

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

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TUESDAY

DECEMBER 17, 2002

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The Public Hearing convened in Room 2002, South, 441 4th Street N.W., Washington, D.C. 20001, pursuant to notice, at 9:00 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE RENSHAW	Vice Chairperson (not present)
CURTIS ETHERLY, JR.	Board Member
DAVID ZAIDAIN	Board Member

ZONING COMMISSIONER PRESENT:

PETER MAY	Board Member Representing Zoning Commission
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COMMISSION STAFF PRESENT:

Sheri M. Pruitt, Secretary BZA
Beverley Bailey, Office of Zoning
Clifford Moy, Office of Zoning

OTHER AGENCY STAFF PRESENT:

John Nyarku, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Lori Monroe, Esq.
Mary Nagelhout

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

CHAIRPERSON GRIFFIS: Thank you and good morning, ladies and gentlemen. Forgive our delay. We're having some transportation problems by some of our Board members and we will then need to rearrange the schedule for the special public meeting but let me call to order the special public meeting of the 17th of December 2002 and introduce myself. I am Jeff Griffis, Chairperson today. Ms. Renshaw, Vice Chair is not with us and traveling out of town. Mr. Etherly is here. Also representing the National Capitol Planning Commission is Mr. Zaidain and representing the Zoning Commission we will have several members with us on the dias, at this point is Mr. May.

Our able staff, of course, is with us this morning, Ms. Pruitt, Mr. Nyarku, who I haven't seen yet but probably will be showing up shortly, and Mr. Moy and Ms. Bailey. With that, let us move directly into actually the second case that's listed on the morning which would be The Washington Home. We will announce that. The issue with Georgetown Day, we had scheduled that first for the public meeting. However, we don't have a quorum to vote on it and so we will wait for that and that way we can dispense of that application.

Staff, when you're ready.

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MR. MOY: Good morning, Mr. Chairman, members of the Board. The case before us this morning is Application Number 16836 of The Washington Home, pursuant to 11 DCMR 3104.1 for a special exception for an addition to an existing health care facility increasing the number of beds from 201 to 205 beds and increasing the number of parking spaces from 75 to 173 spaces under Section 219 in an R-1-B district at premises 3720 Upton Street N.W., Square 1825, Lot 818.

Basically, Mr. Chairman, we have received draft findings of fact and conclusions of law from the Applicant, number one, number two, we are also in receipt from the citizens concerned about The Home=s expansion and also proposed conditions from ANC 3F. Finally, I=d also like to note for the Board that we have also received letters from Council Member Mendleson, Monica Reeder and Jacqueline Wider that were received after the close of the record, which was October the 15th, 2002.

Neither Council Member Mendleson, Reeder nor Ms. Wider appeared at the October 15th, 2002 hearing. The submissions should be excluded from the record. However, if the Board wants to consider them in their deliberations, the Board on its own motion could or should reopen the record to accept the

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submissions and allow time for all parties to respond.

Those are Exhibits 112 and 114. So essentially, that concludes my report.

CHAIRPERSON GRIFFIS: Thank you very much, Mr. Moy. Board members, comments, concerns, opinions on the unsolicited documents that were put in as listed by Mr. Moy. It would, as he has said, let's be clear, require us opening the record and allowing time for comments. So, opinions?

COMMISSIONER MAY: As I understand it, the staff may have looked into the matter as to what was specifically requested or --

CHAIRPERSON GRIFFIS: Yes.

COMMISSIONER MAY: -- what the door was left open to and I was wondering if they might comment on that.

MS. PRUITT: We actually went through the transcript. We received two letters, one from the opposition, one from the Applicant and then one from the parties indicating that they both felt certain items of information should be struck from the record.

And those were also the only items that came in after October 5th. In reading the transcripts closely, it was determined that these were the only three that were not requested or even showed up at the hearing.

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On your public hearing notices, behind various exhibits, we have the transcript number or page number where that person spoke or that issue was addressed and we can give you copies of that if you would like.

CHAIRPERSON GRIFFIS: I think that would be good to have. However, on the specific point, then, Mr. May, do you have an opinion on opening the record?

COMMISSIONER MAY: I'm still reviewing some of the information that we received this morning, so I need another minute or two.

CHAIRPERSON GRIFFIS: Not in terms of the submissions but rather the list of submissions, is that correct, Mr. May?

COMMISSIONER MAY: Yes.

CHAIRPERSON GRIFFIS: Good.

COMMISSIONER MAY: No, I mean, it's the addendum which recasts the points that she just made, so I'm going over that.

CHAIRPERSON GRIFFIS: Very good. Is everyone in receipt of the information under question?

MEMBER ZAIDAIN: I do not believe that I am. In reviewing the file last night, I did not recall and this is the stuff that was submitted this morning?

CHAIRPERSON GRIFFIS: No, this was

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submitted prior to this morning but you may not have received it in the packets and therefore, would not have read it.

MEMBER ZAIDAIN: I can't disagree with that.

CHAIRPERSON GRIFFIS: Okay. I think it might be appropriate to err on the side of caution as it may not be clear that the Board members have all received it and then they would not have obviously read it. Looking down at the list, I think there was ample and sufficient information in the record that would have addressed some of the, if not all of the issues that would have been raised by those that submitted information. So I would be able to proceed with this and not open the record. I think it's fairly clear that what we have in the entire record is of substantial nature and has addressed numerous points and I think that will be evident in our deliberations that may proceed momentarily.

COMMISSIONER MAY: Looking over the list of unsolicited documents, we were -- you are proposing essentially not reopening the record to accept the letter from Council Member Mendleson, the further resolution of the ANC and letter from Monica Reeder and then the rest of it seems to be correspondence regarding the letters that were unsolicited.

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MS. PRUITT: Excuse me, Mr. May. I believe, you may have an older agenda but the submissions that were unsolicited were from Council Member Mendleson, Reeder and Jacqueline Wider. The ANC resolution actually you had to read through it very carefully, contained the conditions on the very last page and that=s why under findings of fact and conditions it=s considered --

COMMISSIONER MAY: Okay, the version I have of the agenda calls -- refers to that as a proposed finding.

MS. PRUITT: Right.

COMMISSIONER MAY: Okay. All right, so it=s just those three, right?

MEMBER ZAIDAIN: So it=s my understanding that the ANC=s resolution was timely filed and that=s acceptable. The other ones were unsolicited; is that my understanding? No, what I was saying was in the list of unsolicited documents, you were just discussing, the ANC 3F resolution, and that was submitted timely.

MS. PRUITT: Well, not only was it submitted timely but it was what the Board asked for, conditions.

MEMBER ZAIDAIN: Okay, yeah.

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MS. PRUITT: It just did their conditions through a resolution which we're not used to seeing.

MEMBER ZAIDAIN: Right. Well, that one was in my packet, that's why I was confused and the other ones, I don't think I received. But Mr. Chair, my opinion is this case went on for I think we had public hearings for six months on this and I think the transcript and the records is definitely complete. So I would not support reopening the record for these submissions.

CHAIRPERSON GRIFFIS: Well said, Mr. Zaidain, others?

COMMISSIONER MAY: I would agree with that.

CHAIRPERSON GRIFFIS: Very well.

MEMBER ETHERLY: Mr. Chair, if I could, let me just walk through not so much concern but let me just kind of walk through my question here that I put to staff, just to make sure we're clear. There is discussion in some of the submissions from the opponent party in the case regarding how to view these -- how to view the documents, some of the additional documents that have been submitted and in particular I'm looking at the December 10th letter from Mr. Graham, a representative of the party CCHE.

The thing that I just want to walk through

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is there is reference made in that communication to either some indications or representations in the transcript that the Board would be amenable to the receipt of additional testimony in writing given the shortness of time as we went through oral testimony over a number of different sessions.

I wanted to clarify with staff that none of the individuals who have submitted additional documentation, however, are claiming to be affiliated officially or being offered as members of CCHE. So they're not party representatives, correct?

MS. PRUITT: Correct, and they were not at the hearing on the 15th which was the only day that you could add additional testimony, written testimony because of time constraints.

MEMBER ETHERLY: Okay. With that understanding, Mr. Chair, I would be in support of your recommendation that those -- that those communications not be accepted into the record. I'm somewhat, however, on the fence with respect to the communication from Council Member Mendleson, if for no other reason that as a -- as a body of the District of Columbia Government, I might be inclined to exercise a little more forbearance and a little more consideration in that regard. I think it probably would require a

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waiver, maybe staff can comment on that.

