

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

JUNE 9, 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, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
BEVERLEY BAILEY, Sr. Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

The transcript constitutes the minutes from the Public Meeting held on June 9, 2009.

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

2 9:48 a.m.

3 BZA CHAIR LOUD: This meeting will  
4 please come to order. Good morning, ladies  
5 and gentlemen.

6 This is the June 9 Public Meeting  
7 of the Board of Zoning Adjustment of the  
8 District of Columbia.

9 My name is Marc Loud. I'm  
10 Chairperson. Joining me today are Vice Chair  
11 Shane Dettman representing the National  
12 Capital Planning Commission and Mr. Anthony  
13 Hood, Chairperson of the Zoning Commission.  
14 To my left, Mr. Clifford Moy and Ms. Beverley  
15 Bailey of the Office of Zoning and then to  
16 their left is Ms. Lori Monroe of the Office of  
17 Attorney General.

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

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

8                   Does the staff have any preliminary  
9 matters?

10                  MR. MOY:        Good morning, Mr.  
11 Chairman, Members of the Board. Staff would  
12 recommend that we handle preliminary matters  
13 in a case-by-case basis.

14                  BZA CHAIR LOUD:    Thank you, Mr.  
15 Moy.    Then let's call -- I don't have my  
16 schedule of the order of cases for this  
17 morning, but what I'd like to do is call Ideal  
18 Academy.    Following that, we'll call the  
19 Lawrence case and then we'll save D.C.  
20 Teacher's Credit Union for the last decision  
21 of the morning.    My understanding is that  
22 there have been some last minute filings in

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1 the case that we'll need some time to take a  
2 look at before we can proceed forward.

3 Thank you, Ms. Bailey.

4 We try our best to work timely with  
5 reviewing the cases and coming before you and  
6 rendering decisions and hearing cases and  
7 really hold ourselves to a very high standard  
8 in terms of that and it complicates matters a  
9 little when we get very, very last minute and  
10 late pleadings and so, I'm really encouraging  
11 all parties that come before us if you have  
12 any opportunity to resolve these issues prior  
13 to the morning of the decision, please made  
14 every opportunity that you can because it  
15 pushes are schedule behind and it requires us  
16 to review a lot of things last minute.

17 Mr. Moy.

18 MR. MOY: Yes, sir. Again, good  
19 morning, Mr. Chairman, Members of the Board.  
20 Welcome, Mr. Hood from the Zoning Commission.

21 The first case for a decision in  
22 the Special Public Meeting for June 9th, 2009

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1 is Application Number 17866. This is  
2 Associates for Ideal Education, Inc. and I'm  
3 going to read the amended application to this  
4 case, Mr. Chairman.

5 And this is pursuant to 11 DCMR  
6 3104.1 for a special exception to establish a  
7 private school. This is now for 60 students,  
8 pre-K through 8th grade and ten staff, under  
9 Section 206 and also special exception relief  
10 from the requirements of Section 1553.2 of the  
11 matter of right and special exception uses  
12 under the 16th Street Heights Overlay  
13 District. This is in the R-1-B District at  
14 premises 1501 Gallatin Street, N.W. The  
15 property is in Square 2714, Lots 804 and 805.

16 As the Board will recall on June 2,  
17 2009, the Board completed public testimony,  
18 closed the record and scheduled its decision  
19 to today June 9th.

20 The Board requested -- the only  
21 requested additional information to supplement  
22 the record was requested of the Applicant or

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1 the ANC to -- because this is ANC 4C to file a  
2 signed resolution letter and that they did,  
3 Mr. Chairman, and that filing is in the case  
4 folders dated June 3rd, 2009 identified as  
5 Exhibit 42.

6 Therefore, the Board is to act on  
7 the merits of the two special exception  
8 requests and that completes the status  
9 briefing, Mr. Chairman.

10 BZA CHAIR LOUD: Thank you, Mr.  
11 Moy. I believe we're ready to deliberate on  
12 this case this morning and I believe Mr.  
13 Dettman is going to start us off.

14 VICE CHAIR DETTMAN: Thank you, Mr.  
15 Chairman.

16 BZA CHAIR LOUD: Let me interject  
17 for one second. I think as a preliminary  
18 matter we did receive this morning, it's date  
19 stamped June 9 9:36 a.m., a letter pertaining  
20 to this case from Mr. or Miss Abeba Taddese  
21 and Adam Lingo who live at 1505 Gallatin  
22 Street, N.W. offering some opinions with

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1 respect to the case and indicating that their  
2 schedules did not allow them to attend the  
3 hearing. Of course, this is the decision  
4 meeting not the hearing.

5                   But, as presiding officer, I don't  
6 think it's appropriate to accept this very  
7 late filing. We've had a hearing on this  
8 matter already. The ANC was present here.  
9 CBENA was present here and in order to allow  
10 us to hear these cases and reach a decision  
11 with some finality, there has to be a point at  
12 which pleadings stop coming to us. So, I'm  
13 not in favor of allowing this in. I think  
14 we've got enough on the record both in support  
15 and in opposition to the case to render a full  
16 decision.

17                   VICE CHAIR DETTMAN: Again, thank  
18 you, Mr. Chairman.

19                   As Mr. Moy stated, this is a  
20 request to establish a private school in the  
21 R-1-B District and currently, the Applicant is  
22 operating a child development center for 40

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1       students and eight staff and what the  
2       Applicant is requesting is permission to also  
3       operate a private school at the subject  
4       property located at 1501 Gallatin Street, N.W.  
5       and in so doing, would increase the total  
6       enrollment of both the child development  
7       center and the private school. So, combined,  
8       the enrollment for students would be 60  
9       students and the combined teachers and  
10      staffing would be ten people.

11                   At the beginning of the hearing,  
12          the Board took up the issue of whether or not  
13          the provisions of the 16th Street Heights  
14          Overlay applied to this application and after  
15          some deliberation, I believe the Board found  
16          that the provisions of the 16th Street Heights  
17          Overlay did, in fact, apply to this case and  
18          so, in order for the Board to analyze and  
19          grant this case, the provisions of Section 206  
20          governing private schools as well as the  
21          provisions of 1553 need to be met.

22                   And in looking at those provisions,

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1 I think since those provisions seem to overlay  
2 quite a bit, I think I'll deal with both sets  
3 of provisions at the same time if that's all  
4 right with my colleagues.

5 Looking at the special exception  
6 Section 206, 206.2 states the private school  
7 shall be located so that it's not likely to  
8 become objectionable to adjoining and nearby  
9 properties because of noise, traffic, number  
10 of students and other objectional conditions.

11 That provision reads very similar to 1553.2A  
12 which deals with the establishment of the  
13 private school or the nonresidential use in a  
14 manner that does not create any kind of  
15 adverse impacts to neighboring and nearby  
16 properties due to traffic, noise, design and  
17 other objectionable conditions.

18 Looking at noise, nonresidential  
19 use has been in existence at this property for  
20 some time. I believe we found out during the  
21 hearing since 1959 and so, there's been a  
22 continuation of nonresidential uses at this

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1 property without any significant issues that  
2 were raised to us during the hearing. There's  
3 no expansion of the existing house or new  
4 construction that's being contemplated. So,  
5 from a construction perspective, from a  
6 staffing perspective, we're only talking about  
7 an increase of 20 students. It doesn't look  
8 like this thing's going to create any adverse  
9 impacts with respect to noise issues.

10                   With traffic, currently the pick-up  
11 and drop-off times for students are staggered  
12 due to the different starting and ending times  
13 of the educational offerings. The school's  
14 also going to have a pick-up and drop-off  
15 coordinator to help facilitate that process  
16 and, in addition, the subject property is  
17 located between 14 and 16th Street which has  
18 adequate Metro bus service that would provide  
19 public access -- public transportation access  
20 for students and staff.

21                   As I noted, the proposed increase  
22 in students and staff is quite minimal and the

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1 traffic study that was submitted to us by  
2 Grove/Slade indicated that as a result of the  
3 increase in enrollment and staffing it's only  
4 going to generate an additional ten trips to  
5 this site over the course of about a two-hour  
6 period in the a.m. So, ten additional  
7 vehicles over the course of two hours doesn't  
8 appear to me as if it's going to produce any  
9 kind of major issues with respect to  
10 additional traffic and congestion in this  
11 area.

12                   And finally, with respect to  
13 design, again there's no expansion or new  
14 construction being proposed.

15                   Pick-up and drop-off is going to  
16 continue to occur along Gallatin Street, but  
17 in addition to that, it's also going to now be  
18 located or take place along Piney Branch as  
19 well and the Board kind of explored that as a  
20 potential issue with respect to congestion and  
21 the safety of the children and potentially  
22 queuing along Piney Branch that could

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1 potentially block the existing driveway  
2 entrance and through a series of questions,  
3 the transportation engineer stated that  
4 because of the rate of the arrival, we're only  
5 talking about an additional ten trips. I  
6 think a total of 27 trips to this site over  
7 the course of maybe 2½ hours. Because of the  
8 rate of arrival the tendency for queuing that  
9 could block the driveway isn't going to be a  
10 real issue and again, pick-up and drop-off is  
11 still going to be available along Gallatin  
12 Street where it currently exists without any  
13 issue.

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1 available for not only students and teachers,  
2 but also visitors to the subject property  
3 that's going to visit the school during school  
4 hours.

