

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

September 30, 2003

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

|                     |                  |
|---------------------|------------------|
| GEOFFREY H. GRIFFIS | Chairperson      |
| CURTIS ETHERLY, JR. | Vice Chairperson |
| RUTHANNE G. MILLER  | Board Member     |
| DAVID ZAIDAIN       | Board Member     |

ZONING COMMISSION MEMBERS PRESENT:

|                 |              |
|-----------------|--------------|
| CAROL J. MITTEN | Chairperson  |
| JOHN G. PARSONS | Commissioner |

OFFICE OF ZONING STAFF PRESENT:

|                 |                  |
|-----------------|------------------|
| BEVERLEY BAILEY | Office of Zoning |
| CLIFFORD MOY    | Office of Zoning |

OTHER AGENCY STAFF PRESENT:

|                      |                    |
|----------------------|--------------------|
| MAXINE BROWN-ROBERTS | Office of Planning |
| KAREN THOMAS         | Office of Planning |

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|                      |                    |
|----------------------|--------------------|
| STEPHEN MORDFIN      | Office of Planning |
| TRAVIS PARKER        | Office of Planning |
| JENNIFER STEINGASSER | Office of Planning |

D.C. OFFICE OF CORPORATION COUNSEL:

PATRICIA GALLAGHER, ESQ.  
SHERRY GLAZER, ESQ.  
MARY NAGELHOUT, ESQ.

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| U.S. Department of State                            |             |
| 3507 International Place, N.W.                      |             |
| Washington, D.C. 20008                              |             |
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P-R-O-C-E-E-D-I-N-G-S

(9:30 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. I would ask that the hearing please come to order. This is the 30th of September Public Hearing of the Board of Zoning Adjustments of the District of Columbia.

My name is Geoff Griffis, Chairperson. Joining me, of course, is Mr. Etherly, the Vice Chair, also Ms. Miller. Representing the National Capitol Planning Commission with us for the FMBZA case is Ms. Gallagher, and representing the National Park Service will be Mr. Parsons. He is on his way and expected any second now.

We figure we will dispense with our openings and get everyone settled and comfortable, and Mr. Parsons will be here to fill out our Board. Copies of today's hearing agenda are available to you.

They are located at the table where you entered into the hearing room.

I would note, and have everyone please understand that all hearings are being recorded before the Board of Zoning Adjustments. Therefore, we ask several things. First of all, we ask that people refrain from any disruptive noises or actions in the

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1 hearing room during our proceedings.

2 Also, very importantly, if you are going  
3 to address the Board, you will need to fill out two  
4 witness cards. Witness cards are located at the table  
5 where you entered into, and also the table -- well,  
6 they're usually on the table in front of us, but there  
7 are probably plenty of copies as you enter into the  
8 hearing room. Those two witness cards go to the  
9 recorder, who is sitting to my right, prior to coming  
10 forward.

11 Then, please come forward and have a seat,  
12 make yourself comfortable. You will need to speak  
13 into a microphone. That microphone will need to be  
14 on. It's important to understand this because any  
15 comments made out in the hearing room will not be on  
16 the record. The Board must deliberate, of course,  
17 solely on the record, and I will cover that.

18 The proceedings for the Foreign Missions  
19 Board of Zoning Adjustment, of which is the first case  
20 in the morning, will be as follows. First of all, we  
21 will have statement and witnesses of the Applicant.  
22 Second, we will have government reports attendant to  
23 this case. Those include those from the Secretary of  
24 State and also the Office of Planning on behalf of the  
25 Mayor of the District of Columbia.

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1 Third, we will have reports or  
2 recommendations for other public agencies that may  
3 have put in submissions to the case. Fourth would be  
4 the report of the Advisory Neighborhood Commission.  
5 Fifth would be persons in support of the application.

6 Lastly, we will have persons in opposition to the  
7 application.

8 There are no parties in a rulemaking  
9 session, of which this is, before the Board of Zoning  
10 Adjustment.

11 The record will be closed at the  
12 conclusion of each case except for any material that  
13 this Board sees fit to request, and we will be very  
14 specific on what is to be submitted and when it is to  
15 be submitted into the Office of Zoning. After that in  
16 receipt, of course the record would be finally closed  
17 and no other information would be allowed into the  
18 record or accepted.

19 The Sunshine Act requires that the public  
20 hearings on each case be held in the open and before  
21 for public. This Board, however, may, consistent with  
22 its Rules of Procedure and the Sunshine Act, enter  
23 into executive session during or after a hearing on a  
24 case. That would be for purposes of reviewing the  
25 record or deliberating on the case.

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1           The decision of the Board, in this  
2 legislative proceedings, must be based exclusively on  
3 the public record, and that goes to the importance of  
4 saying everything that needs to be on the record into  
5 the microphone so that it will be part of our basis  
6 for deliberation.

7           To avoid any appearance to the contrary,  
8 that is, contrary to deliberating solely on the  
9 record, we ask that people present today not engage  
10 Board members in any type of conversation that would,  
11 in fact, be off the record.

12           At this time, the Board will consider any  
13 preliminary matters. Preliminary matters are those  
14 which relate to whether a case will or should be heard  
15 today, such as requests for postponements,  
16 continuances, or withdrawals, or whether proper and  
17 adequate notice of a hearing has been provided.

18           If you are not prepared to proceed with a  
19 case on the morning agenda, or if you believe that the  
20 Board should not hear any case on the morning agenda,  
21 now would be the time to bring up such a preliminary  
22 matter. I will take an indication of preliminary  
23 matters by coming forward and having a seat at the  
24 table in front of us.

25           I will first ask, and also wish a very

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1 good morning to Ms. Bailey from the Office of Zoning,  
2 and also Mr. Moy. Ms. Glazer, representing  
3 Corporation Counsel, is with us. Ms. Bailey, do we  
4 have any preliminary matters before the Board at this  
5 time?

6 MS. BAILEY: Mr. Chairman and everyone,  
7 good morning. Yes, we do, and that is concerning  
8 Application 17059 of Sam Homes, LLC. There was a  
9 request for continuance at this hearing, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Very well. Yes,  
11 sir?

12 MR. ELLIS: Good morning, Mr. Chair. My  
13 name is Craig Ellis. I am counsel for Sam Homes, LLC.

14 We'd be asking for a postponement. We have, after  
15 meeting with the ANC, we are changing our application.

16 Actually, we will be reducing the amount of relief  
17 that we will be requesting from the Board, and we  
18 would need time to resubmit our new set of plans.  
19 We'd ask that we would receive a postponement in this  
20 matter.

21 CHAIRPERSON GRIFFIS: So, you're  
22 fundamentally changing the application?

23 MR. ELLIS: Yes, but --

24 CHAIRPERSON GRIFFIS: Are you changing any  
25 of the relief that's sought?

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1 MR. ELLIS: No, the relief is actually,  
2 it's the same relief but a reduced amount.

3 CHAIRPERSON GRIFFIS: Okay, then I'm just  
4 making that clarification to see if we actually had to  
5 re-advertise.

6 MR. ELLIS: No, we do not have to re-  
7 advertise.

8 CHAIRPERSON GRIFFIS: Okay. I reviewed  
9 preliminarily the schedule for a continuance on this  
10 case, and note that we don't have anything available  
11 until the 16th of December. Do you have a date in  
12 mind after that, or would the 16th of December  
13 suffice?

14 MR. ELLIS: The 16th of December should be  
15 sufficient.

16 CHAIRPERSON GRIFFIS: Okay. Ms. Bailey,  
17 does that still work?

18 MS. BAILEY: In the morning, Mr. Chairman?

19 CHAIRPERSON GRIFFIS: Yes, I believe we  
20 can make it the third case in the morning.

21 MS. BAILEY: That would work, Mr.  
22 Chairman.

23 CHAIRPERSON GRIFFIS: Okay. Very well,  
24 and I think we ought to take a note that that would  
25 fill our morning schedule on the 16th so that I don't

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1 make any other unwarranted schedulings on that day.

2 MS. BAILEY: Mr. Chairman, there is  
3 another brief matter on this. This application was  
4 advertised for 1340, 1342, and 1332-1/2 Montague  
5 Street, N.W. 1332-1/2 is not a correct address for  
6 this property. It should be 1342-1/2, so the record  
7 needs to be changed in that regard.

8 CHAIRPERSON GRIFFIS: Very well. Is that  
9 understood?

10 MR. ELLIS: That is correct, Your Honor.  
11 it should be 1342-1/2.

12 CHAIRPERSON GRIFFIS: Excellent. Well,  
13 what we'll look for in the new submissions that that  
14 would be corrected for the record. I understand that  
15 you may have listed an address that somebody actually  
16 resides at. We don't want that complication bogging  
17 down any of the hearing. Whether that be true or not  
18 it doesn't matter, but we obviously need the same, or  
19 the corrected address.

20 Okay, everything else clear?

21 MR. ELLIS: That's good.

22 CHAIRPERSON GRIFFIS: The 16th of  
23 December, third case in the morning.

24 Any other preliminary matters for the  
25 Board at this time?

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1 MS. BAILEY: No, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Very well. Why  
3 don't we call the first case in the morning, then?

4 MS. BAILEY: And that is Application No.  
5 17051, Application of the Republic of Tajikistan,  
6 pursuant to 11 DCMR 1002 to locate a chancery in the  
7 R-5E District at premises 1005 New Hampshire Avenue,  
8 N.W., ground and second floors. The property is  
9 located in Square 53 on Lot 11.

10 Mr. Chairman, as this is a rulemaking  
11 proceeding, there are no witnesses that are sworn in.

12 CHAIRPERSON GRIFFIS: Thank you. Ready to  
13 proceed.

14 MS. GIORDANO: Good morning, Mr. Chair,  
15 members of the Board. This application involves the  
16 establishment of a new chancery for the Republic of  
17 Tajikistan. With me this morning are the First  
18 Secretary for the Chancery, Mr. Nazir and Mr. Gross,  
19 from my office, who is an urban planner and has been  
20 accepted by this Board as a witness before in urban  
21 planning. He was primarily responsible for the  
22 preparation of this application. He will be assisting  
23 Mr. Nazir.

24 I just wanted to note, and --

25 CHAIRPERSON GRIFFIS: Let me interrupt

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1 you, Ms. Giordano. I'm sorry. Are you requesting  
2 that Mr. Gross --

3 MS. GIORDANO: Yes, please.

4 CHAIRPERSON GRIFFIS: Be an expert witness  
5 this morning?

6 MS. GIORDANO: Be qualified as an expert.

7 CHAIRPERSON GRIFFIS: Okay, and the  
8 submission of the resume for this record?

9 MS. GIORDANO: Mr. Gross has been accepted  
10 as a --

11 CHAIRPERSON GRIFFIS: Indeed.

12 MS. GIORDANO: But I can certainly follow  
13 up with a resume.

14 CHAIRPERSON GRIFFIS: Why don't we do that  
15 and put it in.

16 MS. GIORDANO: All right.

17 CHAIRPERSON GRIFFIS: Now, are there any  
18 questions of the Board of Mr. Gross and his  
19 background, expertise?

20 Any objections? All right, I'll take that  
21 under advisement, my decision to make and bestow the  
22 expert witness status on Mr. Gross.

23 Let's proceed.

24 MS. GIORDANO: Thank you. First I wanted  
25 to note and extend the apologies of the ambassador,

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1 who is not able to be here this morning. He is at the  
2 UN this morning. The president of Tajikistan is at  
3 the UN, and the ambassador is giving a speech before  
4 the General Assembly.

5 CHAIRPERSON GRIFFIS: We could have all  
6 moved to New York for this if you wanted. Okay.

7 MS. GIORDANO: In any event, Mr. Nazir is  
8 here, and I'm going to ask him to just briefly  
9 summarize how this property is going to be utilized.  
10 It is a mix of residential and chancery use. It's a  
11 fairly straightforward application. I think all the  
12 details are in our submission. Mr. Gross is here to  
13 answer any questions as well.

14 I just note that the application has the  
15 support of the State Department, as well as the ANC,  
16 and we have a letter from Ms. Miller in the record.  
17 It's a unanimous support from the ANC. I think I'm  
18 going to have that framed, because that's a rarity in  
19 my profession to get something from Ms. Miller that's  
20 that positive.

21 So, anyway, without further ado, I'm going  
22 to have Mr. Nazir to explain the use of this chancery.

23 CHAIRPERSON GRIFFIS: Good, and let me  
24 just say, I think it's appropriate to be concise and  
25 actually just hit the highlights. I think the

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1 application and the record is sufficient and lays out  
2 all the details that are needed, but we welcome you  
3 here this morning.

4 MR. NAZIR: Thank you. Good morning, Mr.  
5 Chairman.

6 The Republic of Tajikistan is a former  
7 Soviet Union republic. We just became an independent  
8 in 1991. Since September 11, 2001, the Republic of  
9 Tajikistan is a strong ally of the United States in  
10 the war against terrorism.

11 Last year, during first visit of the  
12 President of Tajikistan to the United States, the  
13 government of Tajikistan decided to open an embassy  
14 here in Washington. In order to create a chancery, we  
15 bought the property at 1005 New Hampshire Avenue, N.W.

16 We request approval of our application for its  
17 chancery use.

18 This is a three-story townhouse plus  
19 English basement. We are going to have mixed use.  
20 The ground floor and the second floor as a chancery,  
21 and the other floors as a residence. The basement  
22 apartment and top floor will be used as a residence  
23 for me and the second secretary of the embassy.

24 The only officers to the ambassador are myself and the  
25 second secretary.

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1 Traffic to the site will be minor because  
2 mostly our business is conducted by fax, by e-mail, or  
3 by mail. Few visitors will arrive by taxi or by  
4 chauffeur driven car. Also, I would like to inform  
5 you that there are no many Tajiks which live in D.C.  
6 area.

7 The historic townhouse will be well  
8 maintained. The Historic Preservation staff has  
9 approved our propose for small flag and flagpole.

10 We are pleased to have the support of the  
11 Department of State, the Office of Planning, and the  
12 support of the Advisory Neighborhood Commission 2A.

13 We have been leasing an office, a little  
14 premises which is just 610 square feet at 1725 K  
15 Street. We look forward to have your support to  
16 create a chancery in 1005 New Hampshire Avenue.

17 Thank you for your consideration.

18 CHAIRPERSON GRIFFIS: Good, thank you very  
19 much.

20 There was attendant to the application the  
21 question of parking, and there's two points to that.  
22 First of all, probably more of a procedural matter.  
23 This is a contributing building in a historic  
24 district. Was that certified by the State Historic  
25 Preservation officer?

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1 MR. GROSS: We have not specifically done  
2 that, Mr. Chairman. It's in the regulations.

3 CHAIRPERSON GRIFFIS: What's in the  
4 regulations?

5 MR. GROSS: The waiver of parking for a  
6 historic building.

7 CHAIRPERSON GRIFFIS: Right, but wouldn't  
8 that have to be based on the substantiation that it's  
9 a historic building?

10 MR. GROSS: Oh, yes. It's a contributing  
11 building.

12 CHAIRPERSON GRIFFIS: How do we know that?

13 MR. GROSS: I believe it's listed in the  
14 Snyder Triangle documentation.

15 CHAIRPERSON GRIFFIS: Okay. If you  
16 wouldn't mind --

17 MR. GROSS: If you want something on the  
18 record, we can have that.

19 CHAIRPERSON GRIFFIS: As I say --

20 MS. GIORDANO: Right. We have not  
21 followed through on that, but we --

22 CHAIRPERSON GRIFFIS: It's absolutely  
23 believable. I mean, we can see the pictures. We know  
24 it's in -- if you would just put in just to complete  
25 the record that it actually is, whether it's the

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1 certification by the SHPO or listing, whatever it is.

2 MR. GROSS: Okay.

3 CHAIRPERSON GRIFFIS: We'll get that in.  
4 The second question attends to the parking, of course,  
5 which I don't see any difficulty in terms of granting  
6 the waiver once we receive that information.

7 There's a statement in your application  
8 that this isn't amenable. It's doesn't work well for  
9 large social functions. What is the layout on the  
10 first floor? Are there offices on the first floor?  
11 Is there a large room?

12 MR. NAZIR: We are going to use first  
13 floor as an office for the first secretary, for  
14 myself, and as a place where waiting, as a waiting  
15 room for the visitors which will come to the embassy.

16 CHAIRPERSON GRIFFIS: Okay, and the  
17 waiting room is half the size of the first floor?  
18 What size is it?

19 MS. GIORDANO: Do you have any idea? I  
20 don't know the answer to that question, but I think  
21 what the first secretary is saying is that the first  
22 floor is carved up into separate rooms. So, it would  
23 not be very conducive to social functions.

24 The ambassador lives in the Watergate  
25 complex, and apparently that space that he resides in

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1 is more conducive to social functions, and he would  
2 hold them in his residence.

3 And also, there are occasions that space  
4 is leased out. In fact, the embassy recently had a  
5 function in Georgetown for Independence Day, I believe  
6 it was.

7 MR. NAZIR: Let me, social functions will  
8 not occur there.

9 CHAIRPERSON GRIFFIS: Right.

10 MR. NAZIR: As we have done, we will have  
11 small events at the ambassador's residence, which is  
12 not far from that property, but in case of big social  
13 events, we will arrange some other places, as we have  
14 done forever independently.

15 CHAIRPERSON GRIFFIS: And I understand  
16 that, and that's all in your submission, and that's  
17 very clear.

18 MR. NAZIR: Thank you.

19 CHAIRPERSON GRIFFIS: However, I still  
20 don't have an understanding of what the layout, as  
21 plans weren't submitted into the application. How  
22 many people comfortably can come and wait? Can you  
23 have 50 people come in and be comfortable, all have  
24 chairs and sit and wait to get their passports?

25 MS. GIORDANO: Do you know how many chairs

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1 are going to be in the waiting room? Chairs, couches?

2 MR. NAZIR: No, but it's a big hall in the  
3 first floor. It's a big hall. It can be good and  
4 enough waiting place, but we don't have -- as I told  
5 you, now we have only 610 square feet in K Street.

6 CHAIRPERSON GRIFFIS: Right. Can 20  
7 people comfortably wait?

8 MR. NAZIR: No, no. You know, we have  
9 been working there for eight months. We haven't -

10 MS. GIORDANO: At K Street.

11 MR. NAZIR: Yes, we haven't had, how  
12 should I say, case wherein people come a lot.

13 MS. GIORDANO: Do you know if there is a  
14 floor plan that was part of the sales brochure? I  
15 remember seeing the sales brochure. Was there a floor  
16 plan in it, or pictures of the first floor?

17 MR. NAZIR: I think it was.

18 MS. GIORDANO: Okay. I think we can  
19 submit some photographs, if not a floor plan.

20 CHAIRPERSON GRIFFIS: Are you doing a lot  
21 of alterations in the structure?

22 MR. NAZIR: No.

23 CHAIRPERSON GRIFFIS: So you're keeping  
24 the dining room, the den, the living room that's an  
25 open floor plan?

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1 MR. NAZIR: Yes. We are not going to have  
2 any big reconstruction. It will be just painting some  
3 places.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. NAZIR: It will not be big  
6 reconstruction.

7 CHAIRPERSON GRIFFIS: All right. Well, it  
8 looks pretty nice for a big function, but I guess  
9 we'll take your word for the fact that that's not  
10 where it's going to happen.

11 All right, let's continue on.

12 MS. GIORDANO: That concludes our  
13 presentation, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Very well. Any  
15 other questions from the Board?

16 Let us move on to other government reports  
17 and to the application. Thank you very much. Do we  
18 want to hear from the State Department first, and then  
19 I'd like to go to the Office of Planning and then the  
20 ANC.

21 MR. MLOTEK: Good morning, Mr. Chair and  
22 members of the Board. I'm Ron Mlotek, legal counsel  
23 of the Office of Foreign Missions of the U.S.  
24 Department of State. As it our custom, we would like  
25 to defer to the District of Columbia government, the

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1 Office of Planning, representing the Mayor. We think  
2 the mayor should be heard from first before ourselves.

3 CHAIRPERSON GRIFFIS: Thank you very much.

4 It's always nice to hear the federal government  
5 saying that.

6 MR. MLOTEK: If that is acceptable.

7 CHAIRPERSON GRIFFIS: Let's do that.

8 MR. MLOTEK: Well, it is a zoning and land  
9 use matter, so we think it's only proper.

10 CHAIRPERSON GRIFFIS: I appreciate that,  
11 and that's very civil. Let's do move to the Office of  
12 Planning, who is representing the Mayor of the  
13 District of Columbia at this time, and hear their  
14 report.

15 MS. BROWN-ROBERTS: Good morning, Mr.  
16 Chairman and members of the FMBZA. I am Maxine Brown-  
17 Roberts from the Office of Planning.

18 The Republic of Tajikistan proposes to  
19 place its chancery in the first and second floor of  
20 the proposed building and retain the third floor and  
21 the English basement apartments for employees of the  
22 chancery. Chancery uses are allowed in the District  
23 in accordance with the requirements of the Foreign  
24 Mission Act and Section 350.3 and 1001 of the Zoning  
25 Regulations that outlines the guarantees that have to

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1 be made for chancery uses in the R-5-E District.

2 The international obligations of the  
3 United States is addressed by the State Department,  
4 who states that the granting of the special exception  
5 would assist them in fulfilling their obligations.  
6 The subject property is a contributing building to  
7 Snyder Triangle, a historic landmark that consists of  
8 townhouses within all of Square 53.

9 Alterations to the building will be  
10 limited to internal areas only to accommodate the  
11 proposed office, and external alterations will be  
12 limited to the addition of a plaque and a flagpole.  
13 The Historic Preservation Office has reviewed the size  
14 and placement of the plaque and flagpole and approved  
15 their sizes and locations.

16 For a chancery and residences, the Zoning  
17 Regulation requires two parking spaces. The existing  
18 property cannot accommodate any parking on site. They  
19 would be allowed a parking waiver due to the building  
20 historic status. The residents will be employees of  
21 the chancery and therefore will not commute.

22 The chancery has two off-site parking  
23 spaces. Visitors to the building will be minimal, and  
24 small functions will be limited. Many buildings in  
25 the vicinity have paid parking, and the property is

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1 located within two to three blocks of the Foggy Bottom  
2 Metro Station.

3 The Department of State has determined  
4 that there are no special security requirements and  
5 the site being adequately protected.

6 The Office of Planning, on behalf of the  
7 Mayor, finds that approving the requested use of the  
8 proposed building as a chancery will not be  
9 detrimental to the community, and having continued  
10 residential use in a portion of the building will be  
11 consistent with the character of the area and is in  
12 the municipal's interest.

13 The Department of State states that a  
14 favorable decision of the application would serve the  
15 federal interests, as it's fulfilling agreements with  
16 the government of Tajikistan. The Office of Planning  
17 supports the application and recommends it approval.

18 Thank you, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Good, thank you very  
20 much. Forgive me if I missed it in your oral  
21 presentation, but I believe that you also coordinated  
22 with DDOT regarding the parking?

23 MS. BROWN-ROBERTS: That's correct, and  
24 they did not submit a written report to me, but they  
25 said that they didn't see any problems with the

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1 parking there.

2 CHAIRPERSON GRIFFIS: Okay, excellent. I  
3 thought that was just important to review. Very well.  
4 Any other questions from the Board?

5 Does the Applicant have any questions of  
6 the Office of Planning?

7 Why don't we run through then all the --we  
8 did get a letter, as was stated by the Applicant, from  
9 ANC-2-A signed by Ms. Miller. Are we hearing from the  
10 ANC?

11 The Commissioner Miller, as you get ready  
12 to have a seat, I would note that looking at the  
13 letter that was submitted, it was not explicitly  
14 stated that you were representing the ANC in this  
15 FMBZA case this morning.

16 MEMBER MILLER: The Chair always can, and  
17 I'm the Chair, okay?

18 CHAIRPERSON GRIFFIS: Good to clarify.

19 MEMBER MILLER: I beg your pardon?

20 CHAIRPERSON GRIFFIS: Thank you for  
21 clarification.

22 MEMBER MILLER: And the thing is, it's so  
23 nice to be able to say yes to something that  
24 contributes something to our neighborhood.

25 CHAIRPERSON GRIFFIS: It feels good,

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1 doesn't it?

2 MEMBER MILLER3: I just can't get used to  
3 it. This is the second time we've had to say yes, but  
4 we do appreciate it. They're nice people, and we  
5 think they will be a good contribution to the  
6 neighborhood. He lives in my apartment building where  
7 there's more than adequate parking space.

8 CHAIRPERSON GRIFFIS: I see.

9 MEMBER MILLER: Okay, and I think it's a  
10 real contribution for Foggy Bottom West End.

11 CHAIRPERSON GRIFFIS: Good. Thank you  
12 very much, and we do appreciate your participation and  
13 also the letter that was submitted into the record.

14 Any questions from the Board of the ANC?  
15 Very well.

16 Thank you very much. I believe that  
17 concludes the District agencies represented in this  
18 case. I do not have any notes otherwise unless Board  
19 members are aware of any other submissions.

20 With that then, let's go to the United  
21 States Department of State.

22 MR. MLOTEK: Good morning once again for  
23 the record. I'm Ron Mlotek, legal counsel of the  
24 Office of Foreign Missions of the U.S. Department of  
25 State, representing the Department of the Secretary in

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1 this matter. I'll be very brief because there's no  
2 opposition. It doesn't appear to be a complicate  
3 case.

4 I would just note that Tajikistan is in an  
5 important area of the world for us strategically,  
6 especially now in the age of the War on Terrorism, the  
7 War in Afghanistan and in Iraq. As it so happens, we  
8 are just at this moment beginning a very major  
9 construction project in Dushanbe, the capitol of  
10 Tajikistan, simultaneously with their obtaining a  
11 chancery here. It wasn't conceived originally that  
12 this would happen, but it just so worked out that way.

13 So that favorable action on this case  
14 would be very helpful to us when the time comes for us  
15 to request, as I'm sure we will, various indulgences  
16 and things that are the equivalent of special  
17 exceptions and variances in our system over on that  
18 end.

19 We have met with the embassy's  
20 representative and made sure that he understands and  
21 will communicate back to his government how important  
22 our assistance was to them here and how we will look  
23 forward to reciprocation over on that end.

24 As the Board is aware from my testimony in  
25 previous cases, these new embassies that we're

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1 building in almost everywhere in the world are quite  
2 different and much more ambitious structures, shall we  
3 say, architecturally than was the case in the past  
4 because of the security requirements that now apply  
5 almost everywhere. They certainly do apply in  
6 Dushanbe. So, there will be a necessity to request  
7 the municipality there and the national authorities  
8 for assistance on various land use and zoning and  
9 building code matters, I am sure.

10 We're also very pleased that this worked  
11 out well from the standpoint of the municipal  
12 interests and that the neighborhood has embraced the  
13 embassy as a neighbor there, and that is very  
14 pleasurable for us to see and very gratifying for us  
15 to see.

16 I would also like just to note for the  
17 record that the embassy did meet with the Office of  
18 Planning, as we always encouraged them to do, and that  
19 office did extend the courtesy of having their deputy  
20 director, Ellen McCarthy, meet personally with the  
21 embassy and its representatives, and that's something  
22 that we think is very welcome, very important, and  
23 something that is in line with what Mayor Williams has  
24 on a number of occasions expressed to Department of  
25 State representatives in terms of his administration

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1 being facilitative to foreign embassies when they come  
2 here. So, that was an important courtesy, and we'd  
3 like to express our appreciate to the Office of  
4 Planning for that.

5 That's all I have unless there are any  
6 questions.

7 CHAIRPERSON GRIFFIS: Good, thank you very  
8 much. I would note, in the record is the letter from  
9 Mr. Morton, who does specifically lay out, in fact,  
10 that this favorable approval would fulfill the  
11 international obligation, which is what you've touched  
12 upon.

13 MR. MLOTEK: That is our official  
14 statement for the record..

15 CHAIRPERSON GRIFFIS: Indeed.

16 MR. MLOTEK: And I might just want to  
17 clarify, because the names on these letters change  
18 from time to time, just so there's confusion. Joe  
19 Morton, who signed that letter, was at that time  
20 acting director of the Office of Foreign Missions.

21 the Department of State since the mid-90's, since '95,  
22 I believe, has been dual-headed, and therefore also  
23 serves as the director of the Office of Foreign  
24 Missions with the rank and ambassador. That person,  
25 for the record, is Francis X. Taylor, who is now the

By vir

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1 Director of the Office of Foreign Missions, and would  
2 otherwise have signed this if he had been in the  
3 country at the time.

4 CHAIRPERSON GRIFFIS: Okay. Well, I  
5 appreciate that, and of course, we also look to the  
6 federal agency to review that this would not create  
7 any security or special security requirements. It has  
8 been certified by the submissions into the record that  
9 it would be able to be adequately protected in this  
10 location and in this structure.

11 As I state, it all goes to the reciprocity  
12 as you talked about, and also fulfilling our  
13 obligations and being in line with the federal  
14 interests.