MS. PRUITT: Actually, Mr. Etherly, we already have a previous letter --

MEMBER ETHERLY: Right, from the Council Member.

MS. PRUITT: -- in the record, a very similar letter, so this is more of a technical and procedural issue. So his information has been in the record.

MEMBER ETHERLY: Mr. Chair, I'm prepared to support your direction and move forward.

CHAIRPERSON GRIFFIS: Good, thank you. And I do think that Board members, you spoke eloquently to this fact and we have, Mr. Etherly, noting your concern, accepted per our direction testimony from persons either in favor or in opposition that may not have felt adequate time for giving personal testimony. So with that, I think we ought to proceed.

As Mr. Zaidain has stated, this was a lengthy case. I know we've spent quite a bit of time reviewing all of the record and the recent submissions regarding this case. Let me just summarize. We have two pertinent aspects to this exception regarding The Washington Home and Hospice and that is to construct the addition to the facility and also to reconfigure

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and enlarge the existing parking space.

I think what I'd like to do is run down and hear people's thoughts on the issues and the pertinent issues that came up and I think that there are quite a bit. Some are, in fact, fairly typical of nature with an application like this. Others are very specific to this.

Some of the objections that have actually been brought up in the hearing go to the nature of the reconfiguration of the parking lot and how it will effect the surrounding neighborhood and the use of the surrounding properties and the adjacent property owners. And that goes to a lot of different pieces but pertinently, I think the landscape islands that were being reconfigured and relocated. There was talk and objections to a number and loss of trees involved, all kind of embodied in the fact that they were losing a park-like setting that is now currently the condition of the property.

There were issues of this being too big for a residential area, that is the proposed layout for the parking. There is an issue of non-compliance with previous BZA orders and that goes to the number of parking spaces allowed on the surfaced parking. There was also issue of flood water run-off. I think a

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pertinent issue for our deliberation today and what I'd like to hear is first of all, how we weighed the fact of adjacent property's effect in terms of use, how is the use of adjacent properties impacted or deteriorated based on the proposed changes and if, in fact, this was approved.

Also that goes to the issue of is, as stated in the record, I believe the wording was viewshed, is a viewshed equal to use? Is a viewshed something that this Board actually has a jurisdiction to look at in terms of adverse or negative impact? There was also the piece, an issue of flooding, water runoff, water management. Clearly, in this case, there was substantial information on the new Storm Water Management Plan that would be implemented if this parking lot was to be reconfigured and enlarged.

Well, I know all of you will get into other issues, so let me just name a couple more that I found of great substance. That is, there was an issue of how the management and enforcement and use of the parking lot has been currently and then what it might be able to be. That is, if it was managed, could it become more efficient and effective? Are there people utilizing that parking lot that should not be, that is that aren't attendant to The Washington Home?

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Interestingly, in my mind, the neighborhood spoke quite extensively about wanting people to park on the street and in the residential area as opposed to enlarging. I mean, I guess taking in my mind, hopefully I'm correct, it is the balance of would you rather have a larger parking surface or would you rather have people competing for residential parking spaces and they did, in fact, fairly heavily decided they'd rather have people in the neighborhood.

However, there's testimony of traffic jams and of schools and of morning traffic in the area being very cumbersome. This would clearly, if you went in that direction, add to that condition. And finally, so that I can have others speak, I did not find an awful lot of information in opposition to the addition to the facility. Clearly we had in the past, looked at separating these and deciding on an individual matter.

It became increasingly difficult for this Board to separate the two because one is by regulations tied to the other and that is if we approve the addition to the facility we have to be persuaded that there is adequate parking and yet, here we are looking at an expansion of a parking based on -- and I'm convinced that there is an increased demand for parking for The Washington Home. I think the level of that demand is perhaps,

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still a little questionable to me. And so, let me hear from others if I haven't put everyone to sleep with my diatribe but I hope that we can hit most of these issues and others.

MR. ZAIDAIN: Well, I think I'm in the same position you are. I think all the testimony we heard in regards to the expansion as well as the government reports that we received from the Health Department and OP and DDOT, and again, like I said, the testimony, led me to support the addition but I think what we're going to struggle with is the parking. I mean, hearing testimony from people who say they would rather have it on the street was definitely different from what this Board is used to hearing, and in terms of assessing the -- where the -- with the expansion I do think that there becomes a need for expanding the parking and obviously, hearing the testimony about the traffic jams and the over-burdened streets that are having to account for this parking leads one to believe that, okay, there is a problem here and The Washington needs to expand their parking facility to some degree.

But reading through the transcript and the reports and the submittals what I struggled with was determining what is the degree of the expansion of the lot. I think we heard a lot of testimony on saying

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that what The Washington Home was seeking was an over-expansion and would cause a due harm to the neighborhood and I support that to an extent. So at this point I think -- and I wish I could come up with a solution right now, I'm not sure that I can in this deliberation but what we need to do is find that balance between protecting the neighbors and accommodating The Washington Homes operation in that sense.

CHAIRPERSON GRIFFIS: Good, and if I understand you correctly, you are convinced that, in fact, the basis of The Home has changed and that is the nature of employment, the nature of care and therefore, there is, in fact, a real increase for parking and what you're trying to do is balance that fact of how do you mitigate any potential negative impact and how do you then pick a level for effectual use.

MR. ZAIDAIN: Right, and like a lot of the other cases this Board has deliberated on in the last couple of weeks, this is a special exception that specifically sets out that that's what our job is, is to take testimony and hear from the relevant agencies on how to balance that.

CHAIRPERSON GRIFFIS: Okay.

MR. ZAIDAIN: So I'd like to hear -- I

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think the discussion here is to find a way to balance that because reading the transcript and hearing the testimony, you=ve kind of got people coming from all different angles on what the need is there.

CHAIRPERSON GRIFFIS: Okay, good. Others?

COMMISSIONER MAY: I think we=re all in the same general ball park so far at least. There doesn=t seem to be very much issue with the addition. The issue is parking and more specifically how much parking is appropriate. You know, reviewing the case and having heard all of this over this extended period, it=s clear to me that there needs to be more parking.

I mean, there=s a certain amount of parking that=s there now. They=ve restriped to get more spaces in. They=re still, you know, double parking and the parking lot is overflowing so that the demand is clearly there. Now, there is question as to whether the Home can actually do more to manage the parking in two ways; whether they can manage the demand and encourage other means of transportation and I certainly think that there=s room for improvement there. And then there=s also a question of managing the parking itself to make sure that the people who are parking there are entitled to park there or have -- you know, who actually have that privilege or should have that

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privilege and you know, you can't, in an environment like this just pave an area and expect that only the people who are allowed to park there are going to park there.

And I think that there needs to be greater control over that parking lot. I think that that's probably part of the solution for The Washington Home anyway and if they -- if there's room for them, perhaps, to not spend as much money building a bigger parking lot, maybe there's room for them to introduce some forms of control to manage that parking lot a little bit better.

On the other hand, I'm not highly sympathetic to the viewshed as a use concept. I think that that -- you know, the way the law is right now, The Home could go in and start cutting down trees with every little recourse and so --

CHAIRPERSON GRIFFIS: Not to -- if I can interrupt you, not to mention the fact that they are not build to the maximum allowable. They could actually add structures to that. Okay.

COMMISSIONER MAY: Right, that's a good point. However, the -- oh, and another point I would also make is that when it comes to the impact of traffic that may be created by a larger parking lot, I

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don't know that -- or I have not been convinced by what's been presented so far that there's -- there will be any more significant impact by a larger parking lot.

That all having been said, it's clear to me that what's being proposed is more than is needed and that if The Home were to implement a program to manage their demand and encourage other means of transportation and actually control who gets into that parking lot, that they may find that they only need 110 spaces or 120 spaces or something like that. Unfortunately, we're not the people you want to have deciding how many parking spaces are appropriate for this. So we -- I think we would be in a better position to react to a more comprehensive proposal that says that, you know -- that specifies what parking really truly is necessary, what other means should be used to manage the demand for parking.

And then finally, the last thing is that I think that once you're talking about fewer parking spaces, you're talking about greater flexibility and designing this parking lot in a way that preserves most, if not all of that park-like setting. Because, you know, right now it's just the sheer number that's driving, you know, paving that many trees out of the way. And I think that it could be designed a bit more

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sympathetically to that landscape of there were simply less spaces that had to be accommodated.

