

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 17, 2009

+ + + + +

The Regular 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 LOUD, Vice Chairman
SHANE L. DETTMAN, Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
GREGORY N. JEFFRIES, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.
MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN
ARLOVA JACKSON
KAREN THOMAS
MAXINE BROWN-ROBERTS
STEPHEN RICE

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF
PRESENT:

JEFF JENNINGS

This transcript constitutes the minutes
from the Public Hearing held on March 17,
2009.

TABLE OF CONTENTS

INTRODUCTORY REMARKS:

Ruthanne Miller 6

PRELIMINARY MATTER (1):

CASE 17895, Application of Tho Bella
Dinh-Zarr for a variance.
APPLICATION WITHDRAWN 10

CASE 17891, Application of Judy Smith
for a special exception 10

WITNESSES:

Judy Smith 13
Dennis Connors 14

OFFICE OF PLANNING:

Arlova Jackson 18

PERSONS/PARTIES IN OPPOSITION:

Frederick Oti 20
MOTION TO APPROVE APPLICATION 17891 . . . 33
VOTE TO APPROVE APPLICATION 17891 38

CASE 17864, Application of Kuumba
Learning Center for a special
exception 39

WITNESSES:

Maja Rasheed 41

D.C. DEPARTMENT OF TRANSPORTATION:

Jeff Jennings 47
SPECIFICALLY REQUESTED MATERIALS 91
SET DECISION FOR MARCH 24, 2009 97

CASE 17896, Application of the
Washington Ethical Society
for a special exception 100
REQUEST FOR PARTY STATUS 102

GRANT PARTY STATUS REQUEST 144

WITNESSES:

Stephen Gell 145
Amanda Poppei 149

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

TABLE OF CONTENTS (Con't.)

CASE 17896 (CONTINUED):

WITNESSES:

Joanne Hurt	155
Osborne George	176
Dwayne Toliver	209

CROSS EXAM OF APPLICANT BY MS. HACKNEY	203
--	-----

OFFICE OF PLANNING:

Karen Thomas	234
------------------------	-----

PERSONS/PARTIES IN OPPOSITION:

Ethel Hackney	249
MOTION TO APPROVE APPLICATION 17896 . .	273
VOTE TO APPROVE APPLICATION 17896 . . .	273

AFTERNOON SESSION

INTRODUCTORY REMARKS:

Ruthanne Miller	277
---------------------------	-----

PRELIMINARY MATTERS (1):

<u>CASE 17872, Application of Cynthia</u> O. Agbu. APPLICATION WITHDRAWN	283
--	-----

CASE 17897, Application of Ellen Opper-Weiner for a special exception, a variance, and a use variance	288
--	-----

WITNESSES:

Jennifer Fowler	291
Ellen Opper-Weiner	297

OFFICE OF PLANNING:

Maxine Brown-Roberts	336
CROSS EXAM OF OP BY MS. OPPER-WEINER .	342
MOTION TO APPROVE APPLICATION 17897 . .	364
VOTE TO APPROVE APPLICATION 17897 . . .	365

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

TABLE OF CONTENTS (Con't.)

<u>CASE 17791</u> , Application of DRM and Associates, Inc. for two special exceptions and four variances	368
REQUEST FOR POSTPONEMENT	369
<u>WITNESSES:</u>	
Reverend Donald Madden	382
Reverend Isadore Lane	406
<u>OFFICE OF PLANNING:</u>	
Stephen Rice	416
<u>PERSONS/PARTIES IN OPPOSITION:</u>	
Thomas Hamilton, ANC 6C	425
CLOSING BY REVEREND MADDEN	431
SPECIFICALLY REQUESTED MATERIAL	382
SET FOR DECISION APRIL 14, 2009	438
<u>ADJOURN:</u>	
Ruthanne Miller	440

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

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

(10:02 a.m.)

BZA CHAIR MILLER: Good morning.

This hearing will please come to order. This is the March 17, 2009 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I am the Chair. To my right is our Vice Chair, Mr. Marc Loud and next to Mr. Loud is Mr. Anthony Hood, who is the Chair of the Zoning Commission. To my left is Board Member Shane Dettman. Also next to Mr. Dettman is Mr. Clifford Moy from the Office of Zoning. Mr. Joe --

MR. RADZIEVICH: Radzievich.

BZA CHAIR MILLER: Thank you. He is interning with us right now. Is that a correct characterization? Okay, and Ms. Beverly Bailey from the Office of Zoning.

Copies of today's hearing agenda are available to you and are located to my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 left in the wall bin near the door. Please be
2 advised that this proceeding is being recorded
3 by a court reporter and is also webcast live.
4 Accordingly, we must ask you to refrain from
5 any disruptive noises in the hearing room.

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

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

21 The order of procedure for special
22 exceptions and variances is as follows. One,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 statement and witnesses of the Applicant; two,
2 government reports, including Office of
3 Planning, Department of Public Works, DDOT,
4 etcetera; three, report of the Advisory
5 Neighborhood Commission; four parties or
6 persons in support; five parties or persons in
7 opposition; six, closing remarks by the
8 Applicant.

9 Pursuant to Sections 3117.4 and
10 3117.5, the following time constraints will be
11 maintained. The Applicant, persons and
12 parties, except an ANC, in support, including
13 witnesses, 60 minutes collectively. Persons
14 and parties, except an ANC, in opposition,
15 including witnesses, 60 minutes collectively.
16 Individuals, three minutes.

17 These time restraints do not
18 include cross-examination and/or questions
19 from the Board. Cross-examination of
20 witnesses is permitted by the Applicant or
21 parties. The ANC within which the property is
22 located is automatically a party to a special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 exception or variance case. Nothing prohibits
2 the Board from placing reasonable restrictions
3 on cross-examination, including time limits
4 and limitations on the scope of cross-
5 examination.

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

15 The Sunshine Act requires that the
16 Public Hearing on each case be held in the
17 open before the public. The Board may,
18 consistent with its Rules of Procedure and the
19 Sunshine Act, enter executive session during
20 or after the public hearing on a case for the
21 purposes of reviewing the record or
22 deliberating on the case. The decision of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Board in these contested cases must be based
2 exclusively on the public record. To avoid
3 any appearance to the contrary, the Board
4 requests that persons present not engage the
5 members of the Board in conversation.

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

9 The Board will now consider any
10 preliminary matters. Preliminary matters are
11 those which relate to whether a case will or
12 should be heard today, such as request for
13 postponement, continuance, or withdrawal, or
14 whether proper and adequate notice of the
15 hearing has been given.

16 If you are not prepared to go
17 forward with a case today or if you believe
18 that the Board should not proceed, now is the
19 time to raise such a matter. Does the staff
20 have any preliminary matters?

21 MS. BAILEY: Members of the Board,
22 Madam Chair, to everyone, good morning. There

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is a preliminary matter and it has to do with
2 Application 17895, Tho Bella Dinh-Zarr, if I
3 pronounced that correctly. That application
4 was withdrawn, Madam Chair.

5 BZA CHAIR MILLER: Thank you. And
6 there is no action required by the Board?

7 MS. BAILEY: None is required at
8 this time.

9 BZA CHAIR MILLER: Okay. At this
10 point then, would all individuals wishing to
11 testify today please rise to take the oath and
12 Ms. Bailey will administer it.

13 (Whereupon, all witnesses were
14 sworn.)

15 BZA CHAIR MILLER: Okay, Ms.
16 Bailey, I would just like to make a small
17 change in the order of cases that we are
18 hearing this morning. If the parties are here
19 in the case of 17891, Judy Smith, I would like
20 to have you call that first.

21 MS. BAILEY: Thank you. The
22 parties are here for that case? Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Application number 17891 Judy Smith, pursuant
2 to 11 DCMR 3104.1, for a special exception to
3 allow a partial third story addition to an
4 existing one-family row dwelling under section
5 223, not meeting the lot occupancy, that is
6 section 403, and nonconforming structure
7 provisions, that is subsection 2001.3. The
8 property is zoned R-4. It is located at 1381
9 F Street, Northeast, Square 1029, Lot 189.

10 We did receive this morning, Madam
11 Chair, you don't have it in front of you at
12 this time, but we did receive a letter from
13 the Capitol Hill Restoration Society, which I
14 will pass out at this time.

15 (Pause.)

16 BZA CHAIR MILLER: When you are
17 ready, would you introduce yourselves for the
18 record, please? Is your microphone on?

19 MS. SMITH: I guess it wasn't.
20 Thank you. My name is Judy Smith. I live at
21 the property at 1381 F Street, Northeast. Do
22 you need me to go on or do you want me to --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: And with you
2 is?

3 MR. CONNORS: My name is Dennis
4 Connors. I am Judy's architect and principal
5 of Synergy Design.

6 BZA CHAIR MILLER: Okay and the
7 reason that we have called you first is
8 because your application is very full and
9 seems to meet the standards, on its face, in
10 writing. But I am just going to give you an
11 opportunity if there is anything you want to
12 add or if you want to rest on the record.

13 We just want to let you know that
14 you have very thoroughly already addressed the
15 standards for 223 and there is no opposition
16 to your case.

17 MS. SMITH: Okay, I appreciate
18 that. I would just add I have lived there for
19 ten years and done substantial remodeling
20 inside the home to increase the market value
21 and I now have a five-year-old son and a
22 significant other who is in the military who

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is finally being discharged and so we need a
2 little more room, which is our reason for
3 wanting to expand but really wanting to stay
4 in this neighborhood.

5 And we have modifications to
6 address any questions or concerns that anybody
7 had of all of the number of Boards that we
8 have been in front of. So hopefully, and I
9 appreciate you letting me know that we have
10 done that thoroughly. And I sort of applaud
11 my architect, certainly not me, since I don't
12 know anything about doing it.

13 So, anything other --

14 BZA CHAIR MILLER: Okay, sorry.

15 MR. CONNORS: And good morning,
16 Chairperson Miller and Board. I probably
17 don't need to elaborate much on it. It is a
18 very typical situation. It is a very small
19 lot. It is a rather small house, two stories,
20 no basement. A lot of houses in the
21 neighborhood have basements or additions that
22 exceed the coverage.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And the situation of the house,
2 too, is that the street behind the house to
3 the south is much higher. So, the light that
4 is coming from the south is already casting
5 shadows into Judy's yard and her neighbor's
6 yard. And the way we have situated the
7 addition in the center of the house works in
8 the favor of everyone because it is not
9 casting shadows into her neighbors but it is
10 also not overpowering the beautiful facade of
11 the 1300 block of F Street.

12 And we have, I have been working
13 with Judy for almost probably over a year
14 right now. And we have made great efforts to
15 talk to people in the neighborhood. We have
16 met in front of the ANC and the Board.

17 And one of the reasons why I think
18 the Capitol Hill Restoration Society did give
19 an in favor of support is because we came
20 prepared to their meeting as well with several
21 changes that we addressed because of meeting
22 with ANC. We decided to slant the front of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the proposed addition even further and
2 provided a sight-line study for the street.
3 It is a very wide street. So by doing that,
4 it is quite unusual and not in a historic
5 neighborhood but we felt it is important
6 because it also, it maintains the character
7 and the integrity of the neighborhood by doing
8 an addition such as that.

9 The final, I don't think there
10 were any really final concerns. The existing
11 house has two bedrooms, one bathroom, and one
12 half bath that is kind of sort of tried to
13 squeeze in a shower. I don't know if you have
14 that shower there now. But it is not a very
15 functional bathroom. So the concept would be
16 to gain her and her husband that office space,
17 an extra bedroom for, you know, just make it
18 a family house, really. So nothing else
19 really more to that.

20 BZA CHAIR MILLER: Okay. I think
21 that is what 223 contemplates, to allow
22 homeowners to expand somewhat, provided they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 are within the limit of the lot occupancy and
2 not having an adverse impact on light and air
3 of neighboring properties.

4 I guess I have one question now,
5 though. Did you make a change that is not
6 reflected in the plans that are in our file,
7 or was that change made before you submitted
8 the plans to us?

9 MR. CONNORS: We have made changes
10 but we have sent, faxed in and mailed in, any
11 of the changes to the Board well prior. I
12 think we got everything in by March first.

13 BZA CHAIR MILLER: Okay, I was
14 just wondering because the Capitol Hill
15 Restoration Society letter is March 16th.

16 MR. CONNORS: Oh, we had the
17 changes before their meeting and we provided
18 them with the changes.

19 BZA CHAIR MILLER: Okay. Any
20 questions from Board Members?

21 (No response.)

22 BZA CHAIR MILLER: Okay, then we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 can move to the Office of Planning, if that
2 concludes your statement.

3 All right, good morning.

4 MS. JACKSON: Good morning. Good
5 morning Chair, members of the Board. For the
6 record, my name is Arlova Jackson. I am with
7 the D.C. Office of Planning.

8 I guess we could also state on the
9 record, I will just say in short, that the
10 Office of Planning supports the application.
11 We find it meets the tests for special
12 exception approval and we would recommend
13 approval and I could take any questions that
14 you have.

15 BZA CHAIR MILLER: Thank you.
16 That was an excellent report. You covered all
17 of the elements in writing. Does anyone have
18 any questions for Office of Planning?

19 (No response.)

20 BZA CHAIR MILLER: Does the
21 Applicant have a copy of the Office of
22 Planning's report?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. SMITH: I do. She sent it to
2 me by email. Thank you.

3 BZA CHAIR MILLER: And do you have
4 any questions for the Office of Planning?

5 MS. SMITH: I don't.

6 BZA CHAIR MILLER: Okay. Is
7 anybody here from the ANC?

8 (No response.)

9 BZA CHAIR MILLER: Okay, no one is
10 here from the ANC but we do have an ANC report
11 indicating unanimous support for the project
12 and that is set forth in our Exhibit number 20
13 in a letter dated February 13, 2009.

14 Let's see. They found that it
15 would not unduly affect the light and air
16 available to neighboring properties, nor
17 unduly compromise the privacy of use and
18 enjoyment of neighboring properties.

19 Okay, is there anybody in the
20 audience here who wishes to testify in support
21 of the application?

22 (No response.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Is there anyone
2 who wishes to testify in opposition?

3 MR. OTI: Yes, ma'am.

4 BZA CHAIR MILLER: Okay, please
5 come forward and have a seat at the table.
6 And if you could start with giving us your
7 name and home address.

8 MR. OTI: My name is Frederick
9 Oti. I live at 1383 F Street, Northeast,
10 Washington, D.C. Ma'am, I have been living on
11 that property for the past 17 years.

12 And I was just listening to the
13 gentleman, Ms. Smith's architect. He said
14 that they made a reasonable effort to reach
15 out to the neighbors concerning the project
16 that Ms. Smith is about to embark upon. But
17 I wonder, you know, to what extent their
18 effort was to. Because, you know, what Ms.
19 Smith did was just write a letter, which was
20 very presumptuous, as if I could not write a
21 letter myself. You know, he slotted it
22 through my mailbox. That was all I knew about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this project she is about to embark upon.

2 And I want to know, you know, how,
3 because from what she is saying, I am an
4 engineer by training, I just want to know, you
5 know how much of an impact this thing is going
6 to have on the existing structure. And I have
7 an adjacent wall to Ms. Smith and I have a 19-
8 month-old daughter in the house. This is
9 going to be a major construction. How much of
10 an impact is it going to have on my property?

11 You know, so this is just the
12 relevant questions I want answered. You know,
13 I am not here primarily to oppose what she
14 wants to do. You know, she has a reason for
15 wanting to make an addition to the house.

16 My other question is this. You
17 know, how much of this has been done on that
18 street so far? I have not been able to find
19 any house that is higher, you know, on that
20 very block and even beyond, any house that is
21 much higher than what she is about to put up
22 right now.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So, you know, this is something I
2 want to be considered very, very carefully
3 before you make your approval. Like I said
4 earlier, I am not here to oppose what she is
5 doing but I just want to, just to make a very,
6 very careful analysis of what she is doing
7 because this is something that will have a
8 long-lasting impact.

9 BZA CHAIR MILLER: Thank you. Do
10 Board Members have any questions?

11 (No response.)

12 BZA CHAIR MILLER: Does the
13 Applicant want to respond? Are you familiar
14 where his property is in relation to your
15 property?

16 MS. SMITH: I do. Mr. Oti and I
17 live right next door to each other. I did, as
18 I am sure the Board knows, the letter went out
19 to the whole, you know, whatever radius to
20 notify property owners. I also provided a
21 letter, it was a typed up letter just so it
22 would be readable, to the neighbors on both

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 sides, as well as the neighbors behind me,
2 since the property or the addition could
3 affect the neighbors behind me, with a copy of
4 the drawing so that they would be able to see
5 what it would look like.

6 And I am sorry that Mr. Oti felt
7 it was presumptuous. I drafted a letter which
8 the other neighbors have signed so that they
9 wouldn't have to draft their own letter and
10 just indicate that they did approve it or if
11 they, and said in the cover letter, if they
12 had any concerns that we could address in
13 changing the drawings, I would be happy to
14 consider that and have the architect redraw
15 them. I did provide that letter. I did put
16 it through the mail slot twice. I tried to
17 reach Mr. Oti or his wife a number of times by
18 knocking on their door and have not had an
19 opportunity to do that. Either they won't
20 home or otherwise did not answer. I have seen
21 Ms. Oti a number of times, although she was
22 with her child and didn't want to stop her to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 interrupt her with that.

2 So speaking to the construction
3 and Mr. Connor can probably address that a
4 little better than me, our hope is that the
5 project is small in scale enough that it would
6 not be a long-term project. It is much
7 smaller than the internal remodeling that I
8 did that really took about two months. So, I
9 am hoping it will be a much less time period
10 than that. And I have not selected a
11 contractor yet because we wanted to make sure
12 that we had all of the modifications that we
13 needed from all the various boards and
14 commissions before we would even look to
15 having it priced out. But I would certainly
16 be focusing on making sure that there not
17 affects on the neighbors.

18 As I mentioned, I also have a
19 young child. There are a number of people in
20 our neighborhood who have done construction
21 projects that have been very disruptive to
22 myself and others but I have not really

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 objected to those because I understand that
2 people need to make those construction
3 changes. So we would certainly be very
4 mindful of that, as I have been with other
5 project that I have done on the home.

6 BZA CHAIR MILLER: Okay, and we
7 don't really have jurisdiction over impacts
8 from construction. That is a temporary bother
9 certainly and concern but that is before DCRA.
10 Our concern is the finished product, whether
11 it is going to be within the zoning
12 regulations.

13 So, the only other concern I heard
14 him express with respect to height and I
15 understand certainly that the project is
16 within the limits of our regulations for
17 height. But also, Mr. Connors, I think you
18 found, and I think Office of Planning found,
19 that there wouldn't be an adverse impact on
20 neighboring properties. Did you want to
21 address that any further?

22 MR. CONNORS: No, there is plenty

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of comparisons all throughout Washington good
2 and, unfortunately, many bad. But I would
3 hope that this is a good example and could be
4 done quite thoughtfully.

5 BZA CHAIR MILLER: But the
6 increase in height is not going to have an
7 adverse impact on the shadows and the light
8 and air of your neighbor's property?

9 MR. CONNORS: No, I can't imagine,
10 especially because there are other properties
11 along the same block that have basements which
12 are, you know, naturally if they have
13 basements, their second floor is already
14 elevated higher. And the properties behind
15 Judy's house, immediately behind hers, are
16 significantly higher than her property, which
17 we hope that her partial third floor addition
18 would not exceed the heights of those
19 properties whatsoever.

20 Now, we didn't hire a civil
21 engineer to prove, I mean a survey engineer to
22 prove the heights of all of the surrounding

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 buildings but we did take that into
2 consideration. And that is why we started
3 from the beginning I think even Judy thought,
4 well what if we had the addition on the back
5 of the house. And I think through many
6 deliberations we decided that the middle was
7 the most appropriate to address all of the
8 concerns.

9 BZA CHAIR MILLER: Okay, any other
10 questions? Okay, thank you, sir.

11 MR. OTI: I just want to point out
12 that houses on our own side of the street, all
13 the houses do not have basements, you know, it
14 is houses on the opposite side of the street.
15 So, I just want you to take that into
16 consideration also. Thank you.

17 BZA CHAIR MILLER: Thank you.
18 Anybody else here who wishes to testify on
19 this application?

20 (No response.)

21 BZA CHAIR MILLER: Okay, any final
22 remarks? From the Applicant, any closing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 remarks?

2 MS. SMITH: No, thank you.

3 BZA CHAIR MILLER: Okay. I think
4 the Board is ready to deliberate then. Do we
5 have a motion on this application?

6 VICE CHAIRMAN LOUD: Madam Chair,
7 I would like to start our deliberations off
8 and then perhaps make a motion after recapping
9 some of the key facts, based on what both the
10 record submitted, which as you indicated was
11 quite full, as well as the testimony that we
12 heard today from Ms. Smith, Mr. Connor, and
13 Mr., I believe his name is Oti and I hope I am
14 pronouncing that correctly.

15 Just by way of a quick summary of
16 the facts, this is an application where
17 because of the lack of a basement, the
18 Applicant proposes a partial third-story rear
19 addition for an office, a guestroom, and a
20 bathroom, which would include one south-facing
21 window. It is in the R-4, which limits lot
22 occupancy to 60 percent and the improvement

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would take lot occupancy up to 67.1 percent,
2 which is why a special exception is needed.

3 Now, under section 223, and it was
4 a very extensive report from the Office of
5 Planning at our Exhibit 24, the Applicant's
6 lot occupancy is allowed to go up to at least
7 70 percent. And as indicated, the improvement
8 proposed goes up to 67 percent. So assuming
9 the Applicant meets the conditions for 223, it
10 would meet the requirements for a special
11 exception under 223.

12 Based on the record presented to
13 us and confirmed again by the testimony today,
14 the Applicant makes a very strong case for
15 meeting the requirements of Section 223 in
16 terms of no adverse impacts to light or air or
17 to privacy or use of enjoyment, and there not
18 being a substantial visual intrusion upon the
19 character, scale and pattern to the
20 neighborhood.

21 And I am not going to go through
22 all of the testimony but just want to lift up

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a few exhibits that support each of those
2 elements. With respect to the requirements of
3 223 and 2001.3 as well, the Exhibits 7 and 22
4 of the Applicant's which include the plans,
5 including the modified versions of the plans
6 for the increased slope angle to the roof, as
7 well as the Applicant's Exhibit number 3,
8 which was her statement of proposed uses and
9 walking through the light, and air, and
10 privacy, and character issues, as well as the
11 Applicant's testimony here today, and the
12 Office of Planning Report, our Exhibit 24, all
13 tend to establish that there is no adverse
14 impact on any of the elements identified at
15 section 223.

16 In addition to which, the ANC has
17 indicated through their exhibit, through our
18 Exhibit 20, a full report for the project and
19 through Exhibit 23, at least, I think two of
20 the neighbors, the neighbors to the south,
21 across the alley, whose light would be
22 impacted the most have signed letters of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 support. So, I think the Applicant makes a
2 very strong case for their not being any
3 adverse impacts.

4 At today's hearing we have learned
5 for the first time that an adjoining neighbor,
6 Mr. Oti, who lives at 1383 F Street and has
7 there for 17 years, had some questions and
8 concerns about the project. However, his own
9 testimony is that he is not necessarily here
10 to oppose the project just to get some
11 clarification on issues regarding the
12 construction timelines, the impact to his own
13 property. He is an engineer. He is concerned
14 about, I guess, some of the structural issues.
15 He mentioned a 19-month-old child and the
16 impact that the construction might have on
17 her. In addition to which, he talked about
18 the lack of outreach during the organization
19 of the improvement and communication and those
20 types of issues. And finally, he talked about
21 the concern over the height change with
22 respect to the project and its overall impact

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on the neighborhood.

2 Taking each of those
3 considerations into concern, some of them
4 don't fall within the scope of what the BZA
5 does by way of our land use jurisdiction. And
6 so while, for example I think it is important
7 for the Applicant moving forward to make sure
8 there are very clear lines of communication
9 with your neighbors, particularly your
10 immediate neighbor and to do one's best in
11 terms of construction management and
12 sensitivity to neighbors with small children,
13 and I think that is important. I think the
14 Applicant has not given us any indication that
15 she is not sensitive to that, they,
16 nonetheless, fall outside of BZA jurisdiction.

17 The one issue I think that was
18 raised by the witness that could fall or does
19 fall within what BZA does is the concern about
20 adverse impact because of the height change,
21 the proposed height change. But the record
22 clearly reflects that the proposed addition is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 going to be set back about 15 feet from the
2 front of the property, which would tend to
3 reduce any visual adverse impact from changing
4 the height with respect to other properties in
5 the area. In addition to which, the height,
6 even though it increases somewhat, and I think
7 it increases about seven or eight feet
8 perhaps, is still well within the height
9 limitation for the R-4.

10 So, I think the witness brought
11 forth some concerns that I hope the Applicant
12 takes to heart and responds to as the project
13 moves forward, if in fact the votes are there
14 this morning to move it forward, but I don't
15 think that the witness presented any evidence
16 that tends to suggest that there would be an
17 adverse impact under our 223, were we to grant
18 approval of the application.

19 So all of that being said and I
20 open it up for colleagues to weigh in as well,
21 I would like to move approval of application
22 number 17891, request for special exception

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 relief under 223 to construct an addition to
2 an existing single-family attached dwelling
3 not meeting the requirements of our section
4 403, lot occupancy, and 2001.3.

5 MEMBER DETTMAN: Second.

6 BZA CHAIR MILLER: I just want to
7 make a comment on this. I agree with
8 everything you said, basically. And the
9 Applicant is seeking relief under 223 because
10 it is making an enlargement that increases the
11 lot occupancy but it still comes under the
12 limit allowed for special exception under 223.
13 And that is why 403 and 2001.3 are mentioned.

14 But I would also mention that they
15 are also not in compliance with 401, which is
16 lot within lot area and floor area ratio,
17 which Office of Planning noted but they are
18 not seeking any enlargement in that respect.
19 Sort of technically, I think it is, we would
20 be granting relief under 223 for property that
21 wasn't in compliance with 403 and 2201.3 but
22 perhaps also 401. It is kind of a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 technicality thing though because this comes
2 up a lot when it is not being affected at all.
3 But I just wanted to make that remark for the
4 record, in looking at 223 and what it allows
5 relief from with respect to properties that
6 aren't in compliance with certain provisions
7 of our regs and that is also one of them.

8 MEMBER DETTMAN: I agree, Madam
9 Chair, it is nonconforming as to both width
10 and area. Width, I think the minimum is 18
11 feet and it is about 17 feet. And the area
12 the minimum, I mean the required is 1800 and
13 they are a little below that at almost 1200.

14 And you are right, we kind of go
15 back and forth as to whether the section 223
16 kind of includes that through 2001.3 or other
17 legalese around whether you have to
18 specifically incorporate section 401.

19 But I think your point is well
20 taken and correct. Nonetheless, I think the
21 Applicant still meets the test of 223.

22 BZA CHAIR MILLER: Oh, absolutely.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Absolutely. Any other comments?

2 I guess before we make a decision,
3 I think Mr. Dettman had a concern about
4 something not being in the record and I just
5 want to clarify that before we take a vote on
6 this.

7 MEMBER DETTMAN: Thank you, Madam
8 Chair. The Applicant had mentioned that they
9 had revised the roof of the addition. The
10 plans that we have in the record show a flat
11 roof. And I saw that the drawing that you had
12 up there showing the sightline analysis showed
13 the pitched roof. So if we could just get
14 that drawing in the record, it would be very
15 helpful, unless I haven't seen it in the
16 record.

17 MR. CONNORS: This one?

18 MEMBER DETTMAN: Yes. Our Exhibit
19 7 shows a flat roof.

20 MR. CONNORS: I had faxed and
21 mailed it into the office back on March first.

22 MEMBER DETTMAN: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Okay, so just
2 so it is clear that the plans that we would be
3 voting on would be that which is depicted by
4 that number seven there. Do you have it?

5 VICE CHAIRMAN LOUD: Mr. Dettman,
6 is that Exhibit 22?

7 MEMBER DETTMAN: I was looking at
8 Exhibit 7. Yes, Exhibit 22 shows the
9 modification. I apologize.

10 MR. CONNORS: Along with there
11 were a couple of items that the Office of
12 Planning requested of us that I included in
13 there as well but I didn't present them.

14 BZA CHAIR MILLER: Okay, I think
15 Exhibit 22 is what we needed to see. Correct?
16 Okay.

17 MR. CONNORS: And the Affidavit of
18 Posting should have been in one of those
19 faxes, too.

20 BZA CHAIR MILLER: Okay, we can
21 come back to our deliberation then. Are there
22 any other comments that Board members want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 make?

2 (No response.)

3 BZA CHAIR MILLER: Okay then, the
4 motion has been seconded. All those in favor,
5 say aye.

6 (Chorus of ayes.)

7 BZA CHAIR MILLER: All those
8 opposed?

9 (No audible response.)

10 BZA CHAIR MILLER: All those
11 abstaining?

12 (No audible response.)

13 BZA CHAIR MILLER: And would you
14 call the vote, please?

15 MS. BAILEY: Madam Chair, the vote
16 is recorded as 4-0-1 to grant the application.
17 Mr. Loud made the motion. Mr. Dettman
18 seconded it. Mr. Hood and Mrs. Miller support
19 the motion. Mrs. Walker is not present at
20 this time.

21 BZA CHAIR MILLER: Okay and then
22 this can be a summary order, as there is no

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 party in opposition.

2 MS. BAILEY: Thank you.

3 MR. CONNORS: Thank you for your
4 time.

5 BZA CHAIR MILLER: Thank you.

6 Ms. Bailey, whenever you are
7 ready, then the next case would be 17864,
8 Kuumba Learning Center.

9 MS. BAILEY: Thank you, Madam
10 Chair. As you indicated, this is the
11 application that the number is 17864, Kuumba
12 Learning Center, Inc., and it was previously
13 heard by the Board on February 17th and
14 continued to today. The application is
15 pursuant to 11 DCMR 3104.1 for a special
16 exception for a private school and child
17 development center grades K through 6, under
18 section 206. The premises is 3330 and 3332,
19 and I believe there is another address as
20 well, 3328, 3330, and 3332 Martin Luther King,
21 Junior Avenue, Southeast. The Square is 5978,
22 Lots 884, 1037, and 1036.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I think, not that I think, but the
2 Board did amend this application or it is in
3 the process of amending it because additional
4 parking relief is needed for this project. I
5 believe all of the documents are before the
6 Board at this time and it is ready to go
7 forward.

8 BZA CHAIR MILLER: Thank you, Ms.
9 Bailey. Good morning.

10 MS. RASHEED: Good morning.

11 BZA CHAIR MILLER: Why don't we
12 start with your introducing yourself for the
13 record with your home address as well.

14 MS. RASHEED: Maja Rasheed, 3328
15 Martin Luther King, Junior Avenue, Southeast,
16 Washington, D.C.

17 BZA CHAIR MILLER: Okay, I think
18 where we left off at the last hearing you were
19 going to go back and work with Office of
20 Planning and refine your application and
21 submit some additional filings setting forth
22 your arguments under the amended application.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So we did get a filing from you
2 and then we have a filing from the Office of
3 Planning requesting a or suggesting that this
4 hearing be postponed, that you have more
5 issues that need to be addressed before we
6 have a hearing. What is your position on
7 that?

8 MS. RASHEED: I feel that today
9 that maybe I could meet the Office of Planning
10 request in terms of making the adjustments
11 that are necessary to show that I have enough
12 parking for my staff. And my suggestion is,
13 in terms of the staffing, that because of
14 looking at the status of child development
15 center and private school, that I am looking
16 at seven staff for child development and five
17 for the private school. So looking at that,
18 in terms of the three buildings, the amount of
19 parking that I have, I am hoping that would be
20 adequate enough parking for staffing.

21 And I would ask that maybe Office
22 of Planning can look at that, based on that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Because I think what I had to do was deal with
2 my ratios and I am comfortable with dividing
3 it in that manner.

4 BZA CHAIR MILLER: And 60
5 children. Is that right?

6 MS. RASHEED: Yes.

7 BZA CHAIR MILLER: Okay. My
8 understanding is I think you would still need
9 the relief from parking. We can go ahead and
10 move to Office of Planning but Office of
11 Planning had also stated in its report that
12 you needed to address the impacts of the
13 increase in the number of children and staff
14 with respect to traffic, parking, and
15 character of the neighborhood.

16 MS. RASHEED: We wanted to
17 implement the same plan that was implemented
18 three years ago, in terms of if there is an
19 influx of traffic, that they would have the
20 opportunity to come in the rear and be meted
21 by staff to accompany them. So, we wanted to
22 use that as an option.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Are you
2 prepared, though, to address why that wouldn't
3 have an adverse impact, this increase in
4 students and staff?

5 MS. RASHEED: We don't feel that
6 it would but that is an option that we looked
7 at when we came here three years ago where
8 DDOT came out and did an extensive study in
9 watching the traffic flow. And we feel like
10 we really didn't have to implement that plan
11 but if we have to, that it is still something
12 that we could do.

13 BZA CHAIR MILLER: Okay do Board
14 members have any questions for Ms. Rasheed
15 right now? Otherwise, I am going to turn to
16 Office of Planning.

17 Okay, Mr. Cochran.

18 MR. COCHRAN: Thank you. For the
19 record, my name is Steven Cochran, Office of
20 Planning.

21 Since OP filed its report, we and
22 the applicant have had considerable

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 conversation. We do not feel that it is
2 necessary to recommend that the case be
3 postponed for additional information right
4 now.

5 BZA CHAIR MILLER: Are you on your
6 mike?

7 MR. COCHRAN: I think. Yes. If
8 you will flip to page five of our report, you
9 will see that first that we were asking that
10 the Applicant clarify the number of children
11 in the building that would be sent to the CD,
12 the child development center versus the
13 private school. The Applicant has applied for
14 60 children. The Applicant today, although
15 she didn't mention it in her testimony now has
16 said that no more than 30 would be private
17 school students. The remainder, of course,
18 would be child development students. This is
19 applicable to the parking. Twelve staff. The
20 Applicant today mentioned that there would be
21 seven for the child development center and
22 five for the private school.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 When you come to parking, for the
2 child development, it is a ratio of one
3 parking space for every four staff. That
4 would be two spaces. For the private school,
5 it is two spaces for every three staff. That
6 would mean two spaces but that it is also a
7 one space for every ten seats.

8 So, with 30 children at maximum
9 for the private school, that would mean
10 another three parking spaces, which would
11 bring you up to seven. OP doesn't feel that
12 the Applicant needs any relief from parking,
13 given this new scenario.

14 Where there is, in terms of impact
15 on the neighborhood, the Applicant has not
16 explicitly assessed that impact yet. However,
17 we note that the ANC has voted unanimously to
18 approve it. And unlike the case the last time
19 that the Applicant was approved for a child
20 development center here when there was some
21 opposition, in this instance, there is no
22 community opposition. I am told that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 homeowners of what formerly were the Wilburn
2 Mews Homeowners Association attended the ANC
3 meeting and had no objection. Certainly,
4 there is nothing in the file.

5 That leaves us with the question
6 of drop-off. Right now the order says that
7 the drop-off shall be in the front. There is
8 a 15 minute only drop-off signed space there
9 and staff is supposed to go out to the car and
10 take students into the center. Now that the
11 Applicant has three contiguous buildings, one
12 of which is on the alleys, not just the alley
13 system but also on a curb cut that goes back
14 to the child development center, at least,
15 excuse me, to the National Children's Center,
16 at least OP feels that it is possible to do
17 drop-off either in the rear or at the National
18 Children's Center. You will note from the
19 Applicant's more recent materials that the
20 Children's Center had already agreed that the
21 Applicant could park there. There is no need
22 for the Applicant to park there under zoning.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So that space could be used for drop-off and
2 the Applicant has agreed that they would
3 escort the children into the buildings or you
4 could, perhaps, drop-off in the rear on the
5 side of the building that faces the entrance
6 to the Children's Center but that has a curb
7 cut.

8 DDOT is here today. They have not
9 been able to do a formal analysis of this. I
10 believe that they do have a couple of ideas of
11 whether it might be acceptable or not. And I
12 would like to introduce Jeff Jennings of DDOT.

13 MR. JENNINGS: Hi. Good morning,
14 Madam Chair. For the record, my name is Jeff
15 Jennings. I work for the District Department
16 of Transportation. I think, as Mr. Cochran
17 stated, I haven't had the opportunity to do a
18 full analysis of the project here but it
19 appears that we would like to see the
20 Applicant have vehicles drop off on the side,
21 as Mr. Cochran suggested, where the alley is
22 shared with an entrance to National Children's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Center. And our preference perhaps in this
2 case, would be to remove the vehicles from
3 MLK, Jr. Avenue just for sake of safety, if
4 anything. And then if the Applicant perhaps
5 needs to coordinate better, maybe the rear of
6 the site would be kind of a plan B, if you
7 will.

8 MR. COCHRAN: And I believe that
9 DDOT would also take the sign that says 15
10 minutes permitted for drop-off, they would
11 take that sign away from Martin Luther King
12 and presumably it would be appropriate if you
13 agree to this to have as one of the conditions
14 that the Applicant shall formally notify each
15 incoming, the parent or the guardian of each
16 incoming child that drop-off would occur at
17 that particular revised location.

18 BZA CHAIR MILLER: What kind of
19 condition are you actually suggesting, though,
20 that drop-off would be either on the side
21 where the alley is shared with the entrance to
22 the National Children's Center or in the back

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 or what?

2 MR. COCHRAN: Yes. It seems like
3 the Children's Center would be fine. But the
4 problem with that is, although it seems
5 unlikely, the Children's Center hasn't given
6 a legally binding agreement for that.
7 Obviously they have said, they have got
8 experience in letting the Kuumba Learning
9 Center use that area for parking already.
10 They have said that they would continue to let
11 that be done. So, it seems like it could be
12 converted into a drop-off. However, given
13 that that is not legally binding, we feel that
14 the condition should say either that or in the
15 side of the building because there is room to
16 go in, turn around, drop-off the child,
17 etcetera. There is an alley behind. There is
18 a driveway that goes to the National
19 Children's Center and to the alley behind the
20 building. So either way, it seems as though
21 it would work out.

22 Maybe the condition could say

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there shall be no drop-off in front of the
2 building on Martin Luther King. The Applicant
3 shall make additional arrangements for drop-
4 off on either the side of the building or at
5 the National Children's Center and shall so
6 advise the parent, guardian, whatever of any
7 child attending the Kuumba Learning Center as
8 to where the drop-off shall occur.

9 BZA CHAIR MILLER: If there was
10 more time, I mean, if we didn't do the
11 conditions today, would you anticipate that
12 they -- well, I will get back to you. Is that
13 kind of an agreement likely?

14 MS. RASHEED: Well, I feel that
15 for the 40, we are already working. It's like
16 if it is not broke, don't try to fix it. We
17 are looking at an additional 20. So I could
18 see there would be an additional option that
19 we would use for the extra children but not
20 for the entire center. Because I think that
21 if we balance it out, that we have a better
22 chance of not having an influx of traffic in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 one area. So, if I can just be left alone in
2 terms of the 40 that was agreed upon and maybe
3 look at it for the additional 20, I would ask
4 for that being an option.

5 BZA CHAIR MILLER: So are you
6 saying that currently the 40 children are
7 being, those that are being dropped off are
8 being dropped off on Martin Luther King,
9 Junior Avenue?

10 MS. RASHEED: Yes, and that was
11 agreed from my last special exception and it
12 is working well.

13 BZA CHAIR MILLER: It's working
14 well. Do you have information, Mr. Cochran or
15 Mr. Jennings that there is a problem with
16 that?

17 MR. JENNINGS: I don't know of any
18 impacts that are actually occurring out there.
19 I would think that with MLK, Jr. Avenue being
20 such a fast roadway as it is with vehicles
21 traveling at high rates of speed, however, if
22 the Applicant states that it works, I don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know if we would actually go out there and
2 remove those signs, based upon what she is
3 saying today.

4 However, she also noted earlier
5 today in conversation there is a significant
6 window of drop-off time, which helps out
7 tremendously as well. It is not as though
8 everybody is showing up at a particular time.
9 So between the hours of 7:00 a.m. and 9:00
10 a.m., you have approximately 40 children being
11 dropped off, which clearly helps out
12 significantly.

13 MS. RASHEED: Could I also mention
14 that that study was done three years ago by
15 DDOT? They did sit out and watch the influx
16 of traffic and there is a report on that.
17 Because this was an issue when I had the
18 opposition before and it worked out really
19 well. And also being sensitive to the
20 neighbors, too, instructing everyone not to go
21 up in that area for drop-off.

22 BZA CHAIR MILLER: Okay. We don't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have a copy of that report, though. Correct?

2 MS. RASHEED: I think I might have
3 it.

4 BZA CHAIR MILLER: Okay.

5 MR. COCHRAN: If this is the way
6 that the Board chooses to go, it seems like it
7 would still be appropriate to have as a
8 condition that the Applicant note the drop-off
9 areas that are permitted to each person being
10 dropped off because, otherwise, how would
11 anybody know whether they were supposed to
12 drop off in the front or in the back.

13 BZA CHAIR MILLER: And what is
14 being suggested here? The additional 20
15 children are they in a specific building?

16 MS. RASHEED: Yes.

17 BZA CHAIR MILLER: The last
18 building?

19 MS. RASHEED: Yes, they are
20 confined to the last building.

21 BZA CHAIR MILLER: Okay. And is
22 that the building that has the alley behind

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 it?

2 MS. RASHEED: And that is the
3 building where they are suggesting that they
4 get dropped on the side.

5 BZA CHAIR MILLER: Okay, dropped
6 off on the side or in the rear.

7 MS. RASHEED: In the rear. That
8 building is the last building. So, it would
9 be in the rear or on the side of the building
10 where those children would be.

11 BZA CHAIR MILLER: Okay. And you
12 agree with that?

13 MS. RASHEED: I have no problem
14 with that.

15 BZA CHAIR MILLER: And is there an
16 opinion from DDOT or OP with respect to any
17 impacts of 20 additional students?

18 MR. COCHRAN: Not discussing
19 traffic or parking, I would rely mostly on the
20 sense of the neighbors. The ANC has voted
21 unanimously to approve the expansion.
22 Neighbors attended the ANC meeting. It has

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 been posted twice and there has been no
2 opposition registered.

3 ZC CHAIR HOOD: Madam Chair,
4 again, I would just add that, you know, there
5 were some traffic issues now that may come up
6 but I am sure that can be mitigated.

7 Previously when we sat on this
8 case, I don't know if you sat on this case
9 with me, but previously when I sat on this
10 case, there was some opposition. And I said
11 this at the last hearing that not to see the
12 opposition, obviously, things have, this
13 Applicant has worked very well with the
14 community and worked it out. So, I have a
15 confident level and I don't have a problem in
16 proceeding. And it shows by no one being here
17 like it was previously.

18 BZA CHAIR MILLER: Okay. How
19 about the term question? Did we talk about
20 that?

21 MR. COCHRAN: The Applicant has
22 seven, roughly seven years left on their

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 existing 2006 term for ten years. So it is
2 about seven years. So OP doesn't really have
3 an opinion on the term. Certainly, the
4 easiest thing would be just to continue to the
5 end of the term that already exists but the
6 applicant would then have to come back in
7 roughly seven years.

8 BZA CHAIR MILLER: Does the
9 Applicant have a position on that question?

10 MS. RASHEED: Well, you know, I
11 have stated before, I am trying not to come
12 back anytime soon. So, in consideration for
13 as much time as you can because you know, I
14 just want to get back to the business of
15 working with the children and providing a
16 service.

17 BZA CHAIR MILLER: Okay. It might
18 make sense just to finish out this term. I
19 guess that would mean our putting a term of
20 seven years on this order.

21 This order will be superseding the
22 2006 order, I assume. Don't you think so? I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 mean, unless you don't want it to but I don't
2 see why not.