15 Are there any other questions to the Board  
16 at this time? If there are no other, I thank you very  
17 much. It's always a pleasure to see you, and I noted  
18 that you did bring additional copies of the Federal  
19 Mission Act that we will pass out to those new members  
20 that may not have received that to this date.

21 Are there persons here today either in  
22 support or in opposition to Application 17051 to give  
23 testimony today? Anyone here to give testimony  
24 attendant to this application? Not seeing any  
25 indication that there's anyone here to give further

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1 testimony, let me turn to Board and staff to see if  
2 there is anything else we need to cover within the  
3 Foreign Missions Board of Zoning rulemaking this  
4 morning.

5 Have I missed anything, Ms. Bailey?

6 MS. BAILEY: No, Mr. Chairman, not that  
7 I'm aware of.

8 CHAIRPERSON GRIFFIS: Very well. Then I  
9 would conclude the FMBZA hearing and rulemaking on  
10 this. I would like to close the record. However, the  
11 record is going to stay open to receive one resume  
12 from Mr. Gross so that we just fill out the record in  
13 terms of establishing an expert status for him.

14 Yes, one other note?

15 MS. GIORDANO: Yes, I just wanted to ask,  
16 if the Board is so inclined, for a bench decision. I  
17 think the Office of Planning report confirmed that the  
18 building is contributory in the historic district.

19 CHAIRPERSON GRIFFIS: Oh, right, that's  
20 the second piece.

21 MS. GIORDANO: This property was a  
22 substantial investment for the Republic of Tajikistan,  
23 and as the first secretary indicated, they are leasing  
24 space on K Street, but they would very much like to be  
25 able to establish office use of the building as soon

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1 as possible. So, a bench decision would be very  
2 helpful to the embassy.

3 CHAIRPERSON GRIFFIS: Actually, why don't  
4 you stay because I have a quick question which  
5 actually will probably go to corporation counsel and  
6 the staff. My understanding in this legislative  
7 procedure in the rulemaking that I think we can give  
8 from the bench an indication of a positive outcome.  
9 That is, that we would not disapprove this.

10 However, in the rulemaking, my  
11 understanding is the issuance of an order is the  
12 appropriate procedure for the Board. Perhaps we need  
13 to take a look at the regulations. I think I can  
14 gauge from the Board in terms of its deliberation and  
15 review of this record that that would be the  
16 inclination.

17 MS. GIORDANO: Mr. Mlotek just reminded me  
18 that the Board can certainly vote on this, and I think  
19 as is the case with any BZA proceeding, we have to  
20 have the piece of paper and we have to have the order  
21 before we can occupy and get a certificate of  
22 occupancy for the building. What we're requesting is  
23 that the Board take action on this today as opposed to  
24 waiting to a regularly schedule meeting.

25 CHAIRPERSON GRIFFIS: Very well. In the

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1 spirit of international cooperation, while I will  
2 speak slowly so corporation counsel can interrupt me  
3 if I am in fact taking steps that I should not, but I  
4 would move that the Board not disapprove Application  
5 No. 17051 of the Republic of Tajikistan. That is  
6 pursuant of course to Section 1002 to locate a  
7 chancery at the premises of 1005 New Hampshire Avenue,  
8 N.W. I think the record is sufficient and absolutely  
9 complete on this. I would ask for a second.

10 MS. GLAZER: Mr. Chair, I just want to --  
11 excuse me for interrupting.

12 CHAIRPERSON GRIFFIS: Indeed.

13 MS. GLAZER: Make one comment that under  
14 3134.16 and 3134.17, the decision is not final until  
15 first, a copy of the decision must be published in the  
16 D.C. Register as notice of the final rulemaking, and  
17 at that time it's final upon publication, and it  
18 becomes effective ten days after having become final.

19 So, as long as the parties are aware of that.

20 CHAIRPERSON GRIFFIS: Very well. So, in a  
21 ceremonial appreciation of international cooperation,  
22 I would ask for a second of our indication of what  
23 that order might state.

24 MS. GALLAGHER: So moved.

25 CHAIRPERSON GRIFFIS: Thank you very much,

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1 Ms. Gallagher. I would take further deliberation on  
2 the motion. Any discussion?

3 Very well, then I'd ask for all those in  
4 favor to signify by saying aye.

5 (Chorus of ayes.)

6 CHAIRPERSON GRIFFIS: And opposed?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Very well. It is so  
9 noted, and we will look for a quick, as our  
10 regulations also stipulate, how quickly we need to  
11 present this order. I believe that we will be very  
12 timely.

13 Ms. Bailey, anything further?

14 MS. BAILEY: Just two housekeeping  
15 matters, Mr. Chairman. First, the vote is 5-0-0 not  
16 to disapprove the application motion made by Mr.  
17 Griffis, seconded by Mrs. Gallagher, Ms. Miller, Mr.  
18 Etherly, and Mr. Parsons are in agreement. Perhaps it  
19 would expedite matters if Ms. Giordano would submit a  
20 proposed order so we could get that out quickly.

21 Then the second thing, Mr. Chairman, there  
22 were certain things that were requested, and I just  
23 want to make sure that you still, ask if you still  
24 need them, the resume of Mr. Gross. You also talked  
25 about the floor plans. Do you still need the floor

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1 plans?

2 CHAIRPERSON GRIFFIS: No.

3 MS. BAILEY: And then do you not need  
4 certification of --

5 CHAIRPERSON GRIFFIS: Yes. I think what  
6 we'll just do is just to get some sort of indication,  
7 either a certification or a listing, which shouldn't  
8 be that laborious to find.

9 MS. BAILEY: Thank you, sir.

10 CHAIRPERSON GRIFFIS: Good. No, thank you  
11 very much. Okay, everybody clear then? Very well.

12 I thank you all very much. I appreciate  
13 your participation this morning. That would end then  
14 our rulemaking session this morning.

15 We're going to take a quick break, as the  
16 Board is now going to change its membership, and then  
17 we will move on, I would say, within five minutes to  
18 our normal hearing procedures. Thank you.

19 (Whereupon, the foregoing matter  
20 went off the record at 10:25  
21 a.m. and went back on the record  
22 at 10:30 a.m.)

23 CHAIRPERSON GRIFFIS: Very well. Good  
24 morning, ladies and gentlemen, again. I won't go  
25 through all of my openings, and I think everyone was

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1 present to hear the absolutely important parts, and  
2 that is being on the record, and also aspects of the  
3 Sunshine Act.

4 I will, however, go through the order of  
5 procedure, as the FMBZA, which you've just heard, is a  
6 different order of procedure. The order of procedure  
7 for special exceptions and variances, which we will  
8 now be entertaining, will be first statement and  
9 witnesses of the applicant. Second would be the  
10 government reports, including the Office of Planning,  
11 and then the other attendant agencies that have  
12 submitted into the application.

13 Third, we'd have the report from the  
14 advisory neighborhood commission. Fourth would be  
15 parties or persons in support of the application.  
16 Fifth would be parties or persons in opposition, and  
17 finally, sixth we'd have closing remarks by the  
18 applicant.

19 Cross examination of witnesses is  
20 permitted by the applicant or parties within a case.  
21 The ANC is automatically a party in the case, and that  
22 is the ANC within which the property is located. I  
23 believe that the rest is understood. If there are any  
24 questions in procedural matters, I'd be happy to  
25 answer them as people come up.

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1 I would ask that people turn off all their  
2 cell phones and beepers also so that we don't disrupt  
3 people giving testimony this morning.

4 Let me go to staff again to see if any  
5 other preliminary matters have come up for us, and if  
6 not, we can call the first case of our public hearing  
7 this morning.

8 MS. BAILEY: Mr. Chairman, there's no  
9 other preliminary matters that I'm aware of, and the  
10 next case of this morning is Application No. 17056 of  
11 Richard A Miller, pursuant to 11 DCMR 3104.1, for a  
12 special exception to allow a second story addition to  
13 a single family dwelling under Section 223, not  
14 meeting the lot occupancy requirements. The property  
15 is located in the R-1-B District at premises 2503  
16 Tracy Place, N.W. It's also located in Square 2502 on  
17 Lot 31.

18 All those persons wishing to testify,  
19 would you please stand to take the oath? Please raise  
20 your right hand. Do you solemnly swear or affirm that  
21 the testimony you are about to give in this proceeding  
22 will be the truth, the whole truth, and nothing but  
23 the truth? Please have a seat at the table.

24 CHAIRPERSON GRIFFIS: Good morning.

25 MR. MILLER: Good morning.

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1 CHAIRPERSON GRIFFIS: You wouldn't mind  
2 giving me your name and your address for the record?

3 MR. MILLER: My name is Richard Miller,  
4 and I live at 2305 Tracy Place, N.W.

5 CHAIRPERSON GRIFFIS: Excellent, and why  
6 don't we have everybody introduce themselves so I know  
7 who I'm looking at.

8 MS. KROOS: I'm Kathleen Kroos.

9 MR. KROOS: Richard Kroos with Kroos  
10 Construction, doing the project.

11 CHAIRPERSON GRIFFIS: Okay, and if you  
12 wouldn't mind turning on your microphone and give me  
13 an address for the record.

14 MR. KROOS: Yes, 1617 Oak Lawn Court,  
15 Silver Spring, Maryland, 20903.

16 CHAIRPERSON GRIFFIS: Good, thank you.  
17 Mr. Miller, you're going to present your case this  
18 morning, is that correct?

19 MR. MILLER: Yes.

20 CHAIRPERSON GRIFFIS: And is the case for  
21 a special exception, which is allowing a second story  
22 addition to your house, and it is coming to us under  
23 Section 223?

24 MR. MILLER: Correct.

25 CHAIRPERSON GRIFFIS: Good.

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1 MR. MILLER: Thank you. As I said, my  
2 name is Richard Miller, and along with my wife, I've  
3 owned and occupied the home at 2503 Tracy Place since  
4 1975, and I come before you to request a special  
5 exception to allow a bathroom and closet addition to  
6 my home under Section 223 for residents not meeting  
7 the lot and area and yard requirements in the R-1-B  
8 zone.

9 Richard and Kathleen Kroos of Kroos  
10 Construction can answer specific questions about the  
11 details of the project, but let me state that I  
12 believe the proposed addition satisfied the standards  
13 as identified in 223.2.

14 The report of the Office of Planning,  
15 which recommends approval of the special exception,  
16 states clearly that the addition meets all four  
17 standards necessary for approval. The light and air  
18 available to neighboring properties are not unduly  
19 affected. The privacy of use and enjoyment of the  
20 neighborhood properties are not unduly compromised.

21 The addition, together with the original  
22 building as viewed from the street does not intrude  
23 upon the character, scale, and pattern of houses along  
24 the street frontage, and we provide the photos,  
25 elevation drawings, and site plan showing the

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1 relationship of the proposed addition to the adjacent  
2 buildings.

3 The only point I would add I think to the  
4 Office of Planning's report is that in regard to their  
5 description of the privacy issues, I believe the  
6 neighboring property to the northwest will have even  
7 more privacy than it currently does, as the addition  
8 would replace a balcony which currently overlooks with  
9 house and the garden. So, in fact, we have an outdoor  
10 deck, in a sense, and we can sit out there, and that  
11 overlooks this building. This bathroom will close  
12 that in, and in fact, provide the European Union  
13 Embassy with even more privacy because there would  
14 just be a single window, as there is now.

15 In addition to OP's recommended approval,  
16 the D.C. Historic Preservation Office gave its  
17 approval in June, and states the project poses no  
18 preservation issues.

19 I met with seven of the closest neighbors  
20 regarding the addition, and each have given their  
21 support for the project, and I believe most have sent  
22 letters that are in the record.

23 Just this past Monday on the 22nd, Monday  
24 a week ago, the ANC-2D unanimously recommended  
25 approval of the application, stating they had no

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1 issues or concerns about the application as related to  
2 the standards of zoning regulations.

3 So, I believe, I hope we've met the burden  
4 of proof pursuant to the zoning regulations, and ask  
5 that you grant a special exception for this project.  
6 To quote from the OP report, "the request can be  
7 granted without substantial detriment to the public  
8 good and without substantially impairing the intent,  
9 purpose, and integrity of the zoning regulations."

10 Thank you.

11 CHAIRPERSON GRIFFIS: Good, thank you very  
12 much, and we do appreciate all the information that  
13 was submitted. Let me just clarify. The addition  
14 that's happening, as you've indicated, it's  
15 essentially and infill of an exterior deck. It is a  
16 brick facade, is that correct?

17 MR. MILLER: Correct.

18 CHAIRPERSON GRIFFIS: And there is going  
19 to be some articulation that the roof, or the parapet  
20 line. Of what type of material?

21 MR. KROOS: That's all in brick as well.

22 CHAIRPERSON GRIFFIS: Even the banding?

23 MR. KROOS: Well, that's going to be a  
24 cast stone to match the existing.

25 CHAIRPERSON GRIFFIS: Okay, right.

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1 MR. KROOS: Pre-cast.

2 CHAIRPERSON GRIFFIS: And of course that  
3 goes to the addition, together with the original  
4 building, is viewed from the street and not being  
5 substantially visually --

6 MR. MILLER: Correct.

7 CHAIRPERSON GRIFFIS: Incorrect on the  
8 rest of the street. It seems like it all goes  
9 together very well, and I think it looks like a very  
10 intriguing addition to it.

11 Any other from the Board for the Applicant  
12 at this time? Clarifications?

13 The Office of Planning, which we're going  
14 to get to, in fact, right about now, submitted -- I'm  
15 sure you saw the report. You quoted them. A  
16 fantastic aerial photograph. I must say you do  
17 overlook quite a substantial garden area.

18 MR. MILLER: Yes.

19 CHAIRPERSON GRIFFIS: And you said that is  
20 an embassy, is that correct?

21 MR. MILLER: Correct. It's the European  
22 Union.

23 CHAIRPERSON GRIFFIS: Do you get invited  
24 to the garden parties there? Ah, that doesn't have  
25 anything to do with it.

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1 MR. MILLER: I'm not in the same category.

2 CHAIRPERSON GRIFFIS: Okay, indeed. Let's  
3 go to the Office of Planning, if they have any  
4 highlights that they want to report in their  
5 submission, which I found to be very complete in  
6 addressing all the issues.

7 MR. PARKER: Thank you, Mr. Chairman,  
8 members of the Board. My name is Travis Parker with  
9 the Office of Planning, and OP will stand on their  
10 report as submitted. I'd be happy to answer any  
11 questions you might have.

12 CHAIRPERSON GRIFFIS: Excellent, thank  
13 you, and welcome to this morning's hearing. Any  
14 questions from the Board at this time for the Office  
15 of Planning? Clarifications, questions?

16 Does the Applicant have any cross  
17 examination of the Office of Planning?

18 MR. MILLER: I love the report.

19 CHAIRPERSON GRIFFIS: Indeed, and of  
20 course they are in support of the application, and as  
21 I indicated now probably three times, they laid out  
22 the entire test for the special exception under 223,  
23 and I think have addressed that, obviously with  
24 coordination with you and in their own independent  
25 review of this.

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1           Then let us move on to the ANC report, of  
2           which you did indicate that you met with the ANC. Of  
3           course, we don't know if we -- do we -- when was that  
4           submitted, Exhibit No. 29? Is that timely?

5           MR. MILLER: I don't believe so. The  
6           meeting was not held until the 22nd of September  
7           because there was no meeting in July or August. So,  
8           the meeting was just a week ago Monday.

9           CHAIRPERSON GRIFFIS: Okay. Any  
10          objections from the Board to waive our rules on  
11          timeliness and accept the ANC-2D letter into the  
12          record? If there's no objection, we can take it into  
13          the record.

14          Okay, and it does sufficiently meet our  
15          procedural requirements to be given great weight.  
16          This was actually handed to me this morning, so I will  
17          take a second.

18          They do state that there are no issues of  
19          concern to the ANC about this application related to  
20          the standards of zoning regulations against the  
21          application. So, very well. We'll take that into as  
22          the ANC report in support.

23          There were no requests for party status.  
24          Is anyone here to provide testimony today attendant to  
25          this application, Application 17056? Not noting

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1 anybody charging the table, we will note, as you've  
2 indicated, there are also letters of support. I have  
3 five from the adjacent neighbors, and they are  
4 exhibited in the record.

5 Very well. I don't have any other  
6 submissions or highlights for this application in the  
7 record. I'll turn it over to you, Mr. Miller. If you  
8 have any closing remarks that you would like to  
9 provide.

10 MR. MILLER: No, I just hope you'll grant  
11 that. I don't know if it's possible to grant that  
12 today. Is that -- we thought we were doing this a  
13 long time ago.

14 CHAIRPERSON GRIFFIS: You're requesting a  
15 bench decision today, is that correct?

16 MR. MILLER: Yes, I think that's correct,  
17 if that's the way to say it.

18 CHAIRPERSON GRIFFIS: Very well. We  
19 appreciate you being here and being before the Board  
20 and taking the time out to put in all of this  
21 information and also meet with all, of course, the  
22 agencies that are attendant to providing us  
23 information.

24 I would move approval of Application 17056  
25 of Mr. Miller, pursuant to a special exception which

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1 will allow the second story addition to the single  
2 family dwelling. This is before us under Section 223,  
3 as it is not meeting the lot occupancy requirements in  
4 an existing nonconforming aspect of Section 403 at  
5 premises 2503 Tracy Place, N.W.

6 I think the Board can sufficiently rely on  
7 the submissions of Mr. Miller and also, specifically,  
8 on the Office of Planning's report that laid out the  
9 tests for the 223 and the special exception test, and  
10 of course, it is clear from the documentation that's  
11 been submitted that this won't intend to impair any  
12 light and air or the privacy or the enjoyment of the  
13 adjacent neighbors.

14 I think it's pretty clear that also, and  
15 importantly, that the proposed addition is, I think,  
16 in great form with the fabric of the existing  
17 structure, and therefore would ask for a second in the  
18 motion.

19 MEMBER ZAIDAIN: Second.

20 CHAIRPERSON GRIFFIS: Thank you, Mr.  
21 Zaidain. I'll have others speak to the motion if  
22 there is any other further deliberation. If not, I  
23 would ask that all in favor signify by saying aye.

24 (Chorus of ayes.)

25 CHAIRPERSON GRIFFIS: And opposed.

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1 (No response.)

2 MS. BAILEY: Mr. Griffis?

3 CHAIRPERSON GRIFFIS: Yes?

4 MS. BAILEY: Can I ask for clarification,  
5 sir?

6 CHAIRPERSON GRIFFIS: Sure.

7 MS. BAILEY: The project was advertised  
8 under Section 223 under Section 403 which deals with  
9 the lot occupancy. The Office of Planning and the  
10 computation sheet indicates that it is under 223.  
11 However, relief is required from the rear yard and  
12 side yard. Am I correct?

13 CHAIRPERSON GRIFFIS: In terms of a  
14 nonconforming aspect of an eight-foot side yard, yes,  
15 and also in terms of a 25-foot rear yard, yes.

16 MS. BAILEY: Okay.

17 CHAIRPERSON GRIFFIS: And that is Office  
18 of Planning's correct calculations. Is that  
19 understood?

20 MR. MILLER: Yes, sir.

21 CHAIRPERSON GRIFFIS: Okay. In which  
22 case, it is a matter of mostly just of announcement,  
23 and I think it's very clear, and I appreciate Ms.  
24 Bailey bringing that to our attention. Obviously  
25 those nonconformings weren't expanded or even dealt

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1 with. They are existing nonconformities, and that's  
2 what makes the special exception requirement, when one  
3 is not in conformity with the strict application of  
4 the regulations.

5 I do not believe it changes the tests  
6 whatsoever in terms of the record that we've heard,  
7 and I think that the motion can stand.

8 Anything further? Clarifications?

9 MS. GLAZER: Mr. Chair, just along the  
10 lines of what Ms. Bailey raised, also the minimum lot  
11 area was not met, of 5,000 square feet, and that's  
12 also a continuing nonconformity, but it's not changed  
13 in any way.

14 CHAIRPERSON GRIFFIS: Right, lot area,  
15 right, which are all aspects under 223, which are  
16 allowed to be maintained in a special exception, but  
17 the point being that corporation counsel and Ms.  
18 Bailey from the Office of Zoning is bringing up, that  
19 it is important for us to at least address those and  
20 note for the record that we did see that, and that was  
21 fairly clear.

22 Okay, anything else?

23 MS. BAILEY: No, Mr. Chairman. The vote  
24 is 5-0-0 to approve the application. Mr. Griffis made  
25 the motion, Mr. Zaidain second, Mr. Parsons, Mr.

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1 Etherly, and Ms. Miller in agreement. Is this a  
2 summary order, Mr. Chairman?

3 CHAIRPERSON GRIFFIS: I see no difficulty  
4 in doing a summary order on this, and we will  
5 obviously make note of the sections appropriate for  
6 the 223 special exception.

7 Very well, thank you all very much.

8 MR. MILLER: Thank you.

9 CHAIRPERSON GRIFFIS: We appreciate your  
10 patience with us this morning. Good luck.

11 MR. MILLER: Thank you.

12 CHAIRPERSON GRIFFIS: Let's move on then  
13 to the next case in the morning.

14 MS. BAILEY: The next case is Application  
15 No. 17070 of Meridian International Center, pursuant  
16 to 11 DCMR 3104.2, under Section 214 to modify  
17 Conditions and (e) and (f) of BZA Order No. 5802,  
18 dated February 24, 1960, to allow accessory parking  
19 for the building located at 1630 Crescent Place, N.W.,  
20 known as Square 2568, Lot 809, to be relocated from  
21 the surface to two levels of underground garage in new  
22 development permitted on the subject property as a  
23 matter of right in the R-5-B District at premises  
24 located at 17th and Belmont Streets, N.W., Square  
25 2567, Lot 850, formerly lots 811, 824, 838, and 839.

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1 All those wishing to testify today, would  
2 you please stand to take the oath? Please raise your  
3 right hand. Do you solemnly swear or affirm that the  
4 testimony you are about to give in this proceeding  
5 will be the truth, the whole truth, and nothing but  
6 the truth? Thank you.

7 Mr. Chairman, if I'm not mistaken, there  
8 is a request for party status in this application.

9 CHAIRPERSON GRIFFIS: Yes, I do not  
10 believe you are mistaken. We do have Exhibit No. 23  
11 in the record, a party status application from  
12 Christiane Roehler. I may have stated that  
13 incorrectly. If you wouldn't mind just being  
14 prepared, a very quick question. You indicated that  
15 you are -- have a seat -- representing the Beekman  
16 Place Condominium Association. Actually, I need you  
17 to have a seat right up here, and if you wouldn't  
18 mind, just turn on the microphone.

19 Could you give me your name and your  
20 address for the record?

21 MS. ROEHLER: Okay. My name is Christiane  
22 Roehler. I live at 1666 Beekman Place, B, Washington.  
23 I'm also the treasurer of Beekman Place Condominium  
24 Association, Incorporated.

25 CHAIRPERSON GRIFFIS: Okay, and you've

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1       been authorized by the Beekman Place Condominium  
2       Association to represent them in today's hearing?

3               MS. ROEHLER: Yes, I have.

4               CHAIRPERSON GRIFFIS:       Okay, and I  
5       understand the proximity. Your application is  
6       complete, and if I'm not mistaken, the primary concern  
7       which you are stating that Beekman Place Condominium  
8       Association would be uniquely and significantly  
9       affected if this was to be approved, is the fact of  
10      traffic and also exhaust.

11              MS. ROEHLER: Yes, that's correct.

12              CHAIRPERSON GRIFFIS: Okay, any questions?

13              MS. ROEHLER: And parking.

14              CHAIRPERSON GRIFFIS: And parking?

15              MS. ROEHLER: Moving and parking, traffic  
16      along the property, and exhaust.

17              CHAIRPERSON GRIFFIS: Okay. Any questions  
18      or clarification from the Board? Mr. Collins, if I  
19      can have you introduce yourself for the record, and  
20      then I would take a comment about the party status  
21      application.

22              MR. COLLINS: Thank you, Mr. Chair and  
23      members of the Board. My name is Christopher Collins  
24      with the law firm of Holland & Knight. Seated to my  
25      right is Larry Kolp. Larry is chief of staff of

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1 Meridian International Center, the Applicant in this  
2 case. Like I say, I'm also wearing two hats in this  
3 case. I am a trustee of Meridian International Center  
4 and Chairman of the Preservation and Facilities  
5 Committee of Meridian.

6 CHAIRPERSON GRIFFIS: Are you able to do  
7 both of those?

8 MR. COLLINS: Well, this is a labor of  
9 love.

10 CHAIRPERSON GRIFFIS: Indeed.

11 MR. COLLINS: So, we're here today --  
12 should I start or should I --

13 CHAIRPERSON GRIFFIS: No, actually I'm  
14 only entertaining the party status application. I'm  
15 giving you an opportunity to speak to the request.

16 MR. COLLINS: We had someone from my  
17 office check the record. I have not seen the request  
18 for party status, so I don't know what it says.

19 CHAIRPERSON GRIFFIS: Really?

20 MR. COLLINS: That's correct.

21 CHAIRPERSON GRIFFIS: It was received  
22 September 16 in this office. It is Exhibit No. 23.

23 MR. COLLINS: I had someone check the file  
24 Friday and check the file again Monday.

25 CHAIRPERSON GRIFFIS: Do we have the --

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1 MS. BAILEY: The copy for Mr. Collins?

2 CHAIRPERSON GRIFFIS: Well, yes, that, but  
3 also the official file? Do you have that out here? I  
4 can get that.

5 Does anyone have a clean copy? Mr.  
6 Collins, I'm going to give this to you while they look  
7 for the file so that you can review that.

8 [Pause in proceedings.]

9 CHAIRPERSON GRIFFIS: Is that sufficient  
10 time? Do you need a couple more minutes?

11 MR. COLLINS: Sir, I'm just curious as to  
12 whether the Board believes that this request for party  
13 status meets the test of uniqueness.

14 CHAIRPERSON GRIFFIS: Your case. Do you  
15 have an objection to their request for party status?

16 MR. COLLINS: Beekman Place is located  
17 adjacent, but my question is, and I didn't see  
18 anything here that talks about their unique status and  
19 how they're more affected than anyone else.

20 CHAIRPERSON GRIFFIS: Okay, so you would  
21 object to granting a party status to the Beekman Place  
22 Condominium?

23 MR. COLLINS: I have no objection to  
24 participation, but party status I'm not --

25 CHAIRPERSON GRIFFIS: Okay, so noted, and

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1 that is based on the fact that you don't believe that  
2 the presentation of the unique character of which they  
3 would be affected has been stated. Okay.

4 Let me just address also the other issue  
5 that you have. I've checked the official file.  
6 Exhibit No. 23 is attached, and it is chronological in  
7 the submission. So, it may have just been an  
8 oversight, but it is in the record, and correctly.

9 So, okay, Board members, questions,  
10 clarifications on the request for party status?

11 MEMBER MILLER: Mr. Chairman, I'm just  
12 wondering if Ms. Roller wants to address the point  
13 about how they are unique or different from the  
14 general public.

15 CHAIRPERSON GRIFFIS: Well, I think before  
16 we ask her to give that, I think what is laid out,  
17 unless there's additional pieces, which actually may  
18 not be appropriate, I think the point, as I've  
19 highlighted, is that they are concerned that they  
20 would be uniquely affected in terms of the traffic  
21 jams resulting from slow access to an underground  
22 garage, potentially hindering entry and exit into the  
23 parking lot to Beekman Place, and I quote that from  
24 the last page of their submission.

25 They also were concerned about the

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1 increased exhaust fumes from slow traffic and the  
2 venting of underground garage, which also most  
3 immediately affects their residence.

4 Let me ask you, Ms. Roehler, is that  
5 correct? It's fine, but it may not be correct. Okay,  
6 I'm going to have you turn on your microphone first of  
7 all.

8 Do you understand what, if you are granted  
9 party status, would obligate you to? First of all,  
10 it's a full participation in the case. That means you  
11 would have cross examination privileges. You would  
12 also be required to submit findings that the Board  
13 would request of you, and that may mean as small as  
14 incidental information about Beekman Place to a full  
15 findings of facts and conclusion of law. Is that your  
16 understanding of how you, and the level  
17 you want to participate in this public hearing?

18 Let me also say, as you think briefly  
19 about that, that anyone present today or anyone that's  
20 going to come in is able to participate in the case.  
21 They can certainly provide testimony, and testimony is  
22 provided by persons, but there is a different and a  
23 higher level of obligation and responsibility and  
24 participation that is required of a party in a case,  
25 and you have requested, of course, party status.

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1                   Additionally, at the end of a hearing, a  
2 party would of course be able to bring motions or  
3 during the hearing would bring motions to the Board.  
4 Afterwards, it will also be allowed to bring motions  
5 of reconsideration, et cetera.

6                   MS. ROEHLER: I think we are willing to  
7 assume the obligations of party status.

8                   CHAIRPERSON GRIFFIS: Okay. That being  
9 said, questions from the Board members? Other further  
10 clarifications?

