

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY,

MARCH 24, 2009

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:30 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
MARC LOUD Vice Chairman
SHANE L. DETTMAN Board Member
(NCPC)

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD Chairman
GREGORY N. JEFFRIES Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.

This transcript constitutes the minutes from the Special Public Meeting held on March 24, 2009.

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

10:46 a.m.

CHAIRPERSON MILLER: This meeting will, please, come to order. This is the March 24, 2009 Special Public Meeting of the Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller. I'm the Chair. Joining me today is our Vice Chair, Mr. Marc Loud, and Mr. Anthony Hood, Chair of the Zoning Commission. And to my left is Mr. Shane Dettman, Board Member, Mr. Clifford Moy from the Office of Zoning, Ms. Sherry Glazer from the Office of Attorney General and Ms. Beverley Bailey from the Office of Zoning.

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.

Please, be advised that this proceeding is being recorded by a Court

1 Reporter and is also webcast live.
2 Accordingly, we must ask you to refrain from
3 any disruptive noises or actions in the
4 hearing room.

5 Please, turn off all beepers and
6 cell phones.

7 I just would like to state for the
8 benefit of the audience and those who are
9 tuning in also that this morning we have both
10 a Public Meeting in which the Board will be
11 deliberating on various applications and then
12 we will be moving into a hearing as well.

13 And at this point, I understand
14 Mr. Hood would like to -- that he has a
15 preliminary matter that he would like to
16 address.

17 COMMISSIONER HOOD: Thank you very
18 much, Madam Chair. I wanted to just stop by
19 and say what a great pleasure it has been
20 personally to work with you on behalf of the
21 Office of Zoning, the Board of Zoning
22 Adjustment, the Zoning Commission, the

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1 residents of the District of Columbia, what a
2 pleasure it has been to serve with you.

3 Today is bittersweet. I
4 understand this is your last hearing and
5 you've done a great service to the city. You
6 are a hard worker and the District of Columbia
7 is a better place because Ruthanne Miller
8 passed the way on the Board of Zoning
9 Adjustment.

10 We have a little certificate that
11 was done by the Office of Zoning staff and I
12 will ask your Vice Chair to, please, read it
13 and I'll finish my comments afterwards.

14 VICE CHAIR LOUD: The certificate
15 reads it's from the D.C. Office of Zoning. It
16 says "Certificate of Distinguished Service
17 presented to Ruthanne G. Miller, Chairperson
18 of the Board of Zoning Adjustment, in
19 recognition of your five years of outstanding
20 dedicated public service to the citizens of
21 the District of Columbia, March 24, 2009."
22 And it is signed by Richard Nero, Acting

1 Director OZ, Anthony Hood, Chair of the Zoning
2 Commission, and Clifford Moy, Secretary to the
3 BZA.

4 COMMISSIONER HOOD: And I would
5 ask that those who are in attendance and my
6 colleagues on the dias that we, please, rise
7 and give her a standing ovation and thank her
8 for her years of commitment.

9 (Applause)

10 COMMISSIONER HOOD: And I will say
11 this, Madam Chair, before I open it up for any
12 other comments and again I appreciate those
13 who may have been waiting 15 or 20 minutes for
14 indulging us to even be able to do this. But
15 you have prepared yourself for every BZA
16 hearing very well. You have ran them
17 efficiently and effectively and you didn't let
18 any issues go past any case that we had.

19 And you are definitely an
20 aspiration to me personally. I enjoyed
21 working with you. And again, the residents of
22 the District of Columbia appreciate all of

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1 your hard work and endeavors that you did to
2 make sure that -- you know, you tried to
3 strike the balance.

4 And often times when you sit here,
5 it's easy to sit and criticize, but often
6 times when you sit here and you try to do
7 that, so everyone can coexist, sometimes it's
8 not the easiest thing possible.

9 I think, Madam Chair, you have
10 focused the Board under your leadership and
11 prior to your leadership, you had focused this
12 Board and I think they will move in the
13 fashion for the best interest of the city.
14 And again, on behalf of myself and all of the
15 residents of the District of Columbia, we
16 commend you and we thank you for your service.

17 But one thing I know, I know you,
18 so even though the Board may come to an end,
19 something else will begin. So I would open it
20 up, at this time, for any comments.

21 MR. MOY: Mr. Hood, yes. I was
22 reserving this for the end of the day, but

1 since this has been opened, to just add a
2 footnote to the proceedings that on behalf of
3 the Office of Zoning and in my capacity as the
4 secretary to the Board, I just want to extend
5 our gratitude for your dedication, your
6 commitment to the Board.

7 Everything that you do, I know
8 that as the secretary, you put in tons of
9 hours of work into Board work. And that is
10 much appreciated. I have served other Chairs
11 in the past, not only here with the Board, but
12 in my other, shall we say, past lives and you
13 rank right up there at the top.

14 I mean that sincerely. So you
15 will be sorely missed and good luck in your
16 future endeavors.

17 VICE CHAIR LOUD: Just very
18 briefly, I wanted to add how much you have
19 been a mentor and a guide to me in this
20 process. I don't know if everyone -- I'm sure
21 everyone understands that this is really a
22 volunteer service that is rendered by the

1 folks you see on the dias.

2 And it helps to really have
3 somebody there when you arrive that is
4 thoroughly familiar with the regulations, the
5 institutional knowledge and you are more than
6 willing to share all that you know. You dance
7 around those regulations in a way that is just
8 mesmerizing to watch.

9 And again, you put in the kind of
10 work ethic that says this is not volunteer,
11 this is a commitment. And I really have
12 enjoyed working with you and learned a lot
13 from working with you.

14 MEMBER DETTMAN: I think my
15 colleagues, basically, covered all of my
16 bullets points. It has been an absolute
17 pleasure working with you, Madam Chair. I
18 look forward to today, a full day. And I want
19 to thank you for not only your dedication to
20 the community, you running the hearings in a
21 very fair and equitable fashion, but also the
22 amount that I have learned from you in my

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1 short term on the Board.

2 COMMISSIONER HOOD: Okay. Again,
3 Chair Miller, I thank you for letting me
4 interrupt the proceedings.

5 CHAIRPERSON MILLER: Well, thank
6 you, Mr. Hood, and don't go anywhere yet. I'm
7 not going to pass away on the Board, I hope.
8 And I guess I beg the audiences' indulgence.
9 I really did not anticipate that this was
10 going to be going on at this time. I was
11 prepared perhaps for making some remarks at
12 the end of the day and so this is quite a
13 surprise.

14 But anyway, I want to say that,
15 briefly, you know, and I know that people have
16 been waiting for their cases for a while, at
17 this point, but how much of a pleasure and a
18 privilege and an honor it has been to be on
19 this Board, I think, and to Chair this Board.

20 And I don't think an individual
21 can anticipate actually what is before them
22 before they get on this Board. But I think

1 there is a tradition here of extremely hard
2 work, transparency, integrity and it makes all
3 the work worthwhile.

4 And also, this Board has always
5 had a diversity of individuals who bring
6 something different to the table. And it has
7 been a pleasure. And I know that I'm not
8 going to say enough at this point, maybe I'll
9 say more at the end of the day, but certainly,
10 I said before the Council that the Office of
11 Zoning is an exceptional office. And that
12 this staff enables us to handle the work that
13 we do. And they do a superb job in each of
14 their areas. And also the Office of Planning
15 always does a thorough job.

16 And the participants who come
17 before us, we can see the hard work that goes
18 into all that you do and, you know, we try to
19 approach it with, our job, compassion as well
20 as, you know, hard work.

21 So anyway, thank you. It is
22 really quite -- it has been quite an honor.

1 And this is really very beautiful, this
2 placard. So okay.

3 COMMISSIONER HOOD: Thank you
4 again for allowing me to do this at this time.
5 I'm sure you have other comments. Now that
6 you're getting to the hard work, I'm going to
7 leave.

8 CHAIRPERSON MILLER: All right. I
9 think we probably should move into the hard
10 work. Thank you very much. Okay. I had been
11 opening up our Public Meeting for this
12 morning. And at this point, I would just like
13 to say that we have looked at the schedule and
14 want to hear the cases or decide the cases in
15 the following order. It's not necessarily the
16 order that was posted.

17 So, Mr. Moy, I think that we will
18 be taking No. 3 first, the motion for
19 Application No. 17600-A and 17606-A first,
20 followed by the motion on Application No.
21 17509, that would be second. 17864 Kuumba
22 Learning Center will be third. 17889 Latter-

1 Day Saints would be fourth. And then fifth
2 would be 17726 Wisconsin Avenue Baptist
3 Church.

4 MR. MOY: Yes, Madam Chair, thank
5 you. With that then what is before the Board
6 is the motion to Application Nos. 17600-A of
7 Dakota Square, LLC and 17606-A of Dakota
8 Points, LLC. This is a request of the
9 applicant to extend the validity of the
10 orders, as I have just cited.

11 The order to 17600-A participating
12 on that order is Ms. Miller, Mr. Dettman and
13 Mr. Turnbull, who participated. Mr. Turnbull
14 participated on the earlier case. To
15 Application No. 17606 the participating
16 members would be Ms. Miller, Mr. Loud and Mr.
17 Dettman.

18 On March 6, 2009, the applicant
19 filed an emergency petition to extend the
20 expiration date of Order 17600 and 17606,
21 pursuant to section 3100.5. And these are
22 identified in your case folders as Exhibit 35

1 and 40, respectively.