3 ZC CHAIR HOOD: How many years did
4 she get the first time? I shouldn't probably
5 be asking this question. Ten years.

6 MS. RASHEED: I think it was ten.
7 I think the problem that I am going to
8 probably run into is if you are looking at
9 making changes in terms of when it comes to
10 permits, the permits go along with what your
11 special exception is when you are dealing with
12 the agencies that I have to deal with. So, if
13 it is clearly stated on the special exception
14 what is being done, then when I approach the
15 agencies concerning these children, it will
16 clearly say child development center/private
17 school, in terms of occupancy.

18 So, I think in the future I am
19 going to have problems if it remains just
20 saying, and I am asking that it change in
21 terms of status, in terms of child development
22 slash private school for the other two

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 buildings that I already have. So that may be
2 a complication down the line for me.

3 BZA CHAIR MILLER: Okay. I guess
4 what I had in mind was that this order would
5 say private school/child development center,
6 you know, slash --

7 MS. RASHEED: That's is what I am
8 --

9 BZA CHAIR MILLER: -- special
10 exception relief for whatever. And it would
11 be a new order and it actually would supersede
12 the other order.

13 MS. RASHEED: That's fine.

14 BZA CHAIR MILLER: So the fact
15 that it supersedes the other order doesn't
16 mean that we are, I don't believe, bound by
17 the term of the other order.

18 MS. RASHEED: Okay.

19 BZA CHAIR MILLER: I just seemed
20 we might want to consider keeping that term,
21 which would mean that this one would be seven
22 years, if we felt that that was put on for you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know, a reason for ten years. Of course, Mr.
2 Hood and I were both on that order so I'm not
3 sure why we can't just take a fresh look here
4 and kind of see what makes sense.

5 And I understand, we don't want
6 give you too a short a time period because it
7 would be my opinion, you know, there are no
8 complaints. On the other hand, you are adding
9 a new element, another building, etcetera.
10 So, it seems to make sense.

11 We usually do have a term kind of
12 for the first time that something is going on.
13 It is not exactly the first time since you
14 have had a child development center but it is
15 the first time that we are having this
16 combination and a new building. So that is
17 just something we all need to consider.

18 Let's just see if there is
19 anything else though we need to get into the
20 record for our deliberations on considering
21 this relief.

22 Mr. Cochran, you are all right

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with the Board treating all three buildings
2 together with respect to number of faculty,
3 number of students and impact of the
4 operation?

5 MR. COCHRAN: Yes, Madam Chair.

6 BZA CHAIR MILLER: Okay, like a
7 school with a couple of buildings. Correct?

8 MR. COCHRAN: Or three, as the
9 case may be.

10 BZA CHAIR MILLER: Or three, yes,
11 right. Okay.

12 (Pause.)

13 BZA CHAIR MILLER: Do Board
14 members have any other questions?

15 ZC CHAIR HOOD: Madam Chair, I
16 actually was not clear. Mr. Jennings
17 mentioned the point, the Applicant had asked
18 what she was previously doing that it be left
19 alone and I'm not sure if Mr. Jennings
20 concurred. You may have mentioned, you may
21 have spoke on that issue.

22 But you know, you heard Applicant,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 she asked that what she is doing on MLK be
2 left alone. What is your opinion on that?

3 MR. JENNINGS: I based my opinion
4 on a previous case, the Matthews Memorial Case
5 where we were actually encouraging the
6 Applicant to push their transportation off of
7 MLK, Junior Avenue. And that case recently
8 occurred within the last two to three weeks.
9 This clearly being a different block, the
10 conditions may be completely different.

11 However, what I have come to
12 understand is this area of the city in the
13 next five, seven, ten years, may see just a
14 tremendous amount of growth, especially when
15 it comes to vehicles. Two, whether it be the
16 St. Elizabeth's campus, you know, the Homeland
17 Security that is going to go in over there,
18 and then MLK just really being used that much
19 more than what we see presently. Certainly
20 things that I wanted to kind of take into
21 consideration, we are trying to get the
22 transportation with young children off the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 street and get it onto perhaps an area that
2 has much slower speeds.

3 However, based upon what the
4 Applicant has said, it does work. Will it
5 work in five, seven, ten years? You know,
6 that remains to be seen. We kind of get out
7 there with our projections and try and
8 understand what the neighborhood will look
9 like in that span of time and we are certainly
10 just trying to keep an eye out for safety as
11 much as possible, especially, once again, when
12 it comes to young children.

13 ZC CHAIR HOOD: Right. And you
14 are talking about the Matthews Memorial PD
15 that was in front of the Commission?

16 MR. JENNINGS: Correct.

17 ZC CHAIR HOOD: Because we talked
18 about the slope there. Does this slope in
19 this area? I know you haven't been.

20 MR. JENNINGS: I'm not sure. I
21 haven't had the opportunity to actually go out
22 there and check the grade but I do know in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that particular block, it gets to be pretty
2 tough. I am not even sure where maybe the
3 nearest traffic signal is with relation to the
4 address to kind of temper speeds, if that is
5 even relevant. But you know, these are things
6 that we certainly want to take into
7 consideration.

8 ZC CHAIR HOOD: Okay. All right.
9 Thank you, Mr. Jennings. Thank you, Madam
10 Chair.

11 MR. COCHRAN: Madam Chair, I just
12 have a couple of questions for the Applicant.

13 Was the idea of using the rear
14 alley for pick-up and drop-off for the
15 additional 20 students discussed at the ANC
16 meeting?

17 MS. RASHEED: No.

18 MR. COCHRAN: Do you have a sense
19 of --

20 MS. RASHEED: Not in terms of --
21 they always knew it was an option. So, we
22 sort of like read the old application and we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 brought that up. And I think that was just
2 something that was just assumed if we needed
3 it that we could do it.

4 MR. COCHRAN: Okay. Do you have a
5 sense of what the Homeowners Association,
6 where they are at in terms of using the alley
7 for pick-up and drop-off?

8 MS. RASHEED: Yes, because I have
9 been really working with them since three
10 years ago.

11 MR. COCHRAN: Okay. So they seem
12 to be okay with it?

13 MS. RASHEED: Yes, we are doing
14 fine.

15 MR. COCHRAN: Okay.

16 MS. RASHEED: We are right next to
17 National Children's Center, which is a center
18 for special needs children and adults. So the
19 traffic flow is not the same and heavy as it
20 is towards Matthews Memorial. They have like
21 a Metro across the street and it is just
22 different. But we have been able to manage it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 because of staffing's attention and parents'
2 attention in terms of putting emphasis on
3 where and what you need to do. So, it has
4 been working pretty well for us.

5 MR. COCHRAN: Okay.

6 MS. RASHEED: Because if not, the
7 neighbors would definitely be sitting here.

8 MR. COCHRAN: In the event that
9 the Homeowner's Association for some reason
10 isn't crazy about the idea of additional cars
11 coming in and out of the alley for pick-up and
12 drop-off, have you discussed pick-up and drop-
13 off with the National Children's Center using
14 the side of the building?

15 MS. RASHEED: Yes, we also share
16 the playground as well. So, I have a legal
17 bind to the playground and everything. We had
18 attorneys to draw papers. So we do have a
19 very close relationship.

20 MR. COCHRAN: Okay.

21 MS. RASHEED: So even though I
22 know it sounds like a lot but it also, it is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 controlled. We control the situation. And
2 from my history for the past three years, if
3 it wasn't something I was trying to control,
4 then they would be down here. I would have
5 some opposition.

6 Also in addition to that,
7 everybody doesn't drive. We have a Metro bus
8 that is right there at the alley as well. So
9 there is a high percentage of my population
10 that catches public transportation. So that
11 has balanced it off, too, as well. We have
12 parents that carpool. We have different
13 things.

14 But I definitely have been working
15 really hard to not have emphasis being on the
16 fact that we are causing any problems in the
17 front and in close relationship, especially
18 with some of the opposition that was down here
19 before. And I think they are comfortable
20 because if not, they would be here.

21 BZA CHAIR MILLER: Yes, Mr.
22 Cochran?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. COCHRAN: I feel that I should
2 point out that it may be appropriate to
3 exercise an abundance of caution and ensure
4 that the drop-off is either to the side or to
5 the rear or at the Children's Center.
6 Certainly, there is a bit of liability to the
7 district if we give, if the district gives
8 continued permission to have the drop-off in
9 the front and something untoward happens.

10 If that sign were not there and
11 the drop-off occurred on private land, then
12 first off, you would have less risk for the
13 children. And secondly, there wouldn't be the
14 reluctant approval of the District government
15 to a drop-off in front. DDOT does feel
16 uncomfortable with the continuation, let alone
17 an expansion of the front drop-off.

18 BZA CHAIR MILLER: Well, you know,
19 what is concerning me is I just don't know
20 what do we have in the record with respect to
21 the impact then of all the change in the drop-
22 off to the back. How do we know that is not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 going to have any adverse impact?

2 MR. COCHRAN: If the condition
3 said that the drop-off shall occur at the
4 National Children's Center, where the spaces
5 would be made available for parking anyway,
6 then it seems to me that if that is acceptable
7 to the Applicant, then that could be an
8 appropriate condition because it would be out
9 of any alley circulation and so on and so
10 forth.

11 BZA CHAIR MILLER: Okay. Ms.
12 Rasheed?

13 MS. RASHEED: I mean, would I have
14 to get anything else than what I am already
15 doing? Oh, okay. I don't have any problem.
16 Whatever we can do to control the situation
17 that you anticipate happening, we are ready to
18 implement it.

19 BZA CHAIR MILLER: Okay, from what
20 I hear Mr. Cochran saying is that even though
21 you think that drop-off on MLK Avenue has been
22 working fine, they are saying that they want

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 it to be changed.

2 MS. RASHEED: For the additional
3 children. Right?

4 BZA CHAIR MILLER: Is that
5 correct?

6 MR. COCHRAN: I am in effect
7 channeling DDOT comments on that.

8 BZA CHAIR MILLER: Okay, so that
9 would be a change in your drop-off which has
10 been working fine. So if we are changing it
11 to National Research Center or Children's
12 Research Center or the side, I just want to
13 know what is the impact of that. How do we
14 know, if we are going to put this in an order
15 that that is going to be a condition that that
16 is going to work fine, that there aren't going
17 to be any problems?

18 MS. RASHEED: I think it is
19 reasonable to still look at what we are
20 already doing and the additional children and
21 not to really -- With National Children's
22 Center, taking into consideration that they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have a population, too, I mean, the additional
2 that I am asking for, I think that that is
3 reasonable. But to just to guide all of them
4 to come in that parking lot, I don't think
5 that that is -- I'm not going to say that it
6 is not going to work. But what is already
7 working, I think that needs to be taken into
8 consideration because I think it is reasonable
9 for the additional children but, I think that
10 it is not going to be a problem.

11 I mean, we have like staff coming
12 out of three doors to assist. I have three
13 different doors that staff will be helping and
14 guiding. We are almost like patrols. You
15 know, and so it is not an issue now. And when
16 we see anything that becomes an issue, we
17 alert parents or we will say something to make
18 sure it is a controlled situation.

19 So, I think in terms of my
20 partnership, I don't want to just say oh, just
21 let all of my children come in here but I
22 think it is reasonable to ask for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 additional ones, if needed.

2 BZA CHAIR MILLER: So you have
3 been doing this for three years and there
4 haven't been any accidents or anything like
5 that?

6 MS. RASHEED: Right but I have
7 been in business for 27 years in that same
8 spot.

9 BZA CHAIR MILLER: With drop-offs
10 and things?

11 MS. RASHEED: Yes, with drop-offs.

12 BZA CHAIR MILLER: Okay so that
13 has always been there.

14 MS. RASHEED: Yes, it has always
15 been there. And the neighborhood has been
16 getting quieter. In terms of traffic, traffic
17 is always, but in terms of the calmness of the
18 neighborhood, it is slowly coming.

19 BZA CHAIR MILLER: And were there
20 to be a condition requiring drop-offs for the
21 additional students in the third building to
22 be at the National Children's Center --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. RASHEED: I wouldn't have a
2 problem with that.

3 BZA CHAIR MILLER: -- wouldn't you
4 need some -- but would you need permission
5 from them?

6 MS. RASHEED: No because we do it
7 anyway. We have permission. We have a
8 partnership. So it is not something that is
9 annoying to them and we have a partnership.
10 So anytime if anyone comes now and they want
11 park there, it is understood that is not a
12 problem. So I already have permission.

13 BZA CHAIR MILLER: What kind of
14 partnership? What do you mean?

15 MS. RASHEED: Well we do
16 workshops. We teach there. We share the
17 playground. So, we have a relationship. When
18 our children come out of the playground, we
19 have to enter into their driveway to get to
20 where we are going. We don't always walk.
21 Sometimes, you know, some of the parents have
22 to pick them up there at the end of the day.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So, we have that relationship because there is
2 parking all on the side right by the
3 playground. And so our children have to be
4 picked up there.

5 I have a key to the playground.
6 They have a key. We have a legal document.
7 So, we have a relationship to that area.

8 BZA CHAIR MILLER: So we are
9 talking about dropping off in these parking
10 spaces along their playground?

11 MS. RASHEED: No, it is right in
12 the alley where they are talking about. It is
13 like a drop-off and when you get out, you walk
14 right into the third building. You either
15 walk to the rear or you can walk to the front.
16 And even further down, there are more parking
17 spaces that are right beside the playground.

18 MEMBER DETTMAN: Madam Chair, I
19 agree with everything that DCOP and DDOT are
20 saying in regards to the safety issues that
21 could result with pick-up and drop-off on MLK
22 Boulevard or Avenue. I'm sorry.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But I just want to make sure that
2 if we are going to put conditions in the new
3 order that require pick-up and drop-off to
4 occur at the National Children's Center or
5 behind the building that that is actually
6 something the Board can do, can legally do.

7 You know, with respect to the
8 situation at the National Children's Center,
9 they are allowed to park there but that is a
10 very different situation between parking and
11 then channeling all of these cars going in and
12 out of their driveway. They may be okay with
13 parking because cars come, spend a long time
14 and then leave, versus having this turnover.

15 With respect to having pick-up and
16 drop-off at the rear of the building, as far
17 as I know, it is a private alley. It is
18 common space that is probably owned by the
19 Homeowners Association. The Applicant had
20 mentioned that since her last approval the
21 relationship with the Homeowners Association
22 has been very successful and that if they did

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have a problem, they would be here today.

2 But I am looking at DCOP's 2006
3 report and it says the Applicant should be
4 allowed to use the spaces in the front of the
5 center for drop-off. This is especially more
6 relevant since the Wilbur Mews Homeowners
7 Association is on record strongly opposing any
8 use by the center of the common areas on the
9 private property for pick-up and drop-off.

10 The reason why the relationship
11 might be so good is because none of the common
12 areas are being used. So again, I agree with
13 OP. If we can get the pick-up and drop-off
14 off of the Avenue and onto some off-street
15 location, it would be a safer situation. But
16 I want to make sure that since this is private
17 property we are looking at, that the owners of
18 that property are okay with it.

19 BZA CHAIR MILLER: Good point. I
20 am not really sure that, yes, that we would
21 have jurisdiction to require parking on
22 somebody else's property, without their being

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 here and really indicating their consent.

2 I also have a question though
3 about the fact that there is a history here of
4 27 years of drop-off in front and why that
5 should be such a big concern at this point.
6 Mr. Cochran or Mr. Jennings, do you have any
7 -- I'm not sure you were listening. But the
8 fact that Ms. Rasheed says that they have had
9 this drop-off for 27 years without incident,
10 why should we change that now?

11 MR. JENNINGS: I'm not so sure
12 that, you know, the growth expectation for the
13 neighborhood is something that we, at DDOT
14 really taking into consideration. And knowing
15 that this particular area, as I stated
16 earlier, will have some amount of growth, is
17 that something, you know, do you get into
18 whether or not this block even affected by
19 that growth? Because you can have, certainly,
20 areas that are very close to an area that will
21 have the growth and then this won't.

22 So, had we gone out there and kind

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of taken into consideration, I would rely on
2 the observations that were made three years
3 ago by DDOT and there being no adverse impacts
4 at that time, that is very helpful to know.
5 And I suspect that two and a half, three years
6 later, there perhaps continue to be no
7 impacts.

8 I was basing my testimony on the
9 case, the Zoning Commission case where I had
10 heard from the Ward Transportation Planner in
11 that particular block where Matthews Memorial
12 is located, that the speeds are quick, fast,
13 verging on very unsafe. Again, you know, we
14 conduct the occasional field visit and it does
15 help us out significantly, as much as it may
16 seem anecdotal. However, it seems as though
17 what the applicant has stated today certainly
18 it is important. And does this particular
19 address come into the picture when all of the
20 other growth in the neighborhood certainly
21 comes in our mind? I don't know that. And so
22 I was going with a much safer and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 precautionary measure than perhaps what the
2 Applicant has stated here.

3 BZA CHAIR MILLER: And when is the
4 growth going to come online? I mean because
5 we term these. So you know, we may take
6 another look at this say in five years and
7 seven years and maybe could make a different
8 decision then. So, that is why I ask the
9 question.

10 MR. JENNINGS: Well, if I can
11 defer to the Office of Planning, you know,
12 Steve may be knowledgeable as to when St.
13 Elizabeth's campus may be fully occupied.

14 MR. COCHRAN: If the stimulus bill
15 actually does provide enough money for
16 Homeland Security to be constructed, I cannot
17 give you an exact date. I can only remind you
18 that it would typically take for a project
19 that size a year to a year and a half for the
20 rest of construction drawings to be finished.
21 It is going to have to be rehabilitated,
22 preservation concerns, etcetera. It seems

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 very unlikely that there would be anyone
2 moving in before four years from now, unless
3 there happens to be one or two or three
4 buildings on the site that can be fairly
5 quickly rehabilitated. But that would still
6 not bring Homeland Security up to its full
7 compliment on the site.

8 Whether they would -- I certainly
9 wouldn't want to say that the site would not
10 be at full occupancy seven years from now,
11 however, at the end of the term or ten years,
12 certainly, that you are thinking about. And
13 as for traffic projections, I certainly have
14 none. It is simply an observation that people
15 come in from the suburbs to work at Homeland
16 Security and one of the main routes from
17 Virginia would likely be Martin Luther King,
18 coming off of 295.

19 MR. COCHRAN: Madam Chair, if it
20 does help, you know, we have heard the
21 occasional traffic projection for this site
22 when it is all built out. You know, it stands

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to be one of the biggest traffic generators in
2 the entire city, when it is completely built
3 out. I mean, we are looking at a ballpark
4 figure of upwards of 5,000 vehicles traveling
5 to the site every day. I don't know the
6 amount of trips back and forth from the site,
7 do people leave the site and come back, those
8 types of things. But we certainly are aware
9 of some of the bigger generators that are
10 going to happen in the next five to ten years
11 and we constantly hear about this one. So,
12 that is kind of what I based some of my
13 testimony on today, too.

14 MS. RASHEED: Can I add something?
15 As we project the growth of the neighborhood,
16 can we also look at my possible projection of
17 growth? So, I would have to adapt according
18 to whatever is going on, whether it means
19 shuttle buses, whatever. But as the
20 neighborhood grows, I have to grow and adapt
21 to it as well. So I just want to mention
22 that, too.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Okay. I think
2 it was going towards the safety of the --

3 MS. RASHEED: I know but I have to
4 address that, too.

5 BZA CHAIR MILLER: Yes.

6 MS. RASHEED: In terms of the
7 business, I have to address that as well.

8 BZA CHAIR MILLER: Right. I
9 assume --

10 MS. RASHEED: I just want to say
11 as you project that growth, I project a growth
12 for myself as well, --

13 BZA CHAIR MILLER: And it may be
14 that --

15 MS. RASHEED: -- and making the
16 necessary adjustments.

17 BZA CHAIR MILLER: Right. You
18 might decide I don't want to have drop-off
19 here anymore because it is getting too busy.

20 MS. RASHEED: Right.

21 BZA CHAIR MILLER: You can make
22 that decision also.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I just want to ask before we move
2 off this subject, you know, we are talking
3 about an alternative being in the Children's
4 Center Parking Area or property. Is there
5 another place for drop-off that is not on
6 private property?

7 MS. RASHEED: Can I mention too,
8 these 20 additional children are older
9 children, too. Some of them are going to be
10 riding the bus by themselves. So, I don't
11 want you to think very, very young what we are
12 talking about. I am talking about additional
13 older children.

14 So I don't really foresee a big
15 problem with that because the bus stop is
16 right at the site and some of them will be
17 able to do that. So that is another issue.
18 We are not talking about babies, we are
19 talking about elementary school children and
20 older children.

21 BZA CHAIR MILLER: Are those the
22 ones --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. RASHEED: Those are the ones

2 --

3 BZA CHAIR MILLER: You don't know
4 that those are the --

5 MS. RASHEED: -- that will make up
6 the additional 20 that we are talking about
7 that we are looking at in terms of traffic --

8 BZA CHAIR MILLER: Okay.

9 MS. RASHEED: -- and different
10 things like that.

11 BZA CHAIR MILLER: But can you
12 tell me, we are not that familiar with your
13 property, we don't have that in the record
14 really about where these alternate drop-offs
15 could be. So, we were discussing the
16 Children's Center property and we had some
17 concerns about putting in a condition that
18 affected somebody else's property. And so is
19 there another place in the rear or on the side
20 of your property for drop-off?

21 MS. RASHEED: We have space in the
22 rear.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: In the rear.

2 MS. RASHEED: We have space in the
3 rear.

4 BZA CHAIR MILLER: Okay.

5 MR. COCHRAN: Madam Chair?

6 BZA CHAIR MILLER: Yes.

7 MR. COCHRAN: DDOT seems
8 comfortable with the existing arrangements for
9 the existing 40 children. Would it be
10 possible to simply ask the applicant to
11 provide a diagram and a letter from the
12 National Children's Center saying, if the
13 Children's Center so agreed, saying that they
14 have permission to provide a drop-off for 20
15 children in their parking lot wherever, and
16 have that simply be submitted as supplemental
17 information and then have a decision meeting
18 at another date?

19 BZA CHAIR MILLER: Yes, that is
20 very possible. Is that something that you
21 would like to pursue?

22 MS. RASHEED: I can.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Okay because
2 what Mr. Cochran is saying is we don't need
3 another hearing but we would need this
4 additional information if that is really the
5 best alternative here, you know for the
6 additional 20.

7 MS. RASHEED: Okay and the
8 information that you said from the other
9 property, that is not going to work. There is
10 a lady that is next door that has agreed to
11 let me use her parking lot. That is not
12 acceptable. The National Children's Center
13 would be?

14 I submitted a letter where there
15 is a resident that is right next to my
16 property that has, she can't drive, she
17 doesn't have anybody to come to her parking
18 lot, that has agreed to give me spaces right
19 next to the property for use of the school.
20 Is that acceptable? That is not acceptable
21 but National Children's Center is? In terms
22 if they came in the rear, those two spaces

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 could be used for drop-off. And I have a
2 document that she has signed giving me
3 permission to do that.

4 MR. COCHRAN: It would be, that
5 would almost have to be attached to the deed.
6 If she sold the house, you would then not have
7 a drop-off. The Children's Center is not
8 likely to move. So it seems like it would be
9 easier to get a permanent arrangement with the
10 Children's Center. It wouldn't be, you
11 wouldn't be at as much risk of having
12 conditions change and your then being out of
13 compliance with whatever a BZA order would be.

14 If however, the owner of that
15 property is willing to encumber the property
16 with a permanent condition that the rear of it
17 can be used for drop-off for your facility,
18 then it seems as though that would be
19 acceptable.

20 MS. RASHEED: Well I submitted a
21 letter that she did sign stating that.

22 MR. COCHRAN: Right. But if she

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is not living there, if she doesn't own the
2 building, that doesn't guarantee that the next
3 person would have the same arrangement with
4 you.

5 MS. RASHEED: But I guess this is
6 all in hindsight because National Children's
7 Center could sell to someone else. I am
8 saying how do we control that and how do we
9 know that?

10 I mean, if she sells that and that
11 is one of the conditions of the next resident
12 then I have to approach that then and then
13 come, you know, deal with that. But if we are
14 looking at now and she has been there, she has
15 been there as long as I have, her daughter has
16 attended the school. So she has invested
17 interest in making sure that we are able to be
18 accommodated as much as possible. I mean, who
19 is to say she is not going to be there?

20 MEMBER DETTMAN: Madam Chair?

21 BZA CHAIR MILLER: Yes.

22 MEMBER DETTMAN: I think the safer

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 alternative is what DCOP is suggesting, the
2 use of the National Children's Center. We
3 have testimony, I believe, in the record, that
4 they are currently using the National
5 Children's Center for parking.

6 We also have in the record from
7 2006 the Homeowners Association being very
8 clear they don't want the common areas used
9 for pick-up and drop-off. It is fine that you
10 have these parking spaces on this woman's
11 property but you need to get there and that
12 requires using the common space.

13 So, unless you have a letter from
14 the Homeowners Association saying that the
15 situation has changed since 2006, I think the
16 National Children's Center is the safer
17 alternative to pursue.

18 MS. RASHEED: Okay.

19 BZA CHAIR MILLER: Okay, I kind
20 of, I missed a little bit there. I think Mr.
21 Dettman is more on top of what happened with
22 the Homeowners Association. I am just looking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 at your letter from your neighbor.

2 MS. RASHEED: Uh-huh.

3 BZA CHAIR MILLER: First of all, I
4 understand your question why can't that person
5 as well, why can't you park there, I mean, do
6 your drop-off there. I guess my reaction
7 would be if you know if you got a letter from
8 your neighbor you could. But I mean, we might
9 consider that. That is your parking. But if
10 she did move, as Mr. Cochran suggested could
11 happen, you would have to come back to the
12 Board with another arrangement in order to
13 keep operating. That is how I see it. I
14 mean, unless you do this deed thing but I
15 don't see that happening.

16 MR. COCHRAN: Maybe we are all
17 being too legalistic but there are concerns
18 about insurance. If you are letting your
19 property be used for drop-off and --

20 BZA CHAIR MILLER: Okay.

21 MR. COCHRAN: -- your insurance
22 company doesn't understand that, you are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 incurring a real potential liability. And I
2 am not sure that the neighbor understands
3 that.

4 BZA CHAIR MILLER: Yes, usually
5 institutions do do this kind of thing. They
6 have insurance coverage and things like that.
7 So that does sound like the best situation if
8 you can get it. Also, this letter just talks
9 about employees parking so you would have to
10 get a different letter.

11 MS. RASHEED: Right.

12 BZA CHAIR MILLER: But do you
13 think that since you have this partnership
14 with them, that this is likely to happen?

15 MS. RASHEED: Yes, it just seems
16 like it is just getting drawn out. I have a
17 question because I need to get back to
18 business. In terms of the two that are
19 already in operation, can today a decision be
20 made in terms of the child development center
21 and private school and just let me address the
22 3332? Because it is like I am constantly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 coming back and I need to be able to have that
2 for the two buildings that I am dealing with.
3 Can a partial exception be made today, in
4 terms of my existing buildings that are
5 already in operation? We don't have to go
6 through all of that and I bring in the
7 information for the 3332?

8 Because it is like what is
9 important to me right now is that I need child
10 development/private school for the two
11 existing buildings as I work on this last one.
12 So, I don't know how drawn out this is going
13 to get in terms of if I come back, this is it
14 or there is some other things. Is it possible
15 for you to do that?

16 We are talking about what,
17 another month or --

18 BZA CHAIR MILLER: It's almost
19 really up to you how quickly you do this
20 because I think that we are at the point where
21 we have all of the information but that one
22 document saying that you can have drop-off on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Children Center's property.

2 MS. RASHEED: Okay.

3 BZA CHAIR MILLER: And once you
4 provide that document, the Board will schedule
5 a decision and rule on it. And you don't have
6 any opposition so the order can get out
7 quickly.

8 MS. RASHEED: Okay, so the posting
9 and all of that, do I have to do all of that?

10 BZA CHAIR MILLER: No. No more
11 posting. No.

12 MS. RASHEED: Okay.

13 BZA CHAIR MILLER: All you need to
14 do is submit that document but you need to
15 serve it on the ANC. They are a party to the
16 case.

17 MS. RASHEED: Serve it to the ANC
18 again?

19 BZA CHAIR MILLER: Uh-huh. Well,
20 it is a new document. It is a new parking
21 arrangement.

22 MS. RASHEED: Okay. Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Mr. Cochran?

2 MR. COCHRAN: I can get with the
3 Applicant afterwards to explain what the
4 procedures would be in more detail.

5 BZA CHAIR MILLER: Okay because
6 really the Board will be ready to rule once we
7 have that document. And we really are looking
8 at all three buildings together, the impact of
9 them.

10 MS. RASHEED: Right.

11 BZA CHAIR MILLER: But unless
12 Board members have any other --

13 ZC CHAIR HOOD: I just would say,
14 Madam Chair, I would agree but I was wondering
15 if maybe we can get all that done so we can
16 deal with it next Tuesday.

17 BZA CHAIR MILLER: If she can get
18 that into the record in time.

19 ZC CHAIR HOOD: Yes, because I
20 don't think there is any more notice to anyone
21 else. I think and that would keep in fashion
22 with what she is trying to do. And the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 reality of it is I know I will be here next
2 Tuesday.

3 BZA CHAIR MILLER: Me, too. And
4 the ANC is in support.

5 MS. RASHEED: Okay.

6 BZA CHAIR MILLER: I mean, unless
7 the ANC all of a sudden had a concern with
8 that parking arrangement but I don't think so.
9 It is private -- with Children's Center, I
10 don't anticipate that. So, could you do, to
11 be in accordance with the rules you need to
12 give them a copy of that but that is good for
13 them to know that that is where one of the
14 drop-offs would be.

15 MS. RASHEED: Okay.

16 BZA CHAIR MILLER: Any other
17 questions? I guess and also if you would
18 submit with that, you know, exactly what you
19 would like us to consider the condition to be,
20 otherwise we will figure it out. But if you
21 give us this letter authorizing drop-off there
22 and then you say that you would like a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 condition saying that drop-off will be divided
2 between Martin Luther King, Junior in front,
3 or you can figure it out, Ms. Rasheed.
4 However you want us to consider the condition
5 related to drop-off.

6 MS. RASHEED: Okay, will there be
7 a consideration to split it? That will still
8 remain, the way it is, can that stay the same
9 and I am dealing with the additional children
10 with the additional permission letter document
11 that you need from them. Am I understanding
12 that before I leave?

13 BZA CHAIR MILLER: Okay, the Board
14 hasn't deliberated yet.

15 MS. RASHEED: Oh.

16 BZA CHAIR MILLER: We have heard
17 what you have said. It sounds like that that
18 is probably a good plan. So what you should
19 do is propose that as a condition. This is
20 what you would like and you know, we have
21 heard evidence anyway. If you want to say
22 anything else to support it, you can. But you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know, we have heard evidence that it has been
2 this way for 27 years or whatever. But then
3 we have heard that it is changing.

4 So the other issue we will be
5 considering that we have heard about today
6 that we didn't decide yet would be the term.

7 MS. RASHEED: Okay.

8 BZA CHAIR MILLER: If you have any
9 other comments about that. So otherwise, we
10 have got the number of children, faculty, no
11 parking relief required. I think that we have
12 everything else that we need.

13 Any other thoughts? How about how
14 much time do we need for this?

15 MR. COCHRAN: It seems appropriate
16 to ask the Applicant how soon they think they
17 can get that letter.

18 MS. RASHEED: I am going to start
19 working on it when I leave here. I don't know
20 they can get it to me but I am going to start
21 on it immediately. So, --

22 MR. COCHRAN: Would it be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 appropriate for the Applicant, for you to come
2 back in a few minutes after, give the
3 Applicant a couple of minutes to make a phone
4 call and see what the Children's Center thinks
5 they can do and that would, perhaps would help
6 determine when you would have a decision
7 meeting?

8 MS. RASHEED: Well I have to also
9 meet with the ANC.

10 MR. COCHRAN: No, actually you
11 don't need to meet with the ANC.

12 MS. RASHEED: Oh, okay.

13 MR. COCHRAN: You are just
14 providing them with an informational copy.

15 BZA CHAIR MILLER: You know what I
16 think we are going to do is we are going to
17 set this for a decision for next Tuesday. And
18 if for any reason it needs to be pushed off,
19 we will just push it off later.

20 MS. RASHEED: Okay.

21 BZA CHAIR MILLER: Because I think
22 the concern is that there not be a delay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But you know, if you are not ready, you are
2 not ready and if you just if could let us know
3 if you have a better idea if we are not going
4 to make next Tuesday. Because we would have
5 to have the document by Monday at the latest.

6 SECRETARY MOY: Yes, I would take
7 it up, since it is a single document
8 submission.

9 MS. RASHEED: Okay.

10 BZA CHAIR MILLER: Okay, Monday
11 noon or something? Yes, but make sure you
12 give it to the ANC also.

13 MS. RASHEED: Okay.

14 BZA CHAIR MILLER: Yes, and then
15 they will have an opportunity to respond but
16 they probably won't. You know, --

17 MS. RASHEED: Okay.

18 BZA CHAIR MILLER: -- unless they
19 are concerned about it, then they will let us
20 know.

21 MS. RASHEED: Okay.

22 BZA CHAIR MILLER: Okay, so we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 will put it up for next Tuesday and any
2 problems, just contact Mr. Moy and we will
3 reschedule.

4 MS. RASHEED: Okay.

5 VICE CHAIRMAN LOUD: And you may
6 not want to indicate to the Children's Center
7 that the deadline is Monday at noon. Just,
8 that is your deadline to get it back to us but
9 hopefully they can get it to you much sooner.

10 MS. RASHEED: Okay. Thank you.

11 BZA CHAIR MILLER: Okay, good
12 luck. Thank you very much.

13 We are just going to take a five
14 minute break and the next case can come up and
15 get ready or take a quick break before we
16 start as well.

17 (Whereupon, the foregoing
18 proceedings went off the record at
19 11:32 a.m. and went back on the
20 record at 11:58 a.m.)

21 BZA CHAIR MILLER: Okay, we are
22 back on the record. Ms. Bailey, whenever you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 are ready to call the next case.

2 MS. BAILEY: Madam Chair, it is
3 application number 17896. It is the
4 application of the Washington Ethical Society
5 and it is pursuant to 11 DCMR Section 3104.1
6 for a special exception to allow a child
7 development center, that is for 40 children
8 and 11 staff, under Section 205 at premises
9 7750 16th Street, Northwest. The property is
10 zoned R-1-B -- I'm sorry. It is zoned R-1-A
11 and it is located in Square 2749-F, Lot 81.

12 Madam Chair, there is a request
13 for party status in this application. Ms.
14 Ethel Hackney.

15 BZA CHAIR MILLER: You are Ms.
16 Hackney? You can come and take a seat at the
17 table, if you like. That will be one of the
18 first issues we are considering.

19 Okay, in the meantime, we can
20 start with introduction for those of you who
21 are already at the table.

22 REVEREND POPPEI: I am Reverend

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Amanda Poppei. I am the senior leader at the
2 Washington Ethical Society, the senior clergy
3 person there.

4 MR. GELL: I am Stephen Gell, the
5 attorney for the Washington Ethical Society.

6 MS. HURT: And I am Joanne Hurt.
7 I am the Executive Director of Wonders
8 Childcare.

9 MR. GELL: Madam Chairperson, with
10 us is Mr. Osborne George who is our traffic
11 consultant. And we would request at the
12 appropriate time that he be recognized as an
13 expert witness.

14 BZA CHAIR MILLER: Okay. And is
15 anybody here from the ANC? Okay, who? Is
16 someone authorized to represent the ANC? Do
17 you want to come forward, one of you?

18 MR. TOLLIVER: Where do you want
19 me?

20 BZA CHAIR MILLER: Oh, wherever
21 you would like.

22 MR. TOLIVER: Good afternoon. My

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 name is Dwayne Toliver. I am Commissioner for
2 ANC 4A02 in Shepherd Park, which abuts the
3 district, single member district next to mine.
4 And Karl Kennedy is also here in the back. He
5 is Commissioner ANC 4A01.

6 BZA CHAIR MILLER: Okay and what
7 is your last name?

8 MR. TOLIVER: Toliver, T-O-L-I-V-
9 E-R.

10 BZA CHAIR MILLER: Okay, thank
11 you.

12 MR. TOLIVER: The first name is D-
13 W-A-Y-N-E.

14 BZA CHAIR MILLER: Okay, great,
15 thank you.

16 MR. TOLIVER: You're welcome.

17 BZA CHAIR MILLER: Okay, so the
18 first item that is before us is the request
19 for party status by Mr. Hackney.

20 MS. HACKNEY: Yes.

21 BZA CHAIR MILLER: Could you --
22 your address is 7742 16th Street, Northwest?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. HACKNEY: Yes.

2 BZA CHAIR MILLER: Okay. Yes, we
3 have before us a party status application that
4 just came in yesterday. Is that right?

5 MS. HACKNEY: Well that's not my
6 fault. I can prove that by Ms. Bailey here.
7 I had called several times earlier and asked
8 and I was told that they didn't do that
9 anymore all I needed to do was show up. And
10 I called again about two weeks ago and I was
11 told the same thing. But I came down here
12 Thursday and the lady at the desk asked me if
13 I wanted to talk to Ms. Bailey. I didn't even
14 know this was a question. I just wanted to
15 ask her another question. And she oh, no,
16 they haven't changed that. You have to apply
17 in advance, two weeks in advance. And I asked
18 the lady right there at the desk who admitted
19 that she didn't have the correct information.
20 She admitted she had given me incorrect
21 information. That is why my application is
22 late because I was told that the process had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 changed and that it was no longer necessary.
2 Just to come in and sign the card, that is
3 what I was told.

4 BZA CHAIR MILLER: Well if you
5 just want to testify in this case, then --

6 MS. HACKNEY: I want to testify as
7 a party.

8 BZA CHAIR MILLER: Well, let me
9 just say there are two different ways to
10 testify. One is just to testify as an
11 individual and you don't have to sign anything
12 in advance. You just come in and you can
13 testify. And I think that is probably, you
14 know, whoever you were talking to was thinking
15 about. So, if you just want to testify --

16 MS. HACKNEY: I used the term
17 party. I wanted to be a party.

18 BZA CHAIR MILLER: Right.

19 MS. HACKNEY: Well the other thing
20 I just heard this morning in your introduction
21 that as just a citizen, I am entitled to three
22 minutes. As a party, I am entitled to more.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 That is a different because I was coming
2 hoping I would be a party and then I think I
3 heard somebody if I am not a party, I only
4 have three minutes. So I would like to know
5 what I am.

6 BZA CHAIR MILLER: Okay well we
7 can consider your party status application.
8 And I just want to tell you there are
9 differences. And if it is just a matter of
10 wanting a few more minutes than three minutes,
11 it doesn't mean that you necessarily have to
12 be admitted as a party.

13 But if you are admitted as a
14 party, you have all the rights as the same as
15 the ANC, you can cross-examine.

16 MS. HACKNEY: I have been a party
17 before to other cases and that is what I asked
18 for but the person to whom I talked didn't
19 realize that the procedure had changed. They
20 told me just come. And I only found out
21 Thursday that the procedure has not changed,
22 that people there had just gotten

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 misinformation.

2 BZA CHAIR MILLER: Okay, yes.

3 MS. HACKNEY: The idea of asking
4 questions, yes, I want that privilege.

5 BZA CHAIR MILLER: Okay, so the
6 Board would have to consider because it is
7 late, whether there is good cause to consider
8 your party application and whether there would
9 be a prejudice to any of the other parties.
10 So, we will consider that in the mix of
11 considering also whether you should get party
12 status, whether you are uniquely impacted.

13 MS. HACKNEY: I am unique. I am
14 50 feet from them.

15 BZA CHAIR MILLER: Okay. Where
16 are you?

17 MS. HACKNEY: 7742 16th Street.

18 BZA CHAIR MILLER: No, I mean, how
19 are you 50 feet from where?

20 MS. HACKNEY: From their property.

21 BZA CHAIR MILLER: From the front
22 of their property?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. HACKNEY: Pardon? Yes, I do.
2 I owned it since 1963, when where they
3 occupied was a vacant lot.

4 BZA CHAIR MILLER: And how are you
5 impacted by that? If they have this child
6 development center, how will you be impacted?

7 MS. HACKNEY: It is not just the
8 child, it is the whole access, the whole
9 thing. Many time I have sat in my alley
10 waiting. See, you know, 16th Street, we are
11 not allowed to park there during any rush
12 hour. So we all use our lots and our garages
13 in the back where we park. I have sat in the
14 alley quite a few times waiting for somebody
15 to get out of the building, come out and move
16 their car so I can get in or out of my place.
17 That is a major number one nuisance.

18 Other problems they have had
19 there, not these little children, I guess, but
20 they have had all kinds of problems with some
21 of the other people they have had there like
22 drinking and setting fires in the garage. Not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 intentional fires, just dropping their
2 cigarette butts. The high school kids they
3 had there were a real abomination of
4 abomination.

5 But what I am saying is it is this
6 kind of thing. People are actually parking on
7 my parking pad or parking in the front of my
8 garage and this kind of thing that we put up
9 with through the years because they only have,
10 as they had said, 12 parking spaces. And many
11 times your guests come, they can't even park.

12 Am I testifying now or just
13 answering your questions?

14 BZA CHAIR MILLER: No, we don't
15 want you to testify now, no.

16 MS. HACKNEY: Okay.

17 BZA CHAIR MILLER: Just get an
18 idea of why you are more impacted than the
19 general public.

20 MS. HACKNEY: Okay.

21 BZA CHAIR MILLER: Do Board
22 members have questions before I ask the other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 parties what their position is on this?

2 VICE CHAIRMAN LOUD: Thank you,
3 Madam Chair. Good morning. My name is Marc
4 Loud, as the Chair indicated earlier.

5 There is no question in my mind,
6 at least from what you have testified in your
7 proximity to the Washington Ethical Society
8 that you are probably within our Section 3106.
9 But one of the observations I have made since
10 being on the BZA is that parties, the maximum
11 benefits that come from party status often
12 come when one is prepared to take advantage of
13 putting on witnesses, for example, cross-
14 examining the other person's witnesses. And
15 I just wanted to ask you in connection with
16 that, and I know you are familiar with it
17 because you have been a party in other cases,
18 but is that something that you think you
19 intend to do this morning?

20 MS. HACKNEY: Well it depends on
21 what issues come up whether or not I ask
22 questions. I would like the privilege of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 asking questions, --

2 VICE CHAIRMAN LOUD: Okay.

3 MS. HACKNEY: -- if an issue
4 arises that I need more information about.

5 VICE CHAIRMAN LOUD: Okay. All
6 right. Okay, thank you. Thank you, Madam
7 Chair.

8 BZA CHAIR MILLER: Mr. Gell?

9 MR. GELL: Yes, Madam Chairperson,
10 I would really interpose only technical
11 objections. That is, the lateness of the
12 application and the fact that she is not
13 affected in any specific way that is different
14 from all of the other people in the alley. I
15 think there is a house in between her property
16 and ours.

17 We do think that over the years
18 she may well have been impacted by previous
19 uses and, obviously, we are working with all
20 of the neighbors to try and lessen those. Our
21 testimony will show that in fact our current
22 proposal is not to use the alley at all. So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we think that there really is not going to be
2 a problem from the school for Ms. Hackney and
3 that she would be well satisfied. This has
4 all come out in meetings we have had with
5 neighbors at the ANC meeting and so forth.
6 So, there has been opportunity at that time to
7 ask us questions and to challenge and so
8 forth.

9 And Ms. Hackney is very articulate
10 and I think if the Board would give her
11 additional time to state her case, that we
12 would have no objection to that.

13 BZA CHAIR MILLER: Did you try to
14 meet with Ms. Hackney when you met with the
15 other neighbors?

16 MR. GELL: Oh, yes.

17 BZA CHAIR MILLER: Just a minute,
18 Ms. Hackney.

19 REVEREND POPPEI: Ms. Hackney came
20 to our first meeting with the neighbors. I
21 will talk more about the outreach that we did.
22 But she came to the first meeting and she came

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to the first ANC meeting. And then were you
2 at the second one as well, Ms. Hackney?

