

GOVERNMENT OF THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY
APRIL 7, 1999

+ + + + +

The Board met in Hearing Room 220 South at 441 4th Street, N.W., Washington, D.C., at 1:00 p.m., Sheila Cross Reid, Chairperson, presiding.

PRESENT

SHEILA CROSS REID, Chairperson
JERRY GILREATH, Board Member
JOHN F. PARSONS, Member of the Zoning Commission

STAFF PRESENT

SHERI PRUITT-WILLIAMS, Interim Director, Office of Zoning
PAUL HART, Office of Zoning
JOHN NYARKU, Office of Zoning
BEVERLY BAILEY, Office of Zoning

C-O-N-T-E-N-T-S

<u>AGENDA ITEM</u>	<u>PAGE</u>
PRELIMINARY MATTERS	4
<u>APPLICATION OF NATIONAL GRADUATE UNIVERSITY:</u> <u>16445 ANC-6B (TO BE READVERTISED). . . .</u>	6
<u>APPLICATION OF ST. MARTIN'S CATHOLIC CHURCH:</u> <u>16444 ANC-5C (POSTPONED TO MAY 7TH</u> <u>HEARING)</u>	20
<u>APPLICATION OF DRM AND ASSOCIATES, INC:</u> <u>16446 ANC-6A</u>	27
<u>WITNESS</u>	
DONALD MADDEN.	27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PROCEEDINGS

1:40 A.M.

CHAIRPERSON REID: The hearing will please come to order. Good afternoon, ladies and gentlemen. This is the April 7th Public Hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Sheila Cross Reid. Joining me today are Gerry Gilreath, representing the National Capital Planning Commission and John Parsons, representing the Zoning Commission.

Copies of today's hearing agenda are available to you. They're located to my left near the door.

All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located at each end of the table in front of us.

Upon coming forward to speak to the Board, please give both cards to the reporter who is seated to my report.

The order of procedure for special exception and variance cases will proceed as follows: (1) statement of witnesses of the Applicant; (2) government reports including Office of Planning, Department of Public Works, the ANCs, etcetera; (3) persons and parties in support; (4) persons and parties in opposition; (5) closing remarks by the Applicant.

Cross examination of witnesses is permitted for persons or parties with direct interest in the case. The record will be closed at the conclusion of each case except for any materials specifically requested. The Board and the staff will specify at the end

1 of the hearing exactly what is expected.

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

6 The Board will make every effort to conclude the
7 public hearing as near as possible to 6 o'clock p.m. If the afternoon
8 case is not completed by 6 p.m., the Board will assess whether it can
9 complete the pending case or cases remaining on the agenda.

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

15 If you're not prepared to go forward with the case
16 today, if you believe that the Board should not proceed, now is the
17 time to raise such a matter.

18 Preliminary matters?

19 MS. PRUITT-WILLIAMS: Madam Chair, staff has
20 some preliminary matters and then we can move to the audience.

21 CHAIRPERSON REID: Okay.

22 MS. PRUITT-WILLIAMS: On Case No. 16445, the
23 Applicant National Graduate University, if the Applicant could come
24 forward, please.

25 (Pause.)

26 MR. SCHAUER: Madam Chairperson, I rise in
27 reference to Case 16445, the Application of the National Graduate

1 University. I do not believe this case is ready to go forward today and
2 I request that the Board postpone consideration until a later date.

3 There are several concerns, the first of which is that the Application is
4 advertised as a special exception for a private school under Section
5 206 of the zoning regulations, but there is a letter in file from the
6 Zoning Administrator, dated January 29th, which specifies Section 210
7 as the appropriate remedy, that is the special exception for colleges
8 and universities. The facts in the record, we believe, support the
9 Zoning Administrator's decision. First of all, the Applicant is
10 designated as the National Graduate University and I stress the word
11 University. The application form describes the use to include graduate
12 level curricula in the District of Columbia and the attachment to the
13 application includes a proposed use for univesrity level courses for
14 those in management, human service and government.

15 The higher standard for Section 210, we believe, is
16 appropriate in this case. Colleges and universities are not always
17 good neighbors and in particular, the campus plan which would be
18 required under Section 210 is an essential element of an appliction
19 and it requires the Applicant to state present and future expected use
20 of the campus. Furthermore, any amendments to teh campus plan
21 would require a special exception.

22 CHAIRPERSON REID: Is there anyone who would --
23 are you affiliated with the case?

24 DR. BOEK: Yes, I'm Dr. Boek, President of the
25 univesrity.

26 CHAIRPERSON REID: Okay.

27 DR. BOEK: We have followed the guidance of staff of

1 the D.C. government in applying. That's within -- more than once.
2 And have only recently learned that the Zoning Administrator -- we
3 had met with Ms. Hicks twice and this letter contained a difference in
4 zoning category for whichi we had applied.

5 I met with thes taff again two days ago here and they
6 suggested we supply supplemental information which I have available
7 copies for each one and respectfully ask that that -- provide you with
8 this and that it be included inthe record.

9 CHAIRPERSON REID: Okay. Tell us what you are?
10 Are you a private school or are you a college or university?

11 DR. BOEK: We're a private, independneet, nonprofit
12 institution --

13 MS. PRUITT-WILLIAMS: Dr. Boek, do you confer
14 master's degrees of certificates? If someone goes to your unversity,
15 can they get a master's in a program? Or just courses?

16 DR. BOEK: Graduate degrees, that's right.

17 MS. PRUITT-WILLIAMS: Master's degrees in what
18 area, sir?

19 DR. BOEK: I'm sorry?

20 MS. PRUITT-WILLIAMS: In whta areas? Master's
21 degrees in what areas?

22 DR. BOEK: In management, human service and
23 constitutional democracy.

24 MS. PRUITT-WILLIAMS: So you have a two-year
25 accredited program?

26 DR. BOEK: We will be launching that here. It has not
27 gone through that process yet. It cannot until we're ready sometime

1 probably not until next fall.

2 MS. PRUITT-WILLIAMS: But your hope is to actually
3 have an accredited -- because the information that we have in our file
4 is sufficiently unclear to determine whether it is a private school or a
5 university because you say it was not clear enough. That was one of
6 the concerns.

7 DR. BOEK: Would you like this information now?

8 MS. PRUITT-WILLIAMS: If this is a university, we
9 need to re-advertise this under Section 210 which means that the
10 hearing will have to be held on January 16th -- I'm sorry, June, excuse
11 me.

12 CHAIRPERSON REID: Let me clarify something.
13 What do you consider yourself to be or what are you anticipating that
14 your school will be?

15 DR. BOEK: What are we anticipating? That the
16 school will be used for? Is that your question, ma'am?

17 CHAIRPERSON REID: Yes. The purpose of the
18 school.

19 DR. BOEK: We are 32 years old and we have
20 provided training for more than 28,000 people across the United
21 States who are government officials and who are -- at one time we
22 trained all the procurement officers, almost all of them for all of the
23 universities

24 CHAIRPERSON REID: I don't want you to at this
25 time get into the merits of your case. I just need to know before we
26 proceed is it a university or college? In other words, is it a --

27 DR. BOEK: Yes, it will be.

1 CHAIRPERSON REID: Is it a higher education facility
2 for post-high school education?

3 DR. BOEK: It will be higher education and we hope
4 by next fall to have the graduate degrees underway.

5 CHAIRPERSON REID: Post high school mean that
6 you have graduate and undergraduate --

7 DR. BOEK: They have to have Bachelor degrees.
8 We have no undergraduate.

9 CHAIRPERSON REID: Oh, okay. So you're a
10 graduate school, a graduate facility.

11 DR. BOEK: Excepting of course, we do do extensive
12 training of people who need to learn English and computers and --

13 CHAIRPERSON REID: Those persons attending the
14 school will be --

15 DR. BOEK: They don't need degrees.

16 MS. PRUITT-WILLIAMS: And the percentage of
17 students --

18 DR. BOEK: Anyone can come to those.

19 MS. PRUITT-WILLIAMS: And what is the percentage
20 of students that would be coming to those versus the master's
21 programs that you're hoping?

22 Is it a 50-50 split?

23 DR. BOEK: Five years from now it will probably be 50
24 percent or -- just about 50-50 because we are not a mass institution.
25 You see, even our language classes, that's why we have such an
26 international reputation, have only average of seven students.

27 CHAIRPERSON REID: You're not a what institution?

1 DR. BOEK: English and computer studies.

2 Computers are six students.

3 CHAIRPERSON REID: What is your student
4 population?

5 DR. BOEK: What is the student population? Now?

6 MS. PRUITT-WILLIAMS: Expected, within the next --
7 once you get your --

8 DR. BOEK: We're not sure how much of a need there
9 is for the English and computer studies at this location on Capitol Hill,
10 but if there is we would forecast that there would be about 75 students
11 in English and probably about 21 in the computer studies, that is three
12 classes of that.

13 CHAIRPERSON REID: But no more than a hundred
14 students?

15 DR. BOEK: Pardon?

16 CHAIRPERSON REID: No more than a hundred?

17 DR. BOEK: She asked just about the language.

18 MS. PRUITT-WILLIAMS: ACTually I meant the total.

19 CHAIRPERSON REID: Population.

20 DR. BOEK: And the graduate programs they start
21 with 15 students and there would be four sessions, th eyear, every
22 three months so you've got actually 60 in each of the colleges. But
23 the fact is that the time you go into the second field and the third and
24 fourth field, some of the ones that were in the first field are not there,
25 so you have about an average of about 40 students in those colleges
26 and that would be three of them.

27 MR. GILREATH: Well, could this come under some --

1 DR. BOEK: Of course, they're not there all at the
2 same time either because they're there for three or four hours twice a
3 week.

4 MS. PRUITT-WILLIAMS: Madam Chair, I would
5 suggest that based on Dr. Boek's interpretation and in light of the
6 Zoning Administrator's letter that we need to re-advertise this under
7 university because it is conferring graduate degrees. It is not a school
8 of higher learning that just confers certificates, but degrees which is a
9 different entity and it needs to come under campus plan.

10 DR. BOEK: Less than 100 students.

11 MS. PRUITT-WILLIAMS: The number of students
12 has nothing to do with it. It's the type of use.

13 DR. BOEK: Oh.

14 CHAIRPERSON REID: Okay, I think Mr. Boek that
15 that is the -- we have no other choice because the Zoning
16 Administrator -- this is where I got a little confused because the Zoning
17 Administrator had written saying that it was to be under Section 210
18 so I don't know how it got advertised under 206.

19 Will you answer that, please? When the Zoning
20 Administrator had stipulated that it would be under Section 210?

21 MS. PRUITT-WILLIAMS: Correct.

22 DR. BOEK: How did it get advertised under 206?

23 MS. PRUITT-WILLIAMS: I believe that that's an
24 interpretation that staff made in-house after talking with Mr. Boek,
25 because he did not have all his informaiton at that time nad based on
26 what they were told it was sounding like a private school. That's the
27 best interpretation I can give. I've tried to track this down and have

1 not been able to get a clear answer.

2 CHAIRPERSON REID: Be that as it may, typically,
3 the staff procedures would be predicated on what was directed by the
4 Zoning Administrator.