2 Application 17600 expires two
3 years from March 21, 2007 and Application
4 17606 expires two years from May 9, 2007.

5 Accordingly, the applicant is requesting that
6 the Board: (A) Waive its time limits relating
7 to 17600 and 17606 for good cause and to allow
8 the orders to remain effective for two years
9 or (B) Extend for a period of two years from
10 the dates that I have just cited and (C) The
11 expiration date for each of the orders is
12 tolled from the date of the request letter
13 while the BZA considers this provision and the
14 Zoning Commission considers the Zoning
15 Commission Application No. 09-01.

16 So in effect, the Board is to act
17 on the merits of the request to extend the
18 validity of the orders and to waive the --
19 pursuant to 3100.5 to waive the time limits on
20 Board action under section 3130. That
21 completes the staff's briefing, Madam Chair.

22 CHAIRPERSON MILLER: Thank you,

1 Mr. Moy. Okay. And the reason that we put
2 this No. 1 is because it is really very simple
3 and straightforward. We are authorized under
4 our rules of 3100.5 to waive any rules for
5 good cause and no prejudice to any party.

6 And in this particular case, as
7 Mr. Moy has indicated, there are orders here
8 that are going to expire. Actually, one is
9 dated March 21, 2009, and there is a question
10 whether that may have already expired, but
11 I'll get to that in a minute.

12 In any event, there is good cause
13 here that the applicants are unable to obtain
14 financing because of the economic climate and
15 they have served all the parties that they
16 need to serve, the ANC and the Office of
17 Planning. And there is no prejudice to any
18 party by delaying this.

19 These were summary orders. There
20 was no opposition. So I think that it meets
21 the test for that.

22 One of the orders is dated March

1 21, 2009. For two reasons, I think that we
2 still can extend those orders. One reason
3 being that they did file before the date that
4 the order expired and also our rules also
5 indicate that orders don't become effective
6 until 10 days after the final order, so that
7 this order falls within that window of 10
8 days.

9 Is there any objection to granting
10 the motion to extend these orders for two
11 years? Okay. Not hearing any, then I would
12 move to grant the extensions. Is there a
13 second?

14 VICE CHAIR LOUD: Second, Madam
15 Chair.

16 CHAIRPERSON MILLER: All those in
17 favor say aye.

18 ALL: Aye.

19 CHAIRPERSON MILLER: All those
20 opposed? All those abstaining?

21 MS. GLAZER: Madam Chair, I just
22 wanted to point out that I think the request

1 was made to extend for a certain period of
2 time, so a new date needs to be set.

3 CHAIRPERSON MILLER: Okay. Let's
4 go back then and it was for two years, oh, I
5 see. Okay. It's for two years. I didn't say
6 for two years.

7 Okay. Why don't we extend. I
8 would move then to grant an extension of time
9 for two years from the date on the final
10 orders for each of these orders.

11 VICE CHAIR LOUD: Second, Madam
12 Chair.

13 CHAIRPERSON MILLER: All those in
14 favor say aye.

15 ALL: Aye.

16 CHAIRPERSON MILLER: All those
17 opposed? All those abstaining?

18 MR. MOY: Madam Chair, that would
19 be a vote of -- staff would record the vote as
20 3-0-1 on the motion of the Chair, Ms. Miller,
21 seconded by Mr. Loud. In support of the
22 motion, Mr. Dettman. We have an absentee

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1 ballot from Mr. Turnbull, which states that he
2 supports granting the request for the
3 extension, which would give a final vote of 4-
4 0-1.

5 CHAIRPERSON MILLER: Okay. And if
6 there needs to be any further clarification,
7 the dates are in the orders, but one order,
8 17600, is dated March 21, 2009 and 17606 is
9 dated May 9, 2009, so it will be two years
10 from each of those dates.

11 MR. MOY: Okay.

12 CHAIRPERSON MILLER: Okay.

13 MR. MOY: We voted on both cases?

14 CHAIRPERSON MILLER: We voted on
15 both of them. Okay. They were combined in
16 the application, so we voted together. Okay.

17 MR. MOY: Okay. The next case for
18 the Board is the motion by the applicant to
19 Application No. 17509 of Bernard Renard to
20 extend the validity of the order, pursuant to
21 section 3100.5 of the Zoning Regulations.

22 The -- on March 16, 2009, the

1 applicant filed their request for an extension
2 of the order, as stated. That letter is
3 identified in your case folders as Exhibit 46.

4 Accordingly, the applicant intends
5 to continue to seek appropriate financing for
6 the project before the two year time
7 extension. With that, since this is of the
8 same genre as the original, as the earlier
9 case, the Board is to act on the merits of the
10 extension for the validity of this order as
11 well. That completes the staff's briefing,
12 Madam Chair.

13 CHAIRPERSON MILLER: Thank you.
14 And I think this is exactly the same issue
15 with respect to the good cause being that they
16 are having trouble getting financing. And no
17 prejudice to any party and this was a summary
18 order with no opposition. It was served on
19 Office of Planning and the ANC.

20 And if I didn't say this before,
21 the time limits on the order is set forth in
22 3130.1, which talks about an order being valid

1 for two years, and that we would be waiving
2 this time limit pursuant to 3100.5, which
3 allows us to waive our rules for good cause
4 and no prejudice to any party.

5 Anybody have any concern with this
6 one? So in this case, we would be granting an
7 extension for two years from the date of the
8 order and the date of the order is June 11,
9 2009.

10 In which case, I would move to
11 grant the motion to extend the validity of the
12 order in this case from June 11, 2009 for two
13 years.

14 VICE CHAIR LOUD: Second, Madam
15 Chair.

16 CHAIRPERSON MILLER: Further
17 deliberation? Okay.

18 All those in favor say aye.

19 ALL: Aye.

20 CHAIRPERSON MILLER: All those
21 opposed? All those abstaining?

22 MR. MOY: Staff would record the

1 vote as 3-0-2. This is on the motion of the
2 Chair, Ms. Miller, seconded by Mr. Loud, the
3 Vice Chair. Also in support of the motion is
4 Mr. Dettman and the vote again is 3-0-2.

5 CHAIRPERSON MILLER: Thank you.
6 And I didn't say that the -- I'm not sure if
7 I said it, but the order in this case is
8 17509.

9 MR. MOY: Yes.

10 CHAIRPERSON MILLER: Okay. Then
11 that takes care of those cases.

12 MR. MOY: The next application for
13 decision is No. 17864 of Kuumba Learning
14 Center, Inc., pursuant to 11 DCMR 3104.1, for
15 two special exceptions: A special exception
16 for a private school, grades K through 6,
17 under section 206 and a special exception for
18 a child development center under section 205,
19 for a total of 60 children and 12 staff and
20 three buildings in the R-4 District. This is
21 at premises 3328, 3330 and 3332 Martin Luther
22 King, Jr. Avenue, S.E., Square 5978, Lots 884,

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1 1037 and 1036.

2 On March 17th of this year, the
3 Board completed public testimony, closed the
4 record and scheduled its decision at a Special
5 Public Meeting on March 24, 2009.

6 The Board requested that the
7 applicant provide additional information to
8 supplement the record. That filing was
9 entered into the record this morning, March --
10 although it is dated -- the letter was dated
11 March 23rd, it was entered into the -- filed
12 into the record today, March 24th, Madam
13 Chair.

14 The Board is to act on the merits
15 of the two special exceptions and staff will
16 conclude its briefing here, Madam Chair.

17 CHAIRPERSON MILLER: Thank you,
18 Mr. Moy. Do we need to waive our rules to
19 accept this last filing?

20 MR. MOY: Yes, indeed.

21 CHAIRPERSON MILLER: Okay. Then I
22 would ask my colleagues if they concur in

1 waiving the rules? I think that this is the
2 document that we were waiting for in order to
3 resolve this case. And so I don't believe
4 there is any prejudice to any party by waiving
5 this rule.

6 VICE CHAIR LOUD: I would agree,
7 Madam Chair.

8 CHAIRPERSON MILLER: Okay. Then I
9 think there is consensus on that aspect. And
10 then I think I'm going to turn discussion of
11 this case over to Mr. Loud to lead.

12 VICE CHAIR LOUD: Thank you, Madam
13 Chair. I think we have had a couple of
14 different hearings on this, February 17, March
15 17 and the application changed over time, so
16 I'm going to step back and just do a brief
17 walk-through on where things stand, but not
18 taking very long, because I think we are ready
19 to deliberate today and perhaps render a
20 decision.

21 Originally, this was an
22 application for two special exceptions that

1 grew into an application for three special
2 exceptions, all pertaining to the operation of
3 a child development center and a private
4 school on three adjacent buildings in the R-4
5 and southeast. Those buildings are 3328, 3330
6 and 3332 MLK Avenue.

7 Each of the buildings, as the
8 application evolved completely, will house 20
9 students and 4 staff, giving you a total of 12
10 staff. 7 of those staff will be dedicated for
11 the child development center and 5 will be
12 dedicated for the private school.

13 But as indicated, there will be a
14 mix of child development center and private
15 school clientele in each of the three
16 buildings. All three buildings and the
17 operation of both schools are under common
18 ownership and common operation.