3 MS. HACKNEY: Yes.

4 REVEREND POPPEI: Okay.

5 MS. HACKNEY: I testified at the
6 second one.

7 REVEREND POPPEI: At the JPDS?
8 The one that was at the JPDS?

9 MS. HACKNEY: I testified at the
10 Fort Stevens, the night that --

11 REVEREND POPPEI: Right at the
12 first meeting. And I don't think -- right.

13 MS. HACKNEY: Go ahead.

14 REVEREND POPPEI: It was the first
15 one that I went to. I don't think that she
16 was at the second ANC meeting. And then there
17 was a small working group then that was
18 created to work out the agreement with the
19 neighbors and she was not part of that. It
20 was just three neighbors were involved in the
21 working group.

22 We then split up the houses within

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the 200 foot radius to reach out to the rest
2 of the neighbors. And updates were on the
3 list serve and things like that going around.
4 And Ms. Hackney was actually due to be reached
5 out to by one of the neighbors, the person who
6 originated the agreement. I am not sure
7 whether he was able to be in touch with her or
8 not but we split up the list so that we didn't
9 have to both do everybody.

10 BZA CHAIR MILLER: Yes, Ms.
11 Hackney?

12 MS. HACKNEY: I did not know about
13 this meeting in which this agreement was
14 reached. I read about it in the Washington
15 Current, The Northwest Current and heard that
16 the neighbors had reached an agreement.

17 That is where I found out about
18 the agreement.

19 BZA CHAIR MILLER: Have you read
20 the agreement?

21 MS. HACKNEY: Pardon?

22 BZA CHAIR MILLER: Have you read

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the agreement?

2 MS. HACKNEY: I read what was in
3 The Northwest Current. That is all I have
4 read. That is how I found out about it, that
5 there had even been such a meeting. I read it
6 in The Northwest Current.

7 BZA CHAIR MILLER: Okay. Well,
8 you should probably get a copy of that
9 agreement. Because I am wondering if you read
10 the agreement, whether you are going to have
11 a concern.

12 MS. HACKNEY: Well I read what was
13 in the paper and some of it is very
14 unsatisfactory.

15 ZC CHAIR HOOD: Madam Chair, can I
16 ask Ms. Hackney?

17 BZA CHAIR MILLER: Yes, sir, Mr.
18 Hood.

19 ZC CHAIR HOOD: Ms. Hackney, while
20 this is not a requirement but do you attend or
21 participate with your local ANC commission?

22 MS. HACKNEY: I went to two

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 meetings. I don't go regularly but I went to
2 the December meeting where it had been
3 announced that this would be taken up. But it
4 was postponed. It was not to the agenda that
5 night. I went back in January and that is the
6 meeting at which I testified or spoke or
7 whatever you want to call it, at the January
8 meeting.

9 I didn't go to the -- I mean, and
10 I went -- was that January?

11 REVEREND POPPEI: That was the
12 February meeting.

13 MS. HACKNEY: February meeting. I
14 went to January meeting and it was postponed
15 from there. I had met with them I think in
16 December, whenever. I went to the January
17 meeting. It was postponed. I went to the
18 February meeting and spoke at the February
19 meeting.

20 I did not go to the March meeting
21 because the snow was on the ground. But we
22 had already spoken. I didn't think there was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a necessity to go back anyway enough to risk
2 the snow.

3 And I did not know the neighbors
4 were meeting and talking about it. I read
5 that in the paper.

6 REVEREND POPPEI: Just to try to
7 clarify a little, is that helpful?

8 The working group came out and,
9 Commission Toliver correct me if I am getting
10 this right, but came out and so we had an ANC
11 meeting in early February. And then there was
12 a special ANC meeting which was announced at
13 the end of the early February meeting, since
14 agreement hadn't been reached, a special
15 meeting for the end of February which was held
16 at JPDS. So it was a different location than
17 the regular ANC meetings.

18 At that second February meeting,
19 which Ms. Hackney did not attend --

20 MS. HACKNEY: I didn't know about
21 it.

22 REVEREND POPPEI: -- that is where

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the, out of that meeting then the working
2 group was formed. So folks from that meeting
3 ended up populating the working group.

4 MS. HURT: And it was at that
5 meeting that it was announced that the working
6 group was put in charge of it.

7 BZA CHAIR MILLER: Yes,
8 Commissioner.

9 MR. TOLIVER: Good afternoon,
10 again. Just to be clear, the working group
11 included myself along with three of the
12 neighbors and representatives from WES, as
13 well as WES' counsel and Joanne Hurt from
14 Wonders.

15 We reached out to the community in
16 an effort to identify neighbors that were
17 willing to work with us in drafting the
18 neighborhood cooperation agreement. And a lot
19 of door-to-door knocking went on to try to
20 reach out to neighbors and to speak with them.

21 And so I am not sure if Ms.
22 Hackney was available at the time but there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 were also drafts of the agreement which were
2 circulated among the neighbors. And Ms.
3 Hackney, if you didn't get a copy of that
4 agreement then that is unfortunate.

5 Again, at the end of the meeting,
6 the February meeting, it was, and there was a
7 single, there was a special meeting that was
8 to be held after I had, we had coalesced this
9 group to work out this agreement. And so the
10 concerns and objections that were voiced at
11 the ANC meeting were taken into consideration
12 in the drafting of this current agreement.

13 And so Ms. Hackney's concerns
14 about, and I specifically remember her
15 eloquent testimony, was there were some
16 histories that were not favorable to her as to
17 the use of the property. We talked about the
18 use of the alley and some of other things and
19 the parking along some of the side streets.
20 So, all of those were taken into consideration
21 when we were drafting this agreement.

22 BZA CHAIR MILLER: And people who

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 were on that working group, did they have
2 similar concerns with Ms. Hackney?

3 MR. TOLIVER: Yes, there were
4 similarly situated neighbors. Some were even
5 of closer proximity and they had actually
6 signed on. I personally must have had at
7 least 50 phone calls from various neighbors
8 and a ton of emails. So I was receiving both
9 emails, as well as phone calls to incorporate
10 all of the concerns. And then I am also the
11 secretary for the ANC, so I have to take
12 minutes at the meetings. So, we tried to
13 address all of those.

14 But again, if she is not
15 satisfied, if Ms. Hackney isn't satisfied,
16 then she is well within her rights to object
17 or raise concerns or anything like that. I am
18 not certain what anybody could have said -- is
19 it perfect? No agreement is perfect. That is
20 where you reach an agreement. Two sides come
21 together and try and compromise. But I think
22 the framework within the agreement is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 satisfactory to address people's needs and
2 there are protective measures in the agreement
3 to address situations such that if there is a
4 violation, if there are objections or
5 problems, then we can quickly get involved in
6 that. And the ANC Commissions, Whatley,
7 myself and Kennedy, have each signed on to the
8 agreement and we would be representing the
9 neighbors and their interests if there is a
10 problem going forward.

11 BZA CHAIR MILLER: And are you
12 prepared to represent their interests at this
13 hearing, should issues come up with respect to
14 issues that Ms. Hackney is concerned about?

15 MR. TOLIVER: I represent the
16 constituents, not any particular group.

17 BZA CHAIR MILLER: But you are
18 familiar with the impacts on those properties?

19 MR. TOLIVER: Lord knows, yes.

20 BZA CHAIR MILLER: Okay.

21 MS. HACKNEY: Can I say something
22 now or later?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Yes, Ms.
2 Hackney.

3 MS. HACKNEY: In terms of all
4 these phone calls that Mr. Toliver has gotten,
5 there are not that many people who would be
6 directly affected by this. So people I am
7 talking about, myself, for instance, we are
8 right there.

9 Now, I took a list of the people
10 who had signed on in support. They live, many
11 of them live far away. There is no way they
12 are going to be affected by what goes on in
13 that alley.

14 BZA CHAIR MILLER: I heard Mr.
15 Gell say that the house in between you and
16 their property --

17 MS. HACKNEY: There is one house
18 there. And there are some other issues there
19 which I would rather not get into.

20 BZA CHAIR MILLER: Ms. Hackney,
21 let me ask you this. Have you read their
22 application?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. HACKNEY: Pardon?

2 BZA CHAIR MILLER: Have you read
3 the application?

4 MS. HACKNEY: The application
5 here?

6 BZA CHAIR MILLER: Yes.

7 MS. HACKNEY: I looked at it in
8 the office the other day. I guess maybe I --
9 yes, I read it. Not fully.

10 BZA CHAIR MILLER: Because see, my
11 concern is that a party status is a much
12 higher level of participation and
13 responsibility. And it seems to me that I
14 don't know that you are prepared to do that in
15 that you haven't read the voluntary agreement
16 that is the crux of their --

17 MS. HACKNEY: I read it.

18 BZA CHAIR MILLER: -- case there.

19 MS. HACKNEY: Well I read what was
20 in the paper.

21 BZA CHAIR MILLER: But that is not
22 the agreement.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. HACKNEY: But they specified
2 things here that they agreed on. I don't know
3 how much is left off.

4 MR. TOLIVER: Here.

5 MS. HACKNEY: Oh, this is a copy
6 of the agreement here?

7 MR. TOLIVER: May I made a
8 suggestion?

9 BZA CHAIR MILLER: Sure.

10 MR. TOLIVER: I believe if Ms.
11 Hackney has a copy of the agreement and she
12 turns to the sections where the conditions are
13 set forth, I think at that point then, she
14 could make a better informed decision as to
15 whether or not the agreement will satisfy her
16 needs. It would not take that long to go
17 through it but I think it is pretty
18 comprehensive. And if she has objections --
19 it starts on page two and it goes only, it
20 goes through page six. And I believe that
21 through item number 18. And so in addition,
22 I think if she could just read those points,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I think that and between now and the time that
2 she gets her turn in the barrel or at the
3 mike, her concerns could be assuaged.

4 That is just a suggestion.

5 ZC CHAIR HOOD: Madam Chair, I
6 think when we look at, at least when we look
7 at party status we look at number six and I
8 really can't make out all of what it says but
9 I know it says only two people who sign sheets
10 of support in the area which would be directly
11 affected by this school, none of the, I think
12 that is ANC, AVC, line -- but anyway, I am not
13 sure what it says. But I think for me, that
14 is the threshold point, how she is more
15 affected than the other neighbors in the area.

16 And I am not sure if that has been
17 answered satisfactorily for my benefit because
18 I can't really make all of it out. Maybe if
19 I can ask Ms. Hackney if she can expound on
20 how she is more affected for this proposal
21 than anyone else.

22 MS. HACKNEY: I don't know -- yes,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I can tell you how I am more affected than
2 most people. I don't know who signed the
3 agreement. I don't know who was at the
4 meeting.

5 But I do know for instance, two
6 people who live on the alley, one of them is
7 the house at 16th and Jonquil but his house
8 actually faces Jonquil Street and they park on
9 Jonquil Street. Although they are neighbors
10 within the block, they don't have to come down
11 that alley.

12 The other end of the block is
13 another neighbor who is directly next door.
14 She parks in her yard. She is at 16th and
15 Kalmia. She turns right into the alley and
16 then immediately into her yard beside her
17 house. She doesn't have to come through the
18 alley. I can't get to my garage without
19 through the alley. Those are two of them,
20 the only three neighbors, direct neighbors who
21 signed on. And only one, other than me, well,
22 I mean on those sheets you had in the office,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you had only two direct neighbors in the
2 alley.

3 ZC CHAIR HOOD: Okay but again I
4 think that is the point, how you are more
5 affected than anyone else.

6 MS. HACKNEY: And they do not
7 have, the other two do not have to go through
8 that alley.

9 ZC CHAIR HOOD: Okay.

10 MS. HACKNEY: I am in the middle
11 of the block.

12 ZC CHAIR HOOD: Okay, thank you.

13 MS. HACKNEY: Thank you.

14 BZA CHAIR MILLER: Well I guess I
15 would ask my board members what they think
16 about Mr. Toliver's suggestion and about Ms.
17 Hackney reading the relevant portions of the
18 voluntary agreement.

19 My concern is, I understand where
20 Mr. Hood is coming from, basically. You look
21 like you will be impacted. You live very
22 close to the school and you will be impacted.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And that is basically, that is key grounds for
2 party status.

3 But on the other hand, inherent to
4 party status if a responsibility to
5 participate in the proceedings as a prepared
6 party like the Applicant and the ANC. And it
7 does not sound like you are anywhere near that
8 because you haven't even read the voluntary
9 agreement.

10 MS. HACKNEY: I didn't know there
11 was one --

12 BZA CHAIR MILLER: Right.

13 MS. HACKNEY: -- until I read it
14 in the paper.

15 BZA CHAIR MILLER: See, that --
16 and the point is, individuals can participate
17 in our BZA proceedings without being a party
18 if they are not at that level of preparation.
19 And that is fine.

20 And I think what Mr. Gell was
21 saying, the fact that you are so close to the
22 property and will be impacted, another way for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you to participate would be to give you a
2 little more time than the three minutes to
3 testify.

4 MS. HACKNEY: Well see, I didn't
5 know these meetings were going on. I went to
6 the meeting at the Ethical Society. I went to
7 two ANC meetings. I didn't know about any
8 other meetings. I could not have gone. I did
9 not know they were held.

10 BZA CHAIR MILLER: Okay but the
11 other thing is, these proceedings are not
12 fishing expeditions. They are not time for
13 people who don't know about the project to
14 start asking questions about the project.
15 They are legal proceedings in which the
16 Applicant has a burden of proof and they are
17 making their case and other parties have a
18 chance to, you know, cross-examine and put on
19 their own cases about the application.

20 And I guess all I am saying to you
21 is that I don't hear that you are really ready
22 to do that. So, I would like to ask you one,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 if you would consider us giving you more time
2 to testify as being more impacted than some
3 others or if you want to take the time to read
4 the voluntary agreement and see if that
5 addresses your concerns.

6 ZC CHAIR HOOD: Madam Chair, can I
7 just ask?

8 BZA CHAIR MILLER: Yes.

9 ZC CHAIR HOOD: And I know you are
10 a very fair chair person so I am sure while
11 she may not be granted party status, it will
12 be just like she has it.

13 But I want to ask Commissioner
14 Toliver, not having had an opportunity to read
15 through that, you have heard a little bit of
16 a snapshot of what Ms. Hackney has mentioned
17 in some of the issues.

18 MR. TOLIVER: Yes.

19 ZC CHAIR HOOD: Is that addressed
20 in this --

21 MR. TOLIVER: Yes.

22 ZC CHAIR HOOD: -- very well done

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 document that I haven't read yet?

2 MR. TOLIVER: Yes, sir. And
3 moreover, the Commissioners represent the
4 constituents and not either Wonders or WES.
5 And it is in our interest to make certain that
6 our constituents' concerns are heard. So to
7 the extent that here is a problem and Ms.
8 Hackney -- she could sign on to the agreement
9 today and then have party status within the
10 agreement to bring an action if it were in
11 violation. And I would invite her to do that
12 if she were comfortable with reading the
13 agreement and signing it.

14 But it our obligation to represent
15 our constituents. And so if she is
16 complaining, then we need to step up and
17 respond to her complaints.

18 ZC CHAIR HOOD: I would then also
19 agree with what Commissioner Toliver has
20 fashioned. I think that is a good way to move
21 and give her an opportunity to read this and
22 me the opportunity also to read it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: I mean, you
2 know, it sounds like we are taking a long time
3 with this but sometimes when we actually admit
4 status to somebody who really isn't prepared
5 for it, it really takes a long time to get
6 through the proceedings because they don't
7 understand what they are supposed to do.

8 Another option, I would say, and I
9 am not sure if this is what you meant, Mr.
10 Toliver, but is that as the ANC, if she is
11 listening and has a question, she might be
12 able to ask you. And if you thought it was
13 appropriate, you could articulate that for
14 her, too. Is that right?

15 MR. TOLIVER: That is correct.

16 BZA CHAIR MILLER: Okay.

17 VICE CHAIRMAN LOUD: Madam Chair,
18 let me just ask the Commissioner one question.
19 The earlier agreement that sort of had been
20 worked out, I guess, had the traffic flowing
21 in a northward direction from Jonquil, in the
22 alley, --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. TOLIVER: Yes, sir.

2 VICE CHAIRMAN LOUD: -- from
3 Jonquil up to Kalmia. And then the agreement
4 came in. Most of us did not get the agreement
5 until this morning. I think some of us may
6 have gotten it yesterday but I am one of those
7 who didn't get it until this morning.

8 The part of it that I did get a
9 chance to read, took all of that planning out.
10 And the only folks that are supposed to be
11 coming through the alley are physically
12 disabled?

13 MR. TOLIVER: Yes.

14 VICE CHAIRMAN LOUD: Were there
15 any other, is there any other movement in the
16 alley in terms of drop-off and pick-up times?

17 MR. TOLIVER: Yes, sir. There are
18 expected to be about six staff members that
19 will drive and they will park in the WES
20 parking lot. WES has spaces for 13 vehicles.
21 There are currently six Wonders employees who
22 will park in that area and then there are the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 remaining parking spaces, which will be
2 utilized by the WES staff. And any other
3 parking for staff persons and it is currently
4 not expected that there would be any, but they
5 would park on the east side of Kalmia street,
6 which is located right on the northern side of
7 Shepherd Field.

8 VICE CHAIRMAN LOUD: Is that
9 different than what happens now --

10 MR. TOLIVER: It is very
11 different.

12 VICE CHAIRMAN LOUD: -- with WES
13 staff?

14 MR. TOLIVER: Well, yes, because
15 the overflow is available but that would be
16 taken and consumed by Wonder staff. And so
17 there is no use of the alley to drop off or to
18 pick up. There is even no use of driveways to
19 make a three-point turn within the
20 communities. And so they aren't currently
21 enrolled in the Wonders program any of the
22 students who are disabled. And in fact, there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is a system of fines and there is a monitor
2 that will be out there helping to direct
3 traffic and there will be placards on cars and
4 so forth so that you can identify parents
5 dropping off and picking up or just drivers
6 and vehicle information is on file.

7 And then there are quarterly
8 meetings where we will, you know, get together
9 and see how this is working, are there any
10 changes we can make. The peak hours where
11 they will have people there, there will be an
12 opportunity to adjust that 30 minute period,
13 based on the sign-in sheets that are provided
14 when they drop off the kids so that if it
15 needs to go from like 8:15 to 8:45, to 8:30 to
16 9:00, or whatever time it is, then we will
17 adjust the peak time so that we will have the
18 monitor out there during those times.

19 VICE CHAIRMAN LOUD: Okay. Some
20 of that, I think, was originally --

21 MR. TOLIVER: The major focus was
22 the alley and that is taken out of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 equation.

2 VICE CHAIRMAN LOUD: --
3 contemplated the alley.

4 Yes, I am inclined to support, I
5 don't know if it came from Board Member
6 Dettman but wherever it originated, the
7 suggestion that we do take a little pause and
8 have them consult with one another. And I
9 think maybe, because this is a lot of stuff to
10 read in five minutes, perhaps for the parties
11 to discuss maybe leading off with some
12 conversation with the major change to the
13 whole alley, vehicle movement in the alley,
14 and pointing the party status applicant to the
15 key changes made from the earlier iteration of
16 the document. I think it makes sense to me,
17 Madam Chair.

18 BZA CHAIR MILLER: All right.
19 Well, let me just ask Ms. Hackney if that
20 makes sense to her.

21 MS. HACKNEY: Well, I was trying
22 to read this document, too. So, I didn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 really --

2 BZA CHAIR MILLER: Okay. -- get
3 the question?

4 MS. HACKNEY: -- understand
5 everything he said.

6 BZA CHAIR MILLER: Okay. What he
7 is suggesting is that we give you a few
8 minutes, take a little break again. We don't
9 want to delay this very much. If you think
10 that this a possibility for you to read the
11 document, talk to your ANC commissioner, --

12 MS. HACKNEY: Talk to who?

13 BZA CHAIR MILLER: Mr. Toliver, if
14 you would like.

15 MS. HACKNEY: Oh, okay.

16 BZA CHAIR MILLER: And see if in
17 fact your concerns are basically addressed in
18 that document. And if they are not, whether
19 it might make sense for you to talk to Mr.
20 Toliver and have him represent you as the ANC
21 and you have extra time for testimony, as
22 opposed to your jumping into this proceeding

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 as a party without any witnesses.

2 MS. HACKNEY: Is this going back
3 to the ANC? You said represent me at the ANC.

4 BZA CHAIR MILLER: He's here. No,
5 he is here. If he can articulate -- he
6 represents your ANC. If there is some concern
7 you have in there, it is an option that he can
8 bring that to our attention. They are
9 automatically a party. You wouldn't be a
10 party, you be an individual with a little more
11 time. Is that something that you want to
12 consider?

13 MS. HACKNEY: Well, I guess I have
14 no choice.

15 BZA CHAIR MILLER: No, you have a
16 choice. You have a choice. We just think it
17 might be more appropriate.

18 MS. HACKNEY: I have prepared a
19 statement. I don't know whether I can read it
20 in two or three minutes because I didn't know
21 about all of this.

22 BZA CHAIR MILLER: You brought a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 statement?

2 MS. HACKNEY: Huh?

3 BZA CHAIR MILLER: You brought a
4 statement?

5 MS. HACKNEY: I have a statement.

6 BZA CHAIR MILLER: That's fine.
7 That is what we are saying, we would not limit
8 you to two or three minutes.

9 MS. HACKNEY: Because I don't know
10 what the status is now.

11 BZA CHAIR MILLER: Okay. We were
12 talking about taking just a few minutes. Look
13 at that agreement and talk to Mr. Toliver and
14 see whether or not your concerns can be met by
15 your testifying for longer than three minutes
16 and him bringing to our attention any of your
17 concerns.

18 MS. HACKNEY: Thank you.

19 BZA CHAIR MILLER: Okay. So how
20 many minutes do we need for that?

21 ZC CHAIR HOOD: I'm sure, Madam
22 Chair, probably 15 minutes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Ten? What do
2 you think?

3 ZC CHAIR HOOD: Mr. Toliver is
4 going to be doing basically the briefing. So
5 maybe we need to ask him.

6 MR. TOLIVER: Unfortunately, I am
7 abundantly familiar with this document.

8 ZC CHAIR HOOD: Okay, so what --

9 MR. TOLIVER: And it is only eight
10 pages of text. The other verbiage from page
11 nine on are signatures and legalese as to
12 counterparts and stuff like that.

13 BZA CHAIR MILLER: So do you think
14 ten minutes?

15 MR. TOLIVER: I don't want to rush
16 Ms. Hackney at all.

17 BZA CHAIR MILLER: Okay, fine.

18 MR. TOLIVER: So as long as she is
19 comfortable, I can explain any of the
20 provisions and what its intent is, if
21 necessary.

22 BZA CHAIR MILLER: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. TOLIVER: She is already on
2 page two, I think.

3 BZA CHAIR MILLER: Okay. All
4 right, we don't want to put pressure on so we
5 are going to break. So I guess we will break
6 for 15. If we can resolve this in 15 minutes,
7 I think that will make for more expeditious
8 proceedings.

9 MR. TOLIVER: Yes.

10 BZA CHAIR MILLER: So let's see
11 what happens. Okay.

12 MR. TOLIVER: Thank you very much.

13 (Whereupon, the foregoing
14 proceedings went off the record at
15 12:31 p.m. and went back on the
16 record at 1:04 p.m.)

17 BZA CHAIR MILLER: Okay, we are
18 back on the record and we are at the beginning
19 of the third case in the morning. So if
20 anybody is here for the afternoon case, that
21 won't be for a while, at least another hour.
22 So if you want to go and come back, I just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 want to let you know that that is where we are
2 at.

3 And where are we at in this case
4 with the question of party status? Does
5 anybody have anything to report? Where are
6 you on that? Is your mike on? Is your mike
7 on? I couldn't hear you that well.

8 MS. HACKNEY: What was your
9 question?

10 BZA CHAIR MILLER: Where are we
11 with the question of your party status
12 application? Would you like to pursue it?
13 Would you like to work with Mr. Toliver of the
14 ANC?

15 MS. HACKNEY: Well, I worked with
16 Mr. Toliver and he was very helpful in terms
17 of what is on the paper. But I still would
18 like to be a party, if it is possible.

19 BZA CHAIR MILLER: Okay. All
20 right, then that is the position. I think we
21 have heard from the parties unless there is
22 anything anybody else wants to add before we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 deliberate on that.

2 We have a party status application
3 by Ms. Hackney and it is a couple of things.
4 It is late. However, Ms. Hackney says that it
5 is late because she was getting mixed
6 information and we haven't heard of any
7 specific prejudice to the parties, if she is
8 admitted.

9 We were looking into the option of
10 her possibly coordinating with the ANC in that
11 she wasn't so familiar with the voluntary
12 agreement or the case, except for what she
13 might have read in the paper or whatever.
14 However, and you know, that affects how
15 effectively you can present a case as a party.
16 But I don't know, sometimes individuals do
17 coordinate with other parties and sometimes
18 they don't.

19 So, Ms. Hackney wants to proceed
20 on her own. She has filled out a party status
21 application which shows that she certainly is
22 very close to the school or child development

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 center, within 50 feet and articulated how she
2 may be impacted.

3 Okay, what are the views of the
4 Board with respect to admitting Ms. Hackney as
5 a party?

6 VICE CHAIRMAN LOUD: Madam Chair,
7 I think she meets the criteria and I think her
8 explanation for why it was not more timely is
9 one that I find persuasive.

10 I just want to reiterate as I
11 think you have pointed it out well is that as
12 a party, there are no greater rights than any
13 of the other parties would have. And so the
14 requirement to limit cross to what was brought
15 out on direct remain relevant in the
16 questioning and bringing forward of testimony,
17 etcetera, is still in play.

18 So, I support the party status
19 request.

20 MS. HACKNEY: Thank you.

21 BZA CHAIR MILLER: Okay, others?

22 Okay, I am seeing nods. Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Okay, Ms. Hackney because you are
2 in close proximity, we are going to grant you
3 party status.

4 MS. HACKNEY: Thank you.

5 BZA CHAIR MILLER: And you know,
6 we'll see. We will give you whatever guidance
7 we can, you know, with respect to your
8 participation.

9 MS. HACKNEY: I really wanted the
10 ability to ask questions and whatnot.

11 BZA CHAIR MILLER: Okay. What we
12 will be doing though is what Mr. Loud is
13 indicating. This isn't the place to just ask
14 whatever questions you want to ask. You will
15 be allowed to ask questions that go to the
16 direct testimony that will be presented.

17 MS. HACKNEY: Yes.

18 BZA CHAIR MILLER: Okay?

19 MS. HACKNEY: Yes, thank you.

20 BZA CHAIR MILLER: Okay. All
21 right, so we will call you when it is your
22 turn to come to the table. Or else you can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 stay there if you want, actually. If Mr. Gell
2 needs the chair for witnesses or something you
3 can move. Otherwise, you can stay. And you
4 have Mr. George.

5 MR. GELL: Mr. George can sit next
6 to Ms. Hackney.

7 MS. HACKNEY: Oh, I can move.

8 MR. GELL: I think we have enough
9 room.

10 BZA CHAIR MILLER: Okay you are
11 fine. Okay, everybody is fine.

12 MS. HACKNEY: All right, thank
13 you.

14 BZA CHAIR MILLER: All right,
15 good. So why don't we turn to you, Mr. Gell,
16 for presentation of the case?

17 MR. GELL: Thank you very much,
18 Madam Chairperson.

19 I think the case that is before
20 you is a special exception for a child
21 development center to be operated by the
22 Wonder School at the Washington Ethical

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Society. There are two matters that I would
2 bring up, three matters, before I have Ms.
3 Poppei, who is the senior leader at Washington
4 Ethical Society speak.

5 And that is, first of all, in our
6 original application we had talked about
7 children two and a half to five. More
8 recently, we have changed that to one and a
9 half to five. My pre-hearing statement
10 indicated that and our negotiations with the
11 neighbors also included that. The agreement
12 permits the one and a half to five. So, we
13 would point that out.

14 The number of staff that we have
15 requested has changed. Originally, I think we
16 had said 11. We realize now with younger
17 children, there may have to be more. We would
18 like 14, 13 or 14, depending on the Board's
19 preference on that but it would have to be, we
20 think more than the 11.

21 And the ANC agreement doesn't
22 cover that issue. I have talked to Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Toliver. He didn't seem to have a problem
2 with it. I will let him speak for himself.
3 But in fact, all of the requirements on staff,
4 where they park, the attempt to make sure that
5 many of them come through public
6 transportation and so forth, all of that is in
7 place so that the impact should not really
8 change, if we have more people. And we do
9 have enough parking to accommodate the 14 for
10 zoning purposes.

11 The agreement before you shows 13
12 people signing. That is 11 houses. Some of
13 those are two people in the house signed the
14 agreement plus the ANC and WES and Wonders.
15 And I'm sorry, when I say WES, that is
16 Washington Ethical Society. I should point
17 that out.

18 So we feel, and we are really
19 sorry that Ms. Hackney was not a part of that.
20 We certainly took her concerns into account.
21 We certainly thought that she would be
22 contacted and I am sure efforts were made to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 do that. There was no attempt to cut her out.
2 In fact, every effort was made to address the
3 concerns that she had raised at the meetings.

4 And with that, I will ask Amanda
5 Poppei, the senior leader of the Washington
6 Ethical Society to make a statement.

7 VICE CHAIRMAN LOUD: Just a quick
8 question before you start. The staff goes
9 from 11 to 14? Is that what you just
10 clarified?

11 MR. GELL: We would like 14, yes.

12 VICE CHAIRMAN LOUD: To 14, okay.
13 But the total numbers remains at 40?

14 MR. GELL: The number of children
15 doesn't change.

16 VICE CHAIRMAN LOUD: Okay.

17 MR. GELL: And I would point out
18 that it was 40 when there was a high school.
19 It was 40 when it was the Oneness School --

20 VICE CHAIRMAN LOUD: No, I just
21 wanted to make sure --

22 MR. GELL: -- 66 somewhere in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there.

2 VICE CHAIRMAN LOUD: -- the
3 difference between the pleadings and what you
4 are talking about now.

5 And then the final thing is that
6 some of the pleadings talk about the program
7 beginning at 7:00, some talk about it
8 beginning at 7:30. So either through the
9 witnesses or yourself, just clarify which
10 number you are going to go with. Thank you.

11 MR. GELL: It would be 7:30 and
12 thank you for pointing that out.

13 REVEREND POPPEI: Hi. So, I am
14 Reverend Amanda Poppei. I am the senior
15 leader at the Washington Ethical Society. We
16 are a humanistic religious congregation. We
17 have been in existence since 1944 and we have
18 been at the site in Shepherd Park since 1964,
19 I believe. That all pre-dates me. I have
20 been at the Washington Ethical Society since
21 August, so just about six months.

22 There has, however, been a daycare

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 or a school since 1968, pretty much
2 continuously, different iterations of school
3 daycare center. The only lapse in that was in
4 the last about 18 months, 18 to 24 months,
5 when we were under construction and during
6 that time we did not have a daycare center and
7 the zoning lapsed. So that is why we are here
8 reapplying for zoning for a special exception.

9 So, I have been at WES, which is
10 just for a little bit of reference, a member
11 of the American Ethical Union and the
12 Unitarian Universalist Association. So, it is
13 a congregation. I have been there since
14 August and really kind of tried to come in on
15 the ground running with this piece. And so I
16 started going around and reaching out to
17 neighbors in November, once I had been there
18 for a couple of months and had the lay of the
19 land. I started with invitations to an open
20 house at Washington Ethical Society, which I
21 took to about the nearest 50 houses. And we
22 held that open house in December, which Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Hackney was at along with a number of other
2 neighbors.

3 And that was really my first
4 realization that there were some considerable
5 concerns from the neighborhood. Before me,
6 there was a senior leader for two years, an
7 interim who had put a letter about the
8 construction with his contact information and
9 never heard from neighbors with any concerns.
10 And so we didn't know. We weren't expecting
11 the concerns.

12 So obviously, we then started
13 working more closely with neighbors, really
14 trying to reach out. So, we hosted that
15 meeting in December at the Ethical Society and
16 then again a meeting at the end of January
17 when we presented the traffic study which we
18 had done by O.R. George and Associates. We
19 had, I am guessing, maybe ten neighbors at the
20 first meeting in December. The meeting in
21 January, we actually only had one neighbor
22 come who was not an immediate neighbor but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 someone who was interested in enrolling his
2 child in the daycare center. We didn't have
3 any of the immediate neighbors attend that
4 meeting.

5 We then went to the ANC at the
6 beginning of February and from there, there
7 was a special meeting called at the end of
8 February and then out of that came the working
9 group. So and through that whole time, I also
10 right around in the beginning of February
11 attended a Shepherd Park Community Association
12 meeting and was on the agenda to present at
13 that meeting as well.

14 So, we were trying to reach out in
15 as many ways as possible. We went door-to-
16 door with petitions in support of the center
17 and received a number of signatures. I don't
18 have the exact figure, although I can find it,
19 I think there were, here we go, within the 200
20 foot area, this was before the neighborhood
21 agreement, we had eight signatures from people
22 in the 200 foot area supporting the center.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And again, that was when we were still
2 planning the alley access.

3 So, more meetings, more meetings.
4 And after the ANC meeting at the end of
5 February, we received, I got an email from one
6 of our closest neighbors, Brad who is right
7 across from us on Kalmia and how has parking
8 pad access to the alley. So, he had a
9 particular concern about the use of the alley.
10 And he actually came up with the solution of
11 having parents park briefly on Kalmia to walk
12 their children into the center. And I ran it
13 by Joanne and we were only too delighted to be
14 able to yes to a neighbor's proposal for a
15 different pick-up/drop-off plan. And so the
16 working group then got together and really
17 hammered out the details of that solution but
18 the original plan came from a neighbor.

19 We have also just been working in
20 general with our neighbors and trying to take
21 into account all of their concerns. And I
22 very much hope that as I am there for longer

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and longer we will be building even more good
2 relationships with the neighbors. This
3 neighborhood agreement, I think, is a great
4 start.

5 So, I think that is all.

6 MR. GELL: Thank you very much.
7 And our next two witnesses, Joanne Hurt, who
8 is the Executive Director of Wonders and O.R.
9 George, Osborne George who has appeared before
10 you many times as an expert traffic engineer.
11 And we would even now or just before his
12 testimony, ask that you accept him as an
13 expert witness.

14 BZA CHAIR MILLER: Okay. I don't
15 think we have any concerns. We have accepted
16 Mr. George many times. Does anybody have any
17 concerns? Okay, so he is accepted as an expert
18 witness in --

19 MR. GELL: Thank you.

20 BZA CHAIR MILLER: --
21 transportation. Traffic?

22 MR. GELL: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR Okay.

2 MR. GELL: Parking, traffic.

3 BZA CHAIR MILLER: Parking.

4 MR. GELL: Right. Joanne Hurt has
5 a statement.

6 MS. HURT: Hi. I am Joanne Hurt
7 and I am the Executive Director of Wonders
8 Childcare and I just want to give you an
9 overview of Wonders. We are a non-profit
10 childcare organization and we have been
11 operating in the D.C. area for 33 years. We
12 currently operate three early childhood
13 programs and seven school-aged programs, which
14 are before and after school programs.

15 We are really looking forward to
16 opening our first early childhood program east
17 of Rock Creek Park and we anticipate 40
18 children in the center. And we would like to,
19 we have asked for 14 staff because of the ages
20 of the children, to have the appropriate
21 ratios, and also this additional parking
22 monitor. We can't take a teacher away from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the children to monitor traffic. So, we need
2 to supplement our staffing pattern so that we
3 are able to do both of these functions.

4 We anticipate that about half of
5 our staff will drive or carpool and the rest
6 will use public transportation. We are in the
7 process of adding to our benefits package a
8 benefit that staff can use pre-tax dollars to
9 purchase Metro cards and bus fare.

10 And we currently, because we are a
11 non-profit, the parent tuition is what pays
12 our bills, essentially. And our largest bill
13 is staff salaries and compensation. We do
14 have a scholarship fund that distributes about
15 \$160,000 a year to families who demonstrate a
16 need in tuition assistance. And we typically
17 at all of our sites, it becomes a real
18 neighborhood community center, where we have
19 a lot of families who live in the immediate
20 neighborhood, this has been our experience,
21 who actually use the program. So we, although
22 we have been very careful about planning the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 traffic and parking plan and put a lot of time
2 into it, we do anticipate that there will be
3 a number of families who can walk to the
4 program. And that is, and we are certainly
5 looking forward to that.

6 So, that is all I have to say.

7 BZA CHAIR MILLER: I have a
8 question for you. Is it correct that you are
9 closing your Chevy Chase center?

10 MS. HURT: Yes, we are.

11 BZA CHAIR MILLER: Okay. So, do
12 you expect the children that were in that
13 center to come to this center?

14 MS. HURT: Yes, some of them will.
15 Right now we anticipate about 28 children and
16 some of them do live in the Shepherd Park
17 area. We have a couple who live in that upper
18 14th Street and upper 16th Street areas. So,
19 they live, these families tend to live in D.C.
20 And we have a commitment to our current
21 families. As you can imagine, families with
22 young children need to have the continuity of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 care.

2 So, as we were looking for new
3 program space, it was very important that we
4 were able to find a space that was close
5 enough that our current families would have
6 the option and it would be convenient enough
7 for them to continue with us, if that is what
8 they wanted. But these children will be
9 graduating out in the next year.

10 BZA CHAIR MILLER: I guess so, in
11 the short-term, would you expect more drivers
12 because of that, more kids driving to school
13 or being driven to school and then later, as
14 spaces open up, more children from the
15 neighborhood coming?

16 MS. HURT: Yes, I think that will
17 be the pattern.

18 BZA CHAIR MILLER: Okay. Are
19 there other Board questions?

20 VICE CHAIRMAN LOUD: Thank you,
21 Madam Chair. Just very briefly, can you go
22 over the children's play area plans and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 supervision provisions for that? Or if that
2 is not this witness, the appropriate witness
3 but it sounds as the ED, that would probably
4 fall in your scope.

5 MS. HURT: Yes. There is a
6 playground in the back. It is a play yard
7 that is fenced. And we will be working with
8 WES to replace the fence so that it is a
9 slightly higher level that meets the licensing
10 regulations. The supervision of the
11 playground would be the same as in the
12 classrooms. We would have the same ratios out
13 on the playground, which is licensing ratios.

14 And we have a whole system of
15 escorting children, at all of our centers,
16 escorting children to and from the playground.
17 We bring the attendance sheets with us. We
18 count the number of children before they leave
19 the classroom. We count them when we get to
20 the playground, then line them up and count
21 them before we leave the playground and count
22 them when we bring them in.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And so it is not that far. All
2 the classrooms have really wonderful access to
3 the outside. And so it is just steps away.

4 VICE CHAIRMAN LOUD: Can you speak
5 to how you stagger play areas, or how you
6 schedule play areas, or whether all, I suspect
7 the 28 regular daycare would be playing apart
8 from the pre-K population?

9 MS. HURT: No, each class has
10 their own time.

11 VICE CHAIRMAN LOUD: Okay. And
12 how does that work? How many are in a class?

13 MS. HURT: It will be about eight
14 children.

15 VICE CHAIRMAN LOUD: Okay.

16 MS. HURT: Eight in the smaller
17 classrooms and the older children would be 17,
18 we anticipate will be the largest size.

19 VICE CHAIRMAN LOUD: So does that
20 mean, for example, there would never be more
21 than 17 kids playing at a given time? Okay.

22 MS. HURT: According to licensing,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the playground is large enough for all 40 to
2 play at the same time, so we have that option.
3 But the way our centers typically run now is
4 that it is classroom by classroom that has
5 their own playground time or sometimes two
6 classrooms will combine.

7 VICE CHAIRMAN LOUD: So would it
8 be safe to say we are still talking about 17
9 max at any given time?

10 MS. HURT: Right.

11 VICE CHAIRMAN LOUD: Okay. And
12 the pleadings did talk about you being
13 identified as the community liaison for
14 transportation and, I guess, parking, and
15 other types of concerns. Is that still the
16 case as a result of the agreement?

17 MS. HURT: I will have a role in
18 that but the Program Director, who will be on
19 site will be the immediate liaison.

20 VICE CHAIRMAN LOUD: Okay.

21 MS. HURT: I have more of the role
22 of sort of the, in the fine process I have the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 role of meeting with families if they are not
2 respecting the rules.

3 VICE CHAIRMAN LOUD: Okay. Thank
4 you. No further questions, at least not right
5 now, Madam Chair.

6 BZA CHAIR MILLER: I wanted to
7 follow-up. Did you say something about using
8 pre-tax dollars for Metro subsidies?

9 MS. HURT: For our staff?

10 BZA CHAIR MILLER: For staff.

11 MS. HURT: Uh-huh. That would be
12 one of their benefits. Right now, we have a
13 Cafeteria Plan for our staff that they can use
14 pre-tax dollars to buy their health insurance,
15 to put into their 403(b). And so this would
16 be part of the Cafeteria Plan, where they
17 could opt to buy their Metro cards or bus fare
18 through the same. There are different
19 programs that employers can use for this.

20 So, it would be a cost savings for
21 the staff and it is sort of an incentive for
22 using public transportation. And a lot of our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 staff use public transportation anyway because
2 a lot of them don't own cars.

3 BZA CHAIR MILLER: Does that
4 translate to a certain amount of money or
5 anything? Like sometimes we hear like \$75 for
6 a certain length of time for employee.

7 Is there any dollar figure that
8 goes with this pre-tax dollars?

9 MS. HURT: We haven't settled on
10 what program we are using yet.

11 BZA CHAIR MILLER: Oh, okay.

12 MS. HURT: We are down to two and
13 our HR Department is going to share that with
14 me, actually, in the next couple of weeks. I
15 don't know the details of the plans, at this
16 point.

17 BZA CHAIR MILLER: Okay.

18 MS. HURT: But we do have two
19 different plans identified that we are looking
20 at. Does that make sense?

21 BZA CHAIR MILLER: Well, yes. I
22 am just curious. Can you explain that just a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 little bit more. I mean, what is this pre-tax
2 dollars program? Is it from the government?
3 Is it from --

4 MS. HURT: There are different
5 programs that you can purchase your -- like
6 the one that I have read some information
7 about. You can go online, purchase your Metro
8 card. It gets deducted out of your paycheck
9 before taxes are taken out. So that lowers
10 your paycheck amount so you pay less tax.
11 Does that --

12 BZA CHAIR MILLER: Okay, thank
13 you.

14 MS. HURT: Okay.

15 BZA CHAIR MILLER: Any other Board
16 questions?

17 MEMBER DETTMAN: Just one quick
18 question, Madam Chair. Other than the child
19 development center, what other types of uses
20 or programming takes place inside the building
21 throughout the week?

22 REVEREND POPPEI: That is for me,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I think. Obviously, on Sunday we have
2 services, on Sunday morning.

3 We also have a Jewish congregation
4 that rents our building Saturday morning for
5 services and a Baptist congregation, Refuge
6 Baptist Assembly that meets on Tuesday
7 evenings. Yes, I believe Tuesday evenings.

8 And then we will have sort of
9 occasional one-time rental use. We only rent
10 to non-profits that have a social service
11 mission or like the Rainbow Families Group
12 which supports LGBT families or for life
13 passage events. So, people can't rent it for
14 their birthday party. They feel like having
15 a birthday party somewhere, they want their
16 kids, we don't do that. We do weddings, bar
17 and bat mitzvahs, memorial services.

18 MEMBER DETTMAN: Of the uses and
19 activities, that you just kind of laid out,
20 how many of them or to what extent will they
21 overlap with the daycare center?

22 REVEREND POPPEI: Well, it is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 really different parts of the building. And
2 I should have said, too, that of course the
3 congregation has, you know, we have our Board
4 meetings on Wednesday evening. I mean, you
5 know, the kind of things you would expect at
6 a church. We have got a Board meeting
7 Wednesday evening. We have an auction once a
8 year, you know, on a Friday night, that kind
9 of thing and other meetings and small groups.

