

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY,  
NOVEMBER 10, 2009

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD	Chairman
SHANE L. DETTMAN	Vice Chair (NCPC)
MEREDITH MOLDENHAUER	Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairman
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Spec.

This transcript constitutes the  
minutes from the Special Public Meeting held  
on November 10, 2009.

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Board of Zoning Adjustment  
District of Columbia  
CASE NO. Transcript  
EXHIBIT NO. null

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

2 9:51 a.m.

3 CHAIRMAN LOUD: Good morning,  
4 everyone. Let me apologize for our starting a  
5 few moments late this morning. It is our goal  
6 to come out here every Tuesday at 9:30 a.m.,  
7 so we do apologize.

8 This meeting will officially come  
9 to order. This is the November 10<sup>th</sup> Public  
10 Meeting of the Board of Zoning Adjustment of  
11 the District of Columbia.

12 My name is Marc Loud, Chairperson.

13 And joining me today is Chairman Anthony Hood  
14 from the National -- I'm sorry, from the  
15 Zoning Commission to my right and to my left  
16 is Ms. Meredith Moldenhauer, BZA Mayoral  
17 Appointee, to her left Mr. Clifford Moy,  
18 Secretary of the BZA, and on the far end Ms.  
19 Beverley Bailey, Zoning Specialist in the  
20 Office of Zoning.

21 Copies of today's meeting agenda  
22 are available to you and are located to my

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1 left in the wall bin near the door.

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

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

11 Does the staff have any preliminary  
12 matters?

13 MR. MOY: No, Mr. Chairman.

14 CHAIRMAN LOUD: Thank you, Mr. Moy.  
15 Then why don't we proceed with this morning's  
16 agenda.

17 MR. MOY: Yes, sir. Good morning,  
18 Mr. Chairman, Members of the Board. My  
19 understanding is that the first case the Board  
20 is going to deliberate on is Application No.  
21 17963 of Euclid of Virginia. This case is  
22 pursuant to 11 DCMR 3104.1, for a special

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1 exception to allow a new self-service gasoline  
2 station and convenience store under section  
3 706 in the C-1 District at premises 4975 South  
4 Dakota Avenue, N.E. This is in Square 3899,  
5 Lot 76.

6 CHAIRMAN LOUD: Thank you, Mr. Moy.

7 I do believe that the one of the voting  
8 Members on this case is not going to be able  
9 to join us this morning and so what I'm  
10 suggesting we do is put the Euclid decision  
11 off until 1:00 this afternoon when Board  
12 Member Dettman will be able to be with us.

13 MR. MOY: Okay. Very good. In  
14 that case, the next case before the Board, Mr.  
15 Chairman, is a Motion to Extend the Validity  
16 of the Order to Application No. 17620-A of  
17 Leon and Peggy Robbins, pursuant to section  
18 3130 of the Zoning Regulations.

19 If the Board will recall, the  
20 original application was approved on January  
21 15, 2008. And that application was pursuant  
22 to 11 DCMR 3103.2, for a variance from the lot

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1 occupancy requirement under section 772, and a  
2 variance from the off-street parking  
3 requirements under subsection 2101.1, and  
4 pursuant to 11 DCMR 3104.1, a special  
5 exception from the rear yard requirements  
6 under section 774, and floor area ratio  
7 requirements under section 1323, to allow the  
8 construction of a three-story mixed-use  
9 building in the HS, the H Street N.E.  
10 Neighborhood Commercial Overlay, C-3-A  
11 District at premises 1383 through 85 H Street,  
12 N.E., Square 1027, Lot 846.

13 On November 3, 2009, the Board  
14 convened Application 17620-A. After  
15 deliberation, the Board on its own motion  
16 rescheduled this decision on November 10,  
17 2009. The record will be kept open to allow  
18 the applicant to submit additional information  
19 or substantial evidence attendant to the  
20 provision of section 3130.6 of the Zoning  
21 Regulations.

22 Mr. Chairman, there are two filings

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1 in the record dated November 6, 2009 and they  
2 are Exhibits 44 and 45. These filings are  
3 from the applicant. The Board is to act on  
4 the merits of the request pursuant to the  
5 provisions of 3130. And that completes the  
6 staff's briefing, Mr. Chairman.

7 CHAIRMAN LOUD: Thank you, Mr. Moy.

8 I believe the file is full on this case. As  
9 you indicated, the case was continued from  
10 last week because the applicant had not made  
11 the showing on the 3130, particularly 3130.6.

12 Subsequent to that, applicant filed Exhibits  
13 45, Exhibit 44.

14 Exhibit 44 is a summary of the  
15 total cost of the project putting it at \$1.05  
16 million. Exhibit 45 is the available  
17 financing the applicant has gotten to date,  
18 which is half a million dollars, showing a gap  
19 of about a half a million dollars.

20 So I think the applicant has made -  
21 - has met its burden regarding an extension  
22 under Rule 3130.

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1           With that said, I would like to  
2 rest on the record before us and recommend  
3 that we do approve the extension request.

4           Is there further discussion?

5           All right. Hearing none, then I  
6 would like to move approval of Application No.  
7 17620-A for a 2 year extension under Rule  
8 3130. Is there a second?

9           MEMBER MOLDENHAUER: I second.

10          CHAIRMAN LOUD: The motion has been  
11 made and seconded. Is there further  
12 deliberation, discussion?

13          Hearing none, all those in favor  
14 say aye.

15          ALL: Aye.

16          CHAIRMAN LOUD: All those who  
17 oppose? Are there any abstentions? And, Mr.  
18 Moy, can you read -- I'm sorry, can you let us  
19 know if there are any additional votes?

20          MR. MOY: Yes, sir, absolutely, Mr.  
21 Chairman. Before I give the final vote, there  
22 are two other Members who participated on this

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1 application and they both submitted absentee  
2 ballots.

3 The first is from Mr. Michael  
4 Turnbull and his absentee vote is to approve  
5 the motion with such condition as the Board  
6 may impose. We also have a second  
7 participating Member that is the Vice Chair,  
8 Mr. Shane Dettman, and his absentee ballot is  
9 to -- also to approve or to grant the motion  
10 to extend.

11 So that would give a total vote of  
12 4-0-1 on the motion of the Chair, Mr. Loud, to  
13 approve the Motion to Extend the Validity of  
14 the Order to Application No. 17620-A of Leon  
15 and Peggy Robbins, seconding the motion Ms.  
16 Moldenhauer and one other Board Member not  
17 participating.

18 So again, the final vote is 4-0-1.

19 CHAIRMAN LOUD: Thank you, Mr. Moy.

20 MR. MOY: Waive the requirements  
21 for a summary order, Mr. Chairman?

22 CHAIRMAN LOUD: Yes, sir.

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1 MR. MOY: Thank you.

2 CHAIRMAN LOUD: And we can move on  
3 to the next case when you are ready.

4 MR. MOY: The next case also is a  
5 Motion to Extend the Validity of the Order,  
6 but this is to Application No. 17676-A of  
7 Innovative Recyclers, Inc., pursuant to  
8 section 3130 of the Zoning Regulations.

9 The original application was  
10 approved on October 23, 2007 and that  
11 application was pursuant to 11 DCMR 3103.2,  
12 for a variance from the building height  
13 requirements under subsection 840.1, and  
14 pursuant to 11 DCMR 3104.1, for a special  
15 exception to establish a solid waste handling  
16 facility under subsection 802.4 in the LO/CM-1  
17 District at premises 2225 Lawrence Avenue,  
18 N.E. This property is in Square 4106, Lot  
19 820.