11                   Let me hear brief deliberation then on the  
12 party status application. Ms. Miller?

13                   MEMBER MILLER: I just wanted to know  
14 whether you thought it was appropriate now if Ms.  
15 Roehler wanted to add anything else with respect to  
16 how the property is unique in this case to  
17 participating as a party, other than what's in your --

18                   CHAIRPERSON GRIFFIS: I think if there is  
19 something burning, it's fine. I don't like to set the  
20 precedence that we have applications come in and then  
21 we have people come in and make further cases for --  
22 if there was clarifications that were needed, I think  
23 that would be appropriate, but are there other issues  
24 that you find would uniquely distinctly affect  
25 Beekman?

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1 MS. ROEHLER: I believe I have highlighted  
2 the most important ones.

3 CHAIRPERSON GRIFFIS: Okay. Comments?

4 MEMBER ZAIDAIN: I have no objection, Mr.  
5 Chair.

6 CHAIRPERSON GRIFFIS: Others?

7 COMMISSIONER PARSONS: No objection.

8 VICE CHAIRPERSON ETHERLY: No objection,  
9 Mr. Chair.

10 VICE CHAIRPERSON ETHERLY: No objection.

11 CHAIRPERSON GRIFFIS: Very well. It seems  
12 that the Board is fairly unanimous in granting party  
13 status to the Beekman Condominium Association,  
14 represented by Ms. Roehler. We would note the  
15 objection and concern of Mr. Collins, representing the  
16 Applicant, and that is to the uniqueness of the  
17 standards.

18 I think in terms of granting party status,  
19 it obviously doesn't indicate that the Board is  
20 holding those issues as the case, but we will look to  
21 the case presentation, of course, of those issues and  
22 how they will then go the special exception that we  
23 would find.

24 I think in terms of the proximity in terms  
25 of the issues that are brought up, it is appropriate

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1 to grant party status, and so we will do that. Ms.  
2 Roehler, we appreciate your participation. You're  
3 welcome to have a seat and make yourself comfortable,  
4 and we will proceed now

5 Unless there are other preliminary matters  
6 for us attendant to this application, we can turn it  
7 over to you, Mr. Collins, for a presentation of the  
8 case.

9 MR. COLLINS: Thank you, Mr. Chairman, and  
10 members of the Board. As Ms. Bailey outlined at the  
11 beginning of the case, this is an application to  
12 modify two conditions of a prior approval of this  
13 Board in Order No. 5802, which approved off-site  
14 accessory parking for the predecessor for Meridian  
15 International Center on this lot, which is located  
16 across the street from Meridian International Center.

17 This is necessary because Meridian's  
18 parking will be moved from the surface to a garage  
19 three levels below the surface, and some of it two  
20 levels below the surface. It's important to note that  
21 this parking will remain on the property. The parking  
22 will not be reduced in number or in size. The parking  
23 availability will not be curtailed, and Meridian will  
24 continue to own the parking spaces.

25 We're only asking that the parking spaces

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1 be moved vertically from where they are to an  
2 underground garage, two and three levels below grade.  
3 That's all we're asking.

4 This is not an application for permission  
5 to locate accessory parking spaces on this lot for  
6 Meridian because that approval already exists. This  
7 is not an application for a variance or a special  
8 exception to construct dwellings on this parking lot.

9 The proposal that has been vetted through  
10 the community in a dozen meetings over the course of  
11 the summer, is for a matter of right development on  
12 the site, in accordance with the R-5-B regulations.

13 The plans for that project have not yet  
14 been submitted to any zoning authority for review. At  
15 such time as they are, if they need a variance or a  
16 special exception, then they will need to come before  
17 this Board, but the new development is not what's  
18 before the Board. What's before the Board is moving  
19 this parking vertically two and three levels down  
20 below where it is right now.

21 In order to accomplish that, we need to  
22 modify two conditions of the prior approval,  
23 conditions E and F, which are set forth on page five  
24 of the prehearing statement. Condition E is the  
25 condition that requires a 12-inch thick, 42-inch high

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1 brick wall with coping along the top on the 17th  
2 Street frontage of the parking lot.

3 Now, when the parking lot, as the parking  
4 lot remains a surface lot, that brick wall shall  
5 remain, but when the parking lot is moved three levels  
6 below grade, that requirement is no longer necessary.

7 So, therefore, we've suggested the inclusion of a  
8 sentence that says such wall imposed shall be  
9 maintained so long as the parking area is used  
10 exclusively for surface parking.

11 The next condition, condition F, which  
12 requires that this parking lot be used exclusively for  
13 parking, we're suggesting a change that, as you can  
14 see on page five, so that we are required to maintain  
15 at least the number of spaces, at least 38 parking  
16 spaces, for the use of the owner of the property  
17 across the street, so that the property can be used  
18 for other purposes in addition to the parking.

19 This application has the support of  
20 Councilmember Graham, has conditional support from the  
21 Office of Planning and the ANC, and the D.C.  
22 Department of Transportation has no objection to this  
23 application. The exhibits that are attached to the  
24 prehearing statement, you can see Exhibit A shows the  
25 proximity of the parking lot as it exists now to

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1 Meridian International Center.

2 Meridian owns all of the property in  
3 Square 2568, which is shown on Exhibit A. That's a  
4 square bounded by Belmont, Crescent, 16th, and 17th.

5 There are two historic landmarks on that  
6 property, both of which are on the national register,  
7 and a parking area closest to 16th Street, which will  
8 be maintained and not affected by this application and  
9 will be able to be used, continue to be used for  
10 parking for Meridian.

11 There is reflection in the MOU that we've  
12 achieved with the community that we would use valet  
13 parking as necessary to maximize the occupancy of that  
14 lot.

15 Exhibit B is the zoning map showing that  
16 the lot is in the R-5-B zone. Exhibit C is the plat  
17 layout, the current configuration of the parking lot  
18 with 38 spaces.

19 D is a series of three photos showing the  
20 parking lot. The first of three photos, D-1, is taken  
21 from looking toward the northwest of the parking lot.

22 The second photo, D-3, is taken kind of from the  
23 northeast, looking in a southwest direction. Then  
24 Exhibit D-3 is taken from the southwest, looking in a  
25 northeast direction. All those, they're all taken the

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1 same day, the same time, on a typical day. You can  
2 see that that parking lot is not completely occupied  
3 on a typical day.

4 Exhibit E is the testimony of Mr. Kolp. F  
5 is the prior order. G is the prior set of zoning  
6 regulations under which the original approval was  
7 granted, and you can see the language is virtually  
8 identical to what was the case today for Section 213.

9 H is an agreement that we have with  
10 Colonial Parking for off-site parking during the  
11 construction period. We secured 40 spaces on a full-  
12 time, 24-hours a day, seven days a week, 365 days a  
13 year basis for the period of construction, at a cost  
14 to us of about \$80,000.

15 Exhibit I is a portion of the plans for  
16 the new construction, the portion of which shows the  
17 parking lot of the parking garage, how it works. The  
18 site plan shows how cars would enter the garage  
19 beneath one of the residential units.

20 The second page shows the ramping system  
21 going down to the next level with a ramp in the back  
22 of the building that connects all three levels.  
23 There's no ramping internal to the building. It's all  
24 in the exterior, and that was the subjection of  
25 discussion and resulting in the MOU with the

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1 community.

2           Then there are two, actually three levels  
3 of parking, the upper level, where it is accessed by  
4 ramp, just going in and out. Then the middle and  
5 lower levels are where Meridian's parking is going to  
6 be Meridian will occupy into this plan. The lower  
7 level parking lot shows 33 spaces. We'll occupy all  
8 33 of those. Meridian has a right to have 39 parking  
9 spaces, to own 39 parking spaces in this garage.  
10 Under this plan, we would own 33 in the lowest level  
11 and then six on the next level above.

12           It's a looping system. The ramp that does  
13 down to the rear, you can see it best if you look at  
14 the last drawing, which is the rear elevation. You  
15 can see how the ramp starts on the upper left, and if  
16 you look on the right-hand side, the three levels of  
17 garage are identified there. The ramp goes down past  
18 the first entry of the first level. You can go in the  
19 first level or you can continue down the ramp to the  
20 second level. At that point, you go in the garage at  
21 the second level. In order to get access to the third  
22 level, you go in the second level, loop around back  
23 onto the ramp and into the third level.

24           So, there's plenty of queuing space for  
25 cars accessing the third level to come off the street

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1 and get down, and in any event, it will not -- all 33  
2 spaces are not anticipated to be used on a typical  
3 day, in any event -- 38. I'm sorry, 39 actually we're  
4 getting.

5 CHAIRPERSON GRIFFIS: Right, is what  
6 you're proposing there.

7 MR. COLLINS: Right. I'm sorry, thank you  
8 for that correction. All 39 spaces will not be used  
9 on a regular basis, but we'll have them when necessary  
10 for functions and events.

11 At this point, unless you have any  
12 questions, I'd like to turn it over to Mr. Kolp, who  
13 can testify in this case following his outline in  
14 Exhibit E.

15 CHAIRPERSON GRIFFIS: Excellent. Let me  
16 interject just briefly to see if I understand exactly  
17 what you're saying, Mr. Collins. As you laid out  
18 here, and we appreciate you coming back for the  
19 special exception as we've been through this. What  
20 you're saying is essentially you're here because,  
21 first of all, it's a 1960 order, which made it  
22 difficult to do a straight modification to the  
23 conditions, but rather set it for special exception.

24 Really, what's happening is specifically  
25 in condition F is it's a verbiage that needs to be

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1 changed. Why one wrote a condition that actually said  
2 exclusively, which obviously prohibited any sort of  
3 matter of right redevelopment of this site is a  
4 question. I wasn't on the Board in 1960, but it may  
5 have just been something that was thrown in there and  
6 may not have been -- but I'm not going speculate on  
7 what that is.

8 So, really what it is is changing, and as  
9 you say, it's establishing what's now on the surface,  
10 the exact and in fact an addition of another parking  
11 going below grade. So, moving a surface parking to a  
12 below grade situation.

13 MR. COLLINS: That's correct.

14 CHAIRPERSON GRIFFIS: You've indicated in  
15 what you were saying and also in the submission in the  
16 record is that valet parking is part of the memorandum  
17 with the community and the ANC. Valet parking would  
18 be provided as necessary.

19 MR. COLLINS: That's right.

20 CHAIRPERSON GRIFFIS: What is the level of  
21 as necessary in the Applicant's mind?

22 MR. COLLINS: I think Mr. Kolp can address  
23 that part.

24 CHAIRPERSON GRIFFIS: Oh, he's going to  
25 address that?

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1 MR. COLLINS: Right.

2 CHAIRPERSON GRIFFIS: Excellent. Well, I  
3 appreciate that, then. Good morning to you.

4 MR. KOLP: I would say that -- excuse me.  
5 I'm Larry Kolp. I live at 5205 11th Street, South in  
6 Arlington. I am the Chief of Staff of Meridian  
7 International Center.

8 In answer to that particular question, I  
9 would see a need for valet service using -- to use a  
10 valet service whenever the capacity of the lot would  
11 be expected to be used or overused. If we need more  
12 parking spaces than would be in the lot, then we  
13 would, of course, use a valet service.

14 For instance, coming up this Friday is  
15 Meridian's annual fundraising ball which supports our  
16 international exchange and understanding programs of  
17 the organization. We expect more people than we will  
18 be able to accommodate with cars now.

19 Therefore, we are hiring garages in the  
20 neighborhood for valet parkers to use in order to help  
21 alleviate parking cars on the street, and I don't  
22 think everyone does that. One hires a valet, and the  
23 drivers take them to some mysterious place.

24 We're providing as much as we can for a place for  
25 those to be done. This is just indicative of the kind

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1 of attitude we have now come to have with our  
2 neighbors and the sensitivity that has developed over  
3 the course of this process, that we have understanding  
4 that we're a part of this community.

5 It is certainly not in the interest of  
6 Meridian to make traffic any worse than is necessary  
7 or to cause any harm to our neighbors. We have, in  
8 the course of this summer, when we started first to  
9 ask the BZA to address our question, of course the ANC  
10 was notified. Also on the same day, I placed phone  
11 calls to the leaders of the two largest, closest  
12 condominium associations to Meridian, both Beekman on  
13 the one side and 1661 Crescent Place Association on  
14 the other.

15 This began a series of discussions with  
16 the community. In fact, since then, that was May 23,  
17 just Memorial Day. Since then, we and the developers  
18 have met at least a dozen times with representatives  
19 of the neighborhood, including three meetings with the  
20 ANC, two meetings with Reed Cooke Neighborhood  
21 Association, four meetings at Meridian attended by  
22 between 20 and 30 neighbors, moderated by ANC  
23 Commissioner Jeff Coudriet, and other smaller meetings  
24 along the line.

25 This brought us to a point, all of these

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1 meetings, where an understanding grew between Meridian  
2 and the representatives of the neighborhood,  
3 representatives being the ANC, the Reed Cooke  
4 Association, and the neighbors as represented by Jeff  
5 Coudriet and the ANC in our meetings together.

6 From these developed memoranda of  
7 understanding. The one between Meridian and the  
8 neighbors, signed by the ANC, and agreed to, in a vote  
9 of seven to zero at the ANC, its last meeting,  
10 indicates and enumerates the number of things that we  
11 will do both during construction and even afterward,  
12 to alleviate traffic. You've heard that we have an  
13 agreement with Colonial Parking, which I believe is  
14 the nearest commercial lot for an equivalent,  
15 actually, to more spaces than we now have in the  
16 present lot, during construction.

17 We've also agreed to make every effort to  
18 have our guests be aware of this parking which is a  
19 couple of blocks away. It's not as convenient for  
20 them. It's not as convenient for us. I imagine, in  
21 fact, that that very fact will probably lessen  
22 attendance at our meetings on programs for  
23 international understanding and world affairs.

24 We will make every effort in our flyers,  
25 in the invitations, in information that we send out to

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1 our guests, to inform them of where they can park. We  
2 will also at the same time use the other lot, the lot  
3 that's adjacent to the White Myer Building, which  
4 Meridian acquired in 1985. That's just about the same  
5 capacity as the 17th Street lot, which is the one  
6 before the table today.

7 That lot will be used to its capacity,  
8 and, as I've said, we will use valet parkers.  
9 Sometimes, all that's necessary is for valet parkers  
10 to simply direct parking within the lot, maximizing  
11 the number of cars that can get in there. You can  
12 increase by 50 or 75 percent capacity of a lot if  
13 people are directly about where to park rather than  
14 self-park.

15 We're using all these methods to help the  
16 situation, which will certainly be, in some sense, as  
17 any construction period is, disruptive. We expect  
18 that after the period of construction, when we have  
19 our spaces underground in the new building on the same  
20 site, the 17th Street lot, anytime that we have a  
21 program where members of the public will be coming for  
22 an event, we will have an attendant by the gate of the  
23 parking lot so that there won't be a build-up of cars.

24 There will be signed within the garage, indicating  
25 the direction to Meridian parking, and as Mr. Collins

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1 pointed out, the ramps of the parking lot itself make  
2 a longer queuing area than exists now, which is only  
3 on the street.

4           So, I might say something about the series  
5 of discussions we had with the neighbors. This proved  
6 to be a very informative and educational experience  
7 for us at Meridian because as an organization in a  
8 residential area in historic houses, years ago we did  
9 not feel a great connection with our neighbors. They  
10 were invited to our events, but there was not a great  
11 connection.                   That's all changed. Now  
12 I know our neighbors, and so do the rest of the people  
13 at Meridian. We deal with them now as people rather  
14 than that amorphous essence out there that's the  
15 neighbors.

16           I don't feel that we're different from  
17 them. We're different in the sense that we're an  
18 organizational neighbor, but we are neighbors. We  
19 will actually be a neighbor as close as Beekman and  
20 our friends on Ontario Road to the new building. We  
21 will be neighbors. So, the people who live there will  
22 affect us as much as the people who live there affect  
23 the other neighbors.

24           We've only come to the place where we have  
25 memoranda of understanding with the neighbors, I have

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1 to give credit to two reasons. One is the diligent  
2 and tireless and excellent work of ANC Commissioner  
3 Jeff Coudriet, who has steered the neighbors and us  
4 through this process tirelessly.

5 The second reason that we've been able to  
6 come to these agreements is that the leaders of the  
7 various neighborhood associations have participated in  
8 these meetings. They have actually led their people.

9 They have represented them. They have attended the  
10 meetings. They've taken part, and have come to  
11 sensible agreements between us, the developers, and  
12 the neighbors as represented by the memoranda of  
13 understanding certified by the ANC.

14 It's our hope that you will see and agree  
15 with us that our request will net in something that is  
16 good for the District and that is good, even for the  
17 neighbors. There may be individual disagreement with  
18 that, but it is my belief that this will be a good  
19 thing, and it's our request that you approve.

20 Thank you.

21 CHAIRPERSON GRIFFIS: Good. Thank you  
22 very much.

23 Any questions from the Board at this time?

24 Is there cross examination, Ms. Roehler? No  
25 questions?

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1 MS. ROEHLER: No questions.

2 CHAIRPERSON GRIFFIS: Very well. I thank  
3 you very much, and of course it goes without saying,  
4 as your submission has laid out, that you do believe  
5 that this wouldn't in any way impair the intent and  
6 integrity of the zone plan or map or the public good  
7 by taking a surface parking lot and moving it below  
8 grade?

9 MR. KOLP: Correct.

10 CHAIRPERSON GRIFFIS: Let's go to, oh,  
11 indeed. Is the ANC represented today? Do you have  
12 any cross examination of the Applicant at this time?

13 Very well. We will have your formal  
14 introduction when we call you to give your report.

15 That being said, let's go to government  
16 reports. The Office of Planning is with us today.

17 MS. THOMAS: Good morning, Mr. Chairman,  
18 members of the Board. I'm Karen Thomas, presenting  
19 the Office of Planning's report in Meridian  
20 International Center's request for a modification of  
21 its BZA order issued in 1960, which allowed accessory  
22 parking on its surface lot at 17th and Belmont Streets  
23 and providing 38 parking spaces for the Center's  
24 events.

25 Developer Crescent Place proposed to

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1 develop a luxury residential 30-unit condominium  
2 building with approximately 100 below grade parking  
3 spaces on the current lot. Thirty-nine of these  
4 spaces will be allotted for the Center's use. While  
5 the proposed development of the lot is a matter of  
6 right, the original order details a covenant  
7 agreement, requiring that the area provided for off-  
8 street parking for the Center be reserved exclusively  
9 for that purpose, so long as the said accessory off-  
10 street parking is required by the zoning regulations.

11 The conditions imposed by the Board in  
12 1960 were to insure that the lot was operated and  
13 maintained to be in harmony with the general intent  
14 and purpose of the zoning regulations. The Applicant  
15 is requesting a modification to these conditions which  
16 would reflect a change in the condition of the lot due  
17 to the proposed development of the condominium  
18 residences with underground parking.

19 As such, the wall referred to in Condition  
20 (e) of the order would not be required, and the  
21 covenant would refer generally to on-site parking with  
22 at least 38 spaces.

23 Since neighborhood conditions have evolved  
24 since 1960 and physical development of the lot would  
25 result in the relocation of the parking below grade of

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1 a matter of right development, these changes must  
2 comply with current zoning regulations, including  
3 Section 214, which regulates accessory parking in  
4 residential zoned districts.

5 Based on the Applicant's submission and  
6 the review of the previous decision by the Board, OP  
7 believes that a below grade lot meets the requirements  
8 of Section 214 of the zoning regulations.

9 We concluded that the Applicant has met  
10 the burden of proof pursuant to Section 214 for the  
11 special exception to permit the modification of the  
12 original Board approved order, which would remove the  
13 constraints on the site imposed by the previous order  
14 as it related to the lot.

15 Based on the information provided by the  
16 Applicant, we believe that granting these  
17 modifications would not tend to adversely affect the  
18 use of the neighboring property in accordance with the  
19 zoning regulations and map since the Applicant's  
20 special exception request anticipates using the new  
21 below grade parking lot in the same manner as the  
22 above-grade lot was used for the past 43 years.

23 There is no reason to expect that  
24 continuation of parking below grade absent the 42-inch  
25 wall at the front of the proposed condominium building

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1 to result in inconsistencies with the general purpose  
2 and intent of the zoning regulations and map.  
3 Similarly, the modification of Condition (f) seeks to  
4 maintain the condition of the requirement of 38 spaces  
5 on site, regardless of the spaces above or below  
6 grade.

7 The requested modifications do not change  
8 the material facts concerning the operation of the lot  
9 in the neighborhood. Although neighborhood conditions  
10 have indeed changed since the lot has been in  
11 existence, OP has no information that the parking for  
12 the Center's events have a negative impact on the use  
13 of neighboring properties. As such, there should be  
14 no adverse effects on the use of neighboring  
15 properties in accordance with the regulations and map.

16 Conditions between the Applicant and the  
17 ANC have been negotiated, which are outlined in a  
18 memorandum of understanding. We have no information  
19 on any violations of the existing order which may  
20 prevent continued on-site parking. However,  
21 recognizing the community's concern to minimize the  
22 adverse impact of parking in the neighborhood due to  
23 the temporary loss of event parking spaces during  
24 construction, we recommend approval of the order's  
25 modification subject to conditions one and two

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1 outlined in the draft memorandum of understanding  
2 between the Applicant and the ANC as outlined in our  
3 report.

4 Thank you.

5 CHAIRPERSON GRIFFIS: Thank you very much,  
6 and we appreciate the comprehensiveness of it. In  
7 reviewing the draft MOU, I understand that you're  
8 taking the proposed conditions and the spirit of that  
9 in also looking to the special exception.

10 I have one question in terms of the  
11 proposed conditions. Are you thinking that it would  
12 be appropriate for a condition to be added that would  
13 include the utilization of an attendant?

14 MS. THOMAS: An attendant on --

15 CHAIRPERSON GRIFFIS: Right. The  
16 conditions between the Applicant and the ANC have been  
17 negotiated is what your report says in outlining the  
18 memorandum of understanding. You didn't have any  
19 information on violations or other traffic problems  
20 that came up. You conclude by saying that OP  
21 recommends approval of the order's modification  
22 subject to conditions one and two outlined in the  
23 draft MOU between the Applicant and the ANC-1 as  
24 follows.

25 I guess my question to you directly is

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1 what is this Board supposed to do with, as you've  
2 listed, G and H? There is sufficient record already  
3 establishing G, that they're leasing off-site parking  
4 during the construction, but it goes to whether you're  
5 actually recommending or strongly recommending the  
6 attendant be utilized on an as needed basis to  
7 maximize the use of the parking space on the property  
8 at 1630.

9 MS. THOMAS: I have no objections to  
10 having an attendant.

11 CHAIRPERSON GRIFFIS: No, I know that, but  
12 are you asking that that be deliberated as a condition  
13 of an order that this Board might produce? I guess  
14 directly saying, if so, then how is the establishment  
15 of an as needed basis to be measured?

16 MEMBER ZAIDAIN: To make sure I understand  
17 your question, well, it seems to be it's pretty clear  
18 that they want this incorporated in the modification  
19 of the order. That's the way I read the report, at  
20 least, unless I'm wrong.

21 But your question is, and I think it's a  
22 good one, is how do you measure on an as needed basis.

23 CHAIRPERSON GRIFFIS: That's correct.

24 MEMBER ZAIDAIN: Just so that we have an  
25 enforceable order.

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1 CHAIRPERSON GRIFFIS: That's correct.  
2 What's the measurability of as needed? Is that like a  
3 need to know basis?

4 MS. THOMAS: I think we left that to the  
5 Applicant to work out between them and the ANC or the  
6 neighbors.

7 CHAIRPERSON GRIFFIS: Okay, but my concern  
8 is if it is in fact incorporated into a condition of  
9 this Board, then we're going to have to have a  
10 measurable level, correct? If we don't have a  
11 measurable level, there's nothing to enforce, and if  
12 there's no enforcement, then there's no reason to  
13 write the condition.

14 Now, the Applicant has testified today  
15 before us that at an event that would maximize or  
16 overmaximize the parking provided, that then they  
17 would hire an attendant or a valet or make provisions.

18 MS. THOMAS: Well, in this instance, I  
19 would agree with what the Applicant has put forward  
20 about an as needed basis with respect to when they  
21 believe that they would require a valet or an  
22 attendant if they had overflow attendance at events.

23 CHAIRPERSON GRIFFIS: Okay. So, if the  
24 assessment of the user for the event size, that it  
25 would then be --

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1 MS. THOMAS: Be necessary.

2 CHAIRPERSON GRIFFIS: Implemented that an  
3 attendant would be provided. Okay, that's clear. I  
4 fully understand, and I think the report's excellent,  
5 and I think it lays it out very well. That was my  
6 only point, of needing further clarification. Any  
7 other questions?

8 MEMBER ZAIDAIN: Yes, speaking of further  
9 clarification, I'm lost in my paperwork here. That  
10 condition, it's my understanding, and this is for the  
11 Chair for OP, it comes out of the discussions with the  
12 ANC.

13 CHAIRPERSON GRIFFIS: I understand that.

14 MEMBER ZAIDAIN: I know, I know. I'm  
15 asking point me to the document that that's  
16 referencing.

17 CHAIRPERSON GRIFFIS: Oh, in the MOU?

18 MEMBER ZAIDAIN: Yes.

19 MR. COLLINS: If I may help, it's  
20 paragraph number two of the MOU between the ANC and  
21 Meridian.

22 CHAIRPERSON GRIFFIS: It should be,  
23 there's one attached to the Office of Planning's  
24 report, and there was also an additional submission  
25 from the ANC.

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1 MEMBER ZAIDAIN: Oh, okay. I am sorry.

2 CHAIRPERSON GRIFFIS: So, number two,  
3 efficient use of parking lot on Meridian property, of  
4 addition, and we'll hear from the ANC, too, because  
5 there's also three, four, six, five, seven, which go  
6 to parking and valet and attendant use, but we'll  
7 leave that for further discussion.

8 MEMBER ZAIDAIN: Well, and I think the  
9 issue is to provide some sort of standard or  
10 quantification of when a parking attendant would be  
11 required.

12 CHAIRPERSON GRIFFIS: Right.

13 MEMBER ZAIDAIN: What I was looking for  
14 was some further guidance in the ANC agreement.

15 CHAIRPERSON GRIFFIS: And didn't find any.

16 MEMBER ZAIDAIN: Not at this time, but I  
17 have a lot of documents in front of me. We kill a lot  
18 of trees here at the Board of Zoning Adjustments.

19 CHAIRPERSON GRIFFIS: Right. Give me a  
20 minute.

21 MS. STEINGASSER: Mr. Chair, if I may?

22 CHAIRPERSON GRIFFIS: Yes.

23 MS. STEINGASSER: I think OP would concede  
24 that Condition (h) as we recommended, which is  
25 Condition two of the MOU, is somewhat a self-

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1 regulating condition.

2 CHAIRPERSON GRIFFIS: Self-regulating,  
3 okay.

4 MS. STEINGASSER: That puts the Applicant  
5 on notice that they need to do this and provides some  
6 teeth in a -- I don't want to say a retrospective, but  
7 it does provide teeth if they fail to do it.

8 CHAIRPERSON GRIFFIS: How would we know  
9 whether they failed or not?

10 MS. STEINGASSER: I think the neighborhood  
11 would have to let us know that there's a parking  
12 problem and that the enforcement is not being done in  
13 a manner that they've agreed to.

14 CHAIRPERSON GRIFFIS: I'd hate to see an  
15 appeal by 50 people that had differing opinions of  
16 whether it failed or was a success.

17 MS. STEINGASSER: Well, I don't think it  
18 would be an appeal.

19 CHAIRPERSON GRIFFIS: Well, not an appeal.

20 MS. STEINGASSER: It would be an  
21 application -- it would be a filing to the Zoning  
22 Enforcement Office that the condition is not met.

23 CHAIRPERSON GRIFFIS: Right, understand.

24 MS. STEINGASSER: And it would then be the  
25 obligation of the Applicant to -- and it seems like it

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1 would be a fairly easy thing to evidence. Either  
2 they've hired someone for that night under complaint  
3 or they have not.

4 CHAIRPERSON GRIFFIS: Okay, but we don't  
5 know which nights it would be required to hire an  
6 attendant?

7 MS. STEINGASSER: No.

8 CHAIRPERSON GRIFFIS: It's becoming a  
9 bigger issue. This is a small detail I wanted the  
10 Board to focus on in terms of being if it went to the  
11 issue of righting a condition, that we're going to be  
12 very specific in that condition if we believe that it  
13 is important and is, in fact, the basis of mitigating  
14 any adverse impact that then would allow us to grant a  
15 special exception on this, but I appreciate that, and  
16 I think the Office of Planning's position is well said  
17 and is known. I think we're going to have more  
18 testimony on this issue, so I thought I'd limitedly  
19 set the groundwork for it.

20 Any other questions then of the Office of  
21 Planning? Oh, I'm sorry, yes, Mr. Parsons?

22 COMMISSIONER PARSONS: I guess I'd like to  
23 ask Mr. Kolp, continuing on the same subject, is what  
24 does he think on an as needed basis means.