10 In terms of overlapping with the
11 daycare, the daycare center would be using
12 just the downstairs floor, which is where our
13 Sunday School classes are held on Sunday
14 morning and which are largely not used. In
15 fact, I would say that they are completely not
16 used during the hours that the daycare center
17 is there. I don't think I have ever seen, so
18 there is no rental that would not be able to
19 rent anymore because it is different spaces.
20 We very rarely have any rentals during the day
21 when the daycare center's hours of operation
22 would be. Occasionally, a board meeting might

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 be in those spaces, might meet in a daycare
2 room in the evening.

3 MEMBER DETTMAN: I'm trying to get
4 a sense on what is going to be the demand for
5 the parking that is available onsite. And so
6 --

7 REVEREND POPPEI: Sure, right.

8 MEMBER DETTMAN: -- you have
9 enough parking for the daycare but if there is
10 other uses going on.

11 REVEREND POPPEI: Right. And I
12 guess -- thank you. That is helpful to direct
13 my answer. Right. We have 13 parking spaces.
14 I only have four full-time staff. There is
15 only four of us full-time and there is a
16 couple more that come in occasionally. So
17 there is room for everybody who works in the
18 building. It is rare that we have anybody
19 come to the building who is not one of those
20 people during the day. But occasionally,
21 someone might come in to have a pastoral
22 conversation with me, something like that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But during, when there is not rush
2 hours, there is parking right in front of the
3 building on 16th. There is parking on Kalmia.
4 So, there is ample street parking as well.

5 MEMBER DETTMAN: Okay, thank you.

6 REVEREND POPPEI: Sure.

7 BZA CHAIR MILLER: Okay, any other
8 Board questions?

9 Mr. Gell, is this it, except for
10 your expert witness, as far as witnesses go?
11 Because I am just trying to gauge when to open
12 it for cross-exam by the ANC and Ms. Hackney.

13 MR. GELL: Mr. Osborne will be our
14 next witness, our last witness.

15 BZA CHAIR MILLER: Okay. I am
16 just wondering if it would be easier to break
17 it up and have cross now on these two
18 witnesses. Do you have an opinion on that?

19 MR. GELL: I think we can do it
20 either way.

21 BZA CHAIR MILLER: Okay.

22 MR. GELL: I don't think Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 George's testimony is going to be very long.

2 BZA CHAIR MILLER: Okay.

3 MR. GELL: And so we might just --

4 BZA CHAIR MILLER: Okay, is the
5 ANC okay with hearing all the witnesses and
6 then doing cross?

7 MR. TOLIVER: Yes.

8 BZA CHAIR MILLER: Okay.

9 ZC CHAIR HOOD: If I might --

10 BZA CHAIR MILLER: Yes.

11 ZC CHAIR HOOD: I just had a quick
12 question. And I know you have only been there
13 for what six months, you say, so I don't want
14 to -- do you know how the conditions that were
15 in the order in I guess 2000, how are they
16 coming along? And I am talking about all 12
17 conditions.

18 REVEREND POPPEI: You know, I
19 really don't know because I think that order
20 was for a daycare center. We don't have a
21 daycare center in the building right now
22 because we have been under construction for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the last 18, 24 months. So, there wasn't --
2 I think there was even during the person who
3 was right before me, the interim leader, there
4 was only a daycare center there for maybe six
5 months of his time, something like that.

6 ZC CHAIR HOOD: So it doesn't have
7 a track record then, these conditions.

8 REVEREND POPPEI: Well, I think
9 those conditions would have been conditions
10 for a daycare center. And since there is no
11 daycare center in the building now, they don't
12 apply to the current situation, I think. Does
13 that make sense?

14 ZC CHAIR HOOD: Yes. And the
15 reason I asked that because I was just trying
16 to figure out the relationship. I know the
17 ANC is down here supporting after the
18 memorandum. I was just trying to figure out
19 the relationship and how actually the existing
20 operation, the operation prior to this one
21 worked with the community.

22 REVEREND POPPEI: Yes. And I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 think, you know, it is a good point because I
2 think, again, this does pre-date me so I am
3 speaking a little bit from what I have heard,
4 but my sense is that the organization that
5 was, the daycare center that was in
6 previously, immediately previously to our
7 application now, so the last one, really was
8 not responsive, particularly responsive to the
9 community. And there were actually some
10 difficulties that my staff and the Ethical
11 Society had working with them as well, which
12 was one reason when it became clear that they
13 were going to be leaving and we had an
14 opportunity to look for a new daycare center.

15 We actually had a number of
16 centers interested. It is a great space.
17 There is a beautiful little playground. The
18 building is full of light. You know, people
19 really wanted to have a center there and so we
20 had some choices. And we really chose Wonders
21 because of their 30 plus year history, because
22 of the history of being a good neighbor,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 because we felt as though they were stable,
2 they had a great reputation, and they were
3 someone that we would be able to work with,
4 and that we would be able to work in
5 conjunction with them, with the community.
6 So, that was definitely a factor.

7 I can't speak that much to what
8 happened before, since I wasn't there. But I
9 know that some of that history was a real
10 factor in the choice of Wonders as the center,
11 because they have such a good reputation and
12 history.

13 ZC CHAIR HOOD: Okay, good. Thank
14 you.

15 REVEREND POPPEI: Sure.

16 BZA CHAIR MILLER: Let me just ask
17 one more follow-up question, sorry, before you
18 move on.

19 Are there going to be evening
20 activities at the center?

21 MS. HURT: We anticipate maybe two
22 evening events a year with parents. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 typically have like a back-to-school night at
2 the start of the year. And then we have some
3 sort of a family gathering towards the end of
4 the year. So, that is about it.

5 We have parent-teacher conferences
6 that we will schedule during the day when
7 parking is allowed on 16th Street, so that it
8 will free up, you know, some other parking
9 options.

10 REVEREND POPPEI: And I just
11 wanted to note that that actually was part of
12 our conversation with the neighbors, about
13 when those conferences would be and we have
14 gotten very detailed in those conversations
15 with the neighbors. And thanks to
16 Commissioner Toliver for all of his great deal
17 of work.

18 BZA CHAIR MILLER: I can't
19 remember, we just got this agreement so I
20 can't remember whether -- is that referenced
21 in the agreement or not? It is just a fact
22 that you explained to them?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 REVEREND POPPEI: You know, I --
2 sorry. Go ahead.

3 MR. TOLIVER: Is the question
4 whether or not the use will be prohibited?
5 This agreement speaks to the use of parents.
6 And so it is during at all times they will not
7 use the alley. That they will use 16th Street
8 during non-rush hour periods and that they
9 would not park on Jonquil, that they would
10 park on Kalmia during, on the south side of
11 Kalmia if you are facing north, and south and
12 west of 16th Street and then use the east side
13 as an alternate parking area.

14 BZA CHAIR MILLER: Thank you.
15 Okay.

16 Well, Ms. Hackney, what we were
17 talking about earlier was I think we are going
18 to hear Mr. Gell's last witness, Mr. George
19 who is sitting next to you, and then we are
20 going to open it up for questions from the
21 parties.

22 MS. HACKNEY: Okay.

1 BZA CHAIR MILLER: Okay.

2 MR. GELL: Of course we would like
3 to have been able to provide a traffic report
4 that covers the current situation back a
5 couple of weeks ago. But the negotiations
6 took a rather dramatic turn when the neighbors
7 suggested that we consider the alternative of
8 not even using the alley. So that Mr.
9 George's original work was done based on the
10 alley and we had to have him do an about face.
11 And then of course, we were negotiating and
12 getting signatures and so forth. So, I am
13 sorry that we didn't get it to you much, much
14 earlier than this. And Mr. George has not
15 really had a chance, had not up until now had
16 a chance to express his opinions on the new
17 situation.

18 Basically you have his earlier
19 report, he is going to supplement that orally
20 with his testimony, but it will take into
21 account the fact that we are now not going to
22 be using the alley. Thank you. Mr. George?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. GEORGE: Okay. Good
2 afternoon, Madam Chair and members of the
3 Board. My name is Osborne George. I would
4 like to recognize Ms. Terry Davis, a
5 transportation planner with our firm and who
6 worked with me on the project.

7 I would like to just start where
8 Mr. Gell ended in saying that yes we did a
9 fairly thorough study in keeping with DDOT's
10 typical standards and we came to the
11 conclusion that the proposed use would satisfy
12 the requirements of the zoning regulations
13 with respect to adverse impacts.

14 Just a couple of general points
15 that I would like to site, because I think
16 they came up in some of the questions. We had
17 data from the existing site, which is located
18 at the Chevy Chase circle. And that was quite
19 revealing in that it showed us the arrival and
20 departure patterns for the students, which was
21 quite disbursed.

22 The second thing we looked at,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 which we think should transpose to the site or
2 the subject site is the fact that most of the
3 clients or the students at the Chevy Chase
4 Center came from the immediate vicinity.
5 Looking at that data, approximately 70 percent
6 came from the immediate or contiguous zip code
7 areas. That type of characteristic in terms
8 of the draw or the market area that is served
9 by such centers is quite in keeping with the
10 characteristics which we typically use in
11 doing these traffic studies.

12 And so it was easy for us. We
13 used what we would term a worst case scenario
14 in projecting the traffic conditions but we
15 think that in fact with a number of students
16 coming from the local area, there would be a
17 larger number of walk trips, and so on, as Ms.
18 Joanne Hurt cited. So, that is as far as I
19 would go into as far as the study that is part
20 of your record.

21 As far as the agreement with the
22 neighbors, my only comment would be I think

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the applicant went pretty much beyond the call
2 of duty. That is good to have an applicant
3 that is prepared to do that. The operator of
4 the daycare center has confirmed that the
5 conditions are acceptable and we think that
6 that should result in even less burdens on the
7 community. And so we would add or support to
8 it.

9 With that, I am prepared to answer
10 questions but I think that is as much as I
11 need to say with respect to our study or what
12 is before you.

13 BZA CHAIR MILLER: Thank you. If
14 you have a zip code, how can you tell how many
15 might be in walking distance?

16 MR. GEORGE: Again, the question
17 was with respect to?

18 BZA CHAIR MILLER: Well if you are
19 looking at a zip code, that is kind of a large
20 area, isn't it? Not everybody within a zip
21 code, or am I wrong, can walk from one end of
22 the zip code to the other.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. GEORGE: Right, exactly. We
2 are not saying that they would walk. They
3 would live there and obviously no one can
4 predict precisely where the exact distance is.
5 But if you just look at the typical spread
6 within an area, one can assume, that some
7 would be close. And if they happen to be
8 clients, then many would take advantage of the
9 opportunity to walk to the school.

10 MS. HURT: And can I also add that
11 in our enrollment policies, we enroll children
12 on a first come, first serve basis and for
13 this center, we are actually giving priority
14 in enrollment for the local zip codes and
15 people who live in the neighborhood and the
16 different ANC.

17 BZA CHAIR MILLER: Right, I read
18 that. So when you are giving priority to
19 those who live in the priority, are you giving
20 priority to a zip code or are you giving
21 priority to actually streets that are close to
22 the center?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. HURT: Well I think it is
2 stated it is by the ANC.

3 BZA CHAIR MILLER: But within the
4 ANC boundary?

5 MS. HURT: Yes.

6 MR. TOLIVER: The priority is to
7 the zip code. There was some concern about
8 putting it to the ANC but we would ask that
9 their considerations be first to Shepherd
10 Park, Colonial Village, those in ANC 4A01,
11 4A02.

12 BZA CHAIR MILLER: So is that in
13 the agreement?

14 MR. TOLIVER: No, it specifically
15 references zip code. It is page four, number
16 nine.

17 BZA CHAIR MILLER: Okay, so it
18 says the zip code. So then what is the school
19 saying? Are you going to do that or are you
20 actually going to give priority within the
21 boundaries that are closest to the school or
22 no?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. HURT: Yes, I mean, we --

2 BZA CHAIR MILLER: Even if it is
3 not in the agreement, I mean, what is your
4 intent?

5 MS. HURT: Our intent is to make
6 it a neighborhood program. So the priority in
7 terms of I think we would look at zip code
8 first and then look at proximity.

9 BZA CHAIR MILLER: Okay, thank
10 you. And with respect to determining how many
11 students were in the 70 percent within, what
12 did you say, the zip code?

13 MR. GEORGE: Yes.

14 BZA CHAIR MILLER: Okay, why
15 didn't you -- did you look at actually you
16 have an enrollment with addresses. Did you
17 look at how many actually are within walking
18 distance to the school or would that not serve
19 a purpose you were trying to serve?

20 MR. GEORGE: I think I agree with
21 your last statement. It would not serve the
22 purpose because those distances would not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 necessarily transpose to the new location.

2 Typically when we do studies, we
3 prefer not to get into actual addresses
4 because, you know, we are looking at general
5 proximity. We recognize that some zip codes
6 are larger than others and irregularly shaped.
7 But we think that in planning, looking at
8 statistical data, where they would be sensor
9 strikes or so, they typically consider that as
10 a general criteria in looking at, I would say
11 generic or general transportation demographics
12 and modes of travel and things like that.

13 BZA CHAIR MILLER: Okay. And then
14 this is a very basic question and I don't know
15 if I just missed it. But I thought when Mr.
16 Gell introduced you he made this statement
17 about that there is a change and the alley is
18 not going to be used now.

19 MR. GEORGE: Yes.

20 BZA CHAIR MILLER: And therefore,
21 you were going to testify about something,
22 about what was going to happen. And I think

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I missed it. I don't know.

2 MR. GEORGE: Yes.

3 BZA CHAIR MILLER: But what is the
4 therefore? What is it changing to?

5 MR. GELL: I said he would
6 supplement his report based on the fact that
7 his earlier report had parents dropping
8 children off at the alley entrance, using the
9 alley, pulling into a pull-in space that would
10 be available at that point, and have teachers
11 take the kids from the cars into the house,
12 and so forth. This is what we originally
13 proposed.

14 But now that they are being
15 dropped off on Kalmia and the alley is not
16 going to be used, in fact, parents can't even
17 drive through the alley to get to Kalmia, they
18 are going to have to go around, that we asked
19 Mr. George to supplement his report to be able
20 to say that that new proposal also would be
21 satisfactory in terms of parking and traffic
22 and all of those neighborhood effects that he

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 deals with.

2 BZA CHAIR MILLER: So why would it
3 be satisfactory on Kalmia?

4 MR. GEORGE: I think that the
5 proposed arrangement is spelled out in the
6 agreement. And I think that it was so
7 detailed that I didn't want to repeat it
8 because I pretty much would have to read it.
9 I think it is clear and concise what they are
10 proposing.

11 And it is on page two of the
12 document and it is spelled out in item number
13 two, which is about the lower half of the
14 page. Basically, our study had looked at
15 vehicles accessing the subject property in a
16 clockwise direction, proceeding north on that
17 alleyway within the square and dropping off.
18 And I think we detailed how that would be
19 accommodated along the frontage of the school.

20 Due to the concerns that the
21 school heard, they have agreed for an
22 alternative means of drop-off, which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 essentially it would involve parents parking
2 on Kalmia Street and with monitors pretty much
3 at the intersection with the alleyway and
4 Kalmia and accommodating the students. Some
5 parents walk into the school and I suppose
6 some children could, depending on the ages,
7 could be accompanied by the attendants and
8 walked to the school.

9 But basically, as far as the
10 operation, I think I would defer to perhaps
11 Ms. Joanne Hurt who operates facilities like
12 that to talk about the precise operation of
13 the drop-off and pick-up.

14 BZA CHAIR MILLER: I guess my
15 question, though, is you are the traffic
16 expert and why is Kalmia a good street to have
17 drop-offs on?

18 MR. GEORGE: It is a fairly local
19 street. I think it is classified as a
20 collector but it carries relatively low
21 volumes of traffic. Parking is allowed there.
22 It is restricted by the RPP, Resident Parking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Permit provisions of the city. But based on
2 our surveys, there is often adequate spaces
3 available.

4 And it would also work because of
5 the fact that the arrival pattern is pretty
6 much disbursed, as I said. So, I think, based
7 on that availability on the west side of 16th
8 Street and there is also significant parking
9 on the east side of 16th Street, which is also
10 referenced in the agreement.

11 During the off-peak periods, if it
12 happens that parents do drop their children,
13 again as part of that disburse pattern, after
14 9:30, spaces would be available along 16th
15 Street, with access to the front of the
16 building.

17 ZC CHAIR HOOD: Madam Chair, I
18 don't know if Mr. George can do this, but
19 would it be helpful if he put up a board? I
20 think he has some boards and you can just kind
21 of show the circulation pattern and kind of
22 explain how all of this is going to work. At

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 least it would be helpful for me. I am again,
2 kind of swollen.

3 MR. GEORGE: Is this visible from
4 here?

5 BZA CHAIR MILLER: You just need
6 to be on a mike, though. That was a great
7 idea, Mr. Hood.

8 ZC CHAIR HOOD: Even if you had a
9 corner, kind of like we do the PUDs at night.
10 You know how we do Mr. George, you know what
11 we do. Mr. Loud probably has one. That's all
12 right. But that is fine. But that will help
13 him.

14 MR. GEORGE: We do this at night,
15 especially for you, Mr. Hood.

16 ZC CHAIR HOOD: Thank you. I
17 think you have to be on the mike. There you
18 go.

19 MR. GEORGE: Sixteenth Street runs
20 north-south. Jonquil Street, a local street,
21 is to the south of the square and Kalmia to
22 the north. West is pretty much around,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 approximately on-third down within the block.
2 And there are parking areas at the rear.

3 The proposal that we had, which
4 obtains under the current arrangement is that
5 all vehicles would approach a side from the
6 south. And please keep in mind under the
7 arrangement, current arrangement, only folks
8 who are handicapped, bringing children who are
9 handicapped will actually drop-off here but
10 this is the parking area. The parking that we
11 refer to as far as whether we drop off, based
12 on the neighbor's agreement is along Kalmia
13 Street here, to the west of 16th. A lot of
14 spaces available and they would park. It is
15 a short walk here. There is an entrance to
16 the building at this point.

17 There is also an entrance on the
18 east side of the building off 16th Street and
19 again, if we keep in mind that during weekdays
20 after 9:30 on-street parking is available and
21 based on our surveys, there is ample parking
22 available. Parents would park and access the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 building here.

2 SECRETARY MOY: Madam Chair, may I
3 interrupt just for a minute? Mr. George,
4 could you make your presentation by standing
5 on the other side of the board? Because you
6 are blocking my camera.

7 MR. GEORGE: Oh.

8 SECRETARY MOY: Thank you.

9 MR. GEORGE: And I was smiling
10 just for the camera. This is good?

11 SECRETARY MOY: Yes, this is good,
12 too. You were blocking the camera.

13 MR. GEORGE: Okay, I'm sorry.
14 Right. Okay, fine. Am I good or do I need to
15 repeat any of that?

16 BZA CHAIR MILLER: Thank you, that
17 was great. Any questions from the Board?

18 VICE CHAIRMAN LOUD: I have a
19 really basic question, which is that when you
20 prepared your study, you focused on the
21 intersections, I think, of 16th and Kalmia,
22 16th and Jonquil, and then what was going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 be happening in the alley. But since they
2 have negotiated the agreement, the activity
3 shifts to Kalmia Street, in terms of parking
4 on Kalmia Street.

5 And I thought I heard you and your
6 counsel say that you had not made an
7 assessment of the transportation impact of the
8 shift to Kalmia and wanted to supplement. But
9 then you went ahead to answer the Chair and
10 essentially provide an assessment. So I
11 wanted to make sure that I was understanding
12 what is happening right now.

13 MR. GELL: Mr. Loud, I was
14 referring to his previous written report did
15 not take into account the change. But Mr.
16 George has made that assessment in the
17 meantime and now can testify.

18 VICE CHAIRMAN LOUD: And so he is
19 verbally -- there is not a written supplement
20 is there?

21 MR. GELL: I don't believe there
22 was a written supplement.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. GEORGE: No.

2 VICE CHAIRMAN LOUD: Okay, so the
3 supplement was your testimony?

4 MR. GEORGE: That is correct, sir,
5 yes.

6 VICE CHAIRMAN LOUD: Okay. And so
7 the bottom-line conclusion is that the impact
8 of parking on Kalmia between, we are still
9 talking about peak periods of 8:15 to 8:45 in
10 the morning, --

11 MR. GEORGE: That is correct.

12 VICE CHAIRMAN LOUD: -- is fairly
13 negligible?

14 MR. GEORGE: Yes, the parking
15 usage, typically we don't do any type of
16 statistical or quantitative analysis with
17 respect to the parking. It is a question of
18 the availability. We typically do the level
19 of service analysis, which we documented a
20 report with respect to the intersections.
21 There is going to be some minor difference in
22 terms of the numbers, where they turn, do they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 turn or do they turn right, in terms of this
2 arrangement. We think based on the levels of
3 service presented in the report, the change is
4 not going to have a material impact.

5 VICE CHAIRMAN LOUD: Okay. And I
6 am still kind of getting my arms around some
7 of the fundamentals of your professions,
8 profession rather, and I did notice the
9 conclusion about the level of service D in the
10 original report. But can you just very
11 briefly explain what that means?

12 MR. GEORGE: Yes, sir. The level
13 of service, and I think we defined it, Mr.
14 Loud, and Terry if you would remind me of the
15 page, yes, we have at the bottom of page six
16 of our report a definition of the term "level
17 of service" and it is really an assessment of
18 how well the intersection operates in handling
19 the traffic that it processes.

20 The principle factors considered
21 are the volume of course, the delay that is
22 experienced, freedom of vehicles to maneuver

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and so on, and it considers safety,
2 convenience, comfort. It is a qualitative
3 measure that the professionals developed over
4 many years and the description that we have
5 given here is as defined by the highway
6 capacity manual. In computing the levels of
7 service, we use the road radiometrics, the
8 numbers of lanes, whether there is parking,
9 whether there are bus stops close by, whether
10 it is a signal, a traffic signal or a stop
11 sign. We use the geometrics and the traffic
12 control. And there is computer software that
13 is authorized by the transportation research
14 board that we use. There is also manual
15 methods that you can go through, there are
16 several pages of tables and charts that you
17 can compute.

18 But basically you end up with a
19 determination of the average delay per
20 vehicle, the average delay that the vehicle
21 experienced. Because that is one of the
22 factors that we as drivers consider to be a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 measure of how acceptable it is. And I
2 suppose it is an indication of the value that
3 we put on time.

4 And we end up with various levels
5 of service from A to F with A through D
6 generally considered acceptable and I am sure
7 we all remember that from our college days,
8 although for many D may not be acceptable.
9 The city accepts level of service D. And what
10 we have shown is that the intersections
11 operate above that level.

12 VICE CHAIRMAN LOUD: Okay, that is
13 thoroughly intimidating. But let me just ask
14 this follow-up question, bottom-line question.
15 So to move the center of activity from 16th
16 and Jonquil, which was the original plan, the
17 traffic would go north in the alley. To move
18 everything up one block north to Kalmia, does
19 that change the level of service for this, I
20 guess for this project under your assessment?

21 MR. GEORGE: Yes. Yes. We did
22 not actually run the numbers. What we would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 say is that we, several factors allow me to
2 say that it would be acceptable.

3 Number one, I did say that we
4 looked at what we termed a worst case scenario
5 in estimating the trips. So we assumed no
6 walk trips. We have heard from Ms. Joanne
7 Hurt and I think I have also said that it is
8 quite likely that as the school settles into
9 its new location, there is likely to be a
10 significant number of walk trips people from
11 the neighborhood take. So the trips that we
12 estimated would be reduced.

13 Secondly, I would maintain that
14 there would be some slight adjustment in the
15 pattern of access but in terms of the overall
16 numbers, it would not be to a level of
17 significance that would affect the levels of
18 service that would drop it below what is
19 acceptable.

20 And if it gives you any further
21 assurance, Mr. Loud, DDOT has also looked at
22 this. They looked at our study and they have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 also looked at the neighbors' plans. I think
2 they attended some of the meetings and they
3 also find that it would be acceptable.

4 VICE CHAIRMAN LOUD: Thank you,
5 Mr. George. Thank you, Madam Chair.

6 ZC CHAIR HOOD: Madam Chair, can I
7 just follow up --

8 BZA CHAIR MILLER: Yes.

9 ZC CHAIR HOOD: -- on Mr. George?
10 Now I understand with the agreement that is
11 worked about between the neighbors and the
12 Applicant, the drop-off is for students with
13 disabilities. Correct?

14 MR. GEORGE: Yes.

15 ZC CHAIR HOOD: Now what happens,
16 what about the other population? Now they are
17 going to park and those who need assistance
18 crossing the street, how is that going to
19 work? Or maybe that is a question for Ms.
20 Poppei, I'm not sure.

21 MR. GEORGE: That is for Ms. Hurt.

22 MS. HURT: Well I can answer it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ZC CHAIR HOOD: Okay, Ms. Hurt.

2 MS. HURT: The children and their
3 driver, most likely their parents, will park
4 on Kalmia and walk into the alley into the
5 door where is our entrance of the building.
6 So, during that peak time, that half hour in
7 the morning and half hour in the evening, we
8 will have a staff member out there to make
9 sure that the cars are being parked
10 appropriately and there aren't any driveways
11 blocked or any, you know, any violations.

12 ZC CHAIR HOOD: So do you really
13 think, do we think, I am just asking, do you
14 think that is going to work? We are creatures
15 of habit sometime and you know how we do, we
16 are always rushed. Everything man is quick.
17 Let's get it done and let's get out. I'm not
18 saying that about the kids. I'm not saying
19 push them out.

20 MS. HURT: No, I understand. And
21 because we have this staggered drop-off time
22 and pick-up time, we open at 7:30 in morning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and we close at 6:00 at night. And parents
2 can come anytime during that time to drop-off
3 and pick-up. What we have put in place
4 because we know that parents can be rushed, is
5 that we have put in a system of educating the
6 parents about the rules and the whole tiered
7 system of enforcement.

8 So, part of their enrollment
9 agreement with us will that they sign that
10 they will adhere to the rules. And then we
11 will have an orientation that will be
12 mandatory that everyone will learn about where
13 they can park and where they cannot.

14 And then we will have staff during
15 the peak times out there monitoring. And then
16 we will do regular, sort of checking the
17 alleyway and the parking outside, just to make
18 sure that everyone is adhering. And because
19 everyone will have their tags on file with us,
20 the make of their car and the tag number for
21 all of the drivers that may be coming to and
22 from the program and because we also have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 signs that will be like on the dashboard
2 indicating that it is a Wonders car, we will
3 be able to quickly identify if in fact the
4 rule violations are one of our families
5 because, as we know, lots of people don't
6 follow regular traffic rules in this city.
7 And so we want to be sure that we can identify
8 our families.

9 ZC CHAIR HOOD: I guess one of the
10 major points is that you are going to have a
11 staff person out there.

12 MS. HURT: Yes.

13 ZC CHAIR HOOD: There will never
14 be a day that a staff person won't be out
15 there.

16 MS. HURT: Right. And that is why
17 we need the extra staff.

18 ZC CHAIR HOOD: Okay, thank you.

19 REVEREND POPPEI: I just wanted to
20 add, too, that I think it is really to, there
21 is an advantage that this will be a new site
22 for Wonders because it then just becomes part

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of what parents know about the center from the
2 very beginning. And in fact I think Joanne
3 mentioned she has already sent an email to
4 some of the potential, the interested parents,
5 saying, just so you know, this is what the
6 parking situation is likely to be. This is
7 what the neighborhood agreement is. So it is
8 already out there. I have a 15-month-old and
9 I know that if that is what people tell me I
10 have to do in order to have care for my child,
11 that is what I will do.

12 I think if we were switching it
13 and people were used to something, that might
14 be difficult. But I think because we are
15 starting off saying, listen, if you want care
16 for your child at this location, there is not
17 a lot of children centers around the area, you
18 know, there is a paucity, here is the deal.
19 And I can speak as a parent that I would do
20 that for my daughter.

21 MR. GEORGE: Mr. Gell, I think I
22 can say one more thing on that subject that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would help give Mr. Hood some greater level of
2 comfort. And that is this is somewhat
3 different, I don't think this came out in the
4 presentation, but there are two elements to
5 the school population. There is what we call
6 a regular daycare and there is a pre-K which
7 is about, I think it is about 30 percent of
8 the 40 students, 12 that they will have core
9 hours between 9:00 and 3:00. So that you will
10 find that you will only have in fact around 28
11 students or children coming from the 7:30 up
12 to perhaps 8:30 into quarter to 9:00. And the
13 remaining 12 students, they come pretty much
14 like a regular school, primary school or so,
15 where they pretty much arrive for the 9:00
16 hour and leave at the 3:00 hour.

17 So, that is 30 percent that could
18 almost be extracted from the peak hour traffic
19 and the parking situation that Ms. Hurt and
20 Ms. Poppei defined.

21 BZA CHAIR MILLER: Are all the
22 other children in that peak time or are there

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 some children that come later?

2 MS. HURT: Some do. We like to
3 have -- we tell parents that we would like the
4 children in by 9:00, 9:30 just because it
5 helps the children. I mean, part of, an
6 important element in all of this, I mean, we
7 spent a lot of time thinking about parking and
8 traffic plans. But really, we are there for
9 the children. And so we want to keep the
10 integrity of the day and the care and the
11 education for the children. So the neighbors
12 have been great at listening to that side of
13 it, too. You know, we are talking about young
14 children and their care and education.

15 And so because it helps children
16 to make their transition into their day sort
17 of earlier rather than the flow of coming in
18 after the flow of the day has started, we do
19 encourage parents, although we don't make them
20 and we try to be very flexible for parents to
21 fit their needs.

22 REVEREND POPPEI: And I think some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of the parents would actually arrive with
2 children before the peak. It opens at 7:30 so
3 if you get the bunch that come right at 7:30
4 or --

5 BZA CHAIR MILLER: Mr. George, in
6 your transportation report, there is a draft
7 transportation management operations plan. Is
8 there a final one?

9 REVEREND POPPEI: It's really been
10 replaced by that neighborhood agreement.

11 MR. GEORGE: Yes.

12 REVEREND POPPEI: Because that
13 neighborhood agreement has the conditions,
14 refers to everything that was addressed in the
15 traffic management plan is addressed within
16 the neighborhood agreement.

17 BZA CHAIR MILLER: Okay.

18 MR. GEORGE: I would echo that.

19 BZA CHAIR MILLER: Okay, good.
20 And finally, we have a report from DDOT and I
21 don't believe we are going to have, I don't
22 see any witness from DDOT, any representative

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 from DDOT. So, I am wondering if now is the
2 time for Mr. George to address any of those
3 concerns, unless Office of Planning is going
4 to address it, which I don't think so. But I
5 can --

6 MS. HURT: They did confer
7 beforehand. So, I don't know. You could ask.

8 BZA CHAIR MILLER: Ms. Thomas?

9 MS. THOMAS: Could you repeat the
10 question, please?

11 ZC CHAIR HOOD: That's my fault.

12 BZA CHAIR MILLER: All right, I
13 know. All right. We have a report from DDOT
14 and I am wondering if now is the time for Mr.
15 George to address any of the concerns that
16 DDOT raised in the report or whether you will
17 be adding anything to this report in your
18 testimony and we should wait until after you
19 testify.

20 MS. THOMAS: Karen Thomas for the
21 Office of Planning.

22 DDOT submitted this report after

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we came to an original agreement about any
2 traffic in the alley, based on subsequent
3 conversations with the applicant as to why
4 they would change their drop-off and pick-up.
5 The only thing DDOT alluded to with OP was
6 that if the plan for Kalmia Street didn't work
7 out according to the neighbors, you know, if
8 it obstructed too much traffic or whatever,
9 they would refer it back, or they should refer
10 it to considerations of drop-off and pick-up
11 in the alley. That is the only issue with
12 this report, as it stands. That is the only
13 thing I am prepared to discuss at that time.

14 If there is additional questions,
15 I may not be able to answer. You will have to
16 ask DDOT.

17 MR. GEORGE: Okay. If I may, Ms.
18 Thomas, I think on the very first page in the
19 recommendation and brief, the second sentence,
20 they made note that they would like to see a
21 transportation management plan. And I think,
22 first of all, we had presented a draft and a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 report and I think one of the things that we
2 also pointed out in our study, I believe, the
3 fact that with small children, it was two and
4 a half to five. Now we have heard it is one
5 and a half to five, the opportunities for
6 carpooling and things like that is not so much
7 available. And I think Ms. Hurt has addressed
8 the fact that the school would support through
9 what is called a Smart Benefits subsidies for
10 transportation by their staff and requiring
11 them to park at certain locations and so on.

12 So, the transportation management
13 plans, I think, have been appropriately
14 addressed in the conditions of the neighbors'
15 agreement.

16 BZA CHAIR MILLER: Okay, I guess
17 this goes to Wonders more than you, Mr.
18 George. I don't know. As I am going through
19 this report it says that we recommend Wonders
20 Childcare consider a larger window of time to
21 drop off young children. But I thought what
22 we heard here was that there is a very large

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 window of time.

2 MR. GEORGE: Yes. I am not sure
3 what the basis of that was but I think there
4 is sufficient evidence or statements made
5 regarding the hours of operation. And I am
6 not sure DDOT was really aware of that when
7 they wrote their report.

8 BZA CHAIR MILLER: Okay. I guess
9 then in the last sentence, DDOT asks for
10 Wonders Childcare to share its inter-modal
11 split data with DDOT policy and planning staff
12 and ANC 4A every 12 months. Do you have a
13 reaction to that recommendation?

14 MR. GELL: Would you repeat that?
15 I'm sorry.

16 BZA CHAIR MILLER: Okay. It's on
17 page two of the DDOT report under summary and
18 recommendation and it is the last
19 recommendation. It said "Wonders Childcare
20 should share its inter-modal split data with
21 DDOT policy and planning staff and ANC 4A
22 every 12 months for the public to remain aware

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of any impacts."

2 MR. GEORGE: Madam Chair, I think
3 the agreement also stipulates that the
4 Applicant or the operator will provide at
5 least an annual, not less than once annually
6 a report to the ANC. So if DDOT was not
7 specifically included in that, and my
8 assistant is trying to find the exact item in
9 the agreement, I would think that that is
10 something that could be incorporated.

11 MR. GELL: The agreement does call
12 for us to have regular meetings with the
13 neighbors and the ANC would be represented
14 there. There is a fairly extensive effort
15 undertaken in the agreement to make sure that
16 everybody has all of the information. In
17 fact, Wonders and WES need it as well, to be
18 sure that they are monitoring their people
19 appropriately.

20 Madam Chairperson, Mr. Toliver has
21 to leave at 2:25 and I wonder if we could
22 maybe turn to him. I have a couple more

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 things but if we could turn to him and let him
2 have a chance to testify, I would appreciate
3 it.

4 BZA CHAIR MILLER: Yes, let's do
5 that. I'm glad you brought that to my
6 attention. And I want to say, you know,
7 always, if anybody has a time constraint, to
8 bring it to our attention and we will adjust.

9 MR. TOLIVER: Good afternoon.
10 First, my name is Dwayne Toliver, I am the ANC
11 commissioner for 4A02, which encompasses
12 Shepherd Park. To clarify for the record,
13 Commissioner Karl Kennedy is the ANC, is the
14 Advisor Neighborhood Commissioner for 4A01 in
15 which Wonders is, I'm sorry, WES is located.
16 My involvement has been primarily taking the
17 lead because I was involved with the drafting
18 and the negotiating and a lot of the community
19 communications.

20 I want to point out a couple of
21 things that when I had spoken with Ms. Hackney
22 earlier and some of the concerns that she had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 raised. One was with respect to the
2 physically disabled. And she, as a physician
3 recognizes that obtaining a placard and
4 getting the right to drive and so forth and
5 park pretty much you know, within the
6 restrictions of the issuance of the placard
7 might raise some concerns in other areas that
8 might be abused.

9 And as you know, Section 2B of the
10 agreement does not refer to the drivers being
11 physically disabled but the students being
12 physically disabled. Okay, so I wanted to
13 make that point clear.

14 We will have to work with the
15 community. And another point of clarification
16 is that it is actually that there will be
17 quarterly meetings with the ANC and the
18 neighbors, not annual reports. And that is
19 actually also covered in the agreement. It is
20 within the agreement but it will be at least
21 quarterly is the language we have within it.
22 So, that is important.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 A couple of things that were
2 important to note is that we understand that
3 DDOT and Office of Planning have both weighed
4 and provided their comments and approval. The
5 Commission has not received a copy of their
6 comments and the letter that you received from
7 Steven Whatley, who is the chair of the
8 Commission, reflected that at a six to one
9 vote, the Commission approved the plans and
10 the use, subject to the neighborhood
11 cooperation agreement being signed, executed
12 and delivered, which it has. So, we are very
13 comfortable with that.

14 But I would like for this
15 agreement, if it could be at least referenced
16 or appended to the order, so that down the
17 road, documents change, people change, we can
18 at least know that this is what we are talking
19 about because there is such a heavy reliance
20 by parties on this agreement, and particularly
21 with the traffic engineer who has done a great
22 job at making this clear.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Another point to clarify is that
2 with respect to the traffic flow, parents
3 wouldn't just be obligated to come in a
4 southerly direction on 16th Street or in a
5 northerly direction but they would come in and
6 down Jonquil Street. They would proceed west
7 on Jonquil Street to 17th Street, turn right
8 onto 17th Street, then turn right onto Kalmia.
9 And then they would come up the hill on Kalmia
10 and then to drop their kids off.

11 The students which are, to the
12 extent that they are physically disabled and
13 are required to be dropped off at that site,
14 those parents or drivers would take their
15 vehicle onto Jonquil, whichever turning right
16 or left, and then they would turn into the
17 alley and then they would traverse the alley
18 to get to the west site, and then they would
19 park. Not in the alley. It is my
20 understanding that they would not be parking
21 in the alley but they would be parking in a
22 space. And if any of that is incorrect, we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 need to know.

2 And so we feel comfortable that
3 that is the best way to travel. And as to the
4 comments about the use of Kalmia, we have
5 anecdotal evidence and observations of the
6 traffic patterns along Kalmia and are
7 relatively comfortable that that be the road
8 that is being used and that here is more
9 acrimony, animosity, anxiety about using
10 Jonquil Street because the neighbors park on
11 both sides. On Kalmia Street, traffic is very
12 quick. It is a hill. And so the neighbors,
13 for whatever reasons, have a practice of
14 parking in their own driveways and all of
15 those homes have driveways and/or garages,
16 whether they use a vehicle there I don't know.
17 But that is where they park.

18 So the predominant parking on
19 Kalmia are non-residential parkers. They
20 could, you could park there, for example your
21 driveway is being used for something. For the
22 large part, that is why Kalmia is used.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 There is also a request that was
2 made with the neighbors and WES and we are
3 working with them. They have been great as
4 well as Wonders in agreeing with this. They
5 were going to have DDOT go out to mark some of
6 those areas at the driveways to ensure
7 compliance with the five foot restriction from
8 the driveways. One of the concerns that we
9 had when we were negotiating the agreement
10 were the difficulties in drivers making a
11 left-turn into Kalmia or a left turn and being
12 blinded by traffic so they could not see
13 pedestrians that might be walking. And so
14 that is why we have elected to have right
15 turns as much as possible. A left turn going
16 out of Kalmia would be acceptable because your
17 view would not be blocked. So you could go
18 left or right.

19 And the agreement, it is clear
20 that we are trying to have a certain degree of
21 flexibility within the agreement, as well as
22 teeth to the agreement.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And another thing that Ms. Hackney
2 had correctly pointed out which was a source
3 of substantial conversation that Steve,
4 Amanda, and Joanne will attest to, were the
5 enforcement provisions within the agreement.
6 It is important to point out that we expect
7 that the parties will abide to the agreement
8 and there is language as to verify versus un-
9 verify complaints. And that was really a due
10 process question that came up in our
11 discussions. And ironically enough, the
12 neighbors became more protective of the
13 parents, probably because they may find that
14 their grandchildren are parents, they may be
15 drivers, but they wanted some due process so
16 that if there is a complaint that you can't
17 just come up and say, be a disgruntled
18 neighbor not liking the operation and
19 criticize it to get parents kicked out.

20 So we feel that there are certain
21 prophylactic measures within the agreement to
22 protect the parents, as well as to have teeth.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So that the first violation that is verified,
2 the first complaint that if verified, is
3 subject to a \$50 fine. Then it accelerates to
4 a \$100 fine. Then it accelerates to a \$200
5 fine with expulsion. And there are rights of
6 review. And then we also have a review group,
7 which will be ANC's and members of I believe
8 it is WES or Wonders, I believe it is Wonders'
9 staff.

10 And so it is really important to
11 us that if we have this appended that it be
12 there. We understand that the DDOT and OP
13 have weighed in on this and we feel that we
14 are comfortable. That there are some things
15 we may have to iron out but through the
16 constant cooperation and communication we can
17 get there.

18 But I wanted to point out that Ms.
19 Hackney has been a long-time resident, even
20 though she is not one of my personal
21 constituents, she abuts my constituents so it
22 is important that her concerns are addressed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And as to the whole issue about
2 the zip code, I think, that was raised earlier
3 in the testimony, it will be important to see
4 if we could have, during our quarterly
5 meetings, if there could be made available
6 slots that are open, so that we can take that
7 back to our community, to our LISTSERVs and so
8 forth. Because a lot of people moving into
9 our community are people with kids, young kids
10 and this is a very important thing to them.
11 But you have to balance that out against the
12 quality of life for the neighbors in the
13 community and we think this agreement touches
14 on those things.

15 And so at any rate, with that, I
16 think I will stop, if you have any questions.

17 BZA CHAIR MILLER: It looks like
18 you did a phenomenal job, I think, on this
19 agreement. You certainly have an incredible
20 understanding, at least what I am hearing, of
21 all of the traffic patterns and how it is
22 affecting all of the neighbors. And that is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 great.

2 I just wanted to ask you if you
3 had an idea in your mind as to how the
4 agreement is, if it is enforceable separate
5 from the BZA order. I think that, you know,
6 we haven't deliberated on it yet, but I think
7 given how much is captured in this voluntary
8 agreement, including now from what I hear, the
9 TMP, I think it is quite likely that the Board
10 is certainly going to at least reference this
11 agreement.

12 Do you see a separate mechanism
13 for enforcement?

14 MR. TOLIVER: Yes. In addition to
15 the BZA, this is a contract between and among
16 the parties. And so any aggrieved party could
17 bring a complaint. I, as an ANC Commissioner,
18 would have to act on the complaints of my
19 constituents, as would Commission Kennedy and
20 Commission Whatley.

21 So we do, though, serve for two-
22 year terms. However, and one of the things

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that I thought about later on was well if I
2 want to assign my rights or if I get tired of
3 being an ANC, I could never imagine that, but
4 the concern then would be that the benefits
5 would be assignable and flow to those parties.
6 And I believe we have assignment language.
7 That is one thing that is usually in most of
8 the agreements, that they are assignable among
9 the parties. And it protects us with the
10 assignment going forward.

11 So, we think that we can sue under
12 contract for any violation of the agreement.
13 Actually, I am pretty sure that we can because
14 this is the agreement that the parties have
15 reached and people have waived their rights
16 and not come here to testify or not sought
17 other redress and reliance upon our agreement.

18 BZA CHAIR MILLER: And I just
19 wanted to confirm, I think it is during peak
20 drop-off and pick-up hours or that Kalmia is
21 one-way for those going to the school.

22 MR. TOLIVER: Kalmia is never one-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 way.

2 BZA CHAIR MILLER: Is the
3 circulation plan one-way for those dropping
4 off and picking up?

5 MR. TOLIVER: Yes.

6 BZA CHAIR MILLER: That's what I
7 mean.

8 MR. TOLIVER: Correct, yes, it is
9 one-way. Although, you could park on what
10 would be the north side of Kalmia and walk
11 across. But you have gone one and half or
12 two-year-old, three-year-old, and all it would
13 take would be a couple of times down Kalmia
14 and you would cross at the light. And that is
15 the, we would encourage anybody to do that.
16 So, they could use the opposite side of the
17 street because there are no parking
18 restrictions during that period.