20 Also on November 3, 2009, the Board  
21 convened this application and after  
22 deliberation, the Board on its own motion

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1 rescheduled its decision on November 10, 2009.

2 The record was kept open to allow the  
3 applicant to submit additional information  
4 attendant to the provisions of subsection  
5 3130.6 of the Zoning Regulations.

6 Mr. Chairman, the applicant made  
7 his filing dated Thursday, November 5, 2009,  
8 though it was received in the office on  
9 November 6, 2009. That filing is identified  
10 in your case folders as Exhibit 39. And the  
11 Board is to act on the merits of the request,  
12 pursuant to provisions of 3130.

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

15 CHAIRMAN LOUD: Thank you, Mr. Moy.

16 Similar to the previous case, the Robbins  
17 case, this was a matter heard originally last  
18 week, continued over for one week two days  
19 after the hearing, it looks like.

20 The applicant entered into our  
21 record the supporting documentation to meet  
22 its burden under section 3130, particularly

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1 3130.6, and that is now our Exhibit No. 39.

2 In light of that, I don't think we  
3 need to belabor the point. I would like to  
4 rest on the record and suggest that we grant  
5 this motion. Is there further deliberation or  
6 discussion?

7 Hearing none, I would like to make  
8 a motion then. I would like to move approval  
9 of Application No. 17676-A of the Innovative  
10 Recyclers for an extension under Rule 3130, a  
11 2 year extension.

12 MEMBER MOLDENHAUER: I second.

13 CHAIRMAN LOUD: The motion has been  
14 made and seconded. Further discussion?

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

17 ALL: Aye.

18 CHAIRMAN LOUD: All those who  
19 oppose? Are there any absentees? Mr. Moy?

20 MR. MOY: Yes, sir. Mr. Chairman,  
21 before I give the final vote, we have two  
22 absentee ballots from two participating

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1 Members.

2 The first is from Mr. Michael  
3 Turnbull and his absentee vote is to approve  
4 with such conditions the Board may impose.  
5 The other absentee ballot is from the Vice  
6 Chair, Mr. Shane Dettman, and his absentee  
7 vote is to also approve or to grant the motion  
8 to extend.

9 So that would give a final vote of  
10 4-0-1 on the motion of the Chair, Mr. Loud, to  
11 grant the Motion to Extend the Validity of the  
12 Order to Application No. 17676-A of Innovative  
13 Recyclers, Inc., seconding the motion is Ms.  
14 Moldenhauer. And the final vote is 4-0-1.

15 CHAIRMAN LOUD: Thank you, Mr. Moy.  
16 Let's waive the requirement and do a summary.

17 MR. MOY: All right. Thank you.

18 CHAIRMAN LOUD: All righty. And I  
19 believe we have one more case for this  
20 morning.

21 MR. MOY: Again, we also have our  
22 last and final Motion to Extend the Validity

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1 of the Order. This is to Application No.  
2 17684-A of Mid-Atlantic Realty Partners, LLC,  
3 pursuant to section 3130 of the Zoning  
4 Regulations.

5 As the Board will recall, the  
6 original application was approved on November  
7 20, 2007. That application was pursuant to  
8 DCMR 3104.1 and 3103.2, for variances from the  
9 rear yard requirements under section 774, the  
10 limitation on compact parking space  
11 requirements under subsection 2115.2, and the  
12 off-street loading facility requirements under  
13 section 2201, and a special exception from the  
14 required number of off-street parking spaces  
15 under section 2108, to permit the development  
16 of an office building with retail space on the  
17 ground floor in the DD/C-2-C District at the  
18 southeast corner of the intersection of 6<sup>th</sup> and  
19 K Streets, N.W. The property is in Square  
20 484, Lots 23, 811 through 813 and 826.

21 On September 30, 2009, the  
22 applicant filed their request. This filing is

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1 identified in the case folders as Exhibit 38.

2 And to be brief, the Board is to act on the  
3 merits of this request to extend the validity  
4 of the order, pursuant to the provision under  
5 section 3130.6.

6 And that completes the staff's  
7 briefing, Mr. Chairman.

8 CHAIRMAN LOUD: Thank you, Mr. Moy.

9 I just wanted to note for the record that our  
10 dream team is complete this morning. We have  
11 been joined by Vice Chair Shane Dettman, who  
12 represents the National Capital Planning  
13 Commission and who always tries to steal my  
14 camera, so I did have a bit of the camera to  
15 myself this morning. Good morning, Vice Chair  
16 Dettman.

17 VICE CHAIR DETTMAN: Good morning.

18 CHAIRMAN LOUD: We are -- we have  
19 just started the Mid-Atlantic case 17684-A and  
20 it's another case like the previous two were.  
21 I believe we can rest on the record.

22 The applicant brought the case

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1 before us last week. Subsequent to the  
2 hearing, the Board decided to continue because  
3 he had not met the burden under 3130.  
4 Subsequent to last week's hearing, he did  
5 submit Exhibit 38 and attachments, all of  
6 which help him to meet his burden as regards  
7 not being able to identify adequate financing  
8 for the project.

9 In light of that, I'm going to rest  
10 on the record. I'm going to recommend that we  
11 approve this application. Is there any  
12 further discussion or deliberation?

13 All right. In that case, then I  
14 would like to move approval of Application No.  
15 17684-A of Mid-Atlantic for a 2 year extension  
16 under Rule 3130. Is there a second?

17 VICE CHAIR DETTMAN: Second.

18 CHAIRMAN LOUD: The motion has been  
19 made and seconded. Is there further  
20 deliberation?

21 Hearing none, all those in favor  
22 say aye.

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1 ALL: Aye.

2 CHAIRMAN LOUD: All those who  
3 oppose? And are there any abstentions?

4 MR. MOY: Yes, sir, the staff would  
5 record the vote as 3-0-2. This is the motion  
6 of the Chair, Mr. Loud, to grant the Motion to  
7 Extend the Validity of the Order to  
8 Application No. 17684-A of Mid-Atlantic Realty  
9 Partners, LLC, seconding the motion Mr.  
10 Dettman, in support of the motion Ms.  
11 Moldenhauer. No other Board or Zoning  
12 Commission Members participating.

13 Again, the final vote is 3-0-2.

14 CHAIRMAN LOUD: Thank you, Mr. Moy.

15 Summary order --

16 MR. MOY: Yes, thank you, sir.

17 CHAIRMAN LOUD: -- will be  
18 appropriate.

19 MR. MOY: Thank you.

20 CHAIRMAN LOUD: Thank you. Is  
21 there anything further for the morning's  
22 decision calendar, Public Meeting calendar?

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1 MR. MOY: That's it for --

2 CHAIRMAN LOUD: Okay.

3 MR. MOY: -- this morning.

4 CHAIRMAN LOUD: Thank you. Then  
5 the morning calendar is adjourned.

6 (Whereupon, the Special Public  
7 Meeting was recessed at 10:06 a.m. to  
8 reconvene at 1:14 p.m. this same day.)  
9  
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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 1:14 p.m.

3 CHAIRMAN LOUD: Good afternoon,  
4 everyone. Welcome to the continuation of the  
5 November 10<sup>th</sup> Public Decision Meeting of the  
6 Board of Zoning Adjustment. We started our  
7 decision meeting earlier this morning at 9:30  
8 and we continued one of our cases until this  
9 afternoon, which is the Euclid case. And so  
10 that's going to be the matter that we are  
11 taking up first this afternoon is the Euclid  
12 decision.

