

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

APRIL 26, 2005

+ + + + +

The Public Meeting and Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, DC 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS L. ETHERLY, JR.	Board Member
JOHN A. MANN, II	Board Member

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Deputy Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOHN MOORE	Office of Planning
TRAVIS PARKER	Office of Planning
MAXINE ROBERTS	Office of Planning

This transcript constitutes the minutes from the special public meeting held on April 26, 2005.

AGENDA ITEMS PAGE

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CALL TO ORDER:  
 Geoffrey Griffis. . . . .3

ST. PATRICK'S PROTESTANT EPISCOPAL CHURCH  
 APPLICATION 17300, ANC-3D . . . . .4

VOTE TO APPROVE THE APPLICATION . . . . . 22

ADJOURN:  
 Geoffrey Griffis. . . . . 23

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

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10:16 a.m.

1  
2 CHAIRPERSON GRIFFIS: Good morning, ladies  
3 and gentlemen. Let me call to order our special  
4 public meeting of 26 April, 2005. My name is Geoff  
5 Griffis, Chairperson. Joining me today is the Vice  
6 Chair, Ms. Miller, and also Mr. Etherly.

7 Representing the National Capital Planning  
8 Commission with us this morning and on all cases is  
9 Mr. Mann. Our Zoning Commission member is not present  
10 today but I believe they may well have put in an  
11 absentee vote on the case that we will decide today.

12 Let me go through very quickly. As this  
13 is a special meeting, of course, the hearing agendas  
14 are available for you. We appreciate everyone's  
15 patience this morning in us getting started a little  
16 bit later. We will get into the hearing directly  
17 after a decision on this case which we will call.

18 Of course, the public meeting is a time  
19 where the Board has previously heard a case and will  
20 deliberate on the case so that there is no opportunity  
21 for additional testimony or conversation with the  
22 public. Please be advised that, of course, our public  
23 meetings and our public hearings are recorded.

24 They are recorded in two fashions and I  
25 won't go through those because I'll do that in the

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1 opening of the hearing but I would ask that people  
2 turn off their cell phones and beepers so we don't  
3 have that disruption of the transmissions.

4 With that, let's get right into it and  
5 make up a little bit of time. Let me say a very good  
6 morning to Ms. Bailey who is on the very far right  
7 with the Office of Zoning. And also Mr. Moy closer to  
8 me.

9 Ms. Bailey, are you aware of any  
10 preliminary matters or, Mr. Moy, any preliminary  
11 matters for the Board's attention this morning in the  
12 public meeting?

13 MR. MOY: No, sir. We can handle that  
14 when we call the first case.

15 CHAIRPERSON GRIFFIS: Excellent. Then  
16 let's move ahead, Mr. Moy, and call the first case for  
17 decision.

18 MR. MOY: Good morning, Mr. Chairman, and  
19 members of the Board. The first and only case in the  
20 special public meeting is Application No. 17300 of St.  
21 Patrick's Protestant Episcopal Church pursuant to 11  
22 DCMR 3104.1, for a special exception to allow an  
23 increase in the student enrollment at a private school  
24 (last approved under BZA Order No. 16852-A), from 40  
25 to 60 children, under section 206, in the R-1-B

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1 District at premises 4925 MacArthur Boulevard, N.W.  
2 (Square 1393, Lot 17).

3 On April 12, 2005, the Board completed  
4 public testimony on the application and scheduled its  
5 decision at a special public meeting on April 26,  
6 2005. The Board requested proposed findings of fact  
7 and conclusions of law. That findings was received in  
8 the office and is in your case folders identified as  
9 Exhibit 37.

10 The Board also has preliminary matter.  
11 The Office has received three filings after the record  
12 has been closed. The first filing is a report from  
13 the District Department of Transportation and is  
14 identified as Exhibit 36. No. 2, a letter from Mr.  
15 Lovendusky which is identified as Exhibit 38, and a  
16 letter from Mr. Fenton and Ms. Carbine which is  
17 identified as Exhibit 39. That will complete the  
18 staff's briefing, Mr. chairman.