25 MR. KOLP: My feeling on this is that if

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1 we expect more people who can comfortably,  
2 conveniently park in our lots, these are our guests  
3 and participants in our program. We don't want them  
4 driving around the streets looking for a place to  
5 park. I mean, that's certainly not in our interest.

6 So, whenever we expect more cars than can  
7 comfortably fit in our two lots, we will have a valet  
8 service or an attendant, based on the size of the  
9 event expected.

10 COMMISSIONER PARSONS: So, is there a way  
11 we can be more specific about this in our order? You  
12 certainly know the capacity of your parking lots.

13 MR. KOLP: Yes. If you want to --

14 COMMISSIONER PARSONS: When the number is  
15 to exceed how many spaces?

16 MR. KOLP: If you want a number, I can  
17 tell you that our new parking place, our current  
18 parking place, the 17th Street lot, has 38 places.  
19 After construction, we will have 39 spaces, and the  
20 other lot, which we call the 16th Street lot, has 37  
21 spaces. So, adding those two numbers together, we  
22 come up with something like 75.

23 COMMISSIONER PARSONS: And then we have to  
24 find the as needed basis.

25 MR. KOLP: If we expect more cars than 75,

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1 we would have attendants. If we expect just a few  
2 more than that, you have attendants who can squeeze  
3 them in, as one does in any parking lot, or we will  
4 have valet service.

5 COMMISSIONER PARSONS: Couldn't we craft  
6 something along those lines?

7 CHAIRPERSON GRIFFIS: I think so. That's  
8 all the specificity that I was looking for. Ms.  
9 Miller?

10 MEMBER MILLER: I just want to follow up  
11 because I think you got very specific, and that's very  
12 helpful for us for the order. You said if you expect  
13 to have a need for more than 75 cars, you have just a  
14 few more, you would add an attendant, but at some  
15 point you would add valet?

16 MR. KOLP: Yes.

17 MEMBER MILLER: At what point would you  
18 add valet?

19 MR. KOLP: Just a minute, please. I  
20 would say that with directed parking, we could get a  
21 total of 100 cars in our two lots.

22 COMMISSIONER PARSONS: Directed means by  
23 an attendant?

24 MR. KOLP: By an attendant, yes.

25 CHAIRPERSON GRIFFIS: So that they park in

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1 the existing spot?

2 MR. KOLP: To show people where to park in  
3 the existing lots either now or during construction or  
4 after construction. An attendant can certainly park  
5 cars more efficiently than people parking on their  
6 own.

7 CHAIRPERSON GRIFFIS: And your experience  
8 is most people come alone and drive?

9 MR. KOLP: Most people come, I would say  
10 perhaps no more than two per car, of course. Many of  
11 our events are those -- most of our audience, I'll  
12 say, are couples who are retired for other events.

13 CHAIRPERSON GRIFFIS: So, the average is  
14 two people per automobile?

15 MR. KOLP: I would say that's a generous  
16 average, yes.

17 CHAIRPERSON GRIFFIS: So, conceivably  
18 looking at this, to digest this huge issue now, is  
19 with the availability of 100-car parking, you have an  
20 attendance of 200 or more.

21 MR. KOLP: Say 200, sure.

22 CHAIRPERSON GRIFFIS: Okay.

23 MR. KOLP: That's in fact the way we  
24 guesstimate this.

25 CHAIRPERSON GRIFFIS: Exactly.

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1 MR. KOLP: When we expect an audience of  
2 100 for an author's evening, we know that those cars  
3 can, by and large, fit in our two lots.

4 CHAIRPERSON GRIFFIS: Okay, good. I think  
5 that's what we need at this point.

6 MR. KOLP: Okay.

7 CHAIRPERSON GRIFFIS: After all, we don't  
8 want a 1960 order that makes language difficult for  
9 the next generation. So, we're going to get it all  
10 out there and put together. Very well. Yes?

11 COMMISSIONER PARSONS: I had another line  
12 of questioning. Just on page four of the report,  
13 there's an illustration, and it's labeled proposed  
14 site plan. This is not otherwise in the record. The  
15 Applicant didn't submit this. Is this of what purpose  
16 for us? I mean, the site plan that the Applicant has  
17 submitted is that. It's a site plan, and this then  
18 must be some idea of what the future will look like  
19 but it doesn't really have a bearing on this case, as  
20 I understand it.

21 CHAIRPERSON GRIFFIS: That is my full  
22 understanding. I believe you are correct. In fact, I  
23 didn't see in the Applicant's submission an elevation  
24 that was submitted.

25 COMMISSIONER PARSONS: No. A rear

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1 elevation, but it doesn't look anything like this.

2 CHAIRPERSON GRIFFIS: Right, which was  
3 showing the ramping.

4 COMMISSIONER PARSONS: Yes.

5 CHAIRPERSON GRIFFIS: Right, and the  
6 Office of Planning, in their report, did the proposed  
7 elevation.

8 COMMISSIONER PARSONS: Labeled proposed  
9 site plan?

10 CHAIRPERSON GRIFFIS: Exactly.

11 COMMISSIONER PARSONS: So, what is this,  
12 apparent garage opening entrance and so forth, but --

13 CHAIRPERSON GRIFFIS: You want the  
14 Applicant to address it?

15 COMMISSIONER PARSONS: Well, usually if  
16 we've got an exhibit like this, the Applicant has  
17 submitted it, and that's why I'm curious about it.

18 CHAIRPERSON GRIFFIS: Okay. Just a quick  
19 clarification from the Office of Planning on the  
20 elevations?

21 MS. STEINGASSER: Yes. The Applicant did  
22 submit the elevation to the Office of Planning. The  
23 intention was to provide information on where the  
24 driveway is entering into the building and heading  
25 underground.

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1 CHAIRPERSON GRIFFIS: I see.

2 MS. STEINGASSER: The parking requirements  
3 talk about how underground parking is addressed, and  
4 just provided us with some information.

5 COMMISSIONER PARSONS: Okay, thank you.

6 MR. COLLINS: Can I address that, Mr.  
7 Chair?

8 CHAIRPERSON GRIFFIS: Do you need to?

9 MR. COLLINS: The Applicant did not submit  
10 the proposed site plan that's shown in the OP report.

11 COMMISSIONER PARSONS: Then where did it  
12 come from?

13 MS. STEINGASSER: I'm sorry.

14 COMMISSIONER PARSONS: This may be another  
15 project.

16 MR. COLLINS: It's the developer's  
17 elevation, but we did not submit it.

18 CHAIRPERSON GRIFFIS: But what the Office  
19 of Planning has just indicated is that they were  
20 provided that elevation.

21 MR. COLLINS: They were provided it, but  
22 not by us.

23 CHAIRPERSON GRIFFIS: Oh, is that so?

24 MR. COLLINS: Yes.

25 CHAIRPERSON GRIFFIS: This is all getting

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1 so complicated for an easy case we were going to  
2 finish on time at 12:00.

3 MR. COLLINS: I mean, be that as it may --

4 MS. STEINGASSER: It came to us from the  
5 ANC as part of their address.

6 CHAIRPERSON GRIFFIS: Be that as it may,  
7 as there's a whole lot happening out in the community,  
8 there's a lot of meetings, as was established on the  
9 record, that there were numerous meetings with the  
10 developer and the ANC. Mr. Parsons point is exactly  
11 correct. That's not before us, that elevation.

12 I think it was -- I enjoyed seeing it in  
13 the Office of Planning's report, quite frankly, but it  
14 does help to give the identification of where that  
15 drive entrance is. As the Applicant's submission  
16 clearly shows us in the site plan, it is directly off  
17 of Crescent Street and the 17th Street. So, it does  
18 help a little bit in terms of understanding how it  
19 goes, and of course the rear elevation was provided to  
20 show the ramping on it.

21 Okay, good points all around. Anything  
22 else from the Board for Office of Planning? Does the  
23 Applicant have any cross examination?

24 MR. COLLINS: None, and we agree with the  
25 conditions included in the report as modification by

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1 the discussion of the Board.

2 CHAIRPERSON GRIFFIS: Okay, excellent.  
3 Then does the ANC have any cross examination of the  
4 Office of Planning? None.

5 Does the Beekman party, any cross  
6 examination of the Office of Planning?

7 MS. ROEHLER: Yes. You mentioned that  
8 you're supporting through the memorandum of  
9 understanding, in particular conditions one and two.  
10 For us, condition seven is of particular relevance  
11 because this is the attendant -- this is the  
12 regulation that on the attendant after the garage is  
13 built, which is pertinent for the long-term effect of  
14 traffic on Beekman and Belmont.

15 CHAIRPERSON GRIFFIS: What's the question?

16 MS. ROEHLER: Why the Office did not  
17 recommend to also include condition number seven,  
18 which is utilization of attendant to protect garage  
19 after the garage is constructed.

20 CHAIRPERSON GRIFFIS: Okay.

21 MS. ROEHLER: And for that matter, we  
22 would hope that the Office would support the inclusion  
23 of condition seven.

24 CHAIRPERSON GRIFFIS: But how do you see  
25 that item seven of the MOU isn't addressed in proposed

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1 condition H, which indicates that Meridian would  
2 utilize an attendant on an as needed basis to maximize  
3 the use of parking space on the property located at  
4 1630? You're saying you want an attendant on the 17th  
5 Street?

6 MS. ROEHLER: Sorry, I don't have  
7 condition H in front of me.

8 MR. KOLP: Mr. Chairman, may I offer --

9 CHAIRPERSON GRIFFIS: Actually, no. This  
10 is a cross examination question for the Office of  
11 Planning which they'll need to respond, and then you  
12 can follow up afterwards, of course.

13 Do you have your MOU in front of you?

14 MEMBER MILLER: The draft MOU that was  
15 provided to us from the ANC has number seven as an  
16 independent arborist. I'm not sure what --

17 MS. ROEHLER: No, there are two MOU's.

18 CHAIRPERSON GRIFFIS: Are they qualified  
19 to park cars?

20 MS. ROEHLER: There are two MOU's. One is  
21 an MOU between Meridian International Center and the  
22 ANC, and this is the MOU I'm currently referring to,  
23 which has eight conditions which are numbered  
24 numerically and not by A, B, C, D, or H as in this.

25 CHAIRPERSON GRIFFIS: Which is the one

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1 that's attached to the Office of Planning's report.

2 MS. ROEHLER: And there is a second MOU,  
3 which is apparently what you are currently referring  
4 to that concerns the developers.

5 MS. THOMAS: I just perceived that then to  
6 be included in number two, so I didn't see the  
7 separate. I didn't see how it was separate, condition  
8 two in the MOU.

9 MEMBER ZAIDAIN: And that's reflected in  
10 condition -- you're recommending condition H?

11 MS. THOMAS: Yes.

12 MEMBER ZAIDAIN: Okay, so you're saying  
13 that you felt that condition H addressed that issue,  
14 as well as the condition two in the other MOU?

15 MS. THOMAS: Yes, the issue of the  
16 attendant.

17 CHAIRPERSON GRIFFIS: Follow-up question?

18 MS. ROEHLER: Yes, just for you to  
19 understand what I'm understanding and hearing at this  
20 point in time, in the MOU between Meridian and the  
21 ANC, there is a condition two that says efficient use  
22 of parking lot on Meridian property, which raises the  
23 issue of how to measure the number of events to  
24 achieve full capacity of 50 spaces.

25 CHAIRPERSON GRIFFIS: Right.

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1 MS. ROEHLER: There is an additional  
2 condition seven that says Meridian hereby agrees to  
3 utilize an attendant to provide access to the Crescent  
4 Garage during those times that the garage will be  
5 utilized for events at the Center.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. ROEHLER: Okay, so basically there are  
8 two issues regarding attendants.

9 CHAIRPERSON GRIFFIS: I'm clear.

10 MS. ROEHLER: And I just would like -- at  
11 the end of the day, they're both included in any order  
12 that the BZA issues.

13 CHAIRPERSON GRIFFIS: Okay. Well, we'll  
14 hear more on your case presentation on that, then.

15 Very well, any other cross examination,  
16 questions of the Office of Planning? Yes?

17 MEMBER MILLER: I just want a  
18 clarification from Office of Planning. Am I reading  
19 your report correctly that you don't recommend  
20 adoption of all the conditions in the memorandum of  
21 understanding that's attached, just the ones that  
22 you've listed on the last page?

23 MS. THOMAS: That's correct.

24 MEMBER MILLER: Okay, and do you want to  
25 elaborate anymore on your reasons for not recommending

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1 the others?

2 MS. THOMAS: Well, we believe that the  
3 others related to the construction of the matter of  
4 right construction, and we had no way to speak to  
5 that.

6 CHAIRPERSON GRIFFIS: Good. Thank you  
7 very much, the Office of Planning. I think it was  
8 very clearly laid out with the Office of Planning's  
9 oral testimony and also in their written memorandum  
10 that, in fact, what was before the Board was  
11 completely addressed and that their proposed  
12 modifications to the original order, which was  
13 approved by this Board with numerous conditions.

14 However, they needed just the slight  
15 modifications to Order 5802, and as they proposed, was  
16 sufficient to alleviate any tendency towards adverse  
17 impact.

18 That being said, then, let's move on to  
19 the ANC report. ANC-1-C is recommending approval. It  
20 is Exhibit No. 27, but we do have our ANC  
21 representative here today to present that case.

22 MR. COUDRIET: Good morning. I'm Jeff  
23 Coudriet, ANC Commission 1-C-08, speaking on behalf of  
24 ANC Commission 1-C. You should have in your file our  
25 September 23 letter to the Board, outlining our report

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1 and our actions on this case.

2 I won't rehash all of it, because  
3 obviously we've discussed this, but we voted on this  
4 at our September 3 meeting and recommended the  
5 adoption of the MOU that we negotiated with Meridian  
6 International Center, and we're requesting and  
7 conditioning our support for the application upon the  
8 Board's inclusion of those provisions in the order.

9 As an FYI, of course, we also worked on  
10 the second MOU with the prospective developers, which  
11 I also gave you for your information purposes, and  
12 we're sort of not requesting that be incorporated in  
13 your order because it's not a matter before you.

14 CHAIRPERSON GRIFFIS: Indeed. Thank you  
15 very much, and you are well praised today, if you were  
16 -- I know you were here with the Applicant and the  
17 amount of work that has been done in terms of  
18 coordinating the communication. Of course, that is  
19 very important for any matter that happens in the  
20 community. So, we certainly are appreciative.

21 Questions of the Board of the ANC? Ms.  
22 Miller?

23 MEMBER MILLER: Yes, I have a question for  
24 Mr. Coudriet, and I'd also like Mr. Collins to address  
25 it afterwards. That is, with respect to your

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1 memorandum of understanding, is it your opinion that  
2 it is a legally binding document outside of any BZA  
3 order?

4 MR. COUDRIET: Well, I'm not an attorney,  
5 so I would hope yes, certainly, and seek further  
6 advice. Certainly we would like it to be incorporated  
7 in the order.

8 MEMBER MILLER: Well, I know Mr. Collins  
9 is an attorney, so perhaps you can give us your  
10 opinion and as to how it could be enforced outside of  
11 the BZA order?

12 MR. COLLINS: Outside of the BZA order?

13 MEMBER MILLER: Well, first of all, do you  
14 believe it's a legally binding agreement, separate  
15 from any BZA order?

16 MR. COLLINS: Well, the way it's set up,  
17 we all agreed. We came to agreement on this, and we  
18 discussed that very issue. Because the MOU that --  
19 the other MOU, not the Meridian MOU but the other one  
20 that Mr. Coudriet mentioned with the developer, I  
21 believe is a provision about recording on the land  
22 records on that one.

23 MR. COUDRIET: Right.

24 MR. COLLINS: There's not on this one  
25 because it was understood that this would be as

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1 condition number eight says, incorporated into the  
2 BZA's order in this case. Now, how that's to be  
3 incorporated is up to the Board. Whether it's  
4 findings of fact, conclusions of law, noting the  
5 existence or what. It was our mutual understanding  
6 that that's the enforcement mechanism that this would  
7 be. I think all of us in good faith proceeded with  
8 this agreement and signed the agreement with that  
9 understanding, and that's what we're here to present  
10 this case to you hand in hand with the ANC on that  
11 issue.

12 As to whether all those things are  
13 appropriate conditions, I leave that to the Board's  
14 consideration, but we all agreed that they would be  
15 incorporated, that this MOU would be incorporated into  
16 the Board's order.

17 CHAIRPERSON GRIFFIS: I think that's  
18 understood. Here's the hesitation and some of the  
19 concern for the Board, and that is we applaud and  
20 encourage MOU's and coordination and communication in  
21 the community. What we often are presented with, and  
22 not necessarily specifically in this case, but often  
23 presented with MOU's and conditions of those that go  
24 well beyond our jurisdiction.

25 So, we are often asked to adopt straight

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1 into verbatim conditions. In fact, the Board  
2 previously has done that and run into great trouble.  
3 So, our concern in this new constituted Board, one, is  
4 to write conditions that are explicit, measurable,  
5 understandable, and enforceable, and also not to get  
6 involved in things outside of our jurisdiction.

7 I'll give you an example in your MOU, and  
8 that would be support of residential permit parking.  
9 I applaud that, and I think it's perfectly  
10 appropriate. I'm not sure why Meridian wouldn't want  
11 to do that, and it seems to make a whole lot of sense.

12 Say they didn't. Is that a zoning issue?  
13 Is that even within our jurisdiction, as it's  
14 actually regulating a public thoroughfare and a public  
15 street, which goes to the Department of  
16 Transportation, of which it may be incidental to  
17 applications, but it's in fact not under our  
18 jurisdiction.

19 So, that's some of the concern, and I  
20 think what Ms. Miller is actually bringing up is the  
21 importance of this. It is obviously a consensus among  
22 the community as it's been drafted that this would be  
23 complied with an enforced. So, what I think we need  
24 to balance is how we fit into that.

25 So, I would then go back to the Office of

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1 Planning and what the Office of Planning has stated in  
2 their testimony today and also in their report, that  
3 the conditions as they have recommended them embody  
4 the spirit, the intent, and the specificity of what  
5 is, in fact, laid out in the MOU. So, we have that to  
6 deliberate on.

7 Further from the Board?

8 MEMBER ZAIDAIN: Well, I guess the  
9 additional wrinkle to that issue is the fact that this  
10 is the modification of a previous order, and we're  
11 being asked to deliberate on, you know, a requested  
12 change to some of these modifications. I don't know  
13 the answer to this, but it seems to me there may be a  
14 question on whether or not we can incorporate an order  
15 that has been constructed, or an MOU that has been  
16 constructed today, back to an order that was issued in  
17 1960.

18 I don't know, it's kind of an additional  
19 wrinkle that I'd be interested, if we do go that  
20 route, I'd be interested to hear what corp counsel's  
21 advice would be in incorporating an MOU that may deal  
22 with issues that are not in the record from 1960.

23 CHAIRPERSON GRIFFIS: Well, they can be in  
24 the record. I mean, they're in the current record,  
25 which is why this is a special exception. So, I don't

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1 find any difficulty in looking at that. I think what  
2 I also go back to is the Office of Planning, that they  
3 didn't have any information or evidence that this has  
4 been a substantial, monumental, or minor problem. I  
5 mean, we seem to be trying to alleviate a condition in  
6 a situation that so far hasn't been evidenced as an  
7 extreme condition.

8 MEMBER ZAIDAIN: Correct.

9 CHAIRPERSON GRIFFIS: I think logically,  
10 and I don't think the Applicant is saying this is not  
11 a problem. I think logically the Board can assume  
12 moving cars in for special events and into that area  
13 is something that we need to look at. Street parking  
14 is in the record as being problematic.

15 MEMBER ZAIDAIN: No, I agree, and like I  
16 said, I don't -- I'm just kind of raising the issue,  
17 and I guess it's more of taking up time than anything  
18 just to say I think if we're going to go that route of  
19 trying to adopt an MOU into this, I think we should  
20 look more the specific conditions and tie them to the  
21 issue that's before us and not get into a broad review  
22 of community concerns, whatever. I think an  
23 additional wrinkle to that is the fact that this is a  
24 modification of a previous order where those factors  
25 may not have been deliberated there.

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1 CHAIRPERSON GRIFFIS: That's correct.  
2 Excellent, and I think if you look at previous conduct  
3 of the Board in terms of dealing with MOU's, that  
4 exactly what happens. It is often listed in the order  
5 as a finding of fact, that there is an MOU present,  
6 and that the conditions are then crafted on issues  
7 specific to the Board that come out of the MOU, and I  
8 think that's what the important piece of it is, and I  
9 think that has served us well in the past, and we can  
10 look to that as a way to proceed with this one.

11 Okay, Ms. Miller?

12 MEMBER MILLER: Mr. Coudriet, I also want  
13 to ask you about number eight in the memorandum of  
14 understanding. Given what you've heard the Board  
15 saying about how we need to look at the different  
16 provisions and decide which ones we would actually  
17 incorporate in our order, would you testify today that  
18 the ANC would only support the application if all of  
19 these provisions were incorporated, or not?

20 MR. COUDRIET: I wouldn't say necessarily.  
21 I think it would be a matter we'd want to come back  
22 and review probably. I'm not quite sure how the  
23 Board's process works, but if there were a proposed  
24 order that we could review and, you know, evaluate on  
25 that basis, I'm sure we'd all be happy to do that in a

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1 prompt way.

2 I sort of have my -- my marching orders  
3 are prescribed by what we adopted. So, obviously the  
4 only correct answer I can give you is no, you need to  
5 have all of the provisions in there, would be our  
6 advice.

7 CHAIRPERSON GRIFFIS: Okay. Good, thank  
8 you. Anything else then for the ANC? Does the  
9 Applicant have any cross examination of the ANC?

10 MR. COLLINS: Mr. Coudriet, at the end of  
11 this discussion at the ANC, was there a round of  
12 applause?

13 MR. COUDRIET: Yes.

14 MR. COLLINS: Granting support for the  
15 Applicant's efforts and your efforts and the mutual  
16 efforts of everybody?

17 MR. COUDRIET: Yes. I think people very  
18 much appreciated the hard work and the sort of  
19 comprehensive nature of what we had done and the  
20 constructive dialogue that we've had with the  
21 Applicant and the neighbors. I think we have a better  
22 relationship going forward.

23 CHAIRPERSON GRIFFIS: Good. Maybe we  
24 should condition that. There ought to be good  
25 relationships across the city.

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1           Okay, then does Beekman Association have  
2 any cross examination of the ANC? Very well. I don't  
3 have any other attendant reports for the government  
4 agencies in the record, outside of we have had, as  
5 already spoken to, Exhibit No. 25, which is the letter  
6 from councilmember of Ward 1, Jim Graham, who is in  
7 support of the application and has put that into the  
8 record.

9           Let us move on then. I believe we can go  
10 to the party in opposition's case at this point. Ms.  
11 Roehler, that's yours.

12           MS. ROEHLER: Thank you. I have my  
13 statement in writing as well if you want to have it.

14           CHAIRPERSON GRIFFIS: Actually, do you  
15 have copies to submit into the record?

16           MS. ROEHLER: Yes, I will probably  
17 slightly modify it when I speak.

18           CHAIRPERSON GRIFFIS: Of course. If you  
19 wouldn't mind giving it to the staff that's sitting to  
20 my right, and we can review that while you present it.

21           MS. ROEHLER: Sorry, I just lost my copies  
22 here.

23           CHAIRPERSON GRIFFIS: Do we have that in?  
24 We're making copies. Okay, let's proceed.

25           MS. ROEHLER: Okay, we have the Meridian

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1 International Center, which is to develop the property  
2 known as Square 2567, Lot 850, currently used as a  
3 surface parking lot with luxury condominium units. In  
4 this regard, Meridian International Center is  
5 requesting the modification of Order 5802, which  
6 stipulates that the parking spaces are required  
7 parking, and the lot is to be used exclusively for  
8 that purpose.

9 Meridian International Center is now  
10 proposing to relocate the existing 38 parking spaces  
11 to an underground garage. However, we are of the view  
12 that the proposed relocation of the parking spaces in  
13 itself, but also in conjunction with the proposed  
14 development would aggravate an already tight parking  
15 situation.

16 There are a number of reasons. First, we  
17 believe that the order in its existing form was  
18 drafted not just to insure off-street parking for  
19 Meridian International Center but to insure the  
20 availability of easily accessible parking for  
21 visitors, who typically are not familiar with the  
22 neighborhood.

23 Parking in an underground garage is  
24 significantly more cumbersome than on a surface  
25 parking lot. Especially at night, many people do not

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1     like to use garages.     Both factors increase the  
2     likelihood that visitors to Meridian International  
3     Center will be more likely to park on the neighborhood  
4     streets as opposed to the underground garage.

5             Second, the proposed development on the  
6     lot is for one and two-bedroom luxury condominiums.  
7     Prices of about \$700,000 per unit were mentioned.  
8     Residents of such units own at least one car, and thus  
9     it needs to be insured that there is sufficient  
10    parking for any new residences to be built, in  
11    addition to the relocated Meridian spaces.

12            Third, residents of upscale residences are  
13    typically visited by guests who drive, resulting in  
14    additional increase and demand for parking in the  
15    neighborhood.

16            Other long-term effects on the  
17    neighborhood from the proposed modification of Order  
18    5802 will be increased traffic back-ups, increased  
19    exposure to car exhaust fumes.     Parking in an  
20    underground garage as opposed to parking on a surface  
21    lot is much more likely to cause increased traffic  
22    back-ups and traffic jams when visitors to Meridian  
23    International Center arrive.

24            Typically, all participants of an event  
25    arrive at about the same, and entry into a multi-level

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1 parking garage is more time consuming than parking on  
2 a surface lot. It therefore will be essential to have  
3 an attendant for the parking garage to insure smooth  
4 entry.

5 Increased exposure to exhaust will result,  
6 both from back-up traffic and the necessary venting of  
7 the underground garage.

8 Moreover, there are transitional issues  
9 during the construction phase of such a large  
10 building. In particular, Meridian International  
11 Center needs to insure that the 38 parking spaces of  
12 the parking lot are replaced by alternate off-street  
13 parking in sufficiently close proximity to Meridian  
14 International Center. The removal of street-side  
15 parking during the construction phase should also be  
16 as limited as possible.

17 We recognize and, for that matter, also  
18 want to state for the record that we appreciate all  
19 the efforts that went into this, that Meridian  
20 International Center and the anticipated developers  
21 have worked with neighborhood residents to find  
22 conditions that would ameliorate some of the impact of  
23 the proposed development.

24 In this context, two memoranda of  
25 understandings were drawn up. In light of the

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1 agreement that has been reached, we are willing to  
2 support the requested modification of Order 5802 if,  
3 in addition, the Board would incorporate additional  
4 conditions in the modification.

5 What I have said here is all  
6 understandings, agreements of the memorandum of  
7 understanding between Meridian International Center  
8 and the Advisory Neighborhood Commission 1-C are  
9 incorporated into the Board of Zoning Adjustment  
10 order. I would like to point out that in particular,  
11 conditions one, two, and seven would be of particular  
12 relevance to us. Of course, the other issues are also  
13 relevant and should be there, but in terms of the  
14 substance, this is what we would focus on.

15 The construction of Square 2567, Lot 850  
16 includes a three-level below ground parking garage,  
17 providing at least 89 parking spaces. Sorry, let me  
18 rephrase this. As a second condition we would like to  
19 see reflected in the order issued by the BZA, we want  
20 to refer to the new building.

21 The construction on the lot is supposed to  
22 include a three-level below ground parking garage,  
23 providing at least 89 parking spaces for no more than  
24 30 condominium units. We would like to see a measure  
25 of this also included in the modification order of the

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1 BZA.

2 Third, and these are sort of things, to be  
3 honest, I'm not 100 percent sure whether this is an  
4 issue for the BZA, but we would like to have the Board  
5 of Zoning Adjustment order contain a condition that  
6 during construction, only those parking spaces located  
7 on the west side of 17th Street that but the Lot 850  
8 of Square 2567 be removed from public use for an  
9 extended period of time if and when required by the  
10 construction activity.

11 The aforementioned parking spaces located  
12 on the west side of 17th Street that abut the lot will  
13 be restored and returned to public use upon completion  
14 of the construction activity and will remain available  
15 for public use.

16 Fourth, we would like to have included in  
17 the order that venting of exhaust fumes from the  
18 underground garage will be designed and located in  
19 such a manner that the exhaust fumes do not pose a  
20 health risk or a nuisance to neighborhoods in all  
21 weather conditions.

22 Thank you.

23 CHAIRPERSON GRIFFIS: Good, thank you very  
24 much. Let me take the conditions first.

25 Number four, I think based on your

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1 testimony, that's something worth note for the Board,  
2 and I'll have the Applicant respond to that and  
3 whether they have at this point provisions for such a  
4 measure. However, there are, in fact, building code  
5 provisions that would regulate the venting of the  
6 parking. So, even if that isn't covered by this  
7 Board, I have security in knowing that it will be  
8 properly done so that it would not, in fact, pose any  
9 health risk to the adjacent neighbors.

