

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY, MAY 5, 2009

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The Regular 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,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson
SHANE L. DETTMAN, Vice Chairman

ZONING COMMISSION MEMBER PRESENT:

GREGORY N. JEFFRIES, Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

The transcript constitutes the
minutes from the Public Meeting held on May
5, 2009

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

WELCOME:

Marc D. Loud. 3

BABY LAND DEVELOPMENT CENTER

APPLICATION NO. 17867 - ANC - 7E

PRELIMINARY MATTER:

Request for a Continuance 5

D.C. TEACHER'S CREDIT UNION

APPLICATION NO. 17842 - ANC - 6A

PRELIMINARY MATTERS:

Request to Waive Filing Requirements. 11

Request for a Continuance 14

1634 ASSOCIATE, LLC

APPLICATION NO. 17583-B

PRELIMINARY MATTER:

Request to Waive Filing Requirements. 19

Motion for Minor Modification 20

ROBERT HOLLAND, ET AL

APPLICATION NO. 17904 - ANC - 3/4G

For Decision

VOTE TO APPROVE 17904 (3-0-2) 33

JBG/14TH & S, LLC

APPLICATION NO. 17850

Motion to Reconsider

VOTE TO DENY MOTION (4-0-1) 43

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

11:06 a.m.

CHAIRPERSON LOUD: The meeting will please come to order. Good morning, ladies and gentlemen. This is the May 5th public meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Marc Loud, Chairperson. Joining me today are Vice-Chair Shane Dettman, representing the National Planning Commission, Greg Jeffries, representing the Zoning Commission. Both are to my right. And to my left, Mr. Clifford Moy, Secretary of the BZA, Ms. Lori Monroe of the Office of the Attorney General and Ms. Beverley Bailey, Office of Zoning Specialist.

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

We do not take any public testimony at our meetings unless the Board asks someone to come forward.

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

8 Does the staff have any
9 preliminary matters?

10 MR. MOY: Yes, we do, Mr.
11 Chairman, but I think it would be prudent to
12 address those preliminary matters on a case-
13 by-case basis.

14 CHAIRPERSON LOUD: Thank you, Mr.
15 Moy. In that case, let's proceed with this
16 morning's agenda.

17 MR. MOY: The first case for
18 decision, Mr. Chairman; good morning, Mr.
19 Chairman and Members of the Board, is
20 Application No. 17867 of Baby Land Development
21 Center. This application is pursuant to 11
22 DCMR 3104.1, for a special exception to

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1 establish a child development center, 40
2 children and six staff, under section 205, in
3 the R-2 District at premises 4628 H Street,
4 Southeast. This is Square 5359, Lot 328.

5 At the Board's last decision
6 meeting on this application, which was March
7 3rd, 2009, the Board deliberated and granted
8 the applicant's request for additional time to
9 file post-hearing documents. And essentially,
10 if the Board will recall, this would allow the
11 applicant to retain a transportation
12 consultant and to prepare a traffic analysis.

13 So the Board had given the
14 applicant a deadline for filing of April the
15 7th and responses to that filing by the ANC-7E
16 and an OP supplemental report of April 21st
17 and April 28th, 2009, respectively.

18 The only filing in the record, Mr.
19 Chairman, is a letter requesting continuance
20 of the Board's decision from the applicant.
21 And this was received by the office on April
22 the 29th, 2009 and is in your case folders

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1 identified as Exhibit 28.

2 Again, the applicant is asking the
3 Board to delay its decision.

4 So at this point, the Board is to
5 act on the merits of this request by the
6 applicant and if the Board decides to deny the
7 request, then of course the Board would act on
8 the merits of the special exception request.

9 That completes the staff's
10 briefing, Mr. Chairman.

11 CHAIRPERSON LOUD: Thank you, Mr.
12 Moy.

13 I think we've reviewed the file in
14 the case and are disposed to grant the
15 continuance motion. I wanted to see if Mr.
16 Dettman wanted to add anything to what you've
17 already outlined.

18 Okay. Does the applicant indicate
19 a date in terms of a continuance?

20 MR. MOY: No, sir. But my
21 understanding is that in conversations with
22 the applicant was that she was expecting to

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1 receive the traffic analysis from her
2 consultant today, May the 5th. And of course
3 she would need time to serve that report on
4 the parties, which includes DDoT. So staff
5 would guesstimate that at least a month would
6 be desirable.

7 CHAIRPERSON LOUD: Thank you, Mr.
8 Moy. Can you then look at let us say June,
9 and it could be any one of the Tuesdays and we
10 can set it for a decision? That would allow
11 DDoT their 20-day review period.