19 CHAIRPERSON GRIFFIS: Excellent. Thank  
20 you very much, Mr. Moy.

21 Let's get into briefly the preliminary  
22 matters and that is the submissions that were brought  
23 in. Before we get into those aspects, because I think  
24 this is appropriate for us to move in, we will  
25 obviously look to deliberate and decide on this.

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1 Well, let's deal with the preliminary matters first.  
2 Is there a comment on accepting into the record any of  
3 these or, in fact, not accepting into the record?

4 Yes, Ms. Miller.

5 MS. MILLER: I would move that we accept  
6 all of the documents into the record. The first one  
7 is the DDOT report and I think DDOT was unable to be  
8 at our hearing. Traffic is a key issue in whether  
9 student enrollment increase may cause an adverse  
10 impact so I think it's very important to have that in  
11 the record and I don't see any reason why we should  
12 not.

13 CHAIRPERSON GRIFFIS: Very well. I'm  
14 sorry. Anything else?

15 MS. MILLER: With respect to the other two  
16 documents, they go to the Board's raising some  
17 questions about some of the other conditions and, in  
18 particular, condition No. 20. I know that the Board  
19 members have read the documents and I think we're  
20 prepared to address them. Specifically I would just  
21 like to comment since I was one of the Board members  
22 that was asking a lot of questions at the hearing  
23 about the other conditions. I was interested in  
24 understanding the context in which we were considering  
25 this request for an enrollment increase. Therefore,

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1 I was looking at how the other conditions were  
2 working. I don't think that this Board is intending  
3 to specifically reconsider the other conditions.

4 CHAIRPERSON GRIFFIS: That has opened up  
5 quite a bit of information but I think out of  
6 administrative efficiency we would accept it all. I  
7 don't think most would have been accepted  
8 appropriately as they are not timely filed. The  
9 letter from Mr. Lovendusky, I think, could be stricken  
10 from the record.

11 However, for administrative efficiency I  
12 think we'll take it in as it does go to the issue of  
13 condition 20. Substantively, I think we'll get to  
14 this that it doesn't go in any direction or that I am  
15 persuaded to go in. Be that as it may, I think you  
16 are absolutely appropriate in stepping into the  
17 discussion of all these other conditions that were  
18 part of the past order.

19 I think we'll get further into that. To  
20 put it in context from my own deliberations, it's  
21 impossible for us to look at things in such a vacuum.  
22 There's absolutely no way that we couldn't understand  
23 or look at all the other conditions and the factors  
24 involved even though we're talking about two simple  
25 things.

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1                   One, walking. Two, the increase of  
2 enrollment in the school. How do you not factor in  
3 all these other conditions that the Board previously  
4 found were appropriate and how do you change several  
5 and at least understand? I think that's what we've  
6 come with very directly.

7                   That being said then, is there any  
8 opposition to accepting that information in the  
9 record? In which case then we would accept those  
10 filings, Exhibit 39, 38, and 36 into the record.  
11 Let's proceed then.

12                   Of course, as I've gone into a little bit,  
13 Mr. Moy has adequately addressed this is an  
14 application that is looking to modify two conditions  
15 of a previous order that was allowing the opening of  
16 the school on this site. We had had previously  
17 modifications in addition out of concerns during  
18 construction and also changes to specifically the  
19 plans.

20                   Again, it had to come for the Board's  
21 understanding that whole universe of what was approved  
22 and what is actually there. I don't think any of that  
23 we will need to get into detail in terms of changing  
24 but it certainly sets the stage. It's interesting in  
25 re-reading all this and preparing for today -- let me

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1 not go in that direction at this point.

2 Let's move ahead then and talk about the  
3 specific conditions that we are looking at and that is  
4 the condition that would allow an increase in the  
5 enrollment from 40 to 60 children. Also the  
6 availability of the option of walking to the school as  
7 had been described and detailed in the application.  
8 I'll open it up.