5                   Because there are going to be two  
6 uses at the subject property, there's going to  
7 be a continuing operation of the child  
8 development center and now a new private  
9 school, if you look to Chapter 21, there's two  
10 parking requirements for those uses. But, at  
11 the end of the day because we have two -- I'm  
12 sorry, an increase of two staff which is a  
13 total of ten staff, it generates a parking  
14 requirement of five spaces and they're going  
15 to be providing seven spaces and so, not only  
16 are they meeting their requirement under  
17 Chapter 21, but that makes available two  
18 additional spaces that I think would be  
19 sufficient to accommodate visitors to the  
20 school and we also found out through testimony  
21 of the ANC as well as the OP report that  
22 during school hours, there's an abundance of

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1                   unrestricted street parking in and around the  
2                   neighborhood.

3                   Section 1553.2B(3) and (4) deal  
4                   with the lighting of the parking area as well  
5                   as the screening. Based on the plans that are  
6                   in the record attached to the transportation  
7                   study, it appears that there's going to be  
8                   lighting used to eliminate the parking spaces  
9                   by way of one light pole located at the rear  
10                  towards the alley and there appears that  
11                  there's going to be screening and it may be  
12                  that the Board wants to -- if we're inclined  
13                  to grant this condition, we may want to make  
14                  sure that there's something in the order that  
15                  the screening and lighting provisions are  
16                  adequately met with respect to making sure  
17                  that there's a wood fence or a wall at an  
18                  adequate height to properly screen the  
19                  parking.

20                  Finally, the general special  
21                  exception provisions of 3104.1 need to be met  
22                  and that provision deals with making sure that

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1 the relief can be granted in a manner that is  
2 in harmony with the general purpose and intent  
3 of the regs and does not have any adverse  
4 impact on the use of neighboring properties  
5 and I think I essentially stated everything  
6 when dealing with 206 and 1553 that would  
7 apply to 3104 as well.

8                   There's been a nonresidential use  
9 in this subject property for some time and the  
10 Ideal Academy has operated there for some time  
11 without any major issues. It looks like the  
12 special exception criteria of 206 and the  
13 overlay 1553 have been met.

14                   The ANC is supportive of the  
15 application and I think it's worth noting that  
16 at first the ANC was not supportive of this  
17 application when it came in for an increase to  
18 80 students and I believe the Applicant  
19 through working with the community and the ANC  
20 decided to reduce the enrollment to 60  
21 students and that at least has satisfied the  
22 concerns of the ANC in order to get them to be

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1                   supportive of the application.

2                   The Office of Planning is also in  
3 favor of the application. That's our Exhibit  
4 29. They are supportive with conditions.  
5 There are a series of conditions that were  
6 proposed by OP as well as DDOT who is in  
7 support of the application with a number of  
8 conditions that we'll need to look at if we've  
9 inclined to grant the application.

10                  Finally, we did have some community  
11 involvement. We received testimony from  
12 Commissioner Brenda Speaks who represents 4B05  
13 which I believe is the single member district  
14 as well of the subject property. She was in  
15 support and we also received testimony of six  
16 people in support of the application both  
17 staff at the school as well as neighbors and  
18 parents who have had children attend the  
19 school or are attending the school.

20                  Finally, we did receive testimony  
21 from the Carter Barron East Neighborhood  
22 Association in opposition of the application

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1       stating that they conducted their own informal  
2       survey of the neighbors immediately  
3       surrounding the neighborhood and that the  
4       results of that survey show more of a tendency  
5       to be opposed to the increase in the number of  
6       staffing and students than they were inclined  
7       to be in favor of it and that is -- I don't  
8       have an exhibit number on there. That was  
9       provided through oral testimony as well as a  
10      letter submitted by Sean Wieland of the CBENA.

11                   So, with that Mr. Chair, to me, I'm  
12      inclined to be in favor of granting the  
13      application and I think what's going to be  
14      really important is to make sure that the  
15      conditions that have been proffered by the  
16      Office of Planning, DDOT as well as the  
17      Applicant in their Transportation Management  
18      Plan making sure that we have the right  
19      conditions that would adequately minimize any  
20      kind of an impact that this increase of 20  
21      students might have on the neighborhood.

22                   BZA CHAIR LOUD: Thank you, Mr.

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1 Dettman. That was a very thorough recitation  
2 of the evidence and the standards that apply.

3 I don't have much to add to that.  
4 Only a couple of things. First, I just wanted  
5 to note that I do recall the ANC -- I do  
6 recall the whole issue of the 206 versus 1553  
7 and making sure that the presentation was  
8 comprehensive enough to qualify for all of the  
9 relief that would be appropriate for the  
10 application and one of the things I remember  
11 the ANC testifying to is that as they came  
12 forward with their second resolution in  
13 support of the application that they were --  
14 they the ANC were aware of the whole overlay  
15 issue and that as an ANC both the 206 and the  
16 overlay would being supported. So, I just  
17 want to note that.

18 And I recall the testimony of Mr.  
19 Sean Wieland from CBENA, the Carter Barron  
20 East Neighborhood Association and there being  
21 opposition to it. I think he surveyed the  
22 immediate 12 neighbors or 12 neighbors

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1       certainly in that area. I'm sorry. Yes, 12  
2       neighbors in that area and that I think nine  
3       of them were opposed to it.

4                   The basis of their opposition as I  
5       recall from the testimony was traffic and  
6       parking issues and though I think he did a  
7       good job of both going out and talking to  
8       neighbors and then coming before us and  
9       sharing what their feeling was, I found -- I  
10      found persuasive the traffic report from  
11      Grove/Slade regarding there not being much of  
12      a traffic impact, a parking impact with  
13      respect to the proposed application.

14                  So, I'm not unmindful of the  
15       opposition from Mr. Wieland and CBENA, but I  
16       think that the other evidence in the record  
17       would tend to persuade me that there will be  
18       minimal traffic or parking issues relative to  
19       the application.

20                  I think a third issue that CBENA  
21       raised was that the neighborhood was becoming  
22       institutionalized. We've seen this issue come

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1 up before particularly with 16th Street  
2 Heights Overlay and it is a sensitive issue in  
3 the community and I'm mindful of that.

4 I think in this case the use was  
5 already institutional. It's not a proposed  
6 new institutional use converting a residential  
7 into institutional. Rather it would be  
8 expanding the institutional use and expanding  
9 it in a way that I think the evidence suggests  
10 it would have minimal impact on the community.

11 So, I agree with you in terms of  
12 what I thought I heard the direction being to  
13 support the application.

14 I did want to ask you if you wanted  
15 to go over any conditions.

16 VICE CHAIR DETTMAN: I was just  
17 pulling together the documents that had  
18 conditions recommended and the Office of  
19 Planning's report again Exhibit 29, the DDOT  
20 report that was submitted at the hearing as  
21 well as our Exhibit 28 the transportation  
22 study have conditions.

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1                   I think most of the conditions that  
2 are in the Transportation Management Plan  
3 offered up by the Applicant have been  
4 incorporated into the OP report and just  
5 looking through the DDOT conditions, most of  
6 those are identical to what's been recommended  
7 in the OP report as well maybe with the  
8 exception of two.

9                   So, other than those two that are  
10 in the DDOT report that maybe we can discuss  
11 separately, I would be in favor of  
12 incorporating all of the conditions proposed  
13 by the Office of Planning or I think there's  
14 potential to do it another way. Is that I  
15 think most of the conditions are pulled  
16 directly from the Transportation Management  
17 Plan and another way the Board has approached  
18 these types of things is just to refer to the  
19 TMP. Something to the affect that the  
20 Applicant will carry out the TMP that's in  
21 Exhibit 28 or we can hold those and put those  
22 in the order word for word. I think both

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1 approaches would be effective.

2                   The two conditions in the DDOT  
3 report that don't appear exactly in the OP  
4 report, one was that not only will the  
5 Applicant provide bike racks, but that they be  
6 covered and that was addressed in the hearing.

7                   I think Mr. May raised the question, but it  
8 wasn't something that he was going to pursue.  
9                   He wasn't going to make an issue of it.

10                  The last one was that the Applicant  
11 would share some transportation data with DDOT  
12 and the ANC every 12 months. The Applicant  
13 indicated that that data's collected. They  
14 wouldn't have a problem sharing that, but he  
15 did note that the Applicant is a small private  
16 school with limited resources.

17                  In terms of how to address the TMP  
18 or pulling the conditions in the TMP over into  
19 the order, I would be in favor of just  
20 referring to the TMP by exhibit number and not  
21 having to incorporate them word for word into  
22 the order.

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1                   BZA CHAIR LOUD: I agree with that.

2                   I think that's fine.

3                   I did want to just briefly talk  
4                   about the DDOT conditions and really brief on  
5                   the bike racks. I wasn't in favor of that  
6                   even as I heard Mr. Jennings testimony knowing  
7                   that it's a requirement that not even the  
8                   District of Columbia places on itself to cover  
9                   bike racks.

10                  So, with respect to sharing the  
11                  transportation data, I do think that's  
12                  important particularly since there was some  
13                  testimony that parking and traffic at least in  
14                  the perception of neighbors was a problem.  
15                  So, having this condition where, particularly  
16                  since the Applicant testified it's not a  
17                  problem, they collect it anyway. It's just a  
18                  matter of transmitting it to the ANC and to  
19                  DDOT. I think would go a long way toward  
20                  potentially mitigating any potential issues  
21                  with respect to that and offer them an  
22                  opportunity to dialogue around some specific

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1 information that may lead to better relations.

2 So, I'd be for including that  
3 condition into overall what we do, but apart  
4 from that, no changes to what you laid out.

5 VICE CHAIR DETTMAN: In addition to  
6 that, I'm just looking at the OP conditions.  
7 The first one deals with the total enrollment  
8 and since we have an existing use with 40  
9 students and we're going to 60, but those 60  
10 are going to be shared amongst the two uses, I  
11 think a very clear condition that lays out  
12 that we are limited to a total of 60 students  
13 and ten staff for both uses combined I think  
14 that would be important to have.

