

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY

JANUARY 17, 2018

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The Regular Public Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chair
CARLTON HART, Vice Chair
LESYLLEE M. WHITE, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairman

OFFICE OF ZONING STAFF PRESENT:

TRACEY ROSE, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.
CHRISTOPHER COHEN, ESQ.

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P R O C E E D I N G S

9:48 a.m.

CHAIRMAN HILL: All right, good morning, ladies and gentlemen. The hearing will please come to order. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest. This is the January 17, 2018 public hearing of the Board of Zoning Adjustment in the District of Columbia. My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice Chairperson, Lesylee White, Board Member, and representing the Zoning Commission is Anthony Hood.

Copies of today's agenda are available to you and located in the wall bin near the door.

Please advised this proceeding is being recorded by a court reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the Board, please turn on and speak into the microphone, first stating your name and home address.

When you're finished speaking, please turn your microphone off so that your microphone is no longer picking up sound or background noise.

All persons planning to testify either in favor or in opposition must have raised their hand been sworn in by the Secretary. Also, each witness must fill out two

1 witness cards. These cards are located on the table near the
2 door and on the witness table. Upon coming forward to speak
3 to the Board, please give those cards to the reporter sitting
4 at the table to my right.

5 If you wish to file written testimony or
6 additional supporting documents today, please submit one
7 original and 12 copies to the Secretary for distribution.
8 If you do not have the requisite number of copies, you can
9 reproduce copies on our office printer in the Office of
10 Zoning located across the hall.

11 The procedural order for special exceptions and
12 variances, meaning the order we are going to proceed for
13 special exceptions and variances, as well as appeals is also
14 located in the box as you come in to the room.

15 The record shall be closed at the conclusion of
16 each case, except for any material specifically requested by
17 the Board. The Board and the staff will specify at the end
18 of the hearing exactly what is expected and the date when the
19 persons must submit the evidence to the Office of Zoning.
20 After the record is closed, no other information shall be
21 accepted by the Board.

22 The District of Columbia Administrative Procedures
23 Act requires that the public hearing on each case be held in
24 the open before the public, pursuant to Section 405(b) and
25 406 of that Act. The Board may, consistent with its Rules

1 of Procedures and the Act, enter into a closed meeting on a
2 case for purposes of seeking legal counsel on a case pursuant
3 to D.C. Official Code Section 2-575(b)(4) and/or deliberating
4 on a case pursuant to D.C. Official Code Section 2-
5 575(b)(13), but only after providing the necessary public
6 notice and, in the case of an emergency closed meeting, after
7 taking roll call vote.

8 The decision of the Board in these contested cases
9 must be based exclusively on the public record. To avoid any
10 appearance to the contrary, the Board requests that persons
11 present not engage the members of the Board in conversation.

12 Please turn off all beepers and cell phones at
13 this time, so as not to disrupt the proceedings.

14 Preliminary matters are those which relate to
15 whether a case will or should be heard today, such as request
16 for a postponement, continuance, or withdrawal, or whether
17 proper and adequate notice of the hearing has been given.

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

21 Ms. Secretary, do we have any preliminary matters
22 to discuss now?

23 MS. ROSE: Yes. Good morning, Mr. Chairman and
24 members of the Board. Staff has one preliminary matter for
25 right now. Application number 19666 of Caryn Shenewerk

1 regarding the 1209 Park Road, Northwest, has been postponed
2 to the hearing of February 7, 2018. This case will not be
3 heard today.

4 The other preliminary matters can be addressed as
5 we call the individual cases.

6 CHAIRMAN HILL: Okay, great. Thank you, Ms. Rose.

7 If anyone is here wishing to testify or if you
8 think you might testify, if you could please stand and take
9 the oath which is going to be administered by the Secretary
10 to my left. Thank you.

11 (Whereupon, all witnesses were sworn.)

12 CHAIRMAN HILL: Okay, so good morning, everybody.
13 Sorry we're starting a little late today. There were some
14 issues with the ice and so some of us had difficulties but
15 thank you all for being here.

16 Just to let you know, we are going to follow the
17 agenda that has been set forth in the box to the left -- to
18 the right, as you walk through the door. There is nothing
19 that is changing, except for perhaps in the new applications
20 and appeals section, during the public hearing portion.
21 Application 19657 is going to be moved behind Application
22 19665. So basically, second to last is where we're going to
23 move that.

24 Other than that, everything is going to stay in
25 the order in which we have it. I think it's going to be a

1 pretty long day today. I just kind of want to mention that
2 to everybody, including my fellow Board members. We're
3 probably going to try to break for lunch at some point
4 because I think that just even the meeting cases are going
5 to go on long today.

6 So everybody, settle in. It's nice and warm and
7 so you're at least not slipping on ice.

8 With that, if you would like to call our first
9 meeting case, Ms. Rose.

10 MS. ROSE: Yes, that is Application 19663,
11 Application of Alexandra McDougald and Robert Norris, as
12 amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a
13 special exception under Subtitle D, Section 5201 from the lot
14 occupancy requirements of Subtitle D, Subsection 304.1 and
15 from the nonconforming structure requirements of Subtitle C,
16 subsection 202.2 to construct a two-story rear addition and
17 add an accessory dwelling unit to an existing one-family
18 dwelling in the R-3 Zone at premises 4517 New Hampshire
19 Avenue, Northwest, Square 3308, Lot 47.

20 CHAIRMAN HILL: Okay, great. Thank you. Is the
21 Board ready to vote? Okay, I can go ahead and start.

22 Again, this is for expedited review and I feel as
23 though the record is complete. I didn't really have a lot
24 of issues with it. I went through the record and then saw
25 the report from the Office of Planning that would be in

1 agreement with the analyses that were provided by the Office
2 of Planning, as well as ANC 4C was in favor of this 9-0-0.

3 The ANC did ask the Applicant to install permeable
4 surfaces where concrete is being replaced and to work with
5 D.C. Water to remove lead pipes. The ANC didn't specify that
6 that was necessarily a condition but it is something that
7 they would like the Applicant to try and accomplish and so
8 I wanted to read that into the record.

9 Other than that, I don't really have any thoughts.
10 Does anyone else have any thoughts?

11 VICE CHAIR HART: No, Mr. Chairman. I've also
12 reviewed the record, as well as I also agree with you with
13 regard to the Office of Planning report, Exhibit 39, which
14 recommends approving the request for a special exception for
15 lot occupancy relief from Subtitle D 5201.

16 I just thought it was a fairly reasonable addition
17 on a single family home that will enable it to be of greater
18 utility. And that's it.

19 CHAIRMAN HILL: Okay and with that, I'll go ahead
20 and make a motion to approve Application 19663, as read by
21 the Secretary, and ask for a second.

22 ZC CHAIR HOOD: Second.

23 CHAIRMAN HILL: Motion has been made and seconded.

24 All those in favor?

25 All those opposed?

1 The motion passes.

2 Ms. Rose?

3 MS. ROSE: The staff will record the vote as 4-0-1
4 with a motion by Mr. Hill, seconded by Mr. Hood. Mr. Hart
5 and Ms. White supported the motion; one Board seat vacant.

6 CHAIRMAN HILL: Summary order.

7 MS. ROSE: Thank you.

8 CHAIRMAN HILL: Thank you.

9 MS. ROSE: The next expedited review case is
10 number 19670, application of Luke and Hope Grande, pursuant
11 to 11 DCMR Subtitle X, Chapter 9, for a special exception
12 under Subtitle D, Section 5201 from the rear yard
13 requirements of Subtitle D, Subsection 306.1 and from the
14 side yard setback requirements of Subtitle D Subsection 307.1
15 to construct a rear addition to an existing one-family
16 dwelling in the R-1-B Zone at premises 3701 Corey Place,
17 Northwest, Square 1525, Lot 60.

18 CHAIRMAN HILL: Thank you, Ms. Rose. Is the Board
19 ready to deliberate?

20 Okay, I can also start. Again, this is for
21 expedited review. After reading the report from OP and also
22 reviewing the case, I didn't have a lot of questions on this
23 either. The ANC 3 was in support 5-0, DDOT had no objection.
24 There was also 18 signatures from neighbors in support.

25 I thought that the analysis that the Office of

1 Planning had provided was thorough. And so I didn't have any
2 thoughts other than what was provided by the Office of
3 Planning.

4 Does anyone have anything they'd like to add?

5 MEMBER WHITE: I just concur with what you just
6 said, Mr. Chair. I think there was adequate support. There
7 didn't appear to be any issues or concerns regarding this
8 application for a special exception. And I think that the
9 Applicant met the criteria requested for rear and side yard
10 relief under the special exception criteria.

11 CHAIRMAN HILL: Okay, thank you, Ms. White.

12 Now I'll go ahead and make a motion to approve
13 application number 19670 as cached and read by the Secretary
14 and ask for a second.

15 MEMBER WHITE: Second.

16 CHAIRMAN HILL: The motion has been made and
17 seconded.

18 All those in favor?

19 All those opposed?

20 The motion passes. Ms. Rose?

21 MS. ROSE: Staff would report the vote as 4-0-1,
22 with Mr. Hill making the motion, a second by Ms. White, with
23 Mr. Hart and Mr. Hood in support of the motion; one Board
24 seat vacant.

25 CHAIRMAN HILL: Thank you, summary order?

1 MS. ROSE: Yes, thank you.

2 CHAIRMAN HILL: Thank you. To turn off the phone,
3 you put a switch over here.

4 VICE CHAIR HART: Mr. Chair, I think we said that
5 earlier. Maybe you should just do it yourself.

6 CHAIRMAN HILL: Yes, let's see. Give me a second.

7 All right, Ms. Rose, whenever you're ready.

8 MS. ROSE: Next we have hearing cases for
9 decision.

10 The first is number 19581, the application of
11 Latin American Montessori Bilingual Charter School pursuant
12 to 11 DCMR Subtitle X, Chapter 9, for a special exception
13 under Subtitle U, Subsection 205.1(a) to establish a public
14 charter school in the R-16 Zone at premises 5000 14th Street,
15 Northwest, Square 2711, Lot 802.

16 CHAIRMAN HILL: Okay, thank you. Is the Board
17 ready to deliberate?

18 Okay, would somebody else like to go first? This
19 is going to take a little bit of discussion. So I can start
20 and then --

21 MEMBER WHITE: I can add some comments.

22 CHAIRMAN HILL: Okay, great. Who is going to go
23 first?

24 MEMBER WHITE: So, you can only build off of what
25 I say.

1 This was a case to establish a public charter
2 school in the R-16 Zone located at 5000 14th Street,
3 Northwest. They are requesting a special exception under
4 Subtitle U, 205.1(a).

5 After reviewing the record, there is a substantial
6 amount of testimony here and there were also a number of
7 post-hearing submissions. And the December 20th hearing was
8 concluded after testimony from all parties regarding the
9 supplemental filings for closed conditions, which were very
10 comprehensive and perhaps my fellow Board members would be
11 able to help me on anything that I leave out here.

12 The final revised plans I have looked at and they
13 were requested from the Applicant, including conditions
14 regarding notification of CNDI-LA -- that's an acronym for
15 the neighborhood group in the area -- 30 days before the
16 submission of the building permit application.

17 And OP's conditions regarding the modification of
18 the design approval, here in this case we granted party
19 status to CNDI-LA and they filed responses to the conditions
20 that can be found in Exhibits 164 and 165. They agreed with
21 27 of the 35 conditions that can be found in Exhibit 163.B.

22 OZ's comments and CNDI-LA provided alternate
23 proposed text under Exhibit 164. There are conditions that
24 were noted conditions 2, 3, 7, 9, and 10, where they wanted
25 the name Kingsbury to be added.

1 And then they added some comment to conditions 10,
2 28, and 30, where I guess one of the more highlighted issues
3 during the hearing was that they wanted to get -- they wanted
4 to require the Applicant to come back to the BZA before LAMB
5 increased the enrollment to 600 students.

6 CNDI-LA also specified that they wanted parent or
7 liaison, or the committee that resides within NAC 4C02 to
8 also sit, rather than just ANC 4C to be part of the Liaison
9 Committee as well.

10 Some additional comments, you know we heard
11 testimony from the Applicant, from the opposition that was
12 represented by Mr. Uqdah. We heard testimony from witnesses,
13 Office of Planning. There were a number of people that were
14 in support.

15 There was some information submitted by the expert
16 witness, Daniel VanPelt, providing clarification on the
17 financing proposal.