19 Two of the buildings were approved
20 as a special exception for a child development
21 center previously through our Order No. 17428,
22 but later found noncompliant by the Zoning

1 Administrator and that's our Exhibit 6.

2 Pressing forward, the applicant
3 desired not to make a distinction between
4 whether staff assigned to the CDC or the
5 private school would be so-allocated and as it
6 ended up, we have, through Mr. Cochran's
7 assistance and through the testimony, as
8 indicated, assigned or rather allocated 7 of
9 the staff to the CDC and 5 for the parking.

10 This results in -- 5 for the
11 private school. This results in a 7 space
12 parking requirement. And the testimony of the
13 Office of Planning is that there are 7 spaces
14 in the rear of the three adjoining buildings,
15 so the applicant meets the parking requirement
16 and we don't have to get into a discussion
17 about parking reduction or off-site special
18 exception.

19 In addition to this, the overall
20 request that the applicant has put before us
21 results in a net 20 youth increase to the
22 current 40 that is part of our 2006 order. As

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1 a result of which, the DDOT had some concerns
2 about drop-off and pick-up which currently is
3 directly on Martin Luther King Avenue and it
4 takes place in a 15 minute time span directly
5 in front of the building governed by a sign
6 that allows for 15 minutes for parking and
7 drop-off.

8 The upshot of it all is that at
9 our March 17th hearing, we asked the applicant
10 to come back and demonstrate to us that they
11 could shift drop-off and pick-up to the
12 neighboring National Children's Center site
13 for 20 of those kids, so that there would not
14 be a backup on MLK and that it would generally
15 be a little more safe for the young people.

16 The applicant has responded to our
17 request, albeit not exactly what I think any
18 of us had intended at the March 17th hearing,
19 but nonetheless, in a way that I think
20 satisfies the requirements moving forward
21 under section 206.

22 And specifically, in lieu now of

1 the applicant being able to use the National
2 Children's Center for drop-off and pick-up
3 during that 15 minute period in the morning,
4 what is going to happen is that the applicant
5 is going to direct all parents for the
6 additional 20 young people to take their
7 children to a satellite location, which is at
8 1320-B Good Hope Road, S.E., Washington, D.C.

9 That facility or that location is
10 equipped with two 16 passenger vans for
11 transportation to the MLK site. And so what
12 will happen now is that at drop-off and at
13 pick-up, the young people will be collected at
14 this off-site location, which is away from MLK
15 Avenue, and then they will be brought there in
16 the two vans, which would be infinitely more
17 safe and potentially not have the traffic
18 impact that say having 20 parents drop-off 20
19 kids would have, because you only have two
20 passenger buses.

21 So I think that the applicant
22 satisfied the outstanding concern that we had

1 with respect to adverse traffic impacts, the
2 safety of the drop-off and pick-up for young
3 people.

4 And I do believe that she meets
5 the requirements for section 206 and section
6 205 really. There is no -- are no adverse
7 impacts from noise or traffic or the number of
8 students. We heard that testimony from the
9 Office of Planning. We also have on file
10 support from the ANC for the application,
11 that's our Exhibit 24, and there were no
12 witnesses that came forward in terms of
13 opposition.

14 The parking requirements, as
15 indicated, have been met. The project is in
16 harmony with the Zoning Regs and the Map.
17 Private schools are presumed appropriate in
18 the R-4, qualified by BZA approval. And this
19 operation has been there pretty much since
20 1992, I think.

21 So with that, Madam Chair, unless
22 there are clarifications or additional things

1 that my colleagues would like to add, I'm
2 prepared to move forward with a motion with
3 respect to this application.

4 CHAIRPERSON MILLER: Do you want
5 to discuss conditions after your motion or
6 before?

7 VICE CHAIR LOUD: I think it would
8 probably make sense to discuss it before,
9 right?

10 CHAIRPERSON MILLER: Okay.

11 VICE CHAIR LOUD: Okay.

12 CHAIRPERSON MILLER: Okay.

13 Because I just would add that, you know, this
14 applicant has been operating a child
15 development center and has a good history.
16 And I don't believe that there is any
17 indication of any adverse impacts. And the
18 only ones that we were primarily concerned
19 about, I guess, would be with respect to the
20 drop-offs, the safety there. Okay.

21 VICE CHAIR LOUD: I think in terms
22 of the conditions, the first would be the

1 term. And the previous order was a 10 year
2 term. This, I think, is going to be an all
3 new order and so I would like to propose a 10
4 year term as well.

5 In addition to which the drop-off
6 and the pick-up will occur, as indicated in
7 the applicant's March 23, 2009 letter to the
8 BZA, which essentially does what I just
9 described. It identifies a collector site for
10 the young people at 1320-B Good Hope Road
11 where the parents will be directed to bring
12 the children for pick-up and drop-off. And
13 then following that, the young people will be
14 brought to the site by two passenger vans. So
15 that would be the second condition, that drop-
16 off occur in accordance with what is outlined
17 in the March 23, 2009 memo.

18 CHAIRPERSON MILLER: Okay. Can I
19 just make a couple of comments before we move
20 on?

21 VICE CHAIR LOUD: Um-hum.

22 CHAIRPERSON MILLER: I just want

1 to make a comment on the 10 year term, why I
2 agree with you that that's a good amount of
3 time. One is because the applicant has a good
4 history here and was already operating, I
5 think, under a 10 year order, which this is
6 going to supersede.

7 And also, we heard testimony from
8 Mr. Cochran about this area changing with
9 respect to the St. Elizabeth's campus or
10 something like that. And most likely, it
11 would take about 10 years perhaps before there
12 are really changes that might impact this, the
13 way they operate this child development center
14 and private school with respect to drop-off or
15 anything like that.

16 So I just wanted to just add that
17 there was, you know, a reason for our going to
18 that.

19 With respect to drop-off in
20 accordance with the memo, I mean, with the
21 letter that we just received this morning, I
22 would agree, but I would suggest that we try

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1 to perhaps just take out the key point of it,
2 so that people looking at the order can know
3 what the conditions are without having to
4 refer back to a letter.

5 And my understanding is the drop-
6 off is going to be divided between, I think,
7 the younger children are going to be dropped
8 off at MLK and then the older ones -- is this
9 for the older students or am I mistaken here
10 or maybe she --

11 VICE CHAIR LOUD: My understanding
12 is that it is the 20 new population.

13 CHAIRPERSON MILLER: Right.
14 That's what --

15 VICE CHAIR LOUD: So the existing
16 40.

17 CHAIRPERSON MILLER: Okay. I
18 mean, maybe we can say that drop-off is going
19 to be divided between MLK and this new
20 facility located at 1320-B Good Hope Road,
21 S.E., Washington. I just think we need to
22 just look at whatever most important details

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1 we need out of this.

2 VICE CHAIR LOUD: I think it makes
3 a lot of sense.

4 CHAIRPERSON MILLER: Okay.

5 VICE CHAIR LOUD: What they say is
6 that the drop-off will apply to the 20 new
7 students that are going to be housed in 3332
8 as opposed to the other two buildings.

9 CHAIRPERSON MILLER: Okay.

10 VICE CHAIR LOUD: So maybe we want
11 to reference a third building.

12 CHAIRPERSON MILLER: Right, okay.

13 VICE CHAIR LOUD: And I'm trying
14 to see if they actually -- I think at some
15 point they mentioned the age of the 3332
16 population. Let me just double check my notes
17 and see if I can come up with that right
18 quick.

19 CHAIRPERSON MILLER: Well, I know
20 this was just given to us this morning.

21 VICE CHAIR LOUD: Yeah, they say
22 that in 3332, they will have ages 2 to 18, so

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1 I don't -- I don't know if we want to
2 reference that and get down to that level of
3 detail. But I think we just reference the
4 building and the number of students, because
5 that's the change in status quo.

6 CHAIRPERSON MILLER: So drop-offs
7 for the students at 3332 Martin Luther King,
8 Jr. location will be at 1320-B Good Hope Road,
9 S.E., Washington, D.C.?

10 VICE CHAIR LOUD: That's correct.

11 CHAIRPERSON MILLER: And then
12 those students will be transported to?

13 VICE CHAIR LOUD: They will be
14 transported to the Kuumba Learning Center
15 site.

16 CHAIRPERSON MILLER: Okay.

17 VICE CHAIR LOUD: At MLK Avenue,
18 presumably 3332.

19 CHAIRPERSON MILLER: By van?

20 VICE CHAIR LOUD: By van.

21 CHAIRPERSON MILLER: Okay. I
22 think that does it.

1 VICE CHAIR LOUD: Okay.

2 CHAIRPERSON MILLER: Okay.

3 VICE CHAIR LOUD: All right. If
4 that does it --

5 CHAIRPERSON MILLER: No, I think
6 it does it for the drop-off and pick-up. And
7 I was going to say we usually also do number
8 of students. 60 students?

9 VICE CHAIR LOUD: So why don't we
10 do it now?

11 CHAIRPERSON MILLER: Yes. 60
12 students.

13 VICE CHAIR LOUD: 60 students and
14 12 staff, correct, and 7 of those are for the
15 child development center. The other 5 are
16 allocated to the private school.

17 CHAIRPERSON MILLER: One last
18 question. Do we want to include the condition
19 that was there before with respect to staff
20 being assigned to escort the children between
21 drop-off and pick-up locations?

