

GOVERNMENT  
 OF  
 THE DISTRICT OF COLUMBIA  
 + + + + +  
 BOARD OF ZONING ADJUSTMENT  
 + + + + +  
 PUBLIC MEETING  
 + + + + +  
 TUESDAY  
 DECEMBER 15, 2009

+ + + + +

The Special Public Decision

Meeting convened in Room 220 South, 441 4<sup>th</sup>  
 Street, N.W., Washington, D.C., 20001,  
 pursuant to notice at 9:30 a.m., Shane L.  
 Dettman, Vice-Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHANE L. DETTMAN, Vice Chairman (NCPC)  
 MERIDITH H. MOLDENHAUER, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman  
 PETER MAY, Commissioner (NPS)

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OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes  
from the Public Meeting held on December 15,  
2009.

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

2 10:20 a.m.

3 BZA VICE CHAIR DETTMAN: This  
4 meeting will please come to order.

5 Good morning, ladies and gentlemen.

6 This is the December 15, 2009 of the Board of  
7 Zoning Adjustment of the District of Columbia.

8 My name is Shane Dettman, Vice  
9 Chairperson representing the National Capital  
10 Planning Commission

11 To my right is Mr. Peter May  
12 representing the D.C.Zoning Commission. To my  
13 left is Ms. Meridith Moldenhauer, Mayoral  
14 Appointee to the BZA. Further left is Mr.  
15 Clifford Moy with the Office of Zoning and Ms.  
16 Beverley Bailey also with the Office of  
17 Zoning.

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.

21 We do not take any public testimony  
22 at our meetings unless the Board asks someone

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1 to come forward.

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

9 And at this point, we will  
10 entertain any preliminary matters. And Mr.  
11 Moy, Ms. Bailey, does staff have any  
12 preliminary matters?

13 SECRETARY MOY: Good morning, Mr.  
14 Chairman, members of the Board. We do have  
15 preliminary matters this morning for the two  
16 decision cases. And the staff would suggest  
17 that we take that up case-by-case.

18 BZA VICE CHAIR DETTMAN: Perfect.

19 I think what we'd like to do, the  
20 Board has two decision this morning; those  
21 decisions are Application 17963 and 17988 and  
22 I think what we'd like to do is flip the order

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1 and take up 17988 of Koo L. Yuen first. So  
2 could we call that case first?

3 SECRETARY MOY: Yes, sir.

4 Good morning, Mr. Chairman, members  
5 of the Board, that would be Appeal No. 17988  
6 of Koo L. Yuen. This is a motion for summary  
7 judgment, pursuant to 111 DCMR ' ' 3100 and  
8 3101, from an April 30, 2009, Notice of Intent  
9 to Revoke Building Permit No. B85608 by the  
10 Zoning Administrator, Department of Consumer  
11 and Regulatory Affairs for a gasoline service  
12 station in the C-1 District at premises 5010  
13 Benning Road, Southeast. That's in Square  
14 5340, Lot 68.

15 On December 1, 2009 the Board  
16 completed public testimony on the motion for  
17 the Summary Judgment and closed the record to  
18 further testimony. The Board scheduled to  
19 make its decision on December 15th.

20 And staff would leave it at that,  
21 Mr. Chairman.

22 BZA VICE CHAIR DETTMAN: Thank you,

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1 Mr. Moy.

2 Colleagues, as Mr. Moy stated, the  
3 Board heard the arguments on the Motion for  
4 Summary Judgment on December 1st and set the  
5 decision for that motion for today. However,  
6 at this point in time due to some unexpected  
7 circumstances the Board does not have a quorum  
8 for this particular decision. We don't have  
9 the three members necessary in order for us to  
10 render a decision on the Motion for Summary  
11 Judgment. And that's going to necessitate the  
12 Board to put our decision off on this case  
13 until a later date so that we can get the  
14 three votes. We can have Chairman Loud review  
15 the record and participate in the vote. And I  
16 believe Ms. Moldenhauer is going to be reading  
17 the transcript as well as the record and  
18 participating in that vote as well. So at  
19 that later date we'll have four Board members  
20 participating.

21 Mr. Moy, is there anything else  
22 that I need to state for the record or is it

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1 just a matter of finding a date?

2 SECRETARY MOY: At this point it  
3 would be a matter of rescheduling it to a  
4 future date.

5 BZA VICE CHAIR DETTMAN: Okay. Why  
6 don't we and, Ms. Moldenhauer, if you wanted  
7 to weigh in on a date, why we don't we look at  
8 the afternoon of January 26th. And I think  
9 what we can do is schedule the decision for  
10 the Motion for Summary Judgment and depending  
11 upon the outcome of that vote, we can also  
12 include the hearing, if necessary, on that  
13 particular afternoon. Does that work for  
14 staff?

15 SECRETARY MOY: Yes, sir. It does.

16 BZA VICE CHAIR DETTMAN: Okay. And  
17 why don't we do our very best to keep that  
18 afternoon reserved solely for this particular  
19 case, if that's possible.

20 SECRETARY MOY: So that would be  
21 rescheduling to Tuesday, January, 26, 2010 in  
22 the afternoon. Typically we start at 1:00.

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1                   BZA VICE CHAIR DETTMAN:     Great.  
2     Thank you, Mr. Moy.

3                   If there's nothing else, I think we  
4     can move ahead to the next case.

5                   SECRETARY MOY:     And that would be  
6     Application No. 17963 of Euclid of Virginia,  
7     pursuant to 11 DCMR ' 3104.1 for a special  
8     exception to allow a new self-service gasoline  
9     station and convenience store under section  
10    706, in the C-1 District at premises 4975  
11    South Dakota Avenue, Northeast. The property  
12    is located in Square 3899, Lot 76.

13                  At its decision meeting, if the  
14    Board will recall, on November 10, 2009 the  
15    Board convened this application and  
16    deliberated on two preliminary matters. The  
17    Board expressed continued concerns related to  
18    the applicability of a study event. In any  
19    event, the Board rescheduled its decision to  
20    December 15th with filings from the applicant  
21    and respondents.

22                  The applicant filed within the

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1 deadline, and that filing is in your case  
2 folders identified as Exhibit 33.

3 There were no other filings from  
4 respondents except for a filing from ANC 5E,  
5 which was faxed into the office this morning,  
6 December the 15th. So that would be untimely  
7 considering that the deadline for filing from  
8 parties was Monday, December the 7th.  
9 Although for the Board I read on the first  
10 page of that ANC 5A letter that it does say  
11 that the ANC held an emergency community  
12 meeting on December 7th.

13 Anyways, apart from that  
14 preliminary matter, the Board is to act on the  
15 merits of the requested special exception of  
16 zoning relief.

17 And that completes the staff's  
18 briefing, Mr. Chairman.

19 BZA VICE CHAIR DETTMAN: Thank you,  
20 Mr. Moy.

21 Colleagues, I think the first  
22 matter that we should take up is the late

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1 filing from ANC 5A. As Mr. Moy stated, we  
2 received a last minute fax from the ANC  
3 addressing some of the remaining concerns that  
4 they had with this case. And that's a  
5 resolution from ANC 5A, dated December 11,  
6 2009.