18 OP recommended approval with the conditions in
19 Exhibit 46, I believe, including returning to the BZA to
20 increase to 600 students. ANC that submitted a report into
21 the record did provide support for the application. And from
22 what I understand, they don't necessarily think that they
23 should be required to come back to the BZA because there were
24 a number of conditions I think that the Applicant was
25 provided and did kind of modify some of their positions on

1 things. And also there is a PMP plan that is in place and
2 if that PMP plan is not complied with, then the Certificate
3 of Occupancy would not be something that would be issued to
4 the LAMB School.

5 So my position was that I can understand why the
6 neighbors have concerns about having a significant increase
7 in students coming into that neighborhood. I am very
8 familiar with that area and increasing to 600 is going to be
9 a noticeable change. But I think that the Applicant has made
10 some thoughtful conditions as part of their plan to ensure
11 that there are processes in place to prevent there from being
12 serious adverse impacts to the surrounding community.

13 So my position, unless you have some comments that
14 I can maybe give things another thought from another
15 perspective is that I think that the application did meet the
16 criteria and that the conditions that were submitted along
17 with the PMP plan did provide a process in place in order to
18 prevent there from being serious adverse impacts to the
19 community and allowed the community organizations to be
20 actively engaged in ensuring that their concerns are
21 addressed on an ongoing basis.

22 CHAIRMAN HILL: Okay, thanks, Ms. White.

23 So, I guess this was really -- I mean there is a
24 lot in the record. I mean there is a hundred and some-odd
25 letters and things in here, even more. And there is a long

1 list of final conditions.

2 I mean what I was trying to -- and I did kind of
3 struggle with this and I still am kind of curious to see how
4 this goes, I suppose, is whether or not -- again in terms of
5 the standard that we're looking at zoning and the standards
6 of zoning is whether this -- the adverse impact of the
7 neighborhood.

8 And what I was kind of trying to understand was
9 if there was something put into place that was going to --
10 because basically they wanted to -- you know they are
11 currently at 310 students and they wanted to get to 600 in
12 five years. And so part of the discussion was whether or not
13 they were going to have to come back to us to go up to the
14 next level in terms of increasing the students or did we, or
15 I'm just now speaking about I, that I feel comfortable enough
16 with the conditions that were being put forward and that
17 there was some kind of teeth put in place with the conditions
18 that the Applicant would have to abide by the PMP plan for
19 the traffic -- well, there is the traffic management plan and
20 then there is the performance measurement plan. And so the
21 performance measurement plan was that they had to adhere to
22 the performance measurement plan and prove that they were
23 adhering to the performance measurement plan before being
24 able to go to the Zoning Administrator to get an increase to
25 the 600 students.

1 I did think the initial report from the Office of
2 Planning did say that they had -- they were approving on the
3 recommendation that they come back to us. Then, the Office
4 of Planning provided a supplemental report that said based
5 upon these different criteria that was, again, outlined in
6 the conditions, it would create not a speed bump but a very
7 specific way that the school could prove that they were
8 adhering to the PMP plan in order to move up to 600 students.

9 So then that kicked me back to did I think that
10 the conditions and what they were trying to do -- because at
11 the end of the day, and this was kind of some of the
12 discussion, is that it is a level of trust but you don't know
13 what's going to happen. You know five years from now there
14 could be a new administration, there could be new people.
15 And the community, and I did hear this from the community,
16 is that the current school isn't even up to the level that
17 they were allowed to get up to. So they don't know exactly
18 how the traffic is going to go down as this does move forward
19 and if they did get to 600 students.

20 So let's see, there's even more things that I
21 think I want to kind of circle back around to, depending upon
22 which way we seem to be going, but I did think that the
23 condition -- I mean there was 30 some-odd conditions, which
24 was an extensive amount of conditions that the Applicant was
25 putting forward to try to provide some kind of confidence to

1 the community that they were going to adhere to the PMP plan
2 and the traffic, and the increase to 600 students was not
3 going to be an adverse impact to the community.

4 I did, again, look at the fact that the ANC was
5 in support of this. So the ANC was in support. It's the
6 intervenors and the party status in CNDI-LA that were opposed
7 to the project of going up to 600.

8 And I thought they articulated it very well as to
9 how they were opposed to it and why. And we kept asking them
10 to go back and forth to try to get to an understanding as to
11 how they could feel more comfortable that this wouldn't be
12 an adverse impact to their community.

13 So again, the ANC was in approval but kind of a
14 smaller group of people either close around there as well as
15 kind of the immediate neighbors -- well some were not
16 immediate neighbors but in the area where proposed CNDI-LA.

17 CNDI-LA came back again and wanted some changes
18 to these conditions in that they would like the current
19 school to be listed in the conditions. I found that that was
20 going to be hard for me to get behind because that's not even
21 in front of us. And that school also already has conditions
22 that were put in place when the BZA first approved their
23 application. So, I didn't feel as though I could get behind
24 that.

25 The other thing that CNDI-LA was rejecting, in

1 terms of the conditions, was the 600 students. So that was
2 kind of the whole point, to a certain extent, as to why the
3 Applicant was coming forward.

4 So if we were to go against the 600 students, I
5 would even think that we would have to go back to the
6 Applicant again and say so then if you're not going to get
7 the 600, then what conditions really are you now going to be
8 offering? Because it changes the whole dynamic of the
9 conversation I think.

10 The one thing that they did mention again that was
11 in their feedback from the final conditions was that they
12 wanted a representative on the Commission -- I forget what
13 it was called now -- but from ANC 4C02, which is not the ANC
14 but the SMD there.

15 And so I didn't hear feedback from the Applicant
16 as to what their thoughts were and we'll see where we get to
17 in terms of that. My only thought about that, I suppose, is
18 like you would then have to have a parent within 4C02 that
19 had a student at that school. And I don't know how often
20 that happens. I don't know.

21 So long way around all of this, is that I did feel
22 as though if we were going to move forward with this in terms
23 of the 600 students, I could get behind it because I think
24 that all of the conditions that were put forward did amount
25 to enough of I think measures to avoid adverse impact on the

1 600 students. However, if we were to go forward with that,
2 then again, I would ask that condition I think it was number
3 10 -- thank you condition 10, there needed to be more
4 specificity in that condition and I would then ask if we did
5 get to this point when the order was being written that the
6 order is written from Exhibit 45 pages 21 and 22 of DDOT's
7 report as well as Exhibit 121, pages 1 through 3 from the
8 Applicant. Condition 10 needed to be -- more clarity needed
9 to be provided, which I think the Office of the Attorney
10 General would be able to do that fairly easily.

11 So, again, that's where I am in terms of if you
12 all think that this -- so those were my thoughts.

13 VICE CHAIR HART: Thank you, Mr. Chairman and Ms.
14 White -- Board Member White.

15 I apologize. I'm actually getting over a cold,
16 so my voice is somewhat deeper than it normally is.

17 So I do appreciate the comments that you all
18 provided. And it's helpful understanding how you're kind of
19 looking at this as well. I also appreciate the Applicant for
20 providing an abundance of information regarding the
21 application for allowing a new school at this site and that
22 the opposition party has provided information as well
23 regarding potential impacts on the neighborhood.

24 And I think that both side were trying to manage
25 the impacts of this project to the best of their ability and

1 I would really commend both of you on the amount of work that
2 you've done so far because I think that Mr. Chairman, you
3 said that you thought that CNDI-LA were opposed to the
4 application. And I would change that a little bit. I think
5 they were more concerned about the impacts from the
6 application. They were just kind of like we don't know what
7 -- we can imagine that it might be impactful and we need to
8 find some way that we can understand how the government can
9 systematically understand the impacts and try to mitigate
10 those impacts.

11 So, I would differ with you a little bit on how
12 you kind of saw that, which is fine.

13 CHAIRMAN HILL: Sure.

14 VICE CHAIR HART: And I thought that the
15 conditions that the Applicant and CNDI-LA have agreed to were
16 -- I actually was in agreement with them as well.

17 And your point, Mr. Chairman, about Condition 10
18 regarding the performance monitoring plan, as described on
19 the DDOT report, well really it is that there should be more
20 specificity about what is included in the performance
21 monitoring plan as opposed to just trying to refer to it and
22 not actually spelling anything out in the conditions
23 themselves what those pieces are that should be included in
24 the condition that is in the -- for this project.

25 So I agree with you, Mr. Chairman, that that

1 should have more specificity to it.

2 With regard to the overall idea about 300 versus
3 600, I, too, had somewhat of a -- I was listening very
4 intently during the testimony aspect -- phase of the hearing
5 to understand how we could get to a 300 and 600 and kind of
6 what made sense for the neighborhood and for the school.

7 It seems as though the number of and the
8 specificity of the conditions that have been agreed to are
9 very helpful because they do talk about how to deal with many
10 of the problems or the anticipated impacts and how to deal
11 with them on an ongoing basis. I thought that the Liaison
12 Committee was very good -- Community Liaison Committee and
13 Condition 12 was a very good idea.

14 I understand CNDI-LA's desire or their, I guess,
15 request to have a parent from the ANC 4C02, which is the SMD
16 in the group, and I don't have a problem with that at all.

17 And again, while I understand that it would be
18 nice to know how the LAMB School would react to that, I think
19 that we kind of look at it like does it make sense for this
20 project and I think it does make sense to do that.

21 With regard to the kind of the meat of the
22 conditions, number 10 and number 30 seem to be the two
23 conditions that are kind of the most relevant or most
24 important. And condition 30 was, from what I understand, was
25 taken from the OP report, the supplemental OP report and

1 massaged to where it is now. And this is really to basically
2 say if the LAMB School was not in compliance with the other
3 relevant conditions and the PMP, the performance monitoring
4 plan, the LAMB School shall not be granted a C of O, a
5 certificate of occupancy, for an increase in student and
6 staff count, unless given approval by the BZA.

7 So that to me says that if we approve the 600 and
8 the performance monitoring plan and the other conditions in
9 the set of conditions that we would be attaching to this
10 application, if those were not met, then the Applicant would
11 not get the C of O and -- I'm sorry, they wouldn't get it
12 unless they had an approval by the BZA, which may mean that
13 they would have to come back to the BZA to actually get that
14 final approval. That seems somewhat circuitous but I can
15 understand why that was put in.

16 And I understand that CNDI-LA had their own
17 version of that. They made some changes that we're talking
18 about, basically that the Applicant would have to come back.
19 They would get the 310 at this time and they'd have to come
20 back for the 600 at a later date.

21 I understand that there are -- there will be
22 impacts that are associated with this project. I think that
23 the conditions are set forward to be able to deal and address
24 those conditions. The Liaison Committee is set up to be able
25 to address -- also address some of the kind of unforeseen

1 things possibly that come up. And there is some way for the
2 community to understand that if the LAMB School does not meet
3 these conditions and the PMP that they would have to come
4 back to the BZA for an additional -- for an approval.

5 And so I think that there is enough teeth in the
6 conditions that the Applicant has put forward. I'd like to
7 hear if Mr. Hood is going to give us -- Commissioner Hood is
8 going to give us some comments as well. But right now, I
9 think that I would be in favor of or supportive of the
10 request by the Applicant.

11 ZC CHAIR HOOD: I want to thank my colleagues.
12 I think you all teed it up very well.

13 One of my biggest concerns was the return back to
14 the BZA going from 300 to 600 because under the conditions,
15 and I look at who is making the decision, whoever the ZA may
16 be at that time, to put an onus -- I don't want to pit the
17 neighbor against the community -- I mean against the school.
18 And sometimes we do conditions because conditions sometimes
19 do not deal with adverse impacts. Some of your best made
20 plans, at times I've seen it, to where we come down and put
21 conditions in place and actually the reality is that's not
22 what happens. It takes another course. It's hard on the
23 community. The ZA and going through that process, it puts
24 the burden on the community now.

25 This site is self-contained. I know a lot of work

1 has been done and I don't want to undo what the community and
2 the school have done. The school, I think, has overwhelming
3 support with concerns. I would have to agree with the Vice
4 Chair on that.

5 I think the way I read it is, my interpretation
6 is support but major concerns. And we want to work out those
7 concerns but do these conditions get it? I think returning
8 to the BZA when you go from 300, maybe 300 to 400, I could
9 see some of these conditions being suitable. But when you're
10 talking about doubling, there needs to be a venue or two for
11 the community to be able to say something.

12 And I understand about the Liaison Committee.
13 Some areas that work; I've seen where it works and I've also
14 seen where it doesn't work. One of the concerns that I did
15 have here, I noticed that they wanted a parent in 4C. I
16 don't want to undo that but sometimes it better to get
17 someone who is in 4C who may not be parent. I mean those are
18 some of the things I look at.

19 But I don't feel strong enough to -- I feel strong
20 enough to go forward but I have concerns and reservations on
21 them not returning and allowing a tool or a venue to be able
22 to discuss this in front of the Board on an adjustment like
23 we've done in the past, when we've put a term on it.