9 MS. MILLER: Mr. Chairman, I just wonder  
10 if we also have another preliminary matter and that is  
11 whether we should treat the applicant's prehearing  
12 statement in which they include a modification of  
13 condition No. 7 to permit students under limited  
14 circumstances to walk between the property and the  
15 main St. Patrick's campus as a request for an  
16 amendment to their application because this case was  
17 advertised only as an application for an enrollment  
18 increase from 40 to 60.

19 I would suggest that we would approve that  
20 request because the community was given notice. It  
21 was in their prehearing statement that was served on  
22 the ANC. The ANC addressed it at its meeting and  
23 actually voted on it. OP also addressed it.  
24 Neighbor's United Trust also had noticed and addressed  
25 it in their filing so I think that notice and due

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1 process are safeguarded and that we should consider  
2 that as a request.

3 CHAIRPERSON GRIFFIS: No disagreement with  
4 what I already had in my own mind but let's hear from  
5 others if there's any opposition in continuing that  
6 way. If not, then we'll take it as an amended  
7 application and look to condition No. 7.

8 MS. MILLER: Okay. Then I guess at this  
9 point we will be addressing the -- do you want to  
10 start with the student enrollment increase?

11 CHAIRPERSON GRIFFIS: Absolutely.

12 MS. MILLER: Okay. I think in general I  
13 just want to set what I believe are the legal  
14 standards that we'll be considering this request  
15 pursuant to and that will be 206.2 which says that the  
16 private school shall be located so that it's not  
17 likely to become objectionable to adjoining and nearby  
18 property because of noise, traffic, number of students  
19 where otherwise objectionable conditions and 206.3,  
20 that there be ample parking.

21 Then, of course, I think we must bear in  
22 mind the guidance that we have recently gotten from  
23 the Court of Appeals in the most recent Georgetown  
24 case which also cites the earlier Washington ethical  
25 society case which the applicant also mentioned. In

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1 that case, I understand that specific enrollment and  
2 limitation that's imposed on a school must be tied to  
3 an adverse impact on the neighborhood that the  
4 limitation would specifically mitigate.

5 If we reject the applicant's proposed  
6 enrollment, we should have evidence in the record as  
7 to why an alternative number is necessary to prevent  
8 adverse impacts. I think in this particular case we  
9 did look at two numbers. We looked at increasing to  
10 50 as Office of Planning had at first recommended.  
11 Then we looked at increasing to 60 which is the  
12 request before us.

13 I would note that Office of Planning first  
14 did come and did say 50 but then at the hearing  
15 hearing that there was no adverse impact that was  
16 evidenced in the record switched its position to 60.  
17 I think we heard that the conditions are working very  
18 well at the school, particularly with respect to  
19 traffic management and that the school's program was  
20 actually designed for the additional 20.

21 I didn't hear any evidence that the 20  
22 would cause adverse impacts. It's possible that they  
23 may need one more shuttle bus and DOT didn't find that  
24 would have a negative impact on the community.

25 I also was convinced by allowing this

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1 increase to 60 we weren't inviting an enrollment creep  
2 because the program was actually designed only for 60  
3 and the applicant had presented evidence that they  
4 were willing to even enter into a covenant limiting  
5 the enrollment to 60 but just hadn't been able to work  
6 that out with the neighborhood.

7 CHAIRPERSON GRIFFIS: Excellent. So if I  
8 understand what you're saying, certainly from the  
9 Georgetown remand the courts have told us that we  
10 can't be arbitrary and capricious in denying an  
11 enrollment increase. If we then set an actual number,  
12 we have to somehow justify that number as modifying or  
13 as intentionally reducing any sort of detrimental  
14 impact on the neighborhood so there would have to be  
15 findings that showed how one number differed from  
16 another number.

17 Additionally I absolutely agree with that.  
18 The Office of Planning did commit in their  
19 recommendation with a number of 50 and I think in the  
20 hearing they didn't see any adverse impact of 60. But  
21 more importantly what they directly said was they  
22 offered that as a stepping.