CHAIRPERSON GRIFFIS: Good. When you bring us to the importance of a park-like setting, though, Mr. May, you bring us there under the special exception that would be that it would not have -- is in compliance with the zone plan in terms of the R-1 District, in terms of a residential district. Is that how you get to maintaining a park-like setting in that I'm trying to balance your comment that you said that you're not totally convinced that the viewshed is -- has relevancy to use.

COMMISSIONER MAY: Well, you know, we're starting out from a position that the -- that this use of the property overall, not just the parking but the use of the property overall is an allowed use and that, I mean, by the mere fact that it's a special exception process, to allow its construction implies that this is an allowed use and, in fact, there's a, I remember reading, a ceiling on the number of beds that will be appropriate in an R-1 zone and it was, you know, 300 beds or something like that, far in excess of what's there now. So there's an implied acceptance of this use in R-1.

I guess, you know, when it comes to the

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desirability of the park-like setting, I think that that=s more an expression of the desire not waste what=s there. If you don=t need to park that many cars there, the parking should be based on a well-defined need, and when you don=t need to accommodate that many more spaces, you have greater flexibility in designing what=s left and I simply think that it benefits the home and the neighbors to maintain as much as possible of that existing landscape.

CHAIRPERSON GRIFFIS: Okay.

COMMISSIONER MAY: I don=t think that they=re under obligation to. I think I said it before, they could go in there and cut all those trees down or a lot of them down without anyone being able to stop them.

CHAIRPERSON GRIFFIS: But you would not disagree that in terms of your deliberation how this might be designed or enlarged or increased. What you=re struggling with is how you actually do keep it in harmony with the general purpose and intent of the zoning regulations and the zoning map and that is the zoning regulations and how it outlines the specific uses and general parameters of R-1 zone.

MEMBER ZAIDAIN: I think I agree with what you=re saying. I think we=re getting into the issue of

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aesthetics and we're talking about park-like settings and viewsheds and I'm in the same ball park with Mr. May but I got there a little bit differently. If you look at the zoning for the special exception the big issue was adequately screened parking spaces.

CHAIRPERSON GRIFFIS: Right.

MEMBER ZAIDAIN: And to me screening applies landscaping, making sure that it softens the visual impact and that's common in most zoning codes. Every time there's a parking lot built you hear screening. So that is where this whole issue of landscaping and aesthetics came into play in my deliberations. However, again, I had a hard time assessing the landscaping proposals because I did not fully agree with the level of parking that was being proposed. So it's hard to determine whether or not the impact or the mitigation was adequate when I didn't agree with the extent of the expansion in terms of the parking lot.

CHAIRPERSON GRIFFIS: Excellent. Okay, this is what I'd like to do then. Let me hear comments regarding the expansion of the facility and see if we have a consensus in the direction that we're going with that. Then secondly, let us address the --

MEMBER ZAIDAIN: Well, just let me clarify,

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you're talking about the four beds.

CHAIRPERSON GRIFFIS: I am, yes, the physical addition to the facility. And then let us address some of the specific things and how we might want to proceed regarding the rest of the special exception issues. And let me just digress quickly for a moment because there was submission and discussion on -- and it is actually in the citizens concerned about The Home expansion, Item Number 207 which spoke about the binding agreement that was done years ago and it was brought up several times in this submission and that is how can we even be entertaining a change when there was an agreement that was decided upon between the neighbors and the applicant, albeit 17 years ago.

And I think without going too far into the details of that, I think that they -- that the application before us actually is absolutely appropriate and is in the appropriate review process under special exception and I think it is encouraging that that type of agreement was made and -- but that doesn't preclude us or in fact doesn't demand that we would deny an application that's before us at this point. So let me hear in terms of the physical addition of rooms to the facility, are there any questions of concern, note of deliberation for others?

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MEMBER ZAIDAIN: Well, I do want to caution the Board on something. It seems we may be leaning towards separating the two.

CHAIRPERSON GRIFFIS: No, I don't think we are and I don't think I'm going to allow that.

MEMBER ZAIDAIN: Because I don't want to go through that experiment again.

CHAIRPERSON GRIFFIS: I want to knock down the issues under this single special exception, so if there are concerns, if there's deliberation that's pertinent, I'd like to hear that now based specifically on the facility. If not, I can take it as a consensus that we all know what we're doing with that and we can move on.

MEMBER ZAIDAIN: Right, okay.

CHAIRPERSON GRIFFIS: Is anyone persuaded by the opposition to the physical addition of the beds or would like to speak to that?

COMMISSIONER MAY: I think the only tangle with that is the parking impact that's associated with it.

CHAIRPERSON GRIFFIS: And I understand that. I'm must --

COMMISSIONER MAY: But generally speaking, no, I don't see that there's any issue with that.

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MEMBER ZAIDAIN: I mean, to me the expansion with the four beds would require some additional parking to compensate, I mean, this expansion of the use but we're dealing with more than that. So that's one reason why I had a hard time assessing it because you've got the expansion of the beds, albeit it's not huge, four beds, and that's going to require in itself some additional parking but then you've got the proposal to expand the parking at a greater extent to compensate for the traffic that it's generating now. So that's why I had a hard time separating it, but in terms of the -- in terms of the expansion of the bed, I would side with the Applicant on that. I think that it's something that is needed and I've heard a lot of testimony in support of it that I would agree with.

CHAIRPERSON GRIFFIS: Good, okay. Then let's get specific because I'd like to have a motion very shortly or a direction from this Board on how we want to proceed with this. First of all, I was very persuaded by the sections that were submitted by the Applicant and how the parking was looking to tuck behind some of the berms and make sure that those berms would provide adequate screening. I was not totally convinced that the largest berm on Upton Street was

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being sufficiently saved, let us say, and I had great concern and was fairly persuaded by James Urban who came in for the opposition about his concern first of all, for the potential need for larger retaining walls as we didn't have final plans on this nor were they required, but we didn't have final plans in terms of how this was going to be constructed.

I think his information was persuasive that the retaining walls may have quite a substantial impact on those existing trees. I think there's availability for reconfiguring the parking lot that would not have a dramatic reduction of parking spaces that could insure the longevity and could insure the utilization of the large berm on Upton and that would, in fact, as we had seen in the sections and in the photographs even, basically screens the vehicles on the surface parking.

Now, I thought another intriguing description that Mr. Urban gave of the existing condition was of a scrim screening. It's a theatrical term but the point was there wasn't a wall of trees but there was, in fact, layers of trees that established that screening in that park-like setting. I think that can also be accomplished although it will not be identical necessarily if this is approved, but it can

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be accomplished, again without having a huge reduction on the number of spaces.

A couple of issues that I think we need just to say for the record or at least I do in terms of my deliberation, there was some testimony that there was sometimes parking on the grass, parking on areas that weren=t striped, parking on areas that were not surfaced. Clearly, we cannot, do not have the jurisdiction to allow that to happen and I would underscore for myself that we would clearly prohibit that in any circumstance. It would -- it is certainly not proper and adequate use of any site.

Are there other issues of specifics that people want to address on that? Another issue that came up, there was a dollar figure constantly thrown around about planting and lighting. I was fairly -- I was very convinced by the lighting designer that we had asked -- this Board had asked her to submit actual cut sheets and diagrams. I thought those were very persuasive in terms of how they were going to light the site and how that light will be of different levels, there were ballards and also lamp posts and fixtures that would have, I think, a fairly -- a good effect in terms of its purpose, in terms of lighting and not have a negative impact in terms of having a glowing parking

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lot surface in a residential zone. I do hope that they will pick their lamping correctly so that they don't have this yellow light that shines, but that may be beyond what we need to discuss as I'm not sure I can convince everybody that my opinion of the color tone of those lamps would be -- would be good.

But let me then hear if others don't have other specific issues because clearly I could continue on. Oh, and I guess my point was, there was \$100,000.00 thrown around. There was a condition talked about making it \$250,000.00. I don't think it's appropriate for this Board to start talking about the dollar amounts. I'll be frank and honest that \$100,000.00 when it was brought up for planting and lighting seemed not to be sufficient but we're not going to pick the dollar amount. I think what we're going to do is look to, if we proceed that way, look to condition aspects that need to be fulfilled and not put a dollar amount to it.

But if others don't have specific things to comment on, I would appreciate hearing how this Board would like to continue with this today and this may be in the form of a motion. I am open to others. Okay, here's an option that we could in fact, continue. It seems that the Board is not totally convinced with the

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fact that the submission of the parking enlargement is what they are comfortable with proceeding with. Let me throw this out for your opinion and deliberation. I think we have an option that we could form a motion to approve this special exception. We could attach conditions to it.