7 Having had a chance to review the  
8 content of that resolution, I see that they do  
9 very briefly address the traffic study that  
10 was prepared for this report or for this  
11 application, that's on the first page of the  
12 report. And then furthermore, the ANC raises  
13 some issues with respect to EPA regulations  
14 and conformance and nonconformance with EPA  
15 regulations which fall outside of the BZA  
16 zoning purview. It also falls outside the  
17 scope of the information that we were looking  
18 for on this latest round of filings.

19 So I think my recommendation on  
20 this late filing is that we could allow it  
21 into the record simply for limited to the  
22 information that is contained on the first

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1 page that addresses the ANC's position on the  
2 traffic report. But anything outside of that,  
3 the information pertaining to the EPA, I think  
4 falls outside our purview here and I would not  
5 be in support of allowing that information in  
6 the record and allowing it to influence the  
7 Board's deliberation on this case.

8 Colleagues?

9 COMMISSIONER MAY: Mr. Chairman, I  
10 don't object to the full document being the  
11 record. But I agree with you that anything  
12 that does not address the traffic report is  
13 not relevant. You know, it's not what we  
14 requested. It's not the basis for any  
15 decision making that we would make according  
16 to the requirements for special exception.  
17 Because otherwise trying to redact information  
18 from a document or something like that, that's  
19 I think an unusual step. I think it's enough  
20 to say that that's simply not relevant and  
21 we'll accept it for what it says about the --

22 MEMBER MOLDENHAUER: This case, the

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1     ANC has obviously been putting a lot of effort  
2     forward in trying to present their issues.  
3     And I think it's frustrating for us to get a  
4     document at the last hour containing amendment  
5     seven that was created on the 11th, and then  
6     we don't get it until the morning of the 15th.

7     We're trying to review, I guess, their  
8     assessments. You know, they have challenges  
9     in the first section about the traffic study.  
10    And it also provides us -- it's a detriment to  
11    us in order to be able to review this and  
12    actually take it into consideration and then  
13    to try to compare that to the report.

14               I think we can allow it in. I  
15    don't know how much we're going to be able to  
16    give it in regards to assessing it or  
17    analyzing it.

18               COMMISSIONER MAY: Mr. Chairman,  
19    could I also add as I recall, what was  
20    discussed at the last meeting since I was not  
21    there but I read the transcript, was that the  
22    ANC would provide the report with sufficient

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1 time for the applicant to provide a response  
2 to it. Clearly, we don't have time to be able  
3 to get that response. And I think that if  
4 were to move forward today, we would want to  
5 take into consideration the fact that we don't  
6 have from the applicant. And if we were to  
7 move to deny the application, I think that we  
8 would have to postpone and allow them to  
9 respond, based on the prior meeting.

10 BZA VICE CHAIR DETTMAN: That's a  
11 very good point, Mr. May.

12 Well, let me ask this: I see the  
13 applicant is in the audience. And would Board  
14 members entertain bringing the applicant up to  
15 ask if they've had a chance to review this  
16 filing and whether or not they wish to  
17 respond?

18 COMMISSIONER MAY: I don't object  
19 to that.

20 MEMBER MOLDENHAUER: I'd be fine  
21 with that also. Because this letter questions  
22 the validity of the traffic study that we're

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1     relying on considering that that was one of  
2     the major issues. And it states here that  
3     they're not sure if its numbers are accurate,  
4     what the date of its completion was; things to  
5     that effect. So I would definitely be willing  
6     to allow the applicant to weigh in on whether  
7     or not they want to respond.

8                 BZA VICE CHAIR DETTMAN: Okay. Why  
9     don't we do that then? If the applicant could  
10    come up to the table.

11                And the ANC is in the audience as  
12    well, and Ms. Grant, if you wanted to come up  
13    to the table. I'm sorry, Ms. Alston. If you  
14    wanted to come up to the table, we're not  
15    going to have a debate about this. This is  
16    really just a matter to find out whether or  
17    not the applicant wants to respond to this  
18    latest filing.

19                And keep in mind that the Board has  
20    pretty much determined that we are going to  
21    allow this in the record. We haven't waived  
22    our rules yet, but the scope of the

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1 information that the Board's allowing into the  
2 record is only that paragraph that pertains to  
3 the traffic study. So really there's no need  
4 to respond to the information about the EPA.

5 And just for the record, could you  
6 introduce yourself?

7 MS. FULLER: Yes. Good morning. My  
8 name is Carlynn Fuller. I'm the attorney for  
9 the applicant.

10 Well first, if I may, raise an  
11 objection. Because we just got this from Mr.  
12 Moy. We didn't even get it from the ANC.

13 The last meeting on November 10th  
14 there was a late filing allowed by the ANC at  
15 that meeting. I called the office on December  
16 the 11th to -- I'm sorry. On December the 8th  
17 to find out if the ANC had filed so that we  
18 would be able to respond timely. They had not  
19 filed. I spoke with Ms. Booth in the Office  
20 of Zoning. There was no response from the  
21 ANC.

22 I think it's unfair to the

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1 applicant who did spend considerable amount of  
2 money on this traffic study, who did meet the  
3 deadline to get it to the Board and hand  
4 delivered it to the ANC on the 10th to now  
5 have to, perhaps, push this case out again not  
6 at the fault of the applicant when, again, as  
7 you indicate they met on the 7th, this was  
8 done on the 11th and its just now getting into  
9 our hands today on the 15th.

10 Can I just consult with my client  
11 in terms of whether -- because we really don't  
12 want to push this into January to have to  
13 review what they are alleging in this report,  
14 especially if the Board has had an opportunity  
15 to review the traffic study. I mean, I'm not  
16 sure if they've consulted with their own  
17 expert or if this is just their opinion.

18 BZA VICE CHAIR DETTMAN: Well, let  
19 me just say this, and that's fine if you want  
20 to consult with your client again, keeping in  
21 mind the information in the resolution that  
22 the Board is going to accept into the record

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1 and incorporate into the deliberation which is  
2 the last paragraph on the first page.

3 We need to apply the standard that  
4 in order to allow this into the record:  
5 There's good cause shown for the late filing  
6 and no prejudice to any party, which the only  
7 other party to this case in addition to the  
8 ANC is the applicant.

9 MS. FULLER: Yes.

10 BZA VICE CHAIR DETTMAN: So while  
11 you confer with your client, perhaps you can  
12 decide whether or not you feel like you're  
13 going to be prejudiced if the Board was to  
14 allow this into the record. And then we'll  
15 hear from the ANC on what their good cause is.

16 MS. FULLER: Okay. Thank you.

17 BZA VICE CHAIR DETTMAN: That sound  
18 good? Okay.

19 Good morning.

20 COMMISSIONER ALSTON: Good morning.

21 Angel Alston on behalf of the ANC 5A

22 Two things I definitely want to

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1 clear up.

2 First one being, she said the  
3 filing was late because they met their  
4 deadline. At the last hearing, they did not  
5 meet their deadlines which is why we had to  
6 postpone it. Because we did not get the  
7 traffic study in October when we were ordered  
8 by the Board. We actually got it after the  
9 hearing, which is why our filing was not  
10 timely --

11 COMMISSIONER MAY: Was that not  
12 known at the hearing?

13 COMMISSIONER ALSTON: It was, and  
14 that's why we're at this hearing --

15 COMMISSIONER MAY: But following  
16 the hearing you were supposed to get the  
17 report that day. Did you receive it that day?  
18 Did you --

19 COMMISSIONER ALSTON: We did  
20 receive it that day. But --

21 COMMISSIONER MAY: I really think  
22 that's the only thing that's relevant at this

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1 moment.