12 MR. MOY: The first Tuesday in
13 June, Mr. Chairman, is June 2nd. The second
14 day in June would be June 9th.

15 CHAIRPERSON LOUD: Let me just
16 take a quick look at what's already scheduled.

17 Why don't we go with June 2nd?

18 MR. MOY: Sounds good.

19 CHAIRPERSON LOUD: Looks like we
20 can squeeze that in in the morning without any
21 problems.

22 MR. MOY: I also have in the

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1 record, too, Mr. Chairman -- I don't know
2 whether you were planning to vote on it or
3 this would be by consensus, but I also have in
4 hand an absentee ballot from Ms. Mary Oates
5 Walker who also participated on the
6 application.

7 CHAIRPERSON LOUD: Okay. Well,
8 why don't we -- I think as we have done for
9 these continuance cases, we vote on that,
10 correct?

11 MR. MOY: Yes, you have.

12 CHAIRPERSON LOUD: That's a
13 decision meeting, so --

14 MR. MOY: You have.

15 CHAIRPERSON LOUD: I think you've
16 summarized and we've found a date that we can
17 go with. Why don't I call the vote and see
18 where members come out?

19 All those in favor --

20 MR. MOY: Excuse me, Mr. Chairman.
21 Is there a motion? I'm assuming you're making
22 a motion. And is there a second.

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1 CHAIRPERSON LOUD: Yes. Yes,
2 thank you very much, Mr. Moy.

3 I'd like to move for approval of
4 continuing the Babyland case, 17867, to June
5 2nd in the morning session. Is there a
6 second?

7 VICE-CHAIRPERSON DETTMAN: Second.

8 CHAIRPERSON LOUD: Thank you, Mr.
9 Dettman.

10 Any further deliberation?

11 Hearing none, all those in favor
12 of the motion to continue, please say aye.
13 Aye.

14 VICE-CHAIRPERSON DETTMAN: Aye.

15 CHAIRPERSON LOUD: All those
16 opposed?

17 All abstentions?

18 Can you call the vote, Mr. Moy?

19 MR. MOY: Yes, sir. Before I give
20 the final tally, I would say that the absentee
21 ballot from Mary Oates Walker, her vote is to
22 grant the motion for a continuance. And that

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1 would give a final vote of 3-0-2 to grant the
2 motion on the motion of Mr. Loud, the Chair,
3 seconded by Mr. Dettman, the Vice-Chair, and
4 two other Board Members not participating. So
5 again, the final vote to grant the motion is
6 3-0-2.

7 CHAIRPERSON LOUD: Thank you, Mr.
8 Moy. Is there anything further in that case?

9 MR. MOY: That's it, Mr. Chair.

10 CHAIRPERSON LOUD: Okay. Thank
11 you. Why don't we move to the next case?

12 MR. MOY: Okay. That Application
13 No. is 17842 of D.C. Teacher's Credit Union,
14 pursuant to 11 DCMR 3103.2, for a use
15 variance to allow the continue use of the
16 former Edmonds Public School for general
17 office use under section 330.5, in the R-4
18 District at premises 901-903 D Street,
19 Northeast. This is in Square 938, Lot 809.

20 On January 6th, 2009, the Board
21 completed public testimony, closed the record
22 and scheduled its decision on May 5th, 2009.

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1 The Board requested additional
2 information to supplement the record as
3 follows: Additional information from the
4 applicant and responses to the filing from the
5 applicant from ANC-6. And left the record
6 open optional for comments from the Office of
7 Planning.

8 To date, Mr. Chairman, we have two
9 filings in the record. The first is from ANC-
10 6A, their letter dated April 22nd, 2009 and is
11 identified in your case folders as Exhibit 34.
12 The second filing is from the applicant and
13 that letter is dated -- well, it's a letter
14 that was submitted into the record yesterday,
15 May the 4th. Both filings are untimely, Mr.
16 Chairman. The letter from the applicant is
17 requesting that the Board delay its decision.
18 And so the Board is to act on the two filings
19 that the ANC is filing. As well that's
20 untimely, probably because of not receiving
21 the applicant's filing in a timely way. So
22 those two filings were untimely and so the

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1 Board should act on that as a preliminary
2 matter as well as the request for the Board to
3 continue its decision to a future date.

4 And that completes the staff's
5 briefing, Mr. Chairman.

6 CHAIRPERSON LOUD: Thank you, Mr.
7 Moy. I think as you had indicated, we were
8 originally going to decide this case this
9 morning. And as I recall, the applicant
10 having put on a fairly strong case for a use
11 variance, but there were some additional
12 things we requested by April 1 from the
13 applicant. Applicant did not meet that
14 deadline and shortly following thereafter both
15 the ANC and now the applicant request a
16 continuance.