One of those conditions, and I think -- well, we could -- one of those conditions would be a resubmission of a parking plan that specifically addressed the concerns of this board in terms of design and design features that we have found that are not in the plan as currently shown. Therefore, the motion would be conditioned on final approval by this Board of that parking layout plan, site plan.

COMMISSIONER MAY: I think that, I guess my greatest discomfort is not so much with the design as with the number of spaces and I'm confident that it would look better, the design would be better if there were fewer spaces and I would be -- it would be great to see that again, but unless there is some guidance with regard to what the appropriate number is, it's hard to simply say it should be -- you know, the design should be revised. Maybe I misunderstand that you're -

CHAIRPERSON GRIFFIS: The other way to look

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at it, Mr. May, is to say it may not be the number that you're concerned about, but you're concerned about the way it looks. So if we can identify or how -- you know, aspects that are not showing for you, be it green islands, be it more trees, be it some sort of screening. If we can identify those and let the designer go about incorporating those, if they can incorporate all those to our satisfaction and maintain the number of count that they have currently, then they solve both problems.

I think what I'm asking is, one option we have is to give criterion that this parking lot should be designed to.

MEMBER ZAIDAIN: Is your suggestion saying that they could redesign it and keep the number of spaces and it would still be acceptable?

CHAIRPERSON GRIFFIS: I don't anticipate that but I don't want to preclude. I do not think that by giving a number of parking spaces that we will in effect, give direction for an adequate design of this.

MEMBER ZAIDAIN: Well, one of the thoughts, and this is a suggestion, I'd like to hear what the Board's -- the rest of the members' responses to this. You know, there was -- someone made the comment about this Board not being the experts in having to set the

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number of spaces, and I agree with that. However, we did get a report from people who are considered the experts and that would be DDOT and they recommended that the Applicant implement a strong transportation to demand management plan to reduce onsite parking by 10 percent or 17 spaces, so they did throw out a number and I guess what my -- what I'm throwing out to the Board is do we want to use that as a baseline in terms of reduction of the spaces?

CHAIRPERSON GRIFFIS: In terms of a maximum?

MEMBER ZAIDAIN: No, the way I understand this memo is they are asking the Applicant to reduce the proposal by 10 percent --

CHAIRPERSON GRIFFIS: Right.

MEMBER ZAIDAIN: -- and suggests a way to do that through a management plan.

CHAIRPERSON GRIFFIS: Okay.

COMMISSIONER MAY: Didn't they already do that? Didn't we get a revised number that's down to 156?

MEMBER ZAIDAIN: I thought this was submitted afterwards?

COMMISSIONER MAY: Huh?

MEMBER ZAIDAIN: I thought this was

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submitted after that.

COMMISSIONER MAY: If it were 10 percent and it was after that then it would be 15 or 16 spaces.

MEMBER ZAIDAIN: Correct me if my chronology is wrong.

COMMISSIONER MAY: It=s been going on for a long time.

MEMBER ZAIDAIN: Yeah, I know.

CHAIRPERSON GRIFFIS: Right, and I think, yes, the last point that we have incorporates that.

MEMBER ZAIDAIN: Okay. Well, as I said, it was a suggestion for the Board to consider.

COMMISSIONER MAY: Well, I guess my concern is that that=s just not far enough because I think that we saw a design result of that which we incorporated that was a positive thing but I don=t think it was as far as it could go.

CHAIRPERSON GRIFFIS: So what are you suggesting, Mr. May?

COMMISSIONER MAY: Well, I want to go back and look now -- I mean, if we are going to get into the question of how many spaces are appropriate, then I want to go back and look at the initial traffic study and say -- and scrutinize those numbers because to me it still comes down to the numbers. I=m just a little

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bit uncomfortable with the notion that we would simply try to specify certain design criteria that they could meet so long as they can sandwich in the parking spaces and we approve it, then it's okay. I think that there's -- I just don't -- I know that there are ways that they could improve the design and gain some spaces, but I'm just not convinced that they can in the end have the number that they're asking for at this moment.

CHAIRPERSON GRIFFIS: So you want to come up with a number; is that correct?

COMMISSIONER MAY: I don't want to come up with a number but I think we have to set one. I really wish that the Applicant had come back to us with a more aggressive reduction in the number of spaces because I think that if they had gotten it down another, you know, 20 or 30 spaces from the 150, then a lot of the issue would go away.

CHAIRPERSON GRIFFIS: Okay, well, we need to be realistic with this and that is can we establish an actual number or are we looking actually to have further submissions on this that we would review?

COMMISSIONER MAY: Much as I hate to continue things even further, I would be open to the idea of requesting a revised submission because as it

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is right now, I'm just not ready to approve a 156 space parking lot.

CHAIRPERSON GRIFFIS: Others?

MEMBER ETHERLY: Mr. Chair, I would -- I appreciate where my colleague, Mr. May is coming from.

I would probably take the opposite tact in that I am fairly comfortable with the 156 parking space number that has been set in the Applicant's proposed findings of fact and conclusions of law. Keep in mind that as we look at this particular site, I believe the opposition and the ANC, of course, raise a very important point and that is the current park-like setting of the site and whatever outcome may be achieved here, the preservation and protection of that setting should be among the paramount concerns here.

When you look at the site as it is -- as it was originally proposed with the addition of 98 proposed spaces you were looking at a 106 percent increase in terms of the impervious or paved spaces and I believe that would include the addition. The reduction in the proposed additional parking spaces, to bring that total down to 156 clearly would decrease that number which I think is a very, very important concession.

Even with the original >98 numbers that

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were proposed, we were looking at a site in its totality that would still be a little beyond 50 percent green space which I think also additionally is a very important point to be kept in mind here. I am -- I agree somewhat with the concern that perhaps there is some additional work that needs to be done here, but I hesitate to contemplate whether this Board is the arbiter with the expertise to do that. My concern wasn't so much the ultimate number of spaces, although once again, as I said, I was very heartened to see the reduction down to 156 parking spaces. I think that moves us in the right direction.

One hundred and seventy-three definitely takes us I think closer to the limit for the property but the -- when you take into account the total green space commitment of this property as it's proposed with the addition and with the additional parking spaces to take the total to 156, and you take that in partnership with what I believe is a very aggressive and strong storm water management plan, I think at least it's my opinion that we have a proposal here which I think satisfies the standards of the zoning regulations as we're applying them but also moves to aggressively address many of the concerns that have been raised by the opposition as well as the ANC.

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I am in agreement at least with the tenor of some of the remarks that speak to the fact that the addition should indeed go forward. I understand where Mr. Zaidain is coming from with respect to the concern about not letting the cart drive the horse or the tail wagging the dog as it were but I believe clearly the challenge here is we have a facility that=s at capacity in terms of the current parking situation there. Something has to be done there. I think the impact on the parking issue from the standpoint of the addition is diminimus but clearly there=s a situation nevertheless, that needs to be remedied there in some respect and I think the Applicant has made a very strong start towards doing that.

I think with some of the conditions that are laid out in the opposition=s proposed findings of fact and conclusions of law and some of the additional items that are laid out in the Applicant=s submission, I think we can craft a workable solution on the dias today that doesn=t move us too deeply into the detail of trying to redesign this project on the fly, Mr. Chairman.

CHAIRPERSON GRIFFIS: So you=re ready to proceed.

MEMBER ETHERLY: Yes, sir, Mr. Chairman.

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CHAIRPERSON GRIFFIS: Good.

MS. PRUITT: Excuse me, Mr. Chairman, do we have a formal motion?

CHAIRPERSON GRIFFIS: Oh, not yet.

MS. PRUITT: Okay.

MEMBER ETHERLY: Mr. Chairman, I would just note for the record, I would be prepared to make an appropriate motion just for the sake of forwarding our discussion, but I don't want to do that at the -- to the detriment of my colleague and inadvertent handcuffing one. Of course, the making of a motion doesn't do that. There still would, of course, require a second --

COMMISSIONER MAY: Feel free to make the motion.

MEMBER ETHERLY: -- and discussion. With that being said, Mr. Chairman, I would just to move us forward, I would move that pursuant to 11 DCMR Section 3104.1 that we approve the special exception for an addition to an existing health care hospice facility, increasing the number of beds from 201 to 205 and increasing the number of parking spaces from 75 to 156 under Section 219 at premises 3720 Upton Street NW, in R1-B district square 1825, lot 818 and would invite a second, with the understanding that there would be

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conditions that of course would be worked out pursuant to that motion.