2 COMMISSIONER ALSTON: No. She said  
3 at the November -- okay. I'm sorry.

4 COMMISSIONER MAY: You know, what  
5 she says about when, who received what really  
6 matter.

7 COMMISSIONER ALSTON: Okay. At the  
8 last hearing --

9 COMMISSIONER MAY: The question is  
10 whether --

11 COMMISSIONER ALSTON: Yes, sir. We  
12 received it that day.

13 COMMISSIONER MAY: -- you received  
14 what you were supposed to received based on  
15 that.

16 COMMISSIONER ALSTON: Yes, sir.  
17 That day. But this --okay. This particular  
18 issue, when we sat here at the scheduling at  
19 the last hearing, the record was not supposed  
20 to be closed to the ANC on the 7th because we  
21 did not hold our emergency meeting until the  
22 night of the 7th. And we were supposed to

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1 have until the end of the week for the record  
2 to be open to us because we specifically said  
3 that our meeting would be held. We would  
4 first try to call an emergency meeting just to  
5 address this issue because we don't meet in  
6 the month of December. And our meeting was not  
7 until the night of the 7th, and that's why  
8 it's--

9 COMMISSIONER MAY: I think it would  
10 be more useful to address why the report was  
11 dated December 11th and we didn't receive it  
12 until this morning.

13 COMMISSIONER ALSTON: December 11th  
14 was Friday. It was supposed to be faxed out  
15 of our office on Friday. And then it was -- I  
16 think it was faxed over yesterday, not today.

17 COMMISSIONER MAY: Okay.

18 COMMISSIONER ALSTON: Okay.

19 BZA VICE CHAIR DETTMAN: Well, Ms.  
20 Alston, I think Mr. May makes a very good  
21 point that the Board put together a briefing  
22 schedule based on the emergency meeting. So

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1 the November date really, the date that you  
2 were supposed to get the original study in  
3 November really isn't relevant.

4 However, what is relevant is the  
5 ANC had a filing deadline of December 7th, and  
6 that happens to be the day that you held your  
7 meeting.

8 So in terms of the Board's standard  
9 that they have to apply in order to waive the  
10 rules and allow in the record, and the first  
11 part of that standard is for good cause shown,  
12 was there a reason why you couldn't hold your  
13 emergency meeting prior to the 7th? Was that  
14 the only day that you could hold that meeting,  
15 discuss it with the community and get your  
16 filing in sometime after?

17 COMMISSIONER ALSTON: Yes, so we  
18 actually -- that date was set on the record at  
19 last week's -- month's hearing when we looked  
20 at the calendar that that was the only date  
21 scheduled. And so we let you all know.  
22 Because you asked us to let you know when our

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1 meeting was going to be. And I told you that  
2 if we were to accommodate a meeting, it would  
3 be December 7th. And then you all said that  
4 you would allow time for us to file. But it  
5 was never that the 7th was the deadline.  
6 Because we even looked at the calendar with  
7 another Commissioner here. That our meeting,  
8 if we had one at all, would always be the  
9 first Monday of the month, which was the 7th,  
10 at 7:30 p.m. And that should be on the  
11 record.

12 COMMISSIONER MAY: My recollection,  
13 having read the record very recently, was that  
14 that's roughly correct. I don't know what the  
15 time was that it was allowed for report, but I  
16 think there was a deadline that was set for  
17 the report. It might have been the 10th, but  
18 it certainly was not the 11th or today. The  
19 idea was to make sure that there was time to  
20 get it the applicant and to get a response  
21 from the applicant.

22 And as I recall, my recollection of

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1 the testimony was that the ANC would turn the  
2 report around the next day, the day after the  
3 meeting from what was in the record. But I  
4 think that we did actually give them a couple  
5 of days.

6 MEMBER MOLDENHAUER: I have another  
7 question. Obviously, the time -- we'll all  
8 aware of the issue of the timing. But is there  
9 a reason why, I mean if this was either faxed  
10 out on Friday or on Monday, why it wasn't sent  
11 the applicant as well?

12 COMMISSIONER ALSTON: We were never  
13 asked to send anything to the applicant. We  
14 always -- always -- our correspondence always  
15 comes to your office. That's just like--

16 MEMBER MOLDENHAUER: But I mean you  
17 knew the time frame and you knew that it was  
18 getting kind of tight. And so I'm just  
19 wondering why you weren't trying to make sure  
20 that they had time to respond and either, you  
21 know, contact, Cliff or make sure that either  
22 you just send it directly the applicant. And

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1 do you have correspondence from the applicant?

2 COMMISSIONER ALSTON: No, we don't  
3 have mailing. We have a telephone number that  
4 we use where we do correspond. But it's never  
5 been the tradition for us to send anything to  
6 them because that's not what we were asked to  
7 do. We were just asked to give it to the  
8 Board.

9 MEMBER MOLDENHAUER: All right.

10 BZA VICE CHAIR DETTMAN: Okay.  
11 Well, I mean typically in Board proceedings  
12 when parties submit information to the Office  
13 of Zoning, they serve all the parties in the  
14 case too.

15 But with respect to the good cause  
16 shown for the late filing, I think that  
17 perhaps maybe there was a little bit of a  
18 misunderstanding whether or not the filing  
19 deadline was the 7th or the meeting was  
20 supposed to be held on the 7th. I think given  
21 the tight timeline and the efforts that the  
22 ANC made to hold an emergency meeting, I think

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1       that that part of the standard has been met.

2               Now with respect to whether or not  
3       allowing the filing into the record would  
4       prejudice any party to the case.

5               I guess it's back the applicant to  
6       see whether or not they've been able to  
7       determine now.

8               MS. FULLER:    Okay.    Again, we do  
9       object to the late filing.    However, we're  
10      reviewing what is -- if you say it's limited  
11      to the first paragraph, this is an opinion.  
12      It's not citing any expert, anything that  
13      would verify that they consulted with their  
14      own person. I don't see any grounds that rise  
15      to the level of an expert opinion.    They're  
16      raising several question in this paragraph and  
17      re-emphasizing some of the same concerns that  
18      they raised prior to even receiving the  
19      traffic study.    So I don't see this as a  
20      direct response other than a challenge based  
21      on their opinion that they've raised prior to  
22      even having the traffic study.

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1                   BZA VICE CHAIR DETTMAN:     Okay.  
2     Well, whether or not reflective of an opinion  
3     or an expert opinion, or the decision of a  
4     transportation expert, I mean that's for the  
5     Board to decide --

6                   MS. FULLER:    Yes.    I mean I --

7                   BZA VICE CHAIR DETTMAN:   -- when it  
8     comes into the record.   However, I think the  
9     question here is do you feel that the  
10    information contained inside the resolution  
11    prejudices you?

12                  MS. FULLER:    I do believe that if  
13    its given great weight just on the face of it,  
14    then I do believe that the applicant will be  
15    prejudiced.   Because the applicant has not had  
16    an opportunity to really respond to this in  
17    great detail. And the fact that if it's going  
18    to push the decision of the Board off until  
19    another month or two, which is what the point  
20    in the deadlines that were set we're trying to  
21    avoid, you know I do believe that the  
22    applicant will be prejudiced.

