GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

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TUESDAY,

APRIL 17, 2007

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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., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
CURTIS ETHERLY, JR. Vice-Chairperson
JOHN MANN, II Board Member (NCPC)
MARC D. LOUD Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY

BEVERLEY BAILEY

JOHN NYARKU

Secretary

Sr. Zoning Specialist

Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from the Special Public Meeting held on Tuesday, April 17, 2007.

A G E N D A

Opening - Chairperson	Miller		4
Preliminary Matters .			5
Application No. 17574 Baptist Church .			5
Note for Approval		,	3 N

1	P-R-O-C-E-E-D-I-N-G-S
2	10:03 a.m.
3	CHAIRPERSON MILLER: Good morning.
4	My name is Ruthanne Miller. I'm the Chair of
5	the Board of Zoning Adjustment.
6	I'm just wondering if we might
7	take a moment of silence in memory and honor
8	of those at Virginia Tech before we start.
9	Thank you.
10	This is the April 17th, 2007
11	Public Meeting of the Board of Zoning
12	Adjustment of the District of Columbia.
13	As I said, my name is Ruthanne
14	Miller. I'm the Chair of the BZA and to my
15	right is Mr. Curtis Etherly, the Vice-Chair
16	and Mayoral Appointee and to my left is Mr.
17	Marc Loud, also a Mayoral Appointee. Moving
18	on down is Mr. John Mann representing NCPC.
19	Clifford Moy of the Office of Zoning. Sherry
20	Glazer of Office of Attorney and Beverley
21	Bailey of the Office of Zoning.
22	Copies of today's meeting agenda

1	are available to you and are located to my
2	left in the wall bin near the door. We do not
3	take any public testimony at our meetings
4	unless the Board asks someone to come forward.
5	Please be advised that this
6	proceeding is being recorded by a court
7	reporter and is also webcast live.
8	Accordingly, we must ask you to
9	refrain from any disruptive notices or actions
10	in the hearing room. Please turn off all
11	beepers and cell phones.
12	Does the staff have any
12	Does the staff have any
13	preliminary matters?
	-
13	preliminary matters?
13 14	preliminary matters? MR. MOY: No, ma'am.
13 14 15	preliminary matters? MR. MOY: No, ma'am. CHAIRPERSON MILLER: Okay. I
13 14 15 16	preliminary matters? MR. MOY: No, ma'am. CHAIRPERSON MILLER: Okay. I think then we'll proceed with the agenda. I
13 14 15 16 17	preliminary matters? MR. MOY: No, ma'am. CHAIRPERSON MILLER: Okay. I think then we'll proceed with the agenda. I believe we have one case on the agenda. Is
13 14 15 16 17 18	preliminary matters? MR. MOY: No, ma'am. CHAIRPERSON MILLER: Okay. I think then we'll proceed with the agenda. I believe we have one case on the agenda. Is that correct, Mr. Moy?
13 14 15 16 17 18 19	preliminary matters? MR. MOY: No, ma'am. CHAIRPERSON MILLER: Okay. I think then we'll proceed with the agenda. I believe we have one case on the agenda. Is that correct, Mr. Moy? MR. MOY: Yes, we do. It's Case

1	Baptist Church pursuant to 11 DCMR 3104.1 for
2	a special exception to establish an accessory
3	parking lot under Section 214 in the R-1-B
4	District at premises 4606 16th Street, N.W.
5	and that's in Square 2652, Lot 22.
6	If the Board will recall, this
7	Special Public Meeting on this Application was
8	scheduled last week on April the 10th and that
9	was rescheduled to today because of a lack of
10	a quorum at that time.
11	The participating Board Members
12	are Mr. Etherly, Mr. Mann and Ms. Carol
13	Mitten.
14	CHAIRPERSON MILLER: Thank you.
15	As I didn't participate in this case, I'm
16	going to turn this over to Mr. Etherly. Thank
17	you.
18	VICE-CHAIRPERSON ETHERLY: Thank
19	you very much, Madam Chair.
20	I think it's appropriate for us to
21	move forward today with action of some nature
22	on this case.

