

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY,

JUNE 23, 2009

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Marc D. Loud, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD Chairman
SHANE L. DETTMAN Vice Chairman
(NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:
LORI MONROE, ESQ.

This transcript constitutes the
minutes from the Special Public Meeting held
on June 23, 2009.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

TABLE OF CONTENTS

WELCOME:

Marc Loud..... 4

W STREET, SE, LLC

APPLICATION NO. 17562:..... 6

Ex. 50 - Approved Plans/Waiver Request..... 6

6 Month File Time Waiver - No Action 8

15-Unit to 18-Unit Modification - Deny..... 10

Waive Construction Deadline - Approve..... 13

Motion to Deny Approved Plan Mod..... 14

Vote to Approve Motion..... 14

Motion to Grant Extending 6 Month

Deadline for Construction..... 16

Vote to Approve Motion..... 17

BABY LAND DEVELOPMENT CENTER

APPLICATION NO. 17867:..... 18

Defer Decision to June 30, 2009..... 21

KOO YUEN

APPLICATION NO. 17870 - ANC-7A:..... 22

Ex. 41 - ANC-7A06 Filing..... 23

Ex. 42 - 6/22/09 Opposition Letter..... 23

Motion for Reconsideration..... 24

Motion to Deny Reconsideration..... 26

Vote to Deny Reconsideration..... 27

THE CRAFTSMAN GROUP, INC.

APPLICATION NOS. 17927 & 17928:..... 28

Board Deliberation..... 30

Motion to Approve Application 17927..... 38

Vote to Approve Application 17927..... 39

Motion to Approve Application 17928..... 40

Vote to Approve Application 17928..... 40

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

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

2 9:52 a.m.

3 CHAIRMAN LOUD: Good morning, this
4 meeting will, please, come to order. Good
5 morning, ladies and gentlemen. This is the
6 June 23rd Public Meeting of the Board of Zoning
7 Adjustment of the District of Columbia. My
8 name is Marc Loud, Chairperson. Joining me
9 today are Vice Chair Shane Dettman
10 representing the National Capital Planning
11 Commission, Mr. Peter May representing the
12 Zoning Commission.

13 To my left is Mr. Clifford Moy,
14 Secretary of the BZA, and to his left Ms.
15 Beverley Bailey, Zoning Specialist. And
16 walking into the room is Ms. Lori Monroe from
17 the Office of the Attorney General.

18 Copies of today's meeting agenda
19 are available to you and are located to my
20 left in the wall bin near the door. We do not
21 take any public testimony at our meeting,
22 unless the Board asks specifically for someone

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 to come forward.

2 Please, be advised that this
3 proceeding is being recorded by a Court
4 Reporter and is also webcast live.
5 Accordingly, we must ask you to refrain from
6 any disruptive noises or actions in the
7 hearing room. Please, turn off all beepers
8 and cell phones.

9 Does the staff have any preliminary
10 matters?

11 MR. MOY: Yes, we do, Mr. Chairman,
12 but staff would suggest that we take those
13 matters up on a case-by-case basis.

14 CHAIRMAN LOUD: Okay. Thank you,
15 Mr. Moy. Why don't we proceed with the agenda
16 for this morning?

17 MR. MOY: Okay. That first case
18 for decision by the Board was -- as a matter
19 of fact, good morning, Mr. Chairman, Members
20 of the Board.

21 We have a request for a
22 modification of approved plans and a waiver of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 the six month time requirement to Application
2 No. 17562. This is of W Street, SE, LLC,
3 pursuant to section 3129 of the Zoning
4 Regulations.

5 The original application, Mr.
6 Chairman, is pursuant to 11 DCMR 3103.2, for a
7 variance from the off-street parking
8 requirements, under section 2116, and pursuant
9 to 11 DCMR 3104.1, for a special exception to
10 construct six three-unit row dwellings, under
11 section 353 in the R-5-A District at premises
12 1749 - 1759 W Street, S.E. This is in Square
13 5755, Lots 38 - 43.

14 Very quickly, Mr. Chairman, on May
15 29, 2009, the applicant filed a request for
16 minor modification of approved plans and a
17 waiver of the 6 month time requirement
18 pursuant to section 3129. This is identified
19 in your case folders as Exhibit 50.

20 The applicant also -- let me run
21 down very quickly three actions for the Board
22 on this request, Mr. Chairman.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 First is a waiver to the 6 month
2 time requirement to file, pursuant to section
3 3129.3.

4 No. 2, approval of the minor
5 modification, pursuant to 3129.

6 And finally, waiver of the 6 month
7 time requirement to commence erection or
8 alteration as approved in a building permit
9 pursuant to section 3130.3.