19 MR. GELL: May I just add a point
20 to what you raised about whether or not to
21 reference the agreement. I think there was an
22 anticipation in the negotiations that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Board would probably not reference the
2 agreement and therefore, we selected specific
3 paragraphs, and that is in paragraph 29, we
4 selected paragraph 2, 3, 4, 6, and 10 as the
5 guts of the agreement that we thought that the
6 Board would want to put in the conditions in
7 the order. And these would be things, of
8 course, that the zoning inspector would be
9 able to enforce. So the neighbors, with
10 respect to those, would have really two ways
11 of enforcing both by contract and by zoning.

12 In addition to which, I don't know
13 if it has been distributed, but I extracted
14 those and put them in a form that the Board
15 can look at and decide what to do with,
16 separate from the agreement.

17 ZC CHAIR HOOD: Madam Chair, I
18 just wanted to add, I also agree with your
19 comments about this agreement between the
20 neighbors and the Applicant. But I wanted to
21 reference Exhibit number 28. Commission
22 Toliver, you mentioned the vote was six to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 one. Here it is reference seven to one. But
2 be that as it is, I am just curious of that
3 one person. Is any portion of this, the one
4 person who voted against this resolution, I
5 guess I voted against this resolution and also
6 the agreement, that one commissioner who voted
7 against it, is any portion of this within
8 their SMD?

9 MR. TOLIVER: No.

10 ZC CHAIR HOOD: Okay.

11 MR. TOLIVER: And the basis for
12 the objection was that we did not have DDOT's
13 approval and it became an issue of precedence
14 as to whether we would vote to approve it in
15 the absence of DDOT's review and approval.
16 And we did have a DDOT representative, Anna
17 Chamberlain, as well as Mr. Jennings from DDOT
18 at our meeting, and we provided them with
19 copies of our agreement, which was in form and
20 substance similar to what you have before you.

21 ZC CHAIR HOOD: Okay, thank you.

22 Thank you, Madam Chair.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. GELL: As part of our
2 presentation, perhaps, there is just one point
3 that Ms. Miller raised much earlier about
4 whether neighborhood children would be, who
5 could walk to the space would be given some
6 priority. There is another point to be raised
7 about that and that has to do with outreach.

8 Perhaps Joanne would speak to
9 that.

10 BZA CHAIR MILLER: Wait. Do you
11 have to go, Mr. Toliver?

12 MR. TOLIVER: I'm sorry, I do.
13 And one thing. And I appreciate it, and Mr.
14 Gell and I have talked at length about the
15 agreement and the summaries and so forth. But
16 I was expecting, I was anticipating as one of
17 the drafts of this that we would have the
18 traffic report and all of the -- there is a
19 lot of reliance on this agreement. And so it
20 is becoming more important, at least patently
21 apparent to me today that this agreement is
22 very important because the parties

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 understandings and agreements are embodied in
2 here and there is a lack of that, and there is
3 a reliance on this agreement, discussions
4 about oh, we are relying on this agreement for
5 this that and the other. So, that is what is
6 important and if all of that were coupled
7 within a document then it would be easier to
8 deal with. But a lot of people are just
9 getting the agreement late in the day, so to
10 speak.

11 So, I am really hopeful that the
12 Board will give credence to our request that
13 they add this to its order, or at least
14 reference it, at a minimum.

15 BZA CHAIR MILLER: Okay, I know
16 you have to go. We often, even if we don't
17 incorporate say the provisions of another
18 agreement, when it is a very important
19 agreement like this one, we often reference
20 that is why, for instance, we don't believe
21 there are going to be adverse conditions
22 because there is this agreement in place that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 addresses, you know, certain aspects. So, I
2 think there is a good chance that the Board
3 would do that.

4 MR. TOLIVER: Thank you.

5 BZA CHAIR MILLER: Okay.

6 MR. TOLIVER: And Mr. Gell and I,
7 we had agreed on, we actually had negotiated
8 provisions that would be within, what he is
9 going to suggest. So, thank you very much for
10 your time. Are there any other questions?

11 VICE CHAIRMAN LOUD: Just one
12 final question, Mr. Toliver before you leave.

13 MR. TOLIVER: Mr. Loud.

14 VICE CHAIRMAN LOUD: Of course, I
15 know you are one of the great leaders of Ward
16 4 and we cross paths often in the community
17 so, --

18 MR. TOLIVER: Yes, we do, Mr.
19 Loud. Thank you, sir.

20 VICE CHAIRMAN LOUD: -- I
21 appreciate your leadership on this issue,
22 especially sticking to your guns with regard

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to the seven to one vote and not allowing it
2 to get into a holding pattern and a ping-pong
3 that never ends.

4 But going to Exhibit 28, one of
5 the things that the Chair mentioned is that
6 the ANC's approval is contingent upon the
7 signing of the voluntary agreement between WES
8 and nearby neighbors and the appropriate 4A
9 commissioners. And just taking a look at the
10 actual agreement, I don't think it has a
11 signature for the Commissioners. I could be
12 wrong.

13 MR. TOLIVER: I happen to have the
14 signatures in front of me.

15 VICE CHAIRMAN LOUD: Okay. Well,
16 the version that I have I don't think has --

17 REVEREND POPPEI: You know, I
18 dropped off copies of the agreement yesterday
19 so that you would have them ahead of the
20 hearing but I didn't have --

21 VICE CHAIRMAN LOUD: Got you.

22 REVEREND POPPEI: -- the final,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 final.

2 VICE CHAIRMAN LOUD: Okay.

3 REVEREND POPPEI: So, Commissioner
4 Toliver has it.

5 MR. TOLIVER: Yes, with
6 Commissioner Whatley, Kennedy and my
7 signatures on it.

8 VICE CHAIRMAN LOUD: I don't know
9 if other Board members have that version or
10 not.

11 MR. TOLIVER: No, they wouldn't
12 because we just signed it.

13 VICE CHAIRMAN LOUD: Got you.
14 Well that would be very important to have, in
15 terms of giving the ANC report the great
16 weight it is entitled to.

17 REVEREND POPPEI: And that
18 includes Joanne Hurt's signature as well.

19 MR. GELL: And if I may, as he
20 leaves, I want to add my tribute to Mr.
21 Toliver for the wonderful work he did in
22 bringing this about. I don't think we would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have gotten there without his help. And he
2 obviously feels strongly about it and
3 expressed the needs of the community very well
4 in our meetings.

5 MR. TOLIVER: Thank you very much.

6 BZA CHAIR MILLER: Thank you.

7 MR. GELL: That completes our
8 testimony.

9 BZA CHAIR MILLER: Okay, Ms.
10 Hackney, then, I think, if I am not mistaken,
11 now is your time, if you have some questions
12 for the Applicant's witnesses, based on what
13 they testified.

14 MS. HACKNEY: Well, I guess --

15 BZA CHAIR MILLER: Wait. Is your
16 mike on?

17 MS. HACKNEY: Pardon? I'm sorry.

18 BZA CHAIR MILLER: Put your mike
19 on.

20 MS. HACKNEY: I forgot it was
21 there. Okay, I don't know whether there are
22 many questions as some questions and some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 comments.

2 BZA CHAIR MILLER: It is just --

3 MS. HACKNEY: I have expressed
4 this --

5 BZA CHAIR MILLER: Wait a second.
6 I just want to tell you the rules.

7 MS. HACKNEY: Oh, I'm sorry.

8 BZA CHAIR MILLER: Okay. Now is
9 the time for questions, okay, of these
10 witnesses. Later, you will get a chance to
11 present your testimony and your comments.
12 Okay? It is bifurcated that way. So you can
13 ask them questions.

14 MS. HACKNEY: Okay. Well, I have
15 asked the questions, I guess I need to ask.
16 I wanted to know, I don't know whether this is
17 the proper time to ask this or not but there
18 are many neighbors are not represented on this
19 agreement. Do you in any way say they are
20 bound by it? I didn't even know you were
21 meeting, so I certainly have not signed it.
22 And I would like to know what affect you think

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 this agreement has on people who didn't even
2 know you were meeting. It wasn't advertised
3 like an election where everybody concerned
4 could come and join in.

5 BZA CHAIR MILLER: Okay, that is a
6 good question. Let them respond.

7 MR. GELL: It was our intention
8 that only the people who signed the agreement
9 would have the right to enforce it through the
10 agreement. However, obviously we would be
11 happy to have Ms. Hackney sign, if she wants
12 to. But we wouldn't just leave it open-ended
13 for anybody to sign on it at a future time.

14 BZA CHAIR MILLER: But she is not
15 bound by anything in the agreement, is she?

16 MR. GELL: Well, the neighbors
17 aren't really bound by very much at all. It
18 is WES and Wonders that are bound. There are
19 some obligations to provide telephone numbers
20 and email addresses to participate in
21 meetings, at least some representative numbers
22 that have come to the quarterly meetings that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 are being held. But no, the neighbors don't
2 really have very much. It does give them a
3 lot of rights, however.

4 MS. HACKNEY: Okay. I guess that
5 is the only question.

6 BZA CHAIR MILLER: Okay.

7 MS. HACKNEY: I guess the other
8 questions more or less come to you people.

9 BZA CHAIR MILLER: Well, I don't
10 think that is in the process, really, but
11 let's go to -- oh. Mr. Loud has question.

12 VICE CHAIRMAN LOUD: I had one
13 question for, I guess for Ms. Hurt, but for
14 whomever would be in a position to answer it.
15 It kind of concerns the whole alley issue and
16 enforcement in the alley. And it sounds like
17 from the conditions that were submitted by Mr.
18 Gell that basically the police person for
19 making sure that all of this works, because it
20 is great to have it in design but the
21 execution is a totally different question, is
22 that you have one person stationed at 16th and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Kalmia's alley and a separate person stationed
2 at 16th and Jonquil's alley. And that person
3 makes sure that -- okay.

4 How is it enforced? How do you
5 make sure that somebody who is at 16th and
6 Kalmia doesn't just decide to go south through
7 the alley or vice-versa?

8 MR. GELL: If I could answer that.
9 It is our proposal that only one person
10 monitor during the peak times. Actually stand
11 out at the corner of Kalmia and the alley and
12 have jurisdiction over that area on Kalmia
13 Street where people would normally be parking.

14 They would also, of course, see
15 anybody coming through the alley who is
16 connected, who is a parent of one of the
17 school children, and would be able to stop
18 them and warn them or site them or whatever so
19 that at that vantage point, they would be able
20 to cover both.

21 We didn't feel there was any need
22 to have anybody at Jonquil because, as I say,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 they would be seen if they came from Jonquil
2 north through the alley.

3 Does that respond?

4 VICE CHAIRMAN LOUD: It does. And
5 so that goes a long way, I think, toward
6 perhaps addressing some of the concerns that
7 Mrs. Hackney might have regarding that early
8 morning alley traffic. Because, as I
9 understand it, it is captured in your Letter
10 F for your conditions. You are going to have
11 someone there who physically stops the traffic
12 from entering the alley during the peak hours.
13 Okay. Thank you.

14 MR. GELL: No, they wouldn't stop
15 them, they couldn't stop them from entering
16 the alley at Jonquil.

17 VICE CHAIRMAN LOUD: No, I'm
18 talking about -- well, at Kalmia will they
19 stop them?

20 MR. GELL: They certainly would
21 stop them from entering from Kalmia.

22 VICE CHAIRMAN LOUD: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. GELL: That's right.

2 VICE CHAIRMAN LOUD: Okay.

3 MR. GELL: That's right.

4 BZA CHAIR MILLER: Okay, any other
5 questions? All right, why don't we go to the
6 Office of Planning then?

7 MS. THOMAS: Yes. Good afternoon,
8 Madam Chairman, members of the Board. I am
9 Karen Thomas with the Office of Planning. I
10 will be brief.

11 The Office of Planning is
12 supporting a request for a child development
13 center at the Washington Ethical Society. We
14 believe it meets the test of the provisions of
15 Section 205.1 through 10.

16 I would just like to clear up one
17 thing on Section 205.9. There are differences
18 in what we originally addressed in page five
19 of our report and the difference being that we
20 came to an agreement with DDOT prior to the
21 Applicant's communication, extensive
22 communications with the community. So, that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 is where the differences are.

2 But that said, we totally agree
3 with what the Applicant's agreement is with
4 the community. And I would be happy to take
5 any questions.

6 BZA CHAIR MILLER: So is it the
7 position of the Office of Planning that you
8 support the application and you support the
9 measures within the voluntary agreement?

10 MS. THOMAS: Absolutely.

11 BZA CHAIR MILLER: Okay and is
12 there a question out there with respect to
13 DDOT's support at this point, do you know?

14 MS. THOMAS: No, DDOT is
15 supportive of the agreement, I believe. That
16 is what was told to me. They are supportive
17 of the agreement. If at some time while the
18 school is in operation and they do that
19 monitoring situation that they expressed,
20 talked about in the agreement, if after
21 probably some a few quarters pass and it is
22 not working out, then they would, then they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 can see going back to do drop-off and pick-up
2 in the alley. But generally speaking, they
3 are supportive of what has been proposed thus
4 far.

5 BZA CHAIR MILLER: Any questions?

6 VICE CHAIRMAN LOUD: Not a
7 question, just I guess sort of cleanup stuff,
8 so that we can say, if we do end up saying
9 that we accepted your report as modified by
10 your testimony, the only other change I see is
11 that they talked in the original submission
12 about a staff of 11.

13 BZA CHAIR MILLER: Eleven, yes.

14 VICE CHAIRMAN LOUD: And they have
15 added up to 14 now. And I am assuming that is
16 not a problem for OP.

17 MS. THOMAS: That is correct. I'm
18 sorry.

19 VICE CHAIRMAN LOUD: And then
20 there was just a little confusion about the
21 start time. And I think where we ended up was
22 that we were talking bout 7:30? Okay. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 so your report says 7:00 a.m. but again --

2 MS. THOMAS: Yes, I think I would
3 like to stick with that 8:00.

4 VICE CHAIRMAN LOUD: 7:00? Okay.

5 MS. THOMAS: Yes, because in a
6 prior case I remember that the Board alluded
7 to let's put it earlier because you don't want
8 a situation where staff is showing up at 7:00
9 or earlier because they have things to do and
10 the community is objecting to well there are
11 people there at that time.

12 So, I think I would like it to
13 stay at least a half an hour earlier to the
14 front end and a half an hour later to the back
15 end.

16 VICE CHAIRMAN LOUD: Okay, so that
17 remains as is in your report, then. Okay.

18 MS. THOMAS: That is correct.

19 VICE CHAIRMAN LOUD: And then the
20 part about the, and I am on your page six
21 conditions, --

22 MS. THOMAS: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIRMAN LOUD: The part
2 about the alley at the rear, --

3 MS. THOMAS: The alley will
4 change.

5 VICE CHAIRMAN LOUD: All of that
6 comes out now.

7 MS. THOMAS: Yes, that's correct.

8 VICE CHAIRMAN LOUD: Okay, thank
9 you.

10 BZA CHAIR MILLER: Well now that
11 Mr. Loud started down that road, what about
12 the condition of one to two weeks' notice for
13 special events at the school?

14 MS. THOMAS: Yes, I picked that up
15 from the prior BZA order for a previous
16 situation and I thought that was helpful to
17 keep the neighborhood peace so that an event,
18 you know, one to two week notice, or some type
19 of notice if that is better and more suited,
20 so that there won't be any sort of conflicts
21 with the neighborhood and the school regarding
22 if they had to have something all of a sudden,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 at least there would be some way of notifying.

2 BZA CHAIR MILLER: Okay, that
3 sounds good. All right, others?

4 (No audible response.)

5 BZA CHAIR MILLER: Okay, thank
6 you. And does the Applicant have a copy of
7 the Office of Planning report?

8 MR. GELL: I had seen it. I don't
9 have it with me but I had seen it.

10 BZA CHAIR MILLER: Do you have any
11 questions?

12 MR. GELL: Just, on the notice. I
13 assume that if the school has to have a hurry
14 up emergency meeting of parents that one or
15 two week notice wouldn't be required. Is that
16 what you are saying?

17 MS. THOMAS: Yes, that is assumed.
18 I mean, there is only so much you can do. But
19 I think for, you know, like the events that
20 you have, like the PTA meetings, you know, it
21 is possible to do with something like that.

22 MR. GELL: It wasn't in our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 agreement but if the Board wants to add that,
2 we have no objection.

3 BZA CHAIR MILLER: Ms. Hackney, do
4 you have any questions for the Office of
5 Planning?

6 MS. HACKNEY: Any questions about
7 what you said?

8 BZA CHAIR MILLER: About what Ms.
9 Thomas just testified to from the Office of
10 Planning? Do you have a question for her?

11 MS. HACKNEY: I didn't understand
12 really what she said the last time she spoke,
13 so I really can't ask a question about it.

14 BZA CHAIR MILLER: Do you have a
15 copy of her report?

16 MS. HACKNEY: Is this the -- no, I
17 don't think so. No, I don't have a copy of
18 her report. Thank you.

19 BZA CHAIR MILLER: Well you don't
20 have to ask a question, just if you had one.

21 MS. HACKNEY: I didn't have a copy
22 of -- it wasn't for her. I don't have a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 question for her.

2 BZA CHAIR MILLER: Okay. And then
3 I think it is now --

4 MEMBER DETTMAN: Madam Chair, I
5 had one quick question just looking down at
6 the OP report.

7 Ms. Thomas, your third condition,
8 are you recommending that staff escort the
9 children to and from the center through the
10 alley, specifically through the alley?

11 MS. THOMAS: I guess this was
12 prior to the agreement that is currently on
13 the table. If they are doing, if they are
14 going to be -- from the way I understand it,
15 no, they are going to be options to walk them
16 through the alley. Is that correct?

17 MS. HURT: The plan is that the
18 parents or the guardian will escort the
19 children into the center, that a staff member
20 will be outside just during the peak time
21 monitoring. But it is the parent
22 responsibility to walk from the parked car

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 into the classroom from both, from 16th or the
2 alley.

3 MEMBER DETTMAN: Sixteenth or the
4 alley, okay.

5 BZA CHAIR MILLER: So staff won't
6 --

7 MEMBER DETTMAN: Okay.

8 BZA CHAIR MILLER: I'm sorry. So
9 staff won't be escorting the children. It
10 won't be like they will be unloaded from the
11 car and the staff will take them in. Each
12 parent will take their child in.

13 MS. HURT: Right because they will
14 be parking their cars now.

15 MS. THOMAS: So I guess they can
16 have, there are two options to take them in;
17 through the alley or from the front at 16th
18 street.

19 MEMBER DETTMAN: Do you see a
20 possibility of parents kind of seeing that
21 they can enter the alley from Jonquil and cut
22 through to Kalmia, instead of going over to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 17th and coming around?

2 I'm trying to get a sense of how
3 much traffic is going to be using the alley as
4 a cut-through, even though they are not
5 parking there, and then the parents escorting
6 children through the alley in the opposite
7 direction.

8 MS. HURT: That is one of the
9 rules that would then trigger a violation.

10 MEMBER DETTMAN: Okay.

11 MS. HURT: So, they might be
12 tempted but they won't be tempted for long.

13 MEMBER DETTMAN: Okay.

14 REVEREND POPPEI: Yes, that's
15 right. Essentially the parents will be told
16 you may never be in the alley at any time.
17 Your car may never be -- no portion of your
18 car may enter the alley at any time.

19 MS. HURT: For instance if --

20 REVEREND POPPEI: It just makes it
21 easier.

22 MS. HURT: -- we have a sick child

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and we call a parent and say your child is
2 throwing up, you need to come right now to
3 pick up your child, even that parent will be
4 parking on Kalmia and walking in to get the
5 child.

6 I mean, we are very clear on this
7 in the agreement and how we will be educating
8 our parents about this.

9 REVEREND POPPEI: And I do just
10 want to add because I think on the face of it
11 it sort of seems like oh boy, they are going
12 to be having to park in the street and walk
13 all the way through. There is only one house
14 between the west building and Kalmia and it is
15 actually no further than if you were at a
16 suburban daycare center and you had to park in
17 a parking lot and walk the parking lot into
18 the center and maybe your kid's room was on
19 the fourth floor so you went up the elevator.
20 The impact for parents is really, it is no
21 more than that walking from Kalmia into the
22 center. So, I think it is going to feel

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 really reasonable to parents.

2 VICE CHAIRMAN LOUD: I think again
3 to Mr. Dettman's question, what really brings
4 it home, I think, is getting that \$50, \$100,
5 whatever, \$150 fine you know for violations.
6 But it won't stop neighborhood cars that are
7 just going to do what they are going to do
8 anyway.

9 REVEREND POPPEI: Right.

10 VICE CHAIRMAN LOUD: But for the
11 parents and I guess they will have these
12 decals that identify them as parents. I think
13 that will bring them in line quickly.

14 REVEREND POPPEI: And we are
15 hoping just our presence there will cut down
16 on some of that alley traffic that neighbors
17 have been complaining about.

18 VICE CHAIRMAN LOUD: Uh-huh.

19 BZA CHAIR MILLER: I just, before
20 we move on, I just want to ask Office of
21 Planning and/or the Applicant, I am having
22 trouble finding in this agreement, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 agreement to do this monitoring of the inter-
2 modal transportation split that DDOT likes to
3 follow. And I just want to know if it is
4 there and if it isn't there, do we need it
5 really to mitigate an adverse impact or is
6 this something that DDOT likes to see what is
7 going on?

8 REVEREND POPPEI: I can speak just
9 to what is in the agreement. I think what we
10 were referring to and looking at was number
11 13, which talks about a written report of any
12 violations and then says in the second
13 sentence, in addition, at least quarterly WES
14 and Wonders will provide a report to the
15 neighbors and ANC commissioners, describing
16 each complaint received whether from neighbors
17 or others and how the complaint was handled,
18 which, as you know, really refers more to
19 violations of the agreement to the traffic
20 plan. So, if people were in the alley, you
21 know, if they were parked too close to a
22 driveway. I have to say I don't actually know

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 what an inter-modal --

2 BZA CHAIR MILLER: Yes, I think
3 that DDOT is interested in how many people are
4 walking, right, how many people are driving,
5 how many people are taking mass
6 transportation. Am I correct, Ms. Thomas?

7 MS. THOMAS: That is correct. But
8 you know, typically we just do that for big
9 schools and private schools. And for a
10 daycare center, I don't know how relevant that
11 should be but that is just my opinion.

12 BZA CHAIR MILLER: Right. I think
13 if you were doing it anyway, it would be nice
14 to copy DDOT. But I don't see that you are
15 really doing that. Right?

16 REVEREND POPPEI: Right. The
17 agreement really refers specifically to the
18 violations of the agreement. That was the
19 main concern of the neighbors and, therefore,
20 our main concern.

21 MS. HURT: But we are going to be
22 keeping DDOT in the loop, after talking with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 them at the last ANC meeting.

2 BZA CHAIR MILLER: You are going
3 to keep them in the loop but are you going to
4 keep those kind of figures, statistics of how
5 many people drive, how many people --

6 MS. HURT: You know, if we have to
7 we will.

8 BZA CHAIR MILLER: Well, I know.
9 If you don't have to, you are not planning on
10 that? That is my question, I guess.

11 MS. HURT: I don't -- unless it --
12 we don't need it for our purposes to run our
13 program.

14 BZA CHAIR MILLER: Okay. All
15 right, any other questions?

16 Okay, then, is there anybody here
17 who wishes to testify in support of the
18 application?

19 Okay, not hearing from anyone,
20 anybody who wants to testify in opposition?
21 Yes, okay. Ms. Hackney, now is your moment.

22 MS. HACKNEY: Okay. Most of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 things have been answered in the general
2 discussion but I do still have a few
3 questions.

4 They are going to impose they say
5 these rules on parents. All of the rules,
6 these people weren't there maybe it will work
7 differently now, but I am a great believer in
8 pastor's prologue and all of the rules or
9 suggestions or whatever you wanted to call
10 them in the past have not worked. And I want
11 to know, I know what they put down there, but
12 what recourse do we have if these don't work?
13 Because they have never worked in the past.
14 That is one question.

15 The next question. They have
16 many, many, many activities at the Washington
17 Ethical Society building in addition to the
18 school. And what control do they have over
19 them? I guess that is not a part of this
20 hearing but they are a much bigger nuisance I
21 guess than the school because they are the
22 ones that come up and take up all of the space

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on weekends, especially.

2 Sometimes, I am just looking at
3 something from one of their newsletters here.
4 On a Sunday, they had four different things.
5 They always start at the 11:00 service but
6 down in the afternoon, 1:00, 4:00, 6:00 and
7 whatever, there is something going on. And
8 they instruct people, in one of the books,
9 they instruct people to park on 16th Street,
10 which happens to be where I live and many
11 times guests can't even get near my house
12 because they have all of the space taken up.
13 So what relief can we expect to look for or
14 hope for from that kind of situation?

15 Another things that was said in
16 one of the meetings that one of the reasons
17 they thought this was a good location because
18 it would be convenient for parents coming into
19 town from out of town to bring their children
20 to school. And now they say now that they are
21 concentrating on local students. Which one
22 are we to believe? Are they really getting

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 here for convenience for out-of-towners to
2 make a quick stop or is this for local
3 students?

4 In one of the parts of the
5 agreement, they said that if we want to
6 complain, we are supposed to have a witness or
7 a camera. And I want to know how many of you
8 leave home every day with a witness and a
9 camera or a camera to take a picture or
10 record, or have a witness there to see what
11 violations of the rules were taking place and
12 how are we expected to live with those?

13 And another question I would like,
14 the one I said I have from you, is how many
15 businesses can we operate in an R-1-A
16 neighborhood? Because this is a business
17 going there. They charge admission for
18 umpteen different things. Like they have
19 movie nights where they charge \$5 for a movie
20 and they will give you popcorn and candy and
21 on down the line. They advertise in the
22 Washington Post magazine section for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 weddings and things they have there. It is a
2 business and how much business can we expect
3 to tolerate in an R-1-A neighborhood? Because
4 I do pay taxes there. My taxes are over
5 \$5,000 a year. Their space is more than twice
6 as big as mine but they are nonprofit. They
7 pay no taxes to support keeping the streets
8 running and clean, and police, fire, and
9 ambulance, and all of those things.

10 So, I don't know that you can do
11 anything about it but these are considerations
12 that should be made, I think, when we think of
13 how many extraneous things can come into our
14 neighborhood. Because we support them but we
15 are the ones that suffer because they are
16 there and I don't think that is quite fair to
17 us as taxpayers and local residents.

18 And I guess the questions have
19 been answered in the various discussions. So,
20 I would like to know, what are they going to
21 do then about all of the people who come there
22 for movies and weddings and various kinds of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 parties, which they have no control over? Are
2 they going to be told the rules how they are
3 supposed to respect our neighborhood or not?

4 BZA CHAIR MILLER: All right. Let
5 me just make a comment and then you can pick
6 up from there. Ms. Hackney, I understand that
7 this building is used for different purposes.
8 And what is before us is just the child
9 development center.

10 MS. HACKNEY: I know that. I said
11 that.

12 BZA CHAIR MILLER: Okay. Okay.
13 I'm not going to answer all of the questions
14 but I just wanted to answer a couple of
15 basics. And that is, that is allowed under
16 the regulations, with the Board's approval in
17 this process, basically if they meet the
18 criteria and we find there is not an adverse
19 impact on neighboring property.

20 So, now whatever is happening with
21 the other aspects of the building is really
22 not before us unless they were happening, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Dettman was exploring this, unless it was at
2 the same time and we found that there was too
3 much going on at the same time.

4 Okay, but other than that, if they
5 have movies on another night, that is not
6 within our jurisdiction.

7 MS. HACKNEY: I said I have had
8 before you since you happen to be sitting
9 here.

10 BZA CHAIR MILLER: I'm sorry.
11 What?

12 MS. HACKNEY: I said, I realize
13 that that was not definitely a zoning question
14 but I ask you because you happen to be sitting
15 there.

16 BZA CHAIR MILLER: Okay.

17 MS. HACKNEY: What I do wonder
18 sometimes what recourse we have for our
19 neighborhood being overrun. And maybe that is
20 a zoning question and allowing people to do so
21 much in the neighborhood.

22 BZA CHAIR MILLER: That is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 zoning question. It is just not this question
2 today. But you can go visit Mr. Hood sometime
3 on the Zoning Commission and ask him to change
4 the rules or we can look, in some cases we can
5 see if there is too much going on but that is
6 not the issue today.

7 MS. HACKNEY: You said I could
8 talk to whom?

9 BZA CHAIR MILLER: Mr. Hood. Not
10 here. Mr. Hood chairs the Zoning Commission.

11 MS. HACKNEY: No, I just want to
12 know who I should see. I didn't get the name.

13 BZA CHAIR MILLER: Hood. This is
14 Mr. Hood. He is chair of the Zoning
15 Commission.

16 MS. HACKNEY: Oh, he is not hiding
17 behind a desk.

18 ZC CHAIR HOOD: Actually, we are
19 doing something on 16th Street but I am
20 reluctant to say anything because it may end
21 up in court.

22 MS. HACKNEY: I just wanted to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know to whom I should address any questions.

2 BZA CHAIR MILLER: Ms. Hackney,
3 there are two zoning bodies. Ms. Hackney.

4 MS. HACKNEY: Oh.

5 BZA CHAIR MILLER: There are two
6 zoning bodies. And Mr. Hood chairs the Zoning
7 Commission and they write the rules and they
8 can change the rules and sometimes that may be
9 the right forum for you.

10 ZC CHAIR HOOD: But also I think
11 even more than that, Ms. Hackney, I think it
12 is good to work with your Ward 4 Planner. I'm
13 not sure who that is, in the Office of
14 Planning. You might want to start there with
15 your Ward 4 Planner. You may want to petition
16 the Zoning Board about something. I'm not
17 sure.

18 Malika Abernathy is the Ward 4
19 Planner. You might want to have a discussion
20 with her.

21 MS. HACKNEY: Where is she
22 located?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ZC CHAIR HOOD: She just moved,
2 where did you all move, to the Rees Building?
3 They are in the Reeves Building, now, Office
4 of Planning. Start there and ask for your
5 Ward 4 Coordinator.

6 MS. HACKNEY: Thank you.

7 ZC CHAIR HOOD: And Madam Chair, I
8 am going to remember that you did that.

9 BZA CHAIR MILLER: Yes, don't go
10 directly to the Zoning Commission. Would you
11 all like to respond to some of the other
12 concerns that were raised?

13 REVEREND POPPEI: I'm not sure how
14 helpful it is for the BZA because it is really
15 not the matter that is before you right now
16 but I do want to say that I am new on the
17 block. And it has been a real hope of mine
18 that we can continue our outreach to the
19 neighborhood. We have been talking to
20 neighbors that having people park on 16th
21 Street was actually a special request from the
22 neighbors who felt that it calmed traffic on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 16th Street. Our members don't like to park
2 on 16th Street, usually, because they are
3 worried that they might get rear-ended. And
4 we had a special request from some neighbors
5 to ask them to park on 16th Street. So we
6 have asked them to kind of take one for the
7 team and do that in an attempt to continue our
8 outreach to neighbors because it does slow
9 traffic, obviously, only during legal hours.
10 I mean, I hope I don't need to say that.

11 So, and you know, I would hope,
12 Ms. Hackney, that you might want to join us
13 for some of those movies. You know, we have
14 the cost to cover the popcorn expenses and it
15 is a heck of a lot cheaper than going to the
16 movie theater. Those are our ways of
17 connecting with our members and also our hope,
18 really, with the local community. We often,
19 if we have a special speaker come, we do put
20 it on the Shepherd Park LISTSERV and we would
21 love to have community members come out. Our
22 hope is to be a resource for ideas, for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 learning. We have a really nice yoga class
2 that meets Sunday evenings and neighborhood
3 folks are always really welcome at those. We
4 would love to have that.

5 So, I hope that we will just be
6 able to continue hearing concerns, being able
7 to respond to concerns, and that you will come
8 to see us as a resource, that we have
9 offerings that we would really love to welcome
10 you to.

11 MS. HACKNEY: Well thank you. I
12 think I told you this before but they hadn't
13 heard it. I asked a previous director of your
14 center, at one time, could he tell me anything
15 that should make us happy to have him as a
16 neighbor. And though he said, he mentioned
17 some club that he worked with. I asked him to
18 tell me more about the club. It was a girl's
19 club in Montgomery County, zero for D.C. and
20 that. So I asked him could he think of
21 anything else. And he told me he was a
22 member, the name of the group escapes me but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 it is this nonprofit group, it used to be
2 called Nonprofit Agenda. But anyways, it has
3 a buying club where you can get your supplies
4 at a lesser price and they run a lot of
5 classes that are helpful to people in
6 nonprofit, and he said they are a member of
7 that. I said, that serves only members of it
8 who are nonprofit people. It does nothing for
9 D.C. He couldn't think of one single thing as
10 to why we should be happy to have them in
11 neighborhood. You are doing much better on
12 this score.

13 BZA CHAIR MILLER: All right. You
14 know what? I'm sorry, I am going to have to
15 cut in here. It is almost 3:00 and we have
16 other people waiting for their cases.

17 So, I hope you will continue
18 dialogue outside of this forum.

19 Ms. Hackney, does that complete
20 your testimony?

21 MS. HACKNEY: Yes, that is it.

22 BZA CHAIR MILLER: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. HACKNEY: I didn't give the
2 testimony because most of what I had said had
3 been covered. I just wanted to ask those few
4 questions.

5 BZA CHAIR MILLER: Okay. Can I
6 clarify? You were admitted as a party and you
7 submitted on your party status application
8 that you were in opposition and I just want to
9 make sure, at this point having heard the
10 whole case, --

11 MS. HACKNEY: I'm still in
12 opposition.

13 BZA CHAIR MILLER: -- if you are
14 still a party in opposition.

15 MS. HACKNEY: Thank you.

16 BZA CHAIR MILLER: Okay. Any
17 cross for Ms. Hackney?

18 MR. GELL: No, I have -- I assume
19 she is not going to sign the agreement.

20 MS. HACKNEY: You are right.

21 BZA CHAIR MILLER: Okay.

22 VICE CHAIRMAN LOUD: Madam Chair,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 --

2 BZA CHAIR MILLER: Yes.

3 VICE CHAIRMAN LOUD: -- I had one
4 quick follow-up to Mrs. Hackney.

5 I think she did raise a lot of
6 questions but one that she raised that I think
7 is within the scope of what we are talking
8 about is the whole thing about a witness and
9 a camera. And I think we kind of, it was kind
10 of funny the way she said it but I think the
11 point is, this enforcement person that is
12 going to be at 16th and Kalmia, for all of
13 this to work, that person really has to do
14 their job. They can't give a lot of breaks to
15 parents because they know the parent or you
16 know, I am going to let you slide this time.
17 That person has to really be bringing the
18 message back to their superiors that there are
19 violations of parents coming through that
20 alley. And I think it will help in terms of
21 the issue that Mrs. Hackney raised regarding
22 cameras and witnesses and all of that. So, I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 just wanted to respond to that point.

2 MS. HURT: And we are prepared to
3 do that. I mean, we currently now have a very
4 strict policy around late pick-up times in our
5 centers, that if you are after 6:00, you get
6 charged by the minute and we have no problem
7 enforcing that.

8 BZA CHAIR MILLER: What is that
9 condition?

10 VICE CHAIRMAN LOUD: I believe
11 that is F in the conditions that Mr. Gell
12 submitted earlier today.

13 REVEREND POPPEI: And Commission
14 Toliver actually spoke to the fact that some
15 of this came actually from neighbors who were
16 saying, you know, we don't want to make it
17 such that any neighbor could come up and just
18 say well, oh, I saw that. Well, nobody else
19 saw it but -- and part of the camera was since
20 cell phones all have cameras that the
21 neighbors at the table at the working
22 agreement felt, actually many of us do have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 cameras all the time.

2 VICE CHAIRMAN LOUD: But again,
3 the cameras are kind of akin to the LISTSERV.
4 There are a lot, there is a huge population of
5 folks in the city and in Shepherd Park in
6 particular who are not on the neighborhood
7 LISTSERV --

8 REVEREND POPPEI: Sure.

9 VICE CHAIRMAN LOUD: -- and
10 probably don't have cell phone cameras and the
11 like.

12 MS. HURT: And we also felt that
13 if it is a repeat offender, the likelihood
14 then will be that there will be people to,
15 other witnesses besides just one.

16 MR. GELL: Mr. Loud, I think it is
17 has probably been your experience as well as
18 mine that neighbors can be pretty good about
19 enforcing rules, when it becomes a problem for
20 them. They are looking to us to enforce the
21 rules and we will. But if neighbors see that
22 people are constantly using the alley to drop

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 their kids off, violating the rules and so
2 forth, they are going to be able to use this
3 agreement to enforce it and the conditions you
4 will be putting in there, they will have
5 something to pin their case on and it will be
6 very, very effective for them.

7 I can assure you that they don't
8 want to be just standing out there every day
9 doing the monitoring themselves. They have
10 other lives to lead and they have expressed
11 that to us many times. But they do have a
12 place to go if it becomes a problem. An that
13 is what this agreement essentially does.

14 BZA CHAIR MILLER: Okay, I think
15 this brings us to the conclusion of your case.

16 MR. GELL: Yes, we are finished.

17 BZA CHAIR MILLER: Okay, sorry.
18 We were just looking for that camera provision
19 but we can look later. You can proceed, if
20 you would like.

21 MR. GELL: I think on the cameras,
22 I think the concern was for reasons quite

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 divorced from the operation of the school that
2 somebody who, I know we can't imagine anybody
3 who would do this, but there are people who
4 like to make trouble. And I think the
5 neighbors were aware of that as well. Just to
6 make sure that there is some reasonable
7 complaint that has been filed, it is not that
8 hard to get out there with a camera. I have
9 got one I am carrying --

10 BZA CHAIR MILLER: Okay, Mr. Loud
11 just showed it to me. I don't want to belabor
12 this because we have other people waiting,
13 too, but I think it is a little broader than
14 that. In your language, it says or other
15 reasonably reliable evidence. So it is not
16 that everybody has to have a camera. Okay.

17 Okay, do you have a closing or no?

18 MR. GELL: No, I realize that it
19 is late and we have probably said everything
20 we need to. The conditions that we submitted,
21 you can look them over and see if they cover
22 what you need. As far as referencing the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 whole agreement, that is okay, too.

2 We will conclude with that and
3 thank you very much.

4 BZA CHAIR MILLER: Okay, any final
5 questions?

6 (No audible response.)

7 BZA CHAIR MILLER: Okay, I don't
8 think that we need to leave the record open
9 for any additional material either. So, we
10 can close the record and just give us a moment
11 and we are going to decide when to set this
12 for decision.

13 (Pause.)

14 MR. GELL: Is there any chance of
15 getting a bench decision today?

16 BZA CHAIR MILLER: I don't know.
17 We are just going to assess. I know we don't
18 need any other information. I think we just
19 have to see if we are ready to go through the
20 conditions and also take into account the
21 people who are here for their hearings.

22 All right, why don't we just --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 okay. We are going to take a short break and
2 just assess with how we want to proceed with
3 this afternoon and the parties who are here
4 and everything.

5 (Whereupon, the foregoing
6 proceedings when off the record at
7 3:05 p.m. and went back on the
8 record at 3:25 p.m.)

9 BZA CHAIR MILLER: Okay, we are
10 back on the record.

11 We decided that we will deliberate
12 on this case. Therefore, that is what we are
13 going to do, starting now.

14 Okay, we do recognize that we have
15 people waiting. So, we may not be as thorough
16 of every aspect of the regulations, but we
17 will address them.

18 So, that being said, okay, this is
19 an application for a child development center
20 under Section 205 of the Zoning Regulations.
21 And we recognize that this is a building that
22 has housed other uses similar to this one,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 over a long period of time, I think until
2 1964. The Office of Planning did a thorough
3 analysis in writing of all of the elements of
4 205 and how this application meets them. And
5 I would suggest that based on the evidence
6 that we heard today, that this application
7 does meet the elements. And I am just going
8 to see if there is any specific regulations
9 that I need to highlight.

10 I mean, there is no question that
11 it is capable of being licensed. There is a
12 very well thought out parking drop-off and
13 pick-up plan and traffic routing plan that was
14 discussed at great detail at this hearing and
15 also that was vetted very thoroughly with the
16 neighbors and the ANC. And I think that I
17 speak for the Board in saying that we were
18 quite impressed with the manner in which the
19 Applicant and the ANC and the neighbors worked
20 together and worked out a parking, traffic,
21 drop-off plan that seems to make great sense
22 and not have adverse impacts on the neighbors.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Okay, I am just skipping through
2 some I don't even think -- Office of Planning
3 addressed every single element. I don't think
4 it is necessary to go into them all here and
5 I think that the Board can just adopt them.

6 Okay, I am going to recommend a
7 few conditions and then I will open this up
8 for discussion.

9 Basically, as I said, the Board is
10 very impressed with the degree to which the
11 ANC, the Applicant, and the neighbors have
12 worked together and find that their
13 neighborhood cooperation agreement basically
14 addresses almost every aspect that could give
15 rise to an adverse impact and addresses that.
16 I think that -- and then Office of Planning
17 may have had one or two.

18 So what I am going to do is I am
19 going to suggest certain conditions. Some of
20 them are quite basic and they lay out the
21 parameters of the school such as that it will
22 have 40 students ages one and a half to five.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And anyone can correct me if I am making any
2 mistakes here. And that the staff will be
3 limited to 14. The hours of operation, number
4 three, would be 7:00 to 6:30 p.m.

5 The Neighborhood Cooperation
6 Agreement we noted has a term of three years.
7 And we think that the BZA order should be the
8 same. So, the fourth condition would be that
9 it would be for a term of three years.

10 Five, we believe that there are
11 certain conditions set forth in the
12 Neighborhood Agreement that should be
13 referenced in the BZA order and it would state
14 that Applicant shall comply with paragraphs 2,
15 3, 4, 6 and 10 of the Neighborhood Cooperation
16 Agreement. And we can get back to any of
17 these that Board members want to get back to.

18 And the sixth would be Office of
19 Planning's condition regarding the notice for
20 special events and that would say at least one
21 week's notice shall be provided to neighbors
22 regarding special events at the school.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Those are my, the basic
2 conditions. Does anyone have any comments on
3 that or any other aspect?

4 (No audible response.)

5 BZA CHAIR MILLER: Okay, I didn't
6 phrase this in any way but I am just wondering
7 whether when we reference that the Applicant
8 will comply with paragraphs 2, 3, 4, 6 and 10
9 of the Agreement, whether or not we want to
10 say that these regard traffic management or
11 something like that. Regarding traffic
12 management. I think they all do.

13 (Pause.)

14 BZA CHAIR MILLER: Yes, traffic
15 and parking management. I would like to say
16 that, at this point, so that anyone looking at
17 the BZA order would have some idea of what
18 these paragraphs are. And then I guess when
19 OAG is writing this order that they can just
20 double check that that is the proper way to
21 characterize them. But I think that that is
22 what it is, traffic and parking management.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Okay, any other comments on this?

2 (No audible response.)

3 BZA CHAIR MILLER: Okay, then I
4 would move approval of application number
5 17896 of the Washington Ethical Society
6 pursuant to 11 DCMR Section 3104.1 for a
7 special exception to allow a child development
8 center, 40 children and 14 staff, under
9 Section 205 at premises 7750 16th Street,
10 Northwest, as conditioned. Do I have a
11 second?

12 ZC CHAIR HOOD: Second.

13 BZA CHAIR MILLER: Further
14 deliberation?

15 (No audible response.)

16 BZA CHAIR MILLER: Okay, not
17 hearing any, all those in favor say aye.

18 (Chorus of ayes.)

19 BZA CHAIR MILLER: All those
20 opposed?

21 (No audible response.)

22 BZA CHAIR MILLER: All those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 abstaining?

2 (No audible response.)