13 For those of you that are here for  
14 the afternoon hearing calendar, which starts  
15 at 1:00 p.m., following our deliberation on  
16 Euclid, we will move immediately into the  
17 hearing calendar and I suspect that we will  
18 not have anyone here beyond 4:00 or 3:00  
19 perhaps today at all.

20 So with that, let me ask for, Mr.  
21 Moy, if you could call our first case? If  
22 there are any preliminary matters?

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1 MR. MOY: Yes, there are, but it's  
2 only attendant to this one case for decision.

3 CHAIRMAN LOUD: Okay.

4 MR. MOY: Good afternoon, Mr.  
5 Chairman, Members of the Board. That  
6 Application is No. 17963 of Euclid of  
7 Virginia, pursuant to 11 DCMR 3104.1, for a  
8 special exception to allow a new self-service  
9 gasoline station and convenience store under  
10 section 706 in the C-1 District at premises  
11 4975 South Dakota Avenue, N.E. The property  
12 is in Square 3899, Lot 76.

13 As the Board will recall on  
14 September 22, 2009, the Board completed public  
15 testimony, closed the record and scheduled its  
16 decision on November 10<sup>th</sup> of this year. The  
17 Board requested additional information to  
18 supplement the record both from DDOT and  
19 allowing responses.

20 The DDOT report, which was filed--  
21 is dated October 16, 2009 and that is in your  
22 case folders, Mr. Chairman, identified as

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1 Exhibit 31.

2 We have two other filings. One is  
3 a response which was allowed into the record  
4 with a deadline of November 2, 2009. The  
5 first is from ANC-5A dated November 4<sup>th</sup>, but it  
6 was received in the Office of Zoning November  
7 9, 2009. That filing is identified as Exhibit  
8 32.

9 The second filing is an individual  
10 letter in opposition from a Ms. Patricia Love  
11 and Percy Love and Fannie Love. That document  
12 is identified as Exhibit 30 and that's dated  
13 September 23, 2009, which was a day after the  
14 Public Hearing of September 22<sup>nd</sup>.

15 These last two filings should be  
16 treated as preliminary matters, Mr. Chairman.

17 Other than that, the Board should act on the  
18 merits of the requested special exception  
19 relief from section 706. And staff will leave  
20 it at that for today. That completes the  
21 staff's briefing, Mr. Chairman.

22 CHAIRMAN LOUD: Thank you, Mr. Moy.

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1 Before we get started, why don't I introduce  
2 the fellow Members who are up here on the  
3 dias.

4 As indicated, I'm Marc Loud,  
5 Chairperson. To my right is Mr. Shane  
6 Dettman, Vice Chairperson, also representing  
7 the National Capital Planning Commission. To  
8 my left is Mrs. Meredith Moldenhauer of the  
9 Board of Zoning Adjustment, Mayoral Appointee,  
10 Mr. Clifford Moy, Secretary of BZA, and to my  
11 far left Ms. Beverley Bailey, Zoning  
12 Specialist here in the Office of Zoning.

13 As indicated, this is a  
14 continuation of this morning's hearing and I  
15 just wanted to note again for the record at  
16 this morning's decision meeting that public  
17 testimony is not allowed at a decision  
18 meeting, unless a Member of the Board asks  
19 someone to come forward.

20 So, please, bear that in mind as we  
21 move forward. I think we have got a couple of  
22 preliminary matters. And what I'm going to do

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1 is ask Mr. Dettman if you could start us off  
2 with respect to the matters.

3 VICE CHAIR DETTMAN: Thank you, Mr.  
4 Chairman. I think we have maybe two  
5 preliminary matters before we get into  
6 discussing the actual merits of the case.

7 The first preliminary matter is our  
8 Exhibit No. 30, which Mr. Moy mentioned is a  
9 letter from the community. The preliminary  
10 matter is whether the Board wants to waive our  
11 rules and allow this into the record, which  
12 again, as has been stated, was closed at the  
13 end of the Public Hearing with the exception  
14 of the information that the Board specifically  
15 requested.

16 I think that the Board was very  
17 specific in terms of the type of information  
18 that they wanted at the conclusion of the  
19 Public hearing. And it would be my  
20 recommendation that we not waive our rules and  
21 not allow this particular letter, again our  
22 Exhibit No. 30, into the record.

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1                   CHAIRMAN LOUD:     Thank you, Mr.  
2     Dettman. I would agree with that. I think  
3     that the submission is untimely. I think we  
4     closed the record November 2<sup>nd</sup>. And in order  
5     to comply with our rules, I would not be in  
6     favor of allowing it in.

7                   In addition, a lot of what is  
8     contained in the letter is contained in the  
9     submission by the North Michigan Park Civic  
10    Association as well as the ANC's report. So I  
11    support your direction on that.

12                  VICE CHAIR DETTMAN: Great. Okay.

13                  MEMBER MOLDENHAUER: I concur with  
14    both of you in regards to the timeliness. And  
15    I think that it's a new effort of this Board  
16    to make sure that, you know, we are staying  
17    consistent and not permitting additional  
18    documentation after a specific date. And you  
19    know, we specifically actually articulated  
20    October 28<sup>th</sup> for the ANC and other community to  
21    respond back and then November 2<sup>nd</sup> for the  
22    close of the record. So this was untimely and

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1 I agree not to let it into the record.

2 VICE CHAIR DETTMAN: Thank you, Ms.  
3 Moldenhauer. The second preliminary matter,  
4 colleagues, is our Exhibit, I believe, No. 32,  
5 which is the letter that we received from ANC-  
6 5A dated November 4, 2009.

7 As Ms. Moldenhauer had just stated,  
8 we left the record open for an ANC response to  
9 the information that we requested from DDOT.  
10 I believe the deadline was October 28<sup>th</sup>. And  
11 again, this was received by the Office of  
12 Zoning on November 9<sup>th</sup>.

13 Just quickly reviewing the letter,  
14 it looks like the ANC has been very busy with  
15 respect to this case and has addressed the  
16 information that is contained in the DDOT  
17 report and that articulates the community  
18 output and the meetings that have occurred  
19 since the Public Meeting.

20 Mr. Chairman, I actually would be  
21 in favor of waiving our rules and allowing the  
22 ANC letter from Ms. Alston into the record.

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1                   CHAIRMAN LOUD:     Thank you, Mr.  
2     Dettman. I believe that our Rule 3100.5 does  
3     allow us to waive the timeliness issue in this  
4     cased. And I think for all the reasons you  
5     articulated, I think it would pretty much make  
6     good sense to do that, so I would be  
7     supportive of that.

8                   MEMBER MOLDENHAUER: I believe that  
9     it is important to have the letters in timely.  
10    I think that based on some additional  
11    discussions that we will be having later, I  
12    think that it would be relevant to permit the  
13    letter into the record.

14                  VICE CHAIR DETTMAN: Thank you.  
15    Specific to the information that the Board  
16    requested from DDOT to close the Public  
17    Hearing and then just to kind of briefly touch  
18    upon some of the topics of discussion, the  
19    main topics of discussion from the Public  
20    Hearing, we did receive, again Mr. Moy  
21    articulated this already, Exhibit No. 31 from  
22    DDOT dated October 16, 2009.