5 MS. PRUITT-WILLIAMS: Correct.

6 CHAIRPERSON REID: Unfortunately, Mr. Boek,
7 through no fault of your own, it was advertised under the wrong zoning
8 regulation so we have to inform the public correctly as to exactly what
9 you are going to be and the reason Mr. Schauer, a representative of the
10 Capitol Hill Restoration Society is here is because of that confusion
11 and to get some clarity. So what we have to do is to readvertise and to
12 reschedule you for your hearing.

13 MR. GILREATH: Would he have to go through a full
14 procedure for a full campus plan?

15 MS. PRUITT-WILLIAMS: Yes.

16 MR. GILREATH: Or just the small scale?

17 MS. PRUITT-WILLIAMS: He has to, he would have
18 to meet the criteria of a campus plan. Now there really isn't a campus,
19 it's a site, but as to what Mr. Schauer said if there's any future
20 development, like in five years, in five years if they intend for their
21 population to increase by 20, that needs to be indicated, those types
22 of things. If they anticipate any expansion of the building that would
23 need to be identified.

24 CHAIRPERSON REID: In other words, he would
25 address the issue that are germane to --

26 MS. PRUITT-WILLIAMS: A campus plan, correct.

27 CHAIRPERSON REID: And although it would not be

1 as elaborate --

2 MS. PRUITT-WILLIAMS: It may not be applicable,
3 but they need to be addressed.

4 CHAIRPERSON REID: Just the salient points of it
5 that would have to --

6 MS. PRUITT-WILLIAMS: And I would suggest Dr.
7 Boek, you've already had some contact with Beverly Bailey of our
8 office.

9 DR. BOEK: We already have and I think this is the
10 answer right here.

11 MS. PRUITT-WILLIAMS: Well, talk with her again
12 and hopefully we can help you, guide you in the right direction.

13 DR. BOEK: That was a Monday?

14 MS. PRUITT-WILLIAMS: Right.

15 DR. BOEK: So this is the plan they're talking about.

16 CHAIRPERSON REID: Okay, now given the fact that
17 he has addressed this campus plan issue, how much time do you
18 think you would need in order to do that sufficiently?

19 MS. PRUITT-WILLIAMS: I don't know. That's
20 something he would have to give us an idea on.

21 CHAIRPERSON REID: Are you familiar with that
22 process for campus plan submissions?

23 DR. BOEK: Well, I met with the staff on Monday and
24 --

25 MS. PRUITT-WILLIAMS: What I can tell you is that in
26 order for this to be on the 16th agenda, June 16th, it has to go to the
27 Register next week, next Friday.

1 CHAIRPERSON REID: Is June 16th, adequate time
2 for you?

3 MS. PRUITT-WILLIAMS: No, he would have to hve it
4 in by next Friday.

5 CHAIRPERSON REID: No, I'm saying you told him it
6 has to be in by next Friday.

7 MS. PRUITT-WILLIAMS: Correct.

8 CHAIRPERSON REID: I'm asking him is June 16th
9 adequate for him, given the time constraints taht she's giving you?

10 DR. BOEK: We wouldn't need much time at all. I
11 think we've got the work already done.

12 As far as the campus plan is concerned, I think we
13 have it done already.

14 CHAIRPERSON REID: Okay, so that will be all right
15 with you? You can meet those time lines?

16 DR. BOEK: Time lines, we don't need any length of
17 time at all. We're out of the Capitol Hill District restoration area. I
18 think it ends on 13kth Street and you represntt that society and we're
19 outside of that.

20 As you know, the Neighborhood ADvisory
21 Commission was very favorable towards this.

22 CHAIRPERSON REID: Let me address whether or
23 not you're outside of his --

24 MR. SCHAUER: Culd I address that point?

25 CHAIRPERSON REID: Yes, please.

26 MR. SCHAUER: The Capitol Hill Historic District
27 ends at 13th Street. This site is just beyond that. It is outside the

1 historic district. However, the interest area of the society is much larger
2 than the historic district. We claim an interest district that goes from
3 the H Street on the north to the Anacostia River on the south and east,
4 so clearly it's within this area. In fact, we would look upon this as
5 being something rather close to the heart of Capitol Hill, so we are
6 very interested in it as a civic association.

7 MR. GILREATH: The building is vacant now?

8 MR. SCHAUER: The building is undergoing
9 renovation now by Dr. Boek.

10 CHAIRPERSON REID: All right. Dr. Boek, the time
11 frames -- will you reiterate that for us, Ms. Williams?

12 MS. PRUITT-WILLIAMS: Yes. Staff would need
13 something, a revised submission by at least Wednesday of next week
14 so that we can make sure -- or Thursday.

15 CHAIRPERSON REID: What does a revised
16 submission consist of?

17 MS. PRUITT-WILLIAMS: A new application form
18 because I don't want to amend the one we have. I'd like for him to fill
19 out a new one.

20 CHAIRPERSON REID: June 16th would be --

21 MS. PRUITT-WILLIAMS: The hearing date. But he
22 would have to have all of his information in so that the public would
23 have access to it.

24 MR. GILREATH: It has to be readvertised.

25 MS. PRUITT-WILLIAMS: Right, it has to be
26 readvertised, but it's a new case. If he's providing new information,
27 that needs to be in the record so that once it's advertised the public

1 has access to it.

2 CHAIRPERSON REID: And we then would review
3 the campus plan?

4 MS. PRUITT-WILLIAMS: Correct. We would review
5 it under the campus plan criteria.

6 CHAIRPERSON REID: All right. Dr. Boek, also I
7 would suggest that you meet with, consult with staff so that they could
8 assist you with putting together what your application and your case
9 should be when you come back for your presentation.

10 DR. BOEK: Thank you very much.

11 CHAIRPERSON REID: Are there any other
12 preliminary matters?

13 MS. PRUITT-WILLIAMS: Staff has others.

14 CHAIRPERSON REID: Okay.

15 MS. PRUITT-WILLIAMS: I believe it's -- excuse me,
16 let me check.

17 (Pause.)

18 Madam Chair, if you could excuse me for one minute?

19 CHAIRPERSON REID: Sure.

20 (Pause.)

21 MS. PRUITT-WILLIAMS: Madam Chair, we can
22 handle these at each case, so we call the first case and deal with it
23 that way.

24 MR. HART: The first case is Application 16444 of St.
25 Martin's Catholic Church/City Lights School, pursuant to 11 DCMR
26 3108.1, for a special exception under Section 206 to make alterations
27 to a special education/alternative education school, and to construct

1 an addition to the school to be used as a vocational arts building to
2 train students in industrial arts, carpentry, etcetera. The property is
3 located in an R-4 District at premises 62 T Street, N.E., Square 3531
4 and 3532, Lots 824, 826 and 834.

5 MS. PRUITT-WILLIAMS: Madam Chair, staff has a
6 preliminary matter regarding this case and if the Applicant could come
7 forward?

8 The preliminary matter is that there was no -- we don't
9 have in the file an affidavit of posting of the property and that is
10 something we typically have before starting the hearing. And if the
11 Applicant can indicate what happened and why they didn't --

12 MR. PETTIWAY: Yes, my name is Rob Pettaway. I'm
13 the Director of City Lights School. And what we have is that because
14 we are a tenant and the actual mailing from your office went to Father
15 Kelly at St. Martin's Church and we were not apprised of that. We
16 were informed by telephone about this meeting, I didn't receive the
17 documents.

18 MS. PRUITT-WILLIAMS: But on your application
19 Father Kelly is the person who is listed to be notified?

20 MR. PETTIWAY: Yes, we understand that.

21 MS. PRUITT-WILLIAMS: I guess then the question is
22 was the property posted?

23 MR. PETTIWAY: Not to my knowledge.

24 MS. PRUITT-WILLIAMS: Then we can't continue at
25 this point. Usually, if the property is posted and you could insure that,
26 the Board could make a decision, but the property was not posted at
27 all. That's what we're finding out now. It needs to be posted for 14

1 days.

2 MR. PETTIWAY: If it's possible, is there -- do I have
3 time to -- I haven't spoken to Father Kelly and when I arrived here this
4 was the first notice.

5 MS. PRUITT-WILLIAMS: Right.

6 MR. PETTIWAY: Is it possible that I could take about
7 5 or 10 minutes and call Father Kelly and make sure?

8 MS. PRUITT-WILLIAMS: You need to ask the Board
9 that.

10 CHAIRPERSON REID: To make sure of what?

11 MR. PETTIWAY: Well, see, there are a lot of
12 assumptions here. I said I have no knowledge of it being posted, but it
13 could have.

14 CHAIRPERSON REID: Are you familiar with the
15 property?

16 MR. PETTIWAY: With the policy?

17 CHAIRPERSON REID: The property itself?

18 MR. PETTIWAY: Yes.

19 CHAIRPERSON REID: The property located at --

20 MR. PETTIWAY: 62 T Street.

21 CHAIRPERSON REID: Yes.

22 MR. PETTIWAY: Yes, I am.

23 CHAIRPERSON REID: Did you see a sign, an
24 orange -- one of our posters on teh building itself?

25 MR. PETTIWAY: No.

26 CHAIRPERSON REID: At any time?

27 MR. PETTIWAY: No.

1 CHAIRPERSON REID: And you would be well
2 enough acquainted with it to know if one had been erected there?

3 MR. PETTIWAY: Yes. If it was there, I would --

4 CHAIRPERSON REID: That is what the issue is, the
5 fact that there was no posting which is required prior that there be in
6 addition to be submitted and advertised in the D.C. Register, that 200
7 notices go out to persons living within 200 feet of the property --

8 MR. PETTIWAY: Yes.

9 CHAIRPERSON REID: As well as that the property
10 be posted for the public to be aware of the fact that there is a hearing
11 today.

12 So without that we have to reschedule you.

13 MR. PETTIWAY: Okay.

14 MS. PRUITT-WILLIAMS: Let's see. Our schedule,
15 unfortunately, is very tight. And you only need 15 days for posting, but
16 that does --

17 CHAIRPERSON REID: Refresh my memory. Has
18 the Board ever given the fact that there has been notice given in the
19 other methods, allowed the case to proceed or does it have to be
20 posted?

21 MS. PRUITT-WILLIAMS: I would suggest it would be
22 posted. You can postpone the hearing and not have to re-advertise,
23 but it is advertised correctly and then anyone who is here will then be
24 allowed to testify at the next hearing and you can postpone it and
25 allow them the 14 or 16 days so we can make sure everything is up
26 there, post it, and put them on the next agenda.

27 However, our agendas are so tight, that's what I'm

1 trying to look at now. We are on the 7th and the 14 would put it on the
2 21st which is a very tight agenda. I think that probably the next best
3 date to be fair to everybody would be to put it behind a special --
4 behind a public meeting on Wednesday, the 5th in May in the
5 morning.

6 CHAIRPERSON REID: Would that work for your
7 schedule?

8 MR. PETTIWAY: That's fine. Yes, because it's my
9 understanding they want to start in the fall.

10 CHAIRPERSON REID: You'll have time. All right,
11 then that being the case then the 5th of May will just delay it about a
12 month. Is that --

13 MR. PETTIWAY: That's doable.

14 CHAIRPERSON REID: That's doable for you.

15 MS. PRUITT-WILLIAMS: I just want you to know you
16 won't receive a notice or any notification that this has been postponed
17 until the 5th of May. This is your notification, okay?