MEMBER ZAIDAIN: Can we discuss the conditions before we get into a second? No?

CHAIRPERSON GRIFFIS: No, it's appropriate to second the motion for discussion. All right, we absolutely have to move this on. I'm going to second the motion.

COMMISSIONER MAY: I was going to second it.

CHAIRPERSON GRIFFIS: Indeed and I think Mr. -- I appreciate your making the motion and I think what we do need to do is establish the conditions on this. Let's start with the number. It is a motion for 156. I'm hearing -- and which was what my pause, but I'm hearing that people want to establish a reduced count. Mr. May, do you want to pick that up? Is there a number that you would like to propose?

COMMISSIONER MAY: I think I'm the only one who really wants to establish a number or have a number established. I would prefer to have had it established and for some reason in my massive pile --

MEMBER ZAIDAIN: You're not the only one.

COMMISSIONER MAY: Oh, you want to have a number, too?

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MEMBER ZAIDAIN: Well, I think we -- I mean, if -- it seems to me we're moving in the direction where we need -- well, we were and now we're going to discuss this motion, maybe on a different realm now, but where we were needing some more guidance, some more information and I'm not for us just opening that up and saying, AOkay, let's start the whole process over again essentially@.

We need -- if we're going to do that, we need to give the Applicant some guidance if that's what we're going to do.

COMMISSIONER MAY: I was looking for the Applicant's original traffic study and I couldn't put my hands on mine in my massive pile of stuff, maybe if somebody else has theirs handy it would be helpful but I was looking over the OP report which sort of recaps it and it cites and I had remembered this number from before, that the peak use currently is in the neighborhood of 130 spaces. And I guess what -- you know, I would want to begin the discussion around that number because at that number we're talking about what the existing condition is and if there is a need to expand beyond that, then that's where measures to control the demand can step in.

And I think that the possibility -- I mean,

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I think in that vicinity you're talking about a much greater flexibility with the use of the land.

MEMBER ETHERLY: As the maker of the motion, just to give my colleagues some guidance in terms of -- I am amenable to looking at a reduced number. For me, once again, preservation of the green space, I think is critical here and then of course, reduction and I think the primary way you do that is reducing the increase in paved or impervious surfaces here, so I'm very comfortable in moving in the direction that moves that number downward, Mr. May.

I guess my concern is just kind of working towards what would a reasonable number be given the fact that we're at, what is the current, 98 now and there clearly is some parking pressures on site. Will an additional, what's that -- will an additional, where is my math, 32 spaces, thank you very much, Mr. May, 32 spaces be significant enough to assist in mitigating some of those pressures?

I believe there was reference in the record to the fact that prior -- in prior proceedings before this body pursuant to another application, there was an original request by The Home for 116 spaces and Mr. May, of course, is referencing the peak traffic usage in the study that was provided by the Applicant that

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looks at a peak usage of about 30 or so.

You know, once again, how do we get to a number that=s workable. I=m comfortable with something in the area of 130, 135. I think the challenge or the critical piece is going to be, perhaps, some guidance as to where that reduction is implemented in the plan.

I mean, and once again, this is where it starts to get very difficult because we=re second-guessing much more experienced experts but to the extent that reduction can perhaps take place in the portion of the site plan that -- whether it=s in the area of the proposed berm, I would agree. That would be the southern portion of the property as it proceeds along Upton Street. That would be in the vicinity of the copula there if the pronunciation of that term is appropriate.

CHAIRPERSON GRIFFIS: Copula.

MEMBER ETHERLY: Cupola, thank you, Mr. Chair. So in terms of the number, my auctioning skills are very light at this point, but do I hear 130, do I hear 130?

MEMBER ZAIDAIN: Well, let=s talk about where that number is coming from. This is coming from the Employees Survey and Transportation Analysis that was done as referenced in the OP report.

COMMISSIONER MAY: I=m not sure actually

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where I saw it now, whether it was, in fact, the OP report.

MEMBER ZAIDAIN: In my mountain of paper the first place I saw it was in the OP report.

COMMISSIONER MAY: Thank you, I'm glad you confirmed that.

CHAIRPERSON GRIFFIS: And it's also in the discussion of how there is swing parking. As employees come in, there's an overlap and that goes to a substantial amount of the parking but could actually be mitigated, perhaps by a management plan on the parking.

Okay, so Mr. Etherly, if I'm correct, you have accepted a friendly amendment to your motion that would move for approval to 130 spaces; is that correct?

MEMBER ETHERLY: That is correct, Mr. Chair.

CHAIRPERSON GRIFFIS: Okay, other conditions to be discussed at this point? And let me just verify the fact, Mr. Etherly that in your condition, it is to have the preservation of two areas, that is the large berm on Upton and the area at the corner of the end of that row in the copula and that would be where a reduction in the proposed spaces would come from in order to create that screening.

MEMBER ETHERLY: That is correct, Mr.

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Chairman, because I believe that also addresses some of the concerns that have been raised on the opposition -- in the opposition's presentation with regard to landscaping and in particular impact on some of the mature trees that are currently present on the site.

CHAIRPERSON GRIFFIS: Okay, anything else?

COMMISSIONER MAY: Yes, the other condition that I would suggest is the -- a transportation demand management program. I'm not sure how best to frame that but we need to do something to encourage The Home to address both the parking demand and the actual management of the lot and that they simply can't continue to operate with an open lot in this way.

CHAIRPERSON GRIFFIS: Okay, and when you're talking about demand, you're talking about other use of the vehicular drive into the --

COMMISSIONER MAY: Exactly, encouraging personnel, their workers to use other means because right now if free parking is a benefit, then a lot more people are going to take it.

CHAIRPERSON GRIFFIS: Okay, and noting the fact that this Board has moved in the substantial direction of conditioning orders with measurable and -- conditions that can, in fact, be looked at for compliance, are you anticipating that what's called a

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parking management plan, that would include that, to be submitted by the Applicant to this Board to DDOT for review? Is that to be done annually, each decade, weekly, or do you want to put a time frame on that?

COMMISSIONER MAY: I don=t know that this is something that needs to be done with -- and renewed in that fashion. I would think that some -- an initial submission. I mean, it=s not uncommon when matters come before the Zoning Commission for the Applicant to provide a transportation management plan that addresses issues of demand for parking and I would think that something like that could be crafted and submitted for -- and made a condition of this order and then it simply is a static document.

CHAIRPERSON GRIFFIS: I see, okay, and I think that goes to the spirit of what we=re talking about and that is to encourage, as we would anywhere in the city, encourage a diversity of uses for transportation, public transportation being of course, a mix to that, then there would not be any sort of compliance with that transportation plan inherent in our condition, Mr. May. It would just be the fact that one would be established; is that correct?

COMMISSIONER MAY: I=m not sure what means we would have to enforce it if we did.

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CHAIRPERSON GRIFFIS: Right, I just want to be totally clear that we're with open eyes going into this.

COMMISSIONER MAY: Yeah, I think that the neighborhood will be vigilant in reminding them about the requirements of their traffic management plan.

CHAIRPERSON GRIFFIS: Okay, and I think it also will serve in terms of -- I think it's beneficial for the Applicant to do it and it will serve, if this does come to fruition that they can, in fact, comply with the condition of 130 spaces that they may wish to see how they can more efficiently utilize that space and also efficiently move their employees safely and securely to and from their facility.

MEMBER ETHERLY: I would note, Mr. Chairman, just pursuant to that particular piece of guidance, that in the opposition's proposed findings of fact and conclusions of law on page 51, under Section F, Conditions for the Future, there is some language which I think is helpful. While I agree with you, be very cautious with respect to language that seeks to direct or compel behavior or compliance because of the enforcement issue, there is some language as it relates to the importance of The Washington Home working diligently to devise an Employee Transit Plan and I'm

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reading in particular from Item Number 211, Section C, that an Employee Transit Plan should be designed to reduce the number of the -- the number of employees, I'm paraphrasing, the number of Washington Home employees who drive to work in this particular version of the language it says, by at least 10 percent through such measures as encouraging car pooling, restricting of the lot to those working at and visiting The Home, using transit subsidies, instituting shuttle service, et cetera.

While I might not want to move towards including that language specifically in the motion or the conditions that we're talking about, just as for the guidance for the Applicant, I believe that a transportation plan, a management plan, should definitely include some reference to a fairly thought out policy as it relates to encouraging visitors and/or most importantly employees to use alternative means of transportation and I think that would help reduce the reliance on the spaces on site and save those for those who need them the most.

