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GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

WEDNESDAY

JUNE 18, 1997

+ + + + +

The meeting took place in Room 220 at 441 Fourth Street, N.W., Fifth Floor, Washington, D.C. at 9:38 a.m., Laura M. Richards, Vice Chairperson, presiding.

PRESENT:

- Laura M. Richards, Vice Chairperson
- Sheila Cross Reid
- Angel F. Clarens
- John G. Parsons, Representative for Zoning Commission
- Maybelle Taylor Bennett, Representative for Zoning Commission

ALSO PRESENT:

- Reginald C. Lyons, Secretary to the Board
- Tracey W. Rose, Zoning Specialist
- Paul Hart, Zoning Specialist

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

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(9:22 a.m.)

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MS. RICHARDS: This meeting will come to order, and we have one agenda item. Would you call that, Mr. Secretary.

MR. LYONS: Yes, ma'am. Chair, it's application 16207 of Joseph's House, acting for Miriam's House, pursuant to 11DCMR 3108.1 for a special exception under Section 358 to increase an existing community residence facility from 15 to 20 persons, and in R5 the District at premises at 1300 Florida Ave., N.W., Square 234, Lot 822.

The case was heard on February 19th, '97. Those present were Ms. Richards, Ms. Reid and Ms. Hinton. On June 4th, the board deferred this decision, its decision to allow Ms. Bennett an opportunity to complete her review of the record and participate in this decision.

This matter is before the board for disposition.

MS. RICHARDS: That's right. This is before us as a special exception. And we have extensive -- there's extensive discussion on this case at the two meetings at which it was deferred, or at least one of those two meetings.

And would anyone care to make a motion for disposition?

MS. BENNETT: Madam Chair, I

1 would move approval of 16207 with conditions.

2 MS. REID: I second it.

3 MS. RICHARDS: Would the maker or the
4 seconder speak to the motion?

5 MS. BENNETT: Certainly. Madam Chair,
6 in my judgment, the applicant has met its burden of
7 proof. I have had an opportunity to listen to all
8 of the tapes and I have had a chance to review the
9 office's record.

10 In my judgment, all of the sections that
11 apply here under 358 are met. There are no other
12 CBRFs, as I understand it, in the square.

13 There was a question, so that takes care
14 of Section 358.2. In 358.3 there was a question in
15 the testimony about which of the facilities
16 identified by Ms. Brazil in opposition as CBRFs were
17 in fact CBRFs.

18 And since the hearing --

19 MS. REID: Excuse me. What did you just
20 say? You said that -- ?

21 MS. BENNETT: There was a question about
22 whether or not the opposition's identified
23 facilities as other CBRFs being within 500 were
24 indeed CBRFs.

25 Since then, in the record has been
26 entered information which indicates that Miriam's
27 House, as well as 1301 Clifton Street, have been

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1 identified as CBRFs according to an official list.

2 It was further noted that indeed 1301
3 Clifton Street was some 750 feet from the site,
4 which pushes it outside of the 500-foot radius and
5 that the other identified facilities were identified
6 as drop-in centers for Martha's Table, emergency
7 family center for 1417 Belmont Street, and
8 transitional rehabilitative housing, 1437 Belmont
9 Street.

10 So I am satisfied that Section 358.3 has
11 been met through Section 358.4 where there is no
12 off-site, I mean off-street parking. I'm sorry, the
13 regulation says that there would be sufficient --
14 there shall be sufficient off-street parking.

15 And this facility has none. I
16 understand that it has been grandfathered. But
17 moreover, besides that point, the residents of the
18 house, in order to qualify to live there, must be
19 homeless and the testimony must have had a diagnosis
20 of AIDS and must have had some opportunistic
21 symptoms also occurring.

22 So that, the concern that was raised in
23 the hearing was that there would be visitors, that
24 there is staff, that there are deliveries made and
25 the like -- medical personnel, counselors,
26 volunteers.

27 And the concern was that there be

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1 adequate parking for these persons. And there was
2 concern further that there was limited parking in
3 the vicinity because of other facilities like
4 Cardozo, like Walker Memorial, and because there is
5 restricted parking to accommodate rush-hour traffic
6 and street cleaning.