18 What you can do is go to the office next door and have
19 someone helping you with getting the placards because you have to
20 post them on all four sides of your property.

21 MR. PETTIWAY: Okay.

22 CHAIRPERSON REID: And also, sir, you submitting
23 your application under Section 206. You need to look at the zoning
24 regulations and then be able to defend when you put on your case how
25 you comply with the sections of 206, Regulation 206.

26 MR. PETTIWAY: 206.

27 CHAIRPERSON REID: There are several items that

1 you must comply with, each one of them and let us know that you
2 have met your burden for the relief that you are requesting.

3 MR. PETTIWAY: Okay.

4 CHAIRPERSON REID: Staff will also help you with
5 that as well.

6 MR. GILREATH: This delay is not going to cause any
7 problems -- perhaps the Catholic Church will finance it, but if it causes
8 problems to delay it until May you will not be adversely affected if the
9 hearing comes in May?

10 MR. PETTIWAY: No, I don't think so.

11 MR. GILREATH: It won't be a problem, okay.

12 MS. BAILEY: Madam Chair, just to reiterate, the
13 gentlemen at the table need to submit their names and correct
14 address so when the order is published or additional material, it will go
15 to them directly rather than to the person that's identified on the
16 application.

17 MS. PRUITT-WILLIAMS: I would just also suggest
18 you check with Father Kelly to make sure whatever goes, that he then
19 forwards it to you.

20 MR. PETTIWAY: I will.

21 MS. PRUITT-WILLIAMS: So we don't have to amend.

22 MR. PETTIWAY: Okay.

23 MS. PRUITT-WILLIAMS: Thank you.

24 MR. PETTIWAY: Thank you.

25 MR. HART: Third case, Application 16446 of DRM
26 and Associates, Inc., pursuant to 11 DCMR 3108.1 and 3107.2, for a
27 special exception under Section 205 to allow a child development

1 center for 50 children, infant through 12 years and 9 staff, and a
2 variance from the off-street parking requirements (Subsection 2101.1)
3 in an R-4 District at premises 728 F Street, N.W. (Square 981, Lot 49.)

4 MR. MADDEN: Good afternoon, I'm Donald Madden.

5 MR. HART: Please step up here, please.

6 (Witnesses sworn.)

7 MR. MADDEN: My name is Donald Madden, I'm the
8 owner of the child development center and DRM and Associates, I'm
9 the President.

10 CHAIRPERSON REID: Your address, please, sir?

11 MR. MADDEN: Address of the premises is 728 --

12 CHAIRPERSON REID: Your address.

13 MR. MADDEN: Oh. 243 K Street, N.W. That's my
14 office, Suite 2, D.C. 20002.

15 CHAIRPERSON REID: Okay, go ahead.

16 MR. MADDEN: I was told by the staff to request that
17 two documents be accepted by the Board, one being a document with
18 a late submission by the Capitol Hill Restoration Society. I've made
19 the copies and I'd like for that to be presented. And in order to
20 expedite the hearing, I have written comments in response to the
21 comments submitted by two opposing parties.

22 CHAIRPERSON REID: Okay.

23 MS. BAILEY: YOU need to ask that your statement
24 with the photographs be also accepted into the record.

25 MR. MADDEN: Yes. I had previously submitted to
26 the staff a statement with photographs and they have that
27 somewhere, I think up there, that I'd like to be also admitted.

1 Do I just give those to -- thank you. She has those.

2 MR. GILREATH: Madam Chair, is the issue here he's
3 presently a child development center and wants to increase the
4 enrollment?

5 MR. MADDEN: May I answer that?

6 CHAIRPERSON REID: yes.

7 MR. MADDEN: No, we're nto trying to increase the
8 enrollment. We're just trying to continue under the current variance
9 that we were issued.

10 MR. GILREATH: How many students do you have
11 now or children?

12 MR. MADDEN: We're approximately 36, but we are
13 zoned for 50 and we have infants which cuts down on the space which
14 has nothing to do with the zoning as I understand. The capacity for
15 the building is 50 and 9 staff is what I'm asking to continue.

16 MR. GILREATH: So it's only a continuation. It was a
17 5-year time frame or something?

18 MR. MADDEN: Right.

19 MR. GILREATH: And you're reporting back. Well,
20 the ANC, do they have any problems with the operation?

21 MR. MADDEN: I appeared before the ANC and
22 basically the operation of teh center was never in opposition. There
23 was an opposition that arose during the hearing of a parking lot,
24 approximatey 9 to 12 blocks away that I had gotten permission to
25 establish a lot into a parking lot and over the period of time there was
26 some delays, seveal times I had to appear before the Board before I
27 got an approval and after I received approval, it was winter time. Then

1 financial difficulties and I could not at that time turn it into a parking lot
2 as I had hoped, but my intentions are still to do that. But that issue
3 has nothing to do with this center as I perceive it. It's 12 blocks away.
4 That's another issue.

5 MR. GILREATH: Well, do you have adequate parking
6 now with the requirements for parking?

7 MR. MADDEN: Yes, same requirements that was
8 allowed by the Board before still exist as I have in a letter there. I
9 control the parking and also the basement of the unit which is in the
10 next block.

11 MR. GILREATH: Do you anticipate your enrollment
12 going to 50 or do you think it will stay basically --

13 MR. MADDEN: I don't anticipate it at this time
14 increasing because I have infants and that's one of the issues of
15 contention that surfaced during some written comments put into the
16 files.

17 Each year it's a requirement for licenses to inspect
18 and issue a license along with the requirements for the Fire
19 Department to inspect, etcetera. And at that time the change of
20 number of children is subject to change, depending on age. If I bring
21 in more infants, it requires less child to be able to enter the property. I
22 can go up to 50 as originally designed, but as I bring in more infants,
23 the number of children would decline for the capacity of the building
24 and there's some misunderstanding by the person that submitted that.
25 We've gone through this before with Mr. Nunley and Acting Chief of
26 the Zoning Office and I thought it was cleared up and why it surfaced
27 again now, I don't understand. I think it's questionable because they

1 clearly explained to Ms. Fatah that the licensing controls each year
2 based on the number of infants and type of child that's in the center as
3 to how many goes on the license. The zoning as explained by Mr.
4 Nunley and Ms. Hicks I think at that time that it would be burdensome
5 for the Board each time I change a child, have to come back before
6 the Board of Zoning hearing to change one child and they said that's
7 done through licensing.

8 MS. PRUITT-WILLIAMS: Excuse me, Dr. Madden,
9 but then is it your -- what you're saying is you have no more than 50
10 children in there?

11 MR. MADDEN: No more.

12 MS. PRUITT-WILLIAMS: But you may have less?

13 MR. MADDEN: I can always have less.

14 MS. PRUITT-WILLIAMS: Right.

15 MR. MADDEN: As I understood it.

16 MS. PRUITT-WILLIAMS: And that is what your
17 previous order CFO allowed?

18 MR. MADDEN: Right.

19 CHAIRPERSON REID: Well, do you know how many
20 children, okay, you're asking for an increase?

21 MR. MADDEN: No ma'am.

22 MS. PRUITT-WILLIAMS: No.

23 CHAIRPERSON REID: No increase?

24 MR. MADDEN: No increase. I want to stay the
25 same.

26 MR. GILREATH: Continuation.

27 MR. MADDEN: Stay the same. I just want to

1 continue. I think we're doing an excellent job of educating children.

2 CHAIRPERSON REID: Okay. You want to continue
3 but the current order allows you to add up to 50 children?

4 MR. MADDEN: No ma'am. The current order -- let
5 me explain. This building was purchased some years ago. It has
6 been vacant ever since the riots of 1968, it's been sitting there. I
7 purchased it and renovated it into a day care.

8 CHAIRPERSON REID: Right.

9 MR. MADDEN: So from the beginning it was
10 constructted, inspected and approved by all authorities from
11 constructgion through licensing and everyone and presented for the
12 Board of 50 children and 9 staff. That was my max capacity from the
13 beginning. I am not asking for any changes from the max capacity. I
14 would like for that to stay the sme at this time.

15 I have some space that I hopefully will be able to build
16 out because there's a great demand for infants and even building out
17 that space, if I make the whole first floor infants, it will reduce the
18 number of children and the capacity for the build out would not
19 necessarily increase the number of children over 50.

20 MR. GILREATH: You said a build out. Are you
21 talking about adding numbers or actualy putting an addition on to your
22 present structure? I'm not sure waht you mean by build out.

23 MR. MADDEN: Actually, I have -- I don't know if they
24 gave you the pictures or not, but on top of one of the floors is a flat
25 area that I could build out and make that into another room or two.

26 MR. GILREATH: But you'd have to come back to the
27 Board for that, I think. Wouldn't that be a differetn action? Right now

1 you really want -- you've been operating this and presumably there
2 was a time limit and you're reporting bacck saying if presuming the
3 neighborhood has no objections, you'd like for us to approve further
4 continuation of this?

5 MR. MADDEN: Continuation, that's all.

6 MR. GILREATH: The build out presumably would
7 occur at some later time at which time you'd come back to the Board,
8 assumnsing it was not a matter of right.

9 MR. MADDEN: Right.

10 MR. GILREATH: If it ws a matter of right, you could
11 go ahead and build it, but otherwise you would come back and we
12 would consider that.

13 MR. MADDEN: Right.

14 MR. GILREATH: Madam Chair, I don't see any
15 problems.

16 MR. PARSONS: Well, we seem to have a problem
17 with the Advisory Neighborhood Commission and Mr. Madden went to
18 a meeting and apparently was interrupted in the middle of his
19 presentation and somebody took over and had some misinformation.
20 Maybe you could tell us more about this.

21 MR. MADDEN: I don't know if it was misinformation.
22 It ws a concern, as I previously stated, that BZA, the Board gave me
23 authorization to turn a lot on 17th Street and Benning Road into a
24 parking lot which on hindsight, if I had thought about it, I coud have
25 probably gone under the grandfather clause because the lot had been
26 used for more than 20 years for parking and I've owned it for probably
27 16 years or so, but I didn't think about it at the time. But I came before

1 the Board and asked for permission to turn it into a parking lot.

2 MR. PARSONS: That was five years ago?

3 MR. MADDEN: No, that was last year. I think it was
4 last year I got the permission to turn it into a parking lot.

5 MR. PARSONS: All right.

6 MR. MADDEN: Before the winter, because I had to
7 come back before the Board several times and give additional
8 information and do renovation, I mean modification to the plan that the
9 Board requested so over a period of time after appearing about
10 three times I received approval to put the parking lot there. But during
11 that time period afterwards, winter, financial difficulties did not allow
12 me to do what I intended to do with the lot. So the lot sits there and
13 anywhere in the city it becomes a dumping ground which I try to keep it
14 clean and the city comes by and fines me and when I don't clean it on
15 a regular basis, I try to get down there at least once a month to try and
16 clean it off and I think we've done a halfway decent job of keeping it
17 clean, but that's what the issue was with ANC is that lot, not the
18 daycare center which I feel is like apples and oranges. We're dealing
19 with children versus a parking lot.