10 On proposed condition number three, you  
11 said that you're asking this Board to limit any of the  
12 removal of the parking during the construction phase.

13 I would also say it is of great concern, and  
14 certainly during construction, administration of any  
15 project of development, it goes beyond the  
16 jurisdiction of this Board, as they will have to pull  
17 a permit to remove any parking or access into the  
18 sidewalks, public street, so that there's another  
19 agency that actually regulates that. Again, it goes  
20 to the original idea or statement that I have made  
21 that this Board needs to condition things that we can  
22 actually have jurisdiction over so we don't get  
23 anybody into trouble, most of which ourselves.

24 The second condition that you proposed I  
25 think is also a very important issue. That is, if

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1 you're building new residential units, you need to  
2 provide the spaces. We don't have any, nor is it part  
3 of this hearing the review, approval, or denial of the  
4 proposed construction. That being said, I know that  
5 there is a link to it. However, the full review of  
6 that is not before us, and not knowing or based on the  
7 statement that at this time it looks to be a proposed  
8 matter of right development, then that matter of right  
9 development would have to conform with the parking  
10 requirements in the zoning regulations, and therefore  
11 it may well be 89 or more.

12 The first, we have somewhat addressed  
13 that. I want to go to your statements. First of all,  
14 parking, as written in your statement and as you just  
15 said, parking in underground garages is significantly  
16 more cumbersome than a surface parking lot. How do  
17 measure that? How do you know that? What does that  
18 mean?

19 MS. ROEHLER: At the current point in  
20 time, the surface parking lot has one entrance and one  
21 exit. It's wide open.

22 CHAIRPERSON GRIFFIS: It's surrounded by a  
23 brick wall.

24 MS. ROEHLER: It's surrounded by a brick  
25 wall, but it's easy and viewable from the straight.

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1 CHAIRPERSON GRIFFIS: Okay, so it's more  
2 cumbersome to go below grade because it's not visible?

3 MS. ROEHLER: So, going below grade means  
4 that you have to fit through a narrow entryway. You  
5 have to pass the security that's --

6 CHAIRPERSON GRIFFIS: Okay, let me stop  
7 you there. What's the opening size for the current  
8 surface parking lot? Do you know? What's the curb  
9 cut?

10 MS. ROEHLER: I don't have the measure,  
11 but certainly at least --

12 CHAIRPERSON GRIFFIS: Is it two lane? I'm  
13 not asking you to be an engineer.

14 MS. ROEHLER: Right, right.

15 CHAIRPERSON GRIFFIS: I'm really trying to  
16 get somewhere.

17 MS. ROEHLER: I think it's two lanes. You  
18 would fit two cars next to --

19 CHAIRPERSON GRIFFIS: So conceivably it's  
20 15 feet? Let me just throw out hypothetically. Let's  
21 say it's 15 feet. Do we have anything that's  
22 dimensioned? Is that the existing? Anyone have my  
23 bifocals?

24 I'm looking at the submission which is  
25 actually, it looks like the ALTA land survey of the

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1 existing. There's a curb cut there on both sides, as  
2 you have indicated. I don't see any dimensions on it,  
3 but it doesn't look to me to be a full two-lane  
4 access, but what do I know?

5 My point being, also in the regulations,  
6 there are drive aisle requirements and height  
7 requirements into a below-grade surface. I would  
8 imagine, looking at this, and in fact looking at the  
9 proposed plan, that the drive aisle in is actually  
10 larger than is existing.

11 Now, the other piece of it is is this will  
12 be a two-way entrance, and I'm just trying to get your  
13 understanding to address your particular issue. My  
14 understanding is that -- my clear understanding of the  
15 proposed parking structure is that ingress and egress  
16 is from that one entrance. That would mean there's a  
17 requirement for the drive aisle to sufficiently, not  
18 only that but the turning radius to sufficiently  
19 accommodate the cars coming in and out.

20 What's your reaction to the testimony that  
21 we've heard today in terms of the ramping that  
22 actually allows for more time to queue, or line up,  
23 the cars, rather than waiting as you're going into the  
24 surface parking lot, as we're seeing here, if a car is  
25 pulling in or backing out? That would block the

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1 entire access or exit to the parking, the surface  
2 parking lot. Do you understand and do you agree, or  
3 tell me why you disagree why the below grade then  
4 becomes more cumbersome in terms of time queuing and  
5 all of that if you have your ramp and you also have  
6 conceivably a wider entrance?

7 MS. ROEHLER: My first concern is with the  
8 exit right into the garage. Because you have to pass  
9 some kind of security measure to even get into the  
10 garage onto the ramp, there is just some kind of  
11 procedure that you have to go through, and every  
12 single car, one after one, would have to do this that  
13 you don't have at the surface parking lot.

14 At the current point in time, if you have  
15 event parking, you could feasibly even use the exit of  
16 the surface parking lot as an entry, basically  
17 temporarily generating two different entries into the  
18 parking lot, simply because it's all open. In an  
19 underground garage, the only thing you can do is you  
20 can go on the entry lane one after one after one,  
21 parking the security measures that are at the entry  
22 gate.

23 CHAIRPERSON GRIFFIS: Okay, and so you  
24 believe that that is actually slower access into the  
25 parking?

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1 MS. ROEHLER: Right.

2 CHAIRPERSON GRIFFIS: Okay. And you say  
3 visitors would be more likely to park in the  
4 neighborhood streets as opposed to the underground  
5 garage because visitors to Meridian or generally the  
6 population is adverse to parking below grade?

7 MS. ROEHLER: Yes, especially at night  
8 when some of the events take place at Meridian which  
9 is, in fact, in the neighborhood the biggest concern,  
10 on parking.

11 CHAIRPERSON GRIFFIS: Okay. Just help me  
12 understand so that it's more than just anecdotal. How  
13 do you base that, that people are more inclined to be  
14 adversely, or are adverse to parking below grade after  
15 dark? I mean, it seems to make some sense, but why?

16 MS. ROEHLER: My main sense is anecdotal,  
17 and all I can say is that there are now parking  
18 garages that provide specially secured parking for  
19 women, for example, especially at night, where there  
20 are advertisements out there that say we have special  
21 secure facility and special supervisory cameras so  
22 that at all times of the day and night, you are safe  
23 in our garage.

24 CHAIRPERSON GRIFFIS: Okay.

25 MS. ROEHLER: So, there apparently is a

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1 concern out in the general population that garage  
2 parking is less secure than an easily visible surface  
3 parking lot.

4 CHAIRPERSON GRIFFIS: Okay. I can  
5 understand that. I know certainly in the suburban  
6 malls, their parking has the highest crime in the  
7 country, more so than in the city even, but we don't  
8 hear a lot about that.

9 Okay, sufficient parking for the  
10 residents. I know we've covered a little bit. You've  
11 indicated that residents for upscaled, or upscale  
12 residents typically are visited by guests who drive,  
13 resulting in additional increase and demand for  
14 parking. Well, there's too many things to go into  
15 that one.

16 MS. ROEHLER: Okay.

17 CHAIRPERSON GRIFFIS: Okay, and we've  
18 talked about the time consuming aspect. All right, I  
19 think I understand. Other questions from the Board?  
20 Do you have cross examination? Yes?

21 MS. ROEHLER: Sorry. Can I just make a  
22 comment on your concern on what I phrased here as  
23 condition number two, which is the parking in the  
24 proposed development?

25 CHAIRPERSON GRIFFIS: Yes.

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1 MS. ROEHLER: Basically by moving the  
2 parking that is currently on the southwest parking lot  
3 to garage parking, additional development will be  
4 possible. We are concerned that in conjunction with  
5 this proposed development and the already tight  
6 parking situation in the neighborhood, which led to  
7 the initial order of requiring parking for Meridian,  
8 for example, that already at this stage, the  
9 requirement that sufficient parking possibly above and  
10 beyond any minimum zoning requirement be taken up.

11 CHAIRPERSON GRIFFIS: I see, because the  
12 new residential development brings on density, which  
13 is attendant -- it's above and beyond just making sure  
14 that the provision of the accessory is okay, but with  
15 the additional density on that block, there may be  
16 other issues, in fact, that come into play.

17 MS. ROEHLER: Right.

18 CHAIRPERSON GRIFFIS: Okay, that's an  
19 interesting point. My interest in for the record,  
20 when was Beekman developed?

21 MS. ROEHLER: I believe in the mid-70's.

22 CHAIRPERSON GRIFFIS: Okay. Very well.  
23 Anything further from the Board. Applicant have any  
24 cross examination?

25 MR. COLLINS: How many parking spaces are

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1 there on Beekman property for Beekman residents?

2 MS. ROEHLER: There are 209 surface  
3 parking spaces and 31 garages.

4 MR. COLLINS: For how many units?

5 MS. ROEHLER: 216.

6 MR. COLLINS: So the total is --

7 MS. ROEHLER: 230.

8 MR. COLLINS: 230, So that's just over one  
9 for one.

10 MS. ROEHLER: Just over one for one, yes.

11 MR. COLLINS: Okay, thank you.

12 CHAIRPERSON GRIFFIS: Anything else? ANC,  
13 any cross examination of the Beekman Place  
14 Association? Very well. No other questions from the  
15 Board?

16 Excellent. Thank you very much. We  
17 appreciate it, Ms. Roehler.

18 Are there other persons here present today  
19 to give testimony in support of the application, if  
20 they wouldn't mind coming forward at this time. If we  
21 just make some room for them at the table.

22 Is anyone else. Well then, room has been  
23 made, and the chair is set. Yes, sir, if you wouldn't  
24 mind turning on your mike and just give me your name  
25 and your address. Touch the base. There's a little

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1 knob on the base. There it is.

2 MR. SCHMID: Thank you. Good afternoon.  
3 I'm Carl Schmid, and I live at 1602-B Belmont Street,  
4 which is directly across the street from Meridian  
5 International, and I'm also part of Beekman Place  
6 Condominium Association. I am here to support the  
7 application of Meridian International, provided that  
8 certain conditions are met.

9 The current order, as you've been  
10 discussing today, required Meridian to maintain 38  
11 parking spaces on a lot with two openings. The  
12 modifications that have been requested will result in  
13 an undue burden on our neighborhood. In order to  
14 lessen this burden, we have been meeting with the  
15 proposed developer, along with Meridian, over the last  
16 three months. After many meetings and much  
17 negotiation, the involved parties have entered into  
18 two MOU's that you've discussed already.

19 It is only with the inclusion of the  
20 Meridian MOU and certain aspects of the Crescent Place  
21 MOU relevant to parking that I can support the  
22 application. Before addressing the MOU's, there is  
23 one point in the application that needs, I believe,  
24 some clarification.

25 Meridian asked that the surface parking

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1 lot be replaced with two levels in underground garage,  
2 but the developer has agreed to provide 89 parking  
3 places on three levels. With parking in our  
4 neighborhood already extremely limited and with the  
5 many events that occur at Meridian, compounded by the  
6 effects of the new development, it is essential that  
7 requiring the construction of 89 parking places on  
8 three levels be incorporated in the zoning order.

9 CHAIRPERSON GRIFFIS: Okay.

10 MR. SCHMID: In the MOU's, we have sought  
11 to mitigate the effects on our neighborhood of the  
12 requested modification. In order to address the loss  
13 of the 38 parking spaces during construction, Meridian  
14 has agreed to obtain access to 40 parking places.  
15 Since these spaces are over two blocks away, Meridian  
16 has agreed to direct its guests to the parking areas  
17 and use valet parking.

18 Meridian has also agreed to park cars on  
19 its lots in other off-site locations rather than on  
20 the street, and make every effort to insure that valet  
21 parkers comply with regulations. Further, in order to  
22 minimize back-ups, they have agreed to utilize an  
23 appropriate level of attendance, and to efficiently  
24 park cars on its other parking lot by utilizing a  
25 parking attendant.

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1           Once construction is complete and Meridian  
2 begins to utilize new underground spaces, access to  
3 them will not be easy. The current ground level  
4 spaces are easily accessible through two openings. In  
5 the future, the spaces will not be seen from the road,  
6 and access will be through one gated underground  
7 entrance. Cars will less likely want to park in it,  
8 and to gain entrance, the gate will have to be open.

9           In order to address these new challenges,  
10 Meridian has agreed to station an attendant at the  
11 gate during its events. Even with the attendant, we  
12 know the traffic will still back up on the narrow,  
13 one-way street. Since cars will have to be directed  
14 to the underground entrance, guests will have to be  
15 greeted by the attendant, and a gate will have to be  
16 opened for each car. This is the condition that was  
17 in the MOU, number seven, which I think there was a  
18 little confusion about in discussion earlier.

19           CHAIRPERSON GRIFFIS: Perhaps we give that  
20 allusion, but I don't think there's any confusion.

21           MR. SCHMID: I think there was a little  
22 confusion between the Crescent Garage --

23           CHAIRPERSON GRIFFIS: I don't think so. I  
24 understand your point.

25           MR. SCHMID: Is not the other garage.

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1 CHAIRPERSON GRIFFIS: There's no  
2 confusion.

3 MR. SCHMID: The other parking lot.

4 CHAIRPERSON GRIFFIS: Okay.

5 MR. SCHMID: In order to help alleviate  
6 parking problems overall in the future, Meridian has  
7 agreed to support the classification of 65 percent of  
8 the spaces on the streets that border its property as  
9 residential parking.

10 CHAIRPERSON GRIFFIS: Right.

11 MR. SCHMID: This will add 34 more  
12 additional residential spaces.

13 There also will be effects on parking in  
14 our neighborhood with the actual construction going  
15 on.

16 CHAIRPERSON GRIFFIS: Before you get too  
17 far into that, first of all, condition will run with  
18 the land on this. My view, and I think this Board  
19 concurs with the view in terms of conditioning  
20 construction aspects or construction management  
21 agreements is inappropriate in an order because an  
22 order runs with, as I say, the land. It's a permanent  
23 situation.

24 Again, I go to the fact of in terms of  
25 construction and construction management, there's an

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1 entire other agency of which we don't need to usurp  
2 their jurisdiction and responsibility because we have  
3 none of it, that regulates that. That does go  
4 through, you know, all sorts of different permitting  
5 and availability.

6 So, I have full faith that the  
7 construction impacts on the neighborhood, there's no  
8 question there's always impacts. People are going to  
9 know things are being built, as we can all testify to  
10 as we run through the city, but those can be, I think,  
11 alleviated, but it's not our jurisdiction to do that.

12 MR. SCHMID: I appreciate that, and I just  
13 bring them to your attention, that they will be  
14 lasting for 18 months, that parking and traffic will  
15 be impacted. There will be trucks, lost parking  
16 spaces, blocked traffic.

17 CHAIRPERSON GRIFFIS: I understand all  
18 that.

19 MR. SCHMID: It just I hope will add to  
20 your decision making and, you know, just so you have  
21 full information.

22 That concludes my statement.

23 CHAIRPERSON GRIFFIS: Good. Thank you  
24 very much. Any questions from the Board?

25 Does the Applicant have any cross

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1 examination? The ANC? Beekman Association party?

2 Very well, thank you very much. Are there  
3 others to give testimony today in support? In  
4 opposition? In neutrality? No other people are  
5 testifying today on this application.

6 Then I can turn it over to you, Mr.  
7 Collins, for closing remarks at this time.

8 MR. COLLINS: Thank you, Mr. Chair. Just  
9 one point of clarification. Mr. Kolp, the entrances  
10 to the existing parking lot, are they two-lane  
11 entrances, or are they single lane?

12 MR. KOLP: They're single lane.

13 MR. COLLINS: And are they wide enough for  
14 a car, and then how much on each side, approximately?

15 MR. KOLP: A total of a foot or two on  
16 either side, as I drive through each day parking  
17 there, it's one way.

18 CHAIRPERSON GRIFFIS: I'm sorry. You're  
19 talking about the existing surface parking lot?

20 MR. COLLINS: Existing surface parking  
21 lot. There was a question as to whether it was two  
22 lanes or one lane.

23 CHAIRPERSON GRIFFIS: Okay, thank you. I  
24 didn't catch that part. Okay.

25 MR. COLLINS: In closing, the Board

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1 appears to be well aware, but it's certainly worth  
2 repeating. This application is not for the approval  
3 of new construction on the site. The picture was  
4 shown on the OP report. There is testimony about how  
5 many spaces ought to be in the new building for the  
6 new residents who ultimately live there.

7 This application is not for that. This  
8 application is for relocating parking spaces from the  
9 surface to two and three levels below the surface.  
10 The point that was made by the last witness about  
11 maybe some confusion about being two levels versus  
12 three levels. Our application was to relocate the  
13 parking to two levels in a garage. The level of the  
14 garage may be three levels, maybe five levels, but  
15 we're here to talk about putting it in two levels, a  
16 level and then some. It's going to be on two levels.

17 We were not intending to indicate anywhere  
18 in our application how many parking spaces or levels  
19 there would be in the new development or whether it  
20 would be -- in fact, our schematic, the concept plan  
21 for parking, does show a three-level garage. So,  
22 there's no issue there.

23 There was some testimony by the Beekman  
24 Place representative about the intention of the Board  
25 back in 1960 when it approved this application, that

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1 it was intended to be a parking lot because parking  
2 garages are cumbersome and harder to use. I refer you  
3 in Tab G to our booklet, which is the 1960 zoning  
4 regulations. Section 3101.411, this is the section  
5 that was originally used to approve this application.

6 The identical language appears in the current zoning  
7 regulations for this. It allows accessory passenger  
8 automobile parking spaces elsewhere within the same  
9 lot or lots.

10 The first subsection, such parking spaces  
11 will be in an open area or in an underground garage.  
12 The Board never made a distinction favoring open areas  
13 versus underground garages. The Zoning Commission,  
14 who adopted that regulation in 1958, never made the  
15 distinction either. That has been the same language  
16 since 1958. So, there is no favoring one over the  
17 other.

18 It's off-site accessory parking. As long  
19 as it meets the requirements of the regulations, which  
20 we are told that this garage will do, then it will  
21 meet the regulations. If it doesn't meet the  
22 regulations, they will have -- that applicant will  
23 need to come back here to you to talk about that, and  
24 we hope they don't, and they've told us that they have  
25 full intention of doing this as a matter of right.

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1           The Beekman Place representative and also  
2           the last witness made a point that we possibly did not  
3           emphasize sufficiently in our application, and that is  
4           under item number seven of the MOU about having  
5           someone at the top at the area where the entrance to  
6           the garage is. For every event, no matter how many  
7           people come, when people come, we'll need to have  
8           someone there to see, are they there for the event,  
9           and then open the garage.

10           We're going to have, and likely Meridian  
11           does have repeat attendees. Typically, these people  
12           come. It's not a whole new section of the city comes  
13           every time there's an event. Typically the same  
14           people come. They know the routine. They know where  
15           to go. They know where to park. This way, they'll  
16           know about the garage, by and large.

17           The MOU talks about that we will identify  
18           locations for parking. People will know after time,  
19           once this is up and operating, that that's the garage.

20           We'll have someone there who will open the garage and  
21           make sure that the people coming are there for  
22           Meridian so that we don't have any unauthorized  
23           parking in the garage that's not associated with  
24           either Meridian or the ultimate occupants of the  
25           building.

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1                   So, we would have on objection to  
2 including number seven from the MOU into that, and  
3 that would address, I think, the first concern that  
4 was in the Beekman testimony as modified by the  
5 witness, saying that in all respects, these should be  
6 in, but at least items one, two, and seven. We have  
7 no objection to that. That makes sense.

8                   In terms of keying the number of people to  
9 when we think it's necessary to have parking  
10 attendants or valets, it seems to be that we could go  
11 with that if there were anticipated to be 200 or more  
12 attendees, we would have valet parking. If there was  
13 150 or more attendees, we would have an attendant to  
14 assist with parking, and in all events, we would have  
15 an attendant at the top of the hill, or at the top of  
16 the ramp there, allowing people to come in who are  
17 there for Meridian, and direct them down into the  
18 garage where there's plenty of queuing space off the  
19 street where that should not be a problem or an issue.

20                  I want to say again, this was a good faith  
21 agreement hammered out over the course of 12 meetings.

22                  You've seen this time and time again, Mr. Chairman,  
23 members of the Board, where parties are a part, and  
24 I'm holding my hands, for the record, about a foot and  
25 a-half apart. They discussed they come closer and

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1 closer together. People give up issues on one side.  
2 People give up issues on another side, and soon they  
3 come to reach an agreement, and we have reached an  
4 agreement here. It's a good faith

5 agreement. This is not like an agreement with a  
6 developer who is leaving the area once something is up  
7 and they're gone and they're not accountable anymore.

8 Meridian is the neighbor. They own the square across  
9 the street. They own three substantial, lovely  
10 properties, and I invite you all to come and see them.

11 They're wonderful. But they are there, and they will  
12 be there. They've been there since 1960. They'll be  
13 there for another 50 years at least, I hope, or more.

14 So they will be in the community. They  
15 will be part of the community, as they are now. This  
16 has been a good process, and I think that on balance,  
17 making this a public hearing has been a good process.

18 It allowed all of these issues to get out in the  
19 open.

20 The fact that the new development is not  
21 before this Board doesn't mean it comes without any  
22 kind of enforcement mechanism. The MOU that's between  
23 the developer and the ANC was hammered out separate  
24 and apart from the MOU between Meridian and the ANC.

25 The other one which Mr. Coudriet submitted

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1 to the record for your information is comprehensive.  
2 I haven't read or mastered the whole thing because,  
3 frankly, it's more than I need to get into for my  
4 case, but the opportunity was there to hammer out  
5 every aspect of what that new development is going to  
6 be, and that MOU is going to be recorded on the land  
7 records. So, whatever they've agreed to will be  
8 enforceable in that respect.

9 Now, we have somewhat of a chicken and egg  
10 situation. That MOU can't be recorded on the land  
11 records until that developer owns the property. That  
12 developer won't own the property until we sell it to  
13 them. We can't sell it to them until after we get  
14 this BZA approved and remove that covenant that we  
15 have currently on this parking lot that requires it to  
16 be used exclusively for parking.

17 The BZA order from 1960 required a  
18 covenant on the land records. That covenant has to be  
19 amended. That covenant can't be amended until after  
20 this Board takes action on this request for  
21 modification. So, there's a chain of events that will  
22 lead ultimately to, I believe, a situation where  
23 everyone can be in substantial agreement on what's to  
24 occur in terms of Meridian's operations and what's to  
25 occur in terms of future development of that site.

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1           It's all there. It's just a matter of  
2 things having to happen in sequence. What we have to  
3 have happen in sequence here is that this is the  
4 beginning and, Mr. Chair, this whole discussion began  
5 with a discussion that I had with corp counsel as to  
6 how do we amend that covenant, and we worked  
7 backwards. Okay, amend the covenant by amending the  
8 BZA, and then we got into the BZA process.

9           So, we can't get there from here until  
10 this happens, and then once this happens, and the  
11 sales can take place. The developer can file the MOU  
12 on the land records, and proceed with development in  
13 full accord with the agreements that they reached with  
14 the community on that issue.

15           We have agreed with the community on that  
16 MOU with the ANC and Meridian, and all those items are  
17 included there.

18           Now, I believe it's up to the Board. You  
19 raised some issues, Mr. Chair and members of the  
20 Board, about what is appropriate to be included as  
21 conditions. That's ultimately your call. There are  
22 certain things that Beekman Place raised that are just  
23 totally outside your jurisdiction. I think three of  
24 the four items are just outside your jurisdiction.

25           The other issue about residential permit

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1 parking, we put it in. That's something I'm not sure  
2 how it can go in as a condition of the BZA approval  
3 because you don't have jurisdiction over that. I  
4 admit that. We're hoping that you would incorporate  
5 the entire MOU in the body of the approval in some  
6 fashion, and then, based on what I'm hearing you say,  
7 that you would incorporate those things that are  
8 appropriate as conditions, as conditions. Maybe  
9 everything is not appropriate for condition.

10 I know that the ANC has said that they  
11 want it all included. You've said some of it's not  
12 appropriate to be included. We just don't want to get  
13 stuck between a rock and a hard place on that kind of  
14 discussion, and I think the Board has the authority to  
15 give the ANC's report great weight, to incorporate it,  
16 to recognize the existence of an MOU in the body of  
17 the document, and even spell it out in the findings,  
18 if that's an appropriate way of handling the  
19 situation. Then in the conclusions, incorporating  
20 that which is appropriate within your jurisdiction to  
21 do so.

22 I think with that, we will close, and  
23 respectfully request that you grant our application.

24 CHAIRPERSON GRIFFIS: Good. Thank you  
25 very much, and we do appreciate you reiterating an

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1 awful lot of that. I think the Board is of great  
2 understanding of how to proceed with the MOU.

3 I would, however like, as the hour has  
4 gotten late, we have a large afternoon, but more  
5 importantly, this application is going to take a  
6 little bit more deliberation to go through, and I  
7 would like to set this for a special public meeting on  
8 the 14th. Let's allow two weeks.

9 The reason why I don't do it on the 7th is  
10 because I would like to have just in your closing  
11 agreed to certain conditions, and there is some  
12 population. If you wouldn't mind just submitting that  
13 in. Just a bullet point, obviously. We'll serve it  
14 to the parties involved in this, and we can have that  
15 and not have to rely on our notes, as the transcript  
16 of this won't be available for six to ten months.  
17 That's a joke, of course, but a long time, and I'd  
18 rather get this expedited while it's fresh in our  
19 minds.

20 This will be special public meeting.  
21 We'll set that on the 14th. We do have a busy day on  
22 the 14th, but obviously that's called at 9:00. I  
23 believe we can get through it.

24 Are there other things that are required  
25 of submission that the Board believes -- I'm not going

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1 to require full findings and conclusions. Of course,  
2 I'll leave the record open to receive those from the  
3 Applicant, from the Beekman party, and also from the  
4 ANC, if you are so inclined. I think I can do that.

5 I'm keeping the time short, so it would  
6 obviously have to be done very quickly. So, Ms.  
7 Bailey, if you wouldn't mind, submissions for that  
8 would have to be within a matter of days, is that not  
9 correct?

10 MS. BAILEY: Yes, Mr. Chairman. I'm  
11 trying to find a calendar. Mr. Collins, the 7th of  
12 October.

13 CHAIRPERSON GRIFFIS: So, a week from  
14 today, we'd have all the submissions.

15 MR. COLLINS: Which includes the draft  
16 conditions and the proposed findings and conclusions?

17 CHAIRPERSON GRIFFIS: I'm not asking for  
18 draft conditions. What I'm asking for is just the  
19 written conditions that you have agreed to, not  
20 previously, but today. You updated a few of the  
21 conditions, or proposed conditions. The attendant  
22 above 150 attendants, the attendant at the new  
23 development gate, those kind of things.

24 I am purposely not keeping the record open  
25 for proposed conditions from the parties and the

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1 Applicant because I think we have sufficient, and I  
2 think the Board is understanding exactly all the  
3 conditions. I didn't hear any evidence that we need  
4 to recraft those or re-address them. I think there  
5 are some very serious concerns on all of those.

6 So, what I just wanted is exactly what you  
7 actually felt were amenable and agreed to today.

8 Mr. Parsons?

9 COMMISSIONER PARSONS: Well, I'm persuaded  
10 by Mr. Collins that maybe some of these things that we  
11 don't have jurisdiction over would be contained in the  
12 findings of fact.

13 CHAIRPERSON GRIFFIS: And the Board can't  
14 deal with that.

15 COMMISSIONER PARSONS: Should we offer  
16 them the opportunity to give us some suggestions on  
17 that as opposed to just the conditions? Do you think  
18 we could do --

19 CHAIRPERSON GRIFFIS: Okay. I wouldn't  
20 want to preclude the work happening outside the Board.  
21 Are you saying that we'd require that? We'd leave  
22 the record if they were so amenable.

23 COMMISSIONER PARSONS: What I'm saying is  
24 if Mr. Collins is the rock and the hard place, right?

25 CHAIRPERSON GRIFFIS: Yes.

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1 COMMISSIONER PARSONS: So, he's got an  
2 agreement. He wants us to incorporate the conditions  
3 of that agreement. We're suggesting that maybe some  
4 of them could be included in the findings of fact, but  
5 all we're asking him to do is to give us the  
6 conditions that he modified today.

7 CHAIRPERSON GRIFFIS: Yes.

8 COMMISSIONER PARSONS: He might want to  
9 split those and to a larger document that gave us  
10 findings of fact to go along with it. That's all I'm  
11 suggesting.

12 CHAIRPERSON GRIFFIS: Okay.

13 COMMISSIONER PARSONS: Otherwise, we'll  
14 have a series of conditions that maybe we can't deal  
15 with.

16 CHAIRPERSON GRIFFIS: Very well. Is that  
17 understood?

18 COMMISSIONER PARSONS: Such as residential  
19 permits.

20 CHAIRPERSON GRIFFIS: Right, exactly.

21 MR. COLLINS: I'm wondering whether it  
22 might be just easier just to list all the conditions  
23 as opposed to just giving you the ones we talked about  
24 today.

25 CHAIRPERSON GRIFFIS: No, that's

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1 absolutely fine.