3 BZA CHAIR MILLER: And would you
4 call the vote, please?

5 MS. BAILEY: Madam Chair, the vote
6 is recorded as 4-0-1, to grant the application
7 with the conditions identified. Mrs. Miller
8 made the motion, Mr. Hood seconded it, Mr.
9 Dettman and Mr. Loud support the motion.

10 BZA CHAIR MILLER: Okay. That
11 completes this case, I believe.

12 MS. BAILEY: Are we having a full
13 order on this, Madam Chair?

14 BZA CHAIR MILLER: Yes, we have a
15 full order as we have a part in opposition.

16 MR. GELL: I do thank you very
17 much. I would just bring up one or two
18 points. And one of them was that we did get
19 the Office of Planning to say that in an
20 emergency they could have a meeting without
21 one week notice. And if the record could
22 reflect that, that would be helpful.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Secondly, if the Office of the
2 Attorney General could be asked to produce the
3 order quickly, they really do have serious
4 licensing, timing problems for their licensing
5 and they need to be able to take something to
6 the licensing folks so they can open in June.

7 BZA CHAIR MILLER: Okay, so your
8 time constraint is they hope to open in June.

9 MS. HURT: We actually hope to
10 open July 1.

11 BZA CHAIR MILLER: Okay.

12 MS. HURT: And so we need a copy
13 of this so that we can get the certificate of
14 occupancy so that we can get the licensing
15 specialists in.

16 BZA CHAIR MILLER: Okay.

17 MS. HURT: Thank you.

18 BZA CHAIR MILLER: We will
19 certainly keep that in mind.

20 MS. HURT: Thank you very much.

21 BZA CHAIR MILLER: Okay, thank
22 you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 (Pause.)

2 BZA CHAIR MILLER: Okay, that
3 concluded our morning session.

4 (The proceedings went immediately
5 into the Afternoon Session.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1 aware that this proceeding is being recorded
2 by a court reporter and is also webcast live.
3 Accordingly, we must ask you to refrain from
4 any disruptive noises or actions in the
5 hearing room.

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

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

21 The order of procedure for special
22 exceptions and variances is as follows. One,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 statement and witnesses of the Applicant; two,
2 government reports, including Office of
3 Planning, Department of Public Works, DDOT,
4 etcetera; three, report of the Advisory
5 Neighborhood Commission; four parties or
6 persons in support; five parties or persons in
7 opposition; six, closing remarks by the
8 Applicant.

9 Pursuant to Sections 3117.4 and
10 3117.5, the following time constraints will be
11 maintained. The Applicant, persons and
12 parties, except an ANC, in support, including
13 witnesses, 60 minutes collectively. Persons
14 and parties, except an ANC, in opposition,
15 including witnesses, 60 minutes collectively.
16 Individuals, three minutes.

17 These time restraints do not
18 include cross-examination and/or questions
19 from the Board. Cross-examination of
20 witnesses is permitted by the Applicant or
21 parties. The ANC within which the property is
22 located is automatically a party in a special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 exception or variance case. Nothing prohibits
2 the Board from placing reasonable restrictions
3 on cross-examination, including time limits
4 and limitations on the scope of cross-
5 examination.

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

15 The Sunshine Act requires that the
16 Public Hearing on each case be held in the
17 open before the public. The Board may,
18 consistent with its Rules of Procedure and the
19 Sunshine Act, enter executive session during
20 or after the public hearing on a case for the
21 purposes of reviewing the record or
22 deliberating on the case. The decision of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Board in these contested cases must be based
2 exclusively on the public record. To avoid
3 any appearance to the contrary, the Board
4 requests that persons present not engage the
5 members of the Board in conversation.

6 Please turn off all beepers and
7 cell phones at this time, so as not to disrupt
8 the proceedings.

9 The Board will make every effort
10 to conclude the public hearing as near as
11 possible to 6:00 p.m. If the afternoon cases
12 are not completed at 6:00, the Board will
13 assess whether it can complete the pending
14 case or cases remaining on the agenda.

15 At this time, the Board will
16 consider any preliminary matters. Preliminary
17 matters are those that relate to whether a
18 case will or should be heard today, such as
19 request for postponement, continuance, or
20 withdrawal, or whether proper and adequate
21 notice of the hearing has been given.

22 If you are not prepared to go

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 forward with a case today or if you believe
2 that the Board should not proceed, now is the
3 time to raise such a matter. Does the staff
4 have any preliminary matters?

5 MS. BAILEY: No, Madam Chair.

6 BZA CHAIR MILLER: Okay, Ma'am, do
7 you think you have a preliminary matter? You
8 have to come to the table and be on mike in
9 order for us to get you on the record.

10 Have a seat and you need to just
11 press that middle push --

12 MS. FREEDMAN: My name is Merna
13 Freedman and I live at 4616 Foot Street,
14 Northeast, Washington, D.C. There is, what is
15 it, a builder that wants to build a house
16 across the street from me. A Mr. Thompson was
17 supposed to get the names of all the neighbors
18 that oppose but I don't know if he did and the
19 only thing that was left on my door was for me
20 to come down here today. And I am, you know,
21 like, I know I oppose it but you know, like I
22 didn't know what I was supposed to say.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Okay. What
2 case is that? Do you know?

3 MS. FREEDMAN: No. I talked to --

4 MS. BAILEY: Madam Chair, it is
5 Cynthia O. Agbu. It is the last case that is
6 listed on the schedule, Application 17872,
7 4537 through 4539 Foot Street, Northeast,
8 Cynthia O. Agbu. I don't think the
9 Applicant's representative is here at this
10 time.

11 BZA CHAIR MILLER: Okay, it also
12 doesn't sound like what we consider a
13 preliminary matter. So what you should do is
14 wait until we call that case.

15 MS. FREEDMAN: Oh, okay.

16 BZA CHAIR MILLER: Okay, wait
17 right there.

18 MS. FREEDMAN: All right.

19 BZA CHAIR MILLER: I've just been
20 informed that the case has been withdrawn.

21 MS. FREEDMAN: Oh, okay.

22 BZA CHAIR MILLER: Therefore, you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 don't need to wait.

2 MS. FREEDMAN: All right, that's
3 great.

4 MS. BAILEY: Thank you, Madam
5 Chair.

6 BZA CHAIR MILLER: Okay, thank
7 you. Thank you very much.

8 MS. FREEDMAN: Thank you.

9 MR. HAMILTON: Good afternoon. I
10 am Tom Hamilton, Commissioner ANC 6C and I
11 have a letter from our Chairperson, Karen Wirt
12 requesting that there is a continuance for BZA
13 Application 17791. This was originally heard
14 last July and it changed considerably when the
15 application was withdrawn for an addition to
16 the building and to a community center.

17 The largest part of the objection
18 by the ANC and the community was because of
19 the addition and the community center.

20 BZA CHAIR MILLER: Wait, wait. I
21 just want to -- wait. You didn't file a
22 request for postponement. Is that correct?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 You are just coming here now and asking that
2 it be postponed?

3 MR. HAMILTON: That is right.

4 BZA CHAIR MILLER: Okay.

5 MR. HAMILTON: We didn't find out
6 about it until very late.

7 BZA CHAIR MILLER: Find out about
8 what?

9 MR. HAMILTON: About this hearing.
10 We received no additional information that
11 this hearing was going to be until actually
12 the Reverend Lane, who is here, called me and
13 asked that I organize a community meeting just
14 to discuss it.

15 BZA CHAIR MILLER: Okay, let me
16 just -- he should be up here as well. That
17 was my point. Once you are getting into, you
18 know, a request of the Board, if the Applicant
19 is here, then we need to hear from the
20 Applicant, too.

21 MR. HAMILTON: Yes, that is fine.

22 BZA CHAIR MILLER: I don't know

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 whether he is opposed or is okay, or --

2 MR. HAMILTON: I'm sorry. I
3 thought that a request for an extension was
4 something that was to be brought up now.

5 BZA CHAIR MILLER: Well, only if
6 it is really quick. You know, like that one
7 was really quick. Because otherwise we may
8 need to, if we have another case ahead of you,
9 it is kind of not fair to get into it.

10 Is this something that, you know,
11 -- why don't you introduce yourself for the
12 record to begin with and then we will see if
13 this is something that is being consented to
14 or not.

15 MR. MADDEN: Okay. Good
16 afternoon. Happy St. Patrick's Day.

17 BZA CHAIR MILLER: Thank you. The
18 same to you.

19 MR. MADDEN: I am Donald Madden.
20 And if you recognize Madden is an Irish name
21 and I haven't completed my roots yet but I may
22 be Irish.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But anyway, I do not accept any
2 postponement and I can go into details of why,
3 if that is necessary.

4 MS. BAILEY: Madam Chair, this was
5 a continuation. This case was originally
6 taken up by the Board back on July 8th of
7 2008. And at that time, it was reschedule for
8 today. So, this is a continuation.

9 MR. HAMILTON: It may technically
10 be a continuation --

11 BZA CHAIR MILLER: Ms. Bailey?

12 MR. HAMILTON: -- but it is not
13 what the ANC voted on.

14 BZA CHAIR MILLER: Okay. I think
15 what I just was saying, though is that if this
16 was by consent, then we would say okay, you
17 both agree, you are going to postpone it and
18 you don't have to wait around anymore. But it
19 is not. And so this is something that is
20 going to take awhile. I don't think that we
21 should put you ahead of the other case, at
22 this point.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So, if you don't mind, we will
2 call you after the next case. Thanks.

3 MR. MADDEN: Thank you.

4 BZA CHAIR MILLER: Oh, okay. I
5 think that that concludes our exploration of
6 preliminary matters and we need to proceed
7 with our regular agenda at this point.

8 Would all individuals who wish to
9 testify today please rise to take the oath.

10 (Whereupon, all witnesses were
11 sworn.)

12 MS. BAILEY: Madam Chair, this
13 Application 17897. This is the application of
14 Ellen Oppen-Weiner, pursuant to 11 DCMR
15 sections 3104.1 and 3103.2, for a special
16 exception from the lot occupancy provisions of
17 section 403 under section 223, to construct a
18 second story addition to an existing accessory
19 garage, a variance from the accessory
20 structure height requirements under subsection
21 2500.4, and a use variance to allow living
22 quarters in the accessory structure under

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 subsection 2500.5. The property is located at
2 223 10th Street, Southeast. It is zoned R-4
3 and is located in Square 944 on Lot 36.

4 Madam Chair, there is a request
5 from ANC 6B. However, that request it was
6 just pointed out to my attention today was
7 addressed to the Historic Preservation Review
8 Board. It is a request for a postponement.
9 It is Exhibit 25 but the document was
10 addressed to the Historic Review Board, not
11 the Board of Zoning Adjustment. And that is
12 the reason, Madam Chair, why I didn't bring it
13 up as a preliminary matter because there seems
14 to be a mistake with this being sent to the
15 BZA.

16 BZA CHAIR MILLER: Okay, so that
17 the mistake is that the ANC is not requesting
18 a postponement of our proceedings. Is that
19 correct?

20 MS. BAILEY: It is not addressed
21 to the Board, Madam Chair.

22 BZA CHAIR MILLER: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BAILEY: It is HPRB.

2 BZA CHAIR MILLER: It was
3 submitted by them to us but addressed to HPRB.
4 Is that right?

5 MS. BAILEY: That's right.

6 BZA CHAIR MILLER: Okay.

7 MS. BAILEY: The ANC, if there is
8 representative here who would like to address
9 this, but I can only go by what is in front of
10 the Board at this time.

11 BZA CHAIR MILLER: Okay, is there
12 a representative from the ANC here?

13 (No audible response.)

14 BZA CHAIR MILLER: All right, Ms.
15 Fowler, do you want to start with
16 introductions and then you can let us know
17 whether you have anything to add to that
18 discussion.

19 MS. FOWLER: Yes. I am Jennifer
20 Fowler of 1819 D Street, Southeast.

21 MS. OPPER-WEINER: Good afternoon.
22 I am Ellen Opper-Weiner, 223 10th Street,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Southeast.

2 MS. FOWLER: Yes, to address the
3 ANC letter, when we had our meeting with them
4 back in March, they had some concerns --
5 February, excuse me, they had some concerns
6 with the historic preservation issues,
7 materials and things like that. But they
8 decided that they wanted to wait to have that
9 discussion until after we get through our
10 zoning. And the same with the Historic
11 Preservations staff. They didn't actually
12 have any concerns with the project but they
13 postponed, they put us on the agenda for next
14 month so that we can get through the zoning
15 part of it first. That's all that that was
16 about.

17 BZA CHAIR MILLER: Okay. So, I am
18 going to let you address your case.

19 MS. FOWLER: Okay. So, as you
20 know, right now, there is an existing two-
21 story garage on the rear of the property. It
22 is currently nonconforming for height. It is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 15 feet, six inches and it has living space on
2 the first floor, as well as a second-story
3 loft and storage space.

4 We are also currently
5 nonconforming for lot occupancy. She is at 66
6 percent, 66.8 percent coverage. So, we are
7 asking for a special exception because of the
8 lot coverage but we are not increasing the
9 coverage.

10 We are also requesting a variance
11 for use of the accessory structure for living
12 quarters.

13 So, those are three things we are
14 looking at here. But we just wanted to
15 stress, we already do have, there is a living
16 space there currently used as storage and
17 office space. And there is a second floor we
18 are hoping to expand and we are increasing the
19 height by four feet over what is there now.

20 I just wanted to talk a little bit
21 about the property and the existing house.
22 the existing house was built in the '60s and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 it is a two-story brick row dwelling with a
2 slab on grade. So we, after exploring options
3 for how to expand her house, determined that
4 it would be prohibitively expensive to add a
5 basement to this house because the slab on
6 grade is designed to basically rest on the
7 earth, so you would have to actually remove
8 the entire slab, put in new framing and build
9 a, you know, if you wanted to dig down. So we
10 didn't think that was an appropriate expansion
11 of the house.

12 Being in the historic district, we
13 were very restricted by sight lines. It is a
14 very short house, compared to the neighbors,
15 so you can see pretty far back from across the
16 street. So, any addition as a third floor
17 wasn't feasible as well.

18 And we also looked at expanding
19 the house towards the rear. And at 70 percent
20 coverage under 223, we could only add about
21 three feet to the house. So, we pretty maxed
22 out in all the options with the existing

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 house. So that is why we turned to the garage
2 as a place to be able to add some space. And
3 even any addition towards the back, we would
4 probably have to be asking for 80 or 90
5 percent, which is, as we know is again, a very
6 difficult variance to get.

7 The existing house, as I said,
8 doesn't have a basement. It also, there is an
9 open court in the front of the house, so it is
10 about 84 square feet that was actually in the
11 original design, has a, you actually walk
12 through -- there is a walkway leading to the
13 front door and it is set back. And that is 84
14 square feet that she has basically lost that
15 can't ever be enclosed because of the historic
16 restrictions. So that is again, something
17 kind of working against her in terms of the
18 lot coverage.

19 I just was going to talk a little
20 bit about the alley and the existing garages
21 that are on the alley. There is 11 two-story
22 garages on this alley between the houses on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 10th Street and the houses on 9th Street. And
2 we did put in, there is an Exhibit that shows
3 pictures of all of the different garages that
4 are there. Two of them are rentals, which are
5 actually rented out to tenants. Three of them
6 are businesses that are actually commercially
7 occupied, one for a musical instrument repair,
8 one is a woodwork shop, and one is like a band
9 rehearsal space. And then the rest of them
10 are owner occupied second floors. Some of
11 them have bathrooms. Some of them have
12 kitchenettes. Some of them don't.

13 So, there is definitely a
14 precedent for this kind of structure. In
15 fact, at 225 10th Street, right next door to
16 Ms. Oppen-Weiner, there is a two-story garage
17 and we are going to be about at the same
18 height as that garage. So, from a scale and
19 masting standpoint, the zoned plan, it is
20 consistent with other structures on the alley.

21 And we are not going to be
22 negatively impacting anybody. We are not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 increasing the amount of traffic. We are
2 maintaining the one parking spot that we
3 already have in the garage but it is not
4 intended for use besides the occupant and her
5 guests.

6 We also are not going to be
7 impacting the neighbors. It is a minimal
8 impact on the light and air to the neighbors.
9 The neighbor at 225 already has a garage that
10 is quite large. The neighbor on the opposite
11 side, because the garage is way at the west
12 end of the property, will only be losing a
13 little bit of sunshine in the afternoon hours.
14 But we do have support from both neighbors
15 abutting, as well as many other neighbors as
16 well.

17 From a privacy and use and
18 enjoyment standpoint, we are not going to be
19 increasing any views into anybody's yards or
20 private space. All of the windows that we are
21 proposing are high, clear story windows.

22 And with that, I will turn it over

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to Ms. Opper-Weiner, to talk about the
2 hardship aspect of the case.

3 MS. OPPER-WEINER: Yes, I have
4 been, well you received a letter from my
5 physical therapist and from my orthopedist who
6 I have been seeing for six and a half years.
7 And the only reason that I have not had to
8 have surgery is that I have had really good
9 luck with regular physical rehab. I have
10 accepted the fact that I will be in rehab for
11 the rest of my life and I am also trying very
12 hard to avoid knee surgery if I possibly can,
13 as long as I can.

14 The suggestion had been made to me
15 last summer by my physical therapist that if
16 I had the equipment available in my home, that
17 I could work out more regularly and that would
18 be better for me. And then we discussed it
19 with the orthopedist who felt the same way,
20 that clearly the activities that I engage in,
21 which include pilates, as well as the
22 stationary bike and other, pilates on the mat,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 which I do actually at a gym. But no facility
2 nearby has the equipment. So I need to travel
3 to my physical therapist located in Glover
4 Park. And so I travel there and it is really
5 quite expensive, actually. She charges me, I
6 think it is \$60 or \$75 a session.

7 The equipment is quite large. And
8 I believe -- well, I know we sent in a drawing
9 that the physical therapist prepared. And one
10 of the machines, the so-called trapeze tower
11 machine, which is the far upper corner of the
12 drawing, on the upper left corner, actually
13 reaches over eight feet high. I'm sorry, over
14 seven feet high. It is 85 something, almost
15 86 inches. And my ceilings in my home are
16 only eight feet. And that piece of equipment
17 needs some space above it in order to not be
18 up against the ceiling, as it were because
19 there are activities that occur on that. I am
20 happy to explain in great detail but I don't
21 think you need to hear about all the things
22 that I do on those things.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The length of it, actually I don't
2 have the measurements here but I think, they
3 are really quite extensive. This is a drawing
4 of what the space would be on the second
5 floor. For example, the trapeze table
6 Cadillac is 85 inches high, 132 inches long,
7 and 44 inches wide. Then the other large
8 piece is the Reformer, which is 14 inches
9 high, they are just low off the ground, 105
10 inches long and 24 feet wide.

11 I live in -- I have three bedrooms
12 in my home. They are occupied. I have an
13 office in one of them and the other bedroom is
14 occupied by my godson who lives with me
15 currently. So there is no interior space
16 within my home.

17 The garage, as it is, is also not
18 big enough because it is divided in half and
19 half of it is for a car and the other half is
20 another office space that I also use. So
21 there really is no place to put anything, not
22 anything of this bulk. And these are the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 machines, the two, the Cadillac and the
2 Reformer are the two main pieces of equipment.

3 So, I would like very much to have
4 the opportunity to be able to work out in my
5 home, to save the travel time that it takes,
6 it takes me two and a half hours between
7 having the session and getting there and back.

8 And really nobody in the
9 neighborhood has opposed this, as far as I
10 know. My two side neighbors, one of them
11 actually came to the ANC meeting at 221 10th
12 Street Southeast. There are for letters that
13 were written, the 225, 241, and 217. My
14 neighbors at 215 and 219 both signed a
15 petition saying that they approve.

16 And then I have verbal, I was
17 asked by the ANC to talk to the people who
18 were on the alley behind me. And I couldn't
19 reach them and I sent them letters. One of
20 them finally called me about a week ago and
21 said if you get this, or two weeks ago, if you
22 get this approved, this was at 220 9th Street,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Southeast, Donald, I can't pronounce his name,
2 Kaniewski, he said just be courteous when you
3 do construction, should that be what you are
4 able to do. I assured him I would be. 216,
5 David Michaels has no problem with it. My
6 other neighbor at 213 10th Street, Southeast,
7 Ripley, she says that is fine. 207 has told
8 me verbally, 209 has told me, these are on
9 10th Street, Southeast. Jason Levine at 914
10 C Street, Southeast.

11 So, it appears that nobody had
12 raised any concerns about doing this. And I
13 personally think I am going to improve the
14 alley, improve my garage which was mistakenly
15 built with cinder block on the back. The good
16 bricks were put on the side. And my neighbor
17 at 221 gets the benefit of the nice brick wall
18 and the alley has -- you'll see the picture is
19 really unattractive.

20 I do believe that with the
21 addition that we have proposed, with some
22 changes apparently in some of the materials,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that we will be upgrading the look. And I
2 don't see how the use will change, since it
3 will be my own personal use and I am not
4 planning on doing anything else there. So,
5 that is it. I would hope that you would
6 consider this.

7 The difficulty with my knee has
8 been something that has been quite a surprise
9 and I think that although I don't appear to be
10 disabled in some way, I really am because I
11 have limitations on what I can do.

12 I also want to say, without
13 necessarily having to say it out loud but I
14 will, is that I am a bit older than most
15 people think I am. And I find that the aging
16 process has really required me almost to be in
17 constant activity more so than I did when I
18 was younger. And so I just mention that and
19 if you care to know how old I am, I am happy
20 to tell you. But I do think that is a factor
21 and it will slow me down. I am working. I am
22 still a self-employed attorney and I intend to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 continue working.

2 So, I don't know if you have any
3 questions or concerns or what I have left out.

4 ZC CHAIR HOOD: Madam Chair?

5 BZA CHAIR MILLER: Yes, Mr. Hood?

6 ZC CHAIR HOOD: I wanted to give
7 -- Ms. Oppper-Weiner, it is good to see you.
8 I have question, though. You mentioned that
9 you had no opposition, no known opposition.
10 In our Exhibit 22, there is a letter from
11 James and Mary Granger.

12 MS. OPPPER-WEINER: Oh, really? I
13 didn't know anything about that.

14 ZC CHAIR HOOD: Are they your
15 neighbors? Where do they --

16 MS. OPPPER-WEINER: They are right
17 behind me on the alley.

18 ZC CHAIR HOOD: On the alley
19 behind you.

20 MS. OPPPER-WEINER: I was not aware
21 of that.

22 ZC CHAIR HOOD: Well they seem to,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I can't really make a lot of this out. They
2 seem to speak to traffic in the alley,
3 illegally parked cars. I am not sure they are
4 attributing all of this to you but I guess
5 there are some activities going on in the
6 alley where they are having some difficulty
7 accessing their garage or their yard.

8 MS. OPPER-WEINER: Well I will
9 tell you that is interesting. It is the
10 commercial building, which is two doors from
11 where they are. My garage door is currently
12 broken. So I don't even use my garage at the
13 moment. I'm waiting for your decision because
14 I have to repair it, otherwise I can't use my
15 garage. So it can't be me. And they have
16 never said -- I did write them a letter,
17 actually, but they didn't respond directly to
18 me.

19 So, I have nothing to do with the
20 traffic because I don't even use the garage.

21 ZC CHAIR HOOD: I'm not sure.
22 They are not necessarily pointing to you but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 they are talking about how trash cans I guess
2 are just laid out in the alley and some other
3 issues of that nature.

4 MS. OPPER-WEINER: Those are my
5 neighbors, by the way. I don't want to get
6 into it because this is not the venue but I
7 can tell you that I am very distressed about
8 it. And it is one of my adjacent neighbors
9 who just doesn't seem to follow the rules.

10 I, as a citizen, find it hard to
11 confront somebody. I go back there regularly
12 and stand up the cans. They put stuff out
13 there I can't dispose of it myself. There are
14 things out there but I can tell you that it
15 does not come from my home. I am extremely
16 careful about recycling. I am the mad recycle
17 queen, seriously, and it really matters to me.
18 And I am not out there all the time but lately
19 I have actually gone around and just checked
20 after Mondays and Thursdays on our pick-up
21 days.

22 So that is not coming from --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 actually, since it is raised, I will address
2 it with them directly. Because I do know
3 them. I know Mary. I don't know her husband.

4 ZC CHAIR HOOD: James, okay.

5 MS. OPPER-WEINER: Yes.

6 ZC CHAIR HOOD: Thank you.

7 MS. OPPER-WEINER: Yes, thank you.

8 BZA CHAIR MILLER: I guess we have
9 lost the Office of Planning but we do have
10 their report.

11 I mean, what I have to say is that
12 you have given a lot of good reasons, you
13 know, why it makes sense for you to do your
14 addition for your pilates equipment. And our
15 regulations don't always make the greatest
16 sense. I mean what this regulation says is it
17 can be used for a domestic employee but not
18 for pilates, just looking at the use variance,
19 per se.

20 But you are seeking a use
21 variance, an area variance, and a special
22 exception. And in the special exception

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 cases, we are bound by our regulations. And
2 a special exception, if you were just looking
3 at adverse impacts, you have made a great case
4 why there aren't necessarily adverse impacts
5 from putting your equipment up there.

6 Skipping to the variance though,
7 the variance is a hard test. And the OAG can
8 correct me if I am wrong or whatever but my
9 understanding of variance law is it goes to
10 the property. It doesn't go to the personal
11 situation of the owner. So that I think that
12 you have to make a case that your property is
13 so exceptionally unique that it creates an
14 undue hardship upon an owner in using that
15 property as allowed under the regulations.

16 And it is my understanding that if
17 you want relief because you have a personal
18 reason, a medical reason, a disability, not
19 that I am giving you legal advice but you can
20 follow-up on this and see that the Fair
21 Housing Act under the reasonable
22 accommodations will look at a personal

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 situation but the Zoning Board doesn't. We
2 look at the property and is there something
3 exceptional about the property that creates an
4 undue hardship upon an owner in using it in
5 accordance with the regulations.

6 And so I don't see that in this
7 case. The fact that there is not a basement
8 I don't see gives rise to an undue hardship in
9 not being able to use the second story for
10 pilates equipment.

11 MS. OPPER-WEINER: Well, I can say
12 --

13 BZA CHAIR MILLER: Yes. Go ahead.

14 MS. OPPER-WEINER: Are you done?
15 I mean, is it my turn?

16 BZA CHAIR MILLER: I know Mr. Hood
17 wanted to say something, too.

18 ZC CHAIR HOOD: I want to say
19 something to that before Ms. Opper-Weiner
20 responded. Because when I looked at the
21 Office of Planning report when they were
22 giving us the analysis, at least the way I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 read it -- first, let me ask this. You don't
2 have a basement. Right?

3 MS. OPPER-WEINER: No.

4 ZC CHAIR HOOD: Okay. Some of
5 this, I think, let me read this out loud.
6 "Secondly, the Applicant has not presented any
7 information as to why the storage could not be
8 accommodated in the basement."

9 MS. OPPER-WEINER: Oh, can I
10 explain that?

11 ZC CHAIR HOOD: Okay.

12 MS. OPPER-WEINER: Yes, there is a
13 bomb shelter. Believe it or not, I think I
14 have the only bomb shelter in Ward Six. And
15 it is beneath the garage and it is subject, so
16 there is some space down there and it is
17 subject to water leakage and there are no
18 windows or anything. It is just, it is
19 literally a bomb shelter and there is a 50
20 gallon water tank in there. And it is not
21 suitable because it gets wet. When it rains,
22 there is leakage down there.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ZC CHAIR HOOD: Okay.

2 MS. OPPER-WEINER: I store mostly
3 paper, because of the nature of the work that
4 I do. And so that is the confusion.

5 And also I do disagree with what
6 they said in that report. I wish they were
7 here to ask questions because we discussed --

8 ZC CHAIR HOOD: They are here.

9 MS. OPPER-WEINER: -- we discussed
10 the fact we did look at other options. I
11 think was a mistake of fact that they put in
12 their report. There she is. And so because
13 we did look at other options. We have looked.

14 And the ceilings in my home being
15 just eight feet high make it impossible for
16 the equipment to be housed in my house.

17 ZC CHAIR HOOD: I didn't want to
18 interrupt the chair. I'm sorry, but that will
19 be a question that I ask Ms. Brown-Roberts at
20 the appropriate time.

21 MS. OPPER-WEINER: And I do think
22 that there has been cases in the past where

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the special exceptions were granted. I do
2 have a couple of them here. They are, I
3 think, fairly close on point and they are a
4 little bit older so that they don't go into
5 the same argument but this is under the same
6 zoning rules.

7 For example, case number 14416,
8 which was decided in 1986. It is an R-4
9 district and they granted the special
10 exception for a two-story addition above a
11 garage. Well, you can read it for yourself
12 but they said that "The Board concludes
13 seeking area variances, the granting of which
14 requires a showing of substantial evidence of
15 practical difficulty upon the owner arising
16 out of some unique or exceptional condition of
17 the property, as exceptionally narrow or is
18 shallow in its shape or topographical
19 conditions. The Board further must find the
20 relief requested could be granted without
21 substantial detriment to the public good."

22 And in this case, there was 60

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 percent lot occupancy and they felt that the
2 burden of proof was met with regard to this
3 very difficult, I understand how difficult it
4 is, this hardship. But I think that the
5 similarities also were that the footprint of
6 the existing garage would not be increased,
7 which is the case here, and that there was no
8 detriment really that is going to be offered
9 to anybody because of this addition.

10 It is four feet higher than it is
11 and the next-door building is the same height.
12 And it strikes me that beyond the domestic
13 use, there are personal uses. This one was
14 going to be for a studio. I think it was a
15 personal use as well.

16 And then I have another case --

17 BZA CHAIR MILLER: Well so in that
18 case, they didn't seek a use variance.
19 Correct?

20 MS. OPPER-WEINER: A variance?

21 BZA CHAIR MILLER: Is that an area
22 variance?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. OPPER-WEINER: No, it's a
2 variance.

3 BZA CHAIR MILLER: No, but there
4 are two types.

5 MS. OPPER-WEINER: For the lot
6 occupancy, the rear yard requirements and from
7 the prohibition against allowing a
8 nonconforming structure which now exceeds the
9 lot occupancy to a single family residence.
10 There was a variance. Maybe that is what it
11 was called then.

12 BZA CHAIR MILLER: No, I would
13 like to see the case but I just want to
14 clarify still --

15 MS. OPPER-WEINER: I'm happy to
16 show it to you. I'm happy to give it to you.

17 BZA CHAIR MILLER: The use
18 variance is a little bit of a higher standard
19 than an area variance, though that still may
20 shed some light on the issue.

21 And Ms. Fowler, are you sure you
22 needed a use variance here?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Is this a second floor or is this
2 a separate apartment or what is this going to
3 be?

4 MS. FOWLER: It is a second floor
5 but it is not going to be an apartment. It is
6 going to be owner-occupied space.

7 BZA CHAIR MILLER: I guess I am
8 just wondering if there is some kind of
9 distinction between accessory apartment above
10 a garage and second floor of a garage.

11 Is this a second floor of a garage
12 or is it an accessory apartment?

13 MS. FOWLER: Second floor of a
14 garage.

15 MS. OPPER-WEINER: I have another
16 case that was two stories where the ground
17 level was a garage and the second level was
18 going to be a solarium. This one happens to
19 be, this was also R-4 on Capitol Hill and
20 again, it was a lot occupant. But they were
21 seeking a variance and they got it. "We are
22 of the opinion that Appellant has proved a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 hardship."

2 Again, these opinions, and I am
3 happy to give them to you, were thinner than
4 is the case now, that I am familiar with and
5 how much you put in your reports. But I think
6 that to be flexible about how a homeowner
7 could use accessory space, I think that ought
8 to be considered, that my own personal need is
9 as important as if -- to flex with these
10 rules, which are harsh, there is no question
11 about it.

12 BZA CHAIR MILLER: Okay, let me
13 just focus on one thing at a time. And one is
14 the use variance, which I believe that you
15 raised that you are seeking a use variance
16 from 2500.5. And so I guess I was asking you
17 now, I don't know if you want to back away
18 from that and we can ask Office of Planning,
19 but if it is not an accessory private garage,
20 let's see, under 2500.5, then we might not
21 have to deal with a use variance, we might be
22 dealing with an area variance.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 2500.5 talks about an accessory
2 private garage and they have a second story
3 use for sleeping or living quarters of
4 domestic employees of the family occupying the
5 main building.

6 MS. FOWLER: That's an R-1-A and
7 we are 1-B.

8 BZA CHAIR MILLER: I'm sorry.
9 Okay.

10 MS. FOWLER: It's a different
11 zone.

12 BZA CHAIR MILLER: All right,
13 which cite? What did you cite? I thought you
14 cited 2500.5. I want to make sure I am
15 looking at the right one. You did. You said
16 variance from use restrictions for an
17 accessory structure in the R-4 zone pursuant
18 to 11 DCMR 2500.5.

19 MS. FOWLER: Right. That is what,
20 when I met with Mr. Nero, that is the
21 regulation that he said that we should file it
22 under.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Okay and if you
2 think that that is not right now?

3 MS. FOWLER: No, I think I
4 misunderstood what you were asking.

5 MS. OPPER-WEINER: Well, I think
6 what she is asking is whether we want to
7 withdraw the request for a use variance. In
8 fact, the building is already being used as an
9 office space. So, in that sense, the change
10 is, which is personal use, the change is going
11 up.

12 BZA CHAIR MILLER: But the
13 regulation goes to the second story. Is the
14 second story being used? Is there a second
15 story at this point?

16 MS. OPPER-WEINER: There is a
17 loft.

18 MS. FOWLER: It is a loft. It is
19 not a full second story. We should have
20 called it a mezzanine.

21 BZA CHAIR MILLER: So it would be
22 a second story.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 No, please, come on in. For a
2 second I just thought that they were backing
3 away from this but it doesn't sound like they
4 are.

5 MS. BROWN-ROBERTS: I'm sorry,
6 Maxine Brown-Roberts from the Office of
7 Planning.

8 The portion of the building of the
9 garage that forms the second story is a
10 mezzanine. It is not a full floor. It is
11 just a portion of the floor and it is a
12 mezzanine. So the building is considered a
13 one-story building.

14 BZA CHAIR MILLER: Okay, then we
15 do have to look at whether there is an undue
16 hardship upon an owner due to the exceptional
17 condition of the property, and I was saying,
18 an if you have cases to the contrary, yes, we
19 would love to see them, that in general, they
20 don't go to a property owner's personal
21 situation. They go to any owner. That if a
22 property owner has a disability, usually the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 resource is the Fair Housing Act, where it is
2 personal. In this case it should be that
3 something about the property makes use in
4 accordance with the regulations an undue
5 hardship for any owner. That is the way I
6 interpret it. Would you agree with me, Ms.
7 Brown-Roberts?

8 MS. BROWN-ROBERTS: I agree.

9 BZA CHAIR MILLER: Yes.

10 MS. OPPER-WEINER: Well if you are
11 asking for a special exception or a variance,
12 and I must admit I should have gotten this
13 straight in my head but I am really not clear
14 on the difference but we are asking to vary
15 the regulation in this special situation.
16 That is why we are here. And I don't know
17 what else to say.

18 There have been, and I have you
19 two cases, you can have these or make me a
20 copy or I will just jot down the number.

21 BZA CHAIR MILLER: You can give
22 them to Ms. Bailey. She could make a copy.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. OPPER-WEINER: Okay. I am
2 happy to have you take a look at it.

3 BZA CHAIR MILLER: But what I
4 wanted to say and you are an attorney. We
5 just don't listen to the cases and say oh yes,
6 that sounds really like a good idea and that
7 is reasonable. Granted. We have to apply the
8 law that you come in under. And what I was
9 saying is that under the special exception
10 that is more of like, well that is not hurting
11 anybody else, no adverse impact, etcetera.

12 Under the variance, it is a harder
13 test. And it does to go the nature of the
14 property and then when it is a use variance,
15 it is a higher standard. It talks about an
16 undue hardship on any owner because of the
17 nature of the property in complying with the
18 regulations.

19 So for instance, if your property
20 was of such a shape that not being able to
21 have that additional height or use would be a
22 problem for anybody because of the nature of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the property, that would fit more within the
2 analysis. But if you have some cases there
3 that you want us to look at --

4 MS. OPPER-WEINER: Yes, Ms. Bailey
5 has taken them. And obviously, I take a
6 little bit different perspective, with all due
7 respect, and I think that an argument could be
8 made that it would affect anybody else in my
9 circumstance. You are right, it is my
10 individual, but there are, those two cases
11 talk about personal, a solarium.

12 There are other cases that I
13 pulled up. I mean, I have a stack here but
14 none of them were, because they weren't R-4s,
15 I just wanted to pick the R-4 ones. I thought
16 that was appropriate but there have been some
17 in R-5.

18 BZA CHAIR MILLER: Well any is
19 appropriate really because that doesn't
20 change. The variance test doesn't change from
21 zone to zone.

22 MS. OPPER-WEINER: Yes, I am going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to want a few minutes to go through the rest
2 of my cases here because there really are a
3 whole series of ones that have occurred that
4 people's personal workshops. And these are
5 all second story garage cases, not just --
6 would you want us to take a short break or
7 something for me to look through this?

8 BZA CHAIR MILLER: How much time
9 would you like?

10 MS. OPFER-WEINER: Maybe ten
11 minutes at the most.

12 BZA CHAIR MILLER: Okay, sure.

13 MS. OPFER-WEINER: Would that be
14 all right?

15 BZA CHAIR MILLER: Sure.

16 MS. OPFER-WEINER: Thank you.

17 (Whereupon, the foregoing
18 proceedings went off the record at
19 4:24 p.m. and went back on the
20 record at 4:58 p.m.)

21 BZA CHAIR MILLER: Okay, we are
22 back on the record and during that break, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Board had a chance to look at the regulations
2 carefully and also to look at some cases as
3 well. So, we are of the view that 2500.5 does
4 not apply and that you don't need a use
5 variance because we read 2500.5 as applying to
6 the R-1-A and R-1-B districts and this is an
7 R-4 district. We have another case that one
8 of our Board members recollected and I think
9 Mr. Moy may be giving you a copy of it. It is
10 application number 17658 of Michael D. Perry.
11 It is not R-4. It doesn't matter what
12 district it is in. But it is similar in some
13 respects, not all respects. But certainly we
14 addressed this question specifically in that
15 case. And that was an R-5-B zone and we said
16 that it didn't apply in the R-5-B zone but
17 only in R-1-A and R-1-B zones.

18 So, I think we can take that use
19 variance off the table, if you would like.

20 MS. FOWLER: Okay.

21 BZA CHAIR MILLER: Okay. I don't
22 know if the Office of Planning has any comment

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on that but --

2 MS. BROWN-ROBERTS: No.

3 BZA CHAIR MILLER: Okay. So,
4 going from there, we are now looking at an
5 area variance and the standard is a little bit
6 easier to meet but still, there is a standard
7 to meet.

8 And also in the Perry case, they
9 also were dealing with exercise equipment. So
10 one of my basic questions for you is, I was
11 saying that, in general, variances cannot be
12 too personal so that if this were the case
13 where because of an exceptional condition of
14 your property you needed this height variance
15 in order to have an exercise room per say,
16 which could be considered customary to general
17 living for anyone, you know, that you didn't
18 have enough space because of the constraints
19 of your property for any owner, you would need
20 to do this. Because I think in this
21 particular case, they also were asking space
22 for exercise equipment.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So, my question goes to whether or
2 not the additional space you are creating,
3 whether the height would be required for any
4 owner to have this type of exercise room or
5 whether or not it is higher because of the
6 special equipment that needs to go in because
7 of your special condition.

8 MS. FOWLER: We decided to make
9 the height nine foot six, approximately on the
10 inside just because if we are going to through
11 all of this process to get the approval, why
12 not make it a nice height. And we also wanted
13 to make the clear story windows, the high
14 windows, so that we didn't have windows
15 peering into the neighbors yards and into the
16 back of their house. So it allows us to do a
17 decent high transom, you know, high clear
18 story window, excuse me, at the top with that
19 height.

20 And if you start to go down an
21 eight foot ceiling and then you really have to
22 be careful about where you place windows to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 keep the neighbors onboard with the project.
2 But it is not, that was, part of it was
3 getting more than an eight foot ceiling for
4 the equipment, but really to make it a nice
5 livable space.

6 MS. OPPER-WEINER: Also, thank
7 you, the stone work on the face of the garage
8 that faces the house, those are paving stones
9 from southwest. It is beautiful, really. So
10 the windows that would be added were to be, is
11 really the only place you can do it. I don't
12 know if it could be any less height because of
13 the nature of the work that exists.

14 So, it was meant to be simple and
15 high. And so I think that was also part how
16 it ended up being that height. I guess it
17 could be slightly lower, but I think there is
18 a limitation with putting the roof on top of
19 where the windows are of how low it could be.

20 So I think the answer to your
21 question would be, yes, it would be the same
22 for anyone else wanting to do a like

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 situation, a like use of the facility like
2 that.

3 MS. FOWLER: And one more point on
4 that, on the height, the neighboring garage is
5 19 feet. And so the idea was to make it, it
6 would have to be really slightly above or
7 slightly below to be able to flash it
8 properly. It would be a little easier than
9 kind of a horizontal joint. It just seemed to
10 be able to get a little bit higher was going
11 to be helpful from a flashing standpoint.

12 BZA CHAIR MILLER: What do you
13 mean by flashing?

14 MS. FOWLER: So that we didn't
15 have two kind of roofs butt into each other.
16 We had more of a coping that we could flash
17 two more easily. Just a little detail but
18 that is why I went ahead and raised it just
19 slightly above the other roof next door.

20 MEMBER DETTMAN: Ms. Fowler,
21 notwithstanding your desire to have a nice
22 space and then views into your neighbors and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the flashing, looking at the two stories that
2 you are proposing, the floor to ceiling on the
3 ground floor and on the top floor. Is what
4 you are proposing kind of the minimum that you
5 need to have in order to have a functional
6 garage with clearance and then a space up top
7 that meets your requirements for the equipment
8 that you are looking to put in there? Is it
9 kind of the minimum that you really need?

10 MS. FOWLER: Yes, it's eight feet
11 on the first floor. Believe me, I have done
12 garages that had seven-six clearance and it is
13 tough. And really, it limits what kind of car
14 you can park in there. So, I tell my clients
15 ahead of time that no SUVs, large cars like
16 that. So, eight feet is a nice height because
17 then you can get a regular standard garage
18 door.

19 MS. OPPER-WEINER: And then for
20 the second floor? Is that --

21 MS. FOWLER: Were you referring to
22 the second floor as well or just --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER DETTMAN: Just looking at
2 both. It sounds like eight feet is really
3 minimum for a garage level in order to get a
4 mid-sized car in there.

5 And then for the second floor,
6 what is the floor-to-ceiling?

7 MS. FOWLER: It is nine foot six,
8 approximately.

9 MEMBER DETTMAN: Okay and that is
10 going to accommodate the equipment that you
11 want to put in there plus how much more?

12 MS. FOWLER: The equipment was
13 just under, you know, six, seven and a half
14 feet or something like that, so it gives the
15 space above it that it needs. But again, I
16 think part of it was driving it was the
17 windows and making sure we can get enough
18 light. And we were limited in glazing because
19 of the existing structure, the masonry
20 structure below.

21 The windows that you see that are
22 actually facing the back yard are down at your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 feet when you are up on that loft level, those
2 two small windows. They are very low. So
3 they are going to be, you know, not going to
4 offer a lot of light and certainly not any
5 view out, unless you are down on our knees.

6 MEMBER DETTMAN: And in terms of
7 along the alley in its entirety, how does the
8 height of this one compare to the majority of
9 the garages along the alley?

10 MS. FOWLER: Pretty similar.
11 there was a document in the record. We went
12 through and took measurements of all the
13 garages on the alley. And so you have some,
14 there is a 19 foot tall right next door. A
15 few doors down, 23 feet tall. A little bit
16 further down, 19 foot six. Another 19 foot
17 six, there are three of those together.
18 Another 19 foot tall, 19 six, 19 six, so it is
19 actually the predominant height that we found
20 in the alley as well.