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1                   BZA VICE CHAIR DETTMAN:    I think  
2                   the Board is prepared to go forward with their  
3                   deliberation today.   And I think that given  
4                   the amount and the content of what's in the  
5                   resolution, the Board can process that and  
6                   incorporate that particular part of the  
7                   resolution into their deliberation.

8                   It looks like this resolution does  
9                   meet the great weight standards about holding  
10                  a meeting.   It was duly noticed.   It had a  
11                  quorum.       So that information about the  
12                  transportation study would be afforded the  
13                  great weight that its entitled to.

14                 But nonetheless, the Board is  
15                 prepared to go forward today.   And unless you  
16                 feel that you're prejudiced to the point where  
17                 you need to respond, that would be the only  
18                 reason that the Board would put this decision  
19                 off.

20                 MS. FULLER:   Okay.   Can you give me  
21                 one second, please?

22                 We're prepared to go forward.

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1 BZA VICE CHAIR DETTMAN: You ready  
2 to go forward?

3 MS. FULLER: Yes.

4 BZA VICE CHAIR DETTMAN: Okay. And  
5 simply just for the record, you do not wish to  
6 respond to that information that pertains to  
7 the transportation study?

8 MS. FULLER: Unless we can respond  
9 orally. But if we're not in writing --if we  
10 can respond today in the form of testimony,  
11 then I can bring my client up and have him  
12 respond. But we stand behind the validity of  
13 the traffic study and the information  
14 contained therein. And so we disagree with  
15 what has been said in this resolution from the  
16 ANC.

17 BZA VICE CHAIR DETTMAN: Well, to  
18 do our best to satisfy the briefing schedule  
19 that the Board put together, and I'll ask my  
20 colleagues as well, I'm in support of  
21 providing you a couple of minutes to provide  
22 testimony on what's here in lieu of a response

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1 on paper.

2 MS. FULLER: Okay.

3 BZA VICE CHAIR DETTMAN: And then  
4 following that couple of minutes, and really  
5 we're looking for a brief response. Maybe a  
6 couple of minutes. And then the Board will  
7 move on with their deliberation.

8 MS. FULLER: All right. Thank you.

9 COMMISSIONER MAY: Mr. Chairman?

10 BZA VICE CHAIR DETTMAN: Yes, sir.

11 COMMISSIONER MAY: Do you need a  
12 motion to be able to waive the rules to accept  
13 the ANC report into the record?

14 BZA VICE CHAIR DETTMAN: Thank you,  
15 Mr. May. I think actually we can do this by  
16 consensus of the Board, or by a motion.

17 COMMISSIONER MAY: Yes.

18 BZA VICE CHAIR DETTMAN: We've done  
19 it both ways. But I can basically say that  
20 I'm in support of waiving under section 3100.5  
21 our rules and allow the late filing from the  
22 ANC into the record.

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1 COMMISSIONER MAY: I would agree  
2 with that.

3 MEMBER MOLDENHAUER: I would agree  
4 also.

5 BZA VICE CHAIR DETTMAN: Okay. It  
6 appears we have a consensus. So the ANC  
7 resolution will be allowed in the record and  
8 afforded the great weight that its entitled  
9 to.

10 Now back to the applicant, we'd  
11 like to ask you to come up. And again, maybe  
12 we're looking at a couple of minutes to  
13 respond to the information that pertains to  
14 the traffic study in the ANC resolution. And  
15 then we'll bring this matter to a close.

16 MS. FULLER: Thank you. We're  
17 pulling the actual study up on the computer.  
18 We don't have a hard copy with us.

19 MEMBER MOLDENHAUER: In regard to a  
20 response, I would just like to say, I mean the  
21 applicant obviously is not a traffic expert so  
22 I don't believe that he should try to testify

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1 in that regard, just simply provide some  
2 general responses as to background information  
3 on your expert or on the traffic study that  
4 was conducted.

5 MR. GAUS: Okay.

6 MEMBER MOLDENHAUER: Providing your  
7 some guidance on response.

8 MR. GAUS: Okay. All right. Good  
9 morning.

10 Again, my name is Michael Gaus.  
11 And I'm prepared to move forward toward.

12 That paragraph that is being  
13 submitted into testimony today, it alleges  
14 that the traffic study was flawed. It alleges  
15 that the numbers were grossly under  
16 represented. Let me just state that this  
17 traffic study was performed by an expert  
18 company that this is the basis of their  
19 business. This is a study that was performed,  
20 this group spent a couple of days not only at  
21 the site, but in intersections that went  
22 beyond the scope of what was asked for simply

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1 to be thorough and to make sure that there  
2 wouldn't be any adverse impact on the  
3 surrounding community and the side streets.

4 And frankly, the Minnesota Avenue  
5 Traffic Study that was utilized in the first  
6 place shows that the Minnesota Avenue traffic  
7 patterns is actually heavier than the South  
8 Dakota Avenue traffic pattern, which would  
9 further enhance our argument that this would  
10 not be a detriment to the surrounding area in  
11 terms of traffic is concerned.

12 I don't see anything on this that  
13 would show that someone actually came back  
14 with another site study that showed the  
15 traffic pattern being something different than  
16 what was performed by the group that did the  
17 traffic study. And so therefore, you know,  
18 I'm prepared to move forward.

19 BZA VICE CHAIR DETTMAN: Thank you  
20 very much.

21 I think at this time it's back to  
22 the Board. And we'll go into deliberation on

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1       this case.

2                   And I believe I've stated it, but  
3       once again for the record with respect to the  
4       ANC resolution that was provided to us this  
5       morning, the information that will be allowed  
6       into the record only pertains to that which  
7       addresses the transportation study. And the  
8       information that pertains to the EPA  
9       regulations and different stories and weblinks  
10      that are included in the resolution, that will  
11      not be considered by the Board.

12                  So, colleagues, I can start us off  
13      here.

14                  This is an application that's been  
15      around for some time and it's a request for a  
16      special exception relief to establish a  
17      gasoline service station at 4975 South Dakota  
18      Avenue, Northeast. For the Board to analyze  
19      such an application, it's per section 726/706  
20      as well as the provisions of 2302 needs to be  
21      met.

22                  Relying upon the Office of

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1 Planning's analyzes with respect to the  
2 provisions of 706, and I won't read them in  
3 their entirety but kind of summarize what  
4 those provisions say. 706.3 states that the  
5 station shall not be located within 25 feet of  
6 a resident's district unless its separated by  
7 a street or an alley, and such is the case as  
8 this one. The subject property is in the R-2  
9 District and it is appropriately separated by  
10 either a street or alley from the surrounding  
11 residential district.

12 706.4 states that the operation of  
13 the use shall not create any dangerous or  
14 other objectionable traffic conditions. And I  
15 think with respect to that provision I'll  
16 address it at the end of my comments since  
17 that's kind of where the crux of the issues  
18 around this application are centered.

19 So moving on to 706.5 the Board may  
20 impose requirements pertaining to design,  
21 appearance, screening and lighting and what  
22 have you. The Office of Planning as well as

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1 DDOT, both in support of the application,  
2 suggested some conditions that be put in place  
3 if the Board was so inclined to approve the  
4 application. So we can take that up at the  
5 time it's appropriate.