23 Clearly the Board looked at it, or I did,  
24 in the hearings of what would that mitigate or what  
25 would that actually do. I think it was well stated 60

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1 is what originally the application came in. There was  
2 an awful lot of hearing. It's fascinating at this  
3 hearing that the applicant actually said they've  
4 learned -- I forget the actual wording now but they  
5 have learned so much now that they didn't know then.  
6 That should be a rock and roll song. Don't you think?

7 The point is they have lived through it  
8 and they have seen what happens and how to deal with  
9 it. There was nothing in the evidence that persuaded  
10 me or I saw that we would actually start looking  
11 towards stepping the number, rather going directly at  
12 60 and seeing was there any evidence that found that  
13 would actually create an adverse impact. If not, I  
14 think the court is telling us if that is not there,  
15 then we cannot create our own number just because we  
16 feel like we don't like 60 that day. Okay.

17 MS. MILLER: We looked at traffic and DDOT  
18 said that one shuttle bus was not consequential. Then  
19 we looked at noise. We heard the whole noise study  
20 that said that the 20 students weren't going to make  
21 a difference. In either event it was within code.

22 CHAIRPERSON GRIFFIS: I'm sorry to  
23 interrupt you but to add to those aspects, all of  
24 those pieces of noise and traffic also have additional  
25 conditions of which we have looked at and understood

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1 and we're not changing, all which seem to have been  
2 fairly successful not only in this application but in  
3 other applications but specifically with this one we  
4 haven't seen anything arise.

5 Even though it's been a short period we  
6 haven't seen anything arise. I mean, the timing. I  
7 remember in the original application how much time  
8 they thought it would take to load and unload kids out  
9 of the van and they actually gave us seconds. What  
10 was it, like 28 seconds and 50 seconds and a minute  
11 and 3 seconds? The point being that they are  
12 operating as anticipated and now we have very specific  
13 facts in the case that show us that nothing has been  
14 created that is detrimental.

15 MR. MANN: Well, and, I think, also  
16 regarding noise the applicant proffered a slight  
17 programmatic change that would mean that the number of  
18 students outside that could potentially create noise  
19 during the recess period was going to be the same.

20 CHAIRPERSON GRIFFIS: Indeed. They are  
21 going to three sessions and not two. Right. That's  
22 an excellent point. Okay.

23 MS. MILLER: I think your point also was  
24 very good. In this case it isn't even based on  
25 speculation. They have a specific track record here

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1 with conditions and we have evidence as to how they  
2 were working.

3 MR. ETHERLY: Mr. Chair, I'll agree with  
4 everything that's been stated to this point regarding  
5 the analysis and assessment of the record that has  
6 been established with respect to the modification. I  
7 think there were two somewhat outstanding issues for  
8 me as we went through the hearing on the proposed  
9 modifications.

10 One was the issue of an additional vehicle  
11 trip with regard to late arriving students and the  
12 other was some discussion that we had regarding  
13 activity on the blacktop area, the parking area. I  
14 think both of those issues were satisfactorily  
15 resolved for me such that I would not require any  
16 additional condition or language inserted into what  
17 we're looking at from the standpoint of dealing with  
18 those two issues.

19 I think, one, hearing the testimony that  
20 we received regarding late-arriving students and  
21 perhaps an additional trip from the main campus to the  
22 Ashby Street location clearly did not rise to the  
23 level of creating any additional traffic impact that  
24 would need to be mitigated in any way. Nor did I find  
25 any compelling reason to suggest further limitations

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1 on the outside recreational activity regarding the  
2 blacktop area. Thank you, Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Good. Excellent.  
4 Thank you.

5 Okay. ms. Miller, any other aspects on  
6 that commission? Are you prepared to move on to  
7 condition 7?

8 MS. MILLER: I'm prepared to move on to  
9 condition 7.

10 CHAIRPERSON GRIFFIS: Okay. Would you  
11 like to?

12 MS. MILLER: Well, just briefly. I don't  
13 think there was any opposition to allowing the  
14 students to walk between the property and the main  
15 campus, particularly as limited by the applicant.  
16 There was some discussion about how specific that  
17 condition was but it was proposed by the applicant.  
18 I made the point but maybe that belongs in their  
19 manual.