21 BZA CHAIR MILLER: Could you
22 revisit what is exceptional about the property

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that leads to, I guess certainly part of the
2 practical difficulty might be not having
3 enough space for an exercise room or some type
4 of extra living space. What is exceptional
5 about this property?

6 MS. FOWLER: Well the court in the
7 front of the house is unusual. It is very
8 unusual in this neighborhood. And because of
9 the historic district, we are limited with
10 what we can do with that space. So
11 essentially, it ends up being a walkway, a
12 circulation space.

13 So as a result she has three
14 bedrooms but two are quite small and one is
15 her master and they are all occupied. And on
16 the first floor, you really only have kitchen
17 and then living space at the back. There is
18 not more than two rooms down there except for
19 the bathroom. There is a powder room.

20 So the shape of the house itself,
21 the fact that it doesn't have a basement and
22 we cannot add up, we can't add back, those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 were the things that made it difficult for us.

2 And another thought on the garage,
3 I could say it is probably the only garage on
4 the alley that is nonconforming for height
5 that is not being occupied. So we are already
6 over the limit on the height and the stories
7 with the mezzanine. Well, the mezzanine
8 probably actually is not illegal but all of
9 the other garages have legitimate two stories
10 and are being actually occupied by their
11 owners or rentals on the alley.

12 BZA CHAIR MILLER: I mean, I think
13 what I am looking for is what is unusual about
14 the property that I guess, I mean it sounds
15 like it might be exceptionally small in some
16 ways or whatever. I mean what we are leading
17 to is that your only option to have sufficient
18 livable space would be this height variance.
19 So, the fact that it doesn't have a basement,
20 means what?

21 MS. FOWLER: Well, we can't add a
22 basement because it was a slab on grade.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Oh, okay. So
2 you can't, you are saying that you can't
3 expand down.

4 MS. FOWLER: We cannot expand
5 down.

6 BZA CHAIR MILLER: Okay.

7 MS. FOWLER: Well we could but it
8 would be a complete gut of the house,
9 basically to do that. And we cannot expand
10 out because of the historic regulations in the
11 historic district. Because anything we do on
12 that roof is going to be visible from the
13 front of the house and we cannot expand to the
14 back. Well, we can but it is only three feet,
15 --

16 BZA CHAIR MILLER: Okay.

17 MS. FOWLER: -- which doesn't
18 solve any problem. So those were the -- and
19 the point was raised by OP about the cellar in
20 the basement, or the cellar of the garage.
21 And again, we have another issue with lots of
22 water intrusion. It would be substantial

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 underpinning and things like that to make that
2 a livable space and then it wouldn't really
3 have any light access.

4 MS. OPPER-WEINER: Yes, I'm not
5 sure how high the ceilings are, now that I
6 think about it. Did you measure those?

7 MS. FOWLER: You can just barely
8 stand. I can just barely stand in there.

9 MS. OPPER-WEINER: Yes, I am not
10 sure that they are full height ceiling down
11 there.

12 MS. FOWLER: You would have to dig
13 down to raise the ceiling height.

14 BZA CHAIR MILLER: Okay, other
15 Board questions?

16 (No audible response.)

17 BZA CHAIR MILLER: Okay, not
18 hearing any, do you have anything else before
19 we go to Office of Planning?

20 MS. OPPER-WEINER: Well, I did dig
21 out some more cases but if you want me to do
22 that afterwards, I do have others that relate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to this subject, not as recent as the last one
2 you pulled, though.

3 BZA CHAIR MILLER: Okay. I mean,
4 I think we pulled a pretty good one.

5 MS. OPPER-WEINER: I think you
6 did, too.

7 BZA CHAIR MILLER: But if you has
8 something else that goes to the issue of an
9 area variance to create more livable space or
10 something to that extent, you should let us
11 know.

12 MS. OPPER-WEINER: Okay. Well,
13 can we wait until after?

14 BZA CHAIR MILLER: Yes, you can
15 wait, sure.

16 MS. OPPER-WEINER: Okay. If it is
17 not necessary, I don't want to keep you all.

18 BZA CHAIR MILLER: Yes, that's
19 fine.

20 MS. OPPER-WEINER: Okay, thank
21 you.

22 BZA CHAIR MILLER: Okay. Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Roberts?

2 MS. BROWN-ROBERTS: Good afternoon
3 Madam Chairman and members of the Board. I am
4 Maxine Brown-Roberts from the Office of
5 Planning and I will summarize my report.

6 Regarding the special exception, I
7 think they meet the 223 review requirements
8 and that is to satisfy an existing condition.
9 So we recommend approval of that special
10 exception.

11 Regarding the area variance for
12 the 15 feet in height of the garage, I still,
13 I have met with the Applicant and have gone
14 over this application. I am still not
15 convinced there is an exceptional situation to
16 the property.

17 One of the things that has been
18 mentioned is that there is a cut out to the
19 front of the house. The house next door to
20 that has the same thing. I don't see that as
21 something that is unique to the community.

22 The lots are, from the map that I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have seen, the lot sizes are similar along
2 that road and in the alley. And regarding I
3 had mentioned in my report regarding the use
4 of the basement, I got the information that
5 that was unusable subsequent to the filing of
6 the report. So, I sort of withdraw that
7 comment.

8 But I still am not convinced as
9 yet that there is some exceptional situation
10 that I can really hang my hat on to say yes,
11 this is a unique property or that there is
12 some exceptional situation.

13 Regarding the second prong, which
14 is sort of contingent on the first, that has
15 not been demonstrated.

16 Regarding the substantial
17 detriment to the public good, as the Applicant
18 said, there are a number of units along that
19 alley that have second story additions to
20 them. And so if I could get something, this
21 addition I don't think would be a detriment to
22 the community. I think, quite frankly, it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would enhance it. But the other two portions
2 of the variance test is sort of what I am
3 having some problems with.

4 And so, you know, I am willing to
5 change my recommendation to go with it, but
6 that is where I am right now. Thank you,
7 Madam Chairman.

8 BZA CHAIR MILLER: Thank you. Is
9 this a particularly small house on the
10 property?

11 MS. BROWN-ROBERTS: No, it is not.
12 I mean, it is similar in size to other houses.
13 I mean, it has a little cut out so it may be
14 a little smaller than some of the others which
15 are flush up to the property line. It is a
16 small house but Capitol Hill has lots of small
17 houses. So again, that is not something that
18 I would consider that is unique.

19 BZA CHAIR MILLER: And I guess,
20 and you know, sometimes it is exceptional
21 where there is no other way to expand except
22 by the way they are seeking with the variance.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 I don't know if --

2 MS. BROWN-ROBERTS: And I looked
3 at -- I considered that but I think that is,
4 you know, a lot of other people could come in
5 and say the same thing. You know, I don't
6 think that is an exceptional situation. You
7 know, somebody else could want to put in a gym
8 and they could say well, you know, I just
9 don't have the space in my house to do it. I
10 don't think that that is enough.

11 BZA CHAIR MILLER: Yes, I am just
12 looking at, you know, yes, when is it enough,
13 the confluence of factors. And you know, of
14 course as well, we can look at that there is
15 already an improvement upon the property so
16 that limits what they can do. And then we
17 just heard Ms. Fowler go through all the ways
18 that they can't expand any other way. They
19 can't go down. They can't go out, etcetera.

20 But you have to buy into the
21 premise, I guess, that there is a practical
22 difficulty they have if they don't expand and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 if they don't have this extra living space.

2 And I guess, is it your opinion
3 that the surrounding houses don't have that
4 living space either?

5 MS. BROWN-ROBERTS: Well, not all
6 the houses along the block. There are some
7 that don't have a garage or have a two-story
8 garage. The house that I think is directly
9 across the street doesn't have a second story
10 garage. So you know, the house I think to the
11 left doesn't have a second-story garage
12 either. So there are a few there.

13 BZA CHAIR MILLER: I guess I
14 actually meant that the houses because if
15 those others wanted second story garages, most
16 likely they would have to come in for a
17 variance from the height as well.

18 MS. BROWN-ROBERTS: Oh, yes.

19 BZA CHAIR MILLER: Okay, so is
20 there something different about this house
21 from those houses or you don't think so? You
22 know, the fact that maybe that this house

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 doesn't have a basement and it has these
2 cutouts?

3 MS. BROWN-ROBERTS: I think one of
4 the -- I just don't buy the cutout argument.
5 It doesn't have a basement, we have had cases
6 here before that you know, we have not sort of
7 considered that argument either. So, it is
8 sort of being the consistency, looking at
9 things consistently.

10 There are some garages there that
11 are not 19 feet. There are some that are
12 lower also. So, there are ways of getting
13 around it.

14 BZA CHAIR MILLER: What do you
15 mean there are ways of getting around it?
16 Getting around what?

17 MS. BROWN-ROBERTS: What I am
18 trying to say is that each property has
19 different circumstances of what they have or
20 what they would propose, that sort of thing.
21 So yes, I mean, I wouldn't want to say well,
22 each one of the houses would have to come in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 for a variance and we would say yes.

2 BZA CHAIR MILLER: Right, that is
3 the thing. It has to be somewhat
4 distinguishable from the other houses.

5 MS. BROWN-ROBERTS: Right.

6 BZA CHAIR MILLER: Yes, okay. And
7 you don't see it. Okay.

8 Board members have other
9 questions?

10 (No audible response.)

11 BZA CHAIR MILLER: Does the
12 Applicant have a copy of the Office of
13 Planning Report?

14 MS. OPPER-WEINER: Yes.

15 BZA CHAIR MILLER: Do you have any
16 questions for the Office of Planning?

17 MS. OPPER-WEINER: Yes, I do. I
18 have one. You made the statement that other
19 houses are like my house but the fact is that
20 the neighbor next door, these houses were
21 built as duplicates. But there is no other
22 house on the block at all that has the front

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 inset, by the way.

2 MS. BROWN-ROBERTS: Yes, and I
3 think that is what I said, that your neighbor
4 is the only house that has something similar.

5 MS. OPPER-WEINER: Right.

6 MS. BROWN-ROBERTS: So, it is not
7 all that unique.

8 MS. OPPER-WEINER: And there are
9 any number, a large number of houses on the
10 street that have basements.

11 MS. BROWN-ROBERTS: I agree with
12 you.

13 MS. OPPER-WEINER: And in fact
14 some of them are under construction now for
15 expansion, I mean, being finished or whatever.

16 Okay, so I just wanted to be clear
17 that that is a different look in my house or
18 a different fact of the way it is built than
19 in others.

20 MS. BROWN-ROBERTS: Yes and I
21 think I did say that. Yes, I agree with you
22 on that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. OPPER-WEINER: And there is no
2 other, where else would I be able to expand in
3 that house? Is there some place that you
4 think?

5 MS. BROWN-ROBERTS: But I don't
6 think it is -- it is not everyone that comes
7 in here and has an application that we say,
8 because you want to expand, yes, you can
9 expand. I may agree with you that there is no
10 way for you to expand but that doesn't mean
11 that you have met the test of this.

12 You know, you could also say okay,
13 I want to put a two-story on my house because
14 it is too small. That doesn't mean, I think,
15 that we are going to agree with that.

16 MS. OPPER-WEINER: Yes, okay, but
17 there is a fair amount of precedent in cases
18 that I have seen where second story garages
19 have been permitted in residential areas.

20 MS. BROWN-ROBERTS: And I am not
21 saying it hasn't been permitted or that we
22 would never agree to permit a second story

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 addition. I am just saying that the
2 information that I have gotten from you I
3 cannot see where meet the test. I think that
4 is what I want to emphasize is that I just
5 can't see how we meet the test.

6 MS. OPPER-WEINER: Right. And the
7 one clarification that I made when you weren't
8 here earlier was that the equipment is, I
9 always get the numbers wrong, almost, over
10 seven feet tall and my house has eight foot
11 ceilings. And if you haven't seen the
12 equipment, it is very bulky. And having the
13 ceiling less than nine inches above it, would
14 not work.

15 So even if I had an extra room in
16 my house, none of them would be big enough of
17 more than one piece of the big equipment. I
18 wouldn't have anything else in there because
19 I don't have very large rooms.

20 So, just to be clear that the
21 height issue, the way you wrote the report
22 said barely over seven feet, it is more that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the equipment, the one piece, the trapeze --

2 MS. BROWN-ROBERTS: The tallest
3 piece.

4 MS. OPPER-WEINER: -- Cadillac as
5 it is called, I can't get over the name of it,
6 so that the height, bulk and the bulk of it
7 itself requires space that I just don't have.
8 And Ms. Fowler mentioned that my downstairs
9 living room, it is a living room/dining room,
10 it is not even separate.

11 MS. BROWN-ROBERTS: Uh-huh.

12 MS. OPPER-WEINER: Well, you were
13 there so you saw that.

14 MS. BROWN-ROBERTS: Yes.

15 MS. OPPER-WEINER: But I wanted
16 the Board to hear that and she did say two
17 rooms. And I have a kitchen in the front,
18 which is also unusual for Capitol Hill, by the
19 way. So there really is no possibility to
20 take my doctor's recommendation and my
21 physical therapist that I have something
22 available to me on a daily basis, basically or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 frequently, you know, four, five, six times a
2 week.

3 I mean I do think, I personally
4 think, obviously I would think this way, not
5 having enough space to do something like this
6 is an exceptional situation, a little bit
7 different than what basis of variances are
8 granted, as I have read literally dozens of
9 these cases. And so that I do think that it
10 would show that this property is exceptional
11 and there are reasons that could be used.

12 You may not agree but that is sort
13 of why I have pursued this, thinking that
14 there was that possibility.

15 MS. BROWN-ROBERTS: Okay.

16 MS. OPPER-WEINER: I have nothing
17 further.

18 BZA CHAIR MILLER: Okay, any other
19 Board questions?

20 (No audible response.)

21 BZA CHAIR MILLER: Is there
22 anybody here from the ANC in this case?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 (No audible response.)

2 BZA CHAIR MILLER: Anybody here
3 who wishes to testify in support of this
4 application?

5 (No audible response.)

6 BZA CHAIR MILLER: Anybody who
7 wishes to testify in opposition?

8 (No audible response.)

9 BZA CHAIR MILLER: Okay, any other
10 Board questions?

11 I guess I would just say at this
12 point I am still, you know, uncertain if there
13 is something exceptional about the property
14 that leads to a practical difficulty in
15 complying with the regulations. I hear what
16 Office of Planning is saying that she doesn't
17 see an exceptional situation that is different
18 from other homes. No one has an inherent
19 right to expand, per se. So sometimes when we
20 -- you know, I asked if it was a really small
21 property because sometimes if it is really
22 exceptionally small, that does obviously,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 create a practical difficulty upon any owner.
2 So I know, obviously, you need it for the
3 machine, for your personal situation and we
4 are just trying to see if it would meet the
5 variance test, though for an owner.

6 MS. OPPER-WEINER: Would it be of
7 any help if I put together a memorandum with
8 regard to these cases? Because when I was
9 reading through them, it is sort of hard to
10 summarize them in five minutes or less, or
11 even ten minutes. I mean, you give us all the
12 time we need but I was just wondering if I
13 made that offer, if that would be helpful.

14 BZA CHAIR MILLER: If you
15 basically are asking us if we could keep the
16 record open and you would submit a memorandum
17 in light of the concerns that have been
18 expressed at the hearing?

19 MS. OPPER-WEINER: Yes.

20 BZA CHAIR MILLER: I think we
21 could do that. Let me just double check with
22 my colleagues.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 (Pause.)

2 BZA CHAIR MILLER: Okay, we are
3 not sure we are going to need a legal
4 memorandum. But let me ask you, I think the
5 one point that might help me, what is it about
6 your house that doesn't allow enough space for
7 this type of use as an exercise room? Is
8 there something about how your house is
9 configured that is different so, therefore,
10 you know, you would need this extra space over
11 the garage? Other than you can't down in the
12 basement, I know you are limited by that?

13 I guess I can't picture your
14 house. So I really don't know. She says its
15 not that small, so that is all I know.

16 MS. OPPER-WEINER: She earlier
17 said it is a very cute, little, small house.
18 So, if you walk in the front door, you go down
19 a long hall and then to your left is the
20 kitchen. And then to the right is another
21 little hall and then opens into a living and
22 dining room. That is the downstairs.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Upstairs, I have three bedrooms.
2 One is a master bedroom. The middle bedroom
3 is, I think 13 by 11 and my godson lives
4 there. So, it is occupied. And then the
5 front room is about the same size, maybe
6 slightly larger, 14 by 11, and that is where
7 I have my desk and lots and lots of paper, my
8 files and such. Some of my files, my current,
9 active. That is where I work.

10 And the garage, as it is currently
11 configured, as you face the garage from the
12 house, the car part is on the right. And then
13 the left side is an office space as well that
14 has two huge filing cabinets in it, two desks
15 in there. And that is where I also work out
16 there as well. It has equipment, computer,
17 and fax and so forth. And then upstairs is a
18 loft that is filled. And I do keep my files,
19 my old files, you know, I don't know if anyone
20 here is an attorney. Okay, I had a feeling
21 there are some. You know about paper and I
22 have to keep the paper for seven years. I am

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not really good at throwing it away in a
2 timely fashion. So I have a lot of boxes
3 filled with old files.

4 BZA CHAIR MILLER: So is there no
5 other room that could be used for this type of
6 exercise room?

7 MS. OPPER-WEINER: Not at all. I
8 mean, there really is nothing else. And none
9 of the -- no.

10 BZA CHAIR MILLER: Okay.

11 MS. OPPER-WEINER: Simply.

12 (Pause.)

13 BZA CHAIR MILLER: Ms. Fowler, we
14 also wanted to ask you about the 223 relief.
15 I believe this is a nonconforming property.
16 Is that correct?

17 MS. FOWLER: For lot coverage,
18 correct. It is nonconforming.

19 BZA CHAIR MILLER: So, I think
20 that we might need to add that is not
21 complying with 2001.3, an enlargement of a
22 nonconforming property. Did you look at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 2001.3? It falls under 223.

2 Okay, it is just kind of a
3 technicality but if you look at 223, it
4 references other regulations that you can
5 proceed under 223 in that the property might
6 not comply with some of these other
7 regulations. So we were looking at 2001.3 as
8 well because it is nonconforming as to height
9 and you are seeking relief in the form an
10 increase in that nonconformity, which is
11 2001.3(b)(2). Okay, so we will put that in.

12 All right, we are going to proceed
13 with deliberations on this and Mr. Dettman is
14 going to start us off.

15 MEMBER DETTMAN: Thank you, Madam
16 Chair. What I think I will do is I will start
17 off by just quickly reviewing the relief that
18 we have before us.

19 As advertised this case was
20 seeking a special exception from the lot
21 occupancy provisions under 223 and, as you
22 just stated, we are going to incorporate into

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the special exception, under 223, 2001.3 as
2 well.

3 In addition to the special
4 exception, we are also looking at a variance
5 from the accessory structure height
6 requirements under subsection 2500.4. The
7 original request also sought a use variance to
8 allow living quarters in an accessory
9 structure under 2500.5. The Board disposed of
10 that request, citing Application 17658 of
11 Michael D. Perry, essentially stating that
12 that provision applies to the R-1-A and R-1-B
13 districts. And as this application is located
14 in R-4, a use variance was not required.

15 Pulling my paperwork together as I
16 talk here. I think what I will start off
17 doing is looking at the special exception
18 request under 223. 223 governs additions to
19 one-family dwellings or flats, as well as
20 newer or enlarged accessory structures. And
21 what I think I will do for the special
22 exception is rely upon DCOP's report, which is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Exhibit 33 in our record.

2 In quickly going through the
3 provisions of 223, 223.2 states the addition
4 shall not have a substantially adverse affect
5 on the use or enjoyment of any abutting or
6 adjacent dwelling or property. And in
7 particular, A, the light and air available to
8 neighboring properties.

9 It seems to me in terms of the
10 height of what is being proposed, it is
11 consistent with what exists along, largely
12 exists along the alley. It is only increasing
13 the height of the structure by four feet. It
14 doesn't appear to me that it is going to have
15 an adverse impact on the light and air that is
16 available to neighboring properties.

17 223.2(b) deals with the privacy of
18 use and enjoyment. We heard Ms. Fowler
19 testify that the placement of the windows was
20 a consideration when designing the increased
21 height and she believes that the placement of
22 the windows is going to effectively reduce any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 kind of intrusion upon the privacy of use and
2 enjoyment of neighboring properties.

3 223.2(c) states the addition,
4 together with the original building as used in
5 the street, alley, or other public way, shall
6 not substantially visually intrude upon the
7 character, scale and pattern of the subject
8 street frontage. The accessory structure
9 appears to be tastefully designed. It looks
10 to be in harmony with what exists along the
11 alley.

12 And there was some testimony about
13 the materials that were used to finish the
14 accessory structure which, again, seems to
15 contribute to the character of the alley. And
16 I think OP also mentioned that they don't
17 believe that it is going impair the pattern
18 and the scale and the character of the alley
19 and believes that it may improve the condition
20 that exists along the alley.

21 223.3 states that the lot
22 occupancy of all new and existing structures

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 on the lot shall not exceed and in the R-4
2 223.3 allows 70 percent. The application is
3 not going to increase the existing
4 nonconforming lot occupancy, which I believe
5 is around 68 percent. And 70 percent is
6 allowed under 223.

7 223.4 says the Board may require
8 special treatment in the way of design
9 screening, exterior, or interior lighting,
10 etcetera. DCOP does not see a need to have
11 any kind of special treatment required by the
12 Board.

13 And 223.5 states that this section
14 may not be used to permit the introduction or
15 expansion of a nonconforming use. The
16 existing uses on the property is a single-
17 family dwelling that is a matter right use in
18 the R-4 and so that provision is complied
19 with.

20 So, with respect to the special
21 exception, Madam Chair and Board members, it
22 seems that provisions of that section are met.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And at this point, I can address the variance
2 request or I can open it up to comments from
3 Board members.

4 BZA CHAIR MILLER: I would say go
5 on to the variance. I think you covered the
6 special exception very thoroughly.

7 MEMBER DETTMAN: Okay. As I
8 stated just a couple of minutes ago, the
9 variance request is from the accessory
10 structure height requirements, under
11 subsection 2500.4. Let me just turn to that
12 provision quickly.

13 2500.4 states that an accessory
14 building in any zoned district shall not
15 exceed one story or 15 feet in height, except
16 as provided in 2500.5. Currently, the
17 accessory structure measures 15 feet six
18 inches. And as proposed, it is going to
19 measure 19 feet six inches.

20 So, in order to allow for a 19
21 foot six inch accessory structure, it needs to
22 meet the test of an area variance, which must

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 meet the standards of a practical difficulty.
2 And as for the first prong of the variance
3 test, whether there is an extraordinary
4 situation upon the property that would give
5 rise to a practical difficulty, I see a
6 confluence of factors here. And not one
7 particular factor is actually overwhelming but
8 I think collectively it does make it
9 practically difficult to carry out the
10 Applicant's wishes.

11 We heard that there were historic
12 constraints. The house is located in an
13 historic district. Any kind of expansion to
14 a third story would be visible from the
15 street. We heard that from Ms. Fowler. And
16 it is my assumption that the Historic
17 Preservation Office would have something to
18 say if you were to try to expand upwards, in
19 terms of its impacts on the character of the
20 historic district as viewed from the street.

21 The existing structure doesn't
22 have a basement. There was a little bit of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 discussion about this cutout that is located
2 in the front of the property and DCOP did
3 mention that the neighboring property also has
4 the same cutout. So I guess in that respect
5 it is not unique in that it is the only one
6 with this cutout. However, I would consider
7 it extraordinary in that we heard in testimony
8 that there are only two houses on this
9 property that does have this kind of cutout in
10 front of the property. And you know, it does
11 take away from developable area. It is
12 located in the front. You really couldn't
13 fill in this court, probably because of
14 historic constraints. And so it is kind of
15 this open area in front of the building that
16 takes up developable area that couldn't be
17 realized in the rear of the building.

18 The existing improvements on the
19 property would only allow for, I think the
20 Applicant said, a three foot expansion on the
21 rear of the building which doesn't meet the
22 requirements necessary to fit this equipment

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in there.

2 It was, I noticed in DCOP's
3 report, they addressed putting the equipment
4 in the garage. But essentially by doing that,
5 it would trigger additional relief. It would
6 trigger a parking relief because they wouldn't
7 be able to park the car in the garage. So, I
8 think that here is a confluence of some minor
9 factors that collectively does create a
10 practical difficulty in accommodating the
11 Applicant's need to have this equipment
12 onsite.

13 And so going to the third prong of
14 the test and then I guess I will open it back
15 up to additional comments. I don't see that
16 this would be an adverse impact on the
17 neighborhood or the zone plan. I think there
18 are enough unique or extraordinary factors
19 that could set this apart from any other case
20 going forward. And OP actually, again I
21 mentioned, stated that it potentially could
22 improve the condition of what exists along the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 property and actually contribute to the
2 character of the alley. So, I think the
3 variance test, actually is met.

4 BZA CHAIR MILLER: Thank you. I
5 think I would like to make a couple of
6 comments. One is with respect to the
7 uniqueness of the cutouts. And from what I
8 heard is that there are only two houses, this
9 property and then the next-door neighbor that
10 has the cutout but that they were built
11 together. So in a way, it is still unique.
12 I doesn't have to be one and only, in any
13 event.

14 And I agree with you that this
15 isn't a clear-cut case but I think there is a
16 confluence of factors that you went over that
17 make the property somewhat unique and give
18 rise to practical difficulty in this case.
19 And the courts certainly have recognized to
20 begin with when there are improvements already
21 on the property than what are the unique
22 constraints that might arise out of that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And with respect to the practical
2 difficulty, what I was saying before was I
3 think we need to look at it broader and not
4 too narrowly with respect to the equipment
5 this property owner has. Because I don't
6 believe the variance is supposed to be
7 tailored to one person. But I think what we
8 heard was that given the constraints of the
9 property, there is a practical difficulty to
10 have space for an exercise room, which has
11 been recognized by this Board as being
12 customarily associated with modern day living.
13 And so I think that the Applicant made,
14 certainly made the case that the only way they
15 could have this space would be on top of the
16 garage and would require a variance and so I
17 think the only question was, I think Office of
18 Planning, you know, legitimately asked, you
19 know, well, is that a practical difficulty or
20 a unique situation. But I think that there is
21 a confluence here and it does lead to, I
22 think, a legitimate practical difficulty that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we have recognized somewhat in the past with
2 respect to exercise rooms and living area.

3 And then you covered certainly
4 that there is no adverse impact from this
5 addition. And in fact, Office of Planning
6 recognized that it would be an improvement.
7 And I think the Applicant addressed a very
8 well how she got to the height it should be
9 with respect to the property that was there,
10 where the windows are placed and where the
11 neighbor's roof is and those aspects. I
12 thought that they addressed that very well.

13 Other comments?

14 (No audible response.)

15 BZA CHAIR MILLER: Okay, not
16 hearing any, do we have a motion?

17 MEMBER DETTMAN: Madam Chair, I
18 would move for approval of Application number
19 17897 pursuant to 11 DCMR 3104.1 and 3103.2
20 for a special exception from the lot occupancy
21 provisions of section 403 and the
22 nonconforming structure provisions of 2001.3

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 under section 223 to construct a second story
2 addition to an existing accessory garage and
3 a variance from the accessory structure height
4 requirements under subsection 2500.4 in the R-
5 4 district at 223 10th Street, Southeast.

6 BZA CHAIR MILLER: Second.
7 Further deliberation?

8 (No audible response.)

9 BZA CHAIR MILLER: All those in
10 favor say aye.

11 (Chorus of ayes.)

12 BZA CHAIR MILLER: All those
13 opposed?

14 (No audible response.)

15 BZA CHAIR MILLER: All those
16 opposed?

17 (No audible response.)

18 BZA CHAIR MILLER: All those
19 abstaining?

20 (No audible response.)

21 BZA CHAIR MILLER: And would you
22 call the vote, please?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. BAILEY: The vote is recorded
2 as 4-0-1 to grant the application. Mr.
3 Dettman made the motion. Mrs. Miller seconded
4 it. Mr. Hood and Mr. Loud support the motion.
5 Mrs. Walker is not present at this time.

6 The application is granted as
7 amended.

8 BZA CHAIR MILLER: Okay. And that
9 will be a summary order, as there is no party
10 in opposition. Okay.

11 MS. OPPER-WEINER: Thanks. I
12 can't thank you enough. I appreciate it.

13 BZA CHAIR MILLER: Okay, we have
14 one more case on the agenda and I think that
15 we will take a five minute break and then we
16 will come back and take the last case on the
17 agenda.

18 (Whereupon, the foregoing
19 proceedings went off the record at
20 5:50 p.m. and went back on the
21 record at 6:04 p.m.)

22 BZA CHAIR MILLER: Okay, Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Bailey, we are ready for you to call the last
2 case on the agenda for this afternoon.

3 MS. BAILEY: Madam Chair, that is
4 Application number 17791. It is the
5 application of DRM and Associates, Inc. and
6 this application was amended. What I believe
7 is currently before the Board is pursuant to
8 section 3104.1 for a special exception to
9 continue a child development center for 50
10 children, infants to 12 years, and nine staff
11 under section 205.

12 The application was amended. I
13 think the Applicant had previously requested
14 to establish a community service center and to
15 construct an addition to the building. Those
16 reliefs have been vacated or were terminated
17 from this project.

18 This is a continuation hearing.
19 It was originally scheduled for July 8, 2008
20 and it was rescheduled to today, March 17,
21 2009.

22 And the last comment I have, Madam

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Chair, today we received from the ANC a
2 document which I am about to pass out and it
3 has comments from the ANC that is requesting
4 a postponement. I think it has testimony from
5 the ANC and additional correspondences. So,
6 I will pass that out at this time.

7 BZA CHAIR MILLER: Thank you, Ms.
8 Bailey. While she is passing that out, why
9 don't we have introductions, at least.

10 MR. MADDEN: Do you want me to
11 start with me?

12 BZA CHAIR MILLER: Yes, sure.

13 MR. MADDEN: Oh, I'm sorry.
14 Earlier I said good afternoon. It is now good
15 evening and I am Donald Madden, President DRM
16 and Associates, Inc. and that is it.

17 BZA CHAIR MILLER: Okay.

18 MR. HAMILTON: I'm Tom Hamilton
19 from ANC 6C.

20 BZA CHAIR MILLER: Okay, we are
21 just taking a moment to look over quickly the
22 March 13, 2009 letter from the ANC that we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 just got.

2 (Pause.)

3 BZA CHAIR MILLER: Okay. I think
4 at this point, rather than read every single
5 attachment to the letter, which I have skimmed
6 anyway, I would turn to you, Mr. Hamilton.
7 Are you still requesting a postponement?

8 MR. HAMILTON: Yes, that is what
9 the ANC voted for.

10 BZA CHAIR MILLER: Okay and did
11 you and Mr. Madden work this all out while we
12 were doing the other cases?

13 MR. HAMILTON: I believe Mr.
14 Madden is still opposed to the postponement.

15 BZA CHAIR MILLER: So why don't
16 you just highlight why you think a
17 postponement would be in order.

18 MR. HAMILTON: Okay, I will read
19 this quite quickly. On July 8, 2008 I
20 testified before this Board that ANC 6C had
21 voted to oppose the application for several
22 variances requested in BZA case 17791 for a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 child development center at 728 F Street,
2 Northeast. The ANC's position was based on
3 opposition from the community. The
4 Applicant's position was not strengthened by
5 his absence from the ANC meeting, although he
6 had attended an earlier meeting of the ANC's
7 planning, zoning, and environment committee.

8 The community's opposition was
9 based largely but not solely on the request to
10 enlarge the building to house a community
11 service center. The meaning of community
12 service center, I might add, was unclear then
13 and is unclear today.

14 When I got to the hearing, I
15 discovered that the request for the building
16 addition and the community service center had
17 been removed from the case. At question was
18 only if the child development center should
19 continue to operate under its existing
20 variances. Since these variances were not
21 actually due for reconsideration, the hearing
22 was postponed. And I guess there were some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 other reasons why the hearing was postponed as
2 well.

3 The ANC received no official
4 notification of the new hearing date. I have
5 been informed by the Office of Planning that
6 notification was not required because this was
7 not a new case but simply a postponement of
8 the same case. This is not accurate. The
9 case that the ANC was presented and that the
10 ANC voted on included another nonconforming
11 use, i.e., the community service center, and
12 the addition to an existing nonconforming
13 structure.

14 Without those two extraordinary
15 requests, the case is entirely different. For
16 this reason, the ANC has requested a
17 postponement so that it can reasonably
18 consider the new case.

19 There are other differences since
20 the aborted hearing of July 8th. The
21 community opposition appears to have subsided.
22 I contacted the individuals who are on record

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in opposition to case 17791. I invited them
2 to a meeting on March 12th at the center, at
3 Reverend Lane's request by the way, and no
4 opposition materialized.

5 Only one of the original opponents
6 responded at all. That was Mr. Vincent
7 Morris. On July 8th, Mr. Morris was given
8 standing by this Board because he owns a home
9 adjacent to 728 F Street, Northeast, although
10 he no longer lives there and did not live
11 there then.

12 Mr. Morris was very much opposed
13 on July 8th to granting the variances
14 requested in BZA Case 17791. On March 11 of
15 this year, however, he took a much more
16 measured tone and he wrote to me in an email,
17 "I would have serious problems if they were
18 trying to expand or put more children there.
19 I also would have a major problem if they were
20 seeking anything other than a short extension
21 of their license. No more ten-year deals.
22 Finally, I think they should be required to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 make some modest improvements to the building,
2 such as completing the wall the out front
3 facing the front windows, storing toys,
4 cleaning litter, and repairing security
5 fence."

6 So no one seems to actually be
7 opposed to the child development center, per
8 se. The Office of Planning supports the
9 application. The community does not seem to
10 oppose the application. And I personally
11 think, and this is only my personal opinion,
12 that the ANC would not oppose it either, given
13 the opportunity to consider the matter.

14 That said, there are some aspects
15 of the conditions for approving the
16 application that I would like to question.
17 "The number of staff shall not exceed nine."
18 I wonder if that requirement would be better
19 determined by the Department of Health, which
20 regulates such matters.

21 "The Applicant shall provide two
22 leased parking spaces for staff use at 600 9th

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Street, Northeast." I don't know if this is
2 important. But if it is, I would recommend
3 that someone go to 600 9th Street, Northeast
4 and try to locate two parking spaces. There
5 is one that I can find and it is actually on
6 public space. And if it is used by childcare
7 staff, I will eat my hat.

8 Finally, "The Applicant shall
9 provide solid or baffled wood fence around the
10 deck play area." There is a deck and there is
11 a fence. The deck is used for storage. There
12 is no deck play area. I don't know if there
13 should be or not. Once again, the Department
14 of Health, childcare professionals would know
15 better than I. It just seems silly to
16 perpetuate the myth that a deck play area
17 exists. It is something like the mythical
18 parking spaces at 600 9th Street, Northeast.

19 Thank you for hearing me out. Let
20 me close by iterating the official position of
21 ANC 6C, which is to request an extension, Mr.
22 Rice says it is a postponement, I think, to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the case until April 10, 2009. And I did
2 submit copies of this testimony, 30 letters of
3 support for the center, which Reverend Lane
4 provided to me this morning, copies of the
5 letter from Karen Wirt, the ANC Chair, copies
6 of the ANC letter from June of 2008, and
7 copies of the email from Vince Morris. Thank
8 you.

9 BZA CHAIR MILLER: Did you say
10 April 10th?

11 MR. HAMILTON: I'm sorry?

12 BZA CHAIR MILLER: Did you say
13 April 10, a continuation until April 10, 2009
14 or did I mishear you?

15 MR. HAMILTON: I believe April
16 10th is what Karen Wirt wrote in her letter,
17 yes.

18 BZA CHAIR MILLER: Okay, that is
19 not a Tuesday. Is that tied to when the ANC
20 might meet on this?

21 MR. HAMILTON: Right.

22 BZA CHAIR MILLER: Is that it? So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 sometime around April 10 or later.

2 MR. HAMILTON: Right. The
3 committee would meet on April first and the
4 full ANC on April 7th.

5 BZA CHAIR MILLER: Okay. Okay,
6 Mr. Madden, you are opposed to that?

7 MR. MADDEN: Yes, ma'am, I do.
8 First of all, when we met here in July it was
9 announced that we would meet again this date.
10 And everyone who was here heard that. And the
11 ANC was here and heard that. And opposition
12 people were here and heard that when it was
13 announced.

14 So, I kept record and made sure
15 that I knew we would meet here and so did the
16 others. And I don't think that would be a
17 legitimate reason for a postponement. In
18 fact, I think what Mr. Hamilton just presented
19 would be in support of not having
20 justification for postponement because in fact
21 the people not objecting to what we have
22 before the BZA at this time and the opposition

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that was expressed before was mainly for what
2 was the build-out. And that was the confusion
3 on the community development. And somehow the
4 word got around, a misunderstanding, that the
5 reason we were going to have the build-out was
6 that we were going to have children there for
7 drug treatment and whatever else. And that
8 never was the intent for the build-out and how
9 that rumor got spread through the
10 neighborhood, I have no idea.

11 But since now they are aware that
12 that is not in existence and we just want to
13 continue the center operation there and I
14 think something the Board should also consider
15 is that we have been before this Board, this
16 is our fourth time and we have been operating
17 for a quarter of a century there. Twenty-five
18 years we have been operating there accident
19 free, incident free. So, I don't see any
20 reason for a postponement. I think we have
21 strong evidence that based on the history of
22 this center, we should be able to continue to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 operate indefinite.

2 And I have a copy of the Board of
3 Zoning Adjustment report that you may have in
4 your file that Sharon Pruitt Williams in '99
5 and this was addressing back for a hearing
6 date of April the 7th, '99 and the decision of
7 June the second, 1999. And in that BZA order,
8 15456 dated 16 August '91, the Board approved
9 use of the site for a child development
10 center. The center had been in operation for
11 over seven years. The Board finding that most
12 of the issues identified by the community in
13 1990 were similar to those currently.

14 So and another factor that I put
15 in the letter to the Board is the cost to come
16 before this Board, at the time I estimated to
17 be between \$15,000 and \$20,000 that I have
18 spent to appear before this Board. And the
19 appearance now cost me \$8,000 alone.

20 BZA CHAIR MILLER: That's kind of
21 hard to believe. Can you explain that?

22 MR. MADDEN: Well, I hope I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 brought it with me. This appearance cost
2 \$8,000. And when I was before the Board the
3 last time, I mentioned that I was seeking to
4 get some of that back, since I withdrew. And
5 I talked to Mr. Nero and he sort of said that
6 he didn't think that was possible.

7 I know the Board recommended that
8 I talk to Mr. Nero in regards to that. But I
9 don't know whether I have that. It is on the
10 front of the application. I don't know if I
11 have that currently in my presence or not.
12 But that is a factual statement.

13 So I strongly recommend that we do
14 not postpone and proceed today with this
15 hearing.

16 ZC CHAIR HOOD: I see a receipt
17 for \$4,050. And that is Exhibit 10.

18 MR. MADDEN: Was that just for one
19 --

20 ZC CHAIR HOOD: It says it is
21 Application for DRM and Associates, Inc., Dr.
22 Madden, four variances and special exceptions

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 for a childcare community center and outreach
2 center located at the address that we have.

3 MR. MADDEN: Okay, I will --

4 ZC CHAIR HOOD: And this is
5 addressed to Dear Mr. Nero. This is from you.
6 I'm sorry, and then on this side, it says
7 Exhibit 37.

8 MR. MADDEN: Okay, I know I have
9 submitted one for two other applications.

10 ZC CHAIR HOOD: Okay.

11 MR. MADDEN: I'm hoping I might
12 get them -- so it should be. I wrote them in
13 two different occasions for another piece of
14 property.

15 ZC CHAIR HOOD: Okay, let me just
16 say that I only have one.

17 MR. MADDEN: Okay.

18 BZA CHAIR MILLER: Yes, I have
19 that same one, Exhibit 10 for \$4,050.

20 Okay, is Mr. Morris here? No,
21 okay.

22 MR. HAMILTON: No, he is not here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 ZC CHAIR HOOD: Madam Chair, I
2 have a question about Mr. Morris. I
3 understand Mr. Morris doesn't even live there
4 and didn't live there prior. So I don't even
5 know why, I am trying to understand his
6 relevance. Maybe I missed part of it.

7 MR. HAMILTON: He owns a house
8 adjacent to the childcare center. I don't
9 know whether he was given standing because it
10 was believed that he actually lived there or
11 not but --

12 ZC CHAIR HOOD: Owns it. He owns
13 it now?

14 MR. HAMILTON: He owns it, yes.

15 ZC CHAIR HOOD: He still owns it.

16 MR. HAMILTON: He still owns it.

17 ZC CHAIR HOOD: Okay. All right,
18 thank you.

19 MR. MADDEN: May I piggyback on
20 that, sir? Madam Chair?

21 BZA CHAIR MILLER: Okay, we are
22 primarily looking at, you know, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 postponement question and I just raised it
2 because he was granted party status. And so
3 therefore, he is a party in opposition right
4 now and you have the ANC in opposition. When
5 we have parties in opposition we usually have
6 written a full order, which takes longer than
7 a summary order, which often occurs when we
8 have no parties in opposition.

9 So I just wanted to let you know
10 that that is a factor in the time for you. It
11 may be that, and I will ask this of Mr.
12 Hamilton, whether or not it would serve the
13 purposes of the ANC, since you represent the
14 ANC, if we were to just leave the record open
15 and then the ANC could consider the issue just
16 as it relates to child development center and
17 submit an additional report, or whether you
18 feel, you know, the hearing needs to be
19 postponed.

20 MR. HAMILTON: I think leaving the
21 record open would be fine.

22 BZA CHAIR MILLER: Okay. Okay and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we could leave it open for Mr. Morris as well,
2 in the event there has been a change in the
3 community and we get an accurate reflection of
4 that.

5 All right, then if that is your
6 position, I guess, what does the Board want to
7 do? Mr. Hamilton has said it would serve the
8 ANC's purposes just to leave the record open
9 and we can proceed. Comments?

10 It is the Applicant's second time
11 here and the order expires in June, I believe.

12 MR. MADDEN: That is correct, yes.

13 BZA CHAIR MILLER: Okay, anybody
14 opposed to proceeding? All right. Then,
15 let's proceed with the merits of the case.

16 Okay, Mr. Madden, you are here
17 because your order that you are operating a
18 child development center under is going to
19 expire in June.

20 MR. MADDEN: That is correct.

21 BZA CHAIR MILLER: Okay and you
22 have reduced your request for relief, if I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 understand just for a special exception under
2 205.

3 MR. MADDEN: That is correct, yes.

4 BZA CHAIR MILLER: Okay, I have a
5 question about the variance, though for the
6 off-street parking requirement.

7 MR. MADDEN: In the files, Your
8 Honor, Madam Chair, I'm sorry, there are
9 parking contracts.

10 BZA CHAIR MILLER: Okay, then my
11 question --

12 MR. MADDEN: 600 9th Street is no
13 longer in the picture.

14 BZA CHAIR MILLER: Okay. All
15 right but it looks like you need relief for
16 the variance as well, unless you can show me
17 otherwise. We are looking at your most recent
18 order is application number 16446. And it
19 says on page three of that order that approval
20 shall be for a period of ten years. And it
21 looks like the approval was for the special
22 exception and the variance.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MADDEN: That is correct, yes.

2 BZA CHAIR MILLER: Okay, so there
3 are two areas of relief that you are seeking.

4 MR. MADDEN: No, maybe I am
5 confused.

6 BZA CHAIR MILLER: Well, it is for
7 the child development center. One is 205 if
8 to operate the child development center.