15 And in addition to that, I had  
16 mentioned during my -- taking the Board  
17 through the provisions that it might be  
18 helpful to have a condition that addresses the  
19 requirements of screening and lighting in the  
20 parking area and that could say something the  
21 Applicant shall comply with the requirements  
22 of whichever those provisions are in the

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1 overlay that deal with the wood fence  
2 screening of the parking area as well as the  
3 -- making sure that the -- any lighting that's  
4 used is directed downward and contained to the  
5 parking area.

6 I don't know if we need to flush  
7 out that language now or we could do it --

8 BZA CHAIR LOUD: I don't think we  
9 need to flush it out now because I think it's  
10 very specific in the regulations as to -- both  
11 by enumeration within the regulations, in the  
12 language.

13 So, what I've jotted down sort of  
14 is that the condition -- it sounds generally  
15 like once we call for a vote we are moving in  
16 the direction of favoring the application with  
17 several conditions.

18 One, that the population be limited  
19 to 60 students and ten staff.

20 Two, that the Applicant would share  
21 transportation data annually with the ANC and  
22 with DDOT and I'm hoping that the ANC will

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1 share it with CBENA.

2                   Third, that the screening and  
3 lighting provisions of Section 1553 be  
4 adequately met by the Applicant.

5                   And then fourth, that the  
6 Transportation Management Plan provisions be  
7 incorporated as conditions for the Applicant.

8                   Is there anything else? Okay.

9                   Then in the absence of any  
10 additional deliberation on it, I'd like to  
11 call the matter for a vote and do you have a  
12 motion?

13                   VICE CHAIR DETTMAN: I move for  
14 approval of Application Number 17866,  
15 Association for Ideal Education, pursuant to  
16 11 DCMR 3104.1 for a special exception to  
17 establish a private school under Section 206  
18 in the R-1-B District at premises 1501  
19 Gallatin Street, N.W. as conditioned.

20                   BZA CHAIR LOUD: Thank you. I  
21 second the motion.

22                   The motion's been made and seconded

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1 as conditioned. Is there further  
2 deliberation?

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

5 (Ayes.)

6 BZA CHAIR LOUD: All those opposed?  
7 Any abstentions? Are there any additional --  
8 yes, Mr. Moy.

9 MR. MOY: Yes, sir, Mr. Chairman.  
10 Before the staff gives a final vote, I would  
11 add that we do have an absentee ballot vote  
12 from a participating member who is Mr. Peter  
13 May and his absentee vote is to approve the  
14 application with such conditions as the Board  
15 may impose.

16 So, that would give a final vote of  
17 3 to 0 to 2. A motion of the Vice Chair Mr.  
18 Dettman to approve as conditioned. Seconded  
19 by Mr. Loud. Again -- and no two other Board  
20 Members participating. So, at the end, the  
21 final vote to approve as conditioned 3 to 0 to  
22 2.

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1                   BZA CHAIR LOUD: Thank you, Mr.  
2 Moy, and can this be a summary decision?

3                   MR. MOY: Yes, sir.

4                   BZA CHAIR LOUD: Okay. Thank you  
5 very much. Thank you, Mr. Dettman for taking  
6 us through that case and starting the  
7 deliberations off.

8                   Is there anything further on this  
9 case, Mr. Moy?

10                  MR. MOY: No, sir.

11                  BZA CHAIR LOUD: Okay. Let's call  
12 the next case.

13                  MR. MOY: The next case, Mr.  
14 Chairman, is a motion for reconsideration  
15 which was filed by the Applicant to  
16 Application Number 17833 of Timothy Lawrence  
17 pursuant to Section 3126.

18                  The staff is going to read the  
19 original application relief which is pursuant  
20 to 11 DCMR 3103.2 for a variance from a lot  
21 occupancy requirement under Section 403 and a  
22 variance from the alley setback requirements

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1 under Subsection 2300.4 to construct a private  
2 garage on an alley lot in the R-4 District at  
3 premises 1665 Harvard Street, N.W. The  
4 property's in Square 2588, Lot 827.

5 On May 14th, 2009, the Board  
6 received this request for reconsideration of  
7 the Board's decision from a Mr. Joe Heisey on  
8 behalf of the Applicant Timothy Lawrence. The  
9 filing is in your case folders identified as  
10 Exhibit 36.

11 The Board is also in receipt of a  
12 second filing from the Applicant which is  
13 pretty much a letter or certificate of service  
14 which is identified as Exhibit 38.

15 Finally, there are three filings  
16 from the party opposition Ed Schneider. All  
17 of these three filings were filed on June 1st,  
18 2009.

19 The first is a letter of  
20 authorization to represent from a Martin  
21 Sullivan of the law office of Martin Sullivan.

22 The second filing is a letter of

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1 service mailed to both Timothy Lawrence the  
2 Applicant and ANC 1D.

3 And the third filing is the written  
4 narrative in opposition to the motion.

5 These are Exhibits 40, 41 and 42  
6 respectively.

7 The Board before acting on the  
8 merits of the request for reconsideration  
9 should address two preliminary matters.

10 The first is the response filing  
11 from the Applicant because in his letter of  
12 service he failed to add service to the party  
13 opposition. So, in other words, the  
14 opposition party Ed Schneider was not served.

15 Nonetheless, the opposition party  
16 had filed a response after learning of the  
17 motion. However, that filing is untimely  
18 being dated June 1st and not meeting the  
19 seven-day response filing rule which exceeds  
20 the permitted filing response by six days.

21 So, those are the two preliminary  
22 matters.

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1                   So, after that then, the Board can  
2 act on the merits of the motion for  
3 reconsideration pursuant to Section 3126.6.

4                   That completes the staff's  
5 briefing.

6                   BZA CHAIR LOUD: Thank you, Mr.  
7 Moy. Appreciate it. Let me turn to my  
8 colleagues and just Mr. Moy having outlined  
9 the preliminary considerations, namely, our  
10 acceptance of the motion for reconsideration  
11 that wasn't served properly and then the  
12 response to the motion because when a party's  
13 not served -- was not able to file a timely  
14 response because they were not served timely,  
15 my feeling is we should move in a direction --  
16 at least I'd like to move in a direction of  
17 resolving it on the merits instead of the  
18 procedural technicalities and so, I'd be in  
19 favor of allowing both pleadings in.

20                   All right. Sounds like there's  
21 unanimous consent on that.

22                   Do we need a vote on that? Okay.

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1 All right.

2 So, I think we're ready to  
3 deliberate in this case and I will do my level  
4 best to start us off. I'm going to repeat  
5 some of what Mr. Moy had indicated so that at  
6 least in my mind, there's a context for our  
7 deliberations and moving forward.

8 Now, in the underlying case, the  
9 Applicant sought to construct a two-car garage  
10 on a 557 square foot alley that did not meet  
11 the lot occupancy as proposed. Did not meet  
12 the lot occupancy requirements of Section  
13 403.2 because the proposed plans resulted in a  
14 100 percent lot occupancy. The maximum  
15 allowable for the alley lot is 40 percent.

16 Secondly, the proposed plans did  
17 not meet the 12 foot alley center line setback  
18 requirement of our Section 2300.2B. The  
19 setback requirement is 12 feet. The  
20 Applicant's project was about 7½. I think it  
21 was 7 feet 6 inches. The alley lot is a pre-  
22 57 lot and appears as a tax lot on the 1925

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1 base map and hence, it allows a private garage  
2 as a matter of right.

3                   Additionally, the Applicant's  
4 proposed garage particularly the south wall  
5 was approximately 17 feet from the rear wall  
6 of the west neighbor's dwelling and this was  
7 the Kempty/Schneider combined. So, the west  
8 neighbors were granted party status in the  
9 underlying case and again, their names were  
10 Kempty and Schneider.

11                   The Board heard the case October  
12 28th, 2008. We deliberated the case and  
13 reached a decision on December 2nd. The final  
14 written decision was issued I think on May  
15 14th. I'm not exactly certain of the exact  
16 date, but nonetheless, it was issued fairly  
17 recently and within that 10-day period, the  
18 Applicant moved for reconsideration and  
19 rehearing.

20                   In the final written decision, the  
21 Board established the area variance test as  
22 the applicable test as opposed to the use

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1 variance test. There was a discussion of this  
2 at page 5 of the decision and the Board  
3 concluded the following: That the lot was  
4 exceptional due to its very small size and its  
5 location behind a dwelling with a different  
6 ownership.

7                   Secondly, the Board concluded that  
8 the Applicant failed to meet the second prong  
9 of the variance test, the area variance test,  
10 in that the asserted practical difficulty was  
11 an inconvenience to the Applicant, but it did  
12 not rise to the level of a peculiar and  
13 practical difficulty.

14                   Additionally, the order went on to  
15 say that there was no proximate relationship  
16 between the uniqueness, i.e., the very small  
17 size and the asserted practical difficulty  
18 which was essentially the inability to secure  
19 vehicles owned by the Applicant.

20                   The BZA having made findings on  
21 those two prongs of the test went on  
22 specifically to say that they did not reach

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1 the third prong, but there was some gratuitous  
2 discussion regarding aspects of the third  
3 prong. But, nonetheless, we decided that  
4 because the Applicant couldn't meet prong 2  
5 that he could not meet the area variance test  
6 and rendered our decision against the  
7 Applicant.

8 As you noted, Mr. Moy, the  
9 Applicant filed for reconsideration and  
10 although he filed timely, he didn't serve the  
11 ANC nor the Kemply/Schneider parties, but the  
12 Kemply/Schneider parties did learn of it.  
13 They have submitted a response to the  
14 reconsideration. There's no harm with respect  
15 to the Applicant not serving them because they  
16 have something on file for us to review.