10 The staff notes for the Board that
11 there is a new amended section 3129 which went
12 into effective the first week of June 2009, as
13 well as an added 3130.6 in the Zoning
14 Regulations.

15 The Board is to act on the request
16 and that completes the staff's briefing, Mr.
17 Chairman.

18 CHAIRMAN LOUD: Thank you, Mr. Moy.
19 That was an excellent overview of the case.
20 In fact, it was so thorough that I can
21 probably be brief with respect to my
22 recommendations on the case and I think we are

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ready to deliberate on it.

2 Let me start with the easiest thing
3 first. The applicant's request for waiver of
4 the 6 month deadline of modified plans. I
5 think is now moot, because the new rule is in
6 effect. This is the first decision meeting we
7 are having with the new 3129 in effect.

8 And under the new rule, 2 years are
9 allowed. The decision was May 29, '07. The
10 request for relief was filed, I believe, May
11 29, '09, so that takes care of one of the
12 three.

13 With respect to the second of the
14 three request for relief raised by the
15 movement, the minor modification and you
16 talked, Mr. Moy, about the original relief
17 being 15-units and how with the proposed plans
18 the applicant now wishes to go to 18-units. I
19 think upon reviewing the files, it is
20 certainly my position and I'll open it up to
21 other Board Members as well, that it's not a
22 minor modification.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And as such, it would not be
2 covered by 3129. It's not a minor
3 modification for a couple of reasons. First
4 and foremost, Zoning Commission Order No. 08-
5 12 passed November 14,2008, rezones the
6 property in question to the R-3, which does
7 not allow multi-family.

8 So that the request to go up to 18-
9 units from the 15 would not only require
10 modification relief, it would require a use
11 variance. And the new 3129 provides that when
12 a proposed modification is not minor, that a
13 hearing shall be conducted. It's not
14 permissive. It's a mandatory hearing shall be
15 conducted to determine whether the
16 modification is in order.

17 So in this case, I don't think that
18 there is any grounds to consider this a minor
19 modification and to rule upon it at this
20 decision meeting without the benefit of the
21 hearing.

22 That being said, and I don't know

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 if the applicant is present this morning or
2 not, but that being said, in order for the
3 applicant to obtain the relief that the
4 applicant is looking to get, there would need
5 to be (A) a separate hearing, and at that
6 hearing, the relevant standard would be the
7 use variance and the applicant would have to
8 meet the burden of the use variance.

9 Also, because we're shifting
10 radically from a section 353 special exception
11 to a use variance, it would be very
12 appropriate to readvertise the case all over
13 again with the applicant going through our
14 front office process of filing the proposed
15 plans in our office notifying all of the
16 persons that get notice when a case is
17 initially filed.

18 So the second area for relief,
19 namely the modification, I don't think would
20 be appropriate or justified by the record
21 before us. And I'll turn to Board Members for
22 any thoughts you may have.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER MAY: I would just say
2 having reviewed the whole record, I think that
3 I would agree with the Chairman that the
4 appropriate action to take, at this point,
5 would be to require a hearing to consider the
6 proposed changes in the case.

7 CHAIRMAN LOUD: Okay. Thank you,
8 Mr. May. I think that the third area of
9 relief sought by the movement was a waiver of
10 the 6 month deadline to commence construction
11 after building permit is issued and I think,
12 in this case, the applicant got his building
13 permit on the original 15 in October of 2008.

14 The 6 months has lapsed. Construction has
15 not commenced. And the only way that he could
16 move forward, even on the 15, would be for us
17 to extend that deadline.

18 We are authorized to do that under
19 our section 3100.5, which allows us to waive a
20 number of our rules if good cause is shown.
21 And I'll just pull the rule right quick as I
22 walk through my thoughts on this.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 I think in the underlying pleadings
2 of what the applicant presents before us is
3 the market downturn and the market downturn
4 impacting significantly his ability to (A) get
5 gap financing in place from the D.C.
6 Department of Housing and Community
7 Development and the collapse of the market, I
8 think, for duplex units.

9 And as a result of which, he is
10 seeking some additional time to complete this
11 project. We have had a number of cases like
12 this in the last 2 or 3 months and this falls
13 in line with those cases. And certainly, the
14 existence of gap funding in the project, which
15 is reflected by a letter in the record from
16 the Department of Housing and Community
17 Development suggests that there was always
18 some financial challenges with the project,
19 such that it needed gap funding in the first
20 place.