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1           Essentially, DDOT kind of lays out  
2           in this three page memo that they provided us  
3           their rationale for supporting.       They  
4           essentially just reiterate their support for  
5           this project stating at the top of page 2 that  
6           the applicant has provided DDOT a  
7           transportation study supporting redevelopment  
8           of the property located at 4975 South Dakota  
9           Avenue, N.E., with a three pump gas station  
10          and convenience market.

11          Further down the page, DDOT notes  
12          the applicant reviewed the potential impact  
13          for cut through traffic on the North Michigan  
14          Park community and the response is credible.

15          Those were the two main items that  
16          I thought went directly to some of the  
17          questions that the Board had at the Public  
18          Hearing.     However, if you will remember,  
19          colleagues, at the Public Hearing, DDOT had  
20          mentioned that in order to adequately assess  
21          the impacts of additional traffic generated by  
22          this use on the surrounding community, they

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1 had actually relied upon a transportation  
2 study that was conducted for a site along  
3 Minnesota Avenue. It was a recent BZA case  
4 for a gasoline service station, which I  
5 believe was by the same applicant, Mr. Koo  
6 Yuen.

7 So DDOT felt that it was adequate  
8 to utilize that transportation study and the  
9 findings and the type of traffic that  
10 surrounded the Minnesota Avenue site and the  
11 number of trips that would be generated by  
12 that gasoline service station.

13 They felt comfortable relying upon  
14 that study in order to come to a conclusion as  
15 to whether to support or not support this  
16 particular application. We had requested that  
17 DDOT provide a little bit more thorough of a  
18 rationale on how they actually got to their  
19 support for this project in reliance upon that  
20 previous study.

21 We had asked for the rationale. We  
22 had actually also asked for the -- that

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1 particular transportation study to be served  
2 on us, as well as the ANC. And we were very  
3 clear that we wanted to make sure that the ANC  
4 and the community had an adequate amount of  
5 time to work with the applicant, to work with  
6 DDOT and meet with the community, so that they  
7 could adequately analyze whatever information  
8 was submitted with respect to the impacts to  
9 transportation and traffic and whatnot.

10 Mr. Chairman, I feel, at this time,  
11 the record is not full enough. I think that  
12 the special exception criteria, the standard  
13 that needs to be met under 706 and Chapter 23,  
14 this is a special exception. I think that  
15 this is a use that is presumed to be  
16 appropriate for this particular Zone District.

17 And I think that the standard for  
18 special exception is that if the relevant  
19 provisions are met, the Board must ordinarily  
20 grant the relief. However, at this point,  
21 especially with respect to 706.4 that states  
22 "The operation of the use shall not create

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1 dangerous or other objectionable traffic  
2 conditions," I don't think we have enough  
3 information in the record for us to adequately  
4 come to a conclusion on how this use is  
5 actually going to impact the surrounding  
6 transportation network.

7 That's not to say that I disagree  
8 with DDOT. I just think that they have  
9 provided us with support for a project, based  
10 upon a methodology, I'll say, that is  
11 different than the way we typically see it.

12 We usually have a transportation  
13 study that is generated for a particular site.

14 And in this case we don't.

15 So I think that if DDOT wants to  
16 continue to rely upon the Minnesota Avenue  
17 Study, we need kind of a rationale on how they  
18 got there. And from a transportation  
19 engineering perspective how that is  
20 appropriate in order to measure one site based  
21 off the study of another.

22 I also think that it is important

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1 that the community be served with this  
2 information. I did notice in our Exhibit No.  
3 32 the ANC states that "In addition to the  
4 traffic study that DDOT relied upon, they also  
5 requested a complete email list of the dates  
6 in which DDOT meetings took place and a record  
7 of correspondence." And it appears as if the  
8 ANC has not received any of that information  
9 as yet.

10 So I think a little extra time for  
11 this case would allow the ANC to get the  
12 information that they think that they need.

13 I will say that the applicant  
14 having not met their burden yet is not off the  
15 hook. I think that they need to be engaged  
16 with the community. And it is really their  
17 burden to meet. It's not DDOT's. It's the  
18 applicant's responsibility to demonstrate to  
19 the Board that they meet the provision of  
20 706.4.

21 And so whether that is working with  
22 the community and DDOT in order to come

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1 together and discuss the existing  
2 transportation study for Minnesota Avenue or  
3 taking the initiative to create a Traffic  
4 Impact Study for this specific location, which  
5 is actually my preference.

6 But I'm willing to entertain kind  
7 of both ways of going about measuring  
8 transportation impacts. So I think that the  
9 applicant still has some work to do here as  
10 well.

11 That being said, Mr. Chairman,  
12 again, I'm sure that you can gather already  
13 that I'm in favor of putting our decision off  
14 with the stipulation that our focus be on  
15 making sure that the ANC and the community  
16 gets enough time to analyze whatever  
17 information is generated, getting their heads  
18 around this somewhat complicated matter of  
19 measuring transportation impact and that we  
20 keep that in mind when we are scheduling and  
21 finding a date.

22 MEMBER MOLDENHAUER: Mr. Dettman, I

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1 think that you provided a very full summary  
2 and I do agree with your conclusion. I just  
3 wanted to add a couple of different points.

4 I think that the applicant may  
5 potentially have detrimentally relied on  
6 DDOT's approval and so because of that, I  
7 would not want to burden them any more with a  
8 long time frame for them to have to wait.

9 I do though think that it is their  
10 burden to submit an application that under  
11 706.4, there has been plenty of testimony that  
12 the traffic conditions would be objectionable  
13 and thus, they have to then -- the burden goes  
14 back to them to show that there is no  
15 objectionable conditions, that there is  
16 sufficient analysis so that we can rely on a  
17 Minnesota Study or that there is another study  
18 that may be presented as you suggested.

19 I think that in addition to that,  
20 you know, it's their responsibility to make  
21 sure if DDOT is not being responsive to the  
22 ANC's request that, you know, they encourage

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1     that communication, such as, you know, making  
2     sure that the ANC has a copy of the survey and  
3     that they have a copy of whatever dates the  
4     meetings occurred, since, obviously, they were  
5     both in attendance at the meetings.

6             You know, the applicant does not  
7     have to just sit back and wait for DDOT to  
8     respond. They can contact the ANC themselves  
9     and make sure that they are communicating and  
10    obtaining all the different information that  
11    is needed, so we can make an adequate decision  
12    at the next meeting.

13            CHAIRMAN LOUD:     Thank you, Ms.  
14    Moldenhauer and Mr. Dettman. I, too, agree  
15    with both of you with respect to your analysis  
16    of where we are. And I'm a little troubled as  
17    well, and it may or may not be the applicant,  
18    it may be the Department of Transportation, it  
19    may just be everybody's work load, but what  
20    comes across as a lack of transparency in  
21    articulating the basis for the conclusions  
22    around traffic impacts.

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1           We had a very long exchange at the  
2           initial hearing about articulating the basis  
3           for the conclusions for the traffic impacts  
4           and being transparent. Just being straight up  
5           about what the conclusion is based on.

6           I'm going to read a little bit from  
7           the transcript. This is at page 185. I'll be  
8           very brief, but it talks about sort of where  
9           we are right now. And this is Chairman Loud  
10          saying "We would like to see a report from  
11          DDOT. It's too bad that they are not still  
12          here, but a report from DDOT that addresses  
13          the section 706 requirements and the 2303, the  
14          grounds for relief particularly as relates to  
15          the traffic and transportation elements of the  
16          requirements.