I'll look to my colleague Mr. Mann 1 as we move forward and perhaps as Mr. Moy 2. 3 indicated, perhaps a little bit of the context in terms of where we are. 4 I'll note first and foremost that 5 I was not present on the day that we had our 6 7 hearing on the matter, but have read the 8 record in its entirety and am prepared to vote 9 and move forward on the case today. With that, Mr. Mann, if you will 10 11 recall, there was quite a bit of discussion 12 between the Board, the Applicant, 13 representative of the ANC around a wide range of issues that we wanted to see shall we say 14 15 a little bit of movement on and I am more than 16 adequately pleased with where we are to date 17 in terms of what has been provided by the 18 Applicant in terms of addressing both concerns

I will note that there were a number of items that were requested by the

on the part of certain community residents,

the ANC and the Office of Planning.

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Board as indicated by Mr. Moy in his summary believe t.hat. Ι the Applicant has satisfactorily, more than satisfactorily responded to with respect to issues around striping on the parking lot, the use pervious paving surfaces, adequate lighting for the parking lot, specific information around usage of the parking lot and particular, the types of events and other such matters in terms of the parking lot's use, clean up with regard to trash and debris. Applicant has made representations as they relate to shrubbery and other planting.

And for the purposes of my colleague, Mr. Mann, I am looking to what is I believe Exhibit Number 27 dated March 26th, 2007 from Mr. Walker who is serving as the Agent for Nineteenth Street Baptist Church.

In response to that submittal, we had another submittal from ANC 4C and we'll probably get into a little more detail as we move forward with regard to the ANC, but the

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1	ANC submitted if I recall at Exhibit Number 28
2	a letter dated April 3rd, 2007 from SMD 4C03
3	Commissioner Ronald P. Bland. A letter
4	essentially denoting that prior objections
5	from those residents and homeowners who were
6	signers to an original petition in opposition
7	to the proposed parking lot are in agreement
8	with the proposal revisions presented by
9	church officials and that is at Exhibit Number
10	28 dated April 3rd.
11	Finally, I will note perhaps just
12	as a little bit of housekeeping, Mr. Mann,
13	that I believe we do need to waive our rules
14	to accept the Office of Planning's report and
15	perhaps, Mr. Moy, just for my clarification,
16	that would be the Office of Planning report
17	dated March the 6th, 2007 at Exhibit Number
18	26?
19	MR. MOY: Yes, sir, that's
20	actually Department of Transportation report,
21	DDOT's report.

VICE-CHAIRPERSON ETHERLY:

Okay.

1	Excellent and that simply needs to be waived
2	and allowed into the record before the record
3	was closed prior to the submittal of that
4	report.
5	MR. MOY: That's correct, sir.
6	VICE-CHAIRPERSON ETHERLY: Correct
7	and unless there's any objection, I'll take it
8	as a consensus.
9	Mr. Mann.
10	MEMBER MANN: No, there's no
11	objection.
12	VICE-CHAIRPERSON ETHERLY: Thank
13	you very much, sir.
14	So, just for the purposes of our
15	record, Mr. Moy, we will consider that report
16	waived in and incorporate it into part of the
17	record.
18	That I think essentially sums up
19	where we are.
20	I will highlight as we move
21	forward perhaps for a little bit of
22	discussion, Mr. Mann, I'll look to you and for

1	the purposes of participants to this case who
2	are watching, you will note that there are
3	technically three Board Members who aren't
4	participating on this case. One of whom is
5	not with us today, but we do have comment from
6	that member with regard to any action that the
7	Board may take today. But, that's why you're
8	seeing essentially just discussion between
9	myself and Mr. Mann as the two present and
10	participating members.
11	One issue that I will highlight is
12	that there is a little bit of a question as to
13	how the Board should treat the ANC's position
14	and by that I mean this, we have on the record
15	at Exhibit Number 20, if I'm not mistaken, Mr.
16	Moy, or might be
17	MR. MOY: That's correct, sir. It
18	is Exhibit 20.
19	VICE-CHAIRPERSON ETHERLY: Exhibit
20	20 was one of the initial submittals by the
21	ANC which expressed essentially what appears

to be opposition to the original case.