17 I think the initial threshold
18 consideration for us is waiver of our rules so
19 that we can review the continuance request and
20 we're authorized under section 3100.5 to waive
21 our rules for good cause shown. And there
22 being no prejudice to either party, I think in

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1 this case both the applicant and the ANC are
2 seeking a continuance. The applicant had some
3 homework to do and in the interval between
4 when we heard the case and the time that the
5 homework was due, the applicant was affected
6 by some decisions of the National Credit Union
7 Administration which it an assessment notice
8 of stabilization, which as I understand it
9 essentially a portion of some fees to this
10 applicant based on stabilizing a number of
11 credit unions that came under the jurisdiction
12 of the National Credit Union Administration.

13 But moreover, this applicant has
14 acted in good faith throughout these
15 proceedings to be able to pull together a time
16 line for when it could address the issues that
17 remained outstanding from the hearing, namely
18 noise from an air-conditioner, fence
19 replacement, security bar replacement, and
20 additional greenery on site.

21 So I think that they make a good
22 case obviously for us waiving our rules under

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1 section 3100.5. Why don't I stop now and
2 allow other Board Members to weigh in?

3 Okay. I think it seems to be the
4 consensus here, Mr. Moy, that we should waive
5 our rules to allow admission of both Exhibit
6 35, as well as Exhibit 34. Does that require
7 a vote, Mr. Moy?

8 MR. MOY: No, it does not.

9 CHAIRPERSON LOUD: Okay. It does
10 not require a vote. So we'll allow those in
11 as a preliminary consideration.

12 And now moving to the issue of the
13 continuance, I think the parties have
14 continued to work with one another, it sounds
15 like, to be able to address. There's sort of
16 one outstanding prong of the variance test and
17 they are asking, as I understand it, to be
18 continued to June 9, 2009. I think that makes
19 sense and I'm fully supportive of it, but let
20 me open it up to other Board Members.

21 I think by head nod other Board
22 Members are fully supportive as well. So I'd

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1 like to move that we continue case No. 17842
2 to June 9 for decision making. Yes, we could
3 easily move it to the morning of June 9 for
4 decision making.

5 And that's a motion. So if
6 there's a second on it?

7 VICE-CHAIRPERSON DETTMAN: Second.

8 CHAIRPERSON LOUD: Okay. The
9 motion's been made and seconded. Is there any
10 further deliberation on it?

11 Hearing none, all those in favor
12 say aye. Aye.

13 VICE-CHAIRPERSON DETTMAN: Aye.

14 CHAIRPERSON LOUD: All those
15 opposed?

16 Any abstentions?

17 Is there an absentee, Mr. Moy?

18 MR. MOY: Yes, I was going to add,
19 Mr. Chairman, we have two absentee ballots.
20 One from Mr. Hood who participated on the
21 application, as well as an absentee ballot
22 from Mary Oates Walker who also participated.

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1 In both case, their absentee vote is to grant
2 the applicant's motion, their request.

3 So in this way that would give a
4 vote of 4-0-1 with one Board Member not
5 participating in granting the motion to
6 reschedule the Board's decision to June 9th,
7 2009.

8 CHAIRPERSON LOUD: Okay. Thank
9 you, Mr. Moy. Is there anything further in
10 this case?

11 MR. MOY: No, sir.

12 CHAIRPERSON LOUD: Thank you. Why
13 don't we call the next case?

14 MR. MOY: The next case for
15 decision, Mr. Chairman, the Board has in their
16 case folders a motion for a minor modification
17 of approved plans to Application No. 17583-B
18 of 1634 Associate, LLC, pursuant to section
19 3129 of the waiver of the six-month time
20 requirement, pursuant to section 3129.3 of the
21 Zoning Regulations.

22 If the Board will recall, the

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1 original application is pursuant to 11 DCMR
2 3103.2, for a variance from the residential
3 recreation space requirements under section
4 773, variance from the retail use provisions
5 under subsection 1901.1, and a variance from
6 the off-street parking requirements under
7 subsection 2101.1. And this is to construct
8 a 32-unit residential building with ground
9 floor retail in the ARTS/C-3-A District at
10 premises southwest corner of the intersection
11 of 14th and R Streets, N.W., Square 208, Lots
12 806, 807 and 808.

13 Staff also reminds the Board that
14 on April the 7th of this year the Board had
15 also approved the applicant's request to
16 extend the validity of the order for two
17 additional years pursuant to section 3100.5 of
18 the Zoning Regulations.

19 On April 3rd, 2009, the Board
20 received a request from the applicant for a
21 minor modification of plans and a waiver to
22 the time requirements. This letter is

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1 identified in your case folders as Exhibit 34.
2 There are no other filings in the record, Mr.
3 Chairman. As you know, pursuant to section
4 3129.4 parties are allowed to file comments
5 within a 10-day period.

6 So essentially what's before the
7 Board is to act on two items. One is the
8 request to waive the six-month time
9 requirement and the second is to act on the
10 merits of the minor modification. And both of
11 these are pursuant to 3129.3 and 3129.7,
12 3129.5, respectively.