24 But going back to the Applicant, the Applicant
25 states, and I still don't see the evidence in the record, and

1 I may have missed it, I do miss things, and that's the
2 financial issue because of the partnership, I believe. Maybe
3 that is the case. And if that's the case, then I would be
4 acceptable to trying to go along and see how this works.

5 This would be the first time in my tenure of
6 putting something in place where you don't have to return but
7 you depend on a condition. That's just my hesitation. I
8 think the community needs to have a venue. But if we feel
9 strong enough that I think it's condition 30 will solve it,
10 I'm just -- we're doubling. And the condition, we don't know
11 how the condition is protect the adverse impacts. That's
12 kind of where I am. But I don't really think for me, now,
13 that's a showstopper. I know it might sound convoluted but
14 it stays with always using alternative facts.

15 I know it sounds convoluted and it sounds like I'm
16 contradicting myself but I do have a concern about not having
17 a venue for the community to come back because the ZA here
18 will put the -- it will be the community that -- say the
19 school, and I believe the school will do this, but if it
20 didn't, administration and things have changed, then the work
21 becomes again on the community to fight with the ZA, they are
22 out of compliance, this is not happening, and then that
23 discovery part probably could take two years. I mean I'm
24 thinking how this stuff -- how it works, how it would work.
25 And I may be totally out in left field but that's what I

1 believe from what I read here what's being proposed.

2 So those are my comments.

3 MEMBER WHITE: I was just going to add to what you
4 said. I mean this is a significant increase for the
5 community.

6 And I'm pretty sure I did ask that question about
7 the financing aspect of things because if it impacts their
8 financing if they don't have BZA approval, I think that was
9 part of their argument. You know I see what's in the record
10 and we had financing people testify but that is sometimes the
11 case with these zoning types of issues.

12 But I think that you know that there are a
13 substantial number of conditions here. And I think that
14 having the Liaison Committee will be critical in the success
15 of this and they will be able to be informed about processes
16 going on at the LAMB School every step of the way before,
17 even before filings are made, from what I understand.

18 So I think it's going to be very important for
19 these conditions to be monitored. It's going to have an
20 impact on the community but I think it could be managed. But
21 there's another school in that area, too. So it is going to
22 add traffic to the neighborhood. So I think if they are able
23 to carefully monitor and abide by the conditions that are set
24 forth, I think that that could work.

25 CHAIRMAN HILL: Yes, and Chairman Hood, I mean I

1 also have concerns. I mean this is also for me, again, it
2 was kind of where we are in terms of the conditions. For me,
3 it was where we were in terms of the conditions and whether
4 I thought, for my vote, whether I thought that the conditions
5 had enough teeth in there to provide something that the
6 community would have in their toolkit, if you will, when they
7 go to 600.

8 Again, however, I, as a member of the community,
9 don't really want to be the person who has to be the onus for
10 the stop.

11 And the financial piece, I mean I guess kind of
12 with talking with the Office of the Attorney General, you
13 know like the finance is not really something that applied
14 to zoning. However, you kind of can't completely -- I mean
15 you're not supposed to think about it, I suppose, but then
16 you go back to what Vice Chair Hart mentioned, that even
17 CNDI-LA didn't necessarily seem opposed to the project. They
18 just had very big concerns. So if the project dies based on
19 the report, but that's not really something that is in our
20 purview but it's something that we took testimony about.

21 And then I, again, was looking at that the ANC,
22 the overall ANC did approve this. Like they were in favor
23 it and so that gave me more comfort in terms of the level of
24 input that we received from the community on the whole.

25 I do think that CNDI-LA did a great job of coming

1 in here, like really putting forward what their concerns were
2 and working hours and hours with the Applicant, I'm sure, to
3 get to where they were.

4 I also then thought that as far as then kind of
5 the community piece, you know there was a letter of support
6 from the councilmember for the school.

7 But I do have concerns. I mean you know it's
8 something that -- but so that all being said, I think I'm
9 still able to go with the conditions here. We've just got
10 to work through those a little bit with you.

11 Vice Chair Hart, do you have a comment?

12 VICE CHAIR HART: Yes, Commissioner Hood, was
13 there a particular aspect of a condition or something that
14 you would -- or another condition to add that you would want
15 to see?

16 I mean the one condition 30, which talks about the
17 LAMB School being in compliance and providing CNDI-LA with
18 the application and the information 30 days before LAMB
19 applies for the C of O, maybe 60 days that we were looking
20 at. I don't know, maybe it's a longer lead time for CNDI-LA
21 to have so that -- those 30 days can go by pretty quickly.
22 So I don't know. I don't know if there is something that you
23 would suggest as making a change. You're just saying an
24 overall concern.

25 ZC CHAIR HOOD: I'm just putting my points out

1 there. Actually, I'm trying to see how things actually go.

2 When they come down here in front of us, in-
3 writing conditions, great, sounds good. But in reality
4 sometimes, when these things are put into action and becomes
5 a problem. I think the school is very willing to be a good
6 neighbor but I'm just saying things do happen. Like I said,
7 some of the best plans sometimes don't go as we plan them.

8 And when I look at not -- the biggest thing for
9 me was not coming back to the BZA. And I think that this --
10 I know this may be the first time. Normally, we use a term.
11 I thought we had some that have a track record of like 20
12 years and we said okay, you can come in five years for years
13 and you've never had a problem; so you have a 20-year track
14 records and the community even supported never coming back
15 to the BZA.

16 This is the first time for me, a first time. And
17 there's always going to be a first time but I'm just
18 concerned that if things do go awry, if it is not prescribed
19 and how we sound, this sounds here, then the community -- the
20 burden will be on the community to convince the ZA and then
21 the school will be telling the ZA. And then I just see it
22 going back and forth. There have been some other instances
23 of this.

24 But again back to 30, I don't want to undo what
25 everybody's done. I'm just raising my concern. I'm not

1 saying this is a showstopper.

2 Maybe this may be an example for us to look at.
3 Maybe not. I know it has some support from a councilmember
4 and others. And the entity is self-contained over there but
5 it's just this 300 to 600 and not having a tool and mechanism
6 where we can come down and we can have a discussion. And
7 those discussions may happen in the Liaison Committee, I
8 don't know what happens there. Like I said previously, I
9 have seen Liaison Committees that actually work and I've seen
10 them where they don't work.

11 And I'm leaning more towards accepting what have
12 in front of us in the community but I just wanted to raise
13 my concern. And I don't know if it's a -- I don't think
14 right now it's a showstopper for me. That gives you a signal
15 where I am but I just wanted to raise my concern.

16 MEMBER WHITE: One of the provisions that did give
17 me some comfort because unless both parties have something
18 to lose here, it's not really a fair set of conditions. But
19 you know number 30 it says if LAMB is not in compliance with
20 the PMP and all other conditions are not met, LAMB shall not
21 be granted a Certificate of Occupancy for an increase in
22 student and staff count, unless given approval by the BZA.

23 So I mean there is a mechanism in place that says
24 if they're not meeting those conditions, they're not going
25 to be entitled to that C of O.

1 CHAIRMAN HILL: Yeah and to tag on to what Mr.
2 Hart said, I mean 30 days does seem kind of short to me, I
3 suppose. You know what I mean? Make it 90 days. I mean you
4 should know pretty far in advance as to how -- you should be
5 able to know 90 days out whether or not you're going to be
6 doing something like this.

7 And so I don't know if that -- then that gives
8 CNDI-LA three months to kind of get their ducks in a row, if
9 they need to go to have some kind of confrontation.

10 Again, to me, it's again, you're just trying to --
11 and this is why we're having such a long discussion because
12 also I am having trepidation with kind of -- if I'm using
13 that word right -- moving forward with this. It's about
14 trust. I mean if it works, it works.

15 And so what Chairman Hood is saying is that you
16 know everybody wants it to work. Everybody's trying to make
17 it work. And five years from now, if it's not working, then
18 CNDI-LA has to go up against the ZA with whatever they have.
19 And so that's all we're kind of talking about.

20 So you know I would be more in favor of a
21 lengthier period of time, I guess, to give CNDI-LA an
22 opportunity from that condition. And then I guess we'd go
23 ahead and add, as Vice Chair Hart was saying, the 4C02 person
24 to their LCC. That's kind of what I'm thinking.

25 MEMBER WHITE: I would agree with that, Mr. Chair,

1 and Vice Chair. It does provide a little more protection for
2 CNDI-LA to give them more notice. So 60 to 90 days would be
3 something that I think would be a lot more attractive and
4 beneficial for the community.

5 CHAIRMAN HILL: Okay. Is CNDI-LA here? Oh, okay.
6 Wow.

7 Is the Applicant here? Okay, can I get the
8 Applicant -- can I just get --

9 ZC CHAIR HOOD: Mr. Chairman?

10 CHAIRMAN HILL: Yes.

11 ZC CHAIR HOOD: I would say go 90 days. That
12 would give me a comfort level but we can hear from others.

13 CHAIRMAN HILL: Okay. There's just so many of
14 you. Okay can you all come up, please, both CNDI-LA and the
15 Applicant just real quick?

16 Okay, if you could introduce yourselves from my
17 right to left, please. Just push in the microphone -- push
18 the button.

19 MR. RIHANI: Rami Rihani, 1505 Emerson.

20 MS. THOMPSON: Doreen Thompson, 1510 Emerson.

21 MR. GILES: John Giles, 1501 Galletin.

22 MR. STRAND: John Strand, 1501 Emerson.

23 MR. KADLECEK: Cary Kadlecek for Goulston & Storrs
24 on behalf of the Applicant.

25 MS. COTTMAN: Diane Cottman, LAMB.

1 MR. ZAYETS: Jerry Zayets, Building Hope.

2 CHAIRMAN HILL: Okay, great. So Mr. Kadlecek,
3 basically you guys have heard everything we've talked about
4 here now. So the 90 days is where we seem to be at. I would
5 assume that's okay with you guys.

6 MR. KADLECEK: Yes, that's fine with us.

7 CHAIRMAN HILL: Okay and then the 4C02 person
8 being added to the LCC?

9 MR. KADLECEK: Sorry, just to -- you guys wanted
10 to add another person to that?

11 CHAIRMAN HILL: So they --

12 MR. KADLECEK: Yes, so I understand. The only
13 reason we had wanted it to be a person from the full ANC is
14 it is a parent. And like you had mentioned, Chairman Hill,
15 sometimes there may not be a parent from that same 4C02. So,
16 we wanted to make sure there was a parent. But if this is
17 a strong issue for the Board, we're fine with it being 4C02.

18 We just wanted to make sure there was always a
19 parent who was on the committee. And there may be a year
20 where no parents live in 4C02.

21 ZC CHAIR HOOD: So let me ask this, Mr. Chairman.
22 Mr. Kadlecek, why does it have to be a parent? How come it
23 can't just be a representative? If you can find a parent,
24 that's great but if you can't --

25 MR. KADLECEK: Well, I think the idea was that

1 there are already four people -- four seats reserved for the
2 community and so they are representatives. But so the idea
3 was that it would be somebody who is from the school.

4 ZC CHAIR HOOD: Do they come out of 4C?

5 MR. KADLECEK: Yes, they would be a ANC 4C parent,
6 as opposed to 4C02.

7 ZC CHAIR HOOD: So you have designated a slot for
8 an ANC 4C parent.

9 MR. KADLECEK: Yes.

10 ZC CHAIR HOOD: The other slots are for anybody
11 within the ANC.

12 MR. KADLECEK: They're for two people -- well,
13 CNDI-LA had asked that two of the seats be reserved for them
14 and that two of them are for West Elementary School parents.

15 ZC CHAIR HOOD: So you are not getting my
16 question. Maybe I'm not asking it right.

17 So what I was trying to find out was could there
18 be somebody within 4C who may not be a parent?

19 MR. KADLECEK: The way it's set up now, no.

20 ZC CHAIR HOOD: Having been through that myself,
21 sometimes that can be a problem.

22 MR. KADLECEK: And we're not opposed to that. I
23 think the idea was -- the way that the committee was
24 originally set up was that there were four seats for the
25 community. CNDI-LA asked that the seats be specifically

1 reserved for them, CNDI-LA, and for West D.C. We don't feel
2 strongly about that but our idea was that those seats were
3 just community seats, not specifically CNDI-LA seats. And
4 they had asked us to change that.

5 ZC CHAIR HOOD: Okay. I don't want to do anything
6 but I think we need to -- even if we can't find a parent
7 within 4C, I would recommend it.