Now, as I noted in our summary, there's been quite a bit of work, quite a bit of discussion between all the parties and I think we have agreement as evidenced by Exhibit Number 28, again, submitted April 3rd under the signature of SMB 4C03 Commissioner Bland.

But, the challenge right now is we still have officially it would appear the ANC in opposition and we have a letter from the Single Member District Commissioner essentially noting that there are no longer any objections to the case.

But, what we need clarification on, and I'm speaking first to Mr. Mann and then perhaps I'll offer some suggestion as to how we move forward, what we need perhaps is clarification on officially where the ANC is with respect to the overall case. Because as an ANC, all we have on record is an opposition statement, but we have a support statement from the Single Member District of

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1	Commissioner.
2	Mr. Mann, is that an adequate
3	explanation of kind of where we are on the
4	ANC?
5	MEMBER MANN: Well, I think we
6	need to clarify one thing. We can still move
7	forward and make a decision
8	VICE-CHAIRPERSON ETHERLY: Yes.
9	MEMBER MANN: whether or not we
10	have any additional information regarding the
11	ANCs official position. There's adequate
12	information in the record in order for us to
13	move forward.
14	VICE-CHAIRPERSON ETHERLY: I would
15	agree, Mr. Mann, and I perhaps should have
16	emphasized that at the outset. I think we are
17	ripe and ready to move forward today with
18	action on this case in a very expeditious
19	fashion.
20	It's perhaps more of a
21	housekeeping and procedural issue for us in

terms of once we take action, how do we then

shall we say memorialize that action. If there isn't any opposition, we do a summary order. It's very quick. The Applicant pretty much will be able to move fairly expeditiously with the rest of the project.

If, however, there is on record a party а person in opposition, in particular, should I party in say а opposition, we are required -- especially if it's the Advisory Neighborhood Commission, we required to address the Advisory are Neighborhood Commission's with concerns specificity. That is part of our statutory responsibility in according the ANC's report great weight. So, it's a procedural issue.

We can do a summary order if no one's in opposition, but because we have an opposition statement on the record from the ANC in what appears to be a support statement from the Single Member District, there's just a little bit of a procedural issue. It's boring. It's technical. I wish we didn't

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1	have to spend time dealing with it, but it's
2	part of our calling as representatives and
3	members on the Board.
4	So, Mr. Mann, perhaps what I would
5	suggest is are you inclined to perhaps take
6	limited testimony today to clarify the ANC
7	position or are you prepared to just simple
8	move forward and we can offer guidance for the
9	Applicant and the ANC on how to proceed after
10	we take our action.
11	MEMBER MANN: I wasn't quite
12	expecting that particular choice of options
13	right there, but if the ANC were present
14	today, then I would be amendable to accepting
15	testimony from the ANC if that's what you were
16	asking regarding the limited additional
17	testimony.
18	However, again, there's certainly
19	adequate information in the record to go
20	forward and make a decision at this point.
21	VICE-CHAIRPERSON ETHERLY: I would
22	agree.

1 Do we have representatives from 4C present today and from Nineteenth 2. ANC 3 Street Baptist Church present? If we could have everyone come 4 5 forward to the table please. We're going to take very limited testimony just on this 6 7 particular question. I appreciate your time 8 gentlemen. Make yourselves comfortable. 9 Because we're taking testimony, I'll need to be sure that you have your 10 11 witness cards complete and if you can make 12 sure that they get to the court reporter who 13 is seated to my right, your left. Thank you very much, gentlemen. 14 15 If I could first have each of you identify 16 yourself by stating your name and your address for the record. There's a button at the base 17 18 of the microphone. You press that button and 19 a red light should come on and you will be set 20 to go. If I could have you 21 All right. 22 identify yourself, sir, and your affiliation.