20 MR. PARSONS: But you do have an order from this
21 Board that says you're supposed to operate it as a parking lot.

22 MS. PRUITT-WILLIAMS: No.

23 MR. PARSONS: No?

24 MR. MADDEN: I have an order that I can turn it into a
25 parking lot.

26 MR. PARSONS: Not that you must, but that you can?

27 MR. MADDEN: Yes, right.

1 MS. PRUITT-WILLIAMS: From our Board?

2 MR. MADDEN: Right. I came in and asked for
3 permission to --

4 MS. PRUITT-WILLIAMS: Do you have the number of
5 the order, sir? Staff is now pulling the order cited from the Zoning
6 Administrator in reference to the daycare center.

7 MR. MADDEN: I'm sorry now?

8 MS. PRUITT-WILLIAMS: We have just gotten -- this
9 is the property at 8th and F that's for a daycare center?

10 MR. MADDEN: That's correct.

11 MS. PRUITT-WILLIAMS: And we can give this to the
12 parties too, a copy of the Board's order approving this in 1991 and
13 you're coming back for renewal of this?

14 MR. MADDEN: Right, they have that, I believe that,
15 already.

16 I have that here, I believe, Your Honor.

17 MS. PRUITT-WILLIAMS: But the case before us
18 today is only the daycare center, is that correct?

19 MR. MADDEN: That's correct. I didn't bring it with
20 me to prepare to --

21 MS. PRUITT-WILLIAMS: That's all right. We have a
22 copy for them. We can get you one too.

23 MR. PARSONS: For the community, at least the ANC
24 is opposing you unanimously because of your noncompliance with this
25 parking lot issue and your testimony is well, you don't really need a
26 parking lot because nobody drives to your daycare. That is your
27 answer to these questions is that you don't need parking.

1 MR. MADDEN: Sir, the parking lot we're talking about
2 is 12 blocks from teh daycare center. It has no relationship to the
3 daycare center at all, none whatsoever.

4 I have a parking space near the daycare center that
5 was approved by the Board fo rme to use complying with the Board's
6 order, since I still have control of it. I own a building on the corner of
7 9th and F. I control the parking. I control the basement unit.

8 MR. PARSONS: So the ANC or some members of
9 the ANC are trying to punish you because you didn't do anything
10 about a different subject and trying to put you out of business before
11 us because of that, is that it?

12 MR. MADDEN: Exactly, sir.

13 MR. PARSONS: That may be a little crudely put, but
14 now I'm getting the point.

15 MR. MADDEN: Right.

16 MR. GILREATH: And so the parking lot was a
17 different action you came before the Board on a different occasion
18 with a different submission?

19 MR. MADDEN: Different occasion several times to
20 get it approved and after, I think, the third time, it wsa approved.

21 MR. GILREATH: And it was a separate application?

22 MR. MADDEN: Separate application all together, sir.
23 It's 12 blocks away. It's on the corner of 17th adn Benning Road.

24 My daycare center i son the corner of 8th and F, N.E.

25 CHAIRPERSON REID: I'm confused. The Baord
26 order gave you a maximum of 50 children.

27 MR. MADDEN: Adn 9 staff.

1 MR. GILREATH: And Capitol Hill Restoration Society
2 has supported your application?

3 MR. MADDEN: That's correct. I went there and got a
4 chance to present the whole facts of what we're doing and the
5 success we're having at teh center and I said if we have a female
6 President in our lifetime she would have graduated from Tender Love.

7 (Laughter.)

8 I have produced what I think at least several genius
9 children to walk out of that center and --

10 MR. GILREATH: You're keeping tabs on them?

11 MR. MADDEN: Oh yes. The motehr and father of
12 one child, I know you want to get out of here, I'll be brief. She was so
13 bright and had such a nice personality, if a child had difficulty in
14 catching on she would take over the class as the teacher would let
15 her. She could teach them in no time. She was great, but both of her
16 parents, everywhere we went, every trip we went on, every activity we
17 had at the center, both parents would take off from work and go with
18 that child. And I told them I want to know this history as long as I'm
19 alive, I want to track her, because she's very bright. I had three
20 almost in that category and --

21 CHAIRPERSON REID: Okay, now a provisoin under
22 whicih were granted first, your first order was granted to you had
23 certain conditions, correct?

24 MR. MADDEN: All of those have been met and
25 continue to be met.

26 CHAIRPERSON REID: All those conditions were met
27 and continue to be met in regard to the number of children, no more

1 than 50. The drop off and pick up. Now that was one of the issues
2 that came up in some of teh adverse imapct complaints.

3 Has there been a problem with the drop off and pick
4 up?

5 MR. MADDEN: Let me address that. I addressed
6 that in my letter, but I'd like to explain.

7 CHAIRPERSON REID: Okay.

8 MR. MADDEN: The Board in its order asked that I
9 contact Parking-Planning to come out and do a survey to put a loading
10 zone sign in front of the center. I did that. They came out several
11 times during the morning unloading, evening with the pickup. Came
12 back to me and said Mr. Madden, we do not see a need for a loading
13 zone. There is no traffic problem, so we don't consider that being
14 necessary.

15 Even though I wanted it, they said it's not necessarily
16 and I didn't pursue it any further because they came out adn they did
17 their job and they responded.

18 CHAIRPERSON REID: Are the hours of operation
19 still 7 a.m. to 7 p.m.?

20 MR. MADDEN: We do that when we have the
21 summer program, we stay open a little later.

22 CHAIRPERSON REID: Not to exceed 7 a.m. to 7
23 p.m.

24 MR. MADDEN: No, we don't exceed it.

25 CHAIRPERSON REID: The parking. The trash.

26 MR. MADDEN: We prepared a bin and we use that
27 bin for the trash. There's no problem.

1 CHAIRPERSON REID: You're in compliance?

2 MR. MADDEN: We're in compliance. We have the
3 pictures there and the previous pictures in the back of the order there,
4 you'll see that we've done I think an improvement in the building and
5 continue to do an improvement and I'm going to put a fence around it
6 like I did 600 9th Street, N.E. if anybody has an occasion to drive past
7 there. It's a real attraction to the community.

8 CHAIRPERSON REID: Okay, we talked about the
9 parking. Outdoor play space is adequate?

10 MR. MADDEN: We have adequate space. We have
11 three schools in the area for playgrounds that we have permission to
12 use.

13 CHAIRPERSON REID: What about -- do you know
14 what the status of other child development centers are within 1,000
15 feet of your facility, what the status of their location is?

16 MR. MADDEN: Do I -- I'm sorry?

17 CHAIRPERSON REID: Let me rephrase it. Are there
18 any other daycare centers that have been added in the interim from
19 the time you've been here within 1,000 feet of your center, to your
20 knowledge?

21 MR. MADDEN: I couldn't say. I think some have
22 been added. I don't know how close they are.

23 They're not really competitive to us because I think
24 there's enough children, demand for day care in the city to go around.

25 CHAIRPERSON REID: How many children do you
26 have?

27 MR. MADDEN: Thirty-six now.

1 CHAIRPERSON REID: Their ages?

2 MR. MADDEN: Infants to 5 years of age.

3 CHAIRPERSON REID: Okay.

4 MR. MADDEN: We lost some of the children because
5 of the new programs. They can go into the school system at an early
6 age now.

7 MR. GILREATH: Looking at the insert, I understand
8 that what they're wanting is for him to be required to reduce the
9 number of children to only 15. As a matter of right there should be no
10 BZA communication adjustment to go beyond that.

11 CHAIRPERSON REID: I did see that, however --

12 MR. GILREATH: YOU don't have to agree with that,
13 but that's what they're asserting. BZA should, given the special
14 exception, they should go there as a matter of right and have 15
15 children there.

CHAIRPERSON REID: Okay.

16 MR. MADDEN: Do I need to respond to that?

17 CHAIRPERSON REID: Now, Dr. Madden, you're
18 asking for a special exception, not a variance, right? You're asking to
19 continue the special exception?

20 MR. MADDEN: Correct.

21 CHAIRPERSON REID: Because in your letter you
22 stipulate a variance. That's one thing.

23 MR. MADDEN: I'm sorry.

24 MS. BAILEY: Madam Chair, the application reads
25 that it's a special exception and a variance.

26 MS. PRUITT-WILLIAMS: He's a variance for parking.

27 CHAIRPERSON REID: The special exception is what

1 you're asking for the continuation of the daycare child development
2 center.

3 MR. MADDEN: And the variance.

4 CHAIRPERSON REID: And then also, I see, he
5 wants a variance for the parking.

6 MR. MADDEN: That's right.

7 CHAIRPERSON REID: I got it. I got a little confused
8 there because it didn't say -- in your letter you didn't mention special
9 exception.

10 MR. MADDEN: I'm sorry.

11 CHAIRPERSON REID: In your application it was
12 mentioned.

13 Any other questions?

14 MR. PARSONS: I guess we better deal with the letter
15 that they received, memo received from Helen Young Fatah. And Mr.
16 Madden has responded to that.

17 She is claiming, I guess, or stating that this facility is
18 licensed or only has the capacity for 29.

19 CHAIRPERSON REID: Oh.

20 MR. PARSONS: And she looks at that from a
21 licensing perspective, whereas Mr. Madden has 36 currently. Is that
22 correct?

23 MR. MADDEN: Let me try to better phrase what I
24 said earlier in regard to her comments. We've gone through this once
25 before with Office of Zoning, which is Office of Zoning intervening on
26 my behalf to explain to Ms. Fatah the rulings and regulatoins of Zoning
27 and explaining to her that what's done here is giving me a max.

1 capacity for that facility which was granted, 50 children and 9 staff.
2 Because I decided to put infants, my licensing is reflective of the
3 space because with infants the space requirement is greater,
4 therefore reducing the number of children on the premises at that time
5 which can be a temporary situation.

6 The Board of Zoning gave me authority for a period of
7 time to allow me to have 50 children. If I decide tomorrow I'm going to
8 put 50 children in there, I don't have to go through anything, come
9 back before the Board. I have that authority already.

10 MR. PARSONS: Right.

11 MR. MADDEN: Each year, Licensing inspects, along
12 with the Fire Department and everybody and his brother comes
13 around now checking day care. So at that time, the measurements
14 are done and whatever and number of infants I may have versus the
15 number of pre-schoolers and so forth are calculated and on the
16 license it tells me what I'm allowed to have for that year.

17 The next is subject to change again and I'm trying to
18 emphasize the Board of Zoning Office tried to explain to Ms. Fatah at
19 that time that if I take and change an infant and come back before
20 BZA, your job would be hearing me every time we decide to change
21 an infant because the number will change.

22 MR. PARSONS: I concur with that and I just wanted
23 to make sure that was on the record.

24 MR. MADDEN: Thank you.

25 CHAIRPERSON REID: Okay, and along the same
26 line you said you have 36 children. What's the breakdown of infants
27 and --

1 MR. MADDEN: I have 10 infants and the rest are --

2 CHAIRPERSON REID: Twenty-six children?

3 MR. MADDEN: I believe that's correct.

4 CHAIRPERSON REID: Mr. Parsons says that you
5 have the capacity for 29 children and 10 infants so that would be
6 below the number. You have a total of 36 with 10 infants and -- 26
7 children. And it says you hae space here for 29 children and 10
8 infants. So that means that you were in keeping within your licening
9 requirement, will it not?