20 In any event, that's the way they  
21 presented it to the community and Office of Planning  
22 and the ANC supported it. It looks to me if there is  
23 a positive impact on traffic because it would cut down  
24 on vehicular trips because as of now as they read the  
25 previous order, they read it as requiring the students

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1 to be transported by a vehicle instead of walking.

2 It also as they have articulated the  
3 condition or proposed the condition, it has these  
4 controls in it that there has to be permission by the  
5 parents and a sign-in and a specific route. Anyway,  
6 I can't see any reason to deny this request.

7 CHAIRPERSON GRIFFIS: Excellent. Just to  
8 further that, the operation, the fundamental operation  
9 of checking in at the main campus and coming up to  
10 this campus is still in place. That has not changed.  
11 What this does is allow a little flexibility.

12 It was fascinating to me that actually one  
13 of the persons to give testimony follows all those  
14 rules but is close enough proximity that his daughter  
15 could actually walk to the school. I think they have  
16 resolved that and she is actually able to walk which  
17 just shows two things for me. First of all, there  
18 needs to be some flexibility in the realities of how  
19 things function.

20 Secondly, it shows how fundamentally law  
21 abiding and order abiding of that person and I can  
22 assume that most of the families in the school are and  
23 not even question it. They might walk when it's a  
24 longer drive to the main campus. Nonetheless, let's  
25 move ahead then, condition No. 7. Any other comments

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1 on that?

2 Okay. Let's go to the other issues then  
3 that were brought up during the hearing or anything  
4 else on the Board members' perspective minds in their  
5 deliberation? Fascinating. Okay. We did have some  
6 discussion on condition No. 20. Condition No. 20 was  
7 an enforcement condition that was written and provided  
8 by the Board in their previous order.

9 Those who were in the hearing were allowed  
10 to discuss it and addressed it. It was, I think, the  
11 understanding of this Board that we obviously had to  
12 come with the full knowledge of all the conditions and  
13 its applicability and how none of these stand alone.  
14 All of these work together, or hopefully work together  
15 and appropriately.

16 Clearly we have a previous order for some  
17 of the other modifications that have conditions  
18 specifically for that aspect. In looking at all  
19 these, they should work together to make a very  
20 harmonious situation. As we look at No. 20 I think,  
21 in my mind, I was kind of concerned that we had  
22 created something that, one, may not be useful at all,  
23 two, probably wasn't written as clearly as we might  
24 today.

25 But I have to say that I don't believe

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1 that we have enough information, or certainly didn't  
2 have a large enough evidentiary hearing on all the  
3 aspects in terms of the timing of the order, whether  
4 it would need to be timed, and how this is to be  
5 enforced or monitored.

6 I don't believe that we have -- in my mind  
7 I don't have enough information to be persuaded to,  
8 one, rewrite it or to delete it from the order. I'll  
9 open it to others for their -- well, let me just say  
10 lastly as my comment I think it's -- maybe I  
11 shouldn't. Let me hear from others.

12 MR. ETHERLY: I agree with you, Mr. Chair.  
13 I think clearly the language goes to, as you said, the  
14 issue of enforcement which has long been throughout my  
15 tenure on the board a recurring theme as we deal with  
16 the matters of private schools or educational  
17 institutions or even other institutions, for that  
18 matter, in our communities.

19 I would agree with its retention perhaps  
20 as -- I don't want to necessarily characterize it as  
21 unartful but I think I struggle some with the  
22 evidence, with the language or the wording of it. I  
23 think really it speaks to the difficulty of trying to  
24 fashion really an effective enforcement/compliance  
25 regime that can stick and can help resolve some of the

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1 longstanding questions that merge around particular  
2 issues. I am inclined to keep it in perhaps as  
3 imperfect as it might be.