17          I think we would also like to see  
18          an articulation in the DDOT report of the  
19          basis of their utilizing 3710 Minnesota Avenue  
20          as the study. There was testimony to that  
21          regard by Mr. Jennings today, but I think a  
22          written articulation of the basis for why they

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1 did that and then I would like to see the 3710  
2 report as appended to the DDOT report and made  
3 a part of our record."

4 So I think we were clear that we  
5 wanted to see why the Department tied the 3710  
6 report to this application, essentially,  
7 giving this applicant a privilege to not have  
8 a study for this site.

9 And I think where we were at the  
10 hearing was that okay, if that is the  
11 direction that the professionals at DDOT want  
12 to go in, we will allow that, but let's have  
13 an articulation of why that should be the case  
14 and let's see a copy of this report and the  
15 analysis appended to the report.

16 We don't have that. We just have,  
17 as Mr. Dettman mentioned and Mrs. Moldenhauer  
18 mentioned, the two page, I think, from DDOT  
19 which is very conclusory and it just suggests  
20 again a lack of transparency.

21 I went on the record at the hearing  
22 and said I thought this was a great project,

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1 really exciting elements, fresh fruit, no  
2 bulletproof glass, not selling any rolling  
3 papers, not going for an alcohol license,  
4 etcetera, etcetera, etcetera, but we were also  
5 clear that, like Mrs. Moldenhauer said, there  
6 is a standard that has to be met.

7           There is a standard that has to be  
8 met. It's the applicant's burden to meet that  
9 standard. Hopefully they are able to work  
10 with and don't run into any obstacles from  
11 Government agencies like DDOT. But at the end  
12 of the day, it's the applicant's burden to  
13 meet that standard.

14           And so I agree with you, Mr.  
15 Dettman. I agree with you, Mrs. Moldenhauer.

16           And let me open it back up. I'm going to  
17 review something and let me open it back up.

18           MEMBER MOLDENHAUER: It appears  
19 potentially that there actually was a specific  
20 South Dakota Transportation Study done. And  
21 if that is the case though, we still don't  
22 have that in our record. And I think that

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1 some of the discussion that we are having  
2 right now in the Board is because of the  
3 potential, maybe the lack of clarity in the  
4 DDOT report.

5 Obviously, just simply referred to  
6 on the second page, you know, a supporting  
7 survey when we were not sure whether that  
8 supporting study was a new one or was the old  
9 one. Even if it is the case that a new one  
10 has been then done, completed, the question is  
11 from the Exhibit 32, it doesn't appear as  
12 though the ANC has ever received a copy of it  
13 from their letter.

14 And at the same time while we do  
15 not have a copy of that report and we would  
16 want at least either to have a DDOT report or  
17 something from the applicant that we can  
18 understand the clarification, that that is  
19 what the final DDOT report and decision was  
20 based on.

21 CHAIRMAN LOUD: Yeah, it appears  
22 again we're sort of trying to fill in the

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1 gaps, not typically taking testimony at a  
2 decision meeting, but having received some  
3 information that apparently there was a study  
4 done. Presumably, it was done by the  
5 applicant.

6 Part of the gap we're trying to  
7 fill in that the study that was done by the  
8 applicant was provided to DDOT, it was also  
9 provided to the ANC. No, it was provided to  
10 DDOT. And DDOT submitted a report to us that  
11 not only did it not reference the study, but  
12 did not attach it.

13 I think the DDOT report, if I'm  
14 correct -- well, you know what, it is vaguely  
15 worded. However, it could be interpreted, I'm  
16 looking at the DDOT exhibit, as meaning that  
17 the DDOT staff did review a transportation  
18 report for South Dakota.

19 The way it is worded, it's not  
20 clear whether they were talking about a study  
21 at 3710 or 4975 South Dakota. So it looks  
22 like we are able to clear that up. So perhaps

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1       what we are looking at now really is making  
2       sure that the Board gets a copy of this study  
3       that DDOT is referencing, so that we have an  
4       opportunity to review traffic and  
5       transportation impacts that are in the study.

6               I don't think it changes  
7       necessarily the outcome that, Mr. Dettman, you  
8       had suggested we aim for today, but it may  
9       change exactly what we are looking for. And I  
10      think both the actual 4975 study and then a  
11      time line that allows the ANC to look at this  
12      study and offer some comments.

13             So with that, is there further  
14      discussion on this point? Okay. So I think  
15      what we need to do now is come up with a  
16      reasonable time line to get this study in the  
17      hands of the Board with a copy to the ANC with  
18      an opportunity for the ANC to respond.

19             Kind of all of what we did the  
20      first time, I think, but to do it all over  
21      again with an opportunity for the ANC to  
22      respond in this 4975 South Dakota study. And

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1 I believe the first time around we gave the  
2 applicant an opportunity to respond to the ANC  
3 and so we should do that again as well.

4 We're going to take the  
5 extraordinary step of asking the ANC leader to  
6 come up, the person that is authorized to  
7 speak on behalf of the ANC. And it's just for  
8 the specific purpose of trying to get a  
9 reasonable time line before us. Not any of  
10 the merits of the case.

11 Good afternoon, Commissioner  
12 Alston, correct?

13 MS. ALSTON: Yes, sir.

14 CHAIRMAN LOUD: All right. How are  
15 you this afternoon?

16 MS. ALSTON: Fine and yourself?

17 CHAIRMAN LOUD: Very good. So you  
18 have heard some of our deliberation regarding  
19 the follow-up study and the confusion about  
20 whether it was or was not completed.

21 I think what we are looking for now  
22 is to make sure that gets in your hands, in

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1 your Commission's hands, you have an adequate  
2 reasonable time to review it and then to  
3 submit something back into our record.

4 MS. ALSTON: Okay.

5 CHAIRMAN LOUD: So with that as the  
6 backdrop, is there a time frame that you would  
7 be looking at to both have this and that you  
8 could get something to us?

9 MS. ALSTON: The ANC meets the  
10 fourth Wednesday at every month.

11 CHAIRMAN LOUD: Yes.

12 MS. ALSTON: Because the fourth  
13 Wednesday of this month is the day before  
14 Thanksgiving, we meet the 18<sup>th</sup> of November,  
15 which is next Wednesday.

16 CHAIRMAN LOUD: Yes.

17 MS. ALSTON: After that, we don't  
18 meet again until the fourth Wednesday in  
19 January.

20 CHAIRMAN LOUD: Yes.

21 MS. ALSTON: Because we are out in  
22 December. So at this point, it's no way we

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1 can get this on the November 18<sup>th</sup> deadline, our  
2 November 18<sup>th</sup>. So the next date for  
3 consideration would be like the fourth  
4 Wednesday in January for us to even hear it at  
5 a monthly meeting and then get a response back  
6 to you would be the beginning of February.

7 CHAIRMAN LOUD: So you're saying  
8 you don't meet at all in December?

9 MS. ALSTON: No, sir.

10 CHAIRMAN LOUD: Okay. And notice  
11 has already gone out for the November 18  
12 meeting?

13 MS. ALSTON: Yes, sir.

14 CHAIRMAN LOUD: Okay.

15 MS. ALSTON: And we have to allot 7  
16 days, but prior to it, it has to be taken to  
17 the affected Commission, the area.

18 CHAIRMAN LOUD: Yes.

19 MS. ALSTON: And the area has to  
20 have a Single Member District meeting and then  
21 once that is decided, it goes before the  
22 Commission as a whole for their support and

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1 what the community wants.