17 In my mind, the whole question here  
18 -- I'm going to go through specifically what  
19 the Applicant raises in the reconsideration.  
20 But, the whole question boils down to whether  
21 the security need for a garaged parking space  
22 on the small lot is a practical difficulty.

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1       In the underlying decision, the BZA said no  
2       because the Applicant could secure the vehicle  
3       by alternate means.

4                   In other words, the way I'm  
5       understanding this, the BZA simply disagreed  
6       with the characterization of the Applicant  
7       that the lack of a garage created a practical  
8       difficulty for the Applicant. We explained  
9       away the characterization of practical  
10      difficulty with reasoning that relied on  
11      evidence in the record that suggested that a  
12      gated security that didn't rise to a garage  
13      facility would provide the level of security  
14      that the Applicant needed. So, we didn't  
15      quite find the practical difficulty that the  
16      Applicant suggested existed and that was the  
17      gravamen of the entire case really.

18                   Now, on reconsideration, the  
19      Applicant raises a number of arguments  
20      pertaining to our decision that sort of danced  
21      around that very basic question of whether  
22      this parked garage, I'm sorry, this garaged

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1 parking amounts to practical difficulty. The  
2 inability to get garage parking amounts to  
3 practical difficulty. As I said, the BZA said  
4 it doesn't.

5                   In moving for reconsideration and  
6 rehearing, the Applicant first argues that our  
7 decision amounts to a taking by the city in  
8 the sense that the permissible use for the  
9 alley lot, a private garage, is something that  
10 we're not allowing the Applicant to do.  
11 Because from a practical standpoint, the only  
12 way the Applicant could do it on a small lot  
13 like that, 557 square feet, with a 40 percent  
14 lot occupancy limitation would be for us to  
15 grant a variance to construct the garage  
16 according to the plans proffered by the  
17 Applicant.

18                   But, that's not exactly the case  
19 for a couple of reasons. First, there is no  
20 obligation for this Applicant to provide  
21 parking for his residence and even if there  
22 were a requirement to provide parking for this

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1 residence, there's nothing in the record that  
2 suggested that parking could not be provided  
3 through the parking pad and that security  
4 could not be provided through the gated  
5 security. So, the characterization, I think,  
6 is inaccurate.

7 Additionally, again, it goes back  
8 to the difficulty that we've identified being  
9 a practical difficulty. It goes without  
10 saying that you got a 40 percent lot  
11 occupancy. You got a 557 square foot lot.  
12 It's going to be difficult to build a garage,  
13 but the reason why the Applicant wanted to  
14 build the garage was to provide secured  
15 parking and this Board found that there was no  
16 evidence that supported the proffer that he  
17 could not have secured parking without the  
18 garage facility. So, I don't see the taking  
19 argument personally as having a lot of weight.

20 The Applicant goes on in the  
21 reconsideration to argue that the Board used a  
22 use variance standard, I think, instead of an

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1 area variance standard and that's not accurate  
2 as well. Although, I think I can understand  
3 some of the confusion.

4 First, let me say that at page 5 of  
5 the decision, the Board was very clear that we  
6 were looking at an area variance standard  
7 instead of a use variance standard. But,  
8 moreover in my mind anyway, in discussing the  
9 area variance standard, I think what we said  
10 was there's an alternate explanation that sort  
11 of undercuts the proffer by the Applicant that  
12 he can only secure the parking space with a  
13 garage and we chose the alternate explanation.

14 In other words, we chose based on the record  
15 to believe that this Applicant could secure  
16 the vehicle through means other than garage.

17 I think that that's consistent with  
18 the area variance test. It's not a use  
19 variance test. We didn't require the  
20 Applicant as would be the case under a use  
21 variance to exhaust every possible alternative  
22 use consistent with the zone before we would

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1 consider granting the variance.

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1 up with the design or to continue the case  
2 until such a design was submitted to the  
3 Board, but that responsibility was on the  
4 Applicant to design or redesign or reevaluate  
5 the plans and I think there's an instance in  
6 the record of the Applicant having done that  
7 once.

8                   But, if there were a way to design  
9 this thing so that even with the 40 percent  
10 lot occupancy you could build a two-car  
11 garage, that was on the Applicant to bring it  
12 forward to us. It wasn't our responsibility  
13 to do that and it certainly wasn't an error  
14 for us to rule that the variance test had not  
15 been made at the second prong because of that.

16                   With respect to the ANC, the ANC in  
17 this case did not support the application and  
18 a lot of what the ANC opposed was the third  
19 prong of the application. Namely, whether  
20 there would be substantial public detriment as  
21 a result of granting the application and that  
22 seemed to pivot around the fact that this lot

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1 that was under consideration was in the back  
2 of the party status. The Kempty/Schneider  
3 party, it was in the back of their yard and  
4 so, there were questions about light and air,  
5 questions about blocking the view and so on  
6 and so forth and the lot was not attached or  
7 adjacent to the Applicant's property.

8                   But, I think the decision makes  
9 very clear that we found that the Applicant  
10 didn't meet the second prong. So, we did not  
11 even go to the third prong.

12                   So, I'm not certain, and maybe you  
13 guys can help me, of what the error was with  
14 respect to that part of our decision.

15                   I'll defer to colleagues and let  
16 you weigh in, but there was also discussion --  
17 speculative discussion that compared the  
18 Applicant's lot with other lots in the square  
19 and the surrounding area. The lot occupancy  
20 for those other lots which were largely  
21 residential and had a 60 percent lot occupancy  
22 with the Applicant's project which was in the

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1       alley and had 40 percent lot occupancy and  
2       then speculative discussion about well, but if  
3       we were residential or if we were treated the  
4       same way as the other lot owners, we would be  
5       able to do this.

6                   But, the point being that those  
7       other properties had greater lot sizes. They  
8       had a greater lot occupancy because they were  
9       already residential and so, of course, the  
10      Zoning Regulations treat the two properties  
11      differently and when we follow the Zoning  
12      Regulations, that's not erroneous for us to do  
13      that. The fact is that the Applicant  
14      presented with a lot that was already  
15      different from a lot of his neighbors' lots  
16      and more particularly their lot occupancy.

17                   So, with that, I'll open the floor  
18      up and see how others are viewing this.

19                   VICE CHAIR DETTMAN: Mr. Chairman,  
20      I don't have much to add. I think that you  
21      went through the points that were raised in  
22      Exhibit Number 36, the Applicant's request for

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1                   reconsideration and adequately addressed them.

2                   I will make one point about item  
3                   number 3 which mentions that during the  
4                   Board's deliberations at its public meeting,  
5                   new issues of design possibilities were raised  
6                   and as you noted, the Applicant actually made  
7                   reference to some of the comments that I made  
8                   during deliberation.

9                   And those comments were made while  
10                  I was noting that during the hearing the Board  
11                  had inquired of the Applicant whether or not  
12                  they investigated other solutions to providing  
13                  secure parking other than building a private  
14                  garage. There was a mention of a roll-up  
15                  door, a secured roll-up door and between the  
16                  hearing and the public meeting, the Applicant  
17                  had modified their design. I think they  
18                  lowered the height of the wall that was going  
19                  to be closest to Mr. Schneider's property.  
20                  So, I was merely noting some of the design  
21                  changes that were made and some of the other  
22                  solutions that were explored by the Applicant.

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1                   But,        nonetheless,        in        the  
2        deliberations,    I    do    make    the    comment    that  
3        regardless    of    what    design    alternatives    myself  
4        or    any    Board    Member    see    as    an    opportunity    to  
5        either    minimize    the    extent    of    the    variance    or  
6        actually    bring    something    into    compliance    with  
7        the    Zoning    Regulations,    as    you    noted,    it's    the  
8        Applicant    responsibility    to    put    together    a  
9        design    and    put    it    in    front    of    the    Board.

10                  And    I    go    on    to    mention    in    page    28  
11        of    the    transcript    is    that    although    I    do    see  
12        some    opportunity    to    minimize    the    extent    of    the  
13        variance,    the    design    that    we    have    in    front    of  
14        us    is    the    one    that    we    are    required    to    look    at  
15        and    so,    I    don't    think    that    my    comments  
16        regarding    the    design    possibilities    of    the  
17        Applicant's    garage    or    the    security    solutions  
18        raised    issues    that    the    Applicant    was    not    able  
19        to    address    during    the    public    meeting.

20                  ZC    CHAIR    HOOD:    Mr.    Chairman,    I  
21        would    just    agree    with    both    of    my    colleagues.  
22        I    don't    think    this    merits    any    reconsideration

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1 on our part. I think it was very well  
2 deliberated and to go on the merits of what's  
3 going on in other parts of that community, I  
4 think each case stands on its own merit.

5 So, I'm not interested in any  
6 reconsideration or rehearing. I think the  
7 record is complete and it stands on its own.

8 BZA CHAIR LOUD: Thank you, Mr.  
9 Hood. Thank you, Mr. Dettman.

10 You mentioned, Mr. Hood, part of  
11 the request that sought a rehearing and I  
12 think the standard is that there's new  
13 evidence that's introduced and I think with  
14 respect to the underlying case, there is no  
15 new evidence that's been presented for us. A  
16 lot of arguments. A lot of different  
17 characterizations of the existing evidence,  
18 but with respect to there being new evidence,  
19 I'm not certain that anything was brought to  
20 our attention that would rise to the level of  
21 being new evidence and I don't think the  
22 purpose of the reconsideration is to have a

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1 rehearing -- reconsideration/rehearing is to  
2 have a rehearing that ends up becoming an  
3 entirely different kind of case.