CHAIRPERSON GRIFFIS: Thanks a lot. Okay, I think that clearly the intent of that condition is well said, Mr. Etherly and we will look to that language as proposed and craft our own to make the

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specific condition.

Lastly, there was talk about the -- well, perhaps not lastly but for me, the construction conditions. I do not think it's appropriate for us nor within our jurisdiction to get into that as I did -- I was not persuaded there was substantial testimony that would move us toward that temporary condition. There are substantial regulations proposed and compliance review for construction and construction site appropriateness.

Mr. May, additional --

COMMISSIONER MAY: I would agree with that.

I do want to mention one thing about the proposed condition for parking and transit as was included in CCHE's proposed findings of fact. And the last item which was that Washington Home would be required to control access to its parking lot by gating it or guarding it during the week days 7:00 a.m. to 3:00 p.m., I think that that should probably be rephrased so that it addresses a gate or guarding requirement for employee parking as opposed to visitor parking. I think that if they want to have, you know, a handful of spaces out in front that are not gated or guarded, there ought to be flexibility in the plan to allow that.

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CHAIRPERSON GRIFFIS: That=s an interesting point. I think that=s appropriate to put in as a directive to be looked at with the resubmission of a landscape plan.

COMMISSIONER MAY: Okay.

CHAIRPERSON GRIFFIS: But I think that=s also decided that it would help the parking management if they had dedicated spaces that they could clearly see that there were employees and that there are a certain place for visitors.

COMMISSIONER MAY: Right, well, in particular what I=m thinking is that they would be able -- having a guarded lot, I think they stated earlier, was clearly going to be an expense problem for them in the long term.

CHAIRPERSON GRIFFIS: Right.

COMMISSIONER MAY: But having something that was controlled with a gate and a card, you know, that could be done for employee spaces and then you know, visitors or even visiting doctors --

CHAIRPERSON GRIFFIS: Right.

COMMISSIONER MAY: -- you know, doctor spaces, just so long as the bulk of them are controlled.

CHAIRPERSON GRIFFIS: And I think that=s an

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interesting option. I'm not sure how it lays out because clearly, as you're saying, people are coming in that wouldn't have a card pass or anything of that nature.

COMMISSIONER MAY: Right.

MEMBER ETHERLY: But you could, of course, get to that with appropriate signage or labeling of spaces as you get into the restriping issue.

CHAIRPERSON GRIFFIS: Right.

MEMBER ETHERLY: If I could, Mr. Chairman, back on the issue of the construction, I would note that in the Applicant's proposed findings of fact and conclusions of law on page 7, there are some proposed conditions or at least some language which I think is fairly consistent with what we see in the opposition's proposal regarding construction. Once again, if it's your concern that that level of specificity perhaps, might not be appropriate to include in the motion, I'm comfortable with that but perhaps just as highlighting that language that's included, once again, on page 7 of the Applicant's proposed findings of fact and conclusions of law, all construction staging would be done on site.

No work before 7:00 a.m. or after 4:00 p.m., all construction vehicles parked on site, no

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weekend work unless the two-day paving process commences, access to site only from Wisconsin Avenue along Van Ness or Quebec Streets to 37th Street and use of single-axle dump trucks for the three weeks of heavy truck traffic.

CHAIRPERSON GRIFFIS: I'm amenable to that if you want to amend your motion to add that condition. Any objections?

MEMBER ZAIDAIN: Mr. Etherly, I don't have that in front of me precisely. That's from the Applicant's --

MEMBER ETHERLY: This is from the Applicant's proposed findings of fact and conclusions of law. There are a couple of items that are included in the opposition's proposed findings of fact and conclusions of law that get into a greater level of specificity as it relates to the posting of a flagman for example, on site temporary parking for construction workers and equipment. I'd just as soon leave that to the appropriate contractor to work with, but I think what the Applicant has put forward, I think, speaks to some of the overall concerns of the opposition and that is impact of timing, construction traffic and related noise.

MEMBER ZAIDAIN: Okay. Well, one of the

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big issues that I think we need to get a consensus on is we've established a middle ground that I think the Board agrees on in terms of the number of spaces but it's clear in the zoning that one of the purviews that we need to get into here is screening of those spaces.

You'd mentioned requesting a landscaping plan, Mr. Chair. I would assume that's something that we're going to go forward with and I guess my question, and maybe it's for corporate counsel or whoever, is do we condition this vote on the acceptable landscaping plan that needs to be submitted?

CHAIRPERSON GRIFFIS: I, in fact, was assuming that that was the direction we were going. Do others have a different opinion? If we're asking for a reduction in count and that's why I was so hesitant to go straight to a number, it seemed like it was the issues of how those numbers set on the site that was of importance.

MEMBER ZAIDAIN: Right.

CHAIRPERSON GRIFFIS: And so, yes, I think it would, in fact, be with a resubmission of a parking site plan that was approvable by this Board.

MEMBER ZAIDAIN: Okay.

CHAIRPERSON GRIFFIS: Is that everyone's agreement?

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MEMBER ZAIDAIN: So in that sense, we=re reopening the record just for the landscaping plan and --

CHAIRPERSON GRIFFIS: I don=t know if we have to reopen the record for that process if it=s a condition that there=s a submission, that=s the way I=d like to approach it, that it would actually be part of the order.

MEMBER ETHERLY: Right, and that submission, of course would be consistent with the guidance that this Board is laying out through its deliberation.

CHAIRPERSON GRIFFIS: Right.

MEMBER ETHERLY: Today.

CHAIRPERSON GRIFFIS: Are we properly proceeding with that if I might ask corporation counsel? As they are nodding their heads yes, I think was can move on. Okay.

MEMBER ZAIDAIN: Well, I mean, I just want to make sure that that -- we have that process laid out and also I highly suggest the parties are served and we can at least get a response from them, just for our deliberation on the landscaping plan.

CHAIRPERSON GRIFFIS: Okay, that does -- that kind of starts to open the record.

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MEMBER ETHERLY: For my --

MEMBER ZAIDAIN: That=s why I specified the parties.

CHAIRPERSON GRIFFIS: I see, yeah.

MEMBER ETHERLY: My concern with that course of action, if I can bifurcate your comment, I love that word, the first part, I think is a very important caution and that is that of course, the reduction in spaces that conceivably would be approved by this Board isn=t going to take place in a vacuum. That it has to come back to this Board. The impact on the site, the impact on the landscaping should be taken into consideration before final approval is granted, I agree with you, especially if the concern is impact on the landscaping and park like setting of the property.

Reopening it for further comment, however, I think, you know, just runs the risk of taking us back literally not necessarily to square one, but square 10 in terms of you know, I mean --

MEMBER ZAIDAIN: Well, I don=t understand and maybe we can separate this out and vote on them separately just to get through it, but we=re requesting a landscaping -- like I said, we=ve reached a middle ground on what we think is appropriate which I think is

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the right thing to do. We're going to ask for additional information in terms of submit a plan to us which we will be the approving body on in terms of the landscaping plan and I think in terms of process, it would be appropriate to let the parties comment on it.

Now, if -- and I'm specifically saying the parties. Now, if they submit letters that are of no substance and do not -- are not productive in terms of crafting or letting us evaluate the landscaping plan in a proper way, then that's their mistake, not ours.

I'm just trying to keep this as fair as possible.

MEMBER ETHERLY: Right, and once again, my only concern with that is I don't think there's a fairness issue. I mean, once again the Board has over a number of days and hours and hours of testimony, I think we've taken adequate comment from the public, from the Applicant, on where the concerns are and where the stress points are with respect to the site plan and I just have significant concerns about reopening that process again. The issues are in front of us. We have the appropriate documentation. I think we can put it to bed.

CHAIRPERSON GRIFFIS: Okay, I think you've both been clear. Let me say that I think we ought to

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proceed and that would be with the condition that if this would be approved but it would be with the condition that a modified site plan for the parking lot that would be reduced parking to 130, that would be approved by this Board and I think we can substantially do that. I think that we can, in fact -- well, there it is. Let=s --

COMMISSIONER MAY: Yeah, I would tend to think no further comment is necessary from others. I think we make the decision and then review and approve upon.

CHAIRPERSON GRIFFIS: Okay, we have a motion and it has been seconded. We have conditions attached to that motion. The first condition is my understanding is that there would be created by the Applicant a parking management plan that would go to the management of the lot itself and to how diverse transportation would be brought to the site.

The second would be based on an approved parking lot site plan and the approval would be from this Board for the number of 130 and that does also go to -- well, those are the two conditions that I have. Did I miss any?