13 And that completes the staff's
14 briefing, Mr. Chairman.

15 CHAIRPERSON LOUD: Thank you, Mr.
16 Moy.

17 Again, I guess the order would be
18 similar to the last case. There's the
19 preliminary question of waiving our rules to
20 allow for the late filing, and would be our
21 rule 3100.5. And then to the actual
22 modification itself.

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1 With respect to 3100.5, we've
2 talked about the showing required there, good
3 cause shown and no prejudice to the rights of
4 another party and not prohibited by law. I
5 think in this case the applicant talks about
6 in their Exhibit 34 the difficulty the
7 applicant has had getting financing, which has
8 led to project delays, and that the project
9 delays creating, I think, the opportunity;
10 I'm putting words in their mouth here, I'm
11 paraphrasing a bit, to reevaluate the floor
12 plan a little bit and to essentially suggest
13 some minor modifications. But I think we
14 bought into the argument of the good cause
15 when we issued the April 7 order and I think
16 it's just as valid with respect to the
17 immediate request for waiver of our rules as
18 well.

19 So I do think that they make the
20 case there, but let me stop and see how Board
21 Members feel about that.

22 All right. Sounds like there's

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1 total agreement.

2 So why don't we allow the Exhibit
3 34 into our record, notwithstanding the
4 lateness, having waived under 3100.5?

5 The second issue would be the
6 question of the changes to the plan which are
7 represented by the applicant as minor
8 modifications. We've reviewed the plans that
9 were submitted with the Exhibit 34 and
10 essentially they ask for alteration of floors
11 2 through 7 on the south-facing side of the
12 mixed-use project. As you indicated, it's a
13 32-unit mixed-use at the corner of 14th and R,
14 and then on floors 2 through 5 on the west-
15 facing side. And the modification with
16 respect to both the south and the west is to
17 eliminate balconies, recessed balconies that
18 were in the original plans and enclose the
19 indentation with sliding glass doors and a
20 railing which would essentially add some
21 square footage to each of the units in
22 question.

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1 They further represent that
2 there's no increase to either floor area ratio
3 or GFA, gross floor area, and that no density
4 will be added to the building, or no new
5 relief is required, and no change in the
6 extent of the relief originally granted.

7 We've reviewed the plans and from
8 reviewing the plans the modifications do
9 appear to be minor and I think that this is
10 one where relief would be justified and
11 warranted under the rules.

12 They did notice the parties in the
13 case. The ANC and I believe they noticed the
14 Office of Planning as well. The ANC, which
15 supported the underlying case, has not
16 responded and the Office of Planning has not
17 responded as well.

18 So again, I think it's one where
19 the modifications appear minor from the record
20 before us and would warrant relief under 3129,
21 but let me open it up to other Board Members.

22 And hearing no comments, then why

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1 don't I make a motion for approval of the
2 motion for modification in Application No.
3 17583 with respect to a minor modification of
4 plans at 14th and R Streets, N.W.?

5 Is there a second?

6 COMMISSIONER JEFFRIES: Second.

7 CHAIRPERSON LOUD: Thank you, Mr.
8 Jeffries.

9 Is there any further deliberation?

10 Hearing none, then let me call for
11 a vote.

12 All those in favor of approval of
13 the motion for modification, say aye? Aye.

14 VICE-CHAIRPERSON DETTMAN: Aye.

15 COMMISSIONER JEFFRIES: Aye.

16 CHAIRPERSON LOUD: All those

17 opposed?

18 All those who abstain?

19 Mr. Moy, is there an absentee in
20 this one? I don't believe so.

21 MR. MOY: No, sir.

22 CHAIRPERSON LOUD: All right.

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1 MR. MOY: No, you're all here.

2 CHAIRPERSON LOUD: All right. And
3 so can you read back the vote?

4 MR. MOY: Yes, sir. The staff
5 would record the vote as 3-0-2. This is on
6 the motion of the Chair, Mr. Loud, to approve
7 the motion for minor modification and waiver
8 of the six-month time requirement. Seconding
9 the motion is Mr. Jeffries. Also in support
10 of the motion, Mr. Dettman. And we have two
11 Board Members not participating of course. So
12 again, the final vote is 3-0-2.

13 CHAIRPERSON LOUD: Thank you, Mr.
14 Moy. Is there anything further on this case?

15 MR. MOY: No, sir.

16 CHAIRPERSON LOUD: Okay. Why
17 don't we call the next case?

18 MR. MOY: The next application,
19 Mr. Chairman, is Application No. 17904 of
20 Robert Holland, et al, pursuant to 11 DCMR --
21 I'm going to read to you, Mr. Chairman, the
22 amended application because it was amended at

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1 the Board's hearing on April the 7th.