8 MR. KADLECEK: I mean we could add another seat
9 that one's a parent and then another one.

10 ZC CHAIR HOOD: I think you have already.

11 MR. KADLECEK: I mean now we're at nine. That
12 would be ten.

13 ZC CHAIR HOOD: You don't want an even number.
14 And again, they may not vote.

15 MR. KADLECEK: It's not voting.

16 ZC CHAIR HOOD: It's not voting so that wouldn't
17 matter. But anyway, we need to look at that.

18 MR. KADLECEK: Yes, I mean, if the Board wants to
19 add just a 4C02 resident, that's fine with us.

20 ZC CHAIR HOOD: I really want to see what the
21 school and the community wants because Hood won't be over
22 there in 4C. I want to see what the people who are going to
23 be living there what they want.

24 CHAIRMAN HILL: Okay. Anyway, you've already gone
25 through all this with CNDI-LA. And so the only suggestion

1 they came back with was the 4C02 parent and that's the only
2 thing that I think they had a question about on that
3 condition.

4 MR. KADLECEK: On that condition, yes.

5 CHAIRMAN HILL: So, Mr. Uqdah is not here. So who
6 would like to speak?

7 MR. RIHANI: I'll speak.

8 CHAIRMAN HILL: Okay. So the question that I
9 have, and the Board, by the way, please obviously ask
10 anything you like, is just in terms of the 90 days. Because
11 it's 60 days -- I mean you've read all the conditions, I'm
12 sure.

13 MR. RIHANI: It's 30.

14 CHAIRMAN HILL: It's 30 days now. And so what
15 Vice Chair Hart was speaking of is like 90 days. That gives
16 you enough time if there were issue to --

17 VICE CHAIR HART: To see.

18 CHAIRMAN HILL: Right, to get your ducks in a row
19 and provide and stop this from moving forward.

20 Do you have any thoughts on anything that we've
21 talked about thus far?

22 MR. RIHANI: Our position remains that we want the
23 Applicant to come to the BZA at that milestone. Obviously,
24 having 90 days is better than 30 days but that doesn't -- we
25 still are in objection to the fact that that's sufficient

1 without coming back to the BZA.

2 CHAIRMAN HILL: Sure, I understand. And before
3 you all speak, and I guess we are having this discussion in
4 the public so you are seeing how this is working its way
5 through. The whole point is the 600, in my opinion.

6 So you're back to then -- if your back to 300 --
7 so it seems as though we're trying to get to the point where
8 600 would be not palatable but there would be enough
9 opportunity for you guys to like fight if the school was not
10 doing what they had wanted to do.

11 And I know each individual has a different opinion
12 as to whether they want the school there or not at all. But
13 the general feeling that we got was that the school -- there
14 wasn't necessarily opposition to the school; it was whether
15 or not the adverse impact would take place at 600.

16 So I understand you all's position. I mean it is
17 clear as to what you don't want to happen. And you can see
18 how there is even anxiety up here in terms of we're just
19 trying to get to a comfort level. That's why we're talking
20 about 90 days in terms of -- I think it's written pretty
21 well, in terms of the condition, as well as the fact of all
22 the things that we have -- it hasn't been that long, two and
23 a half years now, but this is a long list of conditions,
24 meaning they seem to really be trying to accommodate to get
25 to a point where they can get what they need to get done so

1 that they can move forward with the project.

2 Okay, so I hear your point and 90 days is better
3 than 30 days.

4 And I'm sorry, ma'am, you had something you wanted
5 to say?

6 MS. THOMPSON: Yes. First of all, we oppose this
7 application. This is not just about the concern with the
8 application. I want to correct the record on that.

9 Second, these long list of conditions, if they are
10 not addressing the adverse impacts then, essentially, it's
11 just a list. I mean so for example, if a construction
12 vehicle cannot be on the site before seven o'clock, how
13 exactly -- and that's one of the conditions for example
14 that's there -- how exactly is that addressing the queuing
15 up of traffic in the community?

16 So I just want to speak on the conditions. What
17 happened was CNDI-LA said listen, here's a good school. They
18 want to locate in the community. We have nothing against the
19 school. It's the 600 students. Now, some interpret that as
20 just a concern but, essentially, that is in opposition to the
21 application, 600 students.

22 So if this Board is comfortable with putting in
23 likely 400 vehicles into that contained space and saying it's
24 okay for residents to now take it on themselves, to take on
25 this burden of being on this Liaison Committee and now having

1 to go back and forth with the Applicant and the city --

2 CHAIRMAN HILL: Okay, I just want to interrupt you
3 for one second. What's your last name again?

4 MS. THOMPSON: Thompson.

5 CHAIRMAN HILL: Ms. Thompson, were you here
6 earlier on the previous one?

7 MS. THOMPSON: No, I was sick, actually.

8 CHAIRMAN HILL: Okay. Because I want to let you
9 know we've had two long hearings with this and people have
10 spent a lot of time in terms of going through conditions and
11 everything.

12 Now, I understand that -- I mean I guess what I'm
13 trying to get at is we hear everything. And we admit and
14 understand what you're saying. You might have one position,
15 you personally, and even CNDI-LA might have one position.

16 The ANC voted in favor of this. The councilmember
17 has supported a letter in support of this. We've heard a lot
18 of testimony. I guess what I'm trying to get at is like
19 we've done a lot in terms of us to do our best to make sure
20 that we can get to a point where we think that the adverse
21 impact would actually work out for the community.

22 I guess what I'm most trying to say is I hear you.
23 We hear you but I don't think that, at this point, we can go
24 all the way back again to start again.

25 I mean the 600 you guys have put in, you've

1 submitted into the record that you're opposed to the 600 and
2 you're opposed to the variety of conditions that have gone
3 in. So it's not that we're trying to put something on the
4 community. It's not that we're trying to put the community
5 in a situation where down the road they're going to have
6 problems. Our charge is to figure out whether, again, the
7 standard is being met for adverse impact.

8 And so I'm just repeating I guess everything we've
9 just talked about. But I hear what you're saying. And so
10 I'm sorry that you still are opposed to the project.

11 ZC CHAIR HOOD: Mr. Chairman, can I just add to
12 what you were saying?

13 CHAIRMAN HILL: Sure.

14 ZC CHAIR HOOD: The record for me, Ms. Thompson,
15 from what I've heard in testimony is, like the Vice Chair and
16 I just mentioned, opposed with a concern is not total
17 opposition. That's the way that I read the record.

18 Now, I heard for you just now something totally
19 different. But that's the way I read the record and that's
20 the way I've heard testimony.

21 But let me just reiterate what the chairman was
22 saying. What we're trying to do -- again, the issue from 300
23 to 600 is also an issue for us or for me. And I think at the
24 hearing, I have sometimes a bad time recollecting which
25 hearing it was, but at the hearing, I believe the statement

1 from the school to this Board was that we're not going
2 straight from 300 to 600. There will be a place how we
3 slowly increase. Am I correct? I mean it just doesn't go
4 from 300 to 600. I think I've asked that question. It will
5 be an incline. And an incline is how some of these things
6 will be evaluated -- traffic, impacts to the neighborhood.
7 We also take into consideration the other schools Board
8 Member White mentioned which is around West School, which is
9 around the corner.

10 So those are things that were discussed. So
11 that's also a pause for me from 300 to 600. I think that's
12 the issue.

13 Did you want to say something? I know you grabbed
14 the mike. Did you want to say something?

15 MR. RIHANI: Oh, I just want to go back to our
16 closing statement in the end. Chairman Hill brought it up
17 last hearing about I can't figure out if you guys are for it
18 or against it. And we've put in our closing statement.

19 The way the application is written now, it is 600,
20 to Ms. Thompson's -- Doreen's point. Yes, we are against it.
21 We are against 600. So the application that is written, when
22 we filed for party status, we are a party in opposition to
23 LAMB coming with 600 but we stated we welcome them.

24 So you want to say we are in favor with
25 conditions, I don't know but --

1 ZC CHAIR HOOD: No, I said with concerns. And the
2 concern -- I've got your concerns. The concern is from 300
3 to 600.

4 MR. RIHANI: Right.

5 ZC CHAIR HOOD: Is that the only concern?

6 MR. RIHANI: The major thing, I mean all of these
7 conditions about you know the 4C02, I mean we can work these
8 out, honestly. But the major tenet of our opposition is that
9 we need a stopgap at that milestone between the 310 -- when
10 Kingsbury leaves and they're ready to go up to 600, we need
11 them to come back here and they have to reapply.

12 I get the finance issue but I don't think --
13 somebody mentioned it earlier -- that that's part of the
14 funding.

15 And we have an overlay. I mean this is the R-13
16 zoning. There is a residential overlay. And I think
17 whatever that means for our neighborhood and what it offers
18 us for protections should be considered.

19 ZC CHAIR HOOD: Okay.

20 CHAIRMAN HILL: Okay. All right, thank you all
21 very much. Thank you. You can sit back down. Thank you.

22 VICE CHAIR HART: Yes, Mr. Chairman, I appreciate
23 the folks coming up and coming out today. I think we really
24 do. It's helpful to hear all of this and my apologies for
25 misstating CNDI-LA's position on it. And I won't say

1 anything farther than that.

2 In looking at the conditions themselves, and I
3 think this is why Condition 10 is important and the
4 specificity is important, because the condition itself --
5 maybe I should just read it, what it is so far.

6 It says: Starting in the first year of the
7 school's operations at the building, LAMB shall implement the
8 performance monitoring plant, PMP, described on pages 22 --
9 sorry -- 21 and 22 of DDOT's report at Exhibit 45 in the
10 record and enhanced on pages one through three of Applicant's
11 submission at Exhibit 121 in the record.

12 The submission of performance monitoring reports
13 will continue until: 1) a minimum of three years of reports
14 have been submitted or LAMB increases its enrollment to a
15 maximum of 600 students, whichever is later; and 2) the two
16 latest consecutive years demonstrate that the school is in
17 compliance with the performance monitoring plan.

18 And so the performance monitoring plan that DDOT
19 actually laid out in pages 21 and 22 of their report in
20 Exhibit 45 includes a list, a bulleted list that's I don't
21 know maybe ten or so bullets long, and it includes things
22 like traffic summary reports will include the following: at
23 a minimum student enrollment and number of faculty and staff,
24 total entering vehicle counts for students, faculty, and
25 staff at the site; that all site driveways for the busiest

1 morning school drop-off hour, mode splits, which are how
2 people are getting there, either by transit or by car, or
3 walking or biking, are broken down separately for students,
4 faculty, and staff obtained the counters, not traffic
5 surveys; vehicle occupancy counts, so how many people are in
6 each vehicle as they are coming to the site; drop-off and
7 pickup area queue lengths and a potential spillback into
8 public space.

9 So how are cars queuing on the site and are they
10 actually coming off the site into public space using video
11 counters. So they are going to use some sort of video
12 equipment to be able to monitor how cars are coming in at the
13 drop-off and pickup during the day.

14 And also documentation of any changes to TDM,
15 which is transportation development -- transportation demand
16 management program from the previous year, including new or
17 innovative policies being implemented for explicitly
18 requiring in the TDM plan. And the TDM plan just talks about
19 how the school is going to use things like the SmarTrip cards
20 for getting kids to school that are old enough to be able to
21 do that, or encourage biking or walking with your student to
22 the school, that sort of thing.

23 So there are things that I thought were in the
24 DDOT report that helped to understand that these things are
25 going to be looked at and some of this stuff is going to be

1 pretty easy to say well you've had cars queuing out of your
2 site for half the time that you have your -- the school is
3 in session, so you're not in compliance with that. Well, if
4 they're not in compliance with that, then LAMB school is not
5 in compliance with that part of the performance monitoring
6 plan and, therefore, they would not be able to get to the 600
7 limit, unless they came back to the BZA because they have to
8 provide this information to the Zoning Administrator and
9 describe how they are meeting these pieces.

10 I agree that the Commissioner Hood has described
11 how, and rightly so, that some of this case the community is
12 going to be kind of on the hook. But in some of these cases,
13 the Applicant that is before us is going to be also on the
14 hook because if they don't show this stuff, and it's going
15 to be quite a bit of effort for them to be able to provide
16 this information on an ongoing basis. And I just thought
17 that that was helpful to have that information so that we can
18 understand or the ZA can understand how this school was
19 meeting the performance monitoring plan that they had agreed
20 to and that if they don't meet it, then they would have to
21 come back to the BZA for approval of the 600.

22 So, that's it.

23 CHAIRMAN HILL: So Chairman Hood seems to think
24 that he has something to add that might be helpful. But I'm
25 kind of -- I'm back to being somewhat confused in that -- and

1 even maybe if OAG or the Secretary, if I'm talking about
2 doing different things here can let me know how that might
3 have happened.