MEMBER ETHERLY: The landscaping.

CHAIRPERSON GRIFFIS: Well, the

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landscaping, Mr. Etherly, as you bring that up, the landscaping is incorporated in the second condition. That goes to an approved site plan. That site plan should, in fact, show the landscaping.

COMMISSIONER MAY: Did you need to reiterate the number or did I miss that number?

CHAIRPERSON GRIFFIS: 130. Okay, concerns?

MEMBER ZAIDAIN: I mean, I'm in agreement with the general direction. I would just, I guess say, you know, I think we need to be looking for a landscaping plan that is comprehensive and screens the lot adequately and tries to address some of the concerns that were raised in the testimony that we heard, just to provide that guidance.

CHAIRPERSON GRIFFIS: Good, I think that we have substantially hit that. If the Applicant had any questions we could certainly be more direct.

MS. MONROE: Mr. Chairman, I'm sorry. I'm sorry, I didn't realize you were consulting. Can you restate the motion? Is it for -- is the motion standing for 156 beds or is it now 130?

CHAIRPERSON GRIFFIS: No, the motion was amended and it is for 130. And then the second condition actually goes to the submission of the site plan that incorporates that redesign. All right, let

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me turn and see if there is anything else that we missed on that, if we have information that was submitted and any sort of proxy in this that we might need to deliberate on or at least hear.

MR. MOY: Yes, sir, Mr. Chair. Let me -- we have a proxy from Ms. Anne Renshaw.

CHAIRPERSON GRIFFIS: Without stating her vote at this time.

MR. MOY: That=s correct. What I would like to do is read you her proxy because it=s quite extensive.

CHAIRPERSON GRIFFIS: Oh, dear.

MR. MOY: First of all, her proxy vote is to approve the four-bed addition with conditions. And those conditions would include; A, a Construction Management Plan negotiated with the ANC and citizens concerned about The Home=s expansion addition to the CCHE=s findings of facts and conclusions of law on their page 52 which shows a list of construction conditions and Ms. Renshaw adding to those conditions, two conditions, two additional conditions that read one, the contractor will maintain a record of all truckers= licenses and vehicle registrations and second, approved truck routes will be via Wisconsin Avenue to the Beltway to avoid northwest district

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residential neighborhoods.

Part B to that is that a landscape plan be approved by the ANC and the CCHE for the new hospice addition site. C, exterior lighting of the new hospice wing will not intrude into the residential neighborhood and D, the four additional parking spaces for the new wing will be considered as part of the 14 plus parking spaces. And these are the spaces over the BZA approved parking lot cap of 75 already configured into the existing surface lot.

And then finally her proxy vote would be to deny the expansion of The Washington Home surface parking lot to accommodate 173 vehicles in order to preserve the BZA/ANC neighborhood approved green space and protect against the loss of more than 50 trees and 100 shrubs. Parking problems at The Washington Home can be ameliorated with the implementation of a parking management plan to include such features as control of visitor on-site parking (time, sign-in, sign-outs and vehicle tag numbers), valet on-site parking, in parenthesis (duties to include monitoring parking lot), three, enforcement of parking regulations, four, car pooling, five, employee metro check program, six, use of area parking lots/garages and seven, shuttle bus system to and from the metro and there=s two other

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words here that I can't read, period.

CHAIRPERSON GRIFFIS: Very well, further deliberation based on those additional comments and conditions? I think we've touched on most of those issues, but, yes, Mr. Etherly?

MR. ETHERLY: My only points of concern are essentially three items; the record of the truck licenses and vehicular registrations, I believe probably are captured or quite possibly are captured in particular in already pre-existing regs. That's just kind of a guess on that, but I would be hesitant to include that language. The approved truck routes, I'm also a little hesitant on trying to dig into what's going to be the appropriate route for a truck to access but most importantly, the issue of the landscape plan approval with the ANC and CCHE, I'd be concerned about kind of further complicating the ability to reach a workable plan here and that's not to suggest that there wouldn't be an opportunity for very good faith dialogue between CCHE as an ongoing entity because I don't want the point to be lost that CCHE represents the community, represents the neighbors, adjacent property owners and they will have a continuing role to play in this project at this site, not only as an organized body, but just as homeowners with an interest

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in the viability and continuing enjoyment of the neighborhood but including language that speaks to seeking approval from both of those bodies, I think, just creates a tremendous difficulty of enforcement because what happens when the approval isn't obtained.

CHAIRPERSON GRIFFIS: Okay, and I appreciate you saying that and I think we had reached a fairly good consensus or at least an understanding that we are having a submission of a new site plan to this Board only for its own deliberation and approval of that plan, which is the basis for condition number 2 of the order or the motion that is before us.

Anything else? Then if there is nothing else, let me ask for all those in favor of the motion signify by saying Aye@.

(Aye)

CHAIRPERSON GRIFFIS: And opposed?

(No response)

CHAIRPERSON GRIFFIS: Mr. -- or staff can record the vote, please.

MR. MOY: Sir, the staff would record the vote as four to approve, I'm thinking about Ms. Renshaw=s, to approve with conditions. I'll say that her vote is with the Board on the Chair=s approval with that.

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CHAIRPERSON GRIFFIS: Let me help you out, Mr. Moy. I think that would be incorrect.

MR. MOY: Okay.

CHAIRPERSON GRIFFIS: I would take correctly Ms. Renshaw=s vote would not be in favor of the motion as conditioned.

MR. MOY: Okay, in that case then, the vote would be recorded as four, one, zero.

CHAIRPERSON GRIFFIS: Good, thank you very much. We had scheduled 15 minutes for that. We=re well beyond our schedule. We still don=t have a quorum to dispense with the second of the public meeting, if I=m not mistaken.

Let=s take a three-minute break and see if we can reconfigure on how we might proceed with this and then we will call the morning session and I do appreciate everyone=s patience and we will move directly into the morning session and get this done expeditiously.

(Off the record to recess the special session at 10:47 a.m.)

CHAIRPERSON GRIFFIS: Very well. I think we=re ready to proceed.

MS. BAILEY: Mr Chairman, as you indicated, we are now in the special public meeting and this

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concerns the Georgetown Day School Application Number 16944, pursuant to 11 DCMR 3104.1 for a special exception to increase the student enrollment cap from 410 to 465 students and to increase the number of faculty staff from 60 to 95 at an existing private school under Section 206. The property is located in the R-2 District at premises 4200 Davenport Street NW (Square 1673, Lot 821).

Mr. Chairman, this case was last heard or was heard on December 10th and at that time you requested that the Applicant provide proposed conditions. Those conditions have -- those conditions came in, they were timely filed and the decision is scheduled for this morning.

CHAIRPERSON GRIFFIS: Good, thank you very much. Mr. Etherly, as you and I are the in-person voters on this, I would like to move this on very quickly and make a motion for approval of Application 16944, the Georgetown Day School, High School, and that is for a special exception to increase student enrollment from 410 to 465 and to increase the faculty staff from 60 to 95 at the existing premises. This is under Section 206 in the R-2 District and the premises is located at 4200 Davenport Street, NW. That special exception and motion for approval will be with

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conditions.

MEMBER ETHERLY: I would second that motion, Mr. Chairman.

CHAIRPERSON GRIFFIS: Thank you very much.

We had asked, Mr. Etherly, as you do well recall, proposed conditions to be submitted by the Applicant which we did receive and have reviewed. I want to take it in their order which is actually adopted conditions of a previous order as established in this case. This was a brand new special exception and therefore, a full approval on conditions need to be attached.

And I will give my comments and then you can add yours if there -- if required. First of all, the proposed condition is submitted number one is, AApproval shall be limited to Georgetown Day School High School@. I would like to strike that as a condition as I do not believe we have any jurisdiction to tie our orders to user but rather to the land and this is a special exception for a high school.

Secondly, number 3, reads, AThe high school shall have a maximum of 95 full time equivalent faculty and staff members@. For the record, a full time equivalent would be the equal of two part time employees, so for clarification I want to make sure that that=s also your understanding, that one full time

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would, in fact, equal two part time that would -- so that is how I read that definition under that condition.

I think we do not need to modify but would make clarification for the record, in the reporting that=s being laid out in the conditions and the communication with the community, which is condition number 5 and that reads and begins, AAt the beginning of each school year and no event later than October 15th, the school is to provide@, and I now will not read, but evidence and documentary evidence that indicates their compliance with the conditions and terms of the order.