10 MR. MADDEN: They won't allow me to go over my
11 license requirement.

12 CHAIRPERSON REID: So you're fine?

13 MR. MADDEN: I'm fine. I can't go over the zoning
14 and I can't go over the license requirement, but I can go over the
15 license requirements if I decide to go back to what Zoning authorized
16 me to do without having to come back before BZA and that's what
17 she's trying to say, that I need to come back to the BZA because of
18 the licensing. I wasn't able to convince her, obviously. That's the
19 ruling that Zoning informed her of.

20 CHAIRPERSON REID: What aobut the parking?

21 MR. MADDEN: The parking?

22 CHAIRPERSON REID: The parking.

23 MR. MADDEN: Parking conditions that existed in the
24 beginning still exist.

25 CHAIRPERSON REID: You provide --

26 MS. PRUITT-WILLIAMS: Could you just identify
27 those?

1 MR. MADDEN: Yes, I don't know if you're familiar
2 with on the corner of 9th and F is the Charity Baptist Church. I bought
3 that building maybe a year before I bought the daycare center and I
4 renovated it into a luxury house with a basement unit. In that there's a
5 garage and two outside parking spaces which I control the parking
6 and the basement because we use it to teach children to play around
7 on computers, we've got computers in the basement and it's there for
8 parents to come around. We have our meetings there, the parents
9 meeting and we have whatever little functions we have for the parents
10 and the staff, we have it in the basement. So I control that. I lease
11 the upstairs out and I control that area.

12 Did I answer your question? I'm sorry.

13 MR. GILREATH: You are providing off-site parking?

14 MR. MADDEN: That's right. I have that agreement
15 with the person that lives there and understands that I still control it
16 and I own the building.

17 CHAIRPERSON REID: And the reason why you
18 need a variance is because --

19 MS. PRUITT-WILLIAMS: The regs. require it.

20 MR. GILREATH: Self-site parking.

21 MR. MADDEN: Right, for the number of staff it
22 requires me to have parking.

23 CHAIRPERSON REID: The reason why you think
24 you should be given the variance is because?

25 MR. MADDEN: The demand for educating our
26 children in this city is such a significance that I think it's appropriate
27 that we try to educate as many children as we can.

1 CHAIRPERSON REID: Right, right, but what you
2 need to do -- I didn't mean to cut you off, but you need to meet your
3 burden of proof for obtaining a variance and that is that you have to
4 demonstrate that you have something unique or different about your
5 property that wouldn't enable you to comply with existing zoning
6 regulations.

7 MR. MADDEN: I'm sorry. This was, as I said before,
8 an old building that was sitting vacant all this time, to my knowledge.

9 On the premises before there was a parking curb cut
10 and where the entry room is I think at one time it was possibly a
11 garage. There is no curb cut there any longer even though going
12 down the street further by the church and so forth people still use that
13 public space to park on.

14 I chose not to try and get a curb cut in the part there
15 because it would be too close to the building, frankly, I think. So
16 based on the construction and going through the zoning process and
17 the application and so forth they said I needed to have off-site parking
18 which I already had at the building at 600 9th Street and that's what I
19 presented as off-site parking facility because the building I have is on
20 the corner and would not accommodate parking and that was
21 allowable.

22 CHAIRPERSON REID: Are you referring to the
23 building that's 12 blocks away.

24 MR. MADDEN: No, one block away. The building I
25 own for the parking is on 9th and F. That's where the parking is.

26 CHAIRPERSON REID: Which parking?

27 MR. MADDEN: For my daycare center.

1 CHAIRPERSON REID: Okay.

2 MR. MADDEN: My daycare center is on the corner of
3 8th and F.

4 CHAIRPERSON REID: Okay, so you are providing
5 parking?

6 MR. MADDEN: I am providing parking, right. I
7 always have.

8 CHAIRPERSON REID: Why do you need a variance.

9 MR. MADDEN: It's off-site.

10 MS. PRUITT-WILLIAMS: He has to provide off-site
11 parking for a daycare center. His particular site cannot accommodate
12 it so he's providing it off-site at a building somewhere else.

13 CHAIRPERSON REID: I got you because he couldn't
14 provide on the site. I understand that. I just got a little confused there.

15 Okay, so was there any -- to your knowledge was
16 there any adverse impact as a result of your being granted a
17 variance?

18 MR. MADDEN: None whatsoever.

19 CHAIRPERSON REID: As to parking or to traffic or to
20 noise or to any of those things?

21 MR. MADDEN: No. During the hearing and the initial
22 hearing that we had before the BZA, I had a person come in and
23 object and he objected because he compared the laughter of children
24 playing to dogs barking and everybody here laughed him out and he
25 got upset and ran out. So -- but believe it or not I saw him down several
26 times being cooperative now and picking up trash maybe in front of
27 the building, maybe some paper or something. I think he's found out

1 that we are an asset rather than a liability to the community.

2 CHAIRPERSON REID: Are you familiar with the
3 letter from Mr. Attaway who opposes your application and the
4 contention is that there's a shortage of street parking?F

5 MR. MADDEN: Attaway?

6 CHAIRPERSON REID: Yes, that granting the relief
7 that your'e asking for would cause difficulty with regard to parking?

8 MR. MADDEN: I'm sorry. I checked the records
9 yesterday. I didn't see that in the files.

10 CHAIRPERSON REID: It's dated April 1st. You're
11 not familiar with the letter?

12 MR. MADDEN: No ma'am. I looked thourgh the files
13 and only two positions I saw was the two that I commented on.

14 MR. GILREATH: I don't have it in my folder either. It
15 was received April 5th.

16 MS. PRUITT-WILLIAMS: It was received April 5th.
17 Staff goes thourgh the in-box and pulls it. It has not actually gotten in
18 the file. I can provide it quickly.

19 MR. MADDEN: In that case it's untimely permitted, is
20 taht correct?

21 MS. PRUITT-WILLIAMS: The record is open until the
22 hearing is closed. So it's not a timely issue at all.

23 MR. MADDEN: Okay. I think I commented briefly
24 about parking earlier. The parking surveys were done before approval
25 for the daycare center. The spaces, the vaccant spaces around there
26 existed then. They continue to exist. I'm at the center at least twice,
27 almost every day and there's never a problem in parking around the

1 facility.

2 As a matter of fact, across the street, the entire, the
3 whole, all the way down to the alley is unlimited time parking because
4 it's all businesses across the street from the daycare. So this is not
5 adequate assessment of what the parking situation is there. It's not a
6 problem and never has been a problem as verified by the District.

7 CHAIRPERSON REID: Any other questions?

8 All right, thank you very much.

9 MR. PARSONS: I did have one. Mr. Madden, there's
10 a map in the file here. I guess you're familiar with that map. It shows
11 your property and the Office of the Surveyor, it's his map and it seems
12 to be dated 1978, but I'm not sure about the date. And you spoke
13 earlier about a curb cut which is shown on this drawing and it shows
14 access to what appear to be three parking spaces. I'm not sure I
15 understood -- there may be two parking spaces, but nevertheless, you
16 said the street curb cut had been closed or didn't exist.

17 MR. MADDEN: Which property are you speaking
18 about?

19 MR. PARSONS: You better look at the map then.
20 What I'm anxious to know about is what is the status of those parking
21 spaces? You can return and take that with you. This is the property
22 that the daycare center sits on, isn't it?

23 MR. MADDEN: I'm trying to see. Yes, it is.

24 MR. PARSONS: YOU see the two or possible parking
25 spaces they're showing?

26 MR. MADDEN: Okay, there's no curb cut. It says
27 existing curb at the bottom.

1 MR. PARSONS: Yes.

2 MR. MADDEN: So it's not cut.

3 MR. PARSONS: So there's no -- the drawing is
4 inaccurate?

5 MR. MADDEN: Right.

6 MR. PARSONS: That's what I want to make sure of
7 because it appears in this drawing which is in our file without
8 commenting on it that you've got at least two parking spaces on the
9 property and that's not the case.

10 MR. MADDEN: That's not the case.

11 MR. PARSONS: Thank you.

12 MR. MADDEN: As I said earlier, this building has
13 been sitting here for years and previously there may have been
14 sometime in the initial construction as parking, but as it is now I think
15 that possibly could have been a garage.

16 MR. PARSONS: Thank you.

17 MS. BAILEY: Mr. Madden, the last order 15456, is
18 that your last order on this site, Application No. 15456?

19 MR. MADDEN: I don't know the number. It possibly
20 is.

21 MS. BAILEY: That was approved in 1991?

22 MR. MADDEN: That's correct.

23 MS. BAILEY: Okay. It says here that the last
24 condition No. 9, "approval shall be for a period of three years, that's
25 three years from August 16, 1991. It's now 1999."

26 MR. MADDEN: Right, that was an oversight by me
27 and talking with Mr. Nunnally, his office as well and Licensing which

1 come sout every year and inspects and nobody ever -- that never
2 surfaced. That was an oversight ton our part. When I saw Mr.
3 Nunnaly in the office one day I was doing some other business thre
4 and he called me in and said you need to come in and fill out another
5 application. I said okay, no problem. I filled it out the next day.

6 CHAIRPERSON REID: Mr. Madden, once you get
7 the order it's incumbent upon you to make sure that you're in
8 compliance. The time frames which you've been granted --

9 MR. MADDEN: I undersatnd and I apodlogize to the
10 Board, but that was just an oversight.

11 CHAIRPERSON REID: What assurance do we have
12 that if, in fact, your special exception for variance is granted today that
13 you will be in compliance with the order should we give you a term of
14 3 years or whatever?

15 MR. MADDEN: I assure you it won't happen again.

16 CHAIRPERSON REID: What are you going to do to
17 make sure it doesn't happen again?

18 MR. MADDEN: I'm going to make sure it's posted in
19 the center so I have othe rpeople other than myself to remind me of it
20 and it will be there for the inspectors when they come through to be
21 able to see it without having to go into the files or go somewhere and
22 look for it.

23 At the same time, in my letter I requested 20 years
24 because of the loan I anticipate getting to do an additional
25 improvement to the center so I can better serve the children and I
26 hope the Board would accommodate that period of time for me and I
27 think we can do an excellent job in better serving the city.

1 I have been in this city as a developer for 21 years
2 and I have properties that have been sitting since the riots. My office,
3 as a matter of fact, is at 243 K Street, I bought have been sitting since
4 the riots. I bought it and renovated it into an office, a carry out. I've
5 bought buildings on 16th Street that I've renovated, turned into homes
6 for the veterans which was a grant there from HUD that's housing
7 homeless veterans. I've done a number of houses in Northeast and
8 Northwest and I anticipate doing a senior citizens home in the future.
9 So I am, I would think, an asset to this city to make improvements. I
10 buy dilapidated properties and renovate them and turn them into
11 positive tax revenue for the city. And I recommend if you want to
12 come to the daycare center and see waht we've done to that old
13 dilapidated building as well as the one on the corner of 9th and F
14 Street, N.E. And I will continue to make sure that what happened in
15 the past will not happen again, to make sure whatever time you give
16 me I'll be back before you to ask for continuance becuase I love
17 children and I plan to keep this daycare center going.