2 CHAIRMAN LOUD: All right. So  
3 we're looking at the end of January for your  
4 internal process.

5 MS. ALSTON: Yes.

6 CHAIRMAN LOUD: Noticed quorum  
7 meeting.

8 MS. ALSTON: Yes, sir.

9 CHAIRMAN LOUD: All right. And so  
10 you would have reviewed everything by that  
11 point?

12 MS. ALSTON: Yes, sir.

13 CHAIRMAN LOUD: Okay. And then  
14 after that, how long would it take you to  
15 submit a report to the BZA?

16 MS. ALSTON: Not even a week,  
17 probably less than a week.

18 CHAIRMAN LOUD: Okay.

19 MS. ALSTON: Just a couple of days.

20 CHAIRMAN LOUD: Okay. All right.  
21 And again, give me the exact date in January  
22 that we are talking about. Ms. Bailey, I'm

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1 going to ask for your help in a second.

2 MS. ALSTON: The 27<sup>th</sup>.

3 CHAIRMAN LOUD: The?

4 MS. ALSTON: 27<sup>th</sup>.

5 MS. BAILEY: The 27<sup>th</sup>, the fourth  
6 Wednesday.

7 MS. ALSTON: The fourth Wednesday.

8 CHAIRMAN LOUD: Okay. And then  
9 after, presumably, you would close it out on  
10 the 27<sup>th</sup>, the Commission would take a position  
11 with respect to the contents of the study.

12 MS. ALSTON: On the 27<sup>th</sup>.

13 CHAIRMAN LOUD: On the 27<sup>th</sup>.

14 MS. ALSTON: And then it will just  
15 be us getting something to you in writing.

16 CHAIRMAN LOUD: Okay. And the  
17 calendar I'm looking at, Ms. Bailey, doesn't  
18 even go that far, so I need a little help.

19 MR. MOY: If I can intervene, Mr.  
20 Chair, if I can help?

21 CHAIRMAN LOUD: Yes, sir.

22 MR. MOY: The 27<sup>th</sup>, which is the

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1 last Wednesday of January, the 31<sup>st</sup>, the last  
2 day of January is a Sunday, so the following  
3 Monday is February the 1<sup>st</sup>, would be February  
4 the 1<sup>st</sup>.

5 MS. ALSTON: Right.

6 CHAIRMAN LOUD: All right. And I'm  
7 assuming that -- all right. So you could get  
8 something to us by that --

9 MS. ALSTON: By February 1<sup>st</sup>.

10 CHAIRMAN LOUD: -- February 1<sup>st</sup>.

11 MS. ALSTON: Yes.

12 CHAIRMAN LOUD: And then I'm  
13 assuming that the applicant would want an  
14 opportunity to respond to whatever the ANC  
15 submitted. Yes, why don't you join us at the  
16 table and just introduce yourself for the  
17 record?

18 MS. FULLER: Good afternoon.  
19 Carlynn Fuller, attorney for the applicant.

20 CHAIRMAN LOUD: Good afternoon, Ms.  
21 Fuller.

22 MS. FULLER: Can I ask a question?

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1       Are there special provisions for an emergency  
2 meeting of the ANC? I mean, I understand your  
3 normal process, but isn't there a process when  
4 there is an exceptional circumstance that  
5 allows you to call an emergency meeting?

6               Because the applicant is going to  
7 endure an undue hardship. I mean, they did  
8 provide the report to DDOT and we, again,  
9 relied on that DDOT would do what they were  
10 supposed to do in their report to the Board  
11 and to the applicant.

12              Now, we have to, you know,  
13 conceivably we are going to, wait three more  
14 months.

15              CHAIRMAN LOUD: I do want to  
16 commend the applicant for following up with  
17 the study.

18              MS. FULLER: And the applicant paid  
19 for that study.

20              CHAIRMAN LOUD: No, I understand.

21              MS. FULLER: So I mean --

22              CHAIRMAN LOUD: But now, there is

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1 also a requirement that you serve all parties  
2 and the ANC is a party.

3 MS. FULLER: And I guess we figured  
4 that since DDOT had to submit their report,  
5 that their findings with the traffic study  
6 that was submitted would be included in that  
7 report. And you know, unfortunately, that was  
8 our error in relying on DDOT, but that's what  
9 we did, since DDOT was charged with submitting  
10 the report, not the applicant at the last  
11 hearing.

12 CHAIRMAN LOUD: No, I understand.

13 MS. FULLER: So I mean --

14 CHAIRMAN LOUD: It is a mistake to  
15 make. But again, the rule is that you serve  
16 all parties. Let's ask for your specific  
17 question to see if we can close this out and  
18 try to get a date that will work.

19 I think her question is can you  
20 have an expedited meeting, an emergency  
21 meeting some way that would allow this to get  
22 back on BZA calendar before February 1<sup>st</sup> or

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1 February 8<sup>th</sup>?

2 MS. ALSTON: We can call an  
3 emergency meeting in December. Again, the  
4 fourth Wednesday is like the day before  
5 Christmas, which you won't have a quorum, I'm  
6 sure you won't. And the ANC Guidelines state  
7 that you only have to have nine meetings a  
8 month. I have capped that nine meetings a  
9 month this year, so stretching to have a  
10 November meeting was a fight.

11 If we call for a December meeting  
12 and there is no quorum, it's a waste of time,  
13 because people aren't going to come out,  
14 unfortunately, the week before Christmas. So  
15 I don't see that -- I really don't see that  
16 happening.

17 MEMBER MOLDENHAUER: Can I ask a  
18 question? You said earlier you need 7 days to  
19 give notice and right now we're on the 10<sup>th</sup>.

20 MS. ALSTON: Okay.

21 MEMBER MOLDENHAUER: And the next  
22 meeting isn't until the 18<sup>th</sup> of November. What

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1 would stop you from being able to provide  
2 notice for the meeting on November 18<sup>th</sup>? I  
3 mean, obviously, I also see a very active, you  
4 know, constituents, individuals, citizens in  
5 the audience right now. I think that most  
6 people that would be interested in responding  
7 or at least contributing have notice currently  
8 of potentially having that issue on the  
9 calendar.

10 MS. ALSTON: Unfortunately, that's  
11 not the way it works, because it's a Single  
12 Member District issue in my Single Member  
13 District, which is 5A03. I have to serve my  
14 community 7 days in advance to have a meeting  
15 for SMD 5A03. And so at the earliest that  
16 meeting would probably be Tuesday. If I sent  
17 it, it would be the 18<sup>th</sup>.

18 At that meeting, I would give the  
19 consensus of my community. We would sit down  
20 and go over the traffic study. Then I have to  
21 present it to the Commission as a whole and  
22 say hey, let's look at this traffic study, but

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1 take in mind this is what the community wants.

2 Then at the next meeting, which would be the  
3 18<sup>th</sup>, that's where we would discuss it as a  
4 Commission, give findings and then take a  
5 stance from there.

6 It's no way to have two meetings  
7 before the November the 18<sup>th</sup> meeting and give 7  
8 day notice. So it's not 7 day notice for the  
9 18<sup>th</sup> meeting. It's 7 day notice for a  
10 community meeting in which then I take to the  
11 Commission.

12 MEMBER MOLDENHAUER: So I'm trying  
13 to work with this. So if you gave 7 days  
14 notice today.

15 MS. ALSTON: Yes.

16 MEMBER MOLDENHAUER: For a meeting  
17 for your Single Member District and then you,  
18 at the same time, talked with the Commission  
19 as a whole and told them that you were going  
20 to try to address this issue on the 18<sup>th</sup>, you  
21 would then be already able to have potentially  
22 a meeting on the 17<sup>th</sup> within the 7 days and

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1 then go to the Commission on the 18<sup>th</sup>.

