, but the
21 other direction from our site, as well as
22 arrangements with -- at the Lottery, D.C.

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1 Lottery Headquarters.

2 So they are going to be,
3 approximately, the same distance away, but
4 they had previously used this lot instead. So
5 there is other lots in the area.

6 ZC VICE CHAIRMAN JEFFRIES: Okay.
7 I have two other questions. One is actually
8 I'm -- just a curiosity question. Just in
9 terms of the affordable units, where would
10 those be? And I know it's not pertaining to
11 this case, but where -- do you have any sense
12 of where those would be?

13 MR. VOUDRIE: The affordable units
14 will be in the Type II and Type III dwellings.
15 None of the single-family.

16 ZC VICE CHAIRMAN JEFFRIES: Can
17 you point those out again? Yes, okay.

18 MR. VOUDRIE: So the flats --

19 ZC VICE CHAIRMAN JEFFRIES: Right.

20 MR. VOUDRIE: There will be 10
21 affordable units --

22 ZC VICE CHAIRMAN JEFFRIES: Right.

1 MR. VOUDRIE: -- in the flats.
2 The single-family dwellings will not have an
3 affordability component. It was just too
4 difficult to make that work.

5 ZC VICE CHAIRMAN JEFFRIES: And
6 what's going to -- what will the address be
7 for those intercity lots, those interstreet,
8 the new street, what would be the address of
9 those units?

10 MR. VOUDRIE: We have not yet
11 determined the addresses. We have got from 20
12 -- or from 1226 to 1252 right now, so in
13 theory, we could have A and B units and we
14 could divide them up, but we have not tried to
15 divide up the addresses yet.

16 ZC VICE CHAIRMAN JEFFRIES: Yes,
17 I'm just wondering, you know, if, you know,
18 I'm coming to visit someone, you know, and I'm
19 in one of the inner units, I mean, what would
20 my address be? I mean, I don't -- I mean,
21 would it be W Street still or?

22 MR. VOUDRIE: This is a

1 condominium regime, so it would probably be on
2 W Street, yes.

3 ZC VICE CHAIRMAN JEFFRIES: Oh,
4 okay. Okay. Thank you.

5 MEMBER DETTMAN: I just have one
6 question related to the ingress and egress
7 and, you know, your W Street access and 13th
8 Street access is narrower than what is
9 required. But do you still have what you need
10 in order for fire and safety vehicles to get
11 back there and do what they have to do?

12 MR. SHER: The answer is yes, but
13 that we have had some discussion of that
14 already, but that will, obviously, be reviewed
15 as part of permits and the fire department
16 won't let us have the permits unless they are
17 satisfied.

18 CHAIRPERSON MILLER: Would you say
19 that the affordable housing component adds to
20 the practical difficulty test in this case?

21 MR. VOUDRIE: Yes.

22 VICE CHAIRMAN LOUD: I'm sorry,

1 could you just elaborate a little bit on that?
2 I'm starting to get thinking on that. I think
3 I understand where you're going, but just if
4 you could help me out a little bit?

5 MR. VOUDRIE: It is practically
6 more difficult to develop a housing unit that
7 is affordable to someone who otherwise could
8 not afford it. And the land cost is the
9 primary economic driver in that case to making
10 the unit more or less affordable. So if we
11 could fit fewer units on this lot, on this
12 site as Mr. Sher had described, the fewer
13 units would have more land cost distributed
14 across that smaller number.

15 As such, making that number larger
16 makes the units, in effect, more affordable
17 naturally. And as my colleague has pointed
18 out, if we had fewer units, we would probably
19 not be able to provide any affordable housing.
20 If we did something that was less dense, we
21 wouldn't need the variances and we probably
22 would not have provided the affordable

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1 housing.

2 ZC VICE CHAIRMAN JEFFRIES:

3 Actually, I'm sitting here trying to figure
4 out how you -- how this all works, because it
5 seems like it would be -- need to be a little
6 more dense, given -- anyway, but so be it.

7 CHAIRPERSON MILLER: And what's
8 the impact on the application that the
9 Inclusionary Zoning Regulations aren't in
10 effect yet?