6 706.6 states that the required  
7 parking spaces may be arranged so that they're  
8 not accessible at all times, however they need  
9 to be designed and located in a manner that  
10 the maneuvering of such vehicles would not  
11 require moving into public space.

12 The application, the site plan that  
13 was provided which is in our file shows that  
14 the applicant does meet the minimum required  
15 number of parking spaces and they have been  
16 arranged in the manner that will be actually  
17 accessible at all times. And so the provision  
18 of 706.6 has been met.

19 With respect to consistency with  
20 section 2302, 2302.1 pertains to public  
21 storage garages, repair garages, mechanical  
22 and a gasoline service station established or

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1 enlarged in any district except the CM.

2 And then moving on to 2302.2 no  
3 portion of a structure or premises to be used  
4 for those uses shall be located within 25 feet  
5 of a residential district. As I stated in  
6 articulating the provisions under 706, that  
7 provision has been met.

8 2302.3 related to the location of a  
9 vehicular entrance and its proximity to a  
10 residential district. No closer than 25 feet  
11 to a residential district, again unless  
12 separated by a street or alley. That  
13 provision is met as well as 2302.4 which  
14 discusses the relationship of exits and  
15 entrances to street intersections. Not only  
16 does this application meet the 40 foot  
17 requirement on the Regs, but I believe it  
18 meets the 60 foot requirement under the DDOT  
19 public space provisions.

20 So it appears to me that the  
21 provisions under 2302 have been met, including  
22 2302.5 stating that all grease pits and hoists

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1 shall be within the building. This particular  
2 use will not have any of those types of  
3 facilities.

4 Moving back to the issues that  
5 revolve around traffic and the impact of this  
6 particular use on the surrounding neighborhood  
7 with respect to traffic and congestion, having  
8 reviewed thoroughly the transportation study  
9 that was submitted to us, our Exhibit 33, I  
10 think that I was satisfied in what the  
11 transportation study kind of came to a  
12 conclusion of.

13 I disagree with a couple of points  
14 in the traffic study in that the traffic study  
15 says that it is unlikely that the site's  
16 location in the city will result in a reduced  
17 number of trips based on the amount of public  
18 transportation that services this site. I  
19 think that this is a very automobile-oriented  
20 use. People are going to be patronizing this  
21 facility for purposes of filling up their gas  
22 tank. So perhaps maybe to a very, very small

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1 degree those that are visiting the convenience  
2 store might wish to ride a bike or ride the  
3 bus to this facility. But I don't think that  
4 the public transportation that's in close  
5 proximity to this site is any kind of  
6 justification for a reduction in the number  
7 trips that this thing is going to be likely to  
8 generate.

9 I do agree that this type of use  
10 lends itself more to pass by trips. Meaning  
11 that the vehicles that are going to be  
12 entering this site are vehicles that are going  
13 to be on the road anyways. I could be wrong.  
14 But there's not many instances where I've ever  
15 been sitting at home and I'm going to jump in  
16 the car to go up my gasoline tank. And that  
17 would be a new trip.

18 So, I do agree that there's going  
19 to be a high degree of pass by trips, which  
20 means that cars are going to be on the road  
21 already contributing to traffic and  
22 congestion.

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1                   Secondly, I disagree with the  
2                   transportation study in that it says because  
3                   the surrounding neighborhood is well  
4                   established that it does not lend itself to  
5                   commuter cut through traffic. I think that  
6                   whether its an established neighborhood or a  
7                   new neighborhood, I think that the surrounding  
8                   transportation network, and if it lends itself  
9                   to shortcuts to where people are trying to get  
10                  to or shortcut to a highway, I think that that  
11                  lends itself more to cut through trips as  
12                  opposed to whether or not the neighborhood is  
13                  established or not.

14                 So looking at the map that was  
15                 included in the transportation study, I think  
16                 the surrounding transportation network doesn't  
17                 lend itself to cut through traffic simply  
18                 because I think that the majority of the  
19                 traffic on South Dakota Avenue is trying to  
20                 get to another major arterial, and one being  
21                 the BW Parkway. And so the neighborhood to  
22                 the north of the subject traffic, I don't see

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1 any kind of easy connection to get to that  
2 location. So I don't see that this particular  
3 use is going to increase the amount of cut  
4 through traffic in the neighborhood.

5 In terms of the number of trips, I  
6 don't see it raising to a level where its  
7 going to have a substantial impact on the  
8 surrounding neighborhood.

9 And with respect to the site  
10 circulation contemplated, I think that that's  
11 going to control for any kind of objectionable  
12 traffic conditions on the neighborhood.

13 So, colleagues, I'll turn it over  
14 to you. It was kind of a long-winded way of  
15 saying that I do support the application.  
16 However, I think that conditions will be  
17 required in order to address some of the  
18 issues that were raised by the neighborhood.

19 MEMBER MOLDENHAUER: Thank you,  
20 Shane, I believe you did a very thorough job  
21 of going through the different factors for  
22 both 723 and 2302.

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1 I think one of the major issues  
2 that you identified is the traffic conditions  
3 under 726. And, you know, that was one of the  
4 major discussion points of all the different  
5 hearing dates. And the ANC's main concern was  
6 issues of cut throughs. We try to address  
7 that by really analyze and discussing DDOT's  
8 evaluation, obtaining the finer transportation  
9 study for this site and not for another site.

10 And I think that based on a company that  
11 focuses on transportation studies, they have  
12 analyzed and gone through.

13 I believe that you're correct in  
14 assessing and I believe that the  
15 transportation study does correctly state  
16 these will be pass through trips.

17 And I think that DDOT has tried to  
18 make sure that the traffic goes back onto  
19 South Dakota based on the fact that they're  
20 going to have a one in and then everyone else  
21 will come out onto Emerson, and to take a  
22 right back onto South Dakota or to do a left

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1 onto South Dakota.

2 And I think that while it is a  
3 concern, I think that the requirements for the  
4 special exceptions have been met.

5 COMMISSIONER MAY: Mr. Chairman, I  
6 appreciate your summarizing the basic facts of  
7 the case. And I think the matter has become  
8 relatively straightforward now that we have a  
9 traffic report that's been prepared by  
10 somebody with the appropriate expertise and  
11 has been endorsed by DDOT. And we have, I  
12 think, the right combination of conditions  
13 from the Office of Planning and DDOT to  
14 mitigate any of the other concerns that we're  
15 supposed to mitigate by the terms of the  
16 Zoning Regulations. So I think at this point  
17 it's pretty straightforward.

18 BZA VICE CHAIR DETTMAN: Thank you,  
19 Ms. Moldenhauer and Mr. May.

20 I just wanted to make a couple of  
21 points in response to some of the issues that  
22 the ANC raised. And I'll just very quickly go

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1 through their three reports that we received.

2 Looking at our Exhibit 26, which is  
3 the first report that we received. As to the  
4 first two issues, the community does not need  
5 or benefit from a low priced gas station and  
6 that the proposed location will be directly  
7 adjacent to an existing gas station, really  
8 those are not issues that are of a Zoning  
9 nature that the Board would consider in their  
10 deliberation.