22 VICE CHAIR LOUD: Yeah.

1 CHAIRPERSON MILLER: I would think
2 so. Okay. All right. I can't think of any
3 other conditions then.

4 VICE CHAIR LOUD: Neither can I,
5 Madam Chair. I think we have covered it.
6 With that, if there are no additional
7 clarifications, I would like to move approval
8 of Application No. 17864 of the Kuumba
9 Learning Center for special exception relief
10 under section 206 for private school and under
11 205 for child development center.

12 CHAIRPERSON MILLER: As
13 conditioned?

14 VICE CHAIR LOUD: As conditioned.
15 Thank you.

16 CHAIRPERSON MILLER: Second.
17 Further deliberation?

18 All those in favor say aye.

19 ALL: Aye.

20 CHAIRPERSON MILLER: All those
21 opposed? All those abstaining? And would you
22 call the vote, please?

1 MR. MOY: Yes, Madam Chair. Staff
2 would record the vote as 3-0-1. This is on
3 the motion of Mr. Loud, the Vice Chair,
4 seconded by Ms. Miller. In support of the
5 motion is Mr. Dettman. One Board Member not
6 participating on this case. We also have an
7 absentee ballot by Mr. Hood, as he was leaving
8 the dias, and his vote was in support of the
9 application, which would give a resulting vote
10 of 4-0-1. A summary order, Madam Chair?

11 CHAIRPERSON MILLER: Yes, there is
12 no party in opposition.

13 MR. MOY: Okay. Very good.

14 CHAIRPERSON MILLER: On all those
15 orders that we have done so far.

16 MR. MOY: Yes, indeed.

17 CHAIRPERSON MILLER: Okay.

18 MR. MOY: The next application is
19 17889.

20 CHAIRPERSON MILLER: Mr. Moy?

21 MR. MOY: Yes?

22 CHAIRPERSON MILLER: Could you

1 just pause for a second? I think we need to
2 get Mr. Jeffries.

3 MR. MOY: I'm sorry. Oh, yeah.
4 I'm going to go ahead and read the -- go
5 through the reading, Madam Chair. Mr.
6 Jeffries is on his way.

7 CHAIRPERSON MILLER: Thank you.

8 MR. MOY: This is Application No.
9 17889 of the Presiding Bishop of the Church of
10 Jesus Christ of Latter-Day Saints, pursuant to
11 11 DCMR 3104.1, for a special exception to
12 construct a new two-story church on a vacant
13 lot under subsection 1553, in the Sixteenth
14 Street Heights Overlay, SSH/R-1-B District at
15 premises 4901 16th Street, N.W., Square 2710,
16 Lot 15.

17 Staff notes for the Board that
18 this application has been amended to include
19 variance zoning relief from the off-street
20 parking requirements under subsection 1553.2
21 of the overlay as stated.

22 At its Public Hearing on March 10,

1 2009, the Board completed public testimony,
2 closed the record and scheduled its decision
3 on March 24th.

4 The Board requested additional
5 information to supplement the record from the
6 applicant and the opposition party, which is
7 the Carter-Barron East Neighborhood
8 Association. I think I got that right.

9 The applicant made its filing and,
10 just a second here. Yes, the applicant made
11 their filing and this post-hearing document is
12 identified in your case folders as 49.

13 We also have a series of
14 preliminary matters, Madam Chair. There are
15 a series of letters in support of the
16 application, which was filed into the record
17 after the Public Hearing. And these letters
18 in support are identified as Exhibit Nos. 45,
19 46, 47 and 48.

20 In addition to these letters in
21 support, we also have a letter filed by ANC-4C
22 dated March 12, 2009 after the Public Hearing.

1 The letter states the position that the
2 Commission, the ANC Commission, voted
3 unanimately not to support the application,
4 which is Exhibit 44.

5 Next, we have a filing, which is
6 also a preliminary matter, from the Carter-
7 Barron East Neighborhood Association exhibited
8 as Exhibit No. 50, in which the party has
9 written closing testimony, that's a
10 preliminary matter.

11 We also have a filing also from
12 CBENA, Exhibit No. 51, which addresses one of
13 the requests from the Board with respect to
14 the membership and authorization letter,
15 that's Exhibit 51.

16 Finally, Madam Chair, we have a
17 motion from the applicant to strike or not
18 enter into the record Exhibit No. 50 for the
19 reasons I think I have just stated. That's,
20 again, Exhibit No. 52 and that was filed by
21 the applicant on March 23rd.

22 The Board is to act on the merits

1 of the special exception and the variance
2 request and that completes the staff's
3 briefing, Madam Chair.

4 CHAIRPERSON MILLER: Okay. Well,
5 let me just say preliminarily that the reason
6 that we, you know, closed the record at the
7 end of the hearing and only allowed for
8 certain documents to come in is because there
9 has to be, you know, an end and also parties
10 need an opportunity to respond to each other.
11 And if somebody's letter has come in and then,
12 after the record has been closed, the other
13 party doesn't have a chance to respond and
14 that can be prejudicial to the other side.

15 So Mr. Moy seemed to identify a
16 lot of late documents and sometimes we let
17 documents in late, because there is good
18 cause, as we did in the earlier one, in the
19 previous application we were just discussing
20 and there was no prejudice to any party.

21 I was just wondering about the ANC
22 report. I mean, we usually do let ANC reports

1 in, because that's very important for our
2 record to have the ANC's report in and also
3 ANC often cannot do a report until they have
4 their publicly noted meeting. And that often
5 affects when they can file.

6 So I didn't realize that the ANC
7 report is late, Mr. Moy?

8 MR. MOY: Yeah, I need to double
9 check the record, Madam Chair.

10 CHAIRPERSON MILLER: Okay.

11 MR. MOY: But I think this is a
12 supplement.

13 CHAIRPERSON MILLER: Oh.

14 MR. MOY: Of a supplemental type
15 that basically reiterates its earlier position
16 in an earlier filing.

17 CHAIRPERSON MILLER: Okay. Can
18 you give me the exhibit on that one or the
19 date? Because I think I'm probably just
20 looking at the older one now.

21 MR. MOY: It's Exhibit 44.

22 CHAIRPERSON MILLER: Oh, Exhibit

1 44, okay.

2 MR. MOY: Dated March 12th. Do you
3 have it?

4 CHAIRPERSON MILLER: Okay. I'm
5 not sure the Board Members have even gotten
6 that actually. So maybe we should withhold
7 that one in abeyance, unless you all think
8 that we should just -- yeah, I think we should
9 hold that one in abeyance.

10 We did ask for CBENA's
11 authorization and they did provide that, so I
12 would suggest that we definitely accept that
13 one into the record. We wanted to know who
14 they represented and everything.

15 MR. MOY: Um-hum.

16 CHAIRPERSON MILLER: Okay. It's
17 the consensus of the Board to allow that one
18 in. I think that, let me see, Exhibit 50
19 represents itself as being closing summation
20 and that does go beyond what our rules allow
21 and what we left the record open for, so I
22 would suggest that we not accept that one into

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1 the record.

2 The next question goes to letters
3 in support. Mr. Moy, what are the exhibit
4 numbers on the letters of support?

5 MR. MOY: Exhibits 45, 46, 47 and
6 48, Madam Chair.

7 CHAIRPERSON MILLER: Does somebody
8 want to comment on those? Two of us are
9 having trouble even -- three of us, we haven't
10 seen those. But I don't know why we would
11 accept those into the record. I mean, I
12 haven't seen them, but it sounds like they
13 fall into the category of, if Mr. Moy -- I'm
14 sure Mr. Moy accurately described them. We
15 can wait until we see them or we shouldn't see
16 them at all, because we closed the record.

17 You know, unless there is some
18 exceptional good cause that is outlined in
19 there for accepting it, I think that it goes
20 in the category that it would be prejudicial
21 for those maybe who didn't have a chance to
22 respond. So, okay, I think the consensus is

1 not to accept those.

2 I think that may have covered the
3 late submissions. The ANC, we're just going
4 to get back to perhaps when we take a look at
5 it. I would think normally they do have good
6 cause, because of their timing, and so we will
7 just hold that one in abeyance until we look
8 at that.

9 Why don't we move on, at this
10 point, and talk about this case. It's an
11 application for variance relief as well as
12 special exception. I think that there are
13 some concern among my colleagues as to whether
14 or not the record is full enough today to
15 proceed with deliberation.

16 And the concern is, and my
17 colleagues will be addressing it themselves,
18 but, whether or not we have sufficient data
19 for Sunday to determine whether or not -- or
20 determine what any adverse impacts might be
21 related to traffic.

22 I think I'm going to let my

1 colleagues speak to that, at this point.

2 MEMBER DETTMAN: I can begin by
3 making a few comments, Madam Chair. I agree
4 with you that I'm not certain that the record
5 is full enough with respect to the impacts
6 that the proposed church is going to have on
7 traffic congestion and parking and potential
8 spill over parking in the surrounding area.

9 Very thoroughly looking through
10 the transportation study, a few things really
11 jumped out at me in my review as well as
12 during the hearing.

13 First and foremost, it's that the
14 -- we don't have any data collected for 16th
15 Street on Sunday. The applicant had stated
16 that in consultation with DDOT, they were
17 advised to collect data for 16th Street during
18 the weekday, because that's the worst case
19 scenario. And I would agree with that if we
20 really weren't looking at a church on upper
21 16th Street.