11 MR. SHER: We have assumed all
12 along that we would not be in the position to
13 obtain a permit before the Inclusionary Zoning
14 Regs would be in effect. We have had some
15 clients whose projects were far enough along,
16 because while the Zoning Commission has done
17 certain things, inclusionary zoning is not yet
18 in effect. It does not apply.

19 But in order to be vested, you
20 actually have to have a permit issued by DCRA.
21 And we just didn't know that -- we were not in
22 a position to take the risk that we go down

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1 that road and run, run, run, run and then all
2 of a sudden there is at least -- at one point
3 in time, the anticipated effective date of
4 inclusionary zoning was last October.

5 And while it still hasn't happened
6 yet, we don't know when it is going to happen.
7 And so we have assumed that it will apply to
8 the site. And accordingly, that would require
9 that 10 percent of the units be affordable or
10 four out of the 40. We're proposing to do 25
11 percent or 10 out of the 40.

12 But we have designed this thing as
13 if it would have to meet and could take
14 advantage of the Inclusionary Zoning
15 Regulations when they are finally done.

16 CHAIRPERSON MILLER: And with
17 respect to the variances, it just looks like
18 you would need smaller variance relief. I
19 mean, as far as like distance, as widths go or
20 something like that.

21 MR. SHER: Well, for example, we--
22 the lot width category is one where we don't

1 need much in the way of variances, because we
2 have assumed inclusionary zoning. If the
3 inclusionary zoning didn't come about, then
4 that would be a different situation for the
5 lot width area.

6 But we just -- I don't think there
7 is any way that we could know that this is
8 going to be able to be ahead of that curve and
9 we just couldn't take the risk on that.

10 CHAIRPERSON MILLER: Okay. Let me
11 just say this. It looked like, if I recall
12 correctly, either way you might need a
13 variance, it just might be the extent of the
14 variance --

15 MR. SHER: Yes.

16 CHAIRPERSON MILLER: -- is a
17 little different.

18 MR. SHER: That's correct.

19 CHAIRPERSON MILLER: Okay.

20 MR. SHER: We would need most of
21 the same variances.

22 CHAIRPERSON MILLER: Um-hum.

1 MR. SHER: And perhaps on the lot
2 width case, we might need some more. But I
3 think, at this point, we have just assumed
4 that that's what is going to govern as we go
5 forward.

6 CHAIRPERSON MILLER: Okay. All
7 right. Any other questions? Do you have any
8 other witnesses?

9 MR. FREEMAN: No, Madam Chair,
10 that concludes our --

11 CHAIRPERSON MILLER: Okay.

12 MR. FREEMAN: -- direct
13 presentation.

14 CHAIRPERSON MILLER: All right.
15 Then let's go to the Office of Planning.

16 MS. BROWN-ROBERTS: Good
17 afternoon, Madam Chairman and Members of the
18 BZA. I'm Maxine Brown-Roberts from the Office
19 of Planning. I think the applicant has gone
20 into a lot of details as to the request and,
21 therefore, I am going to really stand on the
22 record or just highlight some things for you.

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1 One of the first things is that
2 regarding the -- we have listed in our report
3 the variances that we think were appropriate
4 and also for the special exception. We called
5 out 2116.1 which refers to the location of the
6 parking spaces. I do agree with the
7 applicant.

8 I think what happened was that it
9 was our understanding that these were all
10 going to be record lots, so that's why we had
11 called that out. And subsequent to filing the
12 application, we were advised that that was not
13 so. So that goes away in our recommendation.

14 The applicant is seeking to
15 develop 40 units and they have asked for a
16 number of variances. We do think that they
17 meet the variance test in that the property --
18 we do think the property is unique, because of
19 an exceptional circumstance in that the lot is
20 irregularly shaped and has frontages on three
21 streets. And that this exceptional
22 circumstance does create some problems.

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1 The regulations under matter-of-
2 right scenario on the site, the lots would be,
3 approximately, 130 feet deep and would leave
4 a large portion of these lots under utilized.
5 Again, the property does not include an alley,
6 which is typical, and this takes up a great
7 portion of the land.