21 And I think it is fairly well-known
22 that funding from the Housing Production Trust

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Fund has abated somewhat and is slowing down
2 projects. So I think he has made a very good
3 cause showing, at least to my way of thinking,
4 that the 6 month deadline for commencing
5 construction is something that we should waive
6 and allow this applicant the opportunity
7 whether the goes for 15 or 18 to at least get
8 the project back on track from that
9 perspective.

10 Board Members?

11 COMMISSIONER MAY: Agree.

12 CHAIRMAN LOUD: Okay. It appears
13 as though there is consensus on the latter of
14 the three issues that we discussed. And I'm
15 going to ask you, Mr. Moy or Ms. Monroe, do we
16 need to vote on each of these three issues?
17 Okay. Do we need to vote on -- which do we
18 need to vote on?

19 MS. MONROE: I think as far as the
20 3100.5 waiver, you don't need to vote on that.
21 Really, whether or not you think it is a
22 minor mod and how you want to handle whether

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you want to have a hearing, I would -- that
2 would be -- that's the substance of the
3 question. I would vote on that.

4 CHAIRMAN LOUD: Okay. All right.
5 So let me make the motion just on that issue
6 of I would move that we deny the applicant's
7 motion for a minor modification to his plans
8 to increase from 15-units to 18-units. This
9 is Application No. 17562. And I would move
10 that for all the reasons I have already
11 discussed. Is there a second?

12 VICE CHAIR DETTMAN: Second.

13 CHAIRMAN LOUD: The motion has been
14 made and seconded. Is there further
15 deliberation?

16 Hearing none, all those in favor
17 say aye.

18 ALL: Aye.

19 CHAIRMAN LOUD: All those opposed?
20 Any abstentions? Mr. Moy, can you read back
21 the vote?

22 MR. MOY: Yes, Mr. Chairman. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 staff would record the vote as 3-0-2. This is
2 the motion of the Chair, Mr. Loud, to deny the
3 request for a modification of approved plans
4 from 15-units to 18-units, seconded by the
5 Vice Chair, Mr. Dettman. Also in support of
6 the motion are Mr. May. Again, that vote is
7 3-0-2.

8 Just for the record, Mr. Chairman,
9 staff would record the waiver for the 6 month
10 to file the application was rendered moot, no
11 vote on that. And the request for the waiver
12 of the 6 month to construct after the building
13 permit, staff understands that that was
14 approved by consensus.

15 CHAIRMAN LOUD: Well, let me just -
16 - I want to be real solid and tight for the
17 applicant, so that he knows he can go forward
18 on the 6 month issue. So if it's done
19 pursuant to my authority as presiding
20 official, maybe we should say that or if we
21 need a vote, an actual vote --

22 MS. MONROE: If you feel more

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 comfortable, vote.

2 CHAIRMAN LOUD: Let's vote on it.

3 MS. MONROE: Okay.

4 CHAIRMAN LOUD: Because I think
5 it's important that since the 6 months have
6 expired, that there is no gray area and this
7 applicant knows he can move forward at least
8 on the 15.

9 I would like to move that we grant
10 the relief to the applicant in 17562 that
11 would extend the 6 month deadline for
12 commencing construction on the original 15 to
13 one year after the date of the order in this
14 case.

15 MS. MONROE: Okay. Which order
16 now?

17 CHAIRMAN LOUD: The one that we are
18 going to do right now denying --

19 MS. MONROE: On the -- okay.

20 CHAIRMAN LOUD: -- the modification
21 and granting the 6 months, yeah. Is there a
22 second?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 COMMISSIONER MAY: Second.

2 CHAIRMAN LOUD: Further
3 deliberation?

4 Hearing none, all those in favor
5 say aye.

6 ALL: Aye.

7 CHAIRMAN LOUD: All those opposed?
8 All those in abstention? Mr. Moy, can you
9 call back the vote?

10 MR. MOY: Yes, Mr. Chairman, with
11 pleasure. That vote is 3-0-2 on the motion of
12 Mr. Loud, the Chair, seconded by Mr. May.
13 This is to grant the relief to extend the 6
14 months to one year after the date of the
15 instant order. The motion is supported by Mr.
16 Dettman. Again, that vote is 3-0-2.

17 CHAIRMAN LOUD: Thank you, Mr. Moy.
18 Is there anything further in that case?

19 MR. MOY: Not on this case, sir.

20 CHAIRMAN LOUD: Okay. Why don't
21 you call the next case?

22 MR. MOY: The next case for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 decision is Application No. 17867 of Baby Land
2 Development Center, pursuant to 11 DCMR
3 3104.1, for a special exception to establish a
4 child development center, 40 children and 6
5 staff, under section 205, in the R-2 District
6 at premises 4628 H Street, S.E. This is in
7 Square 5359, Lot 328.