4 I don't know where I am a little bit, in that --
5 and Mr. Hood, if you have something, that's great -- in that
6 it's again the coming back to the BZA that continues to be
7 the new -- and I'm not saying that I'm not there, meaning
8 that I might need to just really kind of look harder at the
9 conditions and see if I'm just really satisfied in terms of
10 them.

11 I definitely think that the Applicant has done the
12 best they can and I definitely think that CNDI-LA is doing
13 the best they can to get to the point where we, as a Board,
14 feel as though the conditions are strong enough to where
15 there is a measure before going to the 600 students.

16 And I understand the concerns of the community in
17 terms of how do they feel comfortable with going to that
18 level of increase in their area.

19 And the other problem that I'm having, I guess,
20 is again, it's then -- I think you said it well, Vice Chair
21 Hart, wherein it's not completely on the community. I mean
22 the Applicant does have to do a lot of stuff but it does
23 involve the community. You know all of CNDI-LA might
24 disappear in the next couple of years, they could just move
25 out of the area.

1 And so but I'm a little -- I don't know.

2 So Mr. Hood, you had something to say?

3 ZC CHAIR HOOD: Yes, I actually was thinking of
4 two different proposals. This last one, after hearing your
5 comments -- and I think that this issue, again, is for about
6 having some type of mechanism for the community to come back
7 and be a real voice as you move up in increasing your student
8 cap from 300 now to 600 -- possibly 600. They may never even
9 hit the 600.

10 But I think that there needs to be some kind of --
11 and I'm just throwing this out here. You can just cut my
12 mike off, if you do have the capability. I know I have to
13 use that sometimes. I've never had to use it on myself so
14 there is a first time. But I will tell you that what I'm
15 thinking is to solve the happy medium would be -- I've heard
16 from the school, I've also heard from CNDI-LA -- I think the
17 happy medium would be is if we have some type of track
18 record.

19 When the school does eventually move in, move into
20 the site and the other school moves out, I think that's when
21 everything is going to trigger. I'm looking at Board Member
22 White because she really did her homework on this.

23 So but anyway, I think that what we could do the
24 first time is to give a term limit for like the first five
25 years or maybe let me do this -- the first three years with

1 a cap of 150 and then they come back to the BZA and we re-
2 look at something. And I'm just talking out loud, so I know
3 people may not agree -- 150 and then we look at some things.
4 And then we can decide -- and even some of these things still
5 go into place, what we have here. The same thing could still
6 be -- we'll have a track record of how we're working but the
7 cap will be for the first three years 150, or two years, or
8 whatever the case is, we put a cap on it.

9 And then they come back to the BZA. We look and
10 see how we're coming along on all these conditions. We get
11 information from CNDI-LA and everybody else, we evaluate it,
12 and then we say okay, well then we can really put these
13 conditions in place of what our role is. Because that's what
14 we've been trying to do. They're trying to put these
15 conditions in place on what some of the things that we do
16 here.

17 Then we have a track record. We now have 150
18 students added. The neighborhood gets to have a track
19 record, see actually what the impacts are. The school gets
20 to see how things are working, if they can get to 150 in two
21 or three years. And then that way, whatever's happening,
22 we're going to have that same discussion but it will be more
23 condensed. We will have kind of a history of where we've
24 been and where we're going. And then these can then replace
25 what CNDI-LA is saying about coming back to us after that.

1 Does that make sense? If it doesn't, just cut my
2 mike off.

3 MEMBER WHITE: So are you saying that you know it
4 would be a monitoring process, where they would have to come
5 back to the BZA to just simply show that they are following
6 the plan and the conditions. And based upon that, we give
7 them the thumbs up?

8 ZC CHAIR HOOD: Everything would go into place.
9 Then we re-look at this proposal and whether or not the sole
10 way to move forward would be these conditions, as opposed to
11 coming back to BZA. And then that way, the neighborhood has
12 a track record, the school has a track record, and then it
13 gives the facility a way. And then put all the onus on the
14 community and anybody. Everybody knows what the operating
15 plan is or how the plan is done in the past. Right now, we
16 have none.

17 MEMBER WHITE: So it's simply a monitoring plan.

18 ZC CHAIR HOOD: Monitoring.

19 MEMBER WHITE: It's not an approval. It's a
20 monitoring process.

21 ZC CHAIR HOOD: We would approve it today if we
22 could put a cap on the student enrollment. It's got 600 --
23 I'm just throwing this out there. And I'm talking out loud.
24 Instead of 600, we would cap it to 450. And I'm just saying
25 that.

1 MEMBER WHITE: So I guess part of the question is
2 whether or not that truly impacts the financing of the
3 project.

4 ZC CHAIR HOOD: I didn't say I had an answer for
5 everything.

6 CHAIRMAN HILL: So I guess -- let me think -- what
7 I don't understand -- and I don't know if OAG or the
8 Secretary has anything to say in terms of what this public
9 meeting that is going on right now, in terms of this open
10 discussion we're having.

11 I don't know how -- well, first of all, Chairman,
12 I appreciate it. I don't know how we get back into
13 discussing conditions with the Applicant. We'd have to now
14 reopen the hearing again, bring the Applicant up here, bring
15 CNDI-LA up here, and try to figure -- no, I'm just saying how
16 I would think have to figure out how to implement or whatever
17 these things are because I'm a little -- the LCC, in terms
18 of the conditions, I thought were how they would have an
19 opportunity to -- it was meeting -- I don't remember how many
20 times it was supposed to meet but it was meeting regularly
21 so that they could see, as the numbers were going up, whether
22 or not the school was living up to their promises.

23 So I don't know -- I'm still back to I don't know
24 how to -- I understand what you're saying in that you're
25 trying to, again, see how to create a check on the adverse

1 impact that would make you feel more comfortable about this.

2 ZC CHAIR HOOD: Actually, I think it would make --
3 because we've done this before in Ward 3. We did something
4 similar. We went so many houses down to six minimum. I'm
5 just thinking that that may give everyone comfort level as
6 far as moving forward.

7 I'm just trying to get us to move forward. So
8 the school can locate, we still have the increase but not the
9 increase that the school has asked for without some input
10 from CNDI-LA and neighbors besides the ANC. That's kind of
11 where I am, as Board Member said, a measuring point.

12 MEMBER WHITE: But one question or comment that
13 I have is that if they don't meet the conditions, is there
14 a stopgap in place that would basically prevent them from
15 getting the C of O in order to get the 600?

16 CHAIRMAN HILL: That's there now.

17 MEMBER WHITE: That's there now?

18 CHAIRMAN HILL: That's there now.

19 MEMBER WHITE: So the question is comment on why
20 that is not sufficient.

21 CHAIRMAN HILL: Okay, so let me ask a question to
22 Ms. Nagelhout or Ms. Rose. This is the longest, by the way,
23 I have ever talked about anything. And so do we have to
24 reopen -- if we were going to talk to -- I mean the parties
25 are here. Do we have to reopen the record?

1 I'm trying to understand and talk to the people
2 that are here about the suggestions that have been made thus
3 far on the dais.

4 MS. NAGELHOUT: You can't turn a decision meeting
5 into a hearing. If you want to reopen the record, you could
6 ask for submissions from the parties. All the parties for
7 the ANC is not here. You could have another hearing and then
8 give notice of the hearing.

9 I'm not sure what we do right now.

10 CHAIRMAN HILL: That's all right, I'm not sure
11 either. But you helped me understand, at least I'm just
12 trying to understand how to move forward.

13 I mean, because Chairman Hood, I don't know
14 exactly understand how that would look, you know what you're
15 speaking of.

16 ZC CHAIR HOOD: I don't really want to be
17 presenting a case. What I'm trying to do is just because for
18 me, the way I understand it, we're going from more -- want
19 the 600 to whatever cap would be to less. So we're not
20 adding anything that what's being proposed. We're not
21 necessarily giving them outright say to go to 600. We're
22 saying you go here first and then we do our checks and
23 balances down here.

24 I don't see why -- we would approve 400 or 450
25 instead of 600, and then put a time limit on it, and then

1 come back and evaluate it with these conditions already in
2 place, even from 300 to 450. These conditions are already
3 in place. Then we have a track record.

4 I don't see why we would, other than just notify
5 the parties on what we approve because we're not going for
6 anymore. Now if we were adding to 1200, then yes, we would
7 have to re-advertise and do all that. But we're taking away
8 from what the proposal is.

9 And we also have the conditions that are here
10 already in place. And maybe I'm not articulating as good as
11 the former John Parsons did but I know that --

12 (Laughter.)

13 ZC CHAIR HOOD: This is not nothing new under the
14 sun. I'm only repeating what I've learned since I've been
15 here from all this.

16 VICE CHAIR HART: Thank you, Commissioner Hood.
17 I understand what you're kind of getting to.

18 My only comment, I guess, on that would be if the
19 LAMB School does not get the 600 at this point and we say
20 that there is some lesser number of students that we would
21 permit them to have. If the LAMB School gets that lower
22 number, and I guess this is something we'd have to hear from
23 them themselves, I'm not exactly sure we would -- I'm not
24 sure what information we would get in five years because I'm
25 not sure that they would actually -- they may make a

1 different decision about moving here. You see what I'm
2 saying?

3 They may end up saying well, we can't make this
4 work and we're going to get fewer students that we would
5 actually be pushing and we're moving to a different location
6 that can provide them with the number of students that they
7 have.

8 It sounded as though that the LAMB School is
9 saying that if we don't do 600, we're not sure if we're going
10 to move forward with it at all. So I don't know how that
11 changes.

12 And I'm not saying that they're saying give us
13 this or not. I'm saying that I think that they're looking
14 at it as a financial issue for an actual question. And I
15 don't know what that lower number will do to that financial
16 question and make them -- have them make a different decision
17 after.

18 And I'm not sure what we'll get from that after
19 you know -- if we would really get the information that
20 you're looking for because they may have decided well, we're
21 not going to pursue that anymore because the BZA said no to
22 600, so we're going to try some other location.

23 ZC CHAIR HOOD: Well, I don't think -- Vice Chair,
24 I understand exactly what you're saying and I know that they
25 want to be predictable in the commitment. I'm not saying no

1 to 600. I'm just saying as we go through this process, give
2 them some time. Because I think from their own testimony,
3 they're not going to build right to 600. Their own testimony
4 shows that there will be a smaller, I guess, increase,
5 moderate increase. And once that increase happens, I'm just
6 trying to balance it with what CNDI-LA and the neighborhood
7 is saying as far as we need to have the checks and balances
8 because they want you to come back to us.

9 And all I'm trying to do is just trying to balance
10 so that if they come back to the Board after the 450, as a
11 protection, it depends on how the order is written, that
12 their ultimate goal is to go to 600, then you have
13 information we'll get back as a track record.

14 If nobody from CNDI-LA comes down here, that means
15 that they are operating just fine, the conditions are going
16 well, the ANC is in support, and nobody will see a difference
17 of any impacts.

18 It's worked in the past. Silence is golden. If
19 after that period, that term is over, after two or three
20 years nobody says anything, they show up and say we want to
21 increase another 150, everybody's in support, then what I'm
22 saying is that they will have worked.

23 Okay, that's going out on a limb. I'm just
24 throwing it out.

25 CHAIRMAN HILL: So again, what that does for me

1 is just I'm not clear how to move forward. I know that now,
2 after this discussion, I would like to have at least another
3 week to read through the conditions and think about the
4 adverse impact.

5 I guess what I'm still -- I still look to the
6 attorneys as to how we would have a discussion about the
7 items that Mr. Hood brought up, without reopening -- having
8 another hearing or just having feedback from the Applicant
9 and CNDI-LA.

10 ZC CHAIR HOOD: We can hear from the parties and
11 Applicant.

12 CHAIRMAN HILL: Okay.

13 ZC CHAIR HOOD: I think that's sufficient enough
14 because we're not increasing. And I'm not trying to take
15 legal advice, I'm just saying let's go to the parties. Let's
16 inquire of them. And then if I'm wrong, Ms. Nagelhout will
17 correct me.

18 CHAIRMAN HILL: Okay. All right. Do we need a
19 break before we do that again? Are you all good?

20 Okay, could the parties come to the table again?
21 I won't send you back this time. You guys can stand again
22 all the time and see what happens.

23 Do they have to introduce themselves again? Ms.
24 Rose, do they have to introduce themselves again?

25 MS. ROSE: Maybe not if they're sitting in the

1 same spot.

2 CHAIRMAN HILL: Okay, if you guys are in the same
3 chairs, you don't have to introduce yourselves again. Okay,
4 it looks like you're in the same chairs.