22 I'm of the opinion that upper 16th

1 Street on a Sunday morning is a very, very
2 different environment than it us during rush
3 hour on a Wednesday.

4 Secondly, the trip generation
5 analysis in the transportation study, which is
6 Exhibit 30 in our record, page 12 deals with
7 the potential trip generation. And the trip
8 generation calculation that the applicant
9 conducted for the weekday is based on this
10 trip generation manual put out by ITE, which
11 bases their calculation on the square footage
12 of the church.

13 However, the trip generation
14 numbers that we are presented with for Sunday
15 diverge from that calculation. They base
16 their calculation on the number of seats in
17 the sanctuary, which might be a fine
18 methodology. However, we are not given any
19 indication as to where that methodology comes
20 from, what rate was applied to go from 279
21 seats to a total of 182 spaces.

22 And then moving forward through

1 the study, all of the numbers that we receive
2 in terms of number of cars coming from which
3 intersections at what times are based off of
4 those numbers on page 12. And so I was
5 unclear on where those numbers came from on
6 page 12. I'm equally as unclear how the
7 numbers following that page come from.

8 And finally, we heard at the
9 hearing that the modal split that was applied
10 to this site, I believe, the applicant
11 provided a modal split of 50 percent. We
12 heard from DDOT and I share their opinion that
13 a 50 percent modal split isn't necessarily
14 appropriate for the location of this site in
15 the District of Columbia.

16 DDOT mentioned that 50 percent
17 modal split is typically applied to sites that
18 sit very, very close to a fixed rail. This
19 site has access to a bus system along 16th
20 Street. So I would recommend that we ask the
21 applicant to go back and either provide
22 justification on their methodologies in the

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1 existing study or do a thorough data
2 collection for 16th Street on a Sunday, so the
3 Board can make a solid finding on what the
4 impacts with respect to traffic and congestion
5 will be with the proposed church.

6 CHAIRPERSON MILLER: Are there
7 other comments about that?

8 COMMISSIONER JEFFRIES: I'm in
9 agreement, Madam Chair, with Board Member
10 Dettman. I do think it's somewhat of a
11 problematic analysis, given the special
12 conditions on a Sunday, particularly on 16th
13 Street, particularly in the fact that, you
14 know, there is on-street parking on those
15 days. And so it's a very different time on
16 16th Street between the weekday and the
17 weekend and the church sits right on 16th
18 Street, the proposed.

19 And so I think there is a lot of
20 things that we should get a better handle on
21 exactly what is going on on Sunday and make
22 certain that we have the information to back

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1 up any decision that we make here.

2 VICE CHAIR LOUD: I would also
3 agree with Board Member Dettman as well. I
4 think that when the expert for the applicant
5 testified, Ms. Morris, she talked about the
6 parking study on Piney Branch, I think, and on
7 Emerson and then went through -- she went
8 through a really helpful analysis of the count
9 and how they develop formulas for what the
10 peak hour traffic will be based on the count.

11 But all the numbers were based on
12 where they did the study, which was pretty
13 much Piney Branch and Emerson and 16th Street
14 was only done as to the week. So I think
15 that's a faulty sort of analytical tool for us
16 to rely upon in moving forward with our very
17 limited, you know, 1553 analysis. And that
18 would plug a very needed gap.

19 And also just to remind myself
20 even that this is the overlay and the whole
21 point of the overlay was that the community
22 felt there were too many churches. I think it

1 had exceeded 10 percent within defined
2 boundaries.

3 And so I mean, that's the very
4 reason why you would want to look at traffic
5 on 16th Street on a Sunday, because,
6 presumably, there is a presumption that you
7 already have a lot of churches and those
8 churches are bringing additional traffic
9 during the days that they worship. So it just
10 seems very curious that that would not have
11 been part of the study.

12 COMMISSIONER JEFFRIES: And I also
13 agree with this whole notion, because it seems
14 counterintuitive to me this 50 percent transit
15 reduction application, just given the location
16 of where this church is being proposed. It
17 just seems kind of intuitive to me that you
18 would apply a 50 percent -- it seems to be 25
19 or even less.

20 I just -- you know, with some
21 familiarity with the area and so forth and how
22 -- I mean, I just don't see a lot of people

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1 getting on a bus going to church. I mean, if
2 the applicant has some information on that,
3 that would be fine. But given that this is
4 really not in close proximity to a Metro, a
5 fixed rail, that's an issue.

6 And I don't know, Mr. Dettman, did
7 you -- did we talk about parking spaces? Was
8 there any discussion about parking spaces?

9 MEMBER DETTMAN: In terms of what
10 is required and what is being provided?

11 COMMISSIONER JEFFRIES: Yes.

12 MEMBER DETTMAN: I can make a
13 couple of comments. You know, I'm most
14 interested in finding out where the numbers on
15 page 12 came from in terms of trip generation,
16 because, as I noted, they base one on square
17 footage and one on the number of seats. And
18 I'm either looking for consistency and
19 reliance on this manual or a sound
20 justification as to why they used one versus
21 the other on Sunday.

22 And the reason I say that is that

1 during the hearing, it was mentioned that the
2 applicant is providing well in excess of what
3 is required for parking.

4 COMMISSIONER JEFFRIES: Um-hum.

5 MEMBER DETTMAN: They are required
6 to provide 28 and they are providing 72. But
7 that doesn't automatically translate to that
8 there is not going to be any impacts to
9 parking on-street, because if it is found that
10 they are providing 72 spaces, but this thing
11 is going to have 150 trips in the morning, you
12 are even exceeding what you are going to be
13 providing.

14 So I would like to see some
15 information, some adjusted numbers for trip
16 generation and how that translates into the
17 number of cars coming to the site and can be
18 accommodated on-site. And if there is any
19 spill over --

20 COMMISSIONER JEFFRIES: Right.

21 MEMBER DETTMAN: -- a
22 justification as to why this will not have an

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1 adverse impact to on-street parking.

2 COMMISSIONER JEFFRIES: Yeah,
3 because I see here on page 26 of the
4 transportation report, it does talk about, you
5 know, a survey done on February 15, 2009. And
6 it states from 10:00 a.m. to 11:00 a.m., you
7 know, perhaps, you know, we might want to look
8 at a different interval, a wider interval over
9 two Sundays just to get a sense of what is
10 going on, rather than just doing sort of a
11 snapshot to be clear.

12 Because you know, I am concerned
13 about spillage and traffic diverting, you
14 know, from 16th Street into these
15 neighborhoods in addition to people parking.
16 So this could be somewhat problematic.

17 I'm not saying that this is rising
18 to a level that, you know, I would -- I
19 couldn't support the project, but I really do
20 think that we need to get some better
21 information, some -- a fuller record here, so
22 that I can be comfortable, particularly given

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1 the level of opposition to this particular
2 church in the neighborhood.

3 CHAIRPERSON MILLER: Okay. Let me
4 just see if we can get specific and I think
5 the applicant's attorney is here and we can
6 talk about how long it would take to get this
7 information when we are ready to do that.

8 But I just want to be able to
9 specifically identify what information the
10 Board wants the applicant to obtain. And one
11 is I think Mr. Dettman is saying that he wants
12 to know, No. 1, the methodology that was used
13 for the Sunday data referenced on page 12.
14 Maybe you can say it better than that, but,
15 okay.

16 MEMBER DETTMAN: That's fine,
17 Madam Chair. If they want to stay with the
18 numbers that they presented to us, just give
19 us a rationale for why they based one on
20 number of seats and one on square footage or
21 recalculate the numbers using, you know,
22 either square footage or number of seats.

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1 CHAIRPERSON MILLER: Okay.

2 MEMBER DETTMAN: And as the study
3 shows at the top, states at the top of page
4 12, that the ITE manual does not have trip
5 generation rates based on seats, but rather on
6 square footage. If they decide to go with the
7 calculation that is based on number of seats,
8 please, let us know where that came from.

9 CHAIRPERSON MILLER: Right. Okay.
10 And No. 2, I think, Mr. Jeffries said a
11 parking study for on-street parking with a
12 broader time span like --

13 COMMISSIONER JEFFRIES: Over maybe
14 -- yeah, yeah. Yes, and over --

15 CHAIRPERSON MILLER: Okay.

16 COMMISSIONER JEFFRIES: -- two
17 weeks, you know.

18 CHAIRPERSON MILLER: So at least
19 two Sundays?

20 COMMISSIONER JEFFRIES: Yes.

21 CHAIRPERSON MILLER: Okay. And in
22 the same radius that was --

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1 COMMISSIONER JEFFRIES: Yes.

2 CHAIRPERSON MILLER: -- done here.

3 Okay. Is that it or was there anything else

4 for Sunday? Maybe that's it for now. Okay.

5 Well, while you are thinking about that -- oh,

6 the modal split. Well, the modal split,

7 that's just an application of a number.

8 COMMISSIONER JEFFRIES: Yeah.

9 CHAIRPERSON MILLER: Okay. And

10 you are just saying the 50 percent seems high.

11 COMMISSIONER JEFFRIES: It just

12 seems extremely high.

13 CHAIRPERSON MILLER: Yeah.

14 MEMBER DETTMAN: And also --

15 COMMISSIONER JEFFRIES: I mean, if

16 they can -- excuse me, I'm sorry, Mr. Dettman.

17 MEMBER DETTMAN: Sure.

18 COMMISSIONER JEFFRIES: If the

19 applicant can somehow give some -- I mean, if

20 they are just sort of grabbing the industry

21 metric, you know, it just doesn't seem to work

22 anecdotally for me, you know. So I just --

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1 you know, if they can somehow provide some
2 evidence that this is, in fact, the population
3 that is going to this church, you know, I'm
4 all ears. But it just does not seem like it
5 follows suit.