11 The current property does not have  
12 adequate square footage to provide a gasoline  
13 service station. Again, the Board does look  
14 at the size of the property. However, a  
15 particular threshold in terms of square  
16 footage does not need to be met in order to  
17 establish the gas station.

18 The current location is surrounded  
19 by homes and a new gas station was potentially  
20 cause environmental problems. I think that any  
21 kind of impact to the neighborhood, whether it  
22 be traffic, whether it be environmental the

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1 Board certainly does take into consideration.  
2 However, I think that there are other  
3 regulations outside of the BZA, outside of the  
4 Zoning Regulations that help to control for  
5 the environmental impacts of a gasoline  
6 service station, some of which were included  
7 in the latest ANC resolution with respect to  
8 EPA regulations. Although the Board's not  
9 considering those here, it's just kind of an  
10 example that regulations do exist.

11 As to whether or not the current  
12 owners currently maintain their property. I  
13 think that property maintenance and  
14 cleanliness is an important thing and I think  
15 that there are other arms of the D.C.  
16 Government that can be engaged in order to  
17 make sure that that happens appropriately.

18 So I think that addresses the  
19 issues in Exhibit 26. They're largely the  
20 same issues that were included in our Exhibit  
21 32 from the ANC, again raising some issues  
22 that don't fall within the Zoning purview;

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1 property maintenance, safety in the  
2 neighborhood. Certainly these are very  
3 legitimate issues, but not before the Board  
4 right now.

5 As to the last resolution that we  
6 received from the ANC, the one that we waived  
7 in today, colleagues, I think that it is the  
8 ANC's opinion that given their hands on  
9 experience for this particular area and the  
10 amount of traffic that they've experienced  
11 they raised a very good point that this area  
12 does have a lot of traffic. I actually do  
13 think that that's reflected in the  
14 transportation study.

15 In looking at the existing  
16 conditions, the level of service of the  
17 intersections, they're operating at a level of  
18 service D, which is the lowest threshold that  
19 DDOT will accept as an acceptable level of  
20 service. Anything below a D is considered  
21 failing. And I would suspect that if the  
22 existing, including the background as well as

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1 the number of trips that this facility is  
2 expected to generate, if it was pushing it to  
3 a level of service E, DDOT would weigh in on  
4 that and say that they would not support this  
5 application. So I think that there's a  
6 minimum number of trips generated by the site.

7 And that incorporating those into the  
8 existing, the surrounding transportation  
9 network we're still operating at an acceptable  
10 level based on the expert opinion of DDOT.

11 So, at this point I think I can  
12 entertain a motion.

13 COMMISSIONER MAY: Mr. Chairman, I  
14 would move approval of Application No. 17963  
15 of Euclid of Virginia, pursuant to 11 DCMR '  
16 3104.1 for a special exception to allow a new  
17 self-service gasoline station and convenience  
18 store under section 706, in the C-1 District  
19 at premises 4975 South Dakota Avenue,  
20 Northeast.

21 BZA VICE CHAIR DETTMAN: Thank you,  
22 Mr. May.

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1 Is there a second?

2 MEMBER MOLDENHAUER: Before I  
3 second it, I believe there were some  
4 conditions, and as long as its conditioned  
5 upon those elements in the DDOT report  
6 including things that went to safety;  
7 providing lights and no noise that could be  
8 heard from, I guess, from the gas stations.  
9 So based on those --

10 COMMISSIONER MAY: Yes.

11 BZA VICE CHAIR DETTMAN: Yes?

12 COMMISSIONER MAY: I would amend my  
13 motion to include the conditions. I meant to  
14 include them.

15 MEMBER MOLDENHAUER: Okay. And  
16 then I would second the motion.

17 BZA VICE CHAIR DETTMAN: Okay.  
18 Thank you.

19 Let's discuss conditions and then  
20 for the record, we have a motion that's been  
21 made and seconded as conditions. And let's  
22 figure out what those conditions are.

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1           The OP report, our Exhibit 23, Ms.  
2           Moldenhauer, did you want to address these or  
3           I could read them as well?

4           It's Exhibit 23. And looking over  
5           those conditions, I'm fine with what OP  
6           recommends.

7           MEMBER MOLDENHAUER: The conditions  
8           are: Just the hours of operations shall be  
9           limited from 6:00 a.m. to 10:00 p.m.; the  
10          flood lights shall be angled downwards and  
11          shuttered in order to avoid light spillage  
12          onto the nearby neighborhood properties; the  
13          canopy lights shall be recessed, and; there  
14          shall be no exterior amplified sound systems.

15          And I believe that those are the conditions  
16          that Mr. May included in his motion.

17          COMMISSIONER MAY: I believe there  
18          were some additional conditions.

19          MEMBER MOLDENHAUER: Oh, were  
20          there.

21          COMMISSIONER MAY: I'm sorry.  
22          Additional conditions from DDOT that we'd like

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1 to address. The limitation to 30 foot long  
2 trucks, which the applicant agreed to. Fuel  
3 delivery between 7:00 p.m. and 7:00 a.m. And  
4 -- let' see. I believe that was it for the  
5 DDOT conditions. Those were the two that were  
6 not addressed in OP's report.

7 MS. GLAZER: Excuse me. I think there  
8 were conditions regarding the curb cut and the  
9 right turn in and exit.

10 COMMISSIONER MAY: Oh, you're  
11 right. So the curb cut will be restricted to  
12 a right turn in vehicle movement only. And  
13 the curb cut will be 20 foot wide, but I think  
14 that's a fairly standard thing.

15 MEMBER MOLDENHAUER: I just have a  
16 question for OAG. I believe that the DDOT  
17 report also included a request to have annual  
18 updated meetings at the ANC regarding traffic.  
19 Is there an opinion on that?

20 MS. GLAZER: I think we discussed that  
21 before. I'm not sure if you were present and  
22 OAG was recommending against that condition.

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1 COMMISSIONER MAY: I would agree  
2 with that recommendation.

3 SECRETARY MOY: Okay. With respect  
4 to the other DDOT conditions, I'm certainly in  
5 favor of the one that requires the South  
6 Dakota Avenue entrance be right turn in only.

7 So there's no left turns in and there's no  
8 exit coming out. So all exiting traffic will  
9 on to Emerson.

10 With respect to the closure of the  
11 South Dakota Avenue curb cut that's nearest  
12 the intersection of Emerson and South Dakota,  
13 I think it shows on the plans that this curb  
14 cut is going to be closed so I don't see a  
15 need to include that as a condition.

16 So for the Office of Attorney  
17 General, does the Board need to articulate the  
18 conditions again or have we been clear enough?

19 MS. GLAZER: I think it is  
20 sufficient.

21 BZA VICE CHAIR DETTMAN: Great.  
22 Thank you.

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1 Well, the motion has been made and  
2 seconded. All those in favor say aye.

3 ALL: Aye.

4 BZA VICE CHAIR DETTMAN: Opposed?  
5 And there are no abstentions.

6 Can we call the vote please?

7 SECRETARY MOY: Yes. Staff would  
8 record the vote as three-to-zero-two. This is  
9 on the motion of Peter May to approve as  
10 conditioned by the Board. Seconded by Ms.  
11 Moldenhauer. Also in support of the motion  
12 the Chairman, Mr. Dettman. We have two  
13 members not present and not voting.