2 Pursuant to 11 DCMR 3104.1 for a special
3 exception to establish an accessory parking
4 lot under section 214 and for location of
5 parking spaces under section 2116.5 in the R-2
6 District at premises 3820-3826 McKinley
7 Street, N.W. The property is in Square 1859,
8 Lots 49, 50, 51 and part of Lot 92.

9 On April 7th, 2009, the Board
10 completed public testimony, closed the record
11 and scheduled its decision on May 5th, 2009.

12 The Board requested additional
13 information to supplement the record as
14 follows: From the applicant and the Board
15 allowed responses to the filing from the
16 applicant from ANC 3/4G, Office of Planning
17 and DDoT.

18 There are three filings in your
19 case folder, Mr. Chairman. The first is from
20 the applicant dated April 13, 2009, and that
21 exhibit is Exhibit 27. Also the second filing
22 is a supplemental report from the Office of

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1 Planning dated April 28, 2009, identified as
2 Exhibit 29. And finally, the third filing is
3 from ANC 3/4G and that letter is dated April
4 15, 2009, received into the office April 17th.
5 And that document is identified as Exhibit 28.

6 The Board is to act on the merits
7 of the special exception relief to sections
8 214 and 2116.4, as well as the proposed
9 conditions.

10 And that completes the staff's
11 briefing, Mr. Chairman.

12 CHAIRPERSON LOUD: Thank you, Mr.
13 Moy. I think we're going to deliberate on
14 this case this morning and appreciate the
15 patience of the parties in this case, some of
16 whom I recognize as being in the audience.

17 I think Mr. Dettman is going to
18 lead us through our deliberation on this, or
19 at least start it off. And so let me turn to
20 Mr. Dettman.

21 VICE-CHAIRPERSON DETTMAN: Thank
22 you, Mr Chairman. And I think this case is

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1 relatively straightforward and we can do this
2 fairly quickly. But before I get into the
3 zoning analysis, what I'd like to do is just
4 provide very quick some background of kind of
5 how the hearing went about.

6 The Board at the hearing took some
7 time to identify exactly what the proper
8 relief was that we were going to look at. If
9 you remember, the applicant originally applied
10 for the continued use of an accessory parking
11 lot under section 213, but as the hearing
12 transpired it turned out that the Board
13 decided to look at this as the establishment
14 of a new accessory parking area, not the
15 continued use. And I think that was because
16 the applicant's previous Board approval had
17 lapsed. And instead of section 213, looking
18 at this as a parking lot, the Board analyzed
19 this case under 214 for accessory parking
20 spaces, as well as 2116 for the off-site
21 location of required parking spaces. So as
22 Mr. Moy noted, the way he read the

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1 advertisement is how we're going to look at it
2 today.

3 The Board requested three things
4 at the end of the hearing. It gave the
5 applicant the opportunity to provide an
6 analysis under 214 and 2116, although the
7 applicant also did go through each and every
8 provision at the hearing and indicated to the
9 Board how they comply with those provisions.
10 So we did not receive that in writing, but
11 nonetheless I think that the oral testimony is
12 adequate.

13 We did receive a landscaping plan;
14 that's Exhibit 27, which indicates the
15 location of the landscaped area which meets
16 the five percent requirement. It states that
17 there's going to be six dogwood trees planted
18 north of the retaining wall at the north end
19 of the site south of McKinley Street and that
20 those trees, pursuant to DCOP's recommendation
21 would be six feet tall once they're planted.
22 Exhibit 27 also stipulates the maintenance

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1 contract that the lawn's going to be mowed
2 once a week. The areas will be fertilized and
3 that the parking lot will be maintained,
4 cleaned and sprayed on a regular basis.

5 So that being said, I think that
6 we can rely upon the applicant's oral
7 testimony for demonstration of compliance with
8 sections 214 and 2116. And by way of 214.5,
9 the applicant had also gone through the
10 provisions of chapter 23. I think that it was
11 made clear during the testimony at the hearing
12 that the applicant complies with all of the
13 necessary provisions. The Office of Planning,
14 in their original report, as well as their
15 supplemental, being Exhibit 29, continues to
16 support the application as conditioned. And
17 in Exhibit 28, the ANC also reiterated their
18 support from their previous filing.

19 So there's adequate support for
20 the application. The applicant meets their
21 burden. And I think at this time I can turn
22 it back to you, Mr. Chairman. And as I

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1 stated, there are some conditions that have
2 been proposed by OP as well as the ANC. And
3 if there's nothing further I can go through
4 the conditions and identify which ones could
5 be appropriate.

6 CHAIRPERSON LOUD: Thank you, Mr.
7 Dettman. I think that was a great review of
8 the record we have before us. I don't have
9 any questions or anything to add to it. You
10 mentioned the ANC support and we give that
11 great weight, as well as the Office of
12 Planning report.