6 MEMBER DETTMAN: Just two last
7 points. The manual that is relied upon
8 heavily, this ITE manual, I do understand that
9 it is cast across a lot of different areas,
10 suburbs, cities, rural areas. It is an
11 estimate. And sometimes -- DDOT has mentioned
12 that they suggested they go out and gather
13 data on three comparables in the area, instead
14 of relying upon this to get a better picture.

15 So that might be an option that
16 they might want to explore, because we do know
17 that -- well, I don't think that the Board is
18 going to be able to base their decision 100
19 percent on this study, because of the manual
20 being kind of this estimate.

21 But also to the modal split,
22 applying a modal split takes into account

1 people who may use public transit and may walk
2 to the site. But also it doesn't take into
3 account how many people are expected to maybe
4 carpool. So after factoring in the modal
5 split, you are going to get a number of trips.
6 And if the applicant is able to give us an
7 idea of how many people are expected to
8 carpool, that could help their case.

9 But again, if they do rely upon
10 carpooling, give us an idea of why they
11 decided that 10 percent of the people are
12 going to carpool. We just don't want to see
13 the number.

14 CHAIRPERSON MILLER: I think the
15 same would go for walking as well. If they
16 have -- they know their membership, so if they
17 know where their membership lives --

18 COMMISSIONER JEFFRIES: They know
19 the boundaries.

20 CHAIRPERSON MILLER: And the
21 boundaries.

22 COMMISSIONER JEFFRIES: They know

1 the boundaries.

2 CHAIRPERSON MILLER: Right. So I
3 think that that was one characteristic of this
4 application where they talked about dividing
5 their congregation when it got too big, so
6 that they kept it within certain boundaries.
7 And so I think that the Board is saying that
8 we would keep the record open for further
9 information that would help the Board really
10 understand as well as possible the Sunday
11 traffic situation, the Sunday vehicles that
12 would be coming to the church.

13 And then this may go without
14 saying, but probably not, that also I would
15 suggest leaving the record open for them to
16 address then how we can interpret those
17 numbers. Why or why not there would be an
18 adverse impact on neighboring property, not
19 just get numbers, you know.

20 And then have the ANC and parties
21 respond to that. Because one of my questions,
22 I guess, and I won't be deciding this case,

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1 but one of my questions really would be, you
2 know, when we get these numbers, then what,
3 you know. At what point is more traffic on
4 16th Street a reason to say that the church,
5 for instance, shouldn't open, even though a
6 church is presumed to be compatible as a
7 special exception.

8 Understanding that this is an
9 overlay and that's why we're looking at the
10 church as a special exception here, but it
11 starts with that premise of being compatible.
12 And then what would be an undue adverse
13 impact?

14 So I think that the Board just
15 wants to get a better handle on the traffic
16 and the spill over, because we did hear other
17 evidence that might indicate that there
18 wouldn't be, such as we heard testimony that
19 fewer than 40 of the members drive a personal
20 vehicle. But you know, they are all different
21 separate pieces of information that the Board
22 will have to assess.

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1 Okay. Anything else?

2 COMMISSIONER JEFFRIES: Madam
3 Chair, I mean, you know, for me I mean, that's
4 -- and like yourself, well, you are certain
5 you won't be hearing it. I may not be hearing
6 it. But you know, I mean, I think the crux of
7 this case is really around, I mean at least
8 for me, you know, what happens in this
9 neighborhood between certain hours on a
10 Sunday, you know.

11 What is the traffic doing? How is
12 the on-street parking impacted? Is the
13 parking lot sufficient? You know, those are
14 the things that, you know, would impact upon
15 my decision.

16 CHAIRPERSON MILLER: And I do
17 recall, I think, DDOT also wanted more
18 information about traffic on Sunday even
19 though, I guess, earlier on in the church's
20 process, you know, they got approval in their
21 environmental screening. But the Board still
22 has to make the findings that it has to make

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1 and if it doesn't feel it has sufficient
2 information, then we need to just take a
3 little bit more time and get that information.

4 So if there aren't any other
5 comments, then I would ask the applicant to
6 come forward. And if an ANC representative is
7 here and if any of the other parties are here,
8 just for scheduling purposes or if you need
9 any other clarification. Is anybody else here
10 on this case? Okay. Good morning.

11 MS. BROWN: Good morning, Madam
12 Chair. As far as scheduling, we're calling
13 the traffic engineer right now to verify that
14 the information can be turned around as
15 quickly as possible. And of course, we have
16 the Easter Sunday and Palm Sunday, which
17 generates more traffic than usual coming up,
18 so we're going to see if we can squeeze it in
19 this Sunday to make sure that we can get a
20 normal count.

21 And just as a point of
22 clarification, Mr. Dettman, on page 26 of the

1 traffic report, it does give an explanation as
2 to why there is a difference between the
3 square footage calculation and the number of
4 seats. The ITE says for Sundays you use
5 seats, during the week you use the other
6 count. And it's based on the ITE manual.

7 MEMBER DETTMAN: Ms. Brown, I
8 believe page 26 has to do with the parking
9 analysis in terms of generating the number of
10 parking spaces that should be.

11 MS. BROWN: Yes. And I -- yes.

12 MEMBER DETTMAN: Right. I was
13 pointing to page --

14 MS. BROWN: 12?

15 MEMBER DETTMAN: -- 12, which
16 deals with how to calculate the number of
17 trips generated by the site. One is based on
18 square footage and one is based on number of
19 seats.

20 MS. BROWN: Okay. Thank you.

21 MEMBER DETTMAN: Okay. Thank you.

22 MS. BROWN: Being the optimist, I

1 would say that we would need no more than two
2 weeks, but we will verify that with the
3 traffic consultant as soon as she calls back
4 in.

5 COMMISSIONER JEFFRIES: Wait. Are
6 there two Sundays before Easter? Ms. Brown,
7 is there two Sundays before Easter? I mean,
8 how much --

9 MS. BROWN: I'm trying to remember
10 myself. Yeah, Easter is the 12th, so the Palm
11 Sunday would be the Sunday before, so we do
12 have this Sunday the 29th that would be.

13 COMMISSIONER JEFFRIES: So would
14 Palm Sunday -- that probably won't be a normal
15 Sunday either?

16 MS. BROWN: No. So if we can get
17 her, someone, out there this Sunday, I think
18 it should work on the 29th.

19 COMMISSIONER JEFFRIES: Yeah, I
20 was really looking for two.

21 MS. BROWN: And we would have the
22 counts from the previous, the existing count.

1 COMMISSIONER JEFFRIES: Um-hum,
2 from the 15th?

3 MS. BROWN: Yes.

4 COMMISSIONER JEFFRIES: Okay.

5 CHAIRPERSON MILLER: So if you do
6 your traffic counts on the 29th, when do you
7 think you could make a submission addressing
8 the issues that we have identified?

9 MS. BROWN: By April 7th.

10 CHAIRPERSON MILLER: I think that
11 you probably are more in a hurry than the
12 Board is, so if that's good for you?

13 MS. BROWN: Well, I guess, maybe
14 it depends on backing into a decision date and
15 making sure that the other parties have an
16 opportunity to comment. So, as you know, we
17 have been waiting for -- the Department
18 process has been held up for almost 10 months
19 now, so the sooner for us, the better.

20 CHAIRPERSON MILLER: Okay. Okay.
21 We were just checking the ANC meeting date for
22 the ANC within which this property is located.

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1 So their meeting date, according to Mr. Moy,
2 is the second Tuesday of the month, which
3 would be April 14th. So if you file by the
4 7th, that would really be perfect.

5 Okay. So --

6 COMMISSIONER JEFFRIES: Okay.

7 Wait.

8 CHAIRPERSON MILLER: Yes, go
9 ahead.

10 COMMISSIONER JEFFRIES: Madam
11 Chair, just something was brought to my
12 attention by my colleagues here. I think the
13 problem with the February 15th survey is that
14 it did not take into consideration 16th Street
15 parking. And so I think that's the
16 difference. And so what we would want is two
17 weeks of a survey for on-street parking, that
18 would include the 16th Street radius.

19 Because it did not include 16th
20 Street in that radius, correct?

21 MS. BROWN: I don't believe it
22 did, but I would have to go back and look. I

1 don't recall if it did or not.

2 COMMISSIONER JEFFRIES: I mean,
3 page 26 --

4 MS. BROWN: I know we have had
5 other --

6 COMMISSIONER JEFFRIES: Do you
7 want to look at it now?

8 MS. BROWN: Yeah. I do recall
9 that we did submit photographs to the record
10 showing, I think they were from March, that
11 there were no -- there are plenty of parking
12 spaces available on the street. It was not a
13 precise count, but it did show existing
14 conditions between 9:00 and 11:00 on that one
15 Sunday morning and it included 16th Street.

16 MEMBER DETTMAN: Well, but I think
17 this goes beyond parking on 16th Street. I
18 think that we need to get a very clear picture
19 in terms of what is the congestion like on
20 16th Street given that there is only two lanes
21 instead of four lanes. You know, there is
22 going to be a lot more weaving, because people

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1 are going to come up to a parked car and need
2 to get into the left hand lane.