8 On June 2, 2009, the Board convened
9 this application, deliberated and rescheduled
10 its decision to June 23rd. The Board allowed
11 filings, additional filings from DDOT and OP
12 by June 17, 2009. As of today, Mr. Chairman,
13 there are no filings in the record case.

14 So what is before the Board is to
15 act on the merits of the special exception
16 request pursuant to the requirements under
17 section 205. And that completes the staff's
18 briefing, Mr. Chairman.

19 CHAIRMAN LOUD: Thank you, Mr. Moy.

20 I believe the Board has reviewed out file on
21 this case as well. Obviously, we have had
22 this case a long time and we pushed it out for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 today hoping to get a report back from DDOT in
2 the matter.

3 This is a case for section 205, 206
4 relief and the ANC opposed it. The Benning
5 Ridge Civic Association opposed it. The
6 Office of Planning kind of didn't pick -- take
7 a position waiting on DDOT to respond to
8 traffic studies.

9 So what I'm going to recommend to
10 colleagues is that we left it open for DDOT to
11 submit a report. They have had the time under
12 the rules to submit their report, but out of
13 an abundance of caution, before we fully
14 deliberate and vote it up or vote it down,
15 that we have an absolutely full record.

16 And since the whole traffic
17 transportation issue was the issue in the
18 case, I would like to continue this for one
19 week to June 23rd. If DDOT has something in,
20 if OP has something in, fine. If they don't,
21 we will move forward and vote it up or down at
22 that point in time.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 But out of, again, an abundance of
2 caution and not voting away someone's rights
3 or privileges without a full record or
4 conversely not voting to support it without a
5 full record, I would be in favor of doing
6 that.

7 MS. BAILEY: Mr. Chairman, did you
8 mean June 30th you're going to -- you said June
9 23rd.

10 CHAIRMAN LOUD: Yes, thank you.

11 COMMISSIONER MAY: Mr. Chairman, I
12 would just want to state for the record that
13 although I didn't participate in the hearing
14 in this case, I have read the record
15 completely and am prepared to participate in
16 any decision making we might do. And I do
17 support the Chairman's recommendation that we
18 defer decision making to allow DDOT to submit
19 its report.

20 VICE CHAIR DETTMAN: Mr. Chairman,
21 like Mr. May, I did not participate in the
22 original hearing, but have reviewed the record

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 as well as the transcripts and support the
2 continuance for one week.

3 CHAIRMAN LOUD: Thank you,
4 gentlemen. So in that case, we will continue
5 this to June 30th. Do we need to vote on this?
6 Okay. No vote necessary. And is there
7 anything further in this case?

8 MR. MOY: No, sir.

9 CHAIRMAN LOUD: Thank you, sir.
10 Can we call the next case?

11 MR. MOY: The next case, Mr.
12 Chairman, actually, there are two here that
13 are of the same genre, but on different
14 properties. And that would be Application No.
15 17927 of the Craftsman Group, Inc. And I'll
16 read both readings, Mr. Chairman.

17 CHAIRMAN LOUD: Mr. Moy, let me
18 interrupt you for just 2 seconds.

19 MR. MOY: Yes.

20 CHAIRMAN LOUD: Can we do the Koo
21 Yuen matter first? That actually appears
22 before the two Craftsman on my calendar.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MOY: Oh, I'm sorry. Yes, we
2 can. Yes, we can.

3 CHAIRMAN LOUD: It's a
4 reconsideration request.

5 MR. MOY: Sorry I jumped the gun on
6 that one.

7 CHAIRMAN LOUD: That's okay.

8 MR. MOY: That would be the -- as
9 you said a motion for reconsideration. This
10 was filed by ANC-7A06 to Application No. 17870
11 of Koo Yuen for Koo Yuen, Euclid of Virginia,
12 Inc., pursuant to section 3126.

13 The original application is
14 pursuant to 11 DCMR 3104.1, for a special
15 exception to establish a gasoline service
16 station under section 726 and 706 in the C-2-A
17 District at premises 3710 Minnesota Avenue,
18 N.E., Square 5046, Lot 810.

19 There are two filings in this case
20 record, Mr. Chairman. The first is a filing
21 from the -- well, on June 4, 2009, the Board
22 received request for this reconsideration.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 This is from ANC Single Member District 7A06.

2 And that is identified in your case folders
3 as Exhibit 41. This was filed under the name
4 of Edward Rhodes, who is the Commissioner for
5 the Single Member District.