4                   The case that the Applicant put  
5 forward -- and I want to commend the  
6 Applicants. I thought and still think that  
7 working with the 557 square foot lot that has  
8 a 40 percent lot occupancy presents a lot of  
9 challenges, but nonetheless, there's a test  
10 for whether you can get relief from those  
11 challenges and I don't think they met it.

12                   And with respect to the rehearing  
13 question, the application was denied because  
14 of prong 2 and there's no new evidence about  
15 prong 2 about the security or safety of the  
16 vehicles that became the focus of the  
17 underlying hearing. So, I agree with you. I  
18 don't think that a rehearing would be  
19 appropriate either.

20                   Is there further deliberation on  
21 the case?

22                   VICE CHAIR DETTMAN: Mr. Chairman,

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1 I think that we did a good job of articulating  
2 our thoughts on, you know, all seven items  
3 that the Applicant puts forth for their  
4 request.

5 Just looking over them quickly one  
6 more time to make sure that we addressed every  
7 single one of their concerns, number seven had  
8 mentioned something to the effect of a de  
9 facto approval of the rear setback requirement  
10 and I don't think there's -- I don't even  
11 think there's such a thing as a de facto  
12 approval.

13 I think that every single  
14 application needs to be judged on its own  
15 merits and with respect to the alley center  
16 line setback requirement, though the Board had  
17 mentioned that a roll-up door might be an  
18 effective solution, I believe the setback  
19 requirement applies to in the regs, if you  
20 look at the plain language of the regs, it  
21 applies to a private garage and I'm not even  
22 certain if a roll-up door was to be explored

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1 that the setback requirement would apply to  
2 that type of solution. But, nonetheless, you  
3 know, again, every single case needs to be  
4 judged on its own merits.

5 BZA CHAIR LOUD: Thank you, Mr.  
6 Dettman. That was a good point to raise. I  
7 think that's captured in our Section 2300.6  
8 where the language garage is used.

9 And side-bar note, I think there  
10 had been a gate there before at some point in  
11 time and I don't think that there was before  
12 us an application for variance approval for  
13 that gate if the Applicant felt that that gate  
14 would have needed variance relief.

15 ZC CHAIR HOOD: Mr. Chairman.

16 BZA CHAIR LOUD: Yes, sir.

17 ZC CHAIR HOOD: If I may, I would  
18 move that we deny reconsideration if I'm in  
19 order. That we deny reconsideration and a  
20 rehearing contingent on the fully deliberated  
21 record that we deliberated at the time and  
22 also, there's no new information for us to

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1 have a rehearing at this time.

2 That's my motion.

3 BZA CHAIR LOUD: Thank you, Mr.  
4 Hood for your motion. I second the motion.

5 Further deliberation?

6 ZC CHAIR HOOD: Mr. Chairman, I  
7 want to commend you on that great deliberation  
8 and making sure that we hit all seven or eight  
9 issues or how many it was and I think the  
10 record is complete in this particular instance  
11 also.

12 BZA CHAIR LOUD: Thank you, Mr.  
13 Hood, and on that note, why don't we call for  
14 the vote.

15 All those who are in favor of  
16 denying the motion?

17 (Ayes.)

18 BZA CHAIR LOUD: All those opposed?  
19 Any abstentions?

20 Mr. Moy, can you call the vote for  
21 us please.

22 MR. MOY: Yes, sir, staff would

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1 record the vote as 3 to 0 to 2. This is on  
2 the motion of Mr. Hood to deny. Seconded by  
3 Mr. Loud. Also in support of the motion, Mr.  
4 Dettman and of course, no other two Board  
5 Members are participating. So, again, it's on  
6 the vote of 3 to 0 to 2 to deny.

7 BZA CHAIR LOUD: Thank you, Mr.  
8 Moy, and do we have anything further on this  
9 case?

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

11 BZA CHAIR LOUD: Okay. Thank you,  
12 Mr. Moy.

13 I think what we're going to do now  
14 is take a break. I understand that there may  
15 have been some supplemental pleadings that  
16 came in on D.C. Federal Credit Union and we do  
17 need an opportunity to review those. So,  
18 perhaps, a ten-minute break would be in order  
19 and we'll resume in about ten minutes. Thank  
20 you.

21 (Whereupon, at 10:40 a.m., off the  
22 record until 11:14 a.m.)

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1                   BZA CHAIR LOUD: This hearing will  
2 resume. The morning's decision meeting.

3                   Mr. Moy, I guess we should call the  
4 final case for this morning.

5                   MR. MOY: Yes, sir, thank you, Mr.  
6 Chairman.

7                   That would be Application Number  
8 17842. This is of D.C. Teacher's Credit Union  
9 pursuant to 11 DCMR 3103.2 for a use variance  
10 to allow the continued use of the former  
11 Edmonds Public School for general office use  
12 under Section 330.5 in the R-4 District. This  
13 is at premises 901-903 D Street, N.E., Square  
14 938, Lot 809.

15                  As the Board will recall at its  
16 decision meeting on May the 5th, 2009, the  
17 Board convened the application and then  
18 granted the Applicant's request to delay its  
19 decision and the Board rescheduled its  
20 decision at a Special Public Meeting today  
21 June 9th.

22                  In your case folders, Mr. Chairman,

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1 is a filing from the Applicant dated June 4th,  
2 2009. It's identified as Exhibit 36.

3                   Staff will also note that the Board  
4 is in receipt of a replacement of the cover  
5 sheet to this document which was submitted to  
6 the staff this morning.

7                   Apart from that, then the staff  
8 will just say that the Board is to act on the  
9 merits of the use variance to allow the  
10 continued use under Section 330.5.

11                  That completes the staff's  
12 briefing, Mr. Chairman.

13                  BZA CHAIR LOUD: Thank you, Mr.  
14 Moy.

15                  I think we are ready to deliberate  
16 this morning. The case originally was heard  
17 by Former Chair Ms. Miller, Ms. Ruthanne  
18 Miller, myself, Mary Oates Walker formerly on  
19 the Board and I believe Mr. Hood and Ms.  
20 Walker and Ms. Miller are no longer with the  
21 BZA, but Mr. Dettman has read the full record.  
22 So, will be joining with deliberations.

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1                   I think we can jump right into and  
2 I'll start us off. Jump right into the case.

3                   As you noted, Mr. Moy, it is a use  
4 variance case. We heard it originally I think  
5 on January 6th. So, it does go back a little  
6 ways and there was a tremendous amount of  
7 evidence put into the record including a  
8 number of witnesses representing the ANC and  
9 Stanton Hill Civic Association, Capitol Hill  
10 Restoration Society, representatives of the  
11 Applicant, the Office of Planning and I  
12 believe one or two neighbors.

13                  The standard for a use variance is  
14 that there be a unique or exceptional  
15 situation, that the unique or exceptional  
16 situation causes an undue hardship as opposed  
17 to practical difficulty which is a lesser  
18 standard for area variances. Thirdly, that  
19 there is no substantial detriment to the  
20 public good nor substantial impairment to the  
21 Zone Plan, the Regulations or the Map.

22                  With respect to the use variance

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1 test and having reviewed the evidence in the  
2 record before us, on the issue of unique and  
3 exceptional element of the use variance test,  
4 this property has functioned as office space  
5 for the Applicant for the last ten years. I  
6 believe it formerly being a vacant school and  
7 the Applicant having used it as an office --  
8 converting it to an office and using it for an  
9 office for the last ten years.

10                   With respect to their being some  
11 undue hardship, there was evidence in the  
12 record that the Applicant has spent over a  
13 million dollars I believe since 1999. That  
14 would include asbestos abatement, window  
15 replacement, new painting, electrical upgrades  
16 to prevent surges, new roofing.

17                   There was also testimony that there  
18 would be tremendous inconvenience to  
19 depositors should there be a need to relocate  
20 and the cost of relocation and, of course, the  
21 loss of the \$1 million capital investment to  
22 date and there may be some other indicia of

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1       undue hardship.

2                   When I conclude my component of the  
3        remarks, other Board Members can weigh in.

4                   With respect to whether there was  
5        substantial detriment to the public good for  
6        allowing this use at this site, there was  
7        testimony from the Office of Planning that  
8        there's no harm to the public good because  
9        it's a quiet use with no evening or weekend  
10      hours, that there's on-site parking that meets  
11      the requirement.

12                  The Applicant testified that 50  
13      percent of the transactions are now on-line  
14      which would tend to further reduce the  
15      intensity of use at the site.

16                  Applicant also testified that the  
17      church is allowed use of the parking for  
18      overflow which was a benefit to the  
19      neighborhood and that may have been echoed by  
20      Mr. Holmes the ANC representative. It may  
21      not, but I know that the Applicant testified  
22      to that and there was some evidence to that.

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1                   Along the same lines of this prong  
2 of the use variance test, the ANC testified  
3 that there was noise from air units that was  
4 disturbing to neighbors walking by and the ANC  
5 pulled together a list of other concerns that  
6 it represented as constituting substantial  
7 detriment to the public good.

8                   I think from where I sit, the  
9 Applicant has made a *prima facie* case for a  
10 use variance. I think the element of the test  
11 that may require digging a little bit further  
12 would be the substantial detriment to the  
13 public good and I think I'd like to frame a  
14 discussion on that around the proposed  
15 conditions of the ANC with respect to that.

16                   So, let me just start with the  
17 conditions that the ANC proposed. The first  
18 condition dealt with noise and again, I think  
19 I mentioned it as regards the air conditioner  
20 units and it being disturbing to neighbors.

21                   The second condition had to do with  
22 removal of a concrete slab in the public

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1 space.