18 CHAIRPERSON REID: Okay. Any other questions?

19 MR. GILREATH: Are we going to hear testimony
20 from anyone else? No questions.

21 CHAIRPERSON REID: Thank you, Mr. Madden.
22 Okay now, do we have government reports? ANC? We had -- I'm
23 sorry, I'm sorry. Cross examine.

24 The ANC Commissioner, that is, is the ANC
25 Commissioner here?

26 MR. FERRELL: 6A.

27 CHAIRPERSON REID: This is 6A. So you may

1 come nad cross examine.

2 MR. GILREATH: Identify yourself for the record.

3 CROSS EXAMINATION

4 MR. FERRELL: My name is Commissioner Gregory
5 Ferrell, ANC6A.

6 I represent single member district 6A-12.

7 CHAIRPERSON REID: YOu can sit there.

8 MR. FERRELL: I can sit?

9 CHAIRPERSON REID: Sure.

10 MR. FERRELL: Mr. Madden, could you tell us and
11 the Board how many employees you have at this particular site on 8th
12 and F, Tender Love?

13 MR. MADDEN: Between 7 and 9, as I recall, given a
14 period of time, depending on the number of children we may have.
15 Plus, we have less than 50 children, probalby, between part-time and
16 full-time, total probably 7, 8 most times.

17 MR. FERRELL: So you say an average of 8?

18 MR. MADDEN: 7, 8, yes, I would say.

19 MR. FERRELL: Mr. Madden, at some point the rear
20 of your building, was it renovated to accommoodate a playground for
21 children?

22 MR. MADDEN: The rear of the building is open. It
23 was never -- it's an open space on top of wht used to be a garage and
24 we never filled it in or made a room out of it which is allowable for
25 children to play in if so desired. As a result of our arrangement with
26 playgrounds in the area, the schools have allowed us to use those
27 facilities to give the children more room to exercise and play which I

1 think is much better.

2 MR. FERRELL: I'd like to draw your attention to BZA
3 order of 1991, 15456 that specifically stated that the Applicant shall
4 provide a solid or wood fence around the deck play area to
5 minimize the noise created by the on-site outdoor play area.

6 Are you stating here that there's no play area on the
7 site in the rear?

8 MR. MADDEN: No, I didn't say that. I said that the
9 open area on top of the garage is open, but can be used for a play
10 area which has a noise barrier, wood stockade fence on 8th Street
11 which was required, suggested, required by the Board which I
12 installed.

13 Do the children use it? Basically, no, we don't use it
14 because of the facilities. We have three schools within walking
15 distance and as I said before I think there's more fresh air if they get a
16 chance to get out on the playgrounds and that's what we do on a daily
17 basis. We take them out to the playgrounds.

18 MR. FERRELL: So for the record you're stating there
19 is a play area and there is a wood fence?

20 MR. MADDEN: Yes, I think if you look at the pictures
21 it will show a --

22 MR. FERRELL: A play area?

23 MR. MADDEN: Wood fence up there, and behind
24 that wood fence there's open space on top of the -- what used to be a
25 garage, now an entrance.

26 MR. FERRELL: Mr. Madden, you testified that there
27 would be no adverse impact with regards to traffic in this particular area.

1 You are asking for a variance on off-street parking. How many
2 parking spaces do you anticipate your staff using during hours of
3 operation?

4 MR. MADDEN: At this time none. Basically, the staff
5 that I have, previous director drove because she lives out in Maryland.
6 The one I have now her husband drops her off. Basically, the only
7 parking that we use is down at 600 9th Street is when she needs to
8 take the staff to a conference or meetings when I'm not available to
9 transport them and she drives in and they're only there during the time
10 that she picks them up and drops them off, stay in there until the
11 business closes, when she gets there in the morning, and is getting
12 ready to go to the conference.

13 I don't anticipate ever, since we've been there, more
14 than one staff parking down the street, or needing to park down the
15 street.

16 MR. FERRELL: So for the record you're stating that
17 between 7 and 8 staff persons each will use public transportation or
18 will be dropped off by some other person?

19 MR. MADDEN: That's basically been the practice and
20 to my knowledge continues to be the practice.

21 MR. FERRELL: Mr. Madden, I believe your testimony
22 was that you came before the ANC and that the ANC lines of
23 questions was totally germane to a vacant lot that is owned by you at
24 7th and Gayle Street. Were you not aware of the ANC's concerns
25 about the impact on parking in a residential area that is zoned for two
26 hours that requires a zoning permit which is paid by the residents in
27 that area at a fee of \$10 per year in order to utilize off-street parking

1 without being ticketed by DPW or the Metropolitan Police. Do you
2 recall the conversation germane to that particular issue?

3 MR. MADDEN: I believe that you commented about
4 parking and I think I said that there had been no parking problems
5 there. The years that we've been there, this has been the only
6 documentation of complaint of anything we received from the
7 neighborhood which basically supports everything we do there.

8 MR. FERRELL: In paragraph 8 of the BZA
9 application, have you established a community liaison program to
10 address the problems or concerns related to the facility? Have you
11 created some community liaison programs in accordance with the
12 law?

13 MR. MADDEN: We meet and we have invitations
14 from the church people who participate. We associate with people
15 across the street, houses, facility for mentally retarded. There's
16 always activities with the community.

17 I think we received support in everything we're asked
18 to do and to my knowledge no one has any objections to us being
19 there. They welcome us as a matter of fact and it's supported by the
20 number of people who signed that lives in close proximity of the day
21 care. They've signed in support this application.

22 MR. FERRELL: Let me ask the question again, sir.
23 Have you established a community liaison program, not have you
24 communicated with certain entities in the community, but have you, in
25 fact, established a liaison community in accordance with the BZA
26 order of 1991?

27 MR. MADDEN: Officially, in writing, no. But we have

1 an liaison establishment with the community. And we will always
2 continue to have that relationship.

3 MR. FERRELL: Do you have any documentation of
4 DPW indicating that the survey regarding the loading zone was not
5 necessary that you can provide to the BZA?

6 MR. MADDEN: That was not provided to me. My
7 understanding was they were provided to the office and consequently
8 to the BZA was there was an official request that that be done and I
9 asked for it under the order of the BZA. Whether they officially came
10 back with the documentation to the BZA, I don't know. They told me
11 verbally for the reasons to their objection to putting a loading zone
12 there, because it wasn't necessary.

13 MR. FERRELL: So this was a verbal transmittal from
14 DPW directly to you and nothing was secured in written form?

15 MR. MADDEN: That's correct.

16 MR. FERRELL: Mr. Madden, you've alluded to
17 property that you own on 9th and F Street and you stated that there
18 were two off-street parking spaces that you have utilized in order to
19 satisfy the parking requirements for the Board's order in 1991.

20 Could you provide a lease agreement from the tenants
21 stipulation that you still control those two parking spaces,
22 notwithstanding the tenants supposedly are renting property from you
23 at that location?

24 MR. MADDEN: As I stated before I do not rent the
25 whole property at 600 9th Street, N.E. I only rent part of the property
26 and I keep control of the parking and the basement unit.

27 MR. FERRELL: Well, let me clarify the question.

1 MR. MADDEN: And the least to the person there's a
2 stipulation claiming that in the lease and I believe that was submitted
3 to the Board in the first application.

4 So for the record, I still control --

5 MR. FERRELL: So for the record you're saying
6 there's a stipulation in the lease that grants you control of the two
7 parking spaces which was submitted for the record?

8 MR. MADDEN: I said as I recall. It may or may not
9 be in it, but I think that was submitted to the Board.

10 MR. FERRELL: Is the lease available?

11 MR. MADDEN: I do not have it here with me.

12 MR. FERRELL: Is it available?

13 MR. MADDEN: I have leases to all my properties,
14 yes.

15 MR. FERRELL: Mr. Madden, you did briefly mention
16 about the parking lot that the BZA special exception that was granted
17 you regarding a parking lot 17th and Gayle Street. Are these pictures
18 adequate?

19 MR. PARSONS: This case isn't before us.

20 MR. FERRELL: I'm not addressing it as a case --

21 MS. PRUITT-WILLIAMS: Mr. Ferrell, you have to talk
22 into the mike.

23 MR. FERRELL: It's for another purpose, not to get
24 into whether the BZA --

25 CHAIRPERSON REID: Tell us what your intent is.

26 MR. FERRELL: My intent is to show that Mr. Madden
27 has been before our ANC and before the Board on several occasions

1 and that the community has worked with Mr. Madden in order to
2 support his business endeavors. However, Mr. Madden has
3 reneged on his agreements to the community on a number of
4 occasions.

5 CHAIRPERSON REID: Now that's a picture of what?

6 MR. FERRELL: Of his vacant lot that resides at 17th
7 and Gayle Street.

8 MS. PRUITT-WILLIAMS: That is not before us today.

9 MR. FERRELL: I understand, that's fine.

10 MS. PRUITT-WILLIAMS: You can't show them to him
11 because they will have to become part of the record and that's why.

12 MR. FERRELL: I was just asking. I think that's all the
13 questions I have.

14 MS. PRUITT-WILLIAMS: Okay.

15 disaster

16 MR. PERNELL: My name is Daniel Pernel. I'm
17 Chairman of the 6A Commission. I just have three questions I'd like to
18 ask Mr. Madden.

19 Mr. Madden, do you have insurance on your facilities
20 to protect the children there?

21 MR. MADDEN: Yes, I do.

22 MR. PERNELL: What does it cost? What is the
23 insurance coverage?

24 MR. MADDEN: Whatever the District requires --

25 MR. PERNELL: Excuse me --

26 MS. PRUITT-WILLIAMS: Mr. Pernel, that's not a
27 zoning issue.

1 MR. PERNELL: But it's an issue required by all
2 facilities.

3 MS. PRUITT-WILLIAMS: But it's not an issue we
4 have jurisdiction over, so it's not appropriate.

5 MR. PERNELL: Well, he's partly answered the
6 question. He's already answered that question to me, so I'd like to
7 get a complete answer.

8 MR. MADDEN: I withdraw my question.

9 CHAIRPERSON REID: Go on to your next question.

10 MR. PERNELL: The next question is what kind of
11 relationship have your facilities done in the community in relationship
12 with the Commission?

13 MS. PRUITT-WILLIAMS: In relationship to this case,
14 sir?

15 MR. PERNELL: Yes, it is.

16 MS. PRUITT-WILLIAMS: I'm not hearing the
17 question, that's why I'm asking.

18 MR. MADDEN: I appear before the Commission at
19 their request.

20 MR. PERNELL: I'm not talking about that. You said
21 earlier in your statement that you had a relationship with your facility
22 community. I'm trying to establish what relationship you have. We're
23 not privileged of it at this time.

24 MR. MADDEN: Well, I just mentioned the community
25 in which I operate, the ANC in that area and I deal with --

26 MR. PERNELL: We didn't know of your facility until
27 you had your application before us.

1 MR. MADDEN: I'm sorry?

2 MR. PERNELL: We didn't know of your facility until
3 you had an application before us.

4 MR. MADDEN: I appeared before the ANC in the
5 initial application and some of your members were present on that
6 committee at the time and on the last committee, still existed, so they
7 were aware that facility being there.