13 So if you could highlight the
14 conditions that would be in play, then we can
15 take it from there.

16 VICE-CHAIRPERSON DETTMAN:
17 Certainly. Most of the conditions that have
18 been proposed are conditions that were from
19 previous orders, from previous BZA cases. And
20 just looking at OP's report, Exhibit 29, they
21 proposed 13 conditions. Several of them are
22 actually the Zoning Regulations. They're

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1 almost word-for-word from the Zoning
2 Regulations, in particular, 2303.1. So
3 typically what the Board has done is decided
4 not to incorporate directly into their orders
5 the Zoning Regulations. And so I would say
6 that we could go through these, as well as
7 checking with the ANC's conditions just to
8 identify which ones are not reflective of what
9 the Zoning Regulations say. And mainly that
10 would be the first one, the approval shall be
11 for a period of five years. The second one,
12 no trash dumpster shall be located on the
13 subject property. There's a condition here
14 that OP is proposing that the landscaping
15 shall be planted within a six-month period and
16 prior to the issuance of a C of O. And
17 there's a couple more. One is that snow and
18 ice shall be promptly removed from the
19 accessory parking area. And the final one
20 they propose is that the applicant shall
21 establish and maintain a liaison with the ANC
22 to discuss problems that might arise in

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1 connection with the operation of the parking
2 area. And I think those conditions are
3 largely consistent with what the ANC has
4 proposed as well.

5 CHAIRPERSON LOUD: Thank you, Mr.
6 Dettman.

7 In terms of the conditions, I
8 agree with you that these were discussed
9 previously. I'm glad to see that some of the
10 discussion about snow and ice removal on the
11 public space has been eliminated from our
12 consideration and I think that all have worked
13 to come to grips with trying to suggest some
14 conditions that are win/win for both parties.
15 So I don't have any further to add.

16 I don't know if you're ready to
17 make a motion or if there are additional items
18 that you want to discuss.

19 VICE-CHAIRPERSON DETTMAN: I'd be
20 happy to make a motion.

21 CHAIRPERSON LOUD: Okay.

22 VICE-CHAIRPERSON DETTMAN: And

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1 just one final point with respect to the
2 conditions. In OP's report the conditions
3 that would be included in the order are Nos.
4 1, 2, 5, 10 and 13. I kind of skipped around.

5 CHAIRPERSON LOUD: Okay. Yes,
6 just before you make a motion, just for
7 clarity, on my Exhibit 29 there is not 13. I
8 mean, there's a paragraph after 12.

9 VICE-CHAIRPERSON DETTMAN: Yes,
10 the paragraph that starts with the
11 representatives of the property owner --

12 CHAIRPERSON LOUD: Yes.

13 VICE-CHAIRPERSON DETTMAN: -- I'm
14 referring to that as 13.

15 CHAIRPERSON LOUD: Okay.

16 VICE-CHAIRPERSON DETTMAN: Yes.

17 CHAIRPERSON LOUD: Just want to
18 make that clarification for the record.

19 I think if you're ready to make
20 the motion?

21 VICE-CHAIRPERSON DETTMAN: I would
22 move for approval of Application No. 17904 of

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1 Robert Holland, et al, pursuant to 11 DCMR
2 3104.1, for a special exception to establish
3 an accessory parking lot under section 214 and
4 for location of parking spaces under section
5 2116.5 in the R-2 District at premises 3820-26
6 McKinley Street, N.W.

7 CHAIRPERSON LOUD: Thank you, Mr.
8 Dettman. And did you want to include in your
9 motion as conditioned?

10 VICE-CHAIRPERSON DETTMAN: As
11 conditioned.

12 CHAIRPERSON LOUD: Okay. Thank
13 you.

14 The motion has been made. I'd
15 like to second the motion.

16 Any further deliberation?

17 Hearing none, the motion's been
18 made and seconded. I'd like to call for a
19 vote now.

20 All those in favor of approval of
21 Application No. 17904, as conditioned, say
22 aye. Aye.

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1 VICE-CHAIRPERSON DETTMAN: Aye.

2 All those opposed?

3 Any abstentions?

4 Mr. Moy, do we have any absentee
5 ballots on this?

6 MR. MOY: Yes, we do.

7 CHAIRPERSON LOUD: Okay.

8 MR. MOY: Yes, we do, Mr.
9 Chairman, before I call the final vote.
10 You're clairvoyant of course.

11 We do have an absentee ballot from
12 Mr. Turnbull who participated on this case and
13 his absentee vote is to approve the
14 application with such conditions as the Board
15 may impose. So I think that fits quite
16 nicely.