1	COMMISSIONER BLAND: Yes, I am ANC
2	Commissioner Ronald Bland. Single Member
3	District 4C03.
4	VICE-CHAIRPERSON ETHERLY:
5	Excellent.
6	MR. MONTEQUE: I'm Thomas
7	Monteque, Chair, Board of Trustees, Nineteenth
8	Street Baptist Church.
9	MR. WALKER: And I am H. L.
10	Walker, Agent for the Nineteenth Street
11	Baptist Church.
12	VICE-CHAIRPERSON ETHERLY:
13	Excellent. Thank you very much gentleman.
14	I want to confirm that as we are
15	opening this up for limited hearing on this
16	particular case that the three of you have
17	previously been sworn in during the earlier
18	proceeding in this case. Is that correct?
19	MR. WALKER: Yes.
20	VICE-CHAIRPERSON ETHERLY: All
21	right. Just to clarify, Ms. Bailey, because
22	they've been previously sworn in, we don't

1 need to do another swearing in? 2. MS. BAILEY: No. No, sir. 3 VICE-CHAIRPERSON ETHERLY: Thank 4 you very much, Ms. Bailey. I neglected to say 5 good morning to all of our Office of Zoning Staff. 6 7 Gentlemen, thank you very much for 8 your time. You heard a little bit of our 9 discussion. Very, very briefly and quickly and I'll just start with you, Mr. Bland, what 10 11 is your understanding of the ANC's official 12 position now on the case? 13 COMMISSIONER BLAND: Well, we actually had not revisited the case once the 14 15 ANC had voted. However, as the Single Member District having followed this through from the 16 17 beginning, we are not in opposition as far as 18 ANC 4C03, the Single Member District, is 19 concerned and I am confident that the ANC, the 20 full Commission, would not be in opposition

based on my submission to the Board regarding

the agreement and acceptance of the agreement.

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1	Acceptance and agreeing to the revisions that
2	the Nineteenth Street Baptist Church has
3	provided to the Board since the original
4	hearing.
5	VICE-CHAIRPERSON ETHERLY:
6	Excellent. Okay. Just to be certain that we
7	put a pin in it, the ANC has not taken
8	subsequent action on shall we say the revised
9	discussions that have taken place between
10	yourself and the church. So, there hasn't
11	been a subsequent meeting and vote on the
12	Applicant as it now stands?
13	COMMISSIONER BLAND: No, it
14	hasn't. No we haven't.
15	VICE-CHAIRPERSON ETHERLY: Okay.
16	Okay. Excellent.
17	Did the church have any comment?
18	I think I understand where we are, but I just
19	want to be sure I give you the opportunity.
20	Okay. Thank you.
21	Mr. Mann.
22	MEMBER MANN: I have no questions

1	of the parties testifying at the moment.
2	VICE-CHAIRPERSON ETHERLY: Okay.
3	Okay. I think that's satisfactory for our
4	purposes just to clarify where we are.
5	As we begin to move forward,
6	gentlemen, we'll be very we'll walk very
7	slowly through what I think that technical
8	outcome will be of the decision, but I think
9	we're prepared to move forward, Mr. Mann, and
10	it would be my motion to move approval of
11	Application Number 17574 of Nineteenth Street
12	Baptist Church pursuant to 11 DCMR 3104,.1 for
13	a special exception to establish an accessory
14	parking lot under Section 214 in the R-1-B
15	District at premises 4606 16th Street, N.W.
16	and I would invite a second.
17	MEMBER MANN: Second.
18	VICE-CHAIRPERSON ETHERLY: Thank
19	you very much, Mr. Mann.
20	I think for purposes of just
21	discussing the relevant requirements of the
22	Special Exception, I think the record is very

full and complete under Section 214 and in particular, Section 2116.5 as it relates to open parking spaces accessory to any building or structure.

moved through the As we've requirements subsequent 2116.6 and its provisions, I think the record is very full with regard to all of the requirements under that section. In particular, as we look at 2116.6 which relates to unusual topography, grades, space, size or dimensions of the lot, the lack of alley the lack an or appropriate ingress or egress through existing or proposed alleys or streets, traffic hazards caused by unusual street grades, location or required parking spaces elsewhere on the same lot, it is very clear in the record that no additional parking spaces can be located on the church's property as it is fully occupied by existing buildings.