5 Okay, so Mr. Kadlecek, I'm going to turn to you.
6 You've heard all of this. Basically what you seem to be
7 struggling -- by the way, let's hear what you think you're
8 struggling with.

9 MR. KADLECEK: Okay, so I think we understand what
10 Mr. Hood was trying to propose. The problem is that having
11 to come back to the BZA is where the financing challenge is.
12 And Mr. Lyons can explain it a little bit better.

13 There is an exhibit in the record. It's Exhibit
14 160. It's a letter from a lender that explains why having
15 to return to the BZA creates a financing challenge.

16 The financing for the school is based on a
17 guarantee of 600 students. If the school has to come back
18 to the BZA, even as Mr. Hood is proposing it, there's no
19 guarantee from the lender's perspective that 600 students
20 would ever be allowed at the school. They need to have some
21 certainty that the school is allowed to have 600 students
22 because that is how a charter school is funded. It's based
23 on a per head facilities allotment. And anything less than
24 that, means that the school has no guarantee that it can ever
25 get that financing that is required for it to pay the loan

1 that it's receiving from this lender in order to renovate the
2 school.

3 So if there is any risk that guarantee of 600
4 students and the funding that would come along with 600
5 students could ever go away, the lender is not interested in
6 financing that deal, as far as I understand it. And Jerry,
7 correct me if I'm wrong.

8 But that's the challenge and that is why this
9 school has gone to such great lengths to come up with these
10 35 conditions to satisfy the concerns of the community so
11 that returning the BZA isn't required to address the impacts,
12 to give some mechanism.

13 I understand that the Board is concerned that
14 there is onus on the community but really the way this
15 condition number 30 is set up is it puts the onus on the
16 school. The school has to present to the Zoning
17 Administrator how they complied with the other 34 conditions.
18 And if they're not in compliance with one of them, then they
19 have to come back to the BZA. All it takes is for the Zoning
20 Administrator to say you're not in compliance with Condition
21 17; you have to go back to the BZA.

22 So the onus really on the Applicant, on the
23 school. It is not on the community because they are the ones
24 that have to show in this application package to the Zoning
25 Administrator we are in compliance with all 34 of these other

1 conditions that have been set forth in this record. And
2 that's the way we intended it. We wanted the onus to be on
3 the school because from the lender's standpoint, as long as
4 the school is control of whether it can get to 600, that's
5 fine. But the problem is when there's another person,
6 meaning the BZA, that's in charge of whether 600 can be
7 achieved or not, the bank is not interested in financing
8 because the risk that there is a possibility that 600
9 students could never be achieved.

10 And so that's really the problem here. And so if
11 the school isn't guaranteed 600 students, it really changes
12 the calculus for all the conditions that we came up with.
13 I mean these conditions were crafted on --

14 CHAIRMAN HILL: No, I understand. I got you. So,
15 that's right. What I thought Chairman Hood was trying to
16 propose was another number that there was going to be an
17 evaluation at and you weren't necessarily going to come --
18 I'm you weren't coming back to the BZA. You know we
19 understand you're not coming back to the BZA. And again,
20 what we're charged to do is in terms of the adverse impact
21 for the 600. We're not even really -- financing is not --
22 at least what I have been kind of informed, financing does
23 not necessarily come into play for the zoning issues.

24 But nonetheless, you've just mentioned it so I'm
25 a little struggling with that myself.

1 Mr. Hood, did you have any questions for them, or
2 thoughts, or whatever?

3 ZC CHAIR HOOD: If you're out of compliance, Mr.
4 Kadlecek, then you wind up here anyway, right?

5 MR. KADLECEK: That's right. So the onus is on
6 the school to maintain compliance and to have to prove to the
7 Zoning Administrator's satisfaction that they're in
8 compliance. If he's not satisfied, then we come back here.

9 It's not that the school --

10 ZC CHAIR HOOD: Where is he going to get his input
11 from?

12 MR. KADLECEK: He's getting the input from both
13 parties. I mean some of it --

14 ZC CHAIR HOOD: You're going write down whatever
15 you want, except for one thing, and the community is going
16 to say something else.

17 MR. KADLECEK: Except for the PMP. That is DDOT
18 makes that determination and DDOT tells the Zoning
19 Administrator whether the school is in compliance. So that's
20 a neutral third party and that's the biggest issue. The
21 transportation and the traffic issue are really the biggest
22 issues.

23 And DDOT is one the that informs the Zoning
24 Administrator whether the school is in compliance, not the
25 school itself, and not CNDI-LA.

1 So really, again, the burden really falls, again,
2 on the school to get DDOT satisfied as the neutral third
3 party to tell the Zoning Administrator that they are in
4 compliance with the PMP.

5 ZC CHAIR HOOD: So if this Board approves a lesser
6 cap with the potential to go to 600, that will affect the
7 finance, even though it's going to say the potential is to
8 go to 600, looking, as Board Member White said, a measurement
9 plan. So that's going to affect the financing.

10 MR. KADLECEK: As I understand it, and Jerry,
11 please interrupt me, from a lender standpoint, that is not
12 a guarantee that they could ever have 600 students. They
13 need to know that there is a point in the future that the
14 school can have 600 students with 100 percent certainty,
15 provided that the school is behaving correctly, because of
16 the revenue stream that is needed from those 600 students
17 based on the way that the charter school is funded.

18 So that's a long way of saying yes.

19 ZC CHAIR HOOD: When everybody comes together --
20 I forgot your name, I'm sorry -- how many students do you
21 have when everybody comes together, when you get over to the
22 site?

23 MR. ZAYETS: Can I actually clarify one thing?
24 So in the 300, it's actually not going to be 300. It's going
25 to be 300 LAMB students and how many Kingsbury folks?

1 MR. KADLECEK: I think it was like 150.

2 MR. ZAYETS: Okay, so we're actually starting off
3 at 450. So the difference is from 450 to 600, not from 300
4 to 600.

5 ZC CHAIR HOOD: So not from 300 to 600. So you
6 are going to start off with 450.

7 MR. ZAYETS: Correct. So the delta is only 150
8 students.

9 MS. COTTMAN: Yes, I was imply going to say that
10 the difference between the number of students that LAMB would
11 have on-site plus the number of students that Kingsbury has
12 on site is what takes us to the 450.

13 LAMB has a long waiting list and certainly what
14 we have always done is we have measured growth over time.
15 So your initial statement that LAMB would not be going from
16 310 one year to 600 the next year is correct. It is over a
17 period of time.

18 CHAIRMAN HILL: Okay, can I interrupt for one
19 second? I'm sorry.

20 So did you all have any comments?

21 MR. GILES: I have one.

22 CHAIRMAN HILL: You have to press the button.

23 MR. GILES: I have one. And so I have to
24 apologize. I was out of the country for a month and missed
25 the last meeting.

1 CHAIRMAN HILL: That was nice.

2 MR. GILES: It was all right.

3 My concern about the performance monitoring plan,
4 as I looked at it in an earlier cycle is that it's subject
5 to self-monitoring. And it could have been revised but it
6 seemed like there would be one day a year or four days a year
7 when measurements would be taken.

8 You know so this is something that is relatively
9 easy to game. You have it walk to school day or car pool to
10 school day. And you could create the evidence that would say
11 there is absolutely no problem. And it's this type of
12 eventuality in my mind that makes me feel like there should
13 be an opportunity for the community to come back to the BZA.

14 I'm not saying that this current administration
15 would engage in this. They've been very good in interacting
16 with us but we also hear that the administration of LAMB may
17 change in the future. And so --

18 CHAIRMAN HILL: Okay. Okay. Okay. All right.
19 Okay.

20 MR. GILES: So this is our concern.

21 CHAIRMAN HILL: So Mr. Kadlecek, I don't want to
22 get -- I mean you guys went through conditions. You went
23 through negotiations. I mean there must have been something
24 in terms of like how you got to number 30, the way you go to
25 number 30.

1 MR. KADLECEK: So the way we got to that condition
2 was when we were contemplating how do we satisfy the concerns
3 of the community, understanding that the community wanted a
4 return to the BZA. So we thought is another mechanism that
5 provides a check that doesn't require back to the BZA. And
6 it was just a period of thinking about this other mechanism.
7 And then we realized that -- I'm sorry, this is a little
8 long-winded -- we realized oh, well, the school is going to
9 -- LAMB isn't going to occupy and have its full student
10 enrollment at the beginning and they are going to eventually
11 need to get a new C of O and increase their student
12 enrollment. So we thought, okay, that's the check because
13 the school can't have 600 students without a new C of O. So
14 the way that --

15 CHAIRMAN HILL: Okay, okay, okay. And DDOT has
16 to determine whether or not you're adhering to the PMP.

17 MR. KADLECEK: Right. And just to address the
18 gentleman's comment, we actually provided testimony on this
19 at the last hearing about the way that the surveys are
20 conducted and that it's in conformance with the standards and
21 so forth.

22 CHAIRMAN HILL: Okay, that's DDOT.

23 MR. KADLECEK: Yes, it's DDOT.

24 CHAIRMAN HILL: Okay, does the Board have anything
25 else, by the way?

1 Okay, go ahead, ma'am.

2 MS. THOMPSON: You know again, I apologize but I
3 try to keep up with things. There have been quite a number
4 of submissions.

5 CHAIRMAN HILL: Sure, I understand.

6 MS. THOMPSON: I may also have missed something.

7 CHAIRMAN HILL: That's all right.

8 MS. THOMPSON: What concerns me about these PMPs
9 and committees is essentially, we are just resident
10 volunteers. As you mentioned, in five years we may not even
11 be there.

12 But the onus places onus on us when, in essence,
13 you guys have a clear mandate to look at adverse conditions.
14 It's a bit unfair. We've watched Liaison Committees, for
15 example, the current Applicant -- I'm sorry -- the current
16 occupant, Kingsbury, that never formulated this Liaison
17 Committee and since 2000 has been out of compliance.

18 CHAIRMAN HILL: Right, okay, but that's them.
19 That's really -- I can't really compare that.

20 MS. THOMPSON: I'm also saying -- forgive me for
21 interrupting.

22 CHAIRMAN HILL: Sure, that's all right.

23 MS. THOMPSON: It's sort of a conversation here.

24 But the other concern I have is that with these PMPs and
25 whatnot, you are just accumulating data. It's not as though

1 there is a standard. It's not saying, for example, if idling
2 exceeds this standard, there is some violation. It's just
3 seems to be collecting data.

4 CHAIRMAN HILL: Okay. Ms. Thompson, there is
5 standards. And so it is within the PMP that has the
6 standards. And then DDOT will review those standards. And
7 that's what -- but there it stands.

8 So okay, does anybody else have anything else?

9 Okay. All right, I'm still back to where I need
10 a week, unless you all -- I need a week. I need to look back
11 at the conditions again and really read them through again.
12 I mean we -- I need a week. Does anybody have any problem
13 with taking another week?

14 ZC CHAIR HOOD: Mr. Chairman, could we make this
15 the first case, so I can come?

16 CHAIRMAN HILL: Oh, yes, that would be great.
17 Yes, that would be great. Thank you, Chairman Hood.

18 So we'll put this back on decision, Mr. Moy -- Ms.
19 Rose for next week.

20 MS. ROSE: You're not requesting any documents?

21 CHAIRMAN HILL: Does anybody need anything?

22 MEMBER WHITE: No.

23 ZC CHAIR HOOD: So, Mr. Chair --

24 CHAIRMAN HILL: One second.

25 ZC CHAIR HOOD: -- I guess my proposal is just off

1 the table. I mean that's fine. I don't have a problem with
2 it being off the table.

3 CHAIRMAN HILL: I don't know. If you would like
4 to ask the Applicant to put something together that they
5 think your proposal is --

6 ZC CHAIR HOOD: Well, they can tell us right now
7 because there ain't no sense in wasting everybody's time.
8 Then they hear from now and if you don't, mind, Mr. Chairman
9 -- and CNDI-LA.

10 CHAIRMAN HILL: Sure, go ahead.

11 MR. KADLECEK: Yes, I think from the Applicant's
12 perspective, that would not be workable.

13 ZC CHAIR HOOD: Okay. Can we hear from CNDI-LA?

14 MR. RIHANI: I mean it satisfies coming back to
15 the BZA earlier. And for the number of students, I mean
16 right now the property has about 107 Kingsbury, when next
17 August, assuming LAMB comes, there's going to be 310 plus the
18 107.

19 CHAIRMAN HILL: So 450.

20 MR. RIHANI: Something like that.

21 ZC CHAIR HOOD: We'll just say 450.

22 MR. RIHANI: Yes, but Kingsbury has another BZA
23 order to increase. So during this time, while they're trying
24 to find another home, they are increasing their student
25 headcount.