7 However there was further testimony that
8 within a short walking distance there is all-day
9 parking.

10 To date, I have heard no testimony. I
11 have read about no testimony entered that the
12 current staff, volunteers, and the like, have
13 difficulty in finding sufficient parking on the
14 street.

15 And I am convinced that there will be no
16 adverse impact flowing from the fact that the site
17 cannot accommodate off-street parking. Section
18 358.5 requires that the facility meet all applicable
19 code and licensing requirements, and I am satisfied
20 that they do.

21 Section 358.6 requires that the facility
22 shall not have an adverse impact on the neighborhood
23 because of noise. There was no mention made of
24 noise.

25 Traffic, I've just identified some
26 concerns, some of the concerns that were raised by
27 traffic or operations. And there weren't any

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1 mention made of operations except for the adequacy
2 of child play area. And we've since received some
3 information about that.

4 One other note that was made about
5 traffic about which there were some complaints had
6 to do with taxi pickups. And since the record has
7 been closed we received information that the -- from
8 the applicant that the staff would see to it that
9 people whose mobility was restricted would be
10 assisted into taxis by staff.

11 And I don't have a problem with that. I
12 think that is a minimal kind of impact. I would not
13 call it adverse.

14 I think that we run into that anywhere
15 in a city where an elderly person or handicapped
16 person has to take a little extra time to get into a
17 taxicab. Where did I -- okay, Section --

18 MR. CLARENS: Just a point of
19 clarification.

20 MS. BENNETT: Sir?

21 MR. CLARENS: Point of clarification.
22 You said after the record was closed. After the
23 record was closed, but I do request the record was
24 left open to receive that information at the request
25 of the board.

26 MS. BENNETT: Okay. And it did come in.

27 MR. CLARENS: Yeah.

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1 MS. BENNETT: I addressed Section 358.7.
2 Section 358.8 does not apply. Section 358.9 has
3 been complied with in my judgment, and those are my
4 reasons, Madam Chair, for supporting this
5 application.

6 MS. RICHARDS: Thank you. Does the
7 seconder have anything to add?

8 MS. REID: No. Basically, in our
9 previous discussions when we had deliberations
10 regarding this case, much of the things that
11 Ms. Bennett has spoken to today have been addressed.

12 I just wanted to reiterate perhaps that
13 I, too, did not see the adverse impact that was
14 proposed or presented by the opposition. And when
15 we looked into the matter and read all the
16 materials, in regard to the parking, that particular
17 area has, in my opinion ample parking on the
18 streets.

19 And there was a point raised that I want
20 to clarify regarding Cardozo High School, which is
21 right around the corner, not having any parking lot
22 to accommodate their teaching staff, and what have
23 you. This is not true. I ride by
24 there just about every day and there is ample
25 parking provided, a parking lot provided right there
26 for the Cardozo High School staff or whoever wants
27 to park there.

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1 And in addition to the taxicab pickups,
2 the applicant indicated that they were also, rather
3 than have the taxicabs stop right in front of the
4 building, have them pull into the alley right there
5 on the side and have the people be assisted down to
6 the alley to be picked up, which would alleviate the
7 traffic pileup there on the street.

8 And they also agreed to have deliveries
9 I think limited to two times a week. And they, too,
10 would be done. The trucks would come in the back of
11 the facility.

12 And a last point is that, if I remember
13 correctly, that building was an apartment building
14 that had 27 units.

15 MS. BENNETT: Seventeen.

16 MS. REID: No, before?

17 MS. RICHARDS: Seventeen.

18 MS. BENNETT: Seventeen.

19 MS. REID: Seventeen units?

20 MS. BENNETT: Uh-huh.

21 MS. REID: Okay, so -- I'm sorry. It
22 had 17 units before it was changed into this
23 facility, Miriam's House. And I think those 17
24 units were like -- I don't know if they were one-
25 and two-bedroom apartments.

26 MR. CLARENS: One bedroom. Mostly one.

27 MS. REID: I think they were a mixture

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1 of one and two.

2 MR. CLARENS: I think the testimony said
3 one bedroom, most of them.

4 MS. REID: We talked about families. If
5 I remember, we talked about families living there in
6 that building.

7 Well, to make a long story short, since
8 the amount of units that were being proposed is not
9 that different from what was already there, I would
10 not think that would be any great adverse impact
11 that would arise from this facility operating right
12 there at the premises.