14 So, again, that's a vote of three-  
15 to-zero-to-two to approve with conditions.

16 BZA VICE CHAIR DETTMAN: Thank you,  
17 Mr. Moy.

18 And that concludes the Board's  
19 morning Public Meeting, correct?

20 SECRETARY MOY: That's correct.

21 (Whereupon, at 10:29 a.m. the  
22 A.M. Session of the Public Decision Meeting

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1 complete, was adjourned until the Afternoon  
2 Session of the Public Decision Meeting  
3 beginning at 1:55 p.m.)  
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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:55 p.m.

BZA VICE CHAIR DETTMAN: The meeting will please come to order.

Good afternoon, ladies and gentlemen. This is the December 15, 2009 afternoon Public Meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Shane Dettman, Vice Chairperson representing the National Capital Planning Commission

To my right is Mr. Anthony Hood, Chairman of the D.C. Zoning Commission. To my left Ms. Meridith Moldenhauer, representing a Mayoral Appointee on the BZA. To my left is Mr. Clifford Moy and Ms. Beverley Bailey from the Office of Zoning.

Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door.

We do not take any public testimony at our meetings unless the Board asks someone

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1 to come forward.

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

9 To the staff, does the staff have  
10 any preliminary matters for this afternoon's  
11 public meeting?

12 SECRETARY MOY: No, sir.

13 BZA VICE CHAIR DETTMAN: Thank you,  
14 Mr. Moy.

15 The Board has one decision to  
16 deliberate on for this afternoon. And why  
17 don't we go ahead and call that case.

18 SECRETARY MOY: Thank you.

19 Good afternoon, Mr. Chairman,  
20 members of the Board. This one case as you  
21 said for decision is Application No. 17958 of  
22 Community Auto Service Center, pursuant to 11

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1 DCMR ' 3103.2, for a variance from the use  
2 provisions under section 701.1, and a variance  
3 from the off-street parking requirements under  
4 subsection 2010.1, to establish an automobile  
5 repair and service establishment in the C-1  
6 District at premises 4408 Arkansas Avenue,  
7 Northwest. The subject site is located in  
8 Square 2819, Lot 808.

9 The staff notes for the Board that  
10 the application was also amended to provide  
11 special exception relief from section 2116  
12 which would permit accessory parking.

13 As the Board will recall, on  
14 December 1, 2009 the Board completed public  
15 testimony, closed the record and scheduled  
16 this decision on December 15th. The Board did  
17 allow the ANC 4C to file its report by  
18 December 11, 2009. That document is in your  
19 case folder identified as Exhibit 39 from ANC  
20 4C.

21 With that, the Board is to act on  
22 the merits of the use variance under section

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1 701.1 and variance from the off-street parking  
2 requirements and off site accessory parking.

3 That completes the staff's  
4 briefing, Mr. Chairman.

5 BZA VICE CHAIR DETTMAN: Thank you,  
6 Mr. Moy.

7 Colleagues, if you recall at the  
8 close of the hearing on this case the Board  
9 set off their decision in order for the ANC  
10 further request to analyze this case and weigh  
11 in on the matter. And we did receive a  
12 resolution from ANC 4C, and that's our Exhibit  
13 39.

14 And very quickly, the ANC did have  
15 an opportunity to meet with the applicant on  
16 December 8, 2009. They expressed their  
17 unanimous support for the project for the use  
18 variance to establish the repair garage, the  
19 variance from the off-street parking  
20 requirements and they do not the applicant's  
21 efforts to acquire some off site parking  
22 spaces in the lot next door and the lease that

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1 had been submitted into the record that  
2 attests to that.

3 So, we did receive the information  
4 that we need in order for us to go forward,  
5 and I can start us off on our deliberations if  
6 Board members don't have anything further?  
7 Great.

8 Very quickly, Mr. Moy recapped the  
9 areas of relief that are being request here.  
10 We're looking at a use variance under section  
11 701.1 to establish a repair garage in the C-1  
12 District. In addition to having to satisfy the  
13 use variance test and meeting the burden of an  
14 undue hardship, the applicant needed to  
15 demonstrate that they are consistent with the  
16 provisions of 2302.

17 We're also here to deliberate on an  
18 area variance request to reduce the required  
19 number of parking space which, for this  
20 facility is 14 spaces, and that area variance  
21 would be from 2101.1.

22 As Mr. Moy noted, the applicant

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1 amended their application to pursue the  
2 ability to locate parking space off site by  
3 way of a special exception under 2116.6.

4 A review of the regulations, also  
5 just for safety's sake, I think that as I  
6 articulate the special exception, I'll also  
7 incorporate the provisions under 708.1 and  
8 section 510 which deal with accessory parking  
9 spaces permitted as a special exception in a  
10 C-1 District.

11 With respect to the two variance  
12 requests, the use variance as well as the area  
13 variance for parking, I'll rely upon OP's  
14 report. This is, if you'll recall,  
15 colleagues, this is a very, very narrow, very  
16 small property that's surrounded on two sides  
17 by a large amount of public space which from  
18 the street it looks like it's part of the  
19 property, but indeed its not.

20 The current lot occupancy for the  
21 building, which was built well prior to the  
22 adoption of the 1958 Zoning Regulations is

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1 nearing somewhere between 98 and 100 percent  
2 lot occupancy. It's a one story building that  
3 was, according to the OP report, constructed  
4 for the purpose of an auto related use;  
5 whether it be a repair garage, a service  
6 station. There was a mention that it had been  
7 used for a significant amount of time as a  
8 used car dealership. So the applicant also in  
9 their testimony stated about the difficulty,  
10 the undue hardship that would result if they  
11 were required to convert the existing  
12 structure to a matter-of-right under the C-1,  
13 again given the amount of lot occupancy, there  
14 was the presence about the vehicle related  
15 equipment in terms of a hoist that would be  
16 used for repair garage, there was an oil pit  
17 inside, the longstanding use of the property  
18 for auto related purposes. I think there was  
19 mention of an uneven floor, concrete floor  
20 inside of it.

21 So in terms of the first prong and  
22 on whether or not the property has an

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1 exceptional condition or situation, I think  
2 that the first prong has been met. Now  
3 whether or not the first prong gives rise to,  
4 in this case, an undue hardship for the use  
5 variance I think that I was persuaded as well  
6 that there would be an undue hardship on the  
7 property owner to require them to put this to  
8 a matter-of-right use in the C-1. Whether or  
9 not there would be a practical difficulty upon  
10 the property owner to provide the requirement  
11 number of parking spaces, I think that given  
12 that this property was constructed to nearing  
13 a 100 percent lot occupancy, it would be  
14 practically difficult for the applicant to  
15 provide all 14 spaces on the property.

16 But I think what we're looking at  
17 here is a parking variance to reduce the  
18 required number for parking spaces from 14 to  
19 11. The applicant received authorization from  
20 the Public Space Committee to locate three  
21 vehicles in the public space along the  
22 adjacent street frontage. And I think that

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1 given the degree of the variance that we're  
2 looking at, only three spaces, I think the  
3 test has been met for the area variance.

4 That leaves 11 spaces that need to  
5 be accounted for. And the applicant amended  
6 their application to seek a special exception  
7 to locate the remaining 11 spaces off site in  
8 the adjacent parking lot pursuant to 2116.6.