8 MR. PERNELL: Are you talking about 1991?

9 MR. MADDEN: When we applied the first time, same
10 committee.

11 MR. PERNELL: There are no commissioners on the
12 present commission that were there in 1991. Mr. Ferrell and I who are
13 present here today came on in 1995, January 2nd.

14 MR. MADDEN: I'm sorry. We met on some
15 occasions, but I beg your pardon.

16 MR. PERNELL: Madam Chair, I reserve the rest of
17 my information for my statement at the end.

18 CHAIRPERSON REID: Thank you. Mr. Madden,
19 now we will have -- you can go back -- we discussed briefly a letter
20 that came from Ms. Fatah with regard to government reports and
21 licensing regulations, administration and talks about the situation that
22 the Tender Love Child Development Center had programs for 29
23 students and 10 infants. And this number of children and number of
24 infants is accurate with the current structure and configuraton of the
25 center is basically all she said.

26 ANC reports? I don't think we have any other
27 government reports.

1 MR. PERNELL: Good evening, my name is Daniel
2 Pernell III and I am Chairman of the 6A Commission.

3 Madam Chair, I just want to clear up a few things.
4 There was no pre-consumptions of any of my Commissioners that
5 were present on February 18th concerning Mr. Madden's BZA
6 application 16448. We were elected by the people, therefore we are
7 under D.C. law we are representing community, not on any pre-
8 consumptions of our personal beliefs or concerns before the
9 Commission. We answered only those questions that were given to
10 us by the surrounding community of Mr. Madden's facility at 720 F
11 Street, N.E.

12 CHAIRPERSON REID: Mr. Pernell, waht did you say
13 BZA --

14 MR. PERNELL: 16448.

15 CHAIRPERSON REID: This is 16446.

16 MR. PERNELL: I'm sorry, 16446. I've got two cases
17 here, I'm sorry. I correct that. 16446.

18 Also, I wanted to say that I think Mr. Madden's facility
19 should have insurance. There are a number of facilities in our area
20 that require they do --

21 MS. PRUITT-WILLIAMS: Mr. Pernell, we've already
22 gone through that. That's not --

23 MR. PERNELL: This is my statement.

24 MS. PRUITT-WILLIAMS: I undrestand, but we're not
25 talking about that in this case.

26 MR. PERNELL: I'm reading from my statement and I
27 thik my statement is for the record, whether it is for or not for this case.

1 Thank you.

2 As I said before I believe this facility should have --

3 MR. PARSONS: Madam Chair, I think his statement
4 has to be relevant. I'm not sure insurance is a relevant matter. In a
5 case this morning that we had we required that the people make their
6 testimony relevant on the issues --

7 MR. PERNELL: My case is relevant and I am
8 speaking for the state and constituents of 28,000 --

9 MR. GILREATH: Why don't we let him read it and
10 we'll just ignore it.

11 MR. PERNELL: Anyway, from my experience in the
12 community, I believe this facility should have insurance. We have a
13 number of complaints from communities in the area where these
14 facilities do not have insurance. When a child is hurt at this type of
15 facility, who takes the blame? So that is the concern, why I'm reading
16 it from my statement.

17 The great impact concerning the BZA, I'm going to let
18 it rely on Mr. Greg Ferrell because he has the most experience in that
19 area and I reserve the rest of my minutes for Mr. Ferrell.

20 MR. FERRELL: For the record, the Advisory
21 Neighborhood Commission, Gregory Ferrell. I represent single
22 member district 6A-12.

23 For the record, I would like to indicate that the ANC
24 has no real reason to try to impose Mr. Madden based on any
25 personal feelings about Mr. Madden as a business man. However, as
26 ANC elected officials, we do have an obligatoin to listen to the
27 concerns of the constituencies that we represent which his facility

1 resides in one o four single member districts.

2 We do have some certain concerns about whether or
3 not Mr. Madden would live up to conditions that are imposed by the
4 BZA, predicated upon the history of dealing with Mr. Madden.

5 We've also went through the ccommunity and talked
6 to a number of the residents who reside in that particular area. As the
7 letter that supported our position regarding the current parking
8 situation that currently exists at the point of 8th and F Street. There is
9 a Metro bus. The Metro bus is heavily traveled. It's a 92 route. It's
10 heavily traveled. We have concerns about the drop off and the pick
11 up of kids.

12 Even with 36 kids, theoretically you could have 25
13 different individuals with cars dropping kids off, curbside drop off, no
14 off-street parking. So you can pull up to a driveway and drop children
15 off, people in the community are concerned about that issue. People
16 in the community at that particular area are always, always, I mean
17 always, giving to outside interest outsides for parking. The residents
18 in that area pay \$10 per year. I pay \$10 per year to park on the street.
19 Unfortunately, I don't have a home with a garage. I don't have a home
20 with a driveway, but in order not to be ticketed I have to pay the city
21 \$10. We're not saying that Mr. Madden should not operate the Tender
22 Love Daycare Center, but we're saying that the capacity to operate
23 such a center with 50 kids without assuring that the impact would not
24 adversely affect the community is an issue that our ANC had to
25 address and I believe we do so appropriately.

26 Mr. Madden has made several inconsistent
27 statements with regard to the make up of our Commission. I was

1 never ever a Commissioner in 1991. I was sworn into office as stated
2 by Commissioner Pernell in 1995, January 2nd and I supported Mr.
3 Madden on his BZA application in hopes of improving my
4 neighborhood. So there's no personal agenda against Mr. MAdDen
5 here. Our agenda is one solely to try to protect the interests of the
6 citizens, of the District of Columbia, while also recognizing as
7 business people, and I'm a business man, we do have a right to exist
8 and co-exist in residential neighborhoods, but as an elected official
9 and after taking careful consideration from the residents in that
10 particular area, I'm not suggesting that the BZA shut Tender Love
11 Child Care Center down, but I'm asking the BZA use its authority to
12 make sure the residents in a residential neighborhood is not trashed
13 on by business interests, whatever they may be. I'm not against
14 children. I love children. I have children, but there is a community
15 issue that needs to be addressed and we need to insure the folk that
16 are giving the order by this BZA comply with the orders.

17 We have a right to -- we have an obligation to comply
18 and I believe that anybody who receives an order from the BZA should
19 be in compliance and if they have proven in plenty of instances that
20 they have not been in compliance, I believe that the Board should give
21 that some consideration. Thank you.

22 MR. PERNELL: Madam Chair, for the record, I would
23 say that as an elected official of the District of Columbia and to the
24 residents of the District that my statement here today will be accepted
25 by this Baord in full in its entire text. Thank you.

26 CHAIRPERSON REID: Thank you.

27 MS. PRUITT-WILLIAMS: I have one quick question.

1 On your resolution dated March 18th, in the back you have votes, yes,
2 no and present. It appears to be written in 9. Is that correct? I didn't
3 undersatnd.

4 MR. FERRELL: The tally, the vote?

5 MS. PRUITT-WILLIAMS: Yes.

6 MR. FERRELL: Let me look at yours. Excuse me,
7 the vote was 8 yes.

8 MS. PRUITT-WILLIAMS: My question is your vote
9 was 8 yes, but then you have 0 for no and 0 for present. There are
10 more than 8 names on the list.

11 MR. FERRELL: We just listed the commissioners.
12 There were 8 commissioners present. OUt of 14, 8 were present.

13 MR. PERNELL: I'd also like to make a correction
14 while you have that out there that whereas he said Commissioner
15 Daniel Pernel, single member district, that's the other one. ON this
16 case before us -- pardon me --

17 CHAIRPERSON REID: I jsut want to make sure that
18 I'm listening to Commissioner Pernel. Didn't I hear you say you're not
19 opposed?

20 MR. FERRELL: We are opposed to Mr. Madden
21 operating a facility with the potential to have 50 children in it. That's
22 our opposition. And the resolution we went as far as saying he should
23 be able to operate with only 15.

24 CHAIRPERSON REID: He has 30.

25 MR. FERRELL: After hearing the testimony of Mr.
26 Madden, and having read into the record the zoning persons' position
27 with regard to 10 infants and 29 --

1 CHAIRPERSON REID: Oh no, that was from teh
2 licensing --

3 MR. FERRELL: Having given that some
4 consideration, I believe that Mr. Madden can operate af acility, but to
5 have a facility operate with 50 kids, knowing that area, the traffic
6 problems, the bus route which is a major bus route, the 92 route
7 stretches from Northwest to Southeast Washington, I do believe that
8 he can exist, but I don't believe he needs to exist with the potential to
9 ahve 50 kids. I could agree with a scaled down number of children.

10 CHAIRPERSON REID: The number that he has now, are you
11 aware of any complaints?

12 MR. FERRELL: There are still --

13 CHAIRPERSON REID: Traffic, parking, drop off and
14 pick up?

15 MR. FERRELL: There are several complaints about
16 drop off and pick up. A lot of the parents or guardians, they drop off
17 on the corner of 8th and F which is a bus route, heavily traveled
18 intersection and it causes traffic problems in the morning and in the
19 evening, in particular, especially with the buses, the Metro bus. That's
20 one of the major concerns.

21 Also, the residents in the area, Mr. MAdden idnicated
22 that the majority of his staff people use public transportation or are
23 dropped off to work. From what we had gathered from the residents,
24 that's not the case. There are employees that use public parking and
25 they use it five days a week and that's a cocnern because we have
26 residents who pay \$10 per year for Ward 6 zone sticker to utilize
27 public parking spaces without being ticketed. Several residents have

1 complained about when they come home from work there's no parking
2 in front of their house on 8th Street.

3 There was a home for the mentally ill or people with
4 mental disabilities across the street. I believe they were shut down.

5 CHAIRPERSON REID: Excuse me --

6 MR. FERRELL: Well, that's a concern about parking
7 as well, people that -- I wasn't aware -- they still have that concern as
8 well, that we feel, numerous occasions that the area is really
9 residential. You do have a few commercial establishments, but for people
10 having to park a block or two away from your homes, especially in the
11 evening time when they leave to go to work, they come back and
12 there's no parking space.

13 CHAIRPERSON REID: So you're saying that your
14 objection is with an increase, up to 50, but at the current level that's
15 not objectionable to you?

16 MR. FERRELL: The current level is 36?

17 CHAIRPERSON REID: Yes. 39.

18 MR. FERRELL: 39.

19 CHAIRPERSON REID: That's as it exists right now.

20 MR. FERRELL: Based upon the letter that we read
21 into the record, the fire inspection that was done, they say the facility
22 is only able to accommodate 39 kids and staff people, then I believe
23 that that will be appropriate for a condition at that particular facility. I
24 hope I'm not speaking out of turn for the community because I'd be in
25 trouble, but personally, after hearing what was read into the record, I
26 believe that that facility should be able to accommodate what our D.C.
27 Fire Inspector said it can accommodate, 38, but I don't think an

1 increase to 50 is necessary.