3 There is no left turn restrictions
4 on 16th Street. So yes, I think looking at
5 parking, available parking, on 16th Street is
6 good for two Sundays, but also the whole idea
7 of the level of service of each intersection,
8 the congestion, the queuing time is different.
9 So we need two weeks of data collection, so
10 that it can be applied to level of service,
11 parking, trip generation, etcetera.

12 MS. BROWN: We're happy then to
13 include Palm Sunday, recognizing that it is
14 going to be --

15 COMMISSIONER JEFFRIES: Spiked?

16 MS. BROWN: -- spiked, yes.

17 CHAIRPERSON MILLER: Okay. So we
18 are looking at an April 28th decision date,
19 because Mr. Jeffries will be here. And it
20 works except for the fact that you are going
21 to have a spiked day. And I can say recognize
22 that, you know.

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1 MS. BROWN: I think if it ends up
2 being a huge problem, maybe we will, you know,
3 request additional time.

4 CHAIRPERSON MILLER: Okay. But as
5 of now, this is a schedule that you are
6 comfortable with our setting that would be
7 April 7th applicant would file its submission
8 on traffic impact and the ANC and opposing
9 parties would file a response by April 21st?
10 Well, let me see. You need time to -- you
11 would like to respond to their response or no?

12 MS. BROWN: If we do need to
13 respond, we can do it in a day.

14 CHAIRPERSON MILLER: Okay. Fine.
15 Mr. Moy, correct me if I'm doing anything --

16 MR. MOY: You're doing well.

17 CHAIRPERSON MILLER: All right.
18 So April 21st would be the opposition and ANC
19 response. And then the decision would be
20 April 28th. And then the last day for the
21 applicant to file a response to the neighbors
22 and the ANC would be what day, that Friday?

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1 MR. MOY: How about Thursday, the
2 23rd?

3 CHAIRPERSON MILLER: Okay.

4 MS. BROWN: That would be fine.

5 MR. MOY: Yeah, we'll give that
6 and if you want to file sooner, that -- we
7 would be pleased as well.

8 CHAIRPERSON MILLER: That's two
9 days. She said she could do it in one and
10 we're giving you two. Okay.

11 MS. BROWN: Thank you.

12 CHAIRPERSON MILLER: All right.
13 Any questions on that?

14 MS. BROWN: No, I think we are
15 fine. Thank you very much.

16 CHAIRPERSON MILLER: Okay. And I
17 guess we should also leave the record open for
18 the Office of Planning, should they want to
19 submit a response.

20 MR. MOY: We'll make that the same
21 day of April 23rd?

22 CHAIRPERSON MILLER: Um-hum. Oh,

1 and DDOT, right. Okay. Oh, Mr. Moy, will you
2 be communicating those dates to the ANC and
3 the opposition party?

4 MR. MOY: Yes, yes, I'll do that.

5 CHAIRPERSON MILLER: Okay. All
6 right. And OP? All right. Then that, I
7 believe, concludes Application 17889.

8 I would suggest, Mr. Moy, we
9 didn't ever get back to that ANC letter.

10 MR. MOY: Yes.

11 CHAIRPERSON MILLER: Whether to
12 accept it in the record that the Board take
13 that up at the next meeting.

14 MR. MOY: Okay. Very good.

15 CHAIRPERSON MILLER: Thank you.
16 Okay. I think we are ready for the last case
17 on the agenda when you are, Mr. Moy.

18 MR. MOY: Yes, Madam Chair, that
19 would be Application No. 17726 of Wisconsin
20 Avenue Baptist Church. The original
21 application -- well, this is the motion of the
22 Board to reopen, but the original application,

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1 I'll go through that reading, was pursuant to
2 11 DCMR 3104.1, for a special exception to
3 allow a child development center under section
4 205 and a special exception to allow a private
5 school under section 206 in the R-1-B District
6 at premises 3920 Alton Place, N.W., Square
7 1779, Lot 824.

8 At its decision meeting on
9 February 17, 2009, the Board deliberated on
10 the supplemental filings from the applicant
11 and parties. After discussion, the Board
12 voted to reopen the record to allow all the
13 additional filings pursuant to sections 3124.2
14 and 3124.7.

15 As a final action of the Board,
16 which was to request additional information on
17 limited issues from the applicant and parties,
18 the applicant filed on February 27, 2009 and
19 that document is identified as Exhibit 90 in
20 your case folders, Madam Chair.

21 The parties, the families
22 neighboring the Wisconsin Avenue Baptist

1 Church responded to the applicant's filing
2 dated March 18, 2009 and it is identified as
3 Exhibit 91.

4 We also have a filing from ANC-3F
5 dated March 20, 2009 identified as Exhibit 92
6 in your case folder.

7 The applicant was allowed to
8 respond to both the ANC and the families
9 neighboring the Wisconsin Avenue Baptist
10 Church. The applicant made two filings to
11 that effect. One which was timely dated March
12 20, 2009 identified as Exhibit 93, which was
13 in response to the families neighboring the
14 WABC.

15 The applicant made a similar
16 filing to respond to the ANC which arrived --
17 which is in your case folders identified as
18 Exhibit 97 dated March 23rd, which was
19 untimely, only because the ANC was a bit
20 untimely. If the Board wants to take that up
21 as a preliminary matter?

22 So again, two filings from the

1 applicant, Exhibit 93 and 94. The Board is to
2 act on the merits of the request for the two
3 parking plans, the co-op hours of operation to
4 be extended into the afternoon and the request
5 to extend the construction time from 2 years
6 as required by the order to 5 or 7 years.

7 And that completes the staff's
8 briefing, Madam Chair.

9 CHAIRPERSON MILLER: Thank you,
10 Mr. Moy. Okay. With the documents that Mr.
11 Moy identified as possibly being untimely, I
12 guess the ANC report and the applicant's
13 response, thereto, I would suggest that we
14 waive our rules and accept them into the
15 record, as they are central to our decision
16 making and not very late. Any opposition?

17 Okay. I think it is time we
18 finally close out this case. It has been
19 going on a very long time and I know that
20 that's difficult on all of us. And I'm glad
21 that I can, you know, put this to bed as one
22 of the last things that I do here.

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1 I'm going to recap just a little
2 bit, because I think it's important to keep in
3 mind, you know, what this application was for
4 and then the limited aspects in which it was
5 opened up or the record was allowed to be
6 open.

7 The original application was for a
8 special exception to allow a child development
9 center under section 205 and a special
10 exception to allow a private school under
11 section 206 and they were for particular
12 entities.

13 In September, the Board granted
14 the application to allow the Caterpillar Co-op
15 to operate as a child development center and
16 it granted the Washington Music School special
17 exception to operate private school on the
18 church's property, subject to certain
19 conditions that were specifically designed for
20 these child development center and school in
21 this location.

22 You know, as I'll get to say

1 perhaps more later, I know that there was a
2 late request or not necessarily late, not
3 under our time restrictions, but yeah,
4 actually a late request to substitute one
5 school for another and that's not really --
6 they are not fungible.

7 I mean, if it was one music school
8 for another music school that had the exact
9 kind of hours, number of students, program,
10 etcetera, perhaps. But I just kind of want to
11 say off the bat that just substituting any
12 school under a special exception order for a
13 school doesn't fly without -- if you need a
14 modification or a new application, you can't
15 just come in because you have an order for a
16 school, but we can get to more on that later.

17 The Board did deny special
18 exception approval for CommuniKids as a child
19 development center. And at that point in the
20 hearing, we left open the record for the
21 applicant to file a revised parking lot plan
22 in light of the fact that we had denied the

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1 special exception for CommuniKids. And we
2 left open the record for the ANC and the
3 neighbors to comment.

4 And we thought that that made
5 sense given the change in the composition on
6 the property, that there might be a parking
7 lot plan that was tailored more appropriately
8 to what was remaining now under the special
9 exception order.

10 And in response, the applicant
11 filed two parking plans. One was called an
12 Interim Parking Plan and one was called a
13 Final Revised Parking Plan and as well as some
14 additional requests. And then in February we
15 decided that we would reopen the record to
16 consider the interim and revised parking
17 plans, since we had only asked for one parking
18 plan.

19 And the reason that was done, just
20 let me back up a little bit, was really for
21 good cause and that the fact that because we
22 disallowed CommuniKids the applicant

1 communicated to us, the applicant being the
2 church, that they couldn't afford to build the
3 addition right away and that the revised
4 parking plan would go with the addition and
5 the interim parking plan would be to serve the
6 special exception uses until there was
7 construction of an addition.

8 So when we reopened the record, we
9 said that we would consider very specific
10 issues. And one was also that the applicants
11 had requested an extension of time in which to
12 construct the addition, which we had also, I
13 may not have said that, approved in our
14 original order. And they requested that this
15 extension be for 5 to 7 years.

16 And if you were listening earlier,
17 the regs provide that a building be
18 constructed within 2 years of the BZA order.
19 And they requested that given the CommuniKids
20 was now not going to be operating on the
21 premises, that the Caterpillar Co-op operate
22 in the afternoon hours until 6:00 p.m. And

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1 then we were to consider the interim and the
2 revised parking plans.

3 So those are the three issues that
4 we are considering today and we will rule on.
5 We left open the record. Specifically, we had
6 a mini kind of hearing and we said, you know,
7 we wanted certain information from the
8 applicant in order for us to have a complete
9 record to decide these issues and then an
10 opportunity for the ANC and the neighbors to
11 respond.