2                   The third condition dealt with --  
3 let me just take a brief look at their Exhibit  
4 34. No, I'm probably doing this a little bit  
5 out of order.

6                   But, the third condition had to do  
7 with pushing the D Street parking in front of  
8 the building off of the public space.

9                   The second -- what is listed as  
10 their second condition, it's the fourth that  
11 I've enumerated, would be replacement of the  
12 metal grids on the lower windows with  
13 something less prison like and paint them the  
14 color of the underlying window trim.

15                   The fourth condition would be  
16 removal of a rusted chain-link fence around  
17 the perimeter leaving a cast iron fence  
18 already in place around the perimeter and I  
19 believe I mentioned removal of the concrete  
20 that forms the entire streetscape of the  
21 property on 9th and on D Streets and if I  
22 didn't mention it, I'm mentioning it now.

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1                   These were the conditions listed by  
2 the ANC in its Exhibit 34 and I do believe  
3 that they also requested a term. If not in  
4 the written submission, then perhaps in their  
5 verbal testimony. I don't -- my eyes aren't  
6 falling on it in the Exhibit 34, but I do  
7 recall there being a request for a term.

8                   ZC CHAIR HOOD: Mr. Chairman, I  
9 think the term -- the request was seven years,  
10 but while I have the floor, Mr. Chairman, I  
11 wanted to just disclose that I have read the  
12 January 6, 2009 transcript in which I was  
13 unable to attend that particular continuation  
14 of the meeting.

15                   BZA CHAIR LOUD: Thank you, Mr.  
16 Hood. I stand corrected on that.

17                   As I noted, I do believe that the  
18 Applicant has made a *prima facie* case for a  
19 use variance.

20                   Now, following the hearings and as  
21 a result of what grew out of the hearings, the  
22 Applicant and the ANC worked together somewhat

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1 to pull together a schedule for implementing  
2 concerns that have been raised in the ANC  
3 report and that schedule is what Mr. Moy  
4 indicated had been submitted to the BZA as our  
5 Exhibit Number 36 with a replacement page I  
6 guess this morning.

7                   But, this is dated May 29 and this  
8 implementation schedule presumably represents  
9 the best efforts of the Applicant after  
10 meeting with its Board of Directors, after  
11 assessing it's overall financial situation and  
12 then having some discussion with the ANC and  
13 then coming back to the BZA saying these are  
14 the things we can do, these are the costs that  
15 we can handle and this is the time line that  
16 we can get these things accomplished in.

17                   In reviewing the entire record, in  
18 reviewing the *prima facie* case, the public  
19 detriment element and then reflecting upon the  
20 work of the Applicant in pulling together the  
21 implementation schedule, what stands out to me  
22 is that only one of the issues that the

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1      Applicant has put a tremendous amount of  
2      thought and is prepared to carry financially  
3      is a zoning issue and while I'm glad that the  
4      other issues were worked out and are a part of  
5      an understanding that the parties in good  
6      faith have come to and that this process  
7      somehow helped them reach that conclusion,  
8      some of what's in Exhibit 36, and I'll be more  
9      specific, go outside of zoning issues and I  
10     think our bailiwick here is as a regulatory  
11     body with respect to the Zoning Regulations.

12           So, those issues that go beyond  
13     that again I think are good issues. The  
14     parties having agreed to them, should honor  
15     them, but not necessarily conditions for us to  
16     consider if they go beyond our expertise as a  
17     zoning body.

18           So, let me jump straight into the  
19     noise issue. The Applicant -- this was  
20     proposed as a condition by the ANC. The  
21     Applicant has proposed as I understand it  
22     installing three units by August 31 of '09 and

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1 then waiting for about a year and installing  
2 an additional three units. That's one part of  
3 the noise issue.

4 The second thing they've proposed  
5 is enclosing these units in a -- I believe  
6 it's a seven foot new wooden fence and that  
7 would also be done by August 31 of '09.

8 And the third thing that they have  
9 proposed is to screen that enclosure with  
10 plantings that would both buffer and absorb  
11 sound. Again, mitigating the noise that the  
12 ANC and other witnesses complained of.

13 The latter requirement, the  
14 installation of plants, I don't see a deadline  
15 date in what was submitted by the Applicant  
16 for installing.

17 But, I think the discussion about  
18 mitigating noise is what we're talking about  
19 and that falls squarely within the use  
20 variance test and I think the Applicant has  
21 made an effort, a reasonable effort, to  
22 address that issue and not only made the

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1 effort, but is now making the representation  
2 to us because we're not imposing these dates  
3 on the Applicant, the Applicant is making the  
4 representation that it can meet these dates.  
5 So, I think that it's a reasonable condition  
6 to -- assuming that everyone agrees that  
7 they've made the *prima facie* case, it's a  
8 reasonable condition to include because there  
9 was testimony regarding the noise and that  
10 being of considerable concern in the community  
11 and I think what the Applicant has done is try  
12 to address that in a way that says that they  
13 heard the testimony, they understand it and  
14 they're going to try to mitigate it. So, I  
15 would be very much in favor of including that  
16 as a condition.

17 The other issues, however, are  
18 issues that fall outside of Zoning and we said  
19 as much in some of the hearing discussion that  
20 we had earlier. For example, the removal of  
21 the concrete slab that's in public space,  
22 again, I'm glad to see that in the submission

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1 it appears the parties are thinking about  
2 that. The Applicant is thinking about it and  
3 creative ways to deal with that, but we said  
4 at the hearing I believe, and if it wasn't  
5 clear, I want to repeat it here, that it's not  
6 a zoning issue. That was page 43 lines 1  
7 through 6 I think of the transcript shows  
8 that.

9 So, that that's something that  
10 again I'm glad our process has helped the  
11 parties move closer in accord with, but it's  
12 not a zoning issue. That's a public space  
13 issue and it's not regulated by the BZA.

14 The same thing with respect to the  
15 parking issue. I think that the Applicant has  
16 a responsibility and does meet the parking  
17 requirements for its use and the city largely  
18 through DDOT has a policy regarding efficient  
19 transportation modes and use of zip cars, et  
20 cetera, but the parking space issue  
21 particularly as relates to the location of  
22 them being in public space is not a BZA issue

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1 and so, that's not something that I would  
2 recommend to my colleagues that we include as  
3 a condition in this case.

4                   The removal of the grates, security  
5 grates, from the lower windows to improve the  
6 appearance, this sounds like something the  
7 Applicant will make an effort to address, has  
8 put it in writing that it will made an effort  
9 to address, has met with it's board on and got  
10 a commitment from its board and so, we're now  
11 at a public hearing and we're repeating that  
12 and it was something that the community raised  
13 a number of concerns about. But, I don't see  
14 the connection of the security bars to the use  
15 variance test and it being incorporated as a  
16 condition of our deliberation this morning.  
17 Other Board Members may feel differently.  
18 That's how I feel.

19                   But, the Applicant having walked  
20 this far, I would hope that the Applicant  
21 honors how far it's walked with the respect to  
22 that condition. I just don't see it as a

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1 zoning issue.

2                   With respect to the chain-link  
3 fence replacement, I do remember some  
4 testimony about the fence being corrosive and  
5 being worn down and rotted out and needing  
6 repainting and the like and again, the  
7 Applicant has agreed to replace that fence and  
8 has worked into its schedule some dollars and  
9 a time line for that, but I don't see that as  
10 being a zoning issue.

11                  And then finally, there was  
12 discussion about a term. I think Mr. Hood  
13 mentioned it earlier about terming the use and  
14 what I'd like to do is hold off on that and  
15 just open it up further for Board Members with  
16 respect to both the *prima facie* case and the  
17 conditions that are a part of the discussion.

18                  ZC CHAIR HOOD: Mr. Chairman, I  
19 think the case has been made and as one of the  
20 Members who originally sat on this case in  
21 1999 and the community came down and basically  
22 included this Board and I think the transcript

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1 stands for itself that the community wanted to  
2 see something happen in that neighborhood.

3                   Obviously, the credit union has  
4 served the neighborhood well. There are some  
5 issues with the noise and some other issues,  
6 but I think that the -- as we see a result of  
7 what we submitted a few moments ago which was  
8 dated May the 29th, that the credit union has  
9 really been a good neighbor.

10                  Because there are a lot of things  
11 that I don't think are within our jurisdiction  
12 and I just want to quote from the previous  
13 transcript.     In 1999, it spoke about  
14 deplorable condition, the termites, roof  
15 needed repairs, windows and all the doors  
16 needed replacing, the furnace needed  
17 replacement, painting inside and out and as  
18 you've already alluded to, we spoke about many  
19 improvements already and to tie a credit union  
20 to be faced with making major renovations in  
21 this economic time, I just think it unfeasible  
22 and I think it's just not exactly the right

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1 way for us to move.

2                   In the case of last night, we had  
3 two major developers which we gave two  
4 additional years to do major development  
5 because of the credit market situations in  
6 this economic times and I'd like to see credit  
7 unions do what the need to do. Lend people  
8 money.

9                   And this is just where I am. I  
10 know that has nothing to do with zoning  
11 either, but that's the way I look at it. I  
12 think this credit union's been a great  
13 neighbor. I think some of the things that are  
14 being asked upon them are just unrealistic.

15                   But, contrary to all that said, I  
16 look at what the Applicant has submitted and  
17 they have really went I think above and beyond  
18 the call for changing some things.

19                   You mentioned the grates. To me,  
20 that's a security issue. Can they be tweaked  
21 or painted? Possibly so. But, you know, we  
22 also have to look at what the building is

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1 being used for. We're talking about finances  
2 and money which is being -- transpiring.  
3 People bringing money to that facility and  
4 sometimes you need some security. But,  
5 anyway, I can go on a long soap box.