2 CHAIRPERSON REID: Okay.

3 MR. PERNELL: Madam Chair, also, I ride that 92 and
4 90 bus on that line on a number of occasions because I live right off of
5 Florida. You know where I live at, so I ride that 90 bus and waht I've
6 seen coming right at 8th and F, coming from Mr. Madden's day care
7 facility there is that a number of those families who are picking up
8 children below the property have to use that Metro bus. Therefore,
9 they're crossing the avenue going to 8th and H Street, N.E. and
10 they're crossing in front of that busy intersection at 8th and F Street,
11 causing a lot of -- in fact, we had a couple that got off the other day
12 had three children they took out of his facility by crossing in front of
13 that traffic and I don't see anything from the facility that they're trying
14 to see the safe and welfare of the kids in crossing that highway along
15 with their parents, even though they're being assisted by their parents.
16 I think they should take part of the impact of that blame in the
17 community.

18 CHAIRPERSON REID: Okay. Any other questions?
19 Thank you very much. Capitol Hill Restoration Society. Party in the
20 case? You're not going to make a statement, just rest on your written
21 submission. Okay, thank you very much.

22 Okay, persons and parties in support of the
23 application? Persons and parties in opposition?

24 MS. PRUITT-WILLIAMS: Will you oplease state your
25 name and address for the record?

26 MS. GOODMAN: I'm Janice Goodman at 512 8th
27 Street, N.E. When I received the notice of the renewal of an

1 application, the two issues of a special exception child development
2 and a variance from the off-street parking requirements, two things --
3 I'll respond to both things. First thing, in 1991 the community
4 accepted Tender Love into the neighborhood. I believed it was going
5 to be a very small operation that would not have a high impact on the
6 community. When Mr. Madden says that he bought that property
7 many years ago, I've lived there 12 years and I must say in the 12
8 years the neighborhood has gone through many ups and downs, so I
9 can attest to that. The building was vacant, although I don't know that
10 haveing 50 children there would actually add to the community

11 I would also led to believe that it was going to be for
12 very small toddlers and infants. Toddlers and infants have a very
13 different impact on a community than 12 year olds in terms of the kind
14 of space they need, in terms of how they move about a space, how
15 they move about in the neighborhood. So I can understand the zoning
16 problem if you have infants, they need a certain amoutn of space and
17 if you have 12 year olds, you need a different kind of space. I don't
18 believe that that facility can accomodate 50 12 year olds. It is
19 basically a corner rowhouse brownstone with an additional garage
20 attached to it. So as far as space is concerned, I think if there are 36
21 children there now, 10 of which ar einfants, I cannot imagine it
22 increasig in any way the number of more adult or ambulatory mobile
23 children. So that's with regard to that.

24 With regard to the parking, Mr. Madden said that he is
25 basicaly the only person that drives and would park his car and since
26 he already has a space at 9th and F, then why would he need any sort
27 of variance? Why would he need any sort of exception for staff

1 because all staff all take public transportation, then there's no need for
2 him to have additional space allowed for his facility. He's stated that
3 he's the only one that drives and parks there and everybody else
4 takes the bus or walks. So I don't understand why there would be a
5 need for him not to be required, not to meet the requirements that
6 everybody else in the neighborhood. However, the neighborhood is
7 already heavily stressed with excessive cars. The Department of
8 Motor Vehicles does not come around and regularly check license
9 tags. On any given date on my block there are probably a dozen out
10 of state tags, as is the case in many of areas around. I think the
11 further they get from Union Station, the fewer tickets are issued.
12 Especially in the evening and since Mr. Madden's facility operates
13 until 7 p.m. I know I come home from work and I often cannot find a
14 place to park my car. Now I understand that \$10 is not very much for
15 a person to have to pay to park my car, however, I have chosen to live
16 in a community to be part of a neighborhood. Mr. Madden says his
17 address is on K Street, but I don't believe Mr. Madden lives in that
18 neighborhood. Most of the people coming to that facility do not live in
19 that immediate neighborhood. Maybe if Mr. Madden is interested in
20 expanding his facility, he might want to move his center to a place
21 which is more accessible to the tenants or to the people that use the
22 facility. Most of the children I see going to the facility are children
23 dropped off by a car or coming by bus. I do not see the local
24 residents actually using the facility. It seems to me something which
25 has been placed there because Mr. Madden happen to speculate the
26 property in our community ten or 15 years ago when property was
27 very cheap.

1 Okay, then the other thing to address, getting back to
2 a 12 year old child needs a certain kind of play area. A townhouse on
3 a corner of a very busy intersection is not the kind of area that a 12
4 year old should be expected to play in if there are 50 other children
5 are in that facility.

6 Let me just tell you about a few other facilities that are
7 in our community that have been imposed on us by the District and by
8 nonprofits and other establishments. We have pregnancy testing
9 center, a rape crisis center, a renal center. Sasha Bruce House,
10 across the street from the Tender Care is a home for mentally
11 disabled individuals which are residents. On the other corner is a very
12 derelict building which houses three various churches which are
13 allowed to park their cars on the sidewalk. Across the street from
14 them is a convenience store, quote unquote a supermarket which
15 really only sells liquor and lottery tickets, but they continue to have
16 their licenses renewed.

17 The point I'm making here is that this is already a very
18 fragile neighborhood. Last year we started a block association to try
19 and raise money and raise awareness of what is going on and we did
20 a yard sale and we managed to raise enough money to plant five trees
21 in our immediate facility. I have lived there for 12 years. Most of my
22 neighbors have lived there for 12 years. We're trying to make it a safe
23 neighborhood. I do'nt object to Mr. Madden being there. I think
24 Tender Love is fine there. I don't think he should be allowed
25 variances in parking and I don't think he should be allowed to expand
26 the number of children that presnetly exist at the facility.

27 Thak you. Do you have any qeustions for me?

1 CHAIRPERSON REID: Mr. Madden, do you have any
2 questions for this witness?

3 MR. MADDEN: Yes.

4 CHAIRPERSON REID: Come forward, please.

5 MR. MADDEN: I'm sorry, I didn't get your name.

6 MS. GOODMAN: Janice Goodman.

7 MR. MADDEN: What address do you say you live?

8 MS. GOODMAN: 512 8th.

9 MR. MADDEN: 3rd Street?

10 MS. GOODMAN: 8th.

11 MR. MADDEN: Did someone come to your door for --
12 to get your approval in the application?

13 MR. MOORE: Eight years ago?

14 MR. MADDEN: No recently.

15 MS. GOODMAN: No. The only time was in 1991
16 when you started it and I vaguely remember signing some form that
17 said we would be in support of a -- an infant day care, a small day
18 care thing.

19 MR. MADDEN: You made inference about the
20 property a long time ago when it was expensive. I just wanted to tell
21 you that --

22 CHAIRPERSON REID: You have to ask.

23 MR. MADDEN: Do you know when the property was
24 purchased?

25 MS. GOODMAN: By you?

26 MR. MADDEN: Yes.

27 MS. GOODMAN: All I know is you made reference in

1 your statement that you had purchased the properties after the riots
2 and you managed to sort of use the riots as a focal point for all your
3 differences, so I'm assuming that after the riots the properties were
4 cheap.

5 MR. MADDEN: That's not --

6 MS. PRUITT-WILLIAMS: You can only ask
7 questions. You can clarify that in your closing statement, sir.

8 MR. MADDEN: Do you drive?

9 MS. GOODMAN: Yes, I do. And I also use public
10 transportation.

11 MR. MADDEN: Do you have off-street parking?

12 MS. GOODMAN: I have a spot behind my house, but
13 it has been converted into a garden.

14 MR. MADDEN: So obviously it's a parking problem for
15 you?

16 MS. GOODMAN: I park on the street.

17 MR. MADDEN: You don't have any parking
18 problem?

19 MS. GOODMAN: I said I do have a parking problem.

20 MR. MADDEN: You said you had a space?

21 MS. GOODMAN: The reason I don't park in my alley
22 is because a woman was murdered there about five years ago and
23 there was a number of problems in our alley and I decided that it
24 would probably be safer for me when I come -- I teach at the
25 Corcoran. When I come home at 10 o'clock at night, I'd rather park on
26 a well-lit street than park in an improperly lit alley.

27 MR. MADDEN: Do you pay for a permit?

1 MS. GOODMAN: Yes.

2 MR. MADDEN: Have you seen any accidents in that
3 facility?

4 MS. GOODMAN: No, I've not seen any accidents.

5 MR. MADDEN: Have you seen the children
6 threatened of being run over?

7 MS. GOODMAN: No, I have not.

8 MR. MADDEN: Close accidents?

9 MS. GOODMAN: No.

10 MR. MADDEN: Have the children disturbed you in
11 any way?

12 MS. GOODMAN: Not at all.

13 MR. MADDEN: Have the staff been rude to you in
14 any way?

15 MS. GOODMAN: I don't know who your staff is.

16 MR. MADDEN: Have you been to the center?

17 MS. GOODMAN: I've been around the center. I
18 haven't been in the center.

19 MR. MADDEN: Have you seen any 12 year olds in
20 the center?

21 MS. GOODMAN: No, I haven't seen any older
22 children. I've only seen really small children like children under the
23 age of 7. I didn't even realize you went up to the age of 12.

24 MR. MADDEN: So to your knowledge there have
25 never been any there.

26 MS. GOODMAN: Right. I've never seen any larger
27 children. I've only seen basically pre-school aged children there which

1 I assume it was, a pre-school facility.

2 MR. MADDEN: So is there any reason to think
3 there's any representative change in that belief?

4 MS. GOODMAN: What leads me is your comments
5 that regarding the numbers. You state as you have infants you need
6 more space and as you take in more children you need less space. If
7 I was a business person and I knew that I could put more pepole in a
8 space and charge so much money, then I would think that having
9 infants would not be as profitable as taking 12 year olds. If you could
10 have 50 12 years at so much and so many infants at so much, but so
11 many more 12 year olds, I would think that there's a chance it would
12 become a center that was not really for smaller children, but was for
13 older children since they are required to have less space.

14 MR. MADDEN: Would you think a business person
15 that took on infants and loss of money would be an asset to yor
16 ucommunity?

17 MS. GOODMAN: I'm not talking about -- all I'm
18 saying -- I don't think I undersatnd your question.

19 MR. MADDEN: Since you're saying that 12 year olds
20 produce more money --

21 MS. GOODMAN: For you.

22 MR. MADDEN: And I decided to put infants on which
23 is less money, wouldn't you think that would be an asset, if a business
24 person took on his own to lose money and to serve the community?

25 MS. GOODMAN: The way infants are an asset to teh
26 community is that they're quieter. They don't throw trash on the street.
27 They're not going to run in front of a bus. They're not apt to go across

1 the street and make fun of mentally disabled children and adults,
2 they're not as apt to go across to the convenience store and steal
3 candy off of shelves. They're not as apt to pull flowers out of gardens.
4 A 12 year old can do that and an infant cannot do that.

5 MR. MADDEN: But you said you haven't seen any 12
6 year olds --

7 MS. GOODMAN: As I said I haven't seen any 12
8 years old. And as you said, most of the children now are infants
9 through 5. I mean my concern is with older children. My concern is
10 not with younger children.

11 MR. MADDEN: So before the BZA today,
12 hypothetically we're thinking that these things will happen if 12 year
13 olds are there

14 MR. PERNELL: m
15 s thr A ell