17 So that would give a final vote of
18 3-0-2. This is on the motion of Mr. Dettman,
19 the Vice-Chair, to approve the application as
20 conditioned. Seconded by Mr. Loud, the Chair.
21 Of course absentee vote of Mr. Turnbull. And
22 we have two other Board Members not

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1 participating of course. So again, the final
2 vote is 3-0-2. And that's it.

3 CHAIRPERSON LOUD: Thank you, Mr.
4 Moy. If there's nothing further in this case
5 -- I'm sorry.

6 MR. MOY: Other than whether or
7 not the Board would want to consider waiving
8 the rules to write a summary order.

9 CHAIRPERSON LOUD: Yes. Yes.

10 MR. MOY: Very good.

11 CHAIRPERSON LOUD: Can you call
12 what I believe is the final case of the public
13 meeting?

14 MR. MOY: Yes, sir. That would be
15 what's before the Board is a motion for
16 reconsideration by an opposing party to
17 application No. 17850 of JBG/14th and S, LLC,
18 pursuant to section 3126. The original
19 application, the Board will recall, is
20 pursuant to 11 DCMR 3104.1 and 3103.2, for
21 a variance from the lot occupancy requirements
22 under section 772 and a special exception for

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1 a roof structure with unequal heights under
2 subsection 411.11, from the restriction on
3 eating and drinking establishments under
4 subsection 1901.6, from the ARTS Overlay
5 height guidelines under subsection 1902.1,
6 from the parking requirements for an addition
7 to an historic structure under subsection
8 2120.6, for the renovation of and addition to
9 an existing historic structure that will
10 create a mixed-use residential and retail
11 development in the ARTS/C-3-A District. This
12 is at premises 1407 S Street, N.W, and 1802,
13 1804, 1810, 1816 and 1818 14th Street, N.W.
14 This is Square 206, Lots 1, 210, 230, 819, 820
15 and 821.

16 Very quickly, Mr. Chairman, on
17 April 8th, 2009 the Board received this
18 request for reconsideration from Tom Coumaris,
19 who is the opposition party on this
20 application. That filing is identified in
21 your case folders as Exhibit 60.

22 Also, staff adds that according to

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1 the regulations Mr. Coumaris also served other
2 parties to the application and that
3 Certificate of Service is also entered into
4 the record and is identified as Exhibit 61.

5 The final filing is from the
6 applicant, the property owner, who filed a
7 response to the motion. That was on April 20,
8 2009. In this instance, both filings, the
9 motion and the applicant's response are timely
10 pursuant to sections 3126.2 and 3126.5,
11 respectively.

12 The Board is to act on the merits
13 of the motion. And I think with that, the
14 staff is going to complete its briefing, Mr.
15 Chairman.

16 CHAIRPERSON LOUD: Thank you, Mr.
17 Moy. I think we've reviewed the pleadings in
18 this case and I think most of us remember this
19 case. It wasn't that long ago that we were
20 hearing this case and deciding on this case
21 and I think we're ready to deliberate on the
22 motion.

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1 Let me start us off by reading the
2 requirements of the rule that allows
3 reconsideration in the first place, and that's
4 3126.4, a motion for reconsideration shall
5 state specifically all respects in which the
6 final decision is claimed to be erroneous, the
7 grounds of the motion and the relief sought.
8 So it's against that rule that we're measuring
9 the motion for reconsideration. And starting
10 us off, let me just observe a couple of
11 things.

12 First, the motion for
13 reconsideration was one page and it included
14 five one-sentence claims of error. And I'm
15 not going to read it, I'll just point it out
16 as Exhibit 60.

17 Each of the assertions of error
18 were stated conclusorily. There was no
19 reference to the transcript made with respect
20 to each of the five claims, there was no
21 reference to any exhibits, no reference to any
22 testimony, no argumentation made, no evidence

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1 pointed to. These were very minimalist
2 assertions regarding the entire record. And
3 that's especially noteworthy in this case
4 because we had such a full record. We had at
5 least 15 witnesses. We had four party
6 opponents, including the movant in this case.
7 We had Mr. Freedman, Mr. Bogden, Mr. Coumaris
8 and Mr. Nap Freeman and Nap later withdrew.
9 But there was a really full record to draw
10 from in this case. And it's somewhat
11 inexplicable to me that the movant has not
12 pulled together any of the record so that we
13 could take a look at our decision and in good
14 faith reconsider any places wherein we may
15 have made an error.

16 We heard the case December 2nd. I
17 think the transcript from that alone was 300
18 pages. And we had sort of like a decision
19 hearing on January 6th, where originally we
20 were going to decide the case, but we ended up
21 allowing testimony as well. And then it was
22 decided on February 3rd. But all of which is

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1 to say there was a really voluminous record
2 for a movant to draw from for a 3126 motion in
3 this case.