9 MR. MADDEN: Okay.

10 BZA CHAIR MILLER: And then the
11 other is the variance from the off-street
12 parking that is required.

13 MR. MADDEN: Right. Right, Your
14 Honor.

15 BZA CHAIR MILLER: Okay. I'm not
16 sure you did that -- I just wanted to be clear
17 about that because you had taken away, it
18 seemed like, the variances, you know, when you
19 amended your application. You know, when you
20 decided not to do the addition, it looked like
21 you were saying all that is left is 205 but
22 actually both 205 and the variance from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 off-street parking requirements are left.

2 MR. MADDEN: Correct.

3 BZA CHAIR MILLER: Okay. All
4 right, so you can address that today.

5 MR. MADDEN: Right.

6 BZA CHAIR MILLER: Okay.

7 MR. MADDEN: Okay, for the record,
8 I think you need to understand that there is
9 an email that is in the file from opposition,
10 Mr. Morris, where he now supports the
11 continuation of operation of the center.
12 Before, he was in opposition of everything
13 dealing with the center. Although he owns the
14 building next door, during the time we met
15 here in July Mr. Morris had never been inside
16 of the center. Since that time, he has been
17 inside the center and he has now got a
18 revelation that things are not what he was
19 projecting.

20 And I think that the ANC
21 Commissioner here will testify on the
22 conditions of the center and the appearance of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the center and the work that has been done at
2 the center and continues to be done.

3 BZA CHAIR MILLER: Is that email
4 in our file?

5 MR. MADDEN: It's in your file.

6 BZA CHAIR MILLER: You have
7 submitted it in your latest application?

8 MR. MADDEN: Yes, ma'am.

9 MR. HAMILTON: It is also included
10 in the package that I submitted.

11 BZA CHAIR MILLER: Okay, good.
12 Thank you.

13 MR. MADDEN: I requested this
14 continuation based on the history of the
15 center. And we have been operating there for
16 a quarter of a century. And we keep coming
17 back and I didn't fully realize that the
18 concept was that if you have a variance,
19 special exception, and you operate for a
20 period of time, and the Board gave me a short
21 period of time, initially, to operate, came
22 back, there was no incidents of no accidents

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and we got additional time. We came back
2 after that and everything was going fine. No
3 incidents, no accidents and the community was
4 benefiting from the services and we continued.

5 And here we are back again
6 requesting continuation and I request
7 continuation of this operation at this time
8 that we can go for an indefinite period of
9 time. And I think we fully can support that
10 by the history of this center. We have
11 graduated excellent students from there. We
12 have provided excellent service for the
13 community and the district.

14 The parents love the center. And
15 I think you will see in those letters the
16 Commissioner just submitted how strongly they
17 feel about the center. And the community
18 loves the center. We have always had a
19 minimum amount of opposition since we have
20 been operating there. Some of you may recall
21 the first time we had an opposition, the
22 individual lived down the street, compared the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 children's laughter to dogs barking. And he
2 was laughed out of this center when he was
3 testifying. Everybody laughed at him and he
4 ran out the door. So, he is no longer in
5 opposition against the center at this point.

6 And addressing Mr. Morris'
7 concerns, his oppositions, we do not plan to
8 add any children. We are not having any
9 intentions of expanding. And I have addressed
10 the concerns about the time period for the
11 continuation of operations and I think that
12 this is fully supported by what I just stated,
13 the history of the center.

14 We have done improvements to the
15 building. As a matter of fact, we have spent
16 \$27,170.00 as Reverend Lane just added up in
17 2008 and thus far in 2009. I don't know if
18 you have a picture of the center in front of
19 you but its improvements, even the painting,
20 they painted the sidewalks, decorated the
21 sidewalks painting. If you go past there, it
22 is a nice, nice building. And if you go

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 inside, you will be much more impressed. And
2 I think the ANC will testify to that as well.

3 As far as storing the toys, we
4 have the buggies that we keep outside when we
5 ride the small children around. And we keep
6 them neatly parked and I don't think it is an
7 eyesore. Obviously, it is an eyesore to some
8 people but I think they are beautiful toys to
9 be out there. And they are taken inside
10 because we don't want them to get stolen but
11 during the day, we have them out there because
12 we just don't have the room inside to have
13 them and have the children be in at the same
14 time. So, it makes it difficult.

15 And we have painted the building,
16 as you will see. And we have started to, we
17 put a fence up and I think there is a
18 misconception about the play area. Outside of
19 the building, I don't know if you can see it
20 in the picture or not, but around the
21 building, there is an area before you get to
22 the sidewalk and there is right at a bus stop,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that area cannot be used for a play area. We
2 have gone through that process with the
3 Department of Health. And that is because of
4 the bus stop and the fumes would not be safe
5 for the children to be out there with the
6 buses coming up parking and all of the fumes.
7 So that is not the intent for that area but I
8 think the concept is the people in opposition
9 thinking that is what that is for.

10 I am going to try to make this
11 brief because I know everybody is ready to go
12 to dinner. I know I am.

13 Now, dealing with the concern the
14 other night we had a meeting, thanks to
15 Commission Hamilton. He called a special
16 meeting after he was made aware that the
17 hearing was today and we would be meeting
18 before the ANC would meet. And he sent out
19 emails for everybody in opposition to come to
20 the meeting at the daycare. I attended the
21 meeting with some of the community and the
22 parents. And without exception, everyone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 there supports the center operations.

2 And I don't know how official that
3 is considered to be, an ANC meeting, but we
4 had total support of the people that attended
5 that meeting. And I think that should have
6 some weight as far as dealing with the ANC
7 because they did have an opportunity to meet
8 with us and we would have been able to answer
9 any questions that they would like for us to
10 answer.

11 I won't go into take a lot of time
12 because I think most of the things was covered
13 during our first meeting in July. So, I don't
14 want to bore you with some of those same
15 things. But I will be able to answer any
16 questions. And I think Commissioner Hamilton
17 here is my support, strong support this time
18 around. He has maybe signed down as
19 opposition but he is actually my support.
20 Thank you.

21 BZA CHAIR MILLER: Thank you. Why
22 don't we ask you a few questions, then.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Because this is a continuation and your
2 previous order is expiring and I just want to
3 be clear what things are remaining the same.

4 And if I look at the conditions,
5 number two is the number of children at the
6 facility shall not exceed 50. Is that the
7 same?

8 MR. MADDEN: The same.

9 BZA CHAIR MILLER: Okay. Now, Mr.
10 Hamilton brought up a concern with respect to
11 the number of staff not exceeding nine. Do
12 you have a concern with that?

13 MR. MADDEN: No concern.

14 BZA CHAIR MILLER: How many staff
15 do you have?

16 MR. MADDEN: Eight.

17 BZA CHAIR MILLER: Okay, so you
18 don't anticipate needing more than nine for
19 this many students. Okay.

20 Hours of operation and days are
21 they 7:00 a.m. to 7:00 p.m. Monday through
22 Friday?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MADDEN: No problem with that.

2 BZA CHAIR MILLER: Okay, is drop-
3 off and pick-up of children from the street in
4 front of the main entrance of the facility?

5 MR. MADDEN: No problem.

6 BZA CHAIR MILLER: Staff or
7 volunteers escorting children between the
8 facility and vehicles during all hours that
9 drop-off and pick-up of children occurs?

10 MR. MADDEN: No problem.

11 BZA CHAIR MILLER: What is the age
12 of the children? Infant through what?

13 MR. MADDEN: Twelve.

14 BZA CHAIR MILLER: Twelve, okay.

15 Let's go to then the two leased
16 parking spaces for staff use at 600 9th
17 Street, Northeast.

18 MR. MADDEN: That, 600 9th Street,
19 as I mentioned in the last time, that building
20 was Charity Baptist Church back in the '80s.
21 I purchased that building and I turned it into
22 a luxury house. In front of that building,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 well, there is a parking garage. And in front
2 there is a parking space. And if you notice
3 on the side, there is an additional parking
4 space. So, there is actually three parking
5 spaces for that building during the time when
6 I renovated it.

7 And since that time, I have sold
8 the building. I no longer own the building.
9 That is why that parking is not an issue
10 there. I have in the record two additional
11 parking spaces that we have available for the
12 center for an indefinite period of time. So,
13 I have submitted that to Mr. Rice and that
14 satisfied. Do I have it? I can show it here.
15 Yes, --

16 BZA CHAIR MILLER: So, the -- wait
17 a second. Are the parking spaces at the same
18 location or are they at a different location?

19 MR. MADDEN: Different location.
20 It is in the file. I have an extra copy here.
21 In the next block from the center.

22 BZA CHAIR MILLER: I am looking at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Exhibit number 40, which says "Parking
2 Contract. This agreement is entered between
3 DRM and Associates, Inc., Donald Madden, 728
4 F Street, Northeast and Mrs. Slaughter of 657
5 F Street, Northeast, Washington, D.C. 20002.
6 This agreement allows DRM and Associates, Inc.
7 and Donald Madden to park for an indefinite
8 period?"

9 MR. MADDEN: That's correct.

10 BZA CHAIR MILLER: But it doesn't
11 say where or am I missing it?

12 MR. MADDEN: Located at 657 F
13 Street, is one.

14 BZA CHAIR MILLER: That is where
15 the parking is?

16 MR. MADDEN: That is what I have.

17 BZA CHAIR MILLER: No, no -- well,
18 is that it?

19 MR. MADDEN: Yes.

20 BZA CHAIR MILLER: Okay, I thought
21 that was Mrs. Slaughter's address. I didn't
22 know that that reflected the place where the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 parking is.

2 MR. MADDEN: The parking, yes.
3 I'm sorry.

4 BZA CHAIR MILLER: Okay, so
5 parking will be at 657 F Street. But it
6 doesn't say how many spaces.

7 MR. MADDEN: It's one.

8 BZA CHAIR MILLER: One space.

9 MR. MADDEN: And the other one is
10 at a different location. I just gave that to
11 Mr. Rice. You got my second copy there?

12 MR. RICE: If you need copies, you
13 can get copies of this. This is new. I don't
14 think I have had this before today.

15 BZA CHAIR MILLER: Okay, Mr.
16 Dettman just gave me another one that is
17 written similarly for 400 E Street, Northeast,
18 which is Stuart-Hobson School?

19 MR. MADDEN: Right and I think
20 that is the one I just gave you. Right. They
21 are stapled together.

22 MEMBER DETTMAN: Mr. Madden, these

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 two parking spaces, are they both owned by Ms.
2 Slaughter?

3 MR. MADDEN: No, she I don't know
4 where the connection with the school. She was
5 working there and had authority to sign that
6 agreement.

7 MEMBER DETTMAN: Does she own the
8 parking space located at 657 --

9 MR. MADDEN: Yes. Yes, she does.

10 MEMBER DETTMAN: She does. Is
11 that her house?

12 MR. MADDEN: Yes, it is.

13 (Pause.)

14 BZA CHAIR MILLER: Is it that one
15 of these spaces is at a residence and one is
16 at a school or what?

17 MR. MADDEN: That is correct.

18 BZA CHAIR MILLER: But it is the
19 same person who signed it.

20 MR. MADDEN: Right.

21 BZA CHAIR MILLER: All right.

22 Okay, -- yes, go ahead Mr. Dettman.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER DETTMAN: Just to raise a
2 couple of things. One is if we are looking at
3 a variance from the parking requirements, I
4 don't believe the Applicant needs to
5 demonstrate that he is going to provide it
6 off-site. It is a variance which essentially
7 says that the Board is going to reduce or get
8 rid of the parking requirement.

9 But if it is off-site parking that
10 we are pursuing, it would be a different
11 provision to provide relief from. And I
12 think, as I just kind of whispered to Madam
13 Chair, I'm not sure how much weight the Board
14 can give these because if the woman sells her
15 house, you lose your parking.

16 MR. MADDEN: Okay, so the same as
17 600 9th Street. The same situation when we
18 first established the center.

19 MEMBER DETTMAN: No, because you
20 owned that property. So you had control over
21 the parking space. This, the woman could sell
22 her house and you lose your parking.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MADDEN: Yes, I understand
2 what you are saying, as I sold the house at
3 600 9th Street and lost the parking. The same
4 situation could possibly occur. I don't know,
5 the lady been there for years. She may be
6 there for another 20 years, I don't know but
7 hopefully she will be there.

8 BZA CHAIR MILLER: But you sold
9 your house and you lost your parking. So did
10 you always have another parking space? Is
11 that what you said? Originally you owned the
12 location where the offsite parking was?

13 MR. MADDEN: 600 9th Street, I
14 owned both buildings --

15 BZA CHAIR MILLER: Okay.

16 MR. MADDEN: -- at the time I
17 started the daycare.

18 BZA CHAIR MILLER: And when did
19 you sell it?

20 MR. MADDEN: Many years later, I
21 guess three, four years ago, I sold it.

22 BZA CHAIR MILLER: Okay and these

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 agreements are dated June 8, 2008. Did you
2 have, was there a period of time when you
3 didn't have offsite parking?

4 MR. MADDEN: Well, the lady that
5 bought the house was allowing us to still use
6 the facility. We still had a halfway decent
7 relationship. She didn't have a car at the
8 time.

9 BZA CHAIR MILLER: Mr. Rice, I
10 don't know if you want to join in on this but
11 I think there is an issue with the variance.

12 MR. RICE: Yes.

13 BZA CHAIR MILLER: Do we need to
14 have these spaces identified for a variance or
15 what provision are we looking at here?

16 MR. RICE: Thank you, Madam Chair.
17 Office of Planning, Stephen Rice for the
18 Record.

19 This parking situation is somewhat
20 new to me, too. My report was based on the
21 conditions that were stated in the previous
22 report. I think the case as 16446, which

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 stated that the two parking spaces should be
2 provided, would be provided at 600 9th Street.
3 So, even in that situation, both parking
4 spaces were provided offsite. Although they
5 were at a location that the Applicant owned at
6 the time, they were in fact offsite. These
7 two are still offsite and he happens to not
8 own them.

9 I don't have the provision with me
10 but I think there is a requirement, in fact I
11 know that there is a requirement that parking
12 should be provided onsite. Whether or not he
13 needs relief from that, I don't know how to
14 answer that because his previous conditions,
15 the previous condition did have parking
16 offsite as well, albeit a different location.

17 So whether or not there is a need
18 for relief now, I don't know how to answer
19 that.

20 BZA CHAIR MILLER: Well, it
21 appears that with the nine staff at the child
22 development center, there is a requirement

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that there be two parking spaces.

2 MR. RICE: The need for two
3 parking spaces, yes, that is clear.

4 BZA CHAIR MILLER: Right.

5 MR. RICE: As far as where it is
6 located or who owns the locations of those
7 parking spaces, I don't know how to answer
8 those questions. But yes, the two parking
9 spaces are needed, are required.

10 BZA CHAIR MILLER: Okay, we just
11 want to take a look at the regulations just to
12 see what options there are. Sometimes there
13 is more than one option. One is a clear
14 variance from the required number of parking.
15 Another is providing those parking spaces
16 offsite, which is what you are doing. So,
17 just give us a moment.

18 MR. MADDEN: Madam Chair, is it
19 appropriate to get a variance from parking?

20 BZA CHAIR MILLER: You did in the
21 last order, it appears.

22 MR. RICE: Well, it is not clear

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to me that he did apply for a variance from
2 parking. I think that was just simply a
3 condition. There was no language --

4 BZA CHAIR MILLER: Yes, Mr. Rice,
5 in the heading of application number 16446,
6 which was the last BZA order, it says for a
7 special exception under section 205 to allow
8 a child development center for 50 children,
9 infant through 12 years, and nine staff and a
10 variance from the off-street parking
11 requirement, --

12 MR. RICE: Yes, I see.

13 BZA CHAIR MILLER: -- citing
14 subsection 2101.1. There is not a lot of
15 language in here, though that addresses that
16 variance.

17 MR. RICE: I guess what confused
18 me is that I am reading the summary order from
19 that case and if there was a need for a
20 variance, I don't understand why there was
21 also a condition. Do you see what I mean? So
22 that throws me off.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Right. That's
2 why we kind of want to take a fresh look at
3 this and look at our regulations.

4 MR. RICE: Okay. Well --

5 MR. MADDEN: Well, may I --

6 MR. RICE: Can I finish?

7 MR. MADDEN: Go ahead.

8 MR. RICE: Two things. I didn't
9 do an analysis on a variance from parking but
10 I would say that this property is at 100
11 percent lot occupancy. So there may be
12 grounds to view this as a variance from
13 parking completely. So, that is a question
14 that is sort of open.

15 BZA CHAIR MILLER: Are you using
16 those spaces or how is it working now with the
17 parking?

18 MR. MADDEN: Reverend Lane?

19 BZA CHAIR MILLER: You can come to
20 the table.

21 MR. MADDEN: May I say something
22 first?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Sure.

2 MR. MADDEN: I am going back to, I
3 guess back in '99 and during the appearances
4 here and I think the parking was addressed
5 back there at that time, the number of parking
6 spaces. It said nearby. I have never been
7 asked by the Board or anyone to show ownership
8 of the property at 600 9th Street. It was
9 just, I guess, in conversation that it was
10 expressed that I owned the property. So it
11 was never an issue to prove that I owned the
12 property. It was just a conversation. There
13 was nothing in the record that I had to
14 produce.

15 BZA CHAIR MILLER: Okay, yes, but
16 it is a condition of the last order and we
17 wouldn't want to put in a condition that
18 wasn't valid anymore.

19 MR. MADDEN: Right.

20 BZA CHAIR MILLER: Okay.

21 REVEREND LANE: Isadore Lane,
22 operator at 728, operator of the childcare

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 center, New Community Child Development
2 Center.

3 There are just two points that I
4 would like to make. The first is that
5 although conditions may change, we have only
6 one staff person that actually has a car and
7 drives. All of the other staff, the wages
8 don't really support private ownership of a
9 vehicle but they take public transportation.
10 So although the condition may change, there
11 may be other staff we hire in the future that
12 may need a parking but as it currently is, one
13 staff drives.

14 The second is I would be in
15 support of a variance if the property is at
16 100 percent lot occupancy, as stated by Mr.
17 Rice.

18 BZA CHAIR MILLER: So where does
19 that one person park now?

20 REVEREND LANE: Down at, sometimes
21 at school, sometimes in front of, depending on
22 the availability of the slot.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Okay. All
2 right, any other questions?

3 Let's see. All right, how about
4 number seven, the Applicant to provide a solid
5 or baffled wood fence around the deck play
6 area to minimize the noise created by the
7 onsite outdoor play area?

8 MR. MADDEN: We have always
9 addressed that and that fence was put up there
10 and it has been there from day one.

11 BZA CHAIR MILLER: Okay, so
12 actually, I mean, if we wanted to keep it, it
13 wouldn't even be provide anymore. It is
14 already there. It would be something like
15 maintain a solid or --

16 MR. MADDEN: Right.

17 BZA CHAIR MILLER: Okay. How
18 about the trash? Number eight, trash will be
19 stored in a covered container under the
20 existing stair landing. Trash pick-up shall
21 occur during hours the facility is not in
22 operation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 REVEREND LANE: I can respond to
2 that.

3 BZA CHAIR MILLER: Yes, please,
4 okay.

5 REVEREND LANE: I am the operator.
6 You can check with the trash disposal company.
7 When we saw that, we contacted them. We will
8 abide by any request that you have with the
9 trash collection company. It is called VHI.
10 And it is properly stored according to
11 district regulations with trash under the bin,
12 as stated.

13 MR. MADDEN: Yes, I believe a copy
14 of that is in the file.

15 BZA CHAIR MILLER: Okay but is it
16 your representation that you are complying
17 with number eight and that is still what the
18 procedures are?

19 REVEREND LANE: I think that was a
20 concern from before, which was addressed
21 subsequent to the previous concern.

22 BZA CHAIR MILLER: You know what?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 There is one other document I would like to
2 ask you about, since you know, we have been
3 hearing about how the community is all coming
4 onboard. We have in our files Exhibit 33,
5 which is a statement in opposition by David
6 Jones.

7 REVEREND LANE: Yes.

8 BZA CHAIR MILLER: Okay. And he
9 says, at least with respect to the trash, "I
10 understand that the daycare facility has no
11 regular trash pick-up service. The dumpster
12 under the outside stairs to the second floor
13 has not been used in years. One wonders what
14 happens to the diapers that are to be
15 discarded, as well as the other trash."

16 REVEREND LANE: That is
17 inaccurate. I can give you a copy of the
18 contract and you can call them and contact
19 them.

20 BZA CHAIR MILLER: We are not
21 going to call them or contact them.

22 REVEREND LANE: I understand.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: But if you want
2 to put in the file a copy of the contracts,
3 that is fine.

4 REVEREND LANE: I would be more
5 than happy. And if you have got a cell phone,
6 we can call them right now.

7 BZA CHAIR MILLER: Okay, we don't
8 we need to call them right now.

9 REVEREND LANE: But this is my
10 copy so just make a copy.

11 BZA CHAIR MILLER: I just wanted
12 to -- this is in the record and I just wanted
13 to have your response. You can give that to
14 Ms. Bailey, if you like.

15 So, is your response that it is
16 just all not true or not?

17 REVEREND LANE: We worked very
18 closely with the community to any concerns
19 that they may have had in the past.

20 BZA CHAIR MILLER: Well then let
21 me just say, this was dated July 8, 2008.

22 REVEREND LANE: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Okay.

2 REVEREND LANE: Any concerns that
3 they have had in the past, we have tried to
4 address it 100 percent. Mr. David Jones is
5 someone who I see quite regularly because he
6 lives right down the street and he runs
7 periodically and he picks up trash on one side
8 and I pick it up on the other.

9 So, if you contact any of the
10 neighbors around the center now, I think you
11 will find that the situation has changed. I
12 think you can ask Commissioner Hamilton and he
13 can --

14 BZA CHAIR MILLER: Well let me
15 just ask you, has the situation changed since
16 July or what? I mean, he was saying that
17 there wasn't regular trash pick-up service.
18 Did he not know or did you make changes since
19 July?

20 REVEREND LANE: You mean July of
21 '08?

22 BZA CHAIR MILLER: '08, yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 REVEREND LANE: Yes, we have made
2 a lot of changes since July of '08.

3 I have had several meetings with
4 the neighbors. Commissioner Hamilton has
5 actually been by the school several times. He
6 knows the parents. So, I think that there has
7 been a great deal of improvement since July of
8 '08.

9 MR. HAMILTON: May I add something
10 to that? When I contacted the community
11 before the meeting that we had at the center,
12 I asked them to concentrate on here and now
13 and not on things that they remembered from
14 the past because I believe that there have
15 been tremendous improvements at the center.

16 BZA CHAIR MILLER: Okay, thank
17 you. And one other question about the fence.
18 He also said in this letter that the brick
19 fence that Mr. Madden had constructed but not
20 finished now about five years ago -- anyway,
21 did you just recently finish the fence?

22 MR. MADDEN: No, the brick fence

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that is finished, Your Honor, that was, and
2 that was what I was addressing earlier about
3 the misconception for that to be the play
4 area. And I think we have let everyone
5 realize at this point that that cannot be a
6 play area. And I think we eliminated concerns
7 about that.

8 BZA CHAIR MILLER: Did you finish
9 this fence that he is referring to?

10 MR. MADDEN: The fence is, the
11 brick fence is finished.

12 BZA CHAIR MILLER: Okay.

13 MR. MADDEN: It is rod iron.

14 BZA CHAIR MILLER: All right. I
15 think that is it for my questions. Any other
16 questions?

17 MEMBER DETTMAN: Just Mr. Madden,
18 would you happen to have any photos of the
19 property as it exists today, because we only
20 have one photo in the record.

21 MR. MADDEN: I thought you would
22 never ask.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MADDEN: I have an excellent
2 photo.

3 BZA CHAIR MILLER: Start with Ms.
4 Bailey. Thank you.

5 MR. MADDEN: Now, when you look at
6 that photo and go by the center, you are going
7 to see that it looks better than the photo
8 because that was taken when we met in July.

9 BZA CHAIR MILLER: When was this
10 photo taken, Exhibit number 6?

11 MR. MADDEN: Oh, that's like 20
12 years ago.

13 BZA CHAIR MILLER: Okay.

14 MR. MADDEN: Now, you will see the
15 difference.

16 BZA CHAIR MILLER: Okay, good.
17 All right. Anything else before we turn to
18 Office of Planning? No. Unless the ANC has
19 any questions for the applicant. Does the ANC
20 have any questions, Mr. Hamilton? Okay, good.

21 All right, Mr. Rice?

22 MR. RICE: Thank you Madam Chair.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Stephen Rice.

2 This case is a case that had been
3 heard several times. The last hearing that we
4 sort of started was in July of '09. This was
5 a case that was previously managed by another
6 OP employee who is not with us at the time.
7 So, a lot of this is sort of fresh to me as
8 well.

9 So OP is in support of approval
10 for the continuance of the CDC, according to,
11 pursuant to section 205.

12 Based on the transcript that I
13 pulled from the preliminary hearing on July
14 the 8th, it sounded as if the Board was a bit
15 reluctant to go forward with the hearing
16 because at the time the Board was waiting to
17 hear or to see how the definition of a child
18 development center would be amended from the
19 Zoning Commission. Since then, the zoning
20 regulation text amendment was finalized and
21 action was taken on February the 9th, 2009,
22 Zoning Commission case 08-16 and the language

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 now reads "two-year-old and older." I think
2 there was a concern with the definition of or
3 whether or not infants should be included,
4 infants meaning two years and under. And that
5 language has been removed from the text. So,
6 OP's position is to maintain its initial
7 recommendation of approval from that case.

8 The conditions that were listed in
9 my report are the same in the application of
10 16446, which was ten years prior on June 2,
11 1999. The only difference was that the ten
12 year length was removed. Based on the history
13 of that child development center, OP didn't
14 believe that a time restriction would still be
15 valid at this point. We haven't had enough
16 evidence to sort of prove why it is necessary
17 to continue to come back every couple of ten,
18 or five years, or whatever.

19 And as far as the provisions of
20 section 205, all of which were met, it is
21 detailed in my report, but I am comfortable
22 with standing on that report and I am open for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 questions, if you have any.

2 BZA CHAIR MILLER: Okay, I just
3 want to follow-up on the variance that we were
4 talking about earlier. And I understand that
5 you didn't look at the variance issue when you
6 did your report but it would seem to me that
7 you were saying that you would support a
8 variance in this case because of the 100
9 percent lot occupancy?

10 MR. RICE: Well, I don't have --

11 BZA CHAIR MILLER: That's only one
12 --

13 MR. RICE: -- the regs in front of
14 me.

15 BZA CHAIR MILLER: Right. That is
16 not all the prongs. But do you see any
17 adverse impacts from granting a variance?

18 MR. RICE: Based on what I know, I
19 don't think we would be opposed to such a
20 variance.

21 BZA CHAIR MILLER: So and let me
22 ask you, might you not be opposed to a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 condition for the Applicant to provide two
2 leased parking spaces? That was one of the
3 previous conditions.

4 MR. RICE: I'm sorry?

5 BZA CHAIR MILLER: One of the
6 previous conditions called for the Applicant
7 to provide two leased parking spaces. And I
8 think when we were looking at this as perhaps
9 a straight variance, I think the Board might
10 be considering whether or not it was necessary
11 to provide the two leased parking spaces. And
12 I wanted to know if you had an opinion on
13 that.

14 MR. RICE: Again, based on what I
15 have heard, it sounds as if there is perhaps
16 not a strong need for those two parking
17 spaces. That is coming from the Applicant.
18 I don't know how that sort of, the community
19 feels about that. But it certainly could not
20 be provided on this property. I know that for
21 certain, given the existing building. And I
22 don't think that there is an alley behind the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 structure, either. I'm looking at an aerial.

2 If I had to make a decision here,
3 I would be more inclined to say that we would
4 be in support of a variance from the parking.

5 BZA CHAIR MILLER: Thank you.
6 Other questions? Does the Applicant have any
7 questions for the Office of Planning?

8 MR. MADDEN: I have a request. If
9 I could get a bench decision today, it would
10 be very helpful because the parents are
11 concerned about, in our meeting the other
12 night, and when they mentioned the
13 postponement of this meeting. And in
14 conversation with the Office of Planning, if
15 we didn't go forth with this meeting today,
16 and it be postponed, we may not be able to
17 meet before the June and it would be a
18 possibility that this center would be shut
19 down for a few months until we will be able to
20 get back before the Board of Zoning and
21 Adjustment.

22 And the parents were informed of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that and they got somewhat concerned about
2 that possibility of what they are going to do
3 with their children. And we need to get back
4 to them and hopefully say that the center will
5 be continued.

6 BZA CHAIR MILLER: Okay, we are
7 diverging a little bit. We are diverging. We
8 are in the middle of our case again. But what
9 we said before and we can revisit at the end
10 of the hearing, was we were going to finish
11 the hearing today but leave the record open so
12 that the ANC and any others, such as Mr.
13 Morris who were in opposition might have a
14 chance to change their position and send in
15 documentation actually in support of your
16 application.

17 And I think we have had this with
18 another case today, I don't know, but that
19 would not necessarily be a big delay in a
20 decision. And in fact, if you did have only
21 support, it would expedite the written order.
22 Because when there is opposition to a case,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the written order takes longer to write and
2 address the concerns.

3 MR. MADDEN: Well, I am a little
4 bit confused from Mr. Hamilton's presentation.
5 That he is saying there is no opposition and
6 Mr. Morris' letter, email that is in the file,
7 saying that he is not opposed to a
8 continuation of the center operation.

9 So, we don't have any opposition.

10 BZA CHAIR MILLER: Well, we have
11 to take a look at Mr. Morris' letter in the
12 file, whether that email in the file, whether
13 that totally undoes his party opposition
14 filing that he made at the last hearing.

15 We also don't have -- I understand
16 that Mr. Hamilton is going to be probably be
17 speaking in support of your application but
18 the ANC itself has, in the record, opposition.
19 And he is saying, that is what he was asking
20 for the opportunity for the ANC to change and
21 that would require us not issuing a bench
22 decision today because we wouldn't have that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in the record yet.

2 MR. MADDEN: Okay, no problem.

3 BZA CHAIR MILLER: But we are well
4 aware of your June deadline and the Board is
5 happy to, we will be happy to move as quickly
6 as we can, once that information comes in.

7 There was another case very
8 similar this morning and we were just talking
9 about even a week in that case.

10 MR. MADDEN: Okay, I appreciate
11 it.

12 BZA CHAIR MILLER: Now, do you
13 have a copy of the Office of Planning report?

14 MR. MADDEN: Yes, I do.

15 BZA CHAIR MILLER: Okay. And did
16 you have any questions for the Office of
17 Planning?

18 MR. MADDEN: No.

19 BZA CHAIR MILLER: Okay.

20 MR. MADDEN: I just wanted to, I
21 guess, emphasize some things that he started
22 mentioning. We started this with his

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 predecessor, Mr. Moore. And so that is where
2 the parking issue was somewhat resolved with
3 Mr. Moore and he was aware of that.

4 BZA CHAIR MILLER: I just want to
5 ask you quickly again, when was this picture
6 that was just put in the record taken?

7 MR. MADDEN: Oh, that was when Mr.
8 Moore came around, with I guess a year ago.

9 MR. RICE: I'm not sure when he
10 actually went out there.

11 MR. MADDEN: I'm not sure but I
12 think that is Mr. Moore standing out there
13 talking to Mrs. Lane on the left of the
14 picture.

15 BZA CHAIR MILLER: Okay, so within
16 a year or two, basically?

17 MR. MADDEN: Within a year, yes.

18 BZA CHAIR MILLER: Within a year,
19 okay.

20 MR. MADDEN: Or less, yes.

21 BZA CHAIR MILLER: Mr. Hamilton,
22 do you have any questions for the Office of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Planning and do you have a copy of their
2 report?

3 MR. HAMILTON: I have no questions
4 and I do have a copy of the report. Thank
5 you.

6 BZA CHAIR MILLER: Okay, good.
7 All right. Now let's turn to you, then. Do
8 you have testimony or you already read it?

9 MR. HAMILTON: I already gave it.

10 BZA CHAIR MILLER: You gave it
11 when you were asking about the postponement.

12 MR. HAMILTON: Right, in my
13 initial --

14 BZA CHAIR MILLER: Okay. Okay,
15 good. Do you have any questions for the ANC?

16 MR. MADDEN: Not at all.

17 BZA CHAIR MILLER: Okay. Is there
18 anybody here in the audience -- oh, wait.
19 Does anybody on the Board have questions for
20 the ANC? Okay.

21 MR. RICE: I have a question for
22 the ANC.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Oh, Mr. Rice,
2 okay.

3 MR. RICE: It is just not clear to
4 me. Did the ANC sort of say why they wanted
5 to have this postponed? Because my
6 understanding is that they were not clear that
7 the addition was taken away from this
8 application. But that doesn't appear to me to
9 be true because in the transcript in July
10 before the hearing in July, and even in OP's
11 report in July, the addition had been removed.

12 I just don't know. It doesn't
13 seem clear to me why they wanted to postpone.
14 I don't know if that is an issue but it is
15 just not clear.

16 MR. HAMILTON: When I came to the
17 July hearing, that was the first that I had
18 heard that the center and the addition had
19 been removed from the application. The ANC
20 had, both the Committee and the full ANC had
21 voted on to oppose based largely on the
22 addition and the center. And the ANC was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 never informed that that had been taken off.

2 MR. RICE: Even after the hearing
3 it was clearly -- it was talked about at the
4 hearing or the pre-hearing.

5 I guess my question is, it was
6 July and they haven't had a chance to sort of
7 talk about it since then? I don't have an
8 issue with it, it is just not clear to me.

9 MR. HAMILTON: Well, I may have
10 dropped the ball on this one.

11 MR. RICE: Okay.

12 MR. HAMILTON: But I assumed,
13 truly, --

14 MR. RICE: Okay.

15 MR. HAMILTON: -- that we were
16 going to be informed of when the next hearing
17 was scheduled.

18 MR. RICE: Okay.

19 BZA CHAIR MILLER: I want to just
20 follow-up, too, just for curiosity. I mean,
21 they met on March 11th, apparently, to discuss
22 the postponement or not? The Commissioners

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 voted --

2 MR. HAMILTON: I think that is
3 right.

4 BZA CHAIR MILLER: It is in your
5 letter.

6 MR. HAMILTON: I think that is
7 right.

8 BZA CHAIR MILLER: The
9 Commissioners voted at 5:00 at the March 11th,
10 2009 meeting to request this extension.

11 MR. HAMILTON: Right.

12 BZA CHAIR MILLER: Okay. Did they
13 discuss the merits at the meeting, like it is
14 just the continuation of the child development
15 center? Can we come to an agreement that we
16 don't have a problem with it?

17 MR. HAMILTON: I raised the issue.
18 I suggested that one of the possibilities was
19 that we would vote to approve but not for a
20 long period of time, so that we would be able
21 to revisit it. The Commission preferred to
22 request the postponement and they voted to.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Okay. And I
2 guess the ANC is going to come in with a
3 position then with respect to whether they
4 think a term should be placed on the child
5 development center. I mean, I don't know that
6 you are authorized to speak to that issue, at
7 this point, or are you?

8 MR. HAMILTON: I'm not authorized
9 to but that doesn't usually stop me.

10 BZA CHAIR MILLER: Do you want to
11 give you personal opinion or what kind of
12 opinion?

13 MR. HAMILTON: I think that this
14 child development center is terrific and I
15 want to see it continue as it is going now
16 under the leadership of Reverend and Mrs.
17 Lane.

18 I can't believe that the ANC is
19 going to oppose it but I can't speak for them.

20 BZA CHAIR MILLER: Is it recently
21 under your stewardship, Mr. Lane, or it has
22 always been?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 REVEREND LANE: Recently.

2 BZA CHAIR MILLER: What?

3 REVEREND LANE: Well according to
4 the history of the center, it is recent. We
5 have been there, this is going on our third
6 year?

7 MR. MADDEN: Uh-huh. Third or
8 fourth.

9 REVEREND LANE: This is going on
10 our third year.

11 BZA CHAIR MILLER: Thirty years
12 you have been under --

13 REVEREND LANE: Three.

14 BZA CHAIR MILLER: Three, okay.

15 MR. MADDEN: Three or four years,
16 yes.

17 BZA CHAIR MILLER: Three, so you
18 are maybe responsible for beautifying it the
19 way it is.

20 MR. HAMILTON: Take credit.

21 BZA CHAIR MILLER: Someone. I
22 mean there is a stark difference between the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 two photographs.

2 Okay, so let me ask you, did I go
3 through whether -- there is nobody else here
4 in the audience to testify. So, we are
5 finished with the case except for any closing
6 remarks. And then we will decide how we are
7 going to go forward.

8 Do you have any closing remarks?

9 MR. MADDEN: Yes, I do.

10 BZA CHAIR MILLER: Okay.

11 MR. MADDEN: Back to the photo,
12 that photo, that painting and all was done
13 before the new management. I had that done
14 and all you see there. But if you go by there
15 now, you are going to see more improvements
16 from that photograph that Reverend Lane takes
17 credit for doing since they took over.

18 BZA CHAIR MILLER: How do you
19 explain the old photograph? Why was it in
20 that state before?

21 MR. MADDEN: I have to look at
22 that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Oh, here.
2 Well, I mean I don't want to spend too much
3 time on this. It is late. But you know,
4 there is such a difference. You know, one has
5 trash around it, etcetera, and the other one
6 is just beautiful.

7 You are not on the microphone. It
8 wasn't operational is what you are saying, at
9 that point of this picture.

10 ZC CHAIR HOOD: That looks like it
11 was under construction or some work was being
12 done. I don't think it always looked like
13 that.

14 BZA CHAIR MILLER: Good, okay.
15 But that was the photo you had in our file.
16 So, you know, it is a good thing you put in
17 this other photo.

18 MR. MADDEN: Probably from '88 --

19 BZA CHAIR MILLER: All right. I'm
20 sorry. Go ahead.

21 MR. MADDEN: Yes, that is probably
22 the '84 picture.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 You made me lose my thought. I'm
2 sorry. When you get my age --

3 BZA CHAIR MILLER: I'm very sorry
4 about that.

5 MR. MADDEN: I probably won't get
6 a chance to address the Board after the ANC
7 submits their input to you and I need to do
8 that at this time, to put my emphasis on why
9 I feel that we should be able to operate
10 without a short period of time or a period of
11 time, based on the history and based on the
12 support from the Office of Planning.

13 If we have been operating unless I
14 don't know if too many centers still around
15 when I started operating. And I take credit
16 and I take pride in what we have done at this
17 location for a quarter of a century. And I
18 take pride in the staff that works there all
19 these years have been very cautious and not to
20 have any accidents with the children. No
21 incidents have been reported. You can verify
22 that with the Department of Health. And they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 inspect, you know how they inspect daycares.
2 Everybody, they always out there unannounced
3 an whatever. And there has never been
4 problems.

5 The Health Department submitted a
6 letter in there and some of that is because I
7 had to challenge their staff in trying to
8 enforce something that wasn't regulation.
9 Just a quick example. They classified from
10 the Health Department that this was a three-
11 story building. I had to go through DCRA and
12 all of that and have them come out and write
13 letters and prove that it is not a three-story
14 building, it is a two-story building.

15 And then I had to go back through
16 the next process was having infants there and
17 no sprinkler system. And I had to go through
18 the DCRA again to convince the Health
19 Department. And winning these battles against
20 the Health Department didn't make me the
21 favorite child in the neighborhood but I won.

22 And that is how possibly they say

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that I wasn't always supportive of what they
2 were trying to do. I am a fighter. And
3 Reverend Lane is different than me and he
4 convinced our opposition somehow, we don't
5 know, and ANC Commission don't know how he did
6 it to support us.

7 But I wanted to please ask you to
8 realize and take into consideration the
9 quarter of a century that we operated there
10 and producing children that are now in college
11 and some about ready to finish college, and I
12 take pride in that. And I love the center.
13 And I think most of you know enough about
14 business that that center is not putting the
15 money in my pocket that I could take that
16 building and do many more things to produce a
17 lot more money. I have been in business for
18 42 years, so I know.

19 And I will have that center there
20 and I want it to stay because I love children.
21 That is why that center is there. And I think
22 I gave you the story of why I started because

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 three 17-year-olds were killed on a Saturday
2 night here in the district. And that building
3 was sitting there empty and I didn't know what
4 I was going to do with it. But when I saw
5 that report on a Sunday, I called an architect
6 on a Monday and I told him to develop it for
7 a child development center so I could stop
8 some of the killing and I think I have been
9 successful in what we have produced in that
10 center. Thank you very much.

11 BZA CHAIR MILLER: Thank you very
12 much. Okay. Now, we just have to make our
13 plan for going forward. And the Board is, you
14 know, willing to act as quickly as we get the
15 information.

16 We talked about leaving the record
17 open for the ANC and Mr. Morris to indicate
18 whether or not they are no longer in
19 opposition and in fact are in support. I
20 haven't looked at that email. I don't know
21 whether that does it for Mr. Morris or not but
22 we will leave the record open for him.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 As we say, we are going to close
2 the record for everything except for whatever
3 it is we specifically need. So, and I don't
4 know that you would need to respond to the ANC
5 but if you want, we could leave the record
6 open for that as well. You did address the
7 term just now.

8 Well, let's look at the time. Mr.
9 Hamilton, when would the ANC meet?

10 MR. HAMILTON: I believe the
11 relevant committee meets on April first and
12 the full commission on April 7th.

13 BZA CHAIR MILLER: Okay. Then the
14 next date that the Board would meet would be
15 April 14th. So we could -- it is not a normal
16 meeting day but I think, let me just see if my
17 colleagues would want to decide this on the
18 14th. Mr. Hood is expected to be here on the
19 14th.

20 ZC CHAIR HOOD: Well that is a
21 good date for me, Madam Chair, but whatever
22 the Board decides.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 BZA CHAIR MILLER: Okay, so we are
2 going to set this for a decision on April
3 14th. The ANC, what is the fastest, what date
4 would you get this to us? And I think that
5 the Board is probably fine if you have it by
6 Friday or something. You are going to meet on
7 a Tuesday, the 7th? Well, you talked about
8 the 10th before. I don't know. What date?

9 MR. HAMILTON: I don't know where
10 the 10th came from. So, the 14th is Tuesday
11 and you want it Friday before that. That
12 would be fine.

13 BZA CHAIR MILLER: Would that work
14 for you?

15 MR. HAMILTON: Yes.

16 BZA CHAIR MILLER: So and you
17 would also share that with the Applicant?

18 MR. HAMILTON: Of course.

19 BZA CHAIR MILLER: Okay. Can you
20 share it with the Office of Planning as well?

21 MR. HAMILTON: Sure.

22 BZA CHAIR MILLER: Okay, so that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 would be great and, obviously, the Board.

2 Mr. Madden, do you want an
3 opportunity, do you want us to leave you the
4 opportunity to respond? Do you want to?

5 MR. MADDEN: You have heard enough
6 from me.

7 BZA CHAIR MILLER: Okay. I think
8 we have.

9 MR. MADDEN: I trust you.

10 BZA CHAIR MILLER: Okay, good.
11 All right. We have heard a lot from you. No
12 we have. You did a great job.

13 So all right, that is all then.
14 We will leave the record open. And Mr. Morris
15 would need to file by that Friday as well.
16 And would you, Mr. Hamilton, communicate this
17 to Mr. Morris?

18 MR. HAMILTON: Certainly.

19 BZA CHAIR MILLER: Okay.

20 MR. HAMILTON: Sure.

21 MS. BAILEY: Thank you. All right,
22 any questions?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 (No audible response.)

2 BZA CHAIR MILLER: Okay, then Ms.
3 Bailey, we are done with this case and I don't
4 believe we have anything else on the agenda
5 for this evening. Do we, Ms. Bailey?

6 MS. BAILEY: No.

7 BZA CHAIR MILLER: Okay. Then
8 this hearing is adjourned.

9 MR. MADDEN: If you make the right
10 decision, then you won't see me anymore.

11 BZA CHAIR MILLER: Thank you very
12 much.

13 MR. MADDEN: Thank you.

14 BZA CHAIR MILLER: This hearing is
15 adjourned.

16 (Whereupon, at 7:27 p.m., the
17 foregoing proceedings were
18 concluded.)

19

20

21

22