6 The only other thing I would say,  
7 Mr. Chairman, is that I want us to really re-  
8 look at the deadline. I don't want to see  
9 this Applicant put themselves in a position  
10 where they -- where we put a condition and  
11 this is already June and they're saying they  
12 can do something by August. I want us to  
13 maybe revisit that.

14 But, I think and I applaud the  
15 credit union. A lot of the things I didn't  
16 think were warranted, but they came down with  
17 a couple of pages of things they're trying to  
18 work out with the commission -- with the ANC  
19 Commission in that community.

20 But, I can tell you this is far  
21 different from what I heard ten years ago and  
22 I was one of the original members who heard

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1 this case and the pleading was oh, please let  
2 this happen and it's been very beneficial to  
3 the community.

4 So, I will tell you I can go one or  
5 two of those conditions which the ANC  
6 regarding those issues already stated are not  
7 in our jurisdiction.

8 BZA CHAIR LOUD: Thank you, Mr.  
9 Hood. Mr. Dettman.

10 VICE CHAIR DETTMAN: Mr. Chairman,  
11 I agree with you. I think the case has been  
12 made for the use variance and I agree with  
13 everything that you said related to what  
14 conditions have something to do with zoning  
15 and others that have -- that are outside of  
16 our jurisdiction and are more of a public  
17 space issue.

18 I think in looking at the current  
19 operations and if we see things that the  
20 Zoning Regulations require to take place on-  
21 site and if they're currently in public space,  
22 we need to do what we need to do in order to

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1 make sure that they're moved onto the  
2 property. For instance, if they're currently  
3 parking in public space and those spaces are  
4 actually required parking spaces, we need to  
5 get them on site, but just basically looking  
6 at the site plan, it looks like they meet  
7 their parking requirement on site and it  
8 doesn't look like any of their zoning  
9 requirements are taking place off property.

10                   And I commend the Applicant as well  
11 as the ANC for the efforts that they've put  
12 forth in improving the site. It looks like  
13 it's almost 100 percent paved and, you know,  
14 it's time to start breaking up the pavement  
15 and maybe putting in some greenery.

16                   From the Applicant's perspective,  
17 it shows a willingness to be a good neighbor.

18                   From the ANC's perspective, it shows, you  
19 know, a dedication to the neighborhood and  
20 again, it's in the Applicant's best interest  
21 to do that. It's just not in our purview.

22                   You know, it's going to improve the

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1 environment for the workers. It's going to  
2 again show a good -- a willingness to be a  
3 good neighbor and it's going to decrease the  
4 amount of impervious surface around this area  
5 which from a sustainability perspective it's  
6 good.

7                   But, the conditions that you had  
8 gone through with respect to the heating pumps  
9 and the HVAC as well, the screening of those  
10 units, I think well within our jurisdiction  
11 and the only ones that really are within our  
12 jurisdiction.

13                   BZA CHAIR LOUD: Thank you, Mr.  
14 Dettman.

15                   First, like you, I want to commend  
16 the ANC because as we say all the time, this  
17 is volunteer work and it's painstakingly  
18 detailed to go through some of these issues  
19 and put an artificial cap on your head that  
20 says I'm only going to deal with this because  
21 it's a zoning issue. I'm not going to deal  
22 with this because it's a historic

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1 preservation. I'm not going to deal with this  
2 because it's a public space.

3 You know, the ANC has to, and this  
4 ANC has in this case and always, do a good job  
5 of protecting their community and laying out  
6 the issues for their community as they see it  
7 and I think that that happened here and I  
8 think that the ANC is to be commended for  
9 that.

10 So, my concluding that a lot of  
11 these issues are not BZA issues doesn't take  
12 anything away from the hard work that the ANC  
13 did and whether they were or were not correct  
14 with respect to their bottom line conclusion  
15 about the need for greenery, parking spaces  
16 and the like.

17 And like you, Mr. Dettman, I'm  
18 encouraged that the Applicant has been willing  
19 to work with the ANC and submit these  
20 documents to us and we've mad the discussion a  
21 part of the public record now. So, that's the  
22 first point I want to make.

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1                   The second point I want to go back  
2 to is something Mr. Hood said about -- and  
3 this is an area where Mr. Hood and I disagree,  
4 but we can agree to disagree and take it from  
5 there and the issue is the installation of the  
6 three initial HVAC units. A total of six HVAC  
7 units were identified as kind of being the  
8 source of the noise problem and they proposed  
9 a staggered schedule where they will install  
10 three by August 31 of '09 and then another  
11 three by August 31 of '10 and I would be  
12 strongly for holding them to that for the  
13 following reasons.

14                   First, when we had the initial  
15 hearing, the Applicant came before us and  
16 said, you know, we can't make any projections  
17 before you guys right now about when we can  
18 install those things because we're a  
19 nonprofit. The board does the governance and  
20 we got to go back to our board and have those  
21 discussions and let the board take a look at  
22 the whole financial and then we'll come back

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1 to you and we'll tell you what we can do.

2 Well, in the interim, they've done  
3 exactly that and their board has taken a look  
4 at the financial considerations. That's a big  
5 part of board work. Is being a fiscal agent  
6 and being a fiduciary and so, they emerged  
7 from that process saying you know what? We  
8 can do three pumps by August 31, '09 and  
9 they've identified a total cost of \$15,000 and  
10 I think they were saying that they can do the  
11 next three in relationship to the natural life  
12 cycle of the units which would be about a year  
13 away.

14 So, I would be for accepting the  
15 good faith representation that is being made  
16 in these pleadings suggesting that they can do  
17 that by August 31, '09.

18                   They've also said that by August  
19    31, '09 they can do the new wood fence  
20    installed around the HVAC.

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1 process, that they've done the calculations.  
2 I mean these -- they're professionals if you  
3 look at some of the submissions that they've  
4 given us regarding the assessment that the  
5 National Credit Union body assessed them for  
6 what was happening in the home mortgage  
7 market. These are folks that know what  
8 they're doing. They know from a fiscal  
9 standpoint what they can handle and what they  
10 cannot handle and certainly probably have some  
11 regulatory requirements about reserves and the  
12 like.

13 So, I'm taking them at their word  
14 that they can do what they have carefully  
15 deliberated on over the last several months  
16 and then come back to us and said that they  
17 can do.

18 The only thing that wasn't clear  
19 from the Exhibit B, which is a part of their,  
20 I think, Exhibit 36, Exhibit B attachment was  
21 whether or not they could do the planted  
22 screenings for the fence enclosure because

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1       they talked about 9 to 12 plants being  
2       installed that would help buffer some of the  
3       noise, but then there's no specific reference  
4       to when those plants can be installed.

5                   So, that's my thought on that, Mr.  
6       Hood, and I'll turn it back to you or Mr.  
7       Dettman for additional.

8                   ZC CHAIR HOOD: Since you mentioned  
9       my name, I'll take personal privilege. You  
10      said we kind of part our ways and basically,  
11      all I'm saying is, you know, and I agree they  
12      know what they're doing obviously.

13                  Let me back up. I don't want to  
14      take anything away from the ANC 6A and I would  
15      agree with everything that you mentioned about  
16      looking out for your neighborhood. Being a  
17      president of a civic association, I know  
18      exactly how that works.

19                  But, I just think -- in '99, I just  
20      go back to that and I look at where we've come  
21      to and look at all the combinations that this  
22      credit union has made in working with the

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1       commissioner.    I think they have done a  
2       yeoman's job in doing that as you both has  
3       stated and I've stated previously.    But, I  
4       also think that at that time, this facility  
5       was basically pushed and asked to come into  
6       that community to make a difference of  
7       something that was definitely a blight and a  
8       problem.    So, again, I'm glad to see that both  
9       sides are working at it.

10           I just -- I guess from the Zoning  
11       Commission where I sit, I just see major  
12       developments come down in front of the Zoning  
13       Commission and ask for extension even though  
14       we're not talking about the same amount of  
15       money.    But, we are in an economic hardship  
16       time now and eight years ago, I would say oh,  
17       what are they talking about?    They know they  
18       can get it done, but the market situation's  
19       changed and I know we're just talking about  
20       heat pumps.

21           I just think confining them from  
22       this date in June to August the 31st -- I'd

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1 just like to see them give some leeway, but I  
2 will tell you it's not a showstopper for me.  
3 But, I just wanted to raise my concern that I  
4 think it should be or could be a little more  
5 leeway even if you add a month to that, you  
6 know, or two months. But, I just think that  
7 to just say August 31st and I'm looking at --  
8 basically, they don't even have two months the  
9 way I see it.

10                   Mr. Chairman, if you want to stick  
11 with the 31st, you know, I'm not going to sit  
12 here and spend another hour talking about  
13 dates.

14                   BZA CHAIR LOUD: Mr. Dettman, did  
15 you have anything to --

16                   VICE CHAIR DETTMAN: I'm stuck  
17 between two chairs here. I don't know what to  
18 decide.

19                   I think that requiring the  
20 Applicant to replace all six units, you know,  
21 upon issuance of the order is a little bit too  
22 much. I think that the phased schedule that

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1       they're offering is the appropriate way to go  
2       given the balancing act that we need to do in  
3       terms of mitigating a zoning issue versus  
4       understanding the economic climate for the  
5       credit union.

6               I think the dates that we have  
7       before us, the three units for August 31st and  
8       then the other three units for August 31st of  
9       2010 were proffered by the Applicant. So,  
10       presumably, they've checked in with their  
11       board and they've looked at their finances and  
12       it seems doable to them

13               I would be fine going forward with  
14       the three in 2009 and the three in 2010. If  
15       we wanted to give a little bit of leeway, we  
16       could put on a month. Give them until  
17       September 30 of '09 and September 30 of 2010.