2 MS. ALSTON: Which is good, but I  
3 can't have a meeting on the 17<sup>th</sup>. I have prior  
4 -- I have obligations on Tuesdays and  
5 Thursdays. So I can't do that. And it's  
6 unfair to push this on our community, when we  
7 have had a month and a half and nothing  
8 happened. So for me to stress that on them is  
9 not fair either.

10 MEMBER MOLDENHAUER: As to the  
11 Board, I mean, I don't like the idea of having  
12 to stretch this out. The last time we heard  
13 this case was, you know, a couple of months  
14 ago when we waited and we had a long time  
15 frame to then, you know, stretch this out all  
16 the way into mid-February, I would just try to  
17 see if there is a way. I would be happy to  
18 see if there was a way to work it out to have  
19 an earlier time frame to resolve this. That's  
20 my encouragement.

21 CHAIRMAN LOUD: I agree with the  
22 spirit of where you're going with it, just

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1 getting close to the holidays and the ANC  
2 normally only meeting once per month and their  
3 decision to -- you're not going to meet in  
4 December at all?

5 MS. ALSTON: Not in December.

6 CHAIRMAN LOUD: They don't meet in  
7 December. It just creates a very difficult  
8 situation for everybody and I'm not certain  
9 that our -- trying to encourage the ANC, I  
10 know, is what we should be doing and we're  
11 really trying to encourage you, but I just  
12 don't think the way the statutory scheme is  
13 set up that we can force the ANC to meet any  
14 earlier than the statute requires and what  
15 their internal bylaws require them.

16 I mean, it would really serve  
17 everyone's interest to have a prompt  
18 resolution of this. And to Mrs. Moldenhauer's  
19 point, the community has been and is very  
20 engaged on the issue. You know, I'm not  
21 trying to force a December meeting on you.

22 I agree with you, I think November

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1 is just, you know, inconvenient.

2 MS. ALSTON: But then, you know,  
3 it's like we're just meeting with the  
4 applicant. We are going through a traffic  
5 study that takes some time to digest to a  
6 community and then to a Commission whose  
7 agenda was set at the beginning of this month  
8 for the October's meeting.

9 It is not going to be small. This  
10 is a detailed traffic study --

11 CHAIRMAN LOUD: Yes.

12 MS. ALSTON: -- that you are asking  
13 us to consider.

14 CHAIRMAN LOUD: This is  
15 unfortunately, because, I mean, this applicant  
16 has done what it was supposed to do by getting  
17 the study, and as Ms. Fuller indicated, at  
18 some considerable expense to them. So it's  
19 not anything, I think, that they have done  
20 wrong, other than not serve you as a party.

21 MS. ALSTON: Well, how long will it  
22 take us to get a copy of the traffic study?

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1 CHAIRMAN LOUD: Did you bring any  
2 with you right now?

3 MS. FULLER: We can have it to them  
4 this afternoon.

5 CHAIRMAN LOUD: Okay.

6 MS. FULLER: I mean, that's not an  
7 issue.

8 CHAIRMAN LOUD: You didn't bring  
9 any with you today?

10 MS. FULLER: No. We have it  
11 electronic.

12 CHAIRMAN LOUD: I see.

13 MS. FULLER: So we can email it or  
14 print it out.

15 CHAIRMAN LOUD: Well, she said  
16 today, I mean.

17 MS. FULLER: Yeah, we can have it  
18 to you today.

19 CHAIRMAN LOUD: As early as today.  
20 Sorry, Commissioner Alston, I think you were  
21 getting ready to --

22 MS. ALSTON: I am trying to see if

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1 I can --

2 CHAIRMAN LOUD: -- respond.

3 MS. ALSTON: -- find a date in  
4 December. I'll work to call a special meeting  
5 in December and I'll encourage them to come  
6 out. That meeting would probably be the 16<sup>th</sup>.  
7 I'll work to have it on the 16<sup>th</sup> of December.

8 MR. MOY: And that's your meeting  
9 with the SMD?

10 MS. ALSTON: No, that would be the  
11 meeting with the ANC as a whole. So if today  
12 is the 10<sup>th</sup>, if we could get the traffic study  
13 soon, I can call a Single Member District  
14 meeting and then hear reports from that and  
15 then take it to the Committee as a whole at an  
16 ANC meeting and then that way we will call it  
17 the third week in December. Then we can  
18 schedule something and I can get something  
19 back to you maybe that Friday.

20 CHAIRMAN LOUD: I think Mr. Dettman  
21 may have had a couple of thoughts. I mean,  
22 I'm looking at that as maybe saving a couple

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1 of weeks.

2 MS. ALSTON: Yes.

3 CHAIRMAN LOUD: And if we are able  
4 to deliberate at the end of December versus  
5 deliberating the end of January. You had a  
6 couple of suggestions. I don't want to stand  
7 in front of you.

8 VICE CHAIR DETTMAN: Well, if the  
9 ANC could make that work, I think the Board  
10 could accommodate that. I'm just looking at  
11 our calendar. And you had said December 16<sup>th</sup>?

12 MS. ALSTON: Yes.

13 VICE CHAIR DETTMAN: That gives us  
14 our last meeting before the holidays, December  
15 22<sup>nd</sup>. And if for whatever reason the ANC  
16 can't, you know --

17 CHAIRMAN LOUD: Right.

18 VICE CHAIR DETTMAN: -- get  
19 organized, then we're automatically in  
20 January. So I was wondering if this would  
21 work? If the SMD could have a special meeting  
22 in the beginning of December?

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1 MS. ALSTON: Yes.

2 VICE CHAIR DETTMAN: So that you  
3 can look at the study with your constituents.  
4 And the ANC could hold a special meeting  
5 right after the New Year holiday, like --

6 MS. ALSTON: So we're going back to  
7 January?

8 VICE CHAIR DETTMAN: So the first  
9 week of January. If you could hold your  
10 special SMD meeting in December, so that gives  
11 you from today until the beginning of December  
12 for you, yourself, to look at this  
13 transportation study and then present it to  
14 your SMD in the beginning of December.

15 Then you can take it to your ANC in  
16 the very beginning of January.

17 MS. ALSTON: The only thing about  
18 that is we have to have elections in January.

19 So they are not -- we're not going to have a  
20 community meeting the first week, an executive  
21 committee meeting and then another major  
22 meeting all in the month of January. That

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1 would be too much on the Commission.

2 What I will do is in December we  
3 have an executive committee meeting the first  
4 Monday, which would be December the 7<sup>th</sup> is what  
5 is normally scheduled for, but because we're  
6 not having a meeting in December, I would see  
7 -- I could see if the Commission would  
8 entertain having a special meeting that day to  
9 address this issue, which means that we would  
10 have to get the traffic study from the  
11 applicant today, so that I could have 7 day  
12 notice to give it to my constituents maybe the  
13 Tuesday or Monday before Thanksgiving and then  
14 follow-up.

15 Give the Commissioners a week to  
16 review and then have a special meeting the  
17 first Monday in December. That's if the  
18 deadlines are met. Then that way in December,  
19 you all can hear the first, second, third  
20 Tuesday of the month, whichever was more  
21 convenient for you.

22 MS. FULLER: We can definitely give

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1 her that report today, so we can meet that  
2 deadline.