Section 2116.7 requires that when the accessory parking spaces are to be located

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elsewhere, the parking on adjacent lots or lots separated only by an alley from the lot upon which the building or structure is located. The triangular-shaped alley in question here abuts three 20-foot-wide alleys at the rear of the church and at the rear of residences. The lot is separated from the main use by approximately 33 feet as the alley abuts the real lot line of the subject church's lot.

Proceeding through 2116.8, the spaces must be located so as to furnish reasonable and convenience parking facilities. Again, the proposed parking area is located within 33 feet of the church. The Applicant believes that the lot will provide convenient parking within walking distance for meetings and events Monday through Sunday.

With respect to 2116.9 and this is perhaps where I think some discussion is needed, but not a lot of detail, the Board can adopt conditions that it deems to be necessary

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and appropriate as it relates to screening,

coping, setbacks, fences, the location of

entrances and exits.

For that particular provision, Mr.

Mann, I will simply -- I think it's simply appropriate to highlight the fact that at the church's most recent submission which we've already discussed in some detail at Exhibit Number 27 dated March 26, the church has made a number of commitments by virtue of its discussions with the ANC and the community around care and management of the parking lot and other appropriate matters and I would simply note that is indeed part of our record and, therefore, will be incorporated into this Board's decision. So, I don't think that any further conditions would be necessary pursuant to 2116.9.

Do you have any comment on that particular issue, Mr. Mann?

MEMBER MANN: I would say that all the items that were identified in the

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testimony in the original OP report and all the concerns that we heard from the neighbors in the area were adequately addressed as you indicated and as are listed in Exhibit 27.

I would note also that 2116.9 says that the Board may impose conditions. It doesn't say that we must impose conditions just because these items were identified and as far as I'm concerned, the church has adequately addressed all of these items and I would agree that we do not need to impose conditions on the church in this order.

VICE-CHAIRPERSON ETHERLY:
Excellent, Mr. Mann. I'll also note for the purposes of our record that the Board is also bound by Sections 2117.10 and 2117.11 which in substantial and pertinent part are also repeated at Sections 2303.1(a) through (f) and I'll note as we move through that again, the church's submission and the record in its entirety I believe adequately address all of the elements of Section 2303.1. So, I will

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not walk through those in excruciating detail, but as is observed in the Office of Planning's report which is -- with the additional discussions that have been underway, the Office of Planning is in support of the application.

I'll also note that we are in receipt of a report from the Department of Transportation at Exhibit Number 26 that we've also reference and the Applicant has agreed to follow the Department of Transportation's quidance with respect to specific issues such as pervious materials to pave the parking lot, installation of adequate lighting illuminate the parking lot and just а continuation of working with the community and the ANC and, of course, the Single Member District in particular around addressing community concerns.

I think in sum, Mr. Mann, all of these items and all of these issues have been addressed more than satisfactorily and I think

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1	we're right for moving forward.
2	MEMBER MANN: I agree. I think
3	that you've adequately addressed everything
4	that was submitted into the record and clearly
5	as the seconder of the motion, I'm in support.
6	So, as far as I'm concerned, the
7	only thing that remains to be addressed is how
8	to deal with the information or the reports
9	submitted by the ANC.
10	VICE-CHAIRPERSON ETHERLY:
11	Excellent. Thank you very much, Mr. Mann.
12	Perhaps before we move forward on
13	the final motion, I might look to the Office
14	of Attorney General if I could just to get
15	some very quick guidance on again kind of
16	where we are in terms of our options for
17	moving forward.
18	Good morning to you, Ms. Glazer.
19	MS. GLAZER: Good morning.
20	VICE-CHAIRPERSON ETHERLY: We've
21	received limited testimony from the Applicant
22	and the ANC on the status of the ANC's action