8 For the historic house on the
9 property, as has -- must be retained per HPRB
10 and we also think that that presents an
11 exceptional situation for the applicant. The
12 applicant is also providing 25 percent or 10
13 units for -- towards affordability.

14 We do think that the -- regarding
15 to the special exception of 2516 that they
16 have met the regulations when they comply with
17 the variances that have been requested. I
18 would also like to call out that the request
19 for the reduction in the egress from W Street
20 and also -- the ingress from W Street and
21 egress onto 13th Street, that has been reduced
22 from the 25 feet.

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1 I did speak to DDOT concerning
2 this issue just before coming over this
3 afternoon and they informed me that the
4 reduction, they could support the reduction.
5 One of the things -- one of the main things is
6 that both W Street and 13th Street are one way
7 and, therefore, the entrances, you don't have
8 traffic going one way, and, therefore, they do
9 not believe that they need enough -- a 25 foot
10 width, which would accommodate two cars going
11 in either direction.

12 I think that was the main thing.
13 Also, we do believe that the design is
14 consequential with the Anacostia Historic
15 District and they did consult with our
16 historic staff and also with HPRB and they are
17 still working with them on that.

18 I think that or we do think that
19 the proposal will contribute to the continued
20 revitalization of the area and also contribute
21 to affordable housing within the District.
22 And we recommend approval of this application.

1 Thank you, Madam Chairman.

2 CHAIRPERSON MILLER: Thank you.

3 This is really an incredibly thorough
4 excellent report.

5 MS. BROWN-ROBERTS: Thank you.

6 CHAIRPERSON MILLER: So I don't
7 have a lot of question on it, but I do have
8 one. I would like your opinion on the
9 landscaping, because 2516.3 does call for a
10 landscaping plan. And we -- it has been
11 brought to our attention well, it's on the
12 site plan. And so I just want to know, you
13 know, Office of Planning's comfort level with,
14 you know, what's reflected on the plans.

15 MS. BROWN-ROBERTS: I think we
16 were comfortable with what we saw. I did have
17 -- and why it was comfortable was that there
18 is someone in our office who sits on the
19 Public Space Committee and I did have him take
20 a look at this and he said that, especially,
21 you know, what is along W Street that he
22 thinks that that was sufficient. And lots of

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1 small -- you know, I think if we ask for more,
2 you know, it's going to lead to a reduction in
3 the unit sizes, you know, the lot sizes and
4 that sort of thing. So I think that is why.

5 ZC VICE CHAIRMAN JEFFRIES: An
6 illustration though. You were looking for
7 more.

8 CHAIRPERSON MILLER: Well, I just
9 was looking for really a comfort level. I
10 mean, I look at it. I see some trees and so
11 I'm like, you know, I don't know, is that
12 enough? You know, some projects really, you
13 know, cry out for more. And I'm not saying
14 that this one does.

15 MS. BROWN-ROBERTS: Right.

16 CHAIRPERSON MILLER: But we
17 usually look at a plan.

18 MS. BROWN-ROBERTS: Yes. And I
19 think there are some other projects where, you
20 know, we have asked for a specific landscape
21 plan, because we think that it's needed. But
22 I think that, you know, in this area and for

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1 this site, this is satisfactory to us.

2 ZC VICE CHAIRMAN JEFFRIES: And I
3 don't, quite frankly, think this is, for me,
4 the case that we need to get -- I mean, I --
5 you know, to me, I still look at this as a PUD
6 case, an actually very good one. So I don't
7 personally need to get into that level of
8 detail, particularly given the architecture,
9 which I think is quite nice.

10 MS. BROWN-ROBERTS: Okay.

11 CHAIRPERSON MILLER: Thank you.
12 No, I think the architecture is fantastic, you
13 know. So, you know, I think I just wanted to
14 get Office of Planning's input, because we
15 didn't have a lot of information on that here.
16 Are there other questions? Does the applicant
17 have any cross examination for the Office of
18 Planning?