6 The second filing in your case
7 folder, Mr. Chairman, is a filing in
8 opposition to the motion from the applicant
9 dated June 22, 2009, and that document is
10 identified as Exhibit 42.

11 Very quickly, there are two
12 preliminary matters, Mr. Chairman. The first
13 is that pursuant to section 3126.3, motions
14 for reconsideration should be served upon all
15 parties. However, this filing from the Single
16 Member District, the record does not show
17 proof of service to other parties.

18 The second preliminary matter
19 pursuant to section 3126.2, is that any party
20 may file a motion for reconsideration and
21 there is no record in the record file that
22 indicates or designates the Single Member

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 District as representing the full ANC. That's
2 the second preliminary matter.

3 Depending on the outcome of these
4 two preliminary matters, the Board is to act
5 on the merits of the motion. And that
6 completes the staff's briefing, Mr. Chairman.

7 CHAIRMAN LOUD: Thank you, Mr. Moy.

8 Let's take up the preliminary matter under
9 3126.2 first, because I think the threshold
10 requirement for a reconsideration is that the
11 movement be a party. The rule says "Any party
12 may file a motion for reconsideration or of a
13 hearing regarding any decision of the Board
14 provided that the motion is filed with the
15 Director within 10 days from the date of the
16 issuance of a final written order by the
17 Board."

18 So the plain language makes it
19 clear that the rule is addressing itself to
20 parties. And in this matter, I think the
21 movement here of Mr. Rhodes was not a party.
22 The ANC was automatically a party in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 underlying case. But the Single Member
2 District Commissioner who has done a yeoman's
3 job of pulling together this pleading paper
4 within that 10 days was nonetheless not a
5 party.

6 And do the rule was not designed
7 and does not give him the authority to move
8 for reconsideration. So for that reason
9 alone, I would be opposed to entertaining the
10 pleading as a motion for reconsideration.

11 But even if I were to entertain it,
12 the substance of what he goes into is the fact
13 that members of the community, himself
14 included, did not know about the project and
15 did not have an opportunity to be heard. The
16 residents were concerned about safety and
17 other issues.

18 And in fact, if you look at the
19 underlying record, this very Commissioner in
20 our Exhibit 22 places something on our record
21 from December 8, 2008. So the Commissioner
22 was well-aware of the proceeding for reasons

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 that are inexplicable and chose not to or was
2 not able to participate in the proceedings.

3 But again, those reasons are not
4 articulated in what was submitted as Exhibit
5 41, so I think we had a full record before us
6 when we deliberated and made the decision.
7 And this particular pleading does not meet the
8 threshold requirement for reconsideration.

9 Colleagues, I open to you for any
10 further thoughts.

11 VICE CHAIR DETTMAN: Mr. Chairman,
12 having participated in the hearing as well as
13 the deliberation, I would concur with that.

14 COMMISSIONER MAY: Mr. Chairman, I
15 did not participate in this case.

16 CHAIRMAN LOUD: Thank you, Mr.
17 Dettman and thank you, Mr. May. So what we
18 will do now then is dispose of the pleading
19 for reconsideration.

20 I would like to move that we deny
21 the Exhibit 41 application from Commissioner
22 Edward Rhodes for us to reconsider the Koo

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Yuen case and that is Case No. 17870. Is
2 there a second?

3 VICE CHAIR DETTMAN: Second.

4 CHAIRMAN LOUD: All right. The
5 motion has been made and seconded. Any
6 further deliberation?

7 Hearing none, all those in favor
8 say aye.

9 VICE CHAIR DETTMAN: Aye.

10 CHAIRMAN LOUD: Aye. All those
11 opposed? Are there any votes in abstention?

12 MR. MOY: Yes, sir, Mr. Chairman.
13 We do have an absentee ballot from the third
14 participant on this application, which is Mr.
15 Michael Turnbull, and his absentee vote is to
16 dismiss or deny this request for
17 reconsideration.

18 CHAIRMAN LOUD: Okay.

19 MR. MOY: So that would give a
20 resulting vote of 3-0-2.

21 CHAIRMAN LOUD: Thank you, Mr. Moy.

22 MR. MOY: This is on the motion of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Mr. Loud the Chair, seconded by Mr. Dettman.

2 CHAIRMAN LOUD: Thank you. All
3 right. So we have disposed of that issue. Is
4 there anything further in this case, Mr. Moy?