2 MR. COLLINS: Just the comprehensive  
3 conditions just so that you have --.

4 CHAIRPERSON GRIFFIS: Yes.

5 MR. COLLINS: Okay.

6 CHAIRPERSON GRIFFIS: What I was saying is  
7 I wasn't asking for further proposed conditions.

8 MR. COLLINS: Oh, no, not further, no.

9 CHAIRPERSON GRIFFIS: Yes, I think that's  
10 absolutely fine. I have full faith that the Board  
11 fully understands what we condition and what we can't,  
12 but we will look to that submission.

13 Ms. Miller?

14 MEMBER MILLER: Just based on what I heard  
15 Mr. Parsons say, wouldn't it also be appropriate for  
16 the ANC to be able to also look to see if some could  
17 fit in findings of fact and others and conditions. Is  
18 that what you asked Mr. Collins to do? Then I would  
19 think that the ANC would also might want to do that.

20 CHAIRPERSON GRIFFIS: I wouldn't want to  
21 preclude them from doing that, and it's all going to  
22 happen fast. That's next Tuesday that everything has  
23 to be submitted in. It also has to be served to all  
24 the other parties.

25 In bringing in the ANC, we're including

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1 all the parties, and I should say that more directly,  
2 that obviously anything we ask the Applicant to do, as  
3 we don't have the time for that to be submitted, and  
4 people are going to respond to that, we fully keep the  
5 record open for everyone to submit the same  
6 information.

7 Very well, everyone understanding? Of  
8 course then on the 14th when we come for a special  
9 public meeting, that's a full deliberation. There's  
10 no additional testimony that is provided.

11 The record will be closed after we receive  
12 all of this information on the 7th, and then we will  
13 go from there.

14 Very well. Anything further we need to do  
15 in the morning session? Ms. Bailey, are you are of  
16 anything?

17 MS. BAILEY: That's it, Mr. Chairman.

18 CHAIRPERSON GRIFFIS: Excellent. Board  
19 members, clarifications? Last questions? Everyone's  
20 understanding?

21 Very well. Thank you all very much for  
22 your patience today, and have an excellent day. This  
23 concludes the morning session of 30 September, 2003.

24 (Whereupon, the above-referenced matter  
25 was adjourned at 12:41 p.m., to reconvene this same

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1 day in the afternoon at 1:43 p.m.)

2 CHAIRPERSON GRIFFIS: Good afternoon.  
3 Thank you for your patience. We did run over a little  
4 bit this morning, but please let me welcome you to the  
5 30th September 2003 Public Hearing of the Board of  
6 Zoning Adjustments of the District of Columbia.

7 My name is Geoff Griffis. I am  
8 Chairperson. Joining me today is the Vice Chair, Mr.  
9 Etherly, also Ms. Miller, sitting on my left.  
10 Representing the Zoning Commission with us this  
11 afternoon is Ms. Mitten, and representing the National  
12 Capitol Planning Commission is Mr. Zaidain.  
13 Representing the Office of Zoning and ably staffing  
14 our Board is Ms. Bailey, sitting to my far right, Mr.  
15 Moy, who will be joining us shortly.

16 With us from Corporation Counsel is Ms.  
17 Nagelhout, who will also make sure we make no  
18 mistakes, legally speaking, in this afternoon's cases.

19 Copies of today's hearing agenda are  
20 available to you. They are located at the table where  
21 you entered into the hearing room. Please avail  
22 yourself to that to see where you are on the agenda.

23 It should be also noted for those first,  
24 and a reminder for those who have been here numerous  
25 times, that all proceedings before the Board of Zoning

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1 Adjustment recorded. Therefore, we ask that everyone  
2 please refrain from making any disruptive noises or  
3 actions in the hearing room. I would ask that people  
4 turn off all their cell phones or beepers at this  
5 time.

6 Also, most importantly, when coming  
7 forward to speak to the Board, there are several  
8 things that you are going to need to do. First of  
9 all, we're going to need to have you fill out two  
10 witness cards. Witness cards are located at the table  
11 where you entered into, and also the table where you  
12 will give testimony today. Those two witness cards go  
13 to the recorder, who is sitting to my right.

14 After that, you need to come forward.  
15 When speaking to the Board, only once you need to give  
16 us your name and your address for the record, and then  
17 you will need to speak into the microphone. All  
18 testimony needs to be on the record for the Board.  
19 Therefore, it will be required to be submitted, or it  
20 will need to be said into a microphone so it is part  
21 of the record for our deliberation.

22 To that, I would ask that people present  
23 today not engage Board members in conversations so  
24 that we do not give the appearance of not basing our  
25 sole deliberations on the record.

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1           The order of procedures today for special  
2 exceptions and variances, first is statement and  
3 witnesses of the applicant. Second, we will hear the  
4 government reports attendant to the application, such  
5 as the Office of Planning and any other attendant  
6 agency reports.

7           Third, we will have the report of the ANC,  
8 the Advisory Neighborhood Commission. Fourth would be  
9 persons or parties in support of the application.  
10 Fifth would be persons or parties in opposition.  
11 Sixth, finally we'll have rebuttal witnesses and  
12 closing remarks by the Applicant.

13           Cross examination of witnesses is  
14 permitted by the Applicant or parties in the case.  
15 The ANC within which the property is located is  
16 automatically a party in the case.

17           The record will be closed at the  
18 conclusion of each public on the case except for any  
19 material that is specifically requested by the Board,  
20 and the Board will be very specific as to what  
21 materials should be submitted and when it is to be  
22 submitted into the Office of Zoning.

23           After that material is received, of course  
24 it goes without saying, then the record would be  
25 complete and would be finally closed. No other

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1 submissions would be accepted into the record.

2 The Sunshine Act requires that this Board  
3 conduct all hearings before the public. The Board  
4 may, however, consistent with its rules of procedure  
5 and the Sunshine Act, enter executive session during  
6 or after the hearing on a case. This would be for the  
7 purposes of reviewing the record and/or deliberating  
8 on the case.

9 The decision of this Board in all  
10 contested cases, of course, all are contested cases  
11 before this Board, must be based exclusively on the  
12 record.

13 I've gone over some important and  
14 pertinent pieces to establishing the record, so be it  
15 known that we will have to only deliberate on the  
16 record that's established before us.

17 We will make every effort to end the  
18 session today at some appropriate time. I understand  
19 that this board may, in fact, have a conflict in  
20 proceeding past 4:00, so I would have everyone digest  
21 that a little bit as you start to look at preparing  
22 your case presentation for today. I will let the  
23 other Board members address that, as it is timely.

24 At this time, the Board will hear any  
25 preliminary matters. Preliminary matters are those

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1 which relate to whether a case will or should be heard  
2 today, such as requests for continuances, withdrawals,  
3 or whether proper and adequate notice of a case has  
4 been provided. If you are not prepared to go forward  
5 with a case today or if you believe that the Board  
6 should not hear a case on its agenda for the  
7 afternoon, now would be the appropriate time to bring  
8 that preliminary matter to the Board.

9 I would ask if you have one indication by  
10 coming forward and having a seat before the Board.  
11 Let me ask Ms. Bailey from the Office of Zoning if  
12 there are any preliminary matters she's aware of for  
13 the Board's consideration at this time.

14 MS. BAILEY: Mr. Chairman and to all, good  
15 afternoon. There is a preliminary matter. It has to  
16 do with Case No. 17050, Government of the United Arab  
17 Emirates. That case was withdrawn, Mr. Chairman. No  
18 further action is required by the Board at this time.

19 CHAIRPERSON GRIFFIS: Thank you very much.  
20 As no action is required on that withdrawal, let us  
21 call the first case in the afternoon.

22 MS. BAILEY: And that is Application 16977  
23 of the Sheridan School, pursuant to 11 DCMR 3104.1 for  
24 a special exception under Section 206, to add 1,200  
25 square feet of gross floor area to an existing

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1 building, to reconfigure the parking area in front of  
2 the school along 36th Street in order to add four  
3 additional parking spaces, to increase the number of  
4 students enrolled in the school from 215 to 226, and  
5 to authorize the number of students who may be  
6 enrolled in the CASA summer program in excess of one  
7 hundred students, and pursuant to 11 DCMR 3103.2 for a  
8 variance from the requirement that parking spaces be  
9 accessible at all times directly from an improved  
10 street or alley under Subsection 2117.4, a variance  
11 from the Subsection 2115.1 from the minimum size  
12 requirement for a parking space, and a variance from  
13 the off-street parking requirements for an elementary  
14 or junior high school under Subsection 2101.1 to allow  
15 a private school in the R-2 District at premises 4400  
16 36th Street, N.W. The property is located in Square  
17 1968 on Lot 10.

18 Please stand to take the oath. All those  
19 persons who will be testifying this afternoon, please  
20 stand. Please raise your right hand. Do you solemnly  
21 swear or affirm that the testimony you are about to  
22 give in this proceeding will be the truth, the whole  
23 truth, and nothing but the truth? Thank you.

24 CHAIRPERSON GRIFFIS: Thank you very much,  
25 Ms. Bailey. Before we get into the case, let me just

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1 announce that I will not be hearing this case and  
2 actually recusing myself from it, as the firm that I  
3 am employed is actually part of this application. So,  
4 with that, I would like to turn it over to the Vice  
5 Chairman, Mr. Etherly, who will be running this case  
6 expeditiously in this afternoon, and good luck. Have  
7 fun.

8 VICE CHAIRPERSON ETHERLY: Thank you very  
9 much, Mr. Chair. Once again, good afternoon, ladies  
10 and gentlemen. Let me also say good afternoon again  
11 to the Office of Zoning staff, who will be assisting  
12 us through the afternoon, and of course to my  
13 colleagues.

14 Ms. Bailey, if I'm not mistaken, I believe  
15 it would be appropriate at this time to deal with some  
16 outstanding party status request issues.

17 MS. BAILEY: Yes, Mr. Vice Chair. We have  
18 seven, eight requests for party status.

19 VICE CHAIRPERSON ETHERLY: Okay. What I'd  
20 like to do, Ms. Bailey, and for the benefit of my  
21 colleagues, is run through those party request  
22 applications to confirm whether or not those requests  
23 are still indeed outstanding and dispose of them as  
24 appropriate. Let me summarize the eight requests that  
25 we do have.

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1 I have at Exhibit No. 26, party request of  
2 Scott A Schachter. I have at Exhibit No. 27 party  
3 status request for Janet Katz; Exhibit No. 28,  
4 Margaret Mahoney; Exhibit No. 29, Ann Yonamura;  
5 Exhibit No. 30, John Winter; Exhibit No. 31, Sonja  
6 Roseter; Exhibit No. 32, Bradley O. Boleculu; and  
7 Exhibit No. 33, Stanley Drake. My apologies to any  
8 disservice to last names along that list.

9 Are any of those applicants present here  
10 in the hearing room today? Okay, I see we have one  
11 indication there. What I'd like to do is if we could  
12 make a space at the table for the one gentleman who  
13 has raised his hand to step up, I would greatly  
14 appreciate that.

15 I would say good afternoon to you, sir.  
16 Once again, thank you very much for filling out the  
17 witness card and sharing that with our audio person.  
18 If you could, state your name and address for the  
19 record, please.

20 MR. SCHACHTER: My name is Scott  
21 Schachter. My address is 3627 Alton Place, N.W.

22 VICE CHAIRPERSON ETHERLY: Okay, thank you  
23 very much, Mr. Schachter. We are in receipt, once  
24 again, of your party status application at Exhibit No.  
25 26. Let me review for the record the requirements of

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1 party status, of course, as you are familiar with, Mr.  
2 Schachter, and in the context of your submission.

3 Number one, of course, how will the  
4 property owned or occupied by such person or in which  
5 the person has an interest be affected by the action  
6 requested of the Board. Number two, what legal  
7 interest does the person have in the property. Number  
8 three, what is the distance between the person's  
9 property and the property that is the subject of the  
10 appeal or application before the Board.

11 Number four, what are the environmental,  
12 economic, or social impacts that are likely to affect  
13 the person and/or the person's property if the action  
14 requested of the Board is approved or denied. Number  
15 five, describe any other relevant matters that  
16 demonstrate how the person will likely be affected or  
17 aggrieved if the action requested of the Board is  
18 approved or denied. Number six, explain how the  
19 person's interests will be more significantly,  
20 distinctively, or uniquely affected in character or  
21 kind by the proposed zoning action than that of other  
22 persons in the general public.

23 My colleagues, you have Mr. Schachter's  
24 party status application before you. Let me ask staff  
25 at this point. Ms. Bailey, would it be appropriate at

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1 this point to invite comment from the Applicant's  
2 representatives on the party status application or  
3 should we move into questions from the Board at this  
4 point?

5 MS. BAILEY: Mr. Vice Chairman, the  
6 information is before the Board. Assuming everyone  
7 has read it, and I imagine there are questions. If  
8 there are questions. If there are questions, they  
9 would be asked to Mr. Schachter at this point.

10 VICE CHAIRPERSON ETHERLY: Okay, thank you  
11 very much, Ms. Bailey. Colleagues, I open up Mr.  
12 Schachter's party status application for any questions  
13 that you may have at this time. Just to fill out the  
14 application request once again, at Exhibit No. 36, we  
15 have Mr. Schachter's application. We also, of course,  
16 had additional submissions on your behalf, Mr.  
17 Schachter, at Exhibit No. 44, Exhibit No. 43, and  
18 Exhibit No. 51 with regard to your complaint of  
19 noncompliance with conditions of the BZA order.

20 But with respect to the party status  
21 application, you note in your request, Mr. Schachter,  
22 that you are the owner and occupant of the property,  
23 which is a private single family home, at 3627 Alton  
24 Place. That property is approximately 31 feet, or  
25 directly across the street, from the subject of this

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1 application. That is correct, Mr. Schachter?

2 MR. SCHACHTER: Yes, sir.

3 VICE CHAIRPERSON ETHERLY: Okay. With  
4 regard to environmental, economic, and social impacts,  
5 you note increased vehicular traffic, increased  
6 pedestrian traffic, increased garbage generation,  
7 filth, rodents, among a number of other concerns.

8 MR. DEPUY: Mr. Chairman?

9 VICE CHAIRPERSON ETHERLY: Yes, sir.

10 MR. DEPUY: Jacques Depuy, Greenstein  
11 Delorme & Luchs, attorney for the Applicant, and  
12 pardon my interruption, and also pardon my voice  
13 quality. I had some surgery recently, so my voice is  
14 not at full speed.

15 In the interest of time, if it would help  
16 the Board, the Applicant has no objection to Mr.  
17 Schachter as a party. We believe he qualifies as a  
18 party. I would request, however, that in view of many  
19 developments that have occurred since he filed his  
20 original request, that the Board would ask him whether  
21 his request is still as a party in opposition or  
22 whether perhaps it is as a party in support. I'm not  
23 sure whether, in view of recent development, that  
24 might not be the case.

25 VICE CHAIRPERSON ETHERLY: Okay. I

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1 appreciate that. I appreciate that. So, the  
2 Applicant at this point is not stating any objection.

3 For the benefit of my colleagues, any objection to  
4 Mr. Schachter's request for party status?

5 MEMBER ZAIDAIN: I have no objection to  
6 the request. I would just kind of state for guidance  
7 that there's been a lot of submissions on his behalf  
8 regarding the lack of compliance of the school. While  
9 that's an issue that we, you know, can discuss, it's  
10 not something that we can specifically deliberate on  
11 in terms of this application. So, I would just give  
12 some guidance to the party to make sure to provide us  
13 a lot of detail on stuff that we can actually dig  
14 into.

15 VICE CHAIRPERSON ETHERLY: No, I agree  
16 completely, Mr. Zaidain, and also with respect of  
17 course to the party status request. So, that wouldn't  
18 be germane to the issue of citing party status.

19 MEMBER ZAIDAIN: Sure. Just out of  
20 curiosity, I would like to get an answer to Mr.  
21 Depuy's question.

22 VICE CHAIRPERSON ETHERLY: Okay. Mr.  
23 Schachter, at this particular point, would you like to  
24 state whether or not your party status application is  
25 in opposition or in support at this time?

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1 MR. SCHACHTER: My application for party  
2 status is in opposition to the application. However,  
3 based on recent events, I do not intend to oppose the  
4 Board's granting of the application on the condition  
5 that certain accommodations that I've worked out with  
6 the school are in fact incorporated into the Board's  
7 decision.

8 VICE CHAIRPERSON ETHERLY: Okay.

9 MR. SCHACHTER: In the event that those  
10 accommodations do not become effective as a result of  
11 the Board's final decision, then my application for --  
12 my party status will remain in opposition to the  
13 application.

14 VICE CHAIRPERSON ETHERLY: Okay. Now, you  
15 do realize of course that you do, as would any  
16 citizen, have the opportunity to provide comments  
17 pursuant to the application as a person in opposition,  
18 and you could just do that simply through the form of  
19 testimony. As a party, of course, there's a much  
20 higher standard of participation that involves cross  
21 examination, the review of documents that are filed on  
22 behalf of the Applicant, production of your own  
23 documents, of course, once again, cross examination,  
24 and the presentation of the case. So, there are a  
25 number of different ways that you can participate

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1 here.

2 I would invite you to consider, if it's an  
3 issue of particular, shall we say, conditions that are  
4 of extreme importance to you, that you of course could  
5 bring that to the attention of the Board through just  
6 testimony rather than through full-fledged  
7 participation. So, once again, I invite you to give  
8 that some consideration.

9 That doesn't mean that I'm inviting you to  
10 withdraw your party status application, but there are  
11 ways in which you can nevertheless participate in the  
12 proceeding and not necessarily have to rise to the  
13 full level of participation as a party representative.

14 Mrs. Miller?

15 MEMBER MILLER: I just wanted to bring to  
16 the attention of my colleagues based on some of the  
17 discussion I just heard that the latest pleading we  
18 received from Mr. Schachter today states that he's  
19 withdrawn his complaints of noncompliance.

20 VICE CHAIRPERSON ETHERLY: Yes, that is  
21 correct. Thank you very much, Mrs. Miller. Any other  
22 questions?

23 CHAIRPERSON MITTEN: I guess just to cut  
24 to it, Mr. Schachter, is your request for party status  
25 in opposition still valid, or have you withdrawn that,

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1 because that's what's before us, and we want to know  
2 if you'd still like us to grant you that status.

3 MR. SCHACHTER: I've not withdrawn the  
4 application. I would like the Board to consider it.

5 CHAIRPERSON MITTEN: Okay.

6 VICE CHAIRPERSON ETHERLY: All right.  
7 Once again, we have no objection from the Applicant to  
8 the party status application. We have Mr. Schachter's  
9 application in front of us. I'd invite action or  
10 continued deliberation from the Board at this point in  
11 time.

12 CHAIRPERSON MITTEN: I have no objection  
13 to granting Mr. Schachter party status.

14 VICE CHAIRPERSON ETHERLY: Thank you very  
15 much, Mrs. Mitten.

16 MEMBER MILLER: No objection.

17 MEMBER ZAIDAIN: No objection.

18 VICE CHAIRPERSON ETHERLY: Okay, hearing  
19 no objections, I will take it as a consensus of the  
20 Board, Mr. Schachter, that you have been afforded the  
21 weighty responsibility of party status as a party in  
22 opposition to the application. We look forward to  
23 your participation in this case.

24 We will give you appropriate guidance and  
25 direction as we move forward. Once again, we thank

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1 you for your application, sir, and if you could take a  
2 seat back in the audience, we will move forward  
3 accordingly.

4 MR. SCHACHTER: Thank you.

5 VICE CHAIRPERSON ETHERLY: Thank you, sir.

6 Once again, as a guidance issue here, you heard the  
7 Chair refer to a potential timing issue that we will  
8 have with the Board here. Due to a prior professional  
9 commitment, I will need to depart at or around four  
10 p.m. this afternoon. So, I am going to endeavor to  
11 move us along expeditiously, but of course I do not  
12 want the Applicant to take that or any of our party  
13 participants, to take that as encouragement to, shall  
14 we say, hurry your self-edit your remarks.

15 We want to hear this case in its entirety.

16 We want to get all the key information on the record  
17 here, so please let's be sure to present that.

18 With that being said, Ms. Bailey, if there  
19 are no other preliminary matters before us at this  
20 time?

21 MS. BAILEY: None, Mr. Vice Chair. Thank  
22 you.

23 VICE CHAIRPERSON ETHERLY: All right, I  
24 think we're ready to move forward. Mr. Depuy, feel  
25 free to introduce yourself and your team.

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1 MS. BAILEY: Mr. Vice Chair, just for the  
2 record, excuse me.

3 VICE CHAIRPERSON ETHERLY: Yes, ma'am.

4 MS. BAILEY: I think we should clearly  
5 reflect, the record should clearly reflect that the  
6 other persons were not present and are not  
7 participating as parties in this case.

8 VICE CHAIRPERSON ETHERLY: Thank you very  
9 much, Mrs. Bailey. As you've heard, we had seven  
10 other requests for party status at this particular  
11 point in time. It would be my recommendation to my  
12 colleagues that those requests be denied summarily due  
13 to the absence of those individuals at this time.

14 MEMBER ZAIDAIN: I would agree.

15 CHAIRPERSON MITTEN: I agree.

16 MEMBER MILLER: I concur as well.

17 VICE CHAIRPERSON ETHERLY: Excellent.  
18 I'll take that as a consensus of the Board then. Ms.  
19 Bailey, I don't believe we need your, shall we say,  
20 record a vote or anything along those lines.

21 MS. BAILEY: No, sir.

22 VICE CHAIRPERSON ETHERLY: Excellent.  
23 Thank you very much, Ms. Bailey. Mr. Depuy, the show  
24 and the floor are yours at this point in time.

25 MR. DEPUY: Thank you very much. Again,

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1 for the record, Jacques Depuy. Appearing with me as  
2 co-counsel is my colleague, Lyle Blanchard, from  
3 Greenstein DeLorme & Luchs.

4 We have three witnesses today for our case  
5 in chief. First will be Randy Plummer, to my right,  
6 who is the headmaster of Sheridan School. To his  
7 right is Michael Hickok, a well known architect, and  
8 also sitting for the moment in the audience is Mr.  
9 Marty Wells, also a well known traffic consultant, all  
10 of whom will identify themselves at the appropriate  
11 time.

12 Given the very adequate record I think  
13 that's been developed in this case so far, and given  
14 that there are time constraints and we have witnesses,  
15 I'd like to put on, I'll really not make an opening  
16 statement except to remind the Board that as a result  
17 of considerable community involvement by the  
18 Applicant, the application was revised as of July 31,  
19 and we submitted a revised statement in support of  
20 that revised application.

21 The revised application was, in fact,  
22 noticed for this hearing. So, the revised application  
23 reflects the relief which is before you. It also  
24 reflects the, as Mr. Plummer will identify, the result  
25 of many, many, many hours of meetings in the community

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1 to resolve outstanding issues.

2 But at this point, without any further  
3 adieu, I'll ask Mr. Plummer to give his testimony to  
4 the Board. We do have copies of his statement, which  
5 we'll hand out to the Board members, which has  
6 exhibits connected to it that will be of value, I  
7 think, to you in following along his testimony.

8 Mr. Plummer, would you identify yourself  
9 for the record and then give your statement to the  
10 Board?

11 CHAIRPERSON MITTEN: Would you turn on  
12 your microphone, please?

13 MR. PLUMMER: Good afternoon. Mr.  
14 Chairman, and members of the BZA, I'm Randy Plummer,  
15 head of Sheridan School. I've been the head of  
16 Sheridan for seven years, and I'm pleased to appear  
17 before you today in support of our application.

18 Did you want to hand out the written  
19 summary?

20 You have the written summary in front of  
21 you, or you will in a minute. I would like to, again,  
22 be as expeditious as possible as well, and I'll try to  
23 summarize even what you have in front of you, which  
24 is, in fact, a summary itself.

25 There are kind of three parts of the

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1 testimony I'd like to make today, and one would be a  
2 summary of the project background from whence this  
3 comes. Two, and probably most important to me  
4 personally is the community process in which we've  
5 engaged, and three would be our actual, an iteration  
6 of our actual proposal.

7 I guess I'd like to begin by saying that  
8 in April of 2001, Sheridan School, which is a 35-year  
9 old, somewhat old building, we received a property  
10 condition survey that we had commissioned, and it  
11 became very clear that there were some issues that had  
12 to do with the longevity of the school, and some  
13 systems were nearing the end of their useful life, in  
14 other words. We really needed for the physical  
15 integrity of the school to engage in some  
16 modifications.

17 Equally as important, obviously to me  
18 again personally is that the school has evolved  
19 philosophically, and it has moved into the more  
20 progressive realm of education, so we have more  
21 project based learning, collaborative learning, team-  
22 based learning, and so we needed classrooms that would  
23 be more commodious and larger for that kind of  
24 physical and cerebral activity in the school. So, it  
25 was really the physical integrity of the building as

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1 well as a philosophical change that necessitated this  
2 discussion.

3 What's most important to me, though, is  
4 that we then decided, at the point that we were going  
5 to be looking at changing the building, to consult  
6 with the neighbors immediately before we actually had  
7 any part in the pond concrete plans. We have  
8 regularly quarterly scheduled meetings, and we decided  
9 to meet with our neighbors to even discuss the  
10 concepts that we were considering in terms of  
11 modifications. I think that was really important and  
12 has led to I think what is a harmonious situation now  
13 with our neighbors.

14 So, we apprised our neighbors at our  
15 quarterly meeting, and my contention then and my  
16 contention now is that the physical and visual impact  
17 on the neighborhood is very modest, and in fact,  
18 involves the addition of four small bays along the  
19 Alton Place and the Yuma Street sides of the Sheridan  
20 School building.

21 But predicated again upon these quarterly  
22 meetings, and modest as we feel the proposal was,  
23 there were obviously considerations that the neighbors  
24 had, and in hearing those considerations, we decided  
25 to not file and actually ask for a continuance twice

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1 because we didn't want to come before you until we  
2 were sure we had support from our neighbors and didn't  
3 want it to be a contentious situation. The initial  
4 proposal was filed on December 3, 2002.

5 I'd like to now talk a little bit about  
6 the neighborhood process, and that's Exhibit 1, if  
7 you'd like to look at the tabs in the packet in front  
8 of you. Just briefly to summarize that, though it was  
9 not a brief scenario in any sense, we proposed our  
10 plan on June 20, 2002, which was actually six months  
11 before that initial filing. So, there was lots of  
12 time before we filed to begin these discussions with  
13 the neighbors.

14 In summary, from our initial meeting on  
15 June 20, 2002 to our most recent meeting on September  
16 10, 2003, we orchestrated 13 neighborhood meetings.  
17 Six were regularly scheduled quarterly meetings, and  
18 seven were what we termed special meetings with  
19 neighbors. The special meetings ranged from groups of  
20 five concerned neighbors in my office to individual  
21 meetings on the front porch and the living rooms of  
22 Yuma Street neighbors who have a view of the school.

23 As a result of a lot of those meetings,  
24 something became very important to us and to them, and  
25 that was our landscaping plan. So, I'd like to now go

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1 over some of the results of the neighborhood process.

2 At one, as I just mentioned, was the landscaping  
3 plan, and that's actually Exhibit 2 in your packet.

4 There has been a lot of concern on the  
5 part of the neighbors about the issue of trust in the  
6 school from prior discussions with the neighbors and  
7 the prior administration. They felt strongly that  
8 there needed to be screening, that the school would be  
9 literally screened by growth of trees over the years  
10 so that it wouldn't be such a visual affront to them.

11 So, we made a commitment at that point, though it  
12 wasn't related to our present proposal, to assuage  
13 their concerns and to earn their trust and to show  
14 that we, in fact, were acting in good faith.

15 So, I can give you a specific, a concrete  
16 action step. As of September 24 of this year, 22  
17 trees have been planted along Yuma Street and Alton  
18 Place, and the landscape design was a collaborative  
19 design that was agreed upon with the work of the  
20 neighbors, literally standing on people's porches and  
21 looking at what effect the plantings would have.

22 In addition to the landscaping plan, we  
23 also, as a result of our conversations, developed a  
24 parking plan that specifically addressed neighbors'  
25 concerns. We just asked what their concerns were

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1 about the parking suggestions that we were making in  
2 our parking lot, and modified the proposal  
3 considerably to address neighborhood concerns.

4 Actually, you can see our parking plan, as  
5 Exhibit P-1 in the revised BZA application that you  
6 have before you. It's not in the packet we just  
7 handed out, but it's in our original BZA application.

8 Then, in addition to the parking plan, we  
9 also, and reference was made by Mr. Schachter.  
10 There's a list of conditions which we have drafted as  
11 conditions to an order of the BZA, and these  
12 conditions were all worked out in consultation with  
13 the neighbors, and they're all things that are  
14 important to them. Let me give you some examples.

15 One would be we've changed our early  
16 delivery times along Alton Place. This would be the  
17 purveyors who deliver to the school. We've changed it  
18 from 7 a.m. to 9 a.m., meaning that there cannot be  
19 deliveries before 9 a.m. in the morning, obviously  
20 insuring neighborhood sanctity in that early hours of  
21 the morning.