19 MR. FREEMAN: No, Madam Chair.

20 CHAIRPERSON MILLER: Do you have a
21 copy of the Office of Planning's report?

22 MR. FREEMAN: Yes, Madam Chair.

1 CHAIRPERSON MILLER: Okay. Okay.
2 Is anyone here from the ANC? Okay. We don't
3 have an ANC report, though I do believe we had
4 that letter that I referenced before from Ms.
5 Greta Fuller, who is the Commissioner for ANC-
6 8A03, who is in support of the development.
7 And she does talk about the presentations that
8 were made at the ANC meetings.

9 MR. FREEMAN: Madam Chair?

10 CHAIRPERSON MILLER: Yes. We have
11 something else also, right.

12 MR. FREEMAN: There is also a
13 letter from ANC Commissioner Jackie Ward in
14 support at Exhibit No. 27 of the record. I
15 just wanted to note that as well.

16 CHAIRPERSON MILLER: Okay. I
17 don't have that in front of me. I don't know
18 if anybody else does, but I do remember that
19 there was another ANC Commissioner who weighed
20 in in support. And that's what you are
21 referring to, right?

22 MR. FREEMAN: Yes, ma'am.

1 CHAIRPERSON MILLER: Okay. So is
2 there anybody else here in the audience who is
3 here to testify in support of the application?
4 Anybody here to testify in opposition to the
5 application? Okay. Not hearing any, any
6 closing remarks?

7 MR. FREEMAN: No, I think we
8 pretty much established how we meet each of
9 the required or requested areas of relief. We
10 are anxious to move forward as soon as
11 possible, having no opposition, combined with
12 the support from the Office of Planning, the
13 ANC Commissioners, HPRB and we request the
14 Board's decision at its earliest convenience.

15 CHAIRPERSON MILLER: Any other
16 questions? I just have one more. Perhaps,
17 Mr. Sher, you can address this or Mr. Freeman.
18 The question about the parking, 21 -- was it
19 2116? It's one record lot or it's 24 lots or
20 could you just address the facts again, what
21 they are now, what's going to happen and how
22 the reg applies?

1 MR. SHER: What it is now is a
2 series of both record lots and ANT lots.
3 There are one, two, three, four, five, six
4 different lots. The project will be combined
5 into a single record lot. And then on that
6 record lot, there will be a condominium regime
7 established which will account for the
8 ownership of each one of the 40 different
9 flowing units, the common areas and so forth.

10 The parking spaces, there will be
11 27 spaces. They will all be on the same
12 record lot as the units they serve.
13 Therefore, under the regulations, they are
14 located appropriately as far as that is
15 concerned. Some of them, you can see clearly
16 in this row along -- that fronts on W Street,
17 these spaces are directly behind and on the
18 same theoretical building site as those units.

19 But these along the private
20 driveway here and one of these two here, well,
21 actually, neither of these two is on this lot,
22 these will be assigned to other units in the

1 condo, but they are all on the same record
2 lot. It's not a whole lot different than if
3 this was an apartment building and the spaces
4 were in the basement and the units were
5 wherever they were.

6 CHAIRPERSON MILLER: Okay. I got
7 that. But right now, what's -- there are six
8 record lots? Is that what you said? Seven
9 record lots?

10 MR. SHER: There are seven. Some
11 of them are record lots and some of them are
12 assessment of taxation lots.

13 CHAIRPERSON MILLER: Oh, okay.

14 MR. SHER: They will ultimately
15 all be subdivided into one record lot, which
16 is the requirement to get the permit.

17 CHAIRPERSON MILLER: Got it.
18 Thank you. Okay. I did ask you all for any
19 closing remarks. Is that correct? You didn't
20 have anything else to say? Is that right or
21 not? Anything else?

22 MR. FREEMAN: No, Madam Chair.

1 CHAIRPERSON MILLER: Okay. Good.
2 Then I think the Board is going to deliberate
3 on this momentarily. Okay. We're ready to
4 deliberate on this.

5 You know, I think this is a really
6 very exciting project, very beautifully
7 designed to fit in to the context of Historic
8 Anacostia and it is providing affordable
9 housing and doing all these good things. And
10 we're going to, you know, describe the relief
11 that we are going to be granting. I don't
12 think we're going to go through every single
13 little variance and special exception or we'll
14 be here all afternoon.