3 CHAIRMAN LOUD: So then let me just  
4 go back over those dates, because there would  
5 be some filing requirements to BZA for that.  
6 So applicant would get the ANC the study  
7 today.

8 MS. FULLER: Yes.

9 CHAIRMAN LOUD: And also provide  
10 the BZA with a copy of the study as well,  
11 obviously.

12 MS. FULLER: Yes.

13 CHAIRMAN LOUD: Then the ANC would  
14 notice a Single Member District meeting?

15 MS. ALSTON: Yes, sir.

16 CHAIRMAN LOUD: On the 18<sup>th</sup> you  
17 said? You said a week before Thanksgiving.  
18 Okay. I'm sorry, go ahead.

19 MS. ALSTON: We have to work with  
20 the facility to see what is available, too,  
21 and then with the holiday approaching, we  
22 would have a Single Member District in a

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1       timely manner.

2                   CHAIRMAN LOUD:    Okay.

3                   MS. ALSTON:    Then that way I could  
4       take it to the Commission the first week in  
5       December.

6                   CHAIRMAN LOUD:    All right.    And  
7       your meetings are still going to be on  
8       Wednesdays or since it's a special meeting  
9       there is no --

10                  MS. ALSTON:    Right.

11                  CHAIRMAN LOUD:    Okay.    But you  
12       think that would be the first week in  
13       December?  You just don't know what date right  
14       now?

15                  MS. ALSTON:    Yes, sir.    Yes, sir.

16                  CHAIRMAN LOUD:    And then would it  
17       be safe to say one week after that?

18                  MS. ALSTON:    That's fine.

19                  CHAIRMAN LOUD:    When would you know  
20       what date the meeting was going to be?

21                  MS. ALSTON:    I mean, I can schedule  
22       the meeting the 2<sup>nd</sup>.  Probably the 1<sup>st</sup>.  No.  We

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1 have a meeting that day. See, this again is  
2 provided we can get a quorum. So I would have  
3 to see who is going to respond, because it was  
4 pulling teeth to get a meeting in November,  
5 because we met the nine meeting a year  
6 requirements by the District Government. So  
7 they were pulling tooth and nail to get a  
8 November meeting.

9           Provided we can get a quorum,  
10 because we're trying to accommodate the  
11 applicant, I would say the first week in  
12 December and then that way I could get the  
13 response back to you by the 7<sup>th</sup>.

14           CHAIRMAN LOUD: Is that a Monday?

15           MS. ALSTON: That's a Monday.

16           CHAIRMAN LOUD: All right. So you  
17 got it back to us by December 7<sup>th</sup>. That would  
18 be your report. And then we allow the  
19 applicant a week after that to respond to the  
20 ANC's report. Counsel?

21           MS. FULLER: We can have it by that  
22 Friday, the 11<sup>th</sup>.

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1 CHAIRMAN LOUD: December 11, which  
2 means we would be able to place it on the  
3 calendar for, was that, December 15? So it  
4 looks like we would be able to have a decision  
5 deliberation on December 15<sup>th</sup>. Does that work,  
6 Commissioner?

7 MS. ALSTON: Yes.

8 CHAIRMAN LOUD: Ms. Fuller?

9 MS. FULLER: Yes, thank you.

10 CHAIRMAN LOUD: Okay. Thank you  
11 both and, again, appreciate both of you for  
12 your follow-up, obviously. A lot of work has  
13 been done since we last met on it. And for  
14 the things that fell in the gaps, we do  
15 apologize.

16 MS. FULLER: Thank you.

17 CHAIRMAN LOUD: Okay.

18 MEMBER MOLDENHAUER: And,  
19 Commissioner Alston, I appreciate all the hard  
20 work that your community and you are doing in  
21 regards to working with, you know, us and our  
22 support of having that fast meeting. Thank

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1       you.

2                   MS. ALSTON:   Could I be very -- can  
3       I make a --

4                   CHAIRMAN LOUD:   Yes.

5                   MS. ALSTON:   I have a comment for  
6       clarity.

7                   CHAIRMAN LOUD:   Yes.

8                   MS. ALSTON:   The traffic study that  
9       I will receive today is for 4975 South Dakota  
10      Avenue?

11                  MS. FULLER:   That's correct.

12                  MS. ALSTON:   Okay.   Thank you.

13                  CHAIRMAN LOUD:   Thank you both.  
14      Ms. Bailey, did you want to read back those  
15      dates or did you have any questions for  
16      clarification?

17                  MS. BAILEY:   I can read back the  
18      dates, Mr. Chair.

19                  CHAIRMAN LOUD:   I'm sorry, I'm  
20      sorry.   Mr. Moy.

21                  MS. BAILEY:   Sorry.

22                  CHAIRMAN LOUD:   Okay.   I forgot

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1 we're in decision.

2 MR. MOY: Oh, that's all right.

3 Ms. Bailey can back me up.

4 CHAIRMAN LOUD: Okay.

5 MR. MOY: The way I understand it  
6 from my notes, if I can still read my notes,  
7 the ANC would file their report or their  
8 letter by Monday, December 7<sup>th</sup>.

9 CHAIRMAN LOUD: Well, let's start  
10 with this. The applicant is going to give the  
11 ANC the report --

12 MR. MOY: Okay.

13 CHAIRMAN LOUD: -- today, November  
14 10<sup>th</sup>.

15 MR. MOY: That's fine. Well,  
16 that's good. Then the applicant will provide  
17 the transportation study.

18 CHAIRMAN LOUD: And Mrs.  
19 Moldenhauer has reminded me and the BZA would  
20 get that as well.

21 MR. MOY: That's right. Would  
22 serve the ANC and would serve all the parties,

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1 including the ANC and the BZA --

2 MS. FULLER: Yes.

3 MR. MOY: -- today, November 10<sup>th</sup>,  
4 close of business November 10<sup>th</sup>.

5 MS. FULLER: Yes.

6 MR. MOY: Then the ANC would meet,  
7 the full ANC would meet sometime during the  
8 first week of December, depending on which  
9 date they would be able to hold a quorum. And  
10 then would file a resolution or a letter to  
11 the Board, to the BZA Monday, December 7<sup>th</sup>,  
12 correct? And responses?

13 MS. ALSTON: December 7<sup>th</sup>.

14 MR. MOY: The applicant's response  
15 by December the 11<sup>th</sup>.

16 MS. FULLER: Yes.

17 MR. MOY: Which is a Friday, I  
18 believe.

19 MS. FULLER: Yes.

20 MR. MOY: Okay. And the Board  
21 would hold a Special Public Meeting on this  
22 application on Tuesday, December the 15<sup>th</sup>.

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1 MEMBER MOLDENHAUER: Yes.

2 CHAIRMAN LOUD: Okay. Again, thank  
3 you both. We look forward to your following  
4 and sticking to the schedule. We are not  
5 inclined for any more postponements. I think  
6 once we get this report, we will have a full  
7 record and can move forward to deliberation  
8 and on December 15 we will deliberate the  
9 case.

10 MS. FULLER: Thank you.

11 MS. ALSTON: Thank you.

12 CHAIRMAN LOUD: Anything further on  
13 the decision?

14 MR. MOY: That should do it, Mr.  
15 Chairman.

16 CHAIRMAN LOUD: What?

17 MR. MOY: That should do it.

18 CHAIRMAN LOUD: Finally.

19 (Whereupon, the Special Public  
20 Meeting was concluded at 1:59 p.m.)

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