

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

JUNE 9, 2009

+ + + + +

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

14 Moving on to the series of
15 provisions that deal with parking, the
16 provision of parking as well as the location
17 and the screening, that being 206.3, 1553.2B
18 as well as 1553.2B(1). In addition to having
19 to provide the required number of parking
20 under Chapter 21, the Applicant also needs to
21 demonstrate that there's going to be enough
22 parking, ample parking that's going to be

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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 be 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 Kemply/Schneider combined. So, the west
8 neighbors were granted party status in the
9 underlying case and again, their names were
10 Kemply 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.

2 What we simply said was your
3 explanation is that you need garaged parking
4 for security. We don't buy that. We think
5 that you can get secured parking on the pad
6 with a gate or through some other means. All
7 of which was supported by the record.

8 So, again, it's a difference in
9 characterizing and drawing conclusions from
10 the evidence. It was not holding the
11 Applicant to the highest standard for a
12 variance which would have been the use
13 standard.

14 Thirdly, the Applicant argued that
15 the design of the structure was such that with
16 some changes, and I think he referenced you,
17 Mr. Dettman, with respect to this, you may
18 want to weigh in, that the design could, with
19 some changes in the design of the structure,
20 could achieve the objective of the building
21 and still meet zoning as if that were sort of
22 our responsibility to redesign it or to come

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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 Kemply/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 had 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.

21 And I'm just making an assumption
22 that they've gone through an internal vet

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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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