9 If you'll recall, the applicant  
10 testified that they currently have negotiated  
11 a lease with their adjacent neighbor. I do  
12 not have an exhibit number with this lease,  
13 however it's a leave between the property  
14 owner and the Alpha Kappa Alpha Sorority  
15 located next door. They have a fairly  
16 sizeable parking lot next door. And that  
17 particular organization has made available 11  
18 spaces to the applicant.

19 In order to grant the special  
20 exception the applicant must meet the  
21 requirements under 2116.6 and those provision  
22 request that the Board shall determine that it

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1 is not practical to locate the spaces in  
2 accordance with 2116.2. I think, again, given  
3 the lot occupancy of the property, I think  
4 it's impractical for them to locate the spaces  
5 on site. 2116 gives preference to locating  
6 these spaces in adjacent or nearby properties,  
7 such as the case in this application.

8 Very quickly as a final note  
9 turning over to the provisions of 510 which  
10 regulate the off site location of parking  
11 spaces not only in special purpose districts  
12 but also it applies to the C-1, the provisions  
13 of 510 state that the total number of parking  
14 spaces provided for the principal use shall  
15 not exceed the minimum number of spaces  
16 required for the principal case. And in this  
17 case the requirement is 14 and we're looking  
18 to locate 11 off site.

19 And finally, 510.4 states that it  
20 shall be considered economically impractical  
21 or unsafe to locate the parking spaces within  
22 the principal building. And, again, given the

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1 lot occupancy of the property I think it is  
2 economically impractical for them to locate  
3 parking spaces on site or in the building in a  
4 manner that is consistent with all of the  
5 regulations of Chapter 21. So that being  
6 said, colleagues, I think all of the relevant  
7 standards have been met for the three areas of  
8 relief that are being requested. And I can  
9 turn it over to colleagues for additional  
10 comments.

11 MEMBER MOLDENHAUER: Chairman  
12 Dettman, I believe that you've sufficiently  
13 summarized everything. I agree with all your  
14 analysis.

15 I think that this property is  
16 exceptional unique considering, as you said,  
17 it's about 99 to 100 percent lot occupancy.  
18 They're not looking to build up anything.  
19 It's just a matter of getting relief for a use  
20 variance to revise the use to be a repair shop  
21 and also for the parking. I think we went  
22 over the parking on multiple days and

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1 discussed that. And the applicant did a very  
2 good job of finally coming back with the  
3 letter and the lease indicating that they were  
4 able to relocate those additional 11 spaces  
5 next door. And I think that that was the ANC  
6 -- I don't know if you mentioned the ANC. But  
7 I believe that the ANC in our Exhibit 34  
8 stated that they needed some additional time  
9 to get a vote, but then at the same time I  
10 believe the last time the applicant came  
11 before us, he stated that the ANC was in  
12 support or had not gotten back specifically to  
13 him based on the fact that they were aware  
14 that the parking spaces were going to be  
15 provided by the fraternity next door.

16 So based on all the above, I think  
17 that we can move forward.

18 I'm sorry, there's also -- it  
19 doesn't have an exhibit number, but we had an  
20 ANC 2C letter, dated December 1st, 2009 which  
21 states that the ANC 4C supports the  
22 application.

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1                   BZA VICE CHAIR DETTMAN: Thank you,  
2                   Ms. Moldenhauer. As you've stated, we have a  
3                   few reports from the ANC. They appear to meet  
4                   the great weight requirement and they'll be  
5                   afforded the weight that they entitled to, and  
6                   that is Exhibits 34, 39 and a follow-up letter  
7                   which does not have an exhibit number.

8                   I'm prepared to make a motion in  
9                   support of the application. I would like to  
10                  throw out the idea of one condition, and it  
11                  goes to the special exception for the off site  
12                  location of parking spaces.

13                  According to our Exhibit 33, which  
14                  has a letter from the Alpha Kappa Alpha  
15                  Sorority, they are entering into an agreement  
16                  for the provision of 11 spaces that will be  
17                  available to the applicant Monday through  
18                  Friday from 7:00 to 5:00. And I guess given  
19                  the nature of these types of businesses where  
20                  work might be being done to an automobile,  
21                  it's not completed at the end of the day so it  
22                  needs to be moved off site, which would be

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1 after 5:00.

2 I could see it being appropriate to  
3 term the special exception for a period of two  
4 years, which is consistent with the period of  
5 the lease that's being entered into. And a  
6 that time the Board will be able to assess  
7 whether or not the placement of vehicles in  
8 the lot over night as created any kind of  
9 objectionable traffic conditions or parking  
10 conditions in the neighborhood.

11 So I would be in favor of that  
12 recommendation if, Ms. Moldenhauer, if you are  
13 as well.

14 MEMBER MOLDENHAUER: Yes. I think  
15 two years is a sufficient time frame,  
16 especially in consideration of the lease time,  
17 lease term.

18 BZA VICE CHAIR DETTMAN: Great. So  
19 that being said, I'll move for approval of  
20 Application No. 17958 of Community Auto  
21 Service Center, pursuant to 11 DCMR ' 3103.2  
22 and 3103.4 for a variance from the use

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1 provisions under section 701.1, and a variance  
2 from the off-street parking requirements under  
3 subsection 2010.1 and a special exception from  
4 the provisions of 2116, 708 as well as in  
5 accordance with 510 to establish an automobile  
6 repair and service establishment in the C-1  
7 District at premises 4408 Arkansas Avenue,  
8 Northwest.

9 MEMBER MOLDENHAUER: I second.

10 BZA VICE CHAIR DETTMAN: Motion's  
11 been made and seconded. All those in favor  
12 say aye.

13 ALL: Aye.

14 BZA VICE CHAIR DETTMAN: Opposed.  
15 Abstentions.

16 Mr. Moy, do we have any absentee  
17 ballots?

18 SECRETARY MOY: Yes, we do, Mr.  
19 Chairman. So before I give a final vote, we  
20 do have an absentee ballot from another  
21 participating member, Konrad Schlater. And  
22 his absentee vote is to approve with such

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1 conditions as the Board may impose. And in  
2 his comment he specifically mentions a  
3 condition of the two year term. So that would  
4 be consistent.

5 So again, so the final vote would  
6 be recorded as three-to-zero-two on the motion  
7 of the Chair, Mr. Dettman, to approve with one  
8 condition for the off site for the accessory  
9 spaces for a period of two years. Second the  
10 motion, Ms. Moldenhauer. And again, in  
11 support of the motion Mr. Schlater. Other  
12 Board members not present, not voting.

13 So again, three-to-zero-to two.

14 BZA VICE CHAIR DETTMAN: Thank you,  
15 Mr. Moy.

16 And I think as there is no  
17 opposition to this case, we can do a summary  
18 motion on that.

19 SECRETARY MOY: Yes, sir. Very  
20 good.

21 BZA VICE CHAIR DETTMAN: Thank you.

22 And that completes the afternoon

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1 Public Meeting?

2 SECRETARY MOY: Yes, sir.

3 BZA VICE CHAIR DETTMAN: Great.

4 Then this meeting stands adjourned.

5 (Whereupon, the Public meeting wad  
6 adjourned at 2:11 p.m.)

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