That=s clear that it=s all the terms and all the conditions of the order. I would, as just -- note for the record and direction, which I think is my understanding and will be the Applicant=s, that goes also to the condition number 11, which is a Traffic Management Plan and that goes to the terms of that management plan and some of the discussions and how adequately that is being fulfilled.

Addition to condition 13 as discussed in the hearing and it was asked to the Applicant and they did not state any aversion to it, but condition 13 deals with special events and I would add to the end of

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that that adequate notice of such service, and they're talking about the shuttle bus service, adequate notice of such service will be provided with announcement of the event. I mean, basically the folks coming to the event ought to know that that's usable and that is all I have in terms of conditions at this point.

Did you have any notes at this point?

MEMBER ETHERLY: No additional notes, Mr. Chairman. I am comfortable with your conditions.

CHAIRPERSON GRIFFIS: Okay. Let me then read a statement that has been submitted to me by Ms. Mitten, who was the Zoning Commission representative on this case and it reads, AI continue to be frustrated with Applicants who ignore the conditions in zoning orders because those conditions are the only means by which communities are protected from adverse impacts. In fact, in this case, if the school had enforced the conditions of the existing order related to parking, they would not have the extent of ill will among immediate neighbors that currently exist. Despite my frustration, I believe that compliance not punishment is the most important goal and we have an applicant before us who appears to sincerely desire to be in compliance with our order, albeit with some modifications@. I will leave the last sentence of this

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statement until we call a vote.

Any other discussion on that?

MS. BAILEY: Not on that, Mr. Chairman, but I should also note that we have a proxy from Mrs. Renshaw and she did also indicate some notes to the conditions, condition number 4 and condition number 5.

CHAIRPERSON GRIFFIS: Are you prepared to read that?

MS. BAILEY: Certainly. Condition number 4, line 3, she indicated the sentence should read, AThe school should attend any additional need necessary by the school and/or the ANC to address issues and concerns raised by the community@. And on Number 5, Condition Number 5, line 2, the sentence should read, AAt the beginning of each school year and in no event later than October 15th and again in the spring prior to the meeting, the ANC/the school shall provide@, and continues with the sentence.

CHAIRPERSON GRIFFIS:

Okay, are there other comments that she has?

MS. BAILEY: She has a note, Mr. Chairman. Part of it I can make out but a part of it, I cannot. AThe spring data should focus in part on the Traffic Management Plan, number of students in violation and fines, issues@ -- I can=t make out the rest of that sentence. This information was faxed and that portion

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was cut off.

MEMBER ETHERLY: Mr. Chairman, if I may, I just want to inquire of staff, was there an additional page to the proxy submission from Mrs. Renshaw that included additional --

MS. BAILEY: Certainly, I just turned the page and I saw it. A Condition number 7, recommend that the 42nd Street entrance be maintained as pickup -- at pickup time also. Condition number 13, recommend that the Board cap the number of special events held at GDS per school year in order to reduce the potential for weekend and/or late evening parking impacts on the surrounding neighbors. The Traffic Management Plan, page 2, number I, add to second and third violations, a student shall not be allowed to drive to school until all fines are paid.

Fifth violation, suspension and/or expulsion will probably never happen over a parking violation. That's the end of her comments, Mr. Chairman.

CHAIRPERSON GRIFFIS: Okay. A quick comment on that, Mr. Etherly in the last piece in terms of students shall not be allowed to drive to school until all fines are paid, it seems to me redundant as they're not allowed to drive to school under the

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conditions that we have in the Traffic Management Plan.

MEMBER ETHERLY: I'd agree, Mr. Chair.

CHAIRPERSON GRIFFIS: And clearly if they're fined, then they are not the ones that are approved drivers to the school. Other than that, I do not feel persuaded that we need to encumber the conditions with some of those -- with any of those details. I think we have hit the point in the spirit that Mrs. Renshaw is actually leading to and I think noting and sitting with her and I think I agree with it, that proper and adequate communication between the school and the community is an important piece and also some sort of level of measurement of compliance but then also the ability to communicate if problems arise during the continued operations. So that being said, do you have any comments or would you like to incorporate any of those comments in your deliberation or to the motion?

MEMBER ETHERLY: No, I would agree with your position, Mr. Chairman. You will recall at the hearing that the Applicant through the testimony of Sergeant Wilson, who serves as the school security head, was quite detailed and rather compelling in terms of the steps that they are implementing to insure that parking rules and restrictions are followed and adhered

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to, not only, of course on the subject property, but also the perimeter and adjacent neighborhoods and communities and I think with that continued level of commitment, many of the parking problems and/or concerns that may have been raised or eluded to can be satisfactorily addressed.

CHAIRPERSON GRIFFIS: Excellent. I appreciate you bringing that up and that is the Traffic Management Plan letter G, which the school shall employ security personnel to patrol the streets, et cetera. That was an impressive testimony. One of our Board members was most specifically moved by it but we don't need to recount that. Anything else then that you can think of?

MEMBER ETHERLY: No.

CHAIRPERSON GRIFFIS: Very well, then I would ask for all those in favor to signify by saying Aye to the motion before us on the table with the amended conditions.

MEMBER ETHERLY: My apologies, Mr. Chairman, if we could delay the motion just for a moment, I wanted to make sure that we took into account the DOT report regarding if -- I just want to clarify with respect to the motion what's our stance with regard to 42nd Street. DOT, you recall, did not

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support modification of the student=s pickup and drop-off outside the school grounds because it would create congestion and a safety hazard while on 42nd Street. I noted that recalling Mrs. Renshaw expressed a desire to see some additional monitoring done out there and I just wanted to confirm.

CHAIRPERSON GRIFFIS: Well, I think the issue goes to the fact of initially when this was brought before us, there was the question from the Applicant bringing up whether we would approve pickup and drop-off on 42nd Street. That was removed from the application and for our deliberation. If you=ll note condition 7 and 8 talked to vehicular traffic coming from the site shall use the Davenport Street entrance. Pedestrian access only will be permitted at 42nd Street, which seems absolutely appropriate.

MEMBER ETHERLY: I see it, thank you.

CHAIRPERSON GRIFFIS: And which will be monitored from 7:45 to 8:15, which is the opening of school. And then condition 8 talked to all pick-up and drop-off of students occurring on school grounds.

MEMBER ETHERLY: Thank you for reminding me of that language, Mr. Chairman. I would be prepared to return to your motion and --

CHAIRPERSON GRIFFIS: All those in favor

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signify by saying AYe@.

(Aye)

CHAIRPERSON GRIFFIS: And opposed?

(No response)

CHAIRPERSON GRIFFIS: Let me read as a vote proxy the last sentence in Ms. Mitten=s submission regarding this case reads, AI support the special exception request and thank the ANC for effectively brokering this positive outcome@.

MS. BAILEY: Mr. Chairman, we are also recording Mrs. Renshaw as in support of this motion as well.

CHAIRPERSON GRIFFIS: Frankly, I=m not going to be the judge of that. The issue comes in, her proxy is certainly in support of the special exception.

The issue and I think we can record it at that point, with review from corporation counsel, in that we did not adopt her specific language for conditions and yet her vote was and proxy was for approval with those conditions as she has stated.

So that=s all I know.

MS. BAILEY: Mr. Chairman, you kind of leave me hanging out here, but we=ll try this. The vote is recorded as three, zero, two, to approve that application. Motion made by Mr. Griffis, seconded by

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Mr. Etherly. Mr. Zaidain is present but did not participate. Ms. Mitten is in support of the motion and Mrs. Renshaw supports the motion; however, her conditions were not adopted.

CHAIRPERSON GRIFFIS: I think that would be sufficient and perhaps if we have other legal opinions we can rectify the record on this. In which case, the motion passes; is that correct?

MS. BAILEY: Yes, Mr. Chairman.

CHAIRPERSON GRIFFIS: Very well.

MS. BAILEY: Is this a summary order, Mr. Chairman?

CHAIRPERSON GRIFFIS: I don=t recall if the Applicant had requested a summary order. I don=t have any objection to that and I think it=s appropriate at this time. Mr. Etherly, any objection?

MEMBER ETHERLY: No objection, Mr. Chair.

CHAIRPERSON GRIFFIS: Very well, then we=ll make it a summary order. Anything else we need to deal with in the morning session? Fabulous, thank you. We can adjourn the morning session and simultaneously the special public meeting and also the morning agenda and we are going to be taking a 20-minute lunch break and we will resume with our afternoon schedule.

(Whereupon, at 2:14 p.m. the hearing in the

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above entitled matter concluded.)

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