1	as has been testified to. We do not have any
2	different ANC action as a whole contrary to
3	the original report which is in opposition.
4	So, I would perhaps like to solicit a
5	suggestion from you on how we might want to
6	proceed once we reach the conclusion of this
7	motion to approve the application.
8	MS. GLAZER: Well, it's up to the
9	Board, but one option I think would be to
10	consider the testimony that has been put
11	forward today. It in substance says that the
12	ANC has changed its position because the
13	objections that were raised initially have
14	been addressed.
15	The other option would be to
16	request confirmation of that from the full ANC
17	in writing.
18	VICE-CHAIRPERSON ETHERLY: I see.
19	Excellent.
20	It would be my suggestion, Mr.
21	Mann, that we move forward with the former
22	suggestion by OAG Representative Ms. Glazer

with respect to simply moving forward. 1 think the record is ripe and full. 2. I'm 3 comfortable doing that. 4 I want to be sure that you have an 5 opportunity to address any concerns that you have with moving forward 6 miaht 7 Treating the testimony that we've received, the written submittals that we have in the 8 9 record as indicative of the ANC's support for this application moving forward positively. 10 11 MS. GLAZER: Ι don't have 12 problem if the Board proceeds in 13 direction. I'm comfortable with MEMBER MANN: 14 15 moving forward today if Mr. Etherly is and given the advice that we've heard from the 16 17 Office of Attorney General today, I would be 18 prepared to support your position on this, Mr. 19 Etherly. 20 VICE-CHAIRPERSON ETHERLY: Thank you very much, Mr. Mann, for those well chosen 21 22 and deliberate words.

Again, for the benefit of our Applicants and to an extent even for the benefit of just those watching, this perhaps is a lot of fanfare over what is a very small -- what may seemingly be a very small issue, but it is very critical that at every step of our process the ANC's concerns, objections if there are any as well as support for an application is considered and considered where possible with great weight. So, that's why we're spending so much time and again, I thank you for your testimony, Mr. Bland, on this matter.

I'm comfortable moving forward,
Mr. Mann, and I think the testimony and again
the written record support that the ANC has
worked very closely with the Applicant. That
the Applicant, in turn, has worked very
closely with the ANC and other community
members and I think this case has come to a
very positive conclusion in a satisfactory
manner than is consistent with the

requirements of the Zoning Regulation, but 1 also addresses many other concerns that were 2. 3 raised by the Applicants. 4 So, I'm prepared to move forward. 5 if there Mr. Mann, isn't further discussion, hearing none, we have a 6 7 motion before us. It's been properly 8 seconded. I'd like to ask all those in 9 support please signify by saying aye. 10 (Ayes.) 11 VICE-CHAIRPERSON ETHERLY: Those 12 opposed? Hearing none. Mr. Moy, if you could record that vote please. 13 Yes, sir, the staff 14 MR. MOY: 15 would record the vote as 2 to 0 to 2. This is on the motion the Vice-Chair Mr. Etherly to 16 Seconded by Mr. 17 approve the application. 18 We have two other Board Members not Mann. 19 participating on this application. 20 Mr. Vice-Chair, we also have an absentee ballot as you mentioned earlier from 21

Carol Mitten who's also participating on this

1	application and her ballot is to approve
2	subject to conditions outlined in the
3	Applicant's filing which is as you mentioned
4	earlier Exhibit Number 17.
5	So, that would give a final vote
6	on this application to approve as 3 to 0 to 2
7	and that completes the resulting vote.
8	VICE-CHAIRPERSON ETHERLY:
9	Excellent. Thank you very much, Mr. Moy.
10	That concludes this Board's action
11	on that application. Congratulations. Wish
12	you best of luck in your of your future
13	endeavors.
14	Thank you for your time today.
15	That's it. Mr. Moy, is there any
16	further business before the Board in its
17	Special Public Meeting of April 10th, 2007?
18	MR. MOY: No, none other than the
19	staff interprets this as a summary order.
20	VICE-CHAIRPERSON ETHERLY: Yes,
21	sir. No objection. Not hearing any from any
22	of my colleagues, we can waive our rules and

1	issue a summary order on that case.
2	Madam Chair, I'll take the liberty
3	of concluding our Special Public Meeting and
4	turning it back over to you.
5	CHAIRPERSON MILLER: Thank you
6	very much.
7	(Whereupon, at 10:29 a.m., the
8	meeting was concluded.)
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