22 Another concrete act and step would be  
23 that we're committed to sponsoring a Metro checks  
24 program. It was actually suggested from one of our  
25 neighbors. Committed to sponsoring a Metro checks

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1 program for employees and providing priority parking  
2 for employees that carpool, again trying to minimize  
3 the use of the parking lot, keeping cars to a minimum  
4 if possible and also for the neighbors' sake, keeping  
5 cars off the neighborhood streets, even if they have  
6 zone three parking.

7 Then, in addition to the parking plan, we  
8 also developed a construction management plan because  
9 when we do engage in construction, that would be of  
10 concern to the neighbors as well. So, before we even  
11 have a single, you know, hole dug, we have a  
12 construction management plan. That's Exhibit 4 that  
13 you do have in front of you in the packet.

14 I can give you an example of one of the  
15 concrete acts and steps in that management plan, that  
16 no construction activities would be conducted before 8  
17 a.m. or after 5 p.m., Mondays through Fridays.  
18 Weekend and holiday work will only be conducted in  
19 extreme emergencies or with prior notice to the  
20 neighborhood, again recognizing what's important to  
21 them.

22 Then, another result of our conversations  
23 would be our traffic management plan, and that's  
24 actually Exhibit 5 that you have in the packet. The  
25 concrete step that I can point to you in that regard

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1 is a drop-off and pick-up plan to parents that  
2 coordinates the traffic flow with an emphasis on  
3 safety, and that's something we developed actually  
4 last spring and was sent out to the parents, well  
5 then, of course, and it's been sent out at continuous  
6 times, and we just sent it out last week again to  
7 remind the parents of what is their responsibility as  
8 they drop off and pick up their children at the end of  
9 the day and the beginning of the day.

10 So, as a result of the aforementioned  
11 meetings to which I've made reference and community  
12 involvement, we have now filed a modified BZA  
13 application on July 31, 2003. That application  
14 includes the following.

15 Just to iterate, and it was mentioned  
16 before, 1,200 square feet of gross floor area to an  
17 existing building, to increase the maximum number of  
18 students enrolled in the school from 215 to 226, to  
19 reconfigure the parking area in front of the school  
20 along 36th Street in order to add four additional  
21 parking spaces, and add six tandem parking spaces in  
22 the Alton Place lot behind the school, to confirm the  
23 number of students who may be enrolled in the school's  
24 CASA summer educational program in excess of 100  
25 students to a maximum of 226.

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1           In order to accomplish the parking  
2 reconfiguration, we are requesting the following  
3 variances. A, a variance from the requirement that  
4 each required parking space shall be accessible at all  
5 times directly from improved streets or alleys. We're  
6 proposing to add six spaces in the Alton Place, what  
7 we term the back parking lot. We're actually going to  
8 encroach a little bit upon what is sort of green space  
9 next to the school so we can fit those spaces in  
10 without taking up more space in the actual parking  
11 lots, allowing access for cars to drive through the  
12 middle of the parking lot, but since there will be  
13 tandem parking, those six are in front. There will be  
14 six cars behind. Those cars in front will not have  
15 direct access.

16           Another variance from the requirement that  
17 each required parking space shall be a minimum of nine  
18 feet in width and 19 feet in length, and we're  
19 actually asking for compact spaces, each total four in  
20 front of 36, which would mean the four that exist, and  
21 an additional six compact spaces to which I just made  
22 reference.

23           A variance from the requirement that an  
24 elementary or junior high school would provide two  
25 parking spaces for each three teachers and other

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1 employees. We have a staff of 55 now, and so we have  
2 done that math, and we're projecting a modest growth  
3 to 60. We would like to, at this point, since we  
4 don't want to come back too often, we'd like to ask  
5 for that variance.

6 Our rationale would be summarized that in  
7 regard to the construction of the classroom bays, they  
8 are very modest in size and only add the 1,200 square  
9 feet of gross floor area. We feel the new  
10 construction will provide better soundproofing,  
11 frankly, than exists today, and the landscaping, to  
12 which I made reference earlier, will screen any visual  
13 impact of these new bays from the residences on Alton  
14 and Yuma Street.

15 The increase in our enrollment cap from  
16 215 to 226 is small. In fact, only a 5.1 percent  
17 enrollment increase, and the reality is that it does  
18 not mean we will have 226 students at all. For  
19 example, last year, the 2002 school year, our  
20 enrollment was 207, and this year, the 2003-2004  
21 school year, our enrollment is 211, but it would  
22 provide flexibility in our admissions process, and we  
23 feel it does not negatively impact neighboring or  
24 nearby property.

25 The changes in the school's main parking

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1 lot on Alton Place and the small parking area in the  
2 front of the school on 36th Street are to satisfy on-  
3 site parking requirements and minimize the parking  
4 pressure on neighborhood streets.

5 The CASA summer educational program has  
6 been operating successfully for nine years without an  
7 enrollment cap. However, to alleviate potential  
8 concerns about our summer program, we have voluntarily  
9 suggested a summer program cap at the same level of  
10 our student cap for our September to June school year.

11 It's important to note that many of the  
12 enrolled summer families live in the surrounding area,  
13 and many actually walk to the school. So, we feel  
14 that not only does CASA -- CASA stands for the  
15 Creative Arts Summer Adventure -- that it not  
16 adversely affects the neighborhood at all, but in  
17 fact, it provides a valuable neighborhood service,  
18 particularly for working families in the summer.

19 I understand that for our parking  
20 variances, we demonstrate a unique condition in the  
21 property that creates a practical difficulty, and I  
22 want to point out that we have a very steep slope  
23 along the southern boundary of our property and a  
24 heavily treed site. So, given the existence of our  
25 building and playground, there really is no additional

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1 land on which we could build additional parking lots,  
2 which is why we're asking for this variance.

3 I guess in summation, I just want to say  
4 that my other role besides being the head of school of  
5 Sheridan School is as the president of the Independent  
6 Schools Association of Washington, AISGW, Associated  
7 Independent Schools of Greater Washington, and we're  
8 all aware of what's been going on, reading in the  
9 paper with some of the contention.

10 One of my main initiatives has been to  
11 author and to work with other heads a good neighbor  
12 policy. We hold a standard of good practices for how  
13 independent schools should deal with the neighborhood  
14 issues when they're projecting any kind of  
15 modification to their building.

16 So, it's incumbent upon me personally as  
17 well as professionally to I hope model that standard,  
18 initially before it's even in place officially for  
19 ASGW, as the head of Sheridan School. I honestly feel  
20 that we certainly made a good faith effort to do that,  
21 and I think the result, as evidenced by what happened  
22 at our ANC meeting, is a lot of collaborative and  
23 support for our proposal.

24 Thank you very much for hearing my  
25 testimony this afternoon.

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1 VICE CHAIRPERSON ETHERLY: Okay.

2 MR. DEPUY: Mr. Chair, would you like to  
3 have us present all of our witnesses so that the Board  
4 and the party in opposition can question all three  
5 together?

6 VICE CHAIRPERSON ETHERLY: That would be  
7 my inclination, but I want to be sure that none of my  
8 colleagues have any pressing questions for Mr. Plummer  
9 at this particular point in time. A note as we are  
10 proceeding, that will be the way that we would  
11 proceed, but let me just note for your consideration,  
12 Mr. DePuy, I know in terms of some of our discussion,  
13 let me highlight two issues that as we move along, I  
14 think my colleagues and I would be very interested in  
15 hearing some discussion about.

16 One would be, as you talk about the summer  
17 program, we saw in the submittals, of course, that  
18 there was some exchange of correspondence between the  
19 Zoning Administrator and your office, and we'd like to  
20 hear some comment of your perception of the summer  
21 program as either an accessory use to the operation of  
22 the school or in the alternative, should that be  
23 treated as a stand-alone activity. Of course, I think  
24 I know where the Applicant will fall on that, but I  
25 think there are some questions at the Board level that

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1 we'd like to see some further detail around.

2 Secondly, it wasn't perhaps directly  
3 referenced in some of the more recent submittals, but  
4 in the record, there is, of course, comment regarding  
5 the farmer's market on site, and so I'd love to either  
6 if Mr. Plummer is interested in speaking to that now,  
7 or at some point through the presentation, I think  
8 also my Board members and I would be interested in  
9 hearing about how that fits into or impacts your  
10 parking needs as well as the overall application.

11 So with that, let's please continue.  
12 Thank you, sir.

13 MR. DEPUY: Thank you. Mr. Hickok, would  
14 you identify yourself for the record, please?

15 MR. HICKOK: My name is Mike Hickok. I'm  
16 a principle of Hickok, Warner, Cole Architects, and  
17 I'm also a parent at the Sheridan School. I'm going  
18 to take you very, very briefly through the physical  
19 implications of the application in front of you.

20 This is basically a landscape design plan.  
21 It incorporates much of what's on the parking plan on  
22 this side, so I'm going to address primarily the  
23 landscape plan unless you have specific questions.  
24 This is the existing what you see in red here as the  
25 existing footprint of the building. I'll speak first

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1 to the bays that we're suggesting, the 1200 square  
2 feet of additional classroom space. Those occur in  
3 one, two, three, four, five, six locations on two  
4 floors. So, that's a total of 12.

5 So, we're talking about adding only 600  
6 square feet to the footprint of the building, 1200  
7 square feet overall, 100 square feet per classroom.  
8 Is that clear?

9 So, that represents the extent of the sort  
10 of physical encroachment of the building on the site.

11 The majority of the renovation work that will take  
12 place will take place within the volume of the  
13 building. We want to add an elevator which will make  
14 the school ADA accessible. We want to reconfigure  
15 interior partitions and space planning to make more  
16 effective use of the space that the school has.

17 The school has an unusual condition where  
18 to go from one half of the school to the other school,  
19 you've got to go downstairs and across and back up  
20 again. We're going to introduce into an existing  
21 double height space, we're going to introduce a  
22 walkway that then connects the two sides of the  
23 school.

24 The biggest and in many ways most  
25 important aspect of this will be a replacement of the

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1 mechanical system as well. The mechanical system, as  
2 Randy pointed out, is beyond the end of its useful  
3 life and really has to be replaced in this next round  
4 of renovation.

5 Let me focus a little bit on the landscape  
6 now. This plan represents, what you see here in light  
7 green are all sort of existing trees on the site.  
8 What you see here in the dark green and the pink are  
9 new trees which have been added to the site at this  
10 time, and the only exception to that are the  
11 landscaping in this corner up here has not been added  
12 in anticipation of building the bays. We don't want  
13 to put the trees in, destroy the trees in the process  
14 building the base. So, those are held in abeyance at  
15 this time.

16 We added a new street tree to an existing  
17 empty well. In this location, more screening has been  
18 completed here, and I believe screening has been  
19 completed here. If it's not, it will be.

20 So, a lot of new landscaping has been  
21 added to the site, and as Randy pointed out, in very  
22 direct consultation with the neighbors. In fact,  
23 standing on front porches looking across the street  
24 and the landscape architect, Ann Anderson, who works  
25 with a firm called Edau, placing those trees

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1 specifically to their satisfaction.

2 Let me quickly go through the parking.  
3 The lot today, this curb line today continues east-  
4 west to the other end of the site. What we're  
5 proposing is to create tandem spaces in these slots  
6 here. There's existing curb cut at the entry to the  
7 building in this location. Today it holds six spaces.

8 We're proposing to go to eight spaces but not enlarge  
9 the curb cut.

10 In terms of our ability to add spaces  
11 elsewhere on the site, this parking lot is clearly  
12 bound by the building and the property lines and  
13 cannot be expanded beyond where we are, and as Randy  
14 pointed out, there is a substantial amount of slope on  
15 this street, and if we try to go into the site this  
16 way, there's a substantial change of grade from this  
17 sidewalk to the play area here. We were really unable  
18 to find any location that was going to be suitable to  
19 put a second lot, and frankly, I wouldn't think a  
20 second lot would be a preferable solution in any case,  
21 but even if we wanted to, I don't see how we could.

22 I think that more or less covers all of  
23 the physical implications of what we're proposing here  
24 today.

25 MR. DEPUY: We'll call our third witness

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1 at this point, Mr. Marty Wells. Mr. Wells?

2 MR. WELLS: Thank you. Good afternoon.  
3 Wells and Associates was retained by the school to  
4 conduct a traffic and parking study for the modest  
5 proposal before you today. We did that, in fact, and  
6 documented that in a report dated July 30 which was  
7 part of the application.

8 We of course reviewed the school's current  
9 traffic management plan. We conducted vehicle and  
10 pedestrian traffic counts, speed studies, vehicle  
11 occupancy counts, parking occupancy counts. We  
12 observed queuing behavior and traffic behavior on 36th  
13 Street, Yuma Street, and Alton Place.

14 I'm prepared to go through that in mind  
15 numbing detail if you'd like, but let me just  
16 summarize by saying that we found that the current  
17 traffic management plan is safe and efficient and has  
18 no significant negative impact on the public. I'm  
19 gratified to report that DDOT agrees with us in this.

20 Our recommendation, quite simply, is to  
21 stay the course. As you know, in other applications,  
22 we have not found that staying the course was the  
23 right course of action, but in this case, it certainly  
24 is.

25 We have recommended that the school

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reinforce their traffic management plan by communicating it regularly to their parents, faculty and staff, vendors and the community. We've asked that the school continue to prevent parents and students from crossing 36th Street at mid-block between Yuma and Alton Street. A little reminder to the district, we would hope that you would continue to enforce posted speed limits and continue to maintain school signs and pavement markings in good condition.

We've also recommended that the rumble strips, which are located on 36th Street in front of the school, that they be removed. There simply is no speed problem on 36th Street, and those rumble strips do more to create noise than they do to control speeds.

As a practical matter with regard to parking, there is no parking problem. We don't anticipate one in the future. We did recommend 37 parking spaces for the current 55 employees, the plan that Mr. Hickok just presented. For 60 employees, for a modest growth in staffing, 40 parking spaces would be required. It's not possible to provide 40 on the site. Three additional spaces would be needed to go from 37 to 40.

Again, as a practical matter, this does

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1 not present any difficulty because the proposed  
2 spillover, or the project spillover, if indeed there  
3 is any after Metrochecks and carpooling, would be  
4 small, inconsequential. There is ample, vacant on-  
5 street parking today at all times of day. Many of the  
6 faculty and staff, in fact, are Ward 3 residents, and  
7 they can legally park in Ward 3 residential permit  
8 spaces.

9 It is my conclusion that granting the  
10 proposed parking variances would have no substantial  
11 detrimental effects on the public.

12 Our findings, I'm gratified to be able to  
13 say and recommendations are consistent with the  
14 Connecticut Avenue Transportation Study which was  
15 recently completed by a consultant for DDOT. DDOT has  
16 submitted a letter to the extent that they have  
17 reviewed this application, and they recommend approval  
18 without any conditions. I haven't seen any reports  
19 like that, and I'm glad we got one.

20 I, too, recommend that you approve this  
21 case without transportation conditions. Thank you.

22 MR. DEPUY: Mr. Chairman, members of the  
23 Board, that concludes our case on direct. Before I  
24 open up our witnesses to your questions and cross  
25 examination, I would like to respond to the two items

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1 that the Chair mentioned.

2 First, with respect to the CASA program,  
3 when we got the Zoning Administrator's letter, as you  
4 can imagine, that generated a lot of discussion at the  
5 school, and a lot of study. We looked into the  
6 authority, legal issues. We looked into the operation  
7 of the CASA program. After a great deal of discussion  
8 and study, we concluded that the CASA program is very  
9 much like the educational program offered by the  
10 school during the normal school year, though it's  
11 offered, of course, during the summer, and with  
12 admittedly more emphasis on recreational and typical  
13 summer activities, but nevertheless an educational  
14 activity.

15 Therefore, we concluded that the use is  
16 accessory to the principal use of a private school on  
17 the premises and does not require any additional  
18 licenses, permits, or other authority. We did look  
19 into whether or not a child development center special  
20 exception and license was necessary, and again  
21 investigated the operations.

22 We had some discussions with D.C.  
23 agencies, had some discussions with other private  
24 schools, and again, after a lot of discussion and  
25 thought, concluded that the CASA program is not a

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1 child development center. It is a program that starts  
2 at a defined time in the morning and runs through a  
3 defined time in the afternoon. It's not like a  
4 morning program or an afternoon program. It is the  
5 same program running all day long. Therefore, that it  
6 does not require any additional authority or  
7 additional permits.

8 Mr. Plummer can respond to any specific  
9 factual questions with respect to CASA. With respect  
10 to the farmer's market, my knowledge of the farmer's  
11 market is very limited, but I will indicate that from  
12 my knowledge, the farmer's market is something that  
13 the community supports, wanted to continue, and the  
14 school simply accommodates both the operator of the  
15 farmer's market and the community in making its  
16 facilities available.

17 Again, if there are specific questions  
18 about the farmer's market, perhaps Mr. Plummer knows  
19 the answers. If not, James Eden, who is the business  
20 manager of the school, is in the audience and perhaps  
21 can answer questions as well.

22 So, at that point, I'll turn it over to  
23 the Board for its questions.

24 VICE CHAIRPERSON ETHERLY: Thank you, Mr.  
25 Depuy. What I'd like to is open it up for Board

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1 questions at this point. Let me also of course note,  
2 after we follow through with Board questions, we'll  
3 have cross examination by the party in opposition.

4 I neglected to inquire, do we have an ANC  
5 representative here today with us? Okay, we have an  
6 ANC representation. ANC, of course, is a party to the  
7 case, and will also have the opportunity to cross  
8 examine testimony that's been provided on direct.

9 So with that, any questions from my Board  
10 colleagues at this point in time? I believe I saw Ms.  
11 Miller or Mr. Zaidain, or Ms. Mitten at this point.

12 MEMBER MILLER: Mr. Plummer, I wanted to  
13 follow up on the farm market, and Mr. Depuy because I  
14 have a concern because I was looking at the proposed  
15 conditions to the BZA order, and it looked to me as if  
16 it might preclude operation of the farm market, which  
17 I believe is on Tuesday, late afternoon and Saturday  
18 mornings.

19 So, it looks like in paragraph six that  
20 evening and weekend activities were restricted, and I  
21 looked through this whole agreement to see where was  
22 this farm market solved, and it seems to be an  
23 oversight, but I'm not sure if that's the case or not,  
24 so if you can address, you know, how it would be  
25 allowed since it appears that it's something that

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1 everybody supports, if that assumption is correct.

2 MR. DEPUY: Well, I'll address the  
3 conditions since I was very involved in drafting the  
4 conditions. The farmer's market did not come up in  
5 any discussions we had, and we had many, many  
6 discussions on proposed conditions. There was a  
7 question as to whether or not the farmer's market  
8 would continue, but apparently once the commitment was  
9 made by the school, those persons that we talked to  
10 did not feel as if a condition needed to be made.

11 Now, if there is something in the  
12 conditions that have been suggested which is at odds  
13 with the farmer's market, then that should be  
14 clarified or revised.

15 Mr. Plummer, can you add anything to that  
16 discussion to help us out here?

17 MR. PLUMMER: Yes, I would just add that  
18 it's imperative that we maintain the farmer's market.

19 That and the playground are probably the two most  
20 important elements for the neighbors, and there's  
21 literally no thought whatsoever to remove the farmer's  
22 market at all.

23 MEMBER MILLER: That's what I thought, and  
24 that may need to be clarified within this agreement,  
25 or within the order.

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1 I have a question about the cap. I think  
2 I read in your submission that by going from 215 to  
3 226, there absolutely would be never a problem that  
4 you would go over the cap. I'm wondering since you're  
5 also in that other position, you know, as head of all  
6 the private schools, how you guarantee that in your  
7 admissions process, because I understand it's not an  
8 exact science how many people you accept and how many  
9 people come.

10 MR. PLUMMER: That's a great question.  
11 Without sounding supercilious, the economy is  
12 certainly helping us keep to our enrollment cap. It's  
13 not an exact science, but we do investigate sort of  
14 the last ten years of what our yield is. That's  
15 really the important answer to that question, how many  
16 acceptances that we send out are accepted by us, and  
17 get a rough percentage of that. We've been averaging  
18 somewhere around 60 or 65 percent. So, we project the  
19 number of acceptances we're going to accept predicated  
20 upon what is our yield.

21 We literally, at least in my six years,  
22 now seventh year, we've had no problem whatsoever  
23 coming to the cap. We take that really seriously. I  
24 mean, 215 was the number that we've always operated,  
25 and we've never been over that, at least in the six

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1 years that I've been there.

2 So, again, you're right. It's not an  
3 exact science, but it's an incredibly important  
4 element in our admissions decisions.

5 MEMBER MILLER: But it's scientific enough  
6 that you can tell that this is a large enough cushion  
7 so you would never go over?

8 MR. PLUMMER: Absolutely.

9 MEMBER MILLER: Okay.

10 MR. PLUMMER: Yes, I really feel  
11 comfortable with that.

12 VICE CHAIRPERSON ETHERLY: Mr. Zaidain?

13 MEMBER ZAIDAIN: I have a question for Mr.  
14 Wells, a clarification. On page 17 of your report,  
15 you've got a list of recommendations for the  
16 operation, at least that's my understanding, because  
17 in your presentation, you kind of said we're not  
18 recommending conditions, and DDOT's not recommending  
19 conditions, but are you -- these are not being  
20 provided as conditions. Furthermore, along those  
21 lines, did you do your analysis on whether or not  
22 there would be negative impacts by this program based  
23 on letters A through L occurring? Do you follow my  
24 thought process here?

25 MR. WELLS: Yes, I do. I think that our

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1 recommendations here are consistent with staying the  
2 course with the existing traffic management plan, if  
3 you're a careful student of the previous order, of  
4 what they're doing now and what these recommendations  
5 are. These recommendations tend to reinforce exactly  
6 what they're doing now.

7 MEMBER ZAIDAIN: Okay.

8 MR. WELLS: And it also reflects the  
9 specific parking plan that was developed, frankly, to  
10 meet the numbers requirements in your zoning  
11 ordinance. Any objective observer would say there's  
12 no parking problem in this area, yet we need to make  
13 the 37 on site spaces in order to comply with the  
14 zoning ordinance, and that's exactly what we're doing  
15 here.

16 MEMBER ZAIDAIN: Okay.

17 MR. WELLS: Now, in terms of the numbers,  
18 what the numbers show, the numbers show the speeds are  
19 low, the levels of service around the school are  
20 great. I mean, their levels of service are A. You  
21 haven't heard me say that in all cases, but this is  
22 certainly a case where the levels of service are A.  
23 It's not contestable.

24 The increase, and I was very conservative  
25 in looking at the traffic increase. Right now, at the

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1 time we did our study, there were 205 students  
2 enrolled in the school. I understand this year  
3 there's 207, which is less than the 215. I took the  
4 enrollment up to the full 226, and that's 34 trips  
5 over an hour, which will have no significant impact.

6 So, that's a long winded answer to saying  
7 yes, we looked at this in great detail, and these  
8 recommendations are consistent with what they're doing  
9 now and the variances that they've requested.

10 MEMBER ZAIDAIN: Okay. I was a little  
11 surprised by DDOT's report as well. It's fairly  
12 uncommon that we get such a short report from them  
13 based on a school case.

14 MR. WELLS: Wasn't that great?

15 MEMBER ZAIDAIN: Less reading for all of  
16 us, I guess, but I would assume that a lot of these  
17 issues, namely, your recommendations, were discussed  
18 with them as well?

19 MR. WELLS: Yes. Part of what goes into  
20 my report, of course, and DDOT's report, is that we've  
21 met with them three or four times through the course  
22 of this study, and I think they felt comfortable with  
23 what they observed themselves, what their own  
24 consultants looked at as part of the Connecticut  
25 Avenue transportation study.

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1                   This is a ways from Connecticut Avenue,  
2                   but it was within that study area for that study.

3                   MEMBER ZAIDAIN:   And that study has been  
4                   submitted to us on another case.   I can't remember,  
5                   but I know the document you're referring to.

6                   Did you raise the rumble strip issue with  
7                   them?

8                   MR. WELLS:   They raised it with me, quite  
9                   frankly, and I thought that rumble strips in between  
10                  two stop sign controlled intersections in such a short  
11                  section was overkill.   All those rumble strips do is  
12                  create noise.   They really are not an effective  
13                  device.

14                  MEMBER ZAIDAIN:   I'm sure they're not  
15                  trying to get the Applicant to remove them, right?

16                  MR. WELLS:   Well, I think they wanted to  
17                  do it.

18                  MEMBER ZAIDAIN:   Okay, but I'm being  
19                  somewhat cynical --

20                  MR. WELLS:   I give them full credit for  
21                  that.

22                  MEMBER ZAIDAIN:   Okay, but again, that's  
23                  just an issue that you're noting.   That's not  
24                  something for us to deliberate in terms of the  
25                  conditions for this application?

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1 MR. WELLS: I don't think it needs to be -  
2 -

3 MEMBER ZAIDAIN: I don't think it can be  
4 conditional. I don't think we can make them do an --  
5 I mean, maybe we can. I'm not sure.

6 MR. WELLS: I think you can rest assured  
7 that this will be done.

8 MEMBER ZAIDAIN: Okay. I think that's all  
9 I have, Mr. Vice Chair.

10 VICE CHAIRPERSON ETHERLY: Thank you. Let  
11 me come to Ms. Mitten, and I'll come back to you, Ms.  
12 Miller.

13 CHAIRPERSON MITTEN: I just have -- I  
14 think I have a suggestion more than a question. The  
15 proposed condition number 18 references the traffic  
16 management plan which is basically a letter that Mr.  
17 Plummer sends out periodically. My concern is that  
18 the way that this is presented, if it's to be  
19 incorporated as an actual plan, and looking ahead,  
20 that it's not enforceable. It's a series of  
21 suggestions.

22 So, I would suggest just for everyone's  
23 sake, that it just be repackaged into a series of,  
24 instead of recommendations, it's what is the standard  
25 that the school intends to be held to, so that the

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1 neighbors will know and you will know, and there won't  
2 be any sort of disconnect there.

3 MEMBER ZAIDAIN: So I think kind of where  
4 you're coming from is similar to where my questions  
5 were coming from. Are you talking about having the  
6 conditions incorporate the recommendations in the  
7 Wells report as conditions, and something that's  
8 measurable and implementable, if I can use that word?

9 CHAIRPERSON MITTEN: I was referring more  
10 specifically to in condition number 18 --

11 MEMBER ZAIDAIN: Okay.

12 CHAIRPERSON MITTEN: Where reference is  
13 made to the letter. We have it at different places,  
14 but it's at Tab 5 of Mr. Plummer's submission today.

15 MEMBER ZAIDAIN: Okay.

16 CHAIRPERSON MITTEN: And these are a  
17 series of suggestions, like please do this, please  
18 don't do that. That's not really very easily  
19 enforceable in that form. So, I'm just suggesting  
20 that it be repackaged to be a series of enforceable  
21 actions that the school will take.

22 That's all.

23 VICE CHAIRPERSON ETHERLY: Okay. Ms.  
24 Miller?

25 MEMBER MILLER: I just have a couple of

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1 questions more. Mr. Hickok, I just want to make sure  
2 I understand that diagram. I think you said that the  
3 light colored trees were trees that were there. The  
4 darker colored trees were newly planted trees, is that  
5 correct?

6 MR. HICKOK: Yes.

7 MEMBER MILLER: Is there any more  
8 landscaping that's anticipated by the school, or is  
9 that it?

10 MR. HICKOK: No, this is the plan that was  
11 arrived at through the consensus with the neighbors.  
12 So, this is the extent of it at this time.

13 MEMBER MILLER: So, it's all be done?

14 MR. HICKOK: I believe everything has been  
15 done except for, as I pointed out, this corner which  
16 we're not going to do until we get the bays done. I  
17 have to check on whether or not that's been planted,  
18 but I'm 90 percent sure, 99 percent sure everything  
19 else has been.

20 MEMBER MILLER: Okay, thank you. I'd just  
21 ask one other questions for Mr. Plummer, or for  
22 whomever.

23 VICE CHAIRPERSON ETHERLY: Sure.

24 MEMBER MILLER: There's a term of art here  
25 that I haven't seen before, and that's this concrete

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1 action step, and I want to know if that's something  
2 that's germane to just you all, or is that a term of  
3 art that has some meaning that we should realize?

4 MR. PLUMMER: No, I was just putting it in  
5 there to show that not only in good faith our intent,  
6 but that, in fact, we've actually implemented steps  
7 immediately to be collaborative with the neighbors,  
8 that we've done them and it's not just rhetoric.

9 MR. HICKOK: I think it should become a  
10 term of art.

11 VICE CHAIRPERSON ETHERLY: All right.  
12 Let's move into, if I could, if there are any further  
13 Board questions. Let me move into cross examination.

14 If I could ask one or so chairs to be cleared out, if  
15 I could have the ANC step forward, along with -- let's  
16 start with the ANC at this point, and we'll bring Mr.  
17 Schachter up once the ANC cross is complete.