5 MR. MOY: No, sir.

6 CHAIRMAN LOUD: Thank you. Can you
7 call the final two decision cases this
8 morning?

9 MR. MOY: Yes, sir. The first of
10 the two is Application No. 17927 of The
11 Craftsman Group, Inc., pursuant to 11 DCMR
12 3103.2, for a variance from the use provisions
13 to allow the establishment of office, artisan
14 studio, metal and glass working shop for
15 historic restoration projects, under
16 subsection 330.5, in the R-4 District. This
17 is at premises the rear of 729 Fairmont
18 Street, N.W., Square 2885, Lot 59.

19 The second case is Application No.
20 17928 of The Craftsman Group, Inc., pursuant
21 to 11 DCMR 3103.2, for a variance from the use
22 provisions to allow the establishment of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 office, artisan studio, metal and glass
2 working shop for historic restoration
3 projects, under subsection 330.5, in the R-4
4 District at premises rear of 775 Fairmont
5 Street, N.W., Square 2885, Lot 862.

6 Both of these cases, Mr. Chairman,
7 were heard on June 9, 2009. The Board
8 completed public testimony, closed the record
9 and scheduled its decision at a Special Public
10 Meeting on June 23rd.

11 The Board did not request any
12 additional information to supplement the
13 record, as the record was full.

14 So in both these cases, the Board
15 is act on the merits of the use variance
16 pursuant to subsection 330.5. And that
17 completes the staff's briefing.

18 CHAIRMAN LOUD: Thank you, Mr. Moy.

19 I think you nailed it right there. That was
20 a perfect segue for us to begin deliberations.

21 I think we are ready to deliberate on the
22 case and I'll start off the deliberation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 You ended by talking about the use
2 variance standard and so that's exactly where
3 I'll pick up and just talk about my
4 reflections upon what was presented before us.

5 First of all, let me say I think
6 that the applicant put on a good case and
7 appreciated the time that they took to pull
8 together the documentation, some of the
9 history on the matter.

10 With respect to the use variance
11 standard, in particular, I was persuaded that
12 the applicant met the burden and I'll just
13 walk briefly through each of the elements and
14 then open it up to fellow Board Members for
15 comment.

16 With respect to the exceptional
17 situation, I believe that there was a
18 confluence of factors which established that
19 element of the test. In particular, that the
20 structure was built prior to 1958 as a
21 commercial building and remains at present a
22 commercial building. And this was both the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 755 and 735, I think, the addresses are. 729,
2 I'm sorry, and 729 Fairmont and 775 Fairmont.

3 So both of them were built as
4 commercial buildings. There are no interior
5 stairs. There is concrete flooring on the
6 first floor. The only walls are the external
7 brickwork that was never finished on the
8 inside and that configuration, I think, of the
9 properties make them unique, certainly make it
10 an exceptional situation to be in the R-4
11 Zone.

12 There was also circumstantial
13 evidence showing that the property had been
14 used continuously as commercial since at least
15 the 1940s and taxed currently by D.C. as
16 commercial. Additionally, there was evidence
17 showing that the property use had been, at
18 least since 1993, about the last 16 years,
19 continuously used for the applicant's
20 woodworking and metalworking purposes.

21 So I believe again that there is a
22 confluence of factors that point to, as Gil

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Martin would suggest, there being some
2 exceptional situation about this particular
3 structure in the R-4 in the alley.

4 Also, I think OP's report indicated
5 that the Historic Preservation staff had noted
6 that while this is not an historic area, this
7 property I'm sorry is not in an historic area,
8 that alley properties between Fairmont and
9 Sherman have structures which have
10 historically been used for industrial
11 purposes. So for that reason, I think that
12 the property met the exceptional situation
13 standard.

14 With respect to causes undue
15 hardship or whether the exceptional situation
16 approximately causes an undue hardship on the
17 applicant, I also came to the conclusion that
18 the applicant met its burden there and I'll
19 suggest the reasons why.

20 First, denial of its continued use,
21 I think, would deprive this applicant of use
22 of the building. For example, it could not be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 used as a single-family dwelling or flat,
2 which are matter-of-right uses in the R-4,
3 because the conversion cost to the structure
4 would be fairly significant.

5 I think the applicant testified
6 that there was a quote of about \$60,000 maybe
7 10 years ago, so that could only have risen
8 significantly since that time. But more so,
9 to operate as a single-family dwelling or a
10 flat, the applicant would still need variance
11 relief from section 2507.3, because the alley
12 lot width and size are too small and too
13 narrow.

14 The other matter-of-right uses for
15 this property would be as a garage or as an
16 artist studio. It would not work as a garage
17 because of, in my opinion, all of the
18 testimony on the record from neighbors about
19 their concerns about parking and activity in
20 the alley.