15 So let me just start off with
16 moving to approve Application No. 17753 of W
17 Street Acquisitions LLC, pursuant to 11 DCMR
18 section 3104.1 and 3103.2, for a variance from
19 the lot area requirements of section 401.3, a
20 variance from the lot occupancy requirements
21 of section 403.2, a variance from the rear
22 yard requirements of section 404.1, a variance

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1 from the front yard requirements of section
2 2516.5(b) and a special exception under
3 section 2516, which authorizes exceptions to
4 building lot control in residence districts to
5 permit the construction of a new residential
6 development at premises 1226-1252 W Street,
7 S.E., and do I have a second?

8 ZC VICE CHAIRMAN JEFFRIES:
9 Second.

10 CHAIRPERSON MILLER: Okay.
11 Basically, it's divided between variances and
12 special exception relief. And I think Mr.
13 Loud wants to start off on the variance
14 relief.

15 VICE CHAIRMAN LOUD: Thank you,
16 Madam Chair. I'll be supporting the
17 application and the motion. The party, I
18 think, has established a sound record for
19 variance relief under our test for variance
20 relief as supported by the Office of
21 Planning's testimony as well.

22 Essentially, the property is

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1 unique. It has a very unique shape with 10
2 different sides. It also has street frontage
3 on, what is it, W Street, 13th Street and V
4 Street, in addition to which the irregular
5 shape of the property creates some very
6 practical difficulties for the applicant in
7 terms of the lot area, meeting lot occupancy,
8 meeting the side yards and so on.

9 And the testimony that has been
10 presented before us indicates that in order
11 for them to comply with our current zoning
12 regime, they would either have to reduce the
13 width of the units or they would have to
14 increase the depth of the lots. Either of
15 which scenario creates for them a project that
16 can't go forward.

17 If they were to reduce, for
18 example, the width of the units, they would
19 have unmarketable units. If they were to
20 increase the depth of the lots, it would
21 decrease the parking that they are going to
22 have to supply for the private street.

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1 Let me see. There was some
2 testimony about affordable housing and the
3 provision of not the 10 percent that the
4 District looks to, but 25 percent affordable
5 housing, which increases the number of units
6 on the developable site by about 35,000 square
7 feet. And that in turn creates a practical
8 difficulty for the applicant, because it has
9 to subsidize the cost of those increased
10 units, which means that they are not able to
11 provide the number of market rate units that
12 they would normally be able to provide.

13 Let me see. And colleagues, feel
14 free to sort of jump in and lift up anything
15 that I am not including. I think the
16 arguments are the same for the rear yard
17 relief that they are seeking as well as the
18 side yard relief.

19 And I suppose I ought to mention
20 into the record the statement of the
21 applicant, which I'm not certain of the
22 exhibit number, as I look at it, but it's a

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1 very well-presented articulation of the relief
2 sought and how it meets our variance test.
3 I'm sort of thumbing through it as I make
4 these remarks.

5 CHAIRPERSON MILLER: Well, I'll
6 just jump in while you are looking.

7 VICE CHAIRMAN LOUD: Sure.

8 CHAIRPERSON MILLER: The other
9 point I would add is if they were to comply
10 strictly with the regulations, there would be
11 great under utilization of the property in
12 there and that becomes even more compelling
13 when you are providing affordable housing.

14 So that I think that goes to
15 practical difficulty and complying with the
16 regulations.

17 VICE CHAIRMAN LOUD: We also heard
18 testimony regarding the third prong of the
19 variance test regarding no substantial
20 detriment to the public good. The R-4 and R-3
21 Districts being designed to accommodate row
22 dwellings and various types of one-family

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1 dwellings, which is the case here.

2 It's also a case of in-fill
3 development on what is currently substantially
4 vacant land and the primary purpose of the R-4
5 District being stabilized residential
6 neighborhoods. There's significant testimony
7 on that by Mr. Sher. And it's also in the
8 Office of Planning's report. So I incorporate
9 that by reference into my support of this
10 application.

11 Let me defer to my colleagues on
12 the special exception relief.

13 CHAIRPERSON MILLER: Well, let me
14 just add with respect to no adverse impact, we
15 haven't heard of any adverse impact related to
16 this development. In fact, we have heard
17 really to the contrary that there is great
18 public benefit. They are revitalizing this
19 property. It has been approved by HPRB. It
20 is compatible with the Historic District.
21 They are providing affordable housing. And
22 it's all a win-win as far as I can see.