4 CHAIRPERSON GRIFFIS: Excellent. Well  
5 said. I appreciate that. Yes, Ms. Miller.

6 MS. MILLER: Well, I just want to say that  
7 I don't think condition 20 just rose to the level  
8 where this Board on its own should take it up to  
9 strike, especially when it wasn't advertised or we  
10 didn't really have a full hearing on it. Therefore,  
11 I mean, it's not the type of condition I would  
12 necessarily raise but I understand that the previous  
13 Board at a whole hearing and they came to that  
14 conclusion. My position is it's not like affirming  
15 that I want to retain. It's just a position that I  
16 don't find the need to tamper with it.

17 CHAIRPERSON GRIFFIS: Right. Okay.

18 MS. MILLER: The applicant is living with  
19 it and hasn't raised a real problem with it so so be  
20 it.

21 CHAIRPERSON GRIFFIS: Anyone else? I  
22 agree with you. I don't think it fundamentally does  
23 damage. It actually is in a kind of repetitive or  
24 additional, let's say, process of which enforcement  
25 might be monitored. Obviously it hasn't been utilized

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1 and I'm not sure it actually could be. I guess that's  
2 my big question. If we actually tried to invoke  
3 condition No. 20, what would it look like? How would  
4 we do it?

5 I don't think there is actually the  
6 vehicle to do it but that doesn't remove the St.  
7 Patrick's being subject to enforcement. The order  
8 itself is enforceable with or without condition No.  
9 20. Okay. Enough said on that then. I'll open it up  
10 to any other issues, aspects, deliberation from the  
11 Board at this time.

12 MS. MILLER: I just want to also note for  
13 the record that I was impressed by how the compliance  
14 mechanism is working, that we had evidence that  
15 parents did not violate any of the conditions. I  
16 think that is a great track record. That is certainly  
17 a factor in the consideration.

18 CHAIRPERSON GRIFFIS: Good. Well then, is  
19 there action proposed by the Board then?

20 MS. MILLER: At this point I would move to  
21 approve application No. 17300 of St. Patrick's  
22 Protestant Episcopal Church pursuant to 11 DCMR 3104.1  
23 for a special exception to allow an increase in the  
24 student enrollment of private school last approved  
25 under BZA order No. 16852-A from 40 to 60 children,

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WASHINGTON, D.C. 20005-3701

1 and to modify condition No. 7 to allow walking between  
2 the main campus and the property under Section 206 in  
3 the R-1-B District of premises 4925 MacArthur  
4 Boulevard, N.W., Square 1393, Lot 17.

5 MR. MANN: Second.

6 CHAIRPERSON GRIFFIS: Thank you, Mr.  
7 Mann. Ms. Miller, further deliberation on the motion?

8 MS. MILLER: I don't have any.

9 CHAIRPERSON GRIFFIS: Any other comments?  
10 Excellent. We have the motion before us. It's been  
11 seconded for approval. I would ask for all those in  
12 favor to signify by saying aye.

13 ALL: Aye.

14 CHAIRPERSON GRIFFIS: And opposed?  
15 Abstaining? Very well. Mr. Moy, if you wouldn't mind  
16 recording the vote.

17 MR. MOY: Yes, sir. The staff would  
18 record the vote as four to zero to zero on the motion  
19 of Ms. Miller, the Vice Chair, to approve the  
20 application, seconded by Mr. Mann. Also in support of  
21 the motion Mr. Etherly and Mr. Griffis, the Chair. We  
22 also have an absentee ballot from Mr. Hood. His  
23 ballot is to approve the application which would give  
24 a final count as five to zero to zero to approve the  
25 application.

**NEAL R. GROSS**

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1                   CHAIRPERSON GRIFFIS: Good. Thank you  
2 very much, Mr. Moy. I think we need to issue a full  
3 order on this. Is there any other business for the  
4 Board in its special public meeting this morning?

5                   MR. MOY: No, sir.

6                   CHAIRPERSON GRIFFIS: Very well. If  
7 there's no other business in our meeting, let me  
8 adjourn the meeting.

9                   (Whereupon, at 10:43 a.m. the special  
10 public meeting was adjourned.)

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