21 And I think that as much as they
22 are concerned about the alley parking and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 traffic conditions with this particular use,
2 the metalworking and woodworking, it would be
3 even greater were the property to be used as a
4 garage.

5 With respect to its use as, and I'm
6 talking again about both properties, an artist
7 studio, there was an Exhibit 6 in both cases
8 that showed a picture of the properties and
9 there is almost no light on the ground floor
10 of either property. In fact, one of the
11 buildings just has literally a garage door,
12 modified garage door, but nonetheless a garage
13 door. And so to me it seems like it wouldn't
14 be very amenable to being an artist studio.

15 But it also suffers from some of
16 the same impediments of converting it to
17 residential in that you don't have any
18 interior stairs. You don't have any interior
19 finishes to the walls. You have got the
20 concrete flooring, so you have a structure
21 that, I think, is much more suited to its
22 historic commercial use than an artist studio.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 And with respect to the final
2 element, whether there is substantial
3 detriment to the public good or harm to the
4 Zone Plan, OP testified that there wouldn't be
5 any harm to the Zone Plan, because it has been
6 used in this commercial/industrial type
7 capacity for at least since the '40s with one
8 small interruption of their being some Howard
9 students that were on the second floor of one
10 of the buildings in question.

11 The neighbors at our Exhibit 19
12 wrote in support of the project. It has been
13 there for about 16 years without, for the most
14 part, any objection from neighbors. The ANC-
15 1B supports it. They were concerned about the
16 applicant's employees. I believe 7 of them
17 making sure they get visitor parking passes
18 for the street and never park in the alley.

19 But apart from that caveat, they
20 were in support of the application. There
21 were three witnesses at the hearing in support
22 as well. And there is a neighbor named Irwin

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 who is our Exhibit 22, but who lives directly
2 across the alley from one of the premises who
3 supports it as well.

4 So I don't think that there was any
5 evidence that there would be substantial
6 detriment to the public good. And the Office
7 of Planning supported it as well. So with
8 that, I'll turn it over to colleagues to weigh
9 in.

10 VICE CHAIR DETTMAN: Mr. Chairman,
11 I have nothing to add. I think you have done
12 a great job of going through the evidence in
13 the record and the oral testimony that was
14 offered up at the hearing and determined what
15 evidence supported the use variance and what
16 evidence did not.

17 I agree with everything that you
18 said and in support of this application, both
19 applications, especially given the amount of
20 support that it has in the community and by
21 the Office of Planning and by the ANC.

22 CHAIRMAN LOUD: Mr. Dettman, did

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 you have any take on the ANC's concern about
2 parking and whether or not there should be
3 parking as a condition? The employees of the
4 applicant should obtain parking passes? I
5 know we don't normally condition variances,
6 but just any thoughts you might have on that.

7 And then I'll share mine.

8 VICE CHAIR DETTMAN: I really
9 don't. I wouldn't be in favor of conditioning
10 the order, especially since, as you say, this
11 is a variance and we typically don't do that.

12 If there is an issue with employees of this
13 particular business parking in the alley, I
14 think that there is some avenue that the
15 neighbors could explore to remedy that
16 situation. But I don't know if that is our
17 situation to try to resolve.

18 CHAIRMAN LOUD: Thank you, Mr.
19 Dettman. And I agree with you, Mr. Dettman.
20 I think there was a lot of testimony in the
21 record that this applicant was not just
22 operating a business in the alley, but that he

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 was a strong member of the community, that he
2 attended community meetings, that he in some
3 cases led community meetings.

4 So without making it a specific
5 condition, I do hope, as Mr. Dettman
6 suggested, that the applicant will work with
7 the ANC, and has every reason to frankly, to
8 make sure that employees are not parking in
9 the alley and that some way of resolving that
10 conflict, a sustainable way, is put in place
11 out of honor and respect for the ANC
12 supporting this and for continuing to be a
13 good neighbor.

14 So with that said, I think what we
15 ought to do is entertain a motion for each
16 case separately and then call a vote on each
17 case separately.

18 I would like to move approval of
19 Application No. 17927 of The Craftsman Group
20 for a use variance for an office workshop at
21 the rear of 729 Fairmont Street, N.W. in the
22 R-4.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 VICE CHAIR DETTMAN: Second.