13 MS. RICHARDS: And that concludes your
14 remarks in support. I will reiterate my earlier
15 opposition to approval and at this point I would
16 like to associate myself with and incorporate by
17 reference the remarks of Mr. Clarens on June 4th,
18 the transcript of which is part of the record of
19 this case.

20 And Mr. Clarens' views, which I share
21 and hold independently is entered on 358.6, the
22 adverse impact arising from the number of similar
23 facilities in the area.

24 And under that standard we have
25 established on the record to a certainty one within
26 500 feet and one that's not within 500 feet, but is
27 in very close proximity.

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1 We had like anecdotal testimony, which I
2 credit, by Ms. Brazil, as to the large number of
3 facilities serving similar populations in the
4 immediate area.

5 And like Mr. Clarens, I just take
6 judicial notice of the vast amount of information,
7 undisputed information that has come before this
8 board over a number of years as to the proliferation
9 of social welfare facilities in that neighborhood.

10 I do not regard this as an application
11 to simply, you know, add five more people to a 15-
12 person matter of right facility. I regard this as
13 -- because anything that's under -- 15 or under, we
14 can't reach. It's not within our jurisdiction.

15 So I look on this when it does come
16 before us as a proposal to establish a 20-unit
17 facility in an already overburdened neighborhood.
18 This is incrementalism at its worst.

19 The neighborhood simply cannot, you
20 know, have one more today, one more tomorrow. At
21 some point one simply has to call a halt and say
22 enough is enough.

23 MS. BENNETT: Madam Chair, may I address
24 that briefly, because I did not participate in your
25 earlier discussions.

26 MS. RICHARDS: Uh-huh.

27 MS. BENNETT: I think that the concern

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1 that Ms. Brazil raises about the concentration of
2 similar facilities one about which I'm not
3 insensitive.

4 I think, on the other hand though, that
5 the section says that the facility shall not have an
6 adverse impact on the neighborhood because of noise,
7 traffic operations, among other things, or the
8 number of similar facilities.

9 And I guess where I found Ms. Brazil's
10 testimony lacking was that she in general talked
11 about the proliferation of similar facilities.

12 But she did not, at least in my
13 understanding, talk about how the halfway house of
14 felons or the group of handicapped persons or the
15 homeless families with children and the like
16 contributed to adverse impacts that were identified.

17 What she said was, there are just too
18 many of them, that the character of the
19 neighborhood, in her judgment, was changing in a way
20 that she felt was destabilizing and not -- I don't
21 think she used that word, of the residential area,
22 and so on.

23 But none of that, to none of those
24 things, did she -- to none of the adverse impacts
25 based on noise or traffic or anything else did she
26 tie the operations of those facilities.

27 The things that she tied to the traffic

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1 problems and so on had to do with the other
2 institutions in the area: Cardozo and Walker
3 Memorial and the diversion of traffic to accommodate
4 Metro, and all of that sort of thing.

5 In fact, there was no mention made, as I
6 recall hearing the tape, of specific adverse impacts
7 being generated by those other facilities. And I
8 have been a part of cases where we did talk about
9 adverse impacts from surrounding facilities --
10 fellows climbing out of the back windows and going
11 across people's buildings and all of that sort of
12 thing. But none of that was entered into testimony.

13 MS. RICHARDS: That's right.

14 MS. BENNETT: Just the notion there were
15 just too many. And I found that -- I found that,
16 together with the fact that this facility had been
17 around for a year and had been -- apparently no
18 complaints had come from it.

19 And so, I put those together and felt
20 that there just wasn't sufficient testimony, at
21 least for me, that said that these -- that the
22 cumulative effect of these facilities was in any way
23 having an adverse impact on the neighbor.

24 MS. RICHARDS: Well, I --

25 MS. BENNETT: On the neighborhood,
26 rather.

27 MS. RICHARDS: I recognize your

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1 construction of the regulation. I have always read
2 the "Or" clause to stand independently. I have
3 never read that section as requiring a specific
4 showing of traffic or noise on account of the number
5 of similar facilities in the area.

6 And indeed the fact that numbers alone
7 may have an adverse impact is embodied in 358.3, the
8 kind of bare minimum spacing requirement.