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1 Special exception relief is under
2 2516, which basically goes to the lot control
3 when there is a multi-family development. And
4 this is in a split zone. The Office of
5 Planning is in support. There were some
6 questions that they had left unanswered that
7 they raised in their report with respect to
8 the driveways, in ingress from W Street and
9 the egress to 13th Street to 16 feet.

10 And I think that's what Office of
11 Planning was addressing that DDOT didn't have
12 any problems with that. She spoke to DDOT
13 before the hearing. All of this is in
14 character with the future development of the
15 neighborhood and with the present
16 neighborhood, in that it is built so
17 compatibly with the Anacostia Historic
18 District.

19 We talked about fire and safety
20 and that was addressed. Urban design was
21 certainly addressed. Historic Preservation.
22 Again, I think I was going to say that I don't

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1 think that we need to go through all of these
2 individually and that Office of Planning has
3 fully addressed them and everything that we
4 have heard today has been totally in harmony
5 with the Zone Plan and the character of the
6 neighborhood.

7 Does anybody else have any
8 comments on the special exception relief? I'm
9 not sure if we talked -- I guess, we're not
10 going to talk about everything, but they are,
11 you know, preserving this historic single-
12 family dwelling, which also went to the
13 practical difficulty and the variance test of
14 laying this whole residential development out.

15 And we also did hear about how
16 there needed to be uniformity for the
17 materials and the lot size and things like
18 that. And so I think that what we have here
19 is really -- looks like the best that they
20 could do.

21 And, of course, we didn't get a
22 landscaping plan in this case, but we did get

1 some landscaping shown on the site plan. And
2 Office of Planning is comfortable with that
3 and as far as the design that I can see, it
4 all looks quite positive. So any other
5 comments?

6 ZC VICE CHAIRMAN JEFFRIES: And,
7 Madam Chair?

8 CHAIRPERSON MILLER: Yes.

9 ZC VICE CHAIRMAN JEFFRIES: I
10 might add, I believe that the affordable
11 housing in this development is going to be
12 some of the replacement housing for Berry
13 Farms, you know, so, you know, there lies in
14 another, you know, benefit to this
15 development.

16 I would surely think that the
17 variances that are being requested, all the
18 relief that is being requested is quite small
19 compared to the benefits that are associated
20 with this project. And again, I know that's
21 a PUD analysis, but I think it goes to speak
22 to a pretty superior project.

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1 CHAIRPERSON MILLER: Yes, I agree.
2 And sometimes even though there may be a lot
3 of relief that is being sought, that doesn't
4 mean there is anything wrong with the project.
5 It means, you know, it can be the topography
6 and the creativity and the practicality of
7 fitting, you know, this kind of housing within
8 the constraints of the property.

9 It looks like a great benefit to
10 the District. And okay, any other comments?

11 ZC VICE CHAIRMAN JEFFRIES: There
12 has been a motion.

13 CHAIRPERSON MILLER: There has
14 been a motion. It has been seconded.

15 All those in favor say aye.

16 ALL: Aye.

17 CHAIRPERSON MILLER: All those
18 opposed? All those abstaining? And would you
19 call the vote, please?

20 MS. BAILEY: Madam Chair, the vote
21 is recorded as 5-0-0 to grant the application,
22 as amended. Mrs. Miller made the motion. Mr.

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1 Jeffries seconded. Mr. Dettman, Mrs. Walker
2 and Mr. Loud support the motion.

3 CHAIRPERSON MILLER: Okay. And
4 there is no opposition in this case, so this
5 can be a summary order.

6 MS. BAILEY: Summary.

7 CHAIRPERSON MILLER: Thank you.
8 Is there anything else on the agenda for this
9 afternoon's hearing, Ms. Bailey?

10 MS. BAILEY: No, Madam Chair.

11 CHAIRPERSON MILLER: Then this
12 hearing is adjourned.

13 (Whereupon, the Public Hearing was
14 concluded at 4:23 p.m.)

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