2 CHAIRMAN LOUD: The motion has been
3 made and seconded. Is there further
4 deliberation?

5 Hearing none, all those in favor
6 say aye.

7 ALL: Aye.

8 CHAIRMAN LOUD: All those opposed?
9 Are there any abstentions?

10 MR. MOY: Yes, Mr. Chairman. There
11 is an absentee ballot from a participant on
12 this application who is Mr. Anthony Hood. And
13 his absentee vote is to approve with such
14 conditions as the Board may impose. So that
15 would give a final resulting vote of 3-0-2.
16 This is on the motion of the Chair, Mr. Loud,
17 to approve the application, seconded by Mr.
18 Dettman. So again, the final vote 3-0-2 to
19 approve.

20 CHAIRMAN LOUD: Thank you, Mr. Moy.
21 Now, I would like to move to our calling a
22 vote on the second related case, which is No.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 17928. I would like to move approval of
2 Application No. 17928 of The Craftsman Group
3 for a use variance for an office workshop at
4 the rear of 775 Fairmont Street, N.W.

5 VICE CHAIR DETTMAN: Second.

6 CHAIRMAN LOUD: The motion has been
7 made, seconded. Any deliberation?

8 Hearing none, all those in favor
9 say aye.

10 ALL: Aye.

11 CHAIRMAN LOUD: All those opposed?
12 Are there any abstentions?

13 MR. MOY: Yes, Mr. Chairman.
14 Again, we have an absentee ballot from Mr.
15 Hood, who participated, and his absentee vote
16 is to approve the application as -- and any
17 conditions as the Board may impose.

18 So again, this is on the motion of
19 the Chairman, Mr. Loud, to approve Application
20 No. 17928, seconded by Vice Chair, Mr.
21 Dettman. And obviously, in support of the
22 motion Mr. Hood. The resulting vote 3-0-2.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRMAN LOUD: Thank you, Mr. Moy.
2 Anything further on this case?

3 MS. MONROE: A question?

4 CHAIRMAN LOUD: Yes?

5 MS. MONROE: Do you -- I think you
6 can do a summary order on this. It depends on
7 how you feel about the ANC, whether or not
8 that was really that important. And also,
9 there had initially been somebody in
10 opposition, but he switched to support, so I
11 don't think that's an issue.

12 I don't even think the ANC would
13 prevent it, but it depends on how you feel
14 about that. I think a summary order is okay
15 on this.

16 CHAIRMAN LOUD: Thank you, MS.
17 Monroe. And my thinking is certainly right
18 where yours is on this. I think the ANC
19 supported it and I think there was a
20 tremendous amount of testimony from the ANC in
21 support or this project.

22 They had some concerns about

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 parking, but I don't think that that rose to
2 the level of making them an opponent of the
3 application. Mr. Dettman? Okay. So we will
4 do summary decisions in both cases. Thank
5 you, Ms. Monroe.

6 We don't normally hear from
7 applicants. If it's an urgent, urgent,
8 urgent, urgent, matter, that's four urgents.
9 That's not urgent. That's probably something
10 that you can take up with Ms. Bailey after the
11 hearing. But thank you and thank you for a
12 great job of presenting the case.

13 Is there anything further on this
14 case, Mr. Moy?

15 MR. MOY: No, sir, that would
16 complete the Special Public Meeting, unless
17 there was any other action the Board wanted to
18 take.

19 CHAIRMAN LOUD: No, I don't think
20 there is any other action. I think what we
21 will do is go into the Public Hearing. But
22 let me just say before we leave here, because

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 once we go into the Public Hearing, I have to
2 say all of the stuff before I can say anything
3 and right now I can just say it.

4 We're going to call the Shirk and
5 Carney cases first. Both of those cases, at
6 least from my personal perspective, I'll open
7 it up to other Board Members, look to be
8 pretty straightforward cases. So if the
9 parties are here, we may ask you to -- give
10 you the opportunity rather to rest on the
11 record with respect to both cases and pull out
12 some of the testimony that makes it 223 from
13 the Office of Planning in their part of the
14 report.

15 So our goal would be, cause we've
16 got a heavy calendar this morning, to be able
17 to make it through those to cases. Then we
18 are going to take a break before we do the LT
19 Propco case, because we've got a last minute
20 pleading this morning from the ANC, no more
21 than perhaps a 5 minute break or so, because
22 we want to hear that case this morning.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 And if the parties are here for
2 that case, it would be our hope that you might
3 be open to the possibility of working through
4 the lunch hour, so that we can finish the case
5 as part of the morning's hearings and
6 certainly finish it before 1:00. So something
7 to think about as you are sitting there.

8 And with that, we will close the
9 morning decision meeting.

10 (Whereupon, the Special Public
11 Meeting was concluded at 10:31 a.m.)
12
13
14
15
16
17

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701