18               So, that gives them a little bit of leeway  
19       just to accommodate any kind of delay that  
20       they might run into with their board or what  
21       have you, but also to make sure that this is  
22       going to get done in a timely way.

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1                   ZC CHAIR HOOD: Mr. Chair, I would  
2 only say that I think when you're trying to  
3 garner support which they're trying to do with  
4 the ANC Commissioner Holmes, you make those  
5 commitments.

6                   My only caution is I don't want to  
7 put anyone in a position where these things  
8 are not realized. So, basically, what I'm  
9 just trying to do is get them another month.  
10 I believe -- I'm sure that they believe they  
11 can do this at that time. All right. Who  
12 knows what may happen, but they know that they  
13 -- if we extend it another month they have  
14 time to tweak it and get it done.

15                  Because here's the thing. We don't  
16 want Commissioner Holmes to be or the  
17 community to be taken back if it's not done by  
18 April 31st. Because I'm sure as good as ANC 6  
19 -- what is this? ANC 6A is I'm sure that they  
20 will -- August 31st they will go see if it's  
21 done by close of business. This is a good  
22 ANC.

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1                   So, I'm not going to push it. It's  
2 up to my colleagues. If you don't want to  
3 extend the month, then we won't. We'll just  
4 take it from there.

5                   BZA CHAIR LOUD: Thank you, Mr.  
6 Hood. Thank you, Mr. Dettman.

7                   Why don't we do this? Then I  
8 perceive that we're at the point where a  
9 motion can be made and I'd like to make the  
10 motion and the motion would be as conditioned  
11 and then we can deliberate further on the  
12 conditions if need be. If not, we can go  
13 straight to the vote.

14                   But, this is the motion I would  
15 make. I would move approval of Application  
16 Number 17842 of the D.C. Teacher's Credit  
17 Union for a use variance to allow the  
18 continued use of the former Edmonds Public  
19 School for general office use under Section  
20 330.5 in the R-4.

21                   The conditions that I would  
22 recommend as part of the motion are that by

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1       September 30, 2009 the first three HVAC units  
2       would be installed. That by September 30,  
3       2010, the second three HVAC units would be  
4       installed. That by September 30, 2009, the  
5       fence enclosure around the HVAC units would be  
6       installed and that by let's say October 30,  
7       2009 the plantings referenced in Exhibit 38,  
8       just the plantings around the HVAC enclosures  
9       would be installed.

10               Those would be the four conditions  
11       I would recommend. That would be the  
12       underlying motion and I'll open it up for  
13       further deliberation.

14               ZC CHAIR HOOD: I think, Mr.  
15       Chairman -- and forgive me I was in a  
16       discussion, I think we have extended it by  
17       one month. Is that your motion? The --

18               BZA CHAIR LOUD: Yes, everything by  
19       one month, but the plantings by two months.  
20       I'm sorry. October 30, 2009.

21               ZC CHAIR HOOD: Okay. And with  
22       that motion, we're not putting any time limit

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1 on this. Right? We're putting all that in  
2 that one motion. Right?

3 BZA CHAIR LOUD: I'm sorry. I  
4 don't know if I understood.

5 ZC CHAIR HOOD: I didn't hear you  
6 with a time frame. So, there's no time frame  
7 that's going to be tied to this.

8 BZA CHAIR LOUD: I'm sorry. I  
9 don't --

10 ZC CHAIR HOOD: Term.

11 BZA CHAIR LOUD: Oh, term. I got  
12 you.

13 ZC CHAIR HOOD: Right.

14 BZA CHAIR LOUD: No, I'm not --  
15 that's not a part of the motion.

16 ZC CHAIR HOOD: Okay. I'll second  
17 it.

18 BZA CHAIR LOUD: Is there further  
19 discussion?

20 Okay. The motion's been made as  
21 conditioned. Seconded as conditioned. All  
22 those in favor say aye.

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1 (Ayes.)

2 BZA CHAIR LOUD: All those opposed?

3 All those in abstention?

4 Mr. Moy, can you read back the  
5 vote?

6 MR. MOY: With pleasure, Mr.  
7 Chairman. The vote would be as recorded by  
8 the staff 3 to 0 to 2. The motion of the  
9 Chair Mr. Loud to approve the use variance as  
10 conditioned. Seconded by Mr. Hood, the  
11 Chairman of the Zoning Commission and also in  
12 support the Vice Chair Mr. Dettman. Again,  
13 the vote is 3 to 0 to 2.

14 BZA CHAIR LOUD: Thank you, Mr.  
15 Moy. I do believe that the -- as I would  
16 understand it, that the ANC supported the  
17 application with reservations. Those  
18 reservations pertaining to non-zoning issues  
19 and the one reservation that they had or  
20 condition that did pertain to zoning would  
21 have been the noise issue and I think we've  
22 incorporated that.

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1                   We did not agree with the term  
2 issue. The seven years proposed by the ANC.  
3 So, I'm not certain if it qualifies for a  
4 summary decision or not. I think, you know,  
5 we just -- it is what it is. But, it sounds  
6 to me like the ANC had recommended approval  
7 with those reservations and we met most of the  
8 zoning reservations.

9                   MR. MOY: That's correct, Mr.  
10 Chairman. The staff would understand that as  
11 -- that this could qualify as a summary order.

12                   BZA CHAIR LOUD: Okay. Thank you,  
13 Mr. Moy. Is there anything further on this  
14 case?

15                   ZC CHAIR HOOD: Mr. Chairman, just  
16 for the record --

17                   BZA CHAIR LOUD: Yes, sir.

18                   ZC CHAIR HOOD: -- I just want to  
19 make sure. We're talking about term. So,  
20 there's no term.

21                   BZA CHAIR LOUD: That's correct.

22                   ZC CHAIR HOOD: Okay. Thank you.

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1 For those who are going to be here 20 years  
2 from now so they understand.

3 BZA CHAIR LOUD: Okay. If that  
4 concludes the morning meeting schedule, then I  
5 think that we have 15 minutes before we break.

6 We also have the option of working through  
7 the noon hour and we have two cases scheduled  
8 this morning for the public hearing calendar.

9 Two use variances cases that can probably be  
10 heard jointing.

11 Are the parties here for Craftsmen.

12 Okay. Everyone who's here for Craftsmen, if  
13 you could just raise your hand so we can get a  
14 sense of how many folks are here. Okay.

15 Well, why don't we do this. Let me  
16 check with the Board Members and get their  
17 sense of how we proceed. Would you like to  
18 begin this case and work somewhat through the  
19 lunch hour or would you like to just hold off  
20 and resume at 1:00 p.m.?

21 VICE CHAIR DETTMAN: Mr. Chairman,  
22 I'm in favor of just kind of going through.

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1 If we wanted to take a five-minute break just  
2 to collect our files and what have you and  
3 then get back out here in five minutes.

4 BZA CHAIR LOUD: Okay. And, Mr.  
5 Hood, do we find something that we agree on  
6 this morning?

7 ZC CHAIR HOOD: So far, but we're  
8 not finished for the day.

9 BZA CHAIR LOUD: Well, let's not  
10 extend that streak out, but it sounds like we  
11 -- all three of us want to work through the  
12 lunch hour and I'm hopeful that that works for  
13 the court reporter and for the staff as well  
14 and what we'll do is take a five-minute break.

15 We'll come back and we'll try to hear both  
16 cases together so that the witnesses for each  
17 case can just come up at the same time and  
18 we'll go through both showings.

19 Yes, sir, why don't you come up on  
20 and introduce yourself for the record. I  
21 don't think our microphone is on.

22 MR. LEFANDE: There we go. Matthew

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1 LeFande, the attorney for the Craftsmen Group.

2 I'm sorry. I was under the  
3 understanding that this was docketed for a  
4 9:30 hearing. I do just want to bring  
5 attention to the Board that I have a 4:00  
6 Superior Court hearing and with the Commission  
7 and the Board's indulgence if we can work  
8 around that.

9 Otherwise, I'll have to call the  
10 chambers and see what accommodations they'll  
11 afford me.

12 BZA CHAIR LOUD: Thank you. I  
13 think the direction that we're going to move  
14 in by foregoing our lunch is going to allow us  
15 to get this finished a lot earlier.

16 The 9:30 posted time was the time  
17 for our -- what we call our decisions where  
18 we're rendering decisions on actual cases that  
19 have been heard previously. Your case I think  
20 was scheduled for a 10:00 hearing. Splitting  
21 hairs because we're still far behind, but that  
22 points to the importance of parties meeting

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1 all of our deadlines for filing.

2 We had a number of late filings in  
3 some of the cases before your case and it just  
4 pushed everything back.

5 But, we have no intention of being  
6 here at 4:00 p.m. still on this case.

7 MR. LEFANDE: Okay. Thank you.

8 BZA CHAIR LOUD: All right.

9 MR. LEFANDE: And I think our  
10 filings are all in order here. So --

11 BZA CHAIR LOUD: Okay.

12 MR. LEFANDE: -- I think we'll be  
13 able to go through this.

14 BZA CHAIR LOUD: Okay.

15 MR. LEFANDE: And the de facto  
16 consolidation of the two matters should also  
17 afford us some expediency.

18 BZA CHAIR LOUD: Thank you.

19 MR. LEFANDE: Thank you.

20 BZA CHAIR LOUD: We will be back in  
21 five minutes and we'll pick up with your case.

22 (Whereupon, the meeting was

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1 concluded at 11:53 a.m.)

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