1 ZC CHAIR HOOD: So, let me ask this question, Mr.
2 Chairman. This may be irrelevant but it's similar. Let me
3 ask you this. Kingsbury, what was their initial student
4 enrollment?

5 MR. RIHANI: I believe back in 2000, and John
6 Strand might know the history here, but the BZA approved them
7 for 300. They never got to 300.

8 ZC CHAIR HOOD: They haven't. How many do they
9 have now?

10 MR. RIHANI: They're at 107, I think; 107, less
11 than 110. But they were recently approved by this body to
12 go up to 175.

13 ZC CHAIR HOOD: And in 2000, they had 300 and they
14 just --

15 MR. RIHANI: The Certificate of Occupancy was for
16 300.

17 ZC CHAIR HOOD: What's the most do you know that
18 they had at one time?

19 MR. RIHANI: John?

20 MR. STRAND: We don't know the number but I don't
21 think --

22 CHAIRMAN HILL: You need to speak into the
23 microphone. You need to speak into the microphone. I'm
24 sorry.

25 MR. STRAND: Sorry, Chairman. I don't think we

1 know the number but I don't think they ever exceeded 160-170.

2 ZC CHAIR HOOD: So -- never mind. I had just
3 better keep that.

4 Well, what I was going to say is maybe the same
5 thing will happen here, that they are hoping to have the
6 whatever the amount is for financing. But that's what I was
7 trying to do, put a proposal that would give us a track
8 record as you see Kingsbury, which through your own testimony
9 says they haven't made it to where they were trying to go.
10 And I'm not saying that's going to happen here because I
11 understand this school is very popular.

12 MR. RIHANI: Yes, I mean I think they have a
13 pipeline, I heard last time of a thousand Applicants between
14 them. So I mean we're looking at August at about 450. And
15 then when Kingsbury leaves, eventually, that 450 is going to
16 drop let's say by 150 and then LAMB is going to start
17 growing.

18 ZC CHAIR HOOD: I just put that proposal out
19 there. I can't predict the future but that's something that
20 I know has worked in the past.

21 Thank you, Mr. Chairman.

22 CHAIRMAN HILL: And this is just we're back to
23 deliberating.

24 Again, what that's doing -- and this is where,
25 again, I'm continuing to have this discussion is that they

1 are coming back -- that's the whole thing, whether they have
2 to come back to us or not. And all of these conditions were
3 based upon the 600 and them not having to come back to us.

4 So if we then -- that's where I'm kind of stuck.
5 If we then lower that number and they have to come back to
6 us again, do all these conditions apply again? And I'm just
7 saying that's where I'm kind of -- so it's either these
8 conditions with the 600 that we're comfortable, at least for
9 me, that I'm going to continue to look at through this week
10 is you know are these things that are in place now enough of
11 a comfort level for me, because I just want to vote, to do
12 the 600. Or do we just got to go back and then none of these
13 conditions really matter? And if they have the 310, then I'd
14 be asking the Applicant whether these conditions apply at
15 all.

16 So, that's why -- so next week still?

17 VICE CHAIR HART: Mr. Chairman, sorry. What I was
18 thinking about was Mr. Kadlec said that the 35 conditions
19 were based on the 600. And as you just said, we may not have
20 35 conditions if we are only approving the 310. And so I
21 just don't know which ones we'd be removing. So I'm thinking
22 that we may have to have something from Mr. Kadlec to be
23 able to do that. I don't know how we say yes to all 35 of
24 these and the 310. See what I'm saying?

25 Yes, we can cut out the ones that actually say 600

1 but that still doesn't mean that this is the same number or
2 the same -- or the written this way for 310 as they are for
3 --

4 CHAIRMAN HILL: Right and so that's part of my
5 discussion. I mean next week I think it's we're deciding
6 whether or not we are comfortable with the 600 and the
7 conditions were set forth. And if we're not, then we deny
8 the application.

9 And so or we could -- it seems like this is here
10 for the 600. And if it was here for the 310, then that's
11 another discussion.

12 So those are my thoughts.

13 MEMBER WHITE: Based upon the feedback I'm getting
14 from the Applicant, it sounds like those 600 is what they're
15 requesting. And I don't see, at least from what I'm hearing,
16 that there is any flexibility there because of some of the
17 reasons that they communicated earlier.

18 So next week, my thought is to move along the
19 application based on the 600 and the conditions.

20 CHAIRMAN HILL: Okay, great.

21 ZC CHAIR HOOD: I would agree, Mr. Chairman. I
22 think we can -- never mind. I'm fine with next week.

23 CHAIRMAN HILL: All right. So we'll see you first
24 thing, Mr. Hood, next week.

25 Ms. Rose?

1 MS. ROSE: I was just going to state the date and
2 time.

3 CHAIRMAN HILL: Okay, please do.

4 MS. ROSE: The Board will defer decision in
5 Application 19531 until the public meeting of January 24,
6 2018 at 9:30 a.m.

7 CHAIRMAN HILL: Yes, ma'am. Okay, we're going to
8 take a break.

9 MR. KADLECEK: Mr. Hill, one more question.

10 CHAIRMAN HILL: Yes?

11 MR. KADLECEK: Will you be accepting draft orders
12 in this case?

13 CHAIRMAN HILL: Do we want draft orders?

14 Okay, we'll take a draft order.

15 MR. KADLECEK: I mean I guess we'll wait until
16 next week. We'll wait until you decide.

17 CHAIRMAN HILL: Oh, okay.

18 MR. KADLECEK: I just wanted to put that out there
19 because I thought it might be helpful, given the very large
20 volume of documents in this case to have a draft order --

21 CHAIRMAN HILL: Sure.

22 MR. KADLECEK: -- and a clarification on
23 conditions.

24 CHAIRMAN HILL: I can -- Mr. Kadlecek, we don't
25 need anything from you. We don't need a draft order. We

1 don't need anything. We have enough in front of us right
2 now.

3 MR. KADLECEK: Right now, yes.

4 CHAIRMAN HILL: Right now. All right.

5 Okay, we'll see you all -- or maybe -- I don't
6 know whether we'll see you all next week or not.

7 We're going to take a break.

8 (Whereupon, the above-entitled matter went off the
9 record at 11:32 a.m. and resumed at 11:45 a.m.)

10 CHAIRMAN HILL: All right, so let's start again.

11 Ms. Rose.

12 MS. ROSE: For 19600.

13 CHAIRMAN HILL: Yes, ma'am, yes.

14 MS. ROSE: This is application 19600 of Team
15 Washington Inc., doing business as Domino's Pizza, pursuant
16 to 11 DCMR Subtitle X, Chapter Nine, for a special exemption
17 under Subtitle U, Subsection 513.1(c), and pursuant to
18 Subtitle X, Chapter Ten, for a variance to relieve conditions
19 of Subtitle U, Subsection 513.1(c)1, to establish a fast food
20 and food delivery establishment in the MU-27 and R-13 zones
21 at premises 2330 Wisconsin Avenue, NW, Square 1300, Lot 815.

22 CHAIRMAN HILL: Okay, great. Is the Board ready
23 to deliberate? Okay, I can start. We took a lot of
24 testimony for this the last time, and there was a lot of
25 discussion with the Office of Planning and the community on,

1 well, there was a lot of discussion from the community. And
2 a lot of those issues were not ones that pertained to zoning,
3 or what was in front of us in terms of the special exception
4 and the variance.

5 The Office of Planning was in denial, they were
6 not in agreement in terms of how the variance test was being
7 met. I also kind of struggled with that a little bit,
8 because I thought that they, the Applicant, had a pretty good
9 case in terms of how the variance test was being met.

10 And, however, then we did get a supplemental
11 statement from Office of Planning where, after they reviewed
12 the supplemental that was provided by the Applicant, they
13 also now did agree with the argument in terms of how the
14 standard had been met to grant this application.

15 After reading the supplemental statements, as well
16 as the Office of Planning supplemental and going back and
17 looking at the record, I now feel comfortable in terms of how
18 the test was being met. I was going to -- I was not going
19 to be in favor, probably, had I not got the supplemental and
20 the analysis, the further analysis from the Office of
21 Planning.

22 But now I'm in support of the application. Does
23 the Board have any other thoughts?

24 VICE CHAIR HART: Mr. Chairman, only that the, I
25 would agree with you in terms of the latest submissions that

1 the Applicant has provided, as well as the Office of Planning
2 supplementary report in Exhibit 62, which is recommending
3 approval of the relief.

4 In the OP report, it stated that the Applicant,
5 I guess the piece that it was having an issue with was the
6 exceptional situation resulting in a practical difficulty.
7 And it stepped through the aspects that it believes may be
8 case, that it was an exceptional situation.

9 And that had to do with the fact that block is
10 only, is one of only two that had, it was a through lot with
11 frontage on both the streets that the property was located
12 mid-block. So direct access from the front to the rear is
13 blocked by the adjacent buildings.

14 And that the Applicant has provided evidence that
15 it contained two entrances, which involves implementing the
16 extra security measures, makes the location too expensive for
17 most potential tenants, and making it difficult to market.
18 And I thought that that was sufficient to meet that prong of
19 the variance test.

20 I didn't have any issues with the other prongs of
21 the variance test, I thought they met those as well. So I
22 would be in support of the application for this.

23 And then there were the conditions for the case,
24 and they were a number of the conditions. I think there were
25 six conditions about the tenant's hours of operation; the

1 trash disposal; the trash cans, where they're going to be
2 placed; the signage along this area, 37th Street; and
3 obstructing the delivery trucks delivered, ask drivers to
4 turn the truck engine off and refrigeration unit for the
5 delivery trucks during store deliveries.

6 And then finally the one about, oh, the
7 installation of a mirror on the front main entrance. But I
8 thought those were fine conditions to add to the application.

9 MEMBER WHITE: Mr. Chairman, I was not present
10 during the hearing. I just wanted to mention that for the
11 record. But I did review the record thoroughly and listened
12 to the testimony online. And I think that with the
13 supplemental reporting that they provided for OP, OP is now
14 in support. As well as the fact that DDOT has no objections.

15 This is a Domino's Pizza that would be operating
16 on Wisconsin Avenue. And one of the things that DDOT noted
17 was that the Applicant will not be allowed to block travel
18 lanes on Wisconsin Avenue as part of their pickup, drop-off,
19 and delivery operations. And then finally, as part of the
20 criteria, there was also a note that the proposal's not
21 inconsistent with the federal elements of the comp plan, it
22 stated in Exhibit 50.

23 So I would be in support, in spite of the fact
24 that, you know, there is some opposition to this business
25 operating. But looking at the criteria, I think they did

1 meet the criteria for a special exception and variance.

2 CHAIRMAN HILL: Okay, all right, I would agree
3 with everything that my colleagues have just said, including,
4 I guess, in terms of the conditions. Right, there were the
5 six conditions, I guess, if, when this is written up, if it
6 could be written so it's the Applicant rather than Domino's
7 in the conditions, because it could be a different tenant,
8 rather than just Domino's.

9 And then also, as Ms. White mentioned, the
10 comments from DDOT concerning the Applicant will not be
11 allowed to block travel lanes on Wisconsin Avenue, NW, as
12 part of their pickup, drop-off, and delivery operations.

13 So I would go ahead and make a motion to approve
14 Application No. 19600, as read and captioned by the
15 secretary, as well as the six conditions as we just
16 mentioned, removing the Domino's' name and putting Applicant
17 in there, as well as the comment from DDOT, and ask for a
18 second.

19 VICE CHAIR HART: Second.

20 CHAIRMAN HOOD: Second.

21 CHAIRMAN HILL: Motion been made and seconded.

22 All those in favor.

23 (A chorus of ayes.)

24 CHAIRMAN HILL: All those opposed. The motion
25 passes, Ms. Rose.

1 MS. ROSE: Who made the second? Staff will record
2 the vote as 4-0-1, with a motion by Mr. Hill, second by Mr.
3 Hart, with Ms. White and Mr. Hood in support, one Board seat
4 vacant, with six conditions as noted by the Board.

5 CHAIRMAN HILL: Summary order. Thank you.

6 MS. ROSE: Next we have 19573, Appeal of Nefretiti
7 Makenta, pursuant to an 11 DCMR, Subtitle Y, Section 302, of
8 the decision made on May 26, 2017 by the Zoning Administrator
9 and the Department of Consumer and Regulatory Affairs to
10 issue building permit B-1707.

11 This is for amending building permit B-1603868 to
12 alter the approved third floor of addition of the RF-1 zone
13 at premises 3616 11th Street, NW, Square 2829, Lot 169.