9 And I do read that as a bare minimum.
10 And I think that it needs to be read in tandem with
11 358.6 because otherwise one could just go every 500
12 feet or every square and then put another one down.
13 And that would sort of render 358.6's final clause a
14 nullity.

15 And the very promulgation of the CBRF
16 regs recognized that CBRFs in residential
17 neighborhoods do have an adverse impact, simply by
18 virtue of being non, I guess, owner-occupied or
19 single household, you know, places.

20 That's woven into the regulatory history
21 of the order, the underlying testimony that gave
22 rise to the tiering of different impact classes of
23 different kinds of CBRFs, and the spacing
24 requirements. So I think that the rules recognizes
25 the impact simply by virtue of a CBRF's existence.

26 MS. BENNETT: Well, we're going to be
27 overturned at some point on that; you know that.

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1 We're going to have to -- we can't probably do that
2 in this case.

3 But that's one of the things that the
4 commission is going to end up changing and having to
5 change in order to make the -- our regulations
6 conform to the Fair Housing Act.

7 And so, while we can't probably deal
8 with that here, there is -- there is pending a case
9 that will be set down I guess within the next few
10 months. Because I think we're going to
11 find that that is a weakness in our regulations and
12 that has been spotted by the Justice Department and
13 that we're going to be taken to task for.

14 So, I mean, I note your concern and as
15 far as I'm concerned, you can call the question.
16 But we don't have -- my concern, too, is that we
17 don't have a proxy from the center.

18 MS. RICHARDS: Well, I'll call the
19 question and --

20 MR. CLARENS: Well, I actually would
21 like to speak.

22 MS. RICHARDS: Oh, certainly,
23 Mr. Clarens.

24 MR. CLARENS: Last time -- since last
25 time I've had an opportunity to listen to the tapes
26 again. I did that actually yesterday and the
27 difficulty I had with my previous position is the

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1 finding of a nexus between the facility itself, the
2 number of similar facilities in the area, and the
3 notion of adverse impact.

4 There is a nexus of sort in the fact
5 that just the presence of a CBRF -- a CBRF -- no,
6 CBR -- that's right -- it's a -- it could be said to
7 contribute to a neighborhood which is struggling on
8 other fronts to develop a certain cohesiveness and
9 strength, et cetera, et cetera, and stability, and
10 quality of life and that this is an issue.

11 In listening to the record again and
12 listening to the comment of Ms. Brazil and the other
13 gentleman that spoke and the rest of the record, I
14 found it more difficult yesterday to find the
15 connection and to see how this particular facility
16 in this particular location contributes adversely to
17 the neighborhood just by its presence in conjunction
18 with other facilities that might exist in the
19 neighborhood.

20 So, Madam Chairperson, probably much to
21 your dismay, I will support the motion that has been
22 made on the basis of the arguments presented by
23 Ms. Bennett.

24 I think that this board needs to draw
25 the line as to the notion of the commutative effect
26 that facilities of this kind have on neighborhoods.
27 I don't have a problem with that.

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1 I think that this particular facility
2 might be the wrong facility in which to draw the
3 line. I think that this is something that this
4 board has to do, but I think that this is the wrong
5 place to do it.

6 MR. ANSELMO: Madam Chair, I just wanted
7 to ask one other thing.

8 MS. RICHARDS: Uh-huh.

9 MR. ANSELMO: After listening to
10 Mr. Clarens' contribution to this discussion, I
11 think that what we must also keep in mind is, under
12 these circumstances with the CBRFs and the
13 situations that surround it in regard to the
14 proliferation issue and also with the negative
15 impact, I would suggest that we look very carefully
16 at the mitigation aspect of it to see, based on what
17 is being alleged as negative impact and what is
18 being done to try to mitigate that particular
19 negative impact, if in fact that is the case.

20 And I think that in a situation like
21 this where you have a facility that is there to
22 accommodate those persons who are not well off and
23 their children in their last days and they -- I
24 would suppose it's kind of like a hospice situation.

25 If the alleged impact that was presented
26 to us is mitigated by the applicant saying that,
27 okay, with the traffic I will do this, the parking I

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1 will do this, the kid's player, I will do this, and
2 look at how that their attempt to try to offset or
3 defuse the negative impact, how that bears upon our
4 decision.