12 We left the record open for
13 additional information on the potential affect
14 on adjacent properties in the neighborhood
15 with the co-op operating until 6:00 in the
16 evening. Our previous order allowed them to
17 operate until 12:45 p.m.

18 We also asked for additional
19 information on turnover of students between
20 the co-op and the music school and just in
21 general about the impact of extending the
22 hours for the Caterpillar Co-op on the affect

1 of the parking lot and adjacent and nearby
2 traffic.

3 We wanted to be clear about the
4 hours of operation, the number of children,
5 the number of faculty, how it, if it, differed
6 at all before the addition and after the
7 addition, dismissal times and how the two
8 parking lots plans would accommodate the drop-
9 off and pick-ups.

10 I think we felt that there was a
11 lot of data in the record already. We didn't
12 have to have a new hearing on any of these,
13 but just wanted a few more facts. And I think
14 we basically got answers to those questions.
15 Because if there was any adverse impact in
16 this case, I think, left, primarily went to
17 parking and the whole turnover. Turnover was
18 really a problem with CommuniKids.

19 And I think that disappeared with
20 our denying CommuniKids, but we just wanted to
21 make sure that there wouldn't be that kind of
22 a problem.

1 The information we got, we got
2 clarification from the applicant that the
3 hours of operation would be 9:00 to 6:00 with
4 early drop-off at 7:30 in the morning, the
5 number of faculty would be 14 max when 56
6 students are served and that the applicant
7 provided a chart on page 2 of Exhibit 90 which
8 shows dismissal times. And there are some
9 staggered dismissal between the 2 year-olds
10 and the 3 to 5 year-olds.

11 The numbers basically aren't
12 changing for the co-op. And we had a Traffic
13 Impact Study that is in the record from
14 Gorove/Slade talking about the impact of 56
15 students and 14 staff. What is just going to
16 be happening is it's going to happen in the
17 afternoon as well as the morning and I believe
18 that Traffic Impact Study said that there was
19 a demand of 18 spaces based on that number.

20 I think that our regs only
21 required 4 spaces for that number. We also
22 have the parking lot plans that are a great

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1 improvement of what was there before. There
2 were parking lot plans, both of them provide
3 27 spaces with the possibility of 28 and that,
4 therefore, even if the maximum is 18, that
5 there are sufficient spaces for the music
6 school.

7 The music school, let's see, I
8 believe they go until 9:00. I can't remember
9 what time. I think they start at 2:00, the
10 music school, to 9:00, but they are very --
11 that's very staggered. It's very -- kids
12 showing up for music lessons and then they
13 will be there on Saturdays and the co-op, I
14 believe, is Monday through Friday.

15 In any event, the parking
16 certainly meets our requirements. And it's
17 not being doubled. It's really they are
18 talking about 56 kids in the morning and 56
19 kids in the afternoon.

20 So I don't see that there is an
21 adverse impact from allowing the co-op to
22 operate in the afternoon as well as the

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1 morning. We went through the whole hearing
2 and deliberation on the impacts of the co-op
3 which I think we found were fairly low.

4 I also want to just note for the
5 record and I'm sure that OAG will pick up on
6 this, that the applicant has asked us to refer
7 to Caterpillar Co-op, at least in the order as
8 Caterpillar Preschool, so I don't have a
9 problem with that. Under our definition of a
10 child development center, it includes
11 preschools, so I just wanted to put that in
12 the record.

13 Well, I didn't really look at this
14 in isolation. I don't know. I mean, I think,
15 and I'm going to open it up for others, but,
16 that the applicant did an excellent job in
17 responding to the Board's concerns with
18 respect to configuration of the parking lot
19 and that it makes sense to have the interim
20 parking lot until there is construction of a
21 new building and that the interim parking lot
22 really addresses, I think, all the concerns

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1 that we focused on.

2 It still provides the curb cut and
3 a better drop-off and landscaping. So I'm
4 speaking generally about that, but I don't
5 have any problem with either of those parking
6 lot plans.

7 I think I'm going to open this up
8 for comment by others before we get to the
9 issue of extension of time to build the
10 addition. So I guess what I'm asking is if
11 others want to comment on extending the hours
12 for Caterpillar to 6:00 p.m. and then your
13 position on the parking lot plans.

14 I mean, if there aren't any
15 comments, I can go on at this point. Okay.
16 All right. The applicant has requested that
17 we grant an extension of time to construct the
18 addition and the parking lot to give them 5 to
19 7 years due to the economic climate and the
20 difficulty of obtaining financing and the fact
21 that they now, you know, no longer have their
22 CommuniKids in their building.

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1 We dealt this morning with three
2 requests for extensions of time due to the
3 economic climate. And, Mr. Jeffries, I know
4 that the Zoning Commission is actually going
5 to be considering a text amendment dealing
6 with this issue. And so I guess my concern
7 is, and it looks like this is the direction
8 that the Zoning Commission may be going into,
9 that I don't know why this case should be
10 treated differently than the other cases, that
11 they have the two years and then two years
12 down the road, they can, before the order
13 expires, come in and ask for an extension of
14 time.

15 Were you here this morning? You
16 weren't here this morning. Actually, this
17 morning we actually just waived the time for
18 them to construct within the 2 years. I know
19 there are two ways to look at it. We have, in
20 the past sometimes, had them come in for a
21 motion for minor modification.

22 And I think within 2 years though

1 the regulations will probably have changed,
2 but they will have changed in a way that will
3 certainly still allow them the right to come
4 in and ask for an extension.

5 So I don't know. I just don't
6 know why we would in this particular case give
7 5 to 7 years and treat it differently than
8 other cases. Do others have thoughts on this?

9 I mean, let me just back up. I
10 think in this particular case we did treat it
11 differently in the sense that we, you know,
12 reopened the record and considered this
13 interim parking plan and, you know, changed
14 the hours for the co-op. But as far as that
15 other rule goes, I don't know why they would
16 be different from others in that situation.

17 Okay. Do you agree? Any other
18 comments on that? Okay. While we are
19 thinking, the other comment I just want to
20 make about the 56 children at one time or
21 something, I think that the neighbors were
22 concerned about that, but, you know, I think

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1 they were concerned with -- or the ANC
2 perhaps.

3 But with the history of the
4 turnover with CommuniKids, but -- I really
5 don't see this as, you know, 56 kids every
6 hour. I think that the co-op is an
7 established program that -- you know, I
8 understand it to be a morning session and an
9 afternoon session. And that some kids in the
10 morning might stay all the way through the
11 afternoon or whatever.

12 So I don't think that we need to
13 get into any conditioning on it really. Is
14 there anything else that anyone wants to
15 address here? Okay. I don't know, let's see
16 if I can phrase this correctly.

17 I would move to, let's see,
18 approve Application No. 17726 of Wisconsin
19 Avenue Baptist Church with the following
20 addition to our previous order or change to
21 our previous order.

22 And that would be to: (1) Extend

1 the hours for the Caterpillar Preschool to
2 6:00 p.m.; (2) To approve the interim parking
3 plan submitted by applicant with Exhibit 83 as
4 the parking plan until an addition is
5 constructed; (3) To approve the revised
6 parking plan submitted by applicant with
7 Exhibit 83 for the parking lot when the
8 addition is constructed.

9 MEMBER DETTMAN: I second the
10 motion.

11 CHAIRPERSON MILLER: Okay. We
12 have a motion that has been seconded. Is
13 there further deliberation? I just want to
14 comment also, I think that, this is in further
15 deliberation, we were asked to consider about
16 the Music School given that there isn't, you
17 know, soundproofing that was going to be in
18 the new addition, whether there should be any
19 further conditions. But I don't think it rose
20 to that level really.

21 I think that it's just -- no, not
22 a big enough problem, I don't think, you know.

1 I mean, just common courtesy things, you know,
2 in the parking lot or whatever. So I just
3 wanted to acknowledge that, but I don't
4 believe that there was any reason that we
5 should be putting any more conditions in the
6 order.

7 Any further deliberation?

8 All those in favor say aye.

9 ALL: Aye.

10 CHAIRPERSON MILLER: All those
11 opposed? All those abstaining? And I'm not
12 sure, we may need to vote on this. They made
13 a request, this is separate from the
14 reconsideration order. They made a request,
15 the applicant, for a 5 to 7 year extension of
16 time in which to build the addition and I
17 would move to deny applicant's request for
18 that extension of time. Do I have a second?

19 MEMBER DETTMAN: Second.

20 CHAIRPERSON MILLER: Further
21 deliberation?

22 All those in favor say aye.

1 ALL: Aye.

2 CHAIRPERSON MILLER: All those
3 opposed? All those abstaining?

4 MR. MOY: Madam Chair, staff will
5 get the vote. It's the same vote for the two
6 Board actions here which was record by the
7 staff as 4-0-1 on the motion of the Chair, Ms.
8 Miller, to approve as stated for the additions
9 to the previous order, seconded by Mr.
10 Dettman. Also in support of the motion is Mr.
11 Loud and Mr. Jeffries. And we have a Board
12 Member not present, not voting.

13 So again, for both Board actions,
14 one for approval and one for denial, the
15 denial going to the request for the extension
16 of time for up to 7 years. The final vote is
17 4-0-1.

18 CHAIRPERSON MILLER: Okay. Thank
19 you very much. And I think that concludes
20 today's Public Meeting.

21 (Whereupon, the Special Public
22 Meeting was concluded at 12:29 p.m.)