14 There are two preliminary matters in this case.
15 Yesterday the Appellant filed a document which the Board
16 needs to address, and there are two motions to dismiss before
17 the Board.

18 CHAIRMAN HILL: Okay, great. Is the Board ready
19 to deliberate? Okay. In terms of the record, there was --
20 this is a long story. There was the Appellant had put
21 something into the record that we had not asked for. But in
22 that submission, there was some discussion about an ANC
23 person who was here who did have an opportunity to testify.

24 The ANC is always a party to the application. But
25 it is only parties that we actually hear from in terms of the

1 appeal. In the letter, it seemed to indicate that the ANC,
2 there was someone from the ANC representing the ANC.

3 What we found out later from the ANC was that
4 there was somebody here from the ANC, he just happened to be
5 from the ANC, was not representing the ANC. But we didn't
6 know that at the time. So we allowed the ANC person to
7 submit something into the record. And I believe it's Ms.
8 Farmer, Commissioner Farmer.

9 So Commissioner Farmer submitted something into
10 the record, and then we had stated when we opened the record
11 for Commissioner Farmer's submission that there were going
12 to be, that the parties could reply, or provide feedback to
13 that submission.

14 So they have done that, and so we are going to
15 accept those items from both the Appellant and the intervenor
16 for the responses to the submission by the commissioner. So
17 that's number one, okay.

18 Number two is the, oh, the motion to dismiss.
19 So the motion to dismiss for failure to state a claim, I did
20 struggle a little bit with this as I didn't necessarily think
21 that the claim was clear in the beginning. But after hearing
22 the arguments from the Appellant, I was able to understand
23 what the claim was better, and so I would not be able, or in
24 favor to dismiss for the failure to state a claim on that
25 motion.

1 And that was both from DCRA as well as the
2 intervenor. So I'd be denying those motions, unless the
3 Board has any other thoughts?

4 VICE CHAIR HART: I would concur with that as
5 well, Mr. Chairman.

6 MEMBER WHITE: Yeah, I would concur that, with
7 your statement, Mr. Chair.

8 CHAIRMAN HILL: Okay, so now that brings us to
9 where we're going to deliberate on the merits of the appeal.
10 Would someone like to start?

11 VICE CHAIR HART: Sure, excuse me. The Appellant
12 provided us with a case that is based on the premise that
13 the, it was called a balcony or a side deck, that the Zoning
14 Administrator had approved as part of the building permit for
15 an adjoining property is a material change from the approved
16 plans. And that that deck was really roof deck on a
17 penthouse that should follow the setback rules for roof
18 decks. And maybe I should say should follow the zoning
19 regulations.

20 The Appellant also alleges that because this deck
21 is on a roof, it also should have a railing that should also
22 be set back from the edge. And the Applicant I guess -- not
23 the Applicant, the person who's owning the adjacent property,
24 they did actually go through a process of changing their
25 plans in terms of providing a railing. And that railing is

1 not set back from the edge. But I'll kind of discuss that
2 in a minute.

3 So kind of how should we see this case? First,
4 I do not believe that the ZA, Zoning Administrator approval
5 of the side deck is a material change from the approved BZA
6 border drawings. The relief that was set back in December
7 of 2016 with the next door neighbor, that project, was, the
8 relief was really from the front to side.

9 And this relief did not change with the addition
10 of the side deck or the balcony, as it is not included in the
11 approved drawings, which, rightly so, only focused on the
12 front of the building.

13 The BZA order from that case correctly referenced
14 the exhibit in that case. And I'm only saying that because
15 the Applicant had, excuse me, the Appellant had described how
16 the, she thought that there was an error, and in that BZA,
17 version of BZA from December 5, 2016.

18 So next I'll point to the ZA Exhibit 36-C, which
19 describes the ZA guidance on the balcony issue versus the
20 roof deck. So this guidance was provided on December 22,
21 2016 to the Office of Planning and Zoning staff. And I find
22 this important because the ZA says that it has seen cases
23 citywide where a deck project has come in that's not on a
24 penthouse but needed to have some interpretation. And this
25 was one of those interpretations.

1 So there was some question about the terminology,
2 about a balcony or side deck. I think that the fact that the
3 ZA wanted to differentiate between decks that are on the roof
4 and other decks is I think appropriate and fine. But the ZA
5 provided what I believe was a reasonable interpretation.

6 It noted that the shallowness of the projection
7 that, was what was differentiating between a balcony and a
8 roof deck. And that shallowness was basically anything that
9 was less than ten feet functioning as a balcony. And
10 anything that was greater than ten feet would be seen as a
11 deck that would need to have the setback, the appropriate
12 setbacks. In this case, this roof side deck was actually a
13 less than ten feet.

14 I also note that the Appellant has provided some
15 photos from the roof, and there was a contention that people
16 would be able to see into, there were some privacy concerns.
17 So people would be able to see into, there were some windows
18 that were on a court. And that court was in a closed court,
19 excuse me, a closed court that was next to the next door
20 neighbor that was building the side deck.

21 Those photos actually show that it was very
22 difficult to see, the court itself was not that, was fairly
23 shallow. While it was, I'm not exactly sure how long, but
24 it looked like it was only maybe two, possibly three feet
25 wide. It was difficult to understand, and we didn't really

1 see how someone standing on that deck would be able to see
2 into that, into the windows that were on the side.

3 The windows, there was a story difference between
4 where the deck was and then where the windows were on the
5 adjoining property. So you'd have to kind of look down into
6 the court, into the window, to be able to actually see
7 anything. And that was really only on the top level. Once
8 you looked at the windows that were both beneath that, there
9 was, it was almost impossible to see anything because of the
10 angle of view.

11 And so I thought that you might be able to
12 somewhat see, you may have somewhat of a privacy concern, but
13 I didn't think it was a major privacy concern. And the other
14 concerns about privacy, which were basically from other
15 windows along the adjoining property, looking towards the
16 Appellant's property, those were beyond the scope of the
17 appeal.

18 Because the Applicant really, the appeal itself
19 was focused on that deck and the ability for the Applicant
20 to, excuse me, the next door neighbor, to have any impacts
21 on the Appellant's property. So I just didn't feel, I didn't
22 feel as though the Appellant had provided the sufficient
23 information to be able to support her claim.

24 I didn't that BZA erred in making the change, or
25 which was allowing the side deck, or that there would be

1 privacy concerns that needed to be mitigated. So I would be
2 supportive of I guess denying the appeal.

3 MEMBER WHITE: Thanks, Mr. Vice Chair. Yeah, this
4 was a very lengthy case, and but I think as Board members,
5 we gave the Appellant serious consideration in terms of her
6 arguments and made sure that the filings that she did make
7 were considered. So again, you know, this is an appeal of
8 the Zoning Administrator to issue a building permit amending
9 B-1603868 building permit to alter the approved third floor
10 addition in the RF-1 zone, located at 3616 11th Street.

11 In the appeal, the Appellant argues the second
12 floor north side deck was not included in the plans that were
13 originally approved by the Board, and therefore the revisions
14 would require a modification of consequence. And the side
15 deck does not need the setback requirements, and the side
16 deck would adversely affect the Appellant with respect to
17 light and privacy.

18 There was a number of information that was
19 presented in the record. As Mr. Chairman mentioned, we even
20 accepted a statement from one of the commissioners that was
21 submitted indicating that, you know, the permits had a
22 negative impact on the Appellant and the community.

23 So the primary issue is whether or not the ZA, the
24 Zoning Administrator, erred in issuing the revised permit,
25 which revised the original permit to address a requirement

1 of the construction codes that new construction retain a ten
2 foot horizontal clear space around the operating chimney on
3 the Appellant's property.

4 So the first step that we took, that I took, was
5 looking at Subtitle A, Section 30410, regarding modifications
6 of BZA. The revised permit did not violate the zoning
7 regulations by carving out a seven foot semicircle out of the
8 proposed third floor side deck. So in other words, the
9 Zoning Administrator is authorized to make determinations
10 that might result in modification to approved plans.

11 So in this case, the ZA determined no added zoning
12 relief was needed, and the modifications were made to comply
13 with construction codes. So the question is did the Zoning
14 Administrator correctly determine that the side deck was not
15 subject to the penthouse setbacks. So in looking at this,
16 you looked at the requirements under 11-C, Section
17 1502.1(c)2.

18 As a permitted story in an RF-1 zone, the third
19 floor of the building does not constitute a penthouse under
20 Subtitle B 1002. The side deck is a balcony, not a roof
21 deck, as outlined in Exhibit 36-C, which the ZA provided
22 guidance on as part of testimony and in the record.

23 The rooftop deck is an uncovered deck projecting
24 ten or more feet from the building wall. A balcony is an
25 uncovered deck that projects no more than ten feet from the

1 building wall, and it's exempt from the penthouse setback
2 requirements. In Exhibit 36-B in the revised permit plans,
3 the side deck projects. The side deck projects out no more
4 than six feet from the building wall. So in that respect,
5 I found that the ZA did not err in making that determination.

6 So I think Mr. Vice Chair commented on the guard
7 rail issue already, so I would concur with his comments with
8 respect to whether or not the guard rail was required on the
9 side deck under the DCRA Building Code. And so the finding
10 there was that the side deck did in fact require protection,
11 a guard rail pursuant to that section. And a revised guard
12 rail permit was filed to clarify for the record.

13 So this doesn't change the scope of the appeal,
14 nor subject the side deck to the penthouse requirement. So
15 with that long-winded response, I would find while I was very
16 concerned, you know, about some of the things that the
17 Applicant was expressing. But under the rules, under the
18 test, under the criteria that we had to look at in terms of
19 how the ZA made their decision, I find that the ZA did not
20 err in this particular case.

21 CHAIRMAN HOOD: Mr. Chairman, I believe that the
22 ZA first of all, while I know this is a gray area in terms
23 of the viability of the penthouse. And I think our
24 regulations may salient to a point, but I think with the
25 interpretations on the administrator, one of the things you

1 should not do is be making substantial changes without going
2 back. And those changes should be plans that lean on the
3 initial approval of the BZA.

4 Again, as I stated, this is a gray area. I just
5 don't think that this rises to the level to overturn this
6 today. But this from my standpoint is a gray or something
7 that the Zoning Commission might need to tighten. But I
8 think its interpretation with all the evidence that's in this
9 case will not rise to the occasion for me to overturn his
10 decision at this point.

11 CHAIRMAN HILL: Okay, thank you. I'd agree with
12 everything my colleagues. I thought that, again, the
13 Applicant didn't raise enough information that I thought that
14 the ZA erred. I won't repeat everything in terms of
15 everything, again, that my colleagues said, but I didn't
16 think that there was a violation of a Section 304.10 in terms
17 of modification to the BZA orders.

18 I thought that from the initial application,
19 again, it was really the front of the building that the
20 initial order was in reference to. And the ZA is authorized
21 to make determinations that might result in modifications to
22 approved plans. I do think that the ZA determined that the
23 side deck was not subject to the penthouse setback
24 requirements of 11(c), Section 1502.1(c)2.

25 I do think, again, that the, how the guard permit

1 was handled was handled correctly, and that the guard permit
2 did not change the scope of this appeal. And that the
3 penthouse requirements, again, were not under consideration
4 there, that area. So that being the case, I mean, this was
5 a very lengthy process, I mean it's not process, hearing.

6 We've heard, we've taken a lot of testimony. This
7 has gone on, and I think that the Applicant does bring up
8 something that, you know, we look at each thing, we look at
9 each case individually. And this one I feel, again, the
10 changes that were made were not something that were outside
11 of the scope of the ZA.

12 And so I would also be in favor of denying the
13 appeal. So does anyone have anything else to add? Okay,
14 that being the case, then I'll go ahead and make a motion to
15 deny Appeal No. 19573 as read by the Secretary and ask for
16 a second.

17 VICE CHAIR HART: Second.

18 CHAIRMAN HILL: Motion is made and seconded. All
19 those in favor.

20 (A chorus of ayes.)

21 CHAIRMAN HILL: All those opposed? The motion
22 passes. Ms. Rose.

23 MS. ROSE: The staff would record the vote as 4-0-
24 1. The motion by Mr. Hill, second by Mr. Hart, with Ms.
25 White and Mr. Hood in support of the motion to deny the

1 appeal. One Board seat vacant.

2 CHAIRMAN HILL: Do we do a summary order? Okay,
3 thank you.

4 (Whereupon, the above-entitled matter went off
5 the record at 12:14 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: Board of Zoning Adjustment

Date: 01-17-18

Place: Washington, DC

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Court Reporter

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