5 And if that looks to us, it seems to us
6 to be adequate, then make our decision accordingly,
7 because there is no perfect world.

8 MS. RICHARDS: I'll call the question.
9 All those in favor of the motion?

10 (Chorus of ayes.)

11 MS. RICHARDS: Opposed? Aye.

12 MR. LYONS: Staff would record the vote
13 as being three to one to approve the application:
14 Ms. Bennett, Ms. Reid and Mr. Clarens to approve;
15 Ms. Richards opposed to the motion; Ms. Hinton, not
16 present, not voting.

17 The board did indicate with the motion
18 with conditions. Is the board prepared to identify
19 them?

20 MS. BENNETT: Madam Chair, I would
21 approve this. I would recommend that the conditions
22 include approval for 20 years, a maximum of 20
23 people, including women and children, maximum number
24 of employees at 16 full-time equivalents.

25 The front of the property shall be
26 landscaped and kept free of trash and debris. The
27 applicants shall meet with residents of the

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1 community periodically to discuss any concerns that
2 might be of interest to both groups.

3 Where a resident's mobility is
4 restricted, the resident shall be assisted to the
5 taxi by the staff and/or the taxi will be told to
6 wait in the alley.

7 Deliveries shall be made from the alley
8 or from an area to the rear of the building. Those
9 would be my recommended conditions.

10 MS. RICHARDS: Do not you think 10 years
11 is rather long for a fledgling undertaking? That's
12 like giving them a license to run amuck and do as
13 they will.

14 MS. BENNETT: I think that the number of
15 people, particularly women and children, who are
16 infected with the AIDS virus and who live with this
17 disease, if they live that long or because of the
18 number -- let me back up.

19 Because of the numbers of people who fit
20 this description and who are -- have been diagnosed,
21 have been diagnosed over a period of years and have
22 -- will be with us for a number of years still, I
23 think they need to know that there are places that
24 are going to be in place for a period of time.

25 And I think I would have put tighter
26 reins on this if, during the year of this particular
27 facility's existence there had been any, you know,

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1 series of complaints about its operations. And that
2 was not so.

3 MS. RICHARDS: Well, I'm not challenging
4 the need of the proposed population for the services
5 offered. But this board has either never sort of
6 tied the eleemosynary motives of an entity to the,
7 you know, setting of conditions.

8 In fact, one of the bedrocks of our
9 conditioning these kind of upright entities,
10 schools, whatever, is the recognition that you may
11 have the best will in the world and you may still
12 have an adverse impact.

13 And when we do let you go forward, we
14 tend to let you go forward with some scrutiny. I
15 mean, as we condition churches very, very rigidly,
16 and, you know, Lord knows, we hope that what they're
17 purveying is going to last a whole lot longer than
18 anything we're going to get down here.

19 MR. CLARENS: Madam Chairperson, I --

20 MS. BENNETT: Lord knows.

21 MR. CLARENS: Lord knows. Lord knows
22 that 10 years is too much. I think that, Madam
23 Chairperson, I think that this is a first time
24 application that is coming before the board.

25 The board in the class has been prudent,
26 and because of the recent precisely tied to the
27 instability of the neighborhood and its efforts to

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1 reestablish itself as a viable community, it would
2 be prudent for this board to go with a lesser amount
3 of years for approval.

4 And then asking, I know that the
5 arguments were made by the lawyer that it is placing
6 an additional burden and that there are other means
7 by which the city can monitor.

8 But we can not sort of give up our
9 responsibility to look for that for which we are
10 charged with, which is the protection of the city as
11 a civic organism from a physical point of view or
12 whatever you want to -- to define what it is that we
13 do.

14 In any case, it seems to me that it is
15 too long. I would recommend five years as it was
16 recommended by the O.P. and I would recommend the
17 board to go with the rest of the motions as
18 described by Ms. Bennett.

19 MS. BENNETT: What do you think? You
20 get to where you know less.

21 MS. REID: Well, I tend to kind of be
22 middle-of-the-road. And if you think over here
23 5 years, over there 10 years, then why not make it
24 7-1/2 years and everybody will be happy -- as a
25 compromise. That's my position.