4 And again, for reasons that are
5 inexplicable none of that appears in our
6 Exhibit 60. It's even more telling for me
7 because in the opposition that was filed to
8 the reconsideration motion, and I understand
9 that the applicant had to do what the
10 applicant had to do, not knowing where the
11 Board would come out on this, so they've
12 really briefed the issue. But interestingly
13 enough, they go into each of these five
14 conclusions and then they go into the record
15 and they pull out places in the record where
16 arguably the movant could have tried to pulled
17 together a case.

18 So the record was available. The
19 opposition went into the record and found
20 places in the record that arguably addressed
21 some of these grounds, but the movant did not.
22 And I don't find, and I'll open it up to other

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1 Board Members, I don't find that what was
2 submitted as our Exhibit 60 meets even the
3 threshold requirement for a section 3126.4
4 motion and I hope that it's instructive both
5 to the movant and anyone else that might be
6 review these proceedings that there is a
7 threshold requirement that has to be met
8 before when can draw down on the resources of
9 the BZA to scour a record like this and find
10 places in it that might align with the
11 conclusions in a reconsideration motion. So
12 I wasn't persuaded that it met threshold
13 requirement in that regard.

14 Again, there's no ground stated
15 for the motion at all and much of what is
16 stated was addressed at the various hearings
17 and responded to at the various hearings.
18 I'll just take point number one in Exhibit 60
19 which talks about the advertisement being
20 insufficient, both in the public posting and
21 in the advertisement as a special exception
22 instead of variances. With respect to that,

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1 that was addressed very specifically at the
2 hearing on December 2nd. But moreover, as I
3 said there were 15 witnesses. There were four
4 party opponents. The ANC gave testimony.
5 There's no indication that notice about this
6 hearing did not get out in the community.

7 So, with that being said, I also
8 want to quote some language from previous BZA
9 Order, that's Application No. 17603-A of
10 Johnson, and I'm pronouncing correctly I hope,
11 Kolipi, where we kind of talked about this
12 issue of threshold requirements and on page 2
13 of that order we say, "The Board was not
14 persuaded that the motion by the party in
15 opposition alleged any grounds to reconsider
16 its decision to grant the special exception
17 requested by the applicant. The motion did
18 not state any respect in which the Board's
19 decision was claimed to be erroneous and the
20 reasons for reconsideration listed in the
21 motion did not present any new argument
22 relevant to the Board's deliberations in the

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1 case."

2 So following in the spirit of that
3 earlier BZA Order, and again finding this one-
4 page reconsideration request not rising to the
5 level of a 3126 motion, I'm of a mind to deny
6 the motion for reconsideration.

7 Let me open it up to other Board
8 Members.

9 I think there's general agreement
10 here, so I'll make a motion that would allow
11 us to deliberate and move on with the day's
12 calendar.

13 I'd like to move for denial of the
14 motion for reconsideration, Exhibit 60, in
15 Case No. 17850, JBG/14th & S, LLC, of the
16 party status opponent Mr. Tom Coumaris.

17 Is there a second?

18 VICE-CHAIRPERSON DETTMAN: Second.

19 CHAIRPERSON LOUD: Thank you, Mr.
20 Dettman.

21 The motion's been made and
22 seconded. All those in favor, say aye. Aye.

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1 VICE-CHAIRPERSON DETTMAN: Aye.

2 COMMISSIONER JEFFRIES: Aye.

3 CHAIRPERSON LOUD: All those

4 opposed?

5 Are there any abstentions?

6 And is there an absentee?

7 MR. MOY: Yes, sir, Mr. Chairman.

8 Very good.

9 That absentee ballot is from Mary
10 Oates Walker and her vote is to deny the
11 motion for reconsideration. So that would
12 give a resulting vote of 4-0-1. This is on
13 the motion of the Chair, Mr. Loud. Seconded
14 by Mr. Dettman. Also in support of the
15 motion, Mr. Jeffries. No one other Board
16 Member of course. So again, the final vote is
17 4-0-1 to deny the motion for reconsideration.

18 CHAIRPERSON LOUD: Thank you, Mr.
19 Moy. Is there any further matter on this
20 morning's agenda for us?

21 MR. MOY: Sir, the Board regrouped
22 and it's 11:51 and there's no other matters

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1 for the public meeting.

2 CHAIRPERSON LOUD: Thank you, Mr.
3 Moy. Let me again apologize to all those in
4 the audience that waited for us to start the
5 deliberation at the posted time of 9:30. We
6 ran into what I hope will be just sort of one-
7 of-a-kind set of circumstances that pushed us
8 a little later than normal. But I do
9 appreciate the patience. I think we all
10 appreciate everyone's patience.

11 Thank you, Mr. Moy. And meeting
12 is adjourned.

13 (Whereupon, the meeting was
14 adjourned at 11:53 a.m.)

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