26 MS. BENNETT: I'll go along with that.

27 MS. REID: As a suggestion.

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1 MS. RICHARDS: All right, seven.

2 MS. REID: Seven. We can cut the half
3 off.

4 MR. CLARENS: Well, the problem with --
5 my concern is with the historically, when there has
6 been opposition, when there is a question as to the
7 possibility of adverse impact, even though the
8 approval of the application implies clearly that
9 this board believes that the adverse impact is not
10 there, is not there now.

11 We don't know what it's going to be down
12 the road. It seems to be that it is the prudent
13 position for this board to take, get a chance to
14 review, see, have the community come back to us and
15 say perhaps the same arguments.

16 We have too many. Well, give us the
17 link. Give us the connection. If they cannot make
18 the connection, then they get approval.

19 So it seems to me that five years is a
20 relatively long time in the life of a city. This is
21 a neighborhood that is changing. Metro is finally
22 -- the ordeal of the construction of the Metro is
23 finally coming to an end and things are going to
24 begin to happen, hopefully, in that part of town.

25 I don't think that five years, I think
26 that seven years, it might be compromise situation;
27 but I am not necessarily happy with it. I don't

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1 know how you solve it.

2 MS. BENNETT: I don't either.

3 MS. REID: Personally, I don't have a
4 problem with the five years. I mean, obviously, the
5 idea is to give a fairly -- a point that is not too
6 far into the future and which the community can come
7 back again if they choose to, to kind of see.

8 I think what I'm hearing from
9 Mr. Clarens is that since there was so much
10 opposition, not a lot --

11 MS. RICHARDS: There wasn't so much
12 opposition.

13 MS. REID: Not a lot, but there was
14 opposition. Then maybe the board, in tempering the
15 opposition with our position should at least give
16 the benefit of the doubt and see what happens in
17 five years.

18 And if everything is fine, then there's
19 no problem. They can renew for another five years.
20 Is that what you're --

21 MR. CLARENS: Or for another 10 years.

22 MS. REID: Oh, another 10 years? But --

23 MR. CLARENS: At that point.

24 MS. REID: -- it does not feel
25 comfortable at this point just saying blanketly 10
26 years. And I, in my own personal opinion, I feel
27 that I don't think there will be a lot of negative

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1 impact or much more negative impact than what we
2 have right now.

3 Because it will be the same people and
4 they'll be doing the same thing, basically. They're
5 not making any noise. They're quiet. They're
6 inside.

7 They go back and forth to the doctor,
8 and that's it as far as we know. But there is, as
9 Ms. Bennett said, a need because today we're just
10 not certain as to when or if there's going to be the
11 cure that we're all praying for.

12 MS. BENNETT: Well, I mean, if -- I'm
13 not going to prolong this. If you say five, then
14 okay. I just think -- I think there's no need for
15 them to come back in five.

16 MS. REID: But who knows?

17 MS. BENNETT: But that's just my own
18 personal opinion and I don't -- I should have been
19 at the meeting that I was scheduled to go to about a
20 half-hour ago.

21 MS. RICHARDS: All right, so --

22 MS. BENNETT: So let me get out of here.

23 MS. RICHARDS: So let's have a quick
24 vote. Are you amending your motion?

25 MS. BENNETT: Yeah. You can do five.

26 MS. RICHARDS: All right. You're
27 seconding? Or is there a second on that?

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1 MS. BENNETT: The motion was --

2 MS. RICHARDS: On the conditions? On

3 all of the conditions?

4 MS. BENNETT: The motion had been made,

5 I think, and we were just --

6 MR. CLARENS: Yeah.

7 MS. BENNETT: -- giving back the

8 guidance --

9 MS. REID: We can go with five?

10 MS. RICHARDS: Right.

11 MS. BENNETT: -- that they needed for

12 condition, right.

13 MS. RICHARDS: Okay, call the question

14 on the conditions. All those in favor.

15 (Chorus of ayes.)

16 MS. RICHARDS: Opposed?

17 (No response.)

18 MS. RICHARDS: Okay.

19 MR. CLARENS: Very good. So who is

20 coming in to replace?

21 MS. RICHARDS: The person who was here.

22 (Whereupon, at 10:00 a.m., the meeting

23 was concluded.)

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