18 Excellent. Good afternoon to you, sir.  
19 If you could, as you take a seat, you may or may not  
20 be familiar with us. Of course, touch the base of the  
21 microphone. If you could state your name and identify  
22 yourself for the record, please.

23 MR. KESSLER: My name is Carl Kessler.  
24 I'm ANC Commissioner for single member District 3F-01.

25 VICE CHAIRPERSON ETHERLY: Excellent, and

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1 Mr. Kessler, I believe you are joined by another ANC  
2 Commissioner as well.

3 MS. WISS: Cathy Wiss, Chair and  
4 Commissioner, ANC-3F-06.

5 VICE CHAIRPERSON ETHERLY: Excellent.  
6 Thank you both very much. I'll note for the record  
7 that Exhibit 48, we'll get into the ANC report in a  
8 moment, but these two representatives are designated  
9 by the ANC to speak on that on ANC's behalf.

10 All right, please proceed with any cross  
11 examination questions that you have.

12 MR. KESSLER: A questions I have for Mr.  
13 Plummer, as far as the student enrollment control  
14 system, is there any way for the community to make  
15 sure that the student enrollment does not exceed the  
16 caps?

17 MR. PLUMMER: Well, I'm not sure exactly  
18 what you mean, but what we've done in the past is  
19 offered the community at our quarterly meetings to  
20 literally count -- I mean, we don't know what else to  
21 do, but count the names in our student directors,  
22 which lists families and students, to show that it's  
23 under 215. I mean, I will do anything, actually,  
24 because it's always under 215. So, any suggestion  
25 that is made by the neighbors, we'd be happy to

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1 comply.

2 MR. KESSLER: Isn't there a provisions in  
3 the proposed conditions on dealing with that issue, in  
4 the annual report?

5 MR. PLUMMER: If there is, I'm sorry, o  
6 don't know it. Oh, right, in the annual report. Yes,  
7 I was thinking of something actually more concrete  
8 than that, but yes, in the annual report, we would  
9 enumerate the number of students, but again, the offer  
10 would be that neighbors could actually come and look  
11 at our class list, or we actually have pictures of  
12 every student in the front of the school as you walk  
13 in. They can literally count the faces.

14 MR. KESSLER: Another questions for Mr.  
15 Plummer. As far as the farmer's market is concerned,  
16 wasn't it the belief of you attorneys during the  
17 discussion that the farmer's market was not something  
18 within the purview of the BZA as far as rules and  
19 regulations for that?

20 MR. PLUMMER: That's what I remember, yes.

21 MR. KESSLER: So --

22 MR. PLUMMER: And I was anxious to make it  
23 something because I know how important it is to the  
24 neighborhood. I was anxious to make it something more  
25 affirmed, but in fact, it seems that the best we can

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1 do is just offer our pledge to keep it there,  
2 certainly as long as I'm the head of school.

3 MR. KESSLER: Another question. On the  
4 traffic, on your school traffic management plan, isn't  
5 there as part of the plan, aren't you planning to have  
6 off duty policemen?

7 MR. PLUMMER: Yes, we're currently in  
8 negotiation right now with two off-duty policemen that  
9 will ameliorate the situation considerably.

10 MR. KESSLER: I have no further questions.

11 MS. WISS: I don't have any questions.

12 VICE CHAIRPERSON ETHERLY: Excellent.  
13 Thank you. Thank you very much. Very tight and  
14 directed cross examination. We appreciate that.

15 Mr. Schachter, if you could, if you have  
16 any cross examination questions, please feel free to  
17 step forward to the table.

18 MR. SCHACHTER: Thank you. I just had a  
19 few quick questions for Mr. Wells. Mr. Wells, do you  
20 have a copy of your report handy?

21 MR. WELLS: I do.

22 MR. SCHACHTER: Mr. Wells, could you take  
23 a look at figures 1-1, 1-2, and 2-2? I'll represent  
24 that those are aerial photographs of the school. Can  
25 you confirm that each of those three exhibits depicts

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1 a school bus parked in the rear lot?

2 MR. WELLS: Those figures, 1-1, 2-1, 2-2,  
3 they are all the same aerial photograph, and that  
4 photograph does show a school bus parked on the  
5 property when this photo was taken, which is a date  
6 unknown.

7 MR. SCHACHTER: And on page three of your  
8 report, Mr. Wells, there's a photograph. That  
9 photograph depicts cars parked in the rear lot outside  
10 of the parking layout?

11 MR. WELLS: That's correct.

12 MR. SCHACHTER: And on page one of your  
13 report, or the Wells report, there are two  
14 photographs. The one on top depicts stacked parking  
15 outside of the parking layout in the front lot, is  
16 that correct?

17 MR. WELLS: That's correct.

18 MR. SCHACHTER: That's all.

19 VICE CHAIRPERSON ETHERLY: Okay. Let me  
20 return just for quick check-in with my Board  
21 colleagues, if there are any further questions of  
22 cross of the witness presented on direct?

23 Okay, terrific. I think you gentlemen,  
24 feel free to take a seat. Don't run away too far,  
25 however.

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1 MR. DEPUY: Thank you.

2 VICE CHAIRPERSON ETHERLY: All right. At  
3 this point, I think it would be appropriate for us to  
4 move into government reports at this time. Government  
5 reports, of course, include the Office of Planning,  
6 our Department of Transportation and, of course, the  
7 ANC report. What I'd like to do is have Office of  
8 Planning present their report at this time, and then  
9 we'll move very briefly into DDOT. I don't believe we  
10 have a DDOT representative on hand? Okay, terrific.

11 Let's move to the Office of Planning.  
12 I'll say good afternoon to you, sir. You can  
13 introduce yourself for the record and proceed.

14 MR. MORDFIN: Good afternoon, Vice  
15 Chairman and members of the Board. My name is Stephen  
16 Mordfin with the Office of Planning, and this is for  
17 BZA Application No. 16977.

18 The Office of Planning has determined that  
19 the application is in conformance with Section 206 in  
20 that it is an existing private school and not a trade  
21 school, will not become objectionable due to noise  
22 because the proposed hours are standard work and  
23 school hours, or because of traffic, as the traffic  
24 study submitted as a part of the application concludes  
25 that the surrounding intersections will continue to

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1 operate at a level of service A.

2 The number of students that the  
3 application proposes to increase is small. It's only  
4 11 students, or 5.1 percent, and that ample parking  
5 will be provided as defined by the schedule within the  
6 zoning regulations.

7 The application requests two area  
8 variances that affect the design of the parking lot.  
9 The site is unique due to the location of the existing  
10 building on the site, and the sloping topography of  
11 the subject property on the south side, meaning that  
12 expansion of the parking lot is not feasible. The  
13 request reduces the size of the parking spaces and to  
14 permit tandem spaces will allow for an increase in the  
15 number of parking spaces, and only employees of the  
16 school will utilize the spaces, and the smaller spaces  
17 work well when used for long term parking such as  
18 employee parking.

19 The third area variance requested is to  
20 reduce the amount of parking required so as to allow  
21 the school to add up to five additional teachers or  
22 other employees in the future, for a total reduction  
23 of parking from 40 spaces to 37. As there is no area  
24 on site to expand the parking, this variance will  
25 allow the school the flexibility to add staff if

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1 necessary.

2 The Office of Planning recommends approval  
3 of the special exceptions and variances as submitted  
4 by the Applicant. That concludes the presentation  
5 from the Office of Planning.

6 VICE CHAIRPERSON ETHERLY: Excellent.  
7 Thank you very much, Mr. Mordfin. As always, very  
8 concise and to the point. Let me open it up for Board  
9 questions only at this point in time for Office of  
10 Planning. If there are any Board questions of the  
11 Office of Planning at this time?

12 While my Board members are orienting  
13 themselves, let me just confirm if that Applicant has  
14 received copies of the Office of Planning's report?  
15 Excellent.

16 Mr. Schachter, do you have a copy of the  
17 Office of Planning's report? Okay, if we could, if I  
18 could ask staff, Ms. Bailey, if you could see if we  
19 have an additional copy of the Office of Planning  
20 report, I'd like to make sure that Mr. Schachter has a  
21 copy of that, please. Excellent, and also, I believe  
22 the ANC needs a copy of the Office of Planning report.

23 So, if we could get two copies of that report, that  
24 would be excellent.

25 The Board once again, any Board questions

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1 of the Office of Planning at this point? Going once,  
2 going twice. All right. Of course, there will  
3 definitely be opportunity as we proceed to come back  
4 to the Office of Planning for questions at this point  
5 in time.

6 Let me ask the Applicant at this time if  
7 the Applicant has any cross examination questions of  
8 the Office of Planning report? Okay, the Applicant is  
9 indicating no cross examination questions.

10 What I'd like to do is I know that Mr.  
11 Schachter, the party in opposition, and the ANC are  
12 securing copies -- did we get copies of the Office of  
13 Planning report?

14 MS. BAILEY: Mr. Schachter has received a  
15 copy.

16 VICE CHAIRPERSON ETHERLY: And has the ANC  
17 received a copy yet? Okay, what I'd like to do is I  
18 want to come back to the two of you for cross  
19 examination questions, but I want to give you an  
20 opportunity to review the report before coming to you.

21 Let me move to DDOT for a moment, and then  
22 I'll come back to the ANC report. Once again, I don't  
23 believe we have a representative from DDOT on hand.  
24 The DDOT report is at Exhibit No. 52, and that's a  
25 letter from the associate director, District

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1 Department of Transportation, Mr. Ken Laden, dated  
2 September 26. Does the Applicant have a copy of the  
3 Department of Transportation's report? Let me also  
4 come back to the ANC and Mr. Schachter, if you have a  
5 copy of the Department of Transportation report.

6 Okay, I should have checked both of those  
7 at the same time. Ms. Bailey, if I could impose upon  
8 you, we will probably need an additional copy for both  
9 Mr. Schachter and for the ANC of the Department of  
10 Transportation report.

11 The Department of Transportation report,  
12 very briefly, notes that they reviewed the Applicant's  
13 proposal and recommends approval of the application  
14 without any conditions. As was indicated earlier,  
15 it's a very -- well, I won't say very rare, but  
16 somewhat rare that we get such a short and terse  
17 Department of Transportation report, but be that as it  
18 may, with that being said, let me come back to the  
19 cross examination question for Mr. Schachter and/or  
20 the ANC with regard to the Office of Planning. If  
21 there are any cross examination questions for the  
22 Office of Planning.

23 Let me ask the ANC first, if you could  
24 indicate by assent or the universal signal of no. If  
25 there are any cross examination questions for the

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1 Office of Planning, ANC? If you could step up to the  
2 mike, sir, so we can make sure that we get you on the  
3 record. If you could touch the base of the microphone  
4 there. Thank you.

5 MR. KESSLER: My name is Carl Kessler, ANC  
6 representative. Unfortunately, I haven't really had  
7 time to review the report since I've only gotten it  
8 like a minute ago. I would like to reserve my right,  
9 if that's possible, to review the report and then ask  
10 questions at a later time during the proceedings?

11 VICE CHAIRPERSON ETHERLY: Okay. I think  
12 that would be more than fair considering that you've  
13 just gotten notice of that report.

14 Mr. Schachter, would that be your  
15 recommendation for yourself as well? Would you like a  
16 little more additional time to take a look at the  
17 Office of Planning report?

18 MR. SCHACHTER: Yes, sir.

19 VICE CHAIRPERSON ETHERLY: Okay,  
20 excellent. Any cross in absentia of the Department of  
21 Transportation report by the Applicant? All right.

22 Okay, I think at this point in time it  
23 would be appropriate to move to testimony in support.

24 Oh, my goodness, of course. How can I forget that?  
25 Thank you very much, Mrs. Mitten.

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1           Our ANC friends, please, at this point in  
2 time, pursuant to our government reports, let's have  
3 the ANC report at this time. How could I? Oh, my  
4 goodness. I'm giddy with power here. Vice Chairman,  
5 and I'm about to move past the ANC. How dare I?

6           Excellent.

7           MS. WISS: Good afternoon. My name is  
8 Cathy Wiss. I'm Chair of ANC-3F. I also represent  
9 ANC-3F-06 and until January, the Sheridan School was  
10 in my district. So, I have been part of this process  
11 from the beginning, starting first at the quarterly  
12 meetings that the school was having with neighbors on  
13 any issue possible, that then moved into discussion of  
14 the plans as well as the other matters.

15           I'm just going to address briefly the  
16 special exceptions and the variances, and I think  
17 we've really heard much of what the school said is  
18 what we experienced and what came up at our ANC  
19 meeting.

20           In the beginning when the bays were  
21 announced, people were concerned that even though it  
22 was bringing the school only five feet closer to their  
23 homes, it might expose them more and so for them, the  
24 landscaping was really important, as well as putting  
25 shades on the windows because of lights at night.

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1           So, the school did work with various  
2 neighbors, particularly the closest ones or ones that  
3 have the greatest problems. I heard back from the  
4 neighbors about the meetings, you know, and that they  
5 over the period of time did work out various plantings  
6 from the angle of their homes. Two screens, the new  
7 bays, as well as other problems that were found, that  
8 certain plantings had not been made from the previous  
9 order, and then they assessed trees and so on.

10           So that was a collaborative process in  
11 order to make the new bays less objectionable to the  
12 neighbors, and that has started. Lots of things have  
13 been planted so far.

14           They've discussed the various changes to  
15 the parking areas. The parking area on 36th Street is  
16 a very small lot. It's pull-in parking directly from  
17 the street, and the only modification would be to the  
18 island, so that would not be creating any  
19 objectionable condition by extending the curb cut.

20           The maximum number of students, again, the  
21 school did allow people to count by going through  
22 their directory how many students were enrolled. At  
23 our ANC meeting, they said that really, it had not  
24 been a huge issue, and particularly the CASA  
25 enrollment had not come up.

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1           So, at our ANC meeting, we asked the  
2 people who were there -- there were only three people  
3 who came to the meeting from the community. One  
4 person said it would be just fine. Another person  
5 said the school had assured her that the programs  
6 would be held both indoors and outdoors, so, it  
7 wouldn't be like a large group of kids yelling on the  
8 playground or something like that. So, she did not  
9 have a problem with it at all.

10           Indeed, the enrollment has been lower than  
11 226, that the school is asking for the same cap as the  
12 regular enrollment. The feeling was that that would  
13 not be objectionable to the neighborhood. I should  
14 say that Mr. Schachter was not certain whether this  
15 program should have that many students.

16           There was a lot of discussion as to a lot  
17 of the kids do walk to school and so on. It's really  
18 a community program.

19           Again, about the variances on parking, it  
20 was important to the ANC that the staff be given  
21 Metrocheck and that they do take special measures for  
22 carpooling so that they reduce any possible spillover  
23 parking in the neighborhood, and they've agreed to  
24 that. They've basically discussed why the existing  
25 parking lots really cannot be expanded.

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1           One thing, too, that Commissioner Kessler  
2           had brought up was the current situation of parking  
3           cars behind each other in the parking lot just to fit  
4           them in did not seem very safe. Could you get fire  
5           engines through there if the school caught on fire?  
6           So the school did call the fire department, and they  
7           showed the school how they had to have clearance for  
8           the fire trucks. After that, then the school then  
9           decided to modify their plan and ask for the tandem  
10          parking so that the aisles could always be kept clear  
11          for fire trucks.

12                   Thank you.

13                   MR. KESSLER: Hi, I'm Carl Kessler, ANC  
14           Commissioner for SMD3-F-01. I appreciate the  
15           opportunity on behalf of the ANC to testify before you  
16           in this case, which is a request for a special  
17           exception. I know that you have our resolution,  
18           report, and attachments. In front of you is  
19           resolution 03-18, report 03-02. So, I won't repeat  
20           what the ANC approved, but we did do it by a 6-0 vote  
21           at our duly advertised meeting on September 15 with a  
22           quorum present. A quorum for our particular ANC is  
23           four.

24                   One of the things that I just found out  
25           today was the attached that we submitted is not the

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1 current version of the attachments. Our version was  
2 based on the school submission on the 16th, and the  
3 attachments they have is where you revise on the 24th,  
4 and even though there were revisions, the school  
5 showed me, I think the ANC would have no problem with  
6 those changes. So, therefore, I would like you to  
7 know there is a difference and discrepancy between our  
8 report, and the final submission as far as attachment  
9 -- that's attachment A, by the way.

10 Let me give you a little background on the  
11 process as I see it. We arrived at this document that  
12 we are submitting to you as our report after  
13 substantial dialogue between the school and the  
14 neighborhood. Randy Plummer indicated how many  
15 meetings we had.

16 One of the interesting things is, at most  
17 of these meetings, there was at least one ANC  
18 commissioner there. So, we were involved in the  
19 process from the beginning and throughout the whole  
20 process.

21 Then, therefore, we made our determination  
22 on the 15th in support of this particular application.

23 It was not done from lack of knowledge because we  
24 were intimately involved throughout the whole process.

25 At the same meeting, it was interesting to

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1 see that many of the -- there weren't that many  
2 neighbors at the meeting, but those that were there  
3 were vocal, and two of the three neighbors that were  
4 there, that were initially opponents of the school in  
5 their various plans, that became a supporter of it.  
6 Therefore, showing that there was a tremendous change  
7 in attitude within the neighborhood towards the  
8 proposals after all this negotiation.

9 Another issue that was important to the  
10 ANC, as Cathy also said, was that whatever conditions  
11 that we have in our attachments and our attachment A,  
12 we'd like to incorporate it directly into the BZA  
13 order rather than treat it as a separate agreement,  
14 just to make sure that the school takes notice that  
15 this is the responsibility of the school to meet  
16 these requirements.

17 Also, the other attachments, B and C, are  
18 resolutions, should be incorporated by reference for  
19 the same reason. They're too lax to incorporate  
20 directly, but hopefully you'll put a reference in  
21 there so that the school realizes that they're  
22 responsible under BZA authority to make sure these  
23 various commitments that they made will actually take  
24 place.

25 As far as the school parking plan is

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1 concerned, I want to emphasize the importance of this  
2 public safety issue because it is, you know, the  
3 school is very close to other buildings on the street,  
4 and if they have a problem, it's going to impact us  
5 all. So, it's very important that when you look at  
6 the parking plan, that you make sure there's space for  
7 emergency vehicles to be included, you know, to be  
8 allowed to reach the school for emergency reasons.

9 Also, basically their plan to reduce staff  
10 parking is also important to us because of the  
11 environmental impact and also the crowding of our  
12 roads, as though it's not as bad as other places. We  
13 still have a problem that will only get worse in the  
14 future.

15 Overall, the ANC endorses the BZA  
16 application of the Sheridan School strongly, as long  
17 as the recommendations outlined above are incorporated  
18 in the Board's final order.

19 Finally, this Commissioner and I  
20 particularly commend the Sheridan for its great  
21 efforts in making certain that the provisions of  
22 Section 206.1 were affected and neighborhood concerns  
23 were allayed. There were a number of instances during  
24 the last year where the school went well beyond the  
25 minimum to address long-standing neighborhood issues.

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1                   One thing I'd like to add about the  
2 farmer's market. I'm not sure where Commissioner  
3 Miller is coming from, as far as the discussion of it.

4       I did an e-mail survey of the neighboring blocks  
5 around the school, and asking whether they'd like the  
6 farmer's market, to continue as part of the  
7 negotiations.

8                   The school, and the response was  
9 overwhelming for the school. So, the immediate  
10 neighborhood is very support of the farmer's market.  
11 We would be very upset if something happened that it  
12 would no longer be there.

13                   So, please make sure, in your final order,  
14 there's nothing that would adversely affect the  
15 farmer's market in its continuous existence.

16                   VICE CHAIRPERSON ETHERLY:       Okay.  
17 Commissioner Kessler and Commission Wiss, thank you  
18 very, very much for your testimony. Please sit tight,  
19 but your testimony is very much appreciated because  
20 it's very clear that there's been a long history of  
21 hard work on the part of this ANC and working with  
22 this applicant to ferret out a number of issues and  
23 resolve them in a very cooperative and collaborate  
24 manner. So, we're very appreciate of that.

25                   As always, I'm sure my colleagues will

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1 also be very appreciative of the very thorough written  
2 report that was done, which I am more than certain  
3 satisfies our requirements in order for it to be  
4 accorded the great weight under our regulations.

5 Let me ask if there are any Board  
6 questions at this particular point in time of the ANC  
7 representatives? Ms. Miller?

8 MEMBER MILLER: Yes, I'd like to follow up  
9 on number one, with Mr. Kessler where I'm coming from  
10 is looking at provisions six and seven. If you might  
11 want to turn your attention to that in the proposed  
12 order. When I read those, and I was aware of the  
13 farmer's market, I read those as possibly restricting  
14 something that the community really did not intent to  
15 restrict. That's why I would like to explore a little  
16 further those two provisions with you because I think  
17 that can be a problem in a BZA order, if there are  
18 restrictions that are not intended.

19 MR. KESSLER: Well, the community was very  
20 concerned in these network meetings about the farmer's  
21 market, okay? However, we were told that basically  
22 the farmer's market, in its continuous existence and  
23 so forth, was outside of the authority of the BZA.  
24 So, we never really pursued it further because we  
25 didn't feel that this would be able to --we could

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1 write anything that the school would be comfortable  
2 with, that the BZA would adopt.

3 So, we basically left it in limbo because  
4 like I say, the neighborhood seems to be very strongly  
5 for it, and the school seems to be very supportive of  
6 it also.

7 MEMBER MILLER: I hear that, and I hear  
8 that's in the record, but what I'm saying is when you  
9 have a restriction like this that prevents the school  
10 from -- I don't know if the school rents the space or  
11 whether it's free or what, but it looks like there are  
12 restrictions on the school's ability to, you know,  
13 rent the space or let it be used by another entity,  
14 and that where I was coming from.

15 MR. KESSLER: That's the whole issue,  
16 because there's no legal agreement at all about the --  
17 they basically do it without any sort of agreement  
18 other than verbal, as to well, you're welcome to use  
19 the space. It's the extent of their agreement is the  
20 way I understood it. That's what I was told in the  
21 meetings.

22 So, there really isn't any legal  
23 connection between the school -- oh, the other thing I  
24 think they asked is make sure they have insurance in  
25 case somebody falls on their property.

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1                   MEMBER MILLER: My problem is that this  
2 language that says evening and weekend activities or  
3 events shall be restricted to those activities and  
4 events that are customary to an elementary school,  
5 kindergarten through eighth grade. A farm market  
6 doesn't seem to fit in there. That's the restriction  
7 that I would be wary of.

8                   MR. KESSLER: Well, if the Board can write  
9 something that would make sure the farmer's market  
10 continues to exist, that's fine.

11                   MEMBER MILLER: Well, my other concern is,  
12 you know, what else is out there that we might not be  
13 aware of, and I want to back up a little bit and ask  
14 you, are these type of restrictions in existence now  
15 in any sense on Sheridan's ability to let other people  
16 use the facilities?

17                   MR. KESSLER: Actually, every one of these  
18 conditions, the proposed conditions, actually exists -  
19 - almost every one of them existed before. The only  
20 thing that this particular, these conditions do is  
21 flesh them out. In other words, because of problems  
22 in the enforcement of the conditions in previous  
23 orders, we added additional enforcement mechanisms.

24                   MEMBER MILLER: So as of now, they're the  
25 similar restrictions?

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1 MR. KESSLER: There really isn't anything  
2 here except possibly number nine where it really  
3 wasn't in the previous order, either the original  
4 order in '63 or the '92 order, that I'm aware of.

5 MEMBER MILLER: Are you aware of any other  
6 nonprofit or other type of activity that occurs at the  
7 school that, other than the farm market, that we  
8 should be aware of?

9 MR. KESSLER: Well, actually, I'm not the  
10 person you should ask. You should ask the school  
11 that.

12 MEMBER MILLER: Right.

13 MR. KESSLER: Because I mean, this was  
14 their language, and this is not the original  
15 neighborhood's language on some of these issues. They  
16 were more restrictive than the neighborhood was.

17 MEMBER MILLER: I mean, for instance, like  
18 when ANC used their school to have a meeting there, or  
19 are there those type of activities that go on as a  
20 school?

21 MR. KESSLER: Well, in earlier versions of  
22 these, there were provisions about that, but that was  
23 removed in the version that's been submitted, so it  
24 was unclear about that.

25 MEMBER MILLER: Is that something you

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1 would prefer not to preclude, though?

2 MR. KESSLER: Yes, certainly. Yes, of  
3 course not. I think that the community, it would be  
4 nice to have the community have access if they could.  
5 That would certainly be of value to the community,  
6 sure.

7 MEMBER MILLER: Okay. So, are you saying  
8 that the limitation is coming from the school and not  
9 from the ANC with respect to use of the facilities for  
10 community events?

11 MR. KESSLER: Well, the way I read the  
12 language, it's more restricted than, you know, it's  
13 very restrictive, but I would like to make sure the  
14 school, you know, there are events that don't fit into  
15 this commercial activities. It would be good if they  
16 were, as long as they were nonprofit.

17 If they were not for profit, the whole  
18 genus of this whole thing was that the school was  
19 renting this place out for jazzersize classes and, you  
20 know, all sorts of things like that. It was a lot of  
21 traffic in the neighborhood. So, that's why the  
22 original provision was in the '92 order, was to  
23 preclude that. So, in other words, the  
24 commercialization of the school.

25 MEMBER MILLER: Okay.

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1 MS. WISS: Possibly some language could be  
2 added to paragraph 7 just to say, this part already  
3 says this paragraph shall not be construed to limit or  
4 affect the CASA or similar summer educational program  
5 or summer camp or neighborhood community meetings.

6 MR. KESSLER: Because there is a category  
7 that the school pointed out to us as neighbors, and as  
8 the ANC commissioners, that's really not included in  
9 here. That's why, like I say, it's up to the school  
10 if they want to limit themselves to this, that's fine.

11 MEMBER MILLER: I assume you mean more  
12 than just meetings because you want the farm market.

13 MS. WISS: Right, or the farm market --  
14 I'm not sure whether you're suggesting putting the  
15 farm market in six or seven.

16 MEMBER MILLER: I just want to make sure -  
17 -

18 MS. WISS: It doesn't sound like an event.

19 MEMBER MILLER: That it's not precluding -  
20 -

21 MS. WISS: Right, or the farm market, yes,  
22 because it seems better in seven than six, which  
23 relates to events.

24 MEMBER ZAIDAIN: Mr. Vice Chair, I think  
25 this is a good issue that Ms. Miller brings up. I

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1 think it's important, or at least my position on this,  
2 and if somebody disagrees, this order will run with  
3 the land. It affects the use on the land. We have  
4 dealt with many cases where the building or the  
5 property is going to be used for other uses, flower  
6 market, you know, wedding reception or whatever it may  
7 be. It's clear that the everybody wants the farmer's  
8 market to continue operating.

9 I don't think we should sit here and  
10 wordsmith the conditions now.

11 VICE CHAIRPERSON ETHERLY: I agree.

12 MEMBER ZAIDAIN: I would recommend that  
13 upon the conclusion of the hearing, we leave the  
14 record open for amended findings of fact and proposed  
15 conclusions to address that issue. It seems as we  
16 progress through this hearing, and I'm sure we'll hear  
17 more about this from the other party, that there have  
18 been other issues dealt with in the conditions, and so  
19 they may need to be updated so we're all clear.

20 VICE CHAIRPERSON ETHERLY: Okay. Ms.  
21 Miller, any additional questions at this point?

22 MEMBER MILLER: No. I think at some  
23 point, Mr. Plummer might want to address this question  
24 as well, but I don't know when that would be  
25 appropriate.

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1 VICE CHAIRPERSON ETHERLY: Okay. I mean,  
2 I agree with Mr. Zaidain. I think clearly the  
3 wordsmithing and the detail work can be done at a  
4 subsequent time. The conditions in that part of the  
5 order definitely are going to be very critical here.

6 Ms. Mitten?

7 CHAIRPERSON MITTEN: I think the degree of  
8 support that there is for this application is a direct  
9 result of the outreach that's been going on with the  
10 school, and built into prior orders has been a process  
11 for an ongoing dialogue that based on some of the  
12 materials that we had submitted by Mr. Schachter has  
13 not always existed.

14 I would be interested in your perspective  
15 on whether, in fact, that has gone on in the past,  
16 whether the liaison meetings have gone on on a regular  
17 basis and so on, and whether you think that the  
18 provisions going forward are sufficient to maintain  
19 the dialogue that now exists.

20 MR. KESSLER: There was after the '92  
21 order a requirement for a quarterly meeting, and there  
22 was about two quarterly meetings, and no one from the  
23 neighborhood showed up. So, I think the school  
24 stopped the neighborhood meetings because there was no  
25 interest.

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1                   However, that was a different group of  
2 neighbors. The neighborhood has changed, and they  
3 took more interest in that. So, when the school re-  
4 initiated them, you know, there was a lot more  
5 interest on the part of the neighbors.

6                   So, therefore, the quarterly meetings are  
7 really important. In fact, that's why there is a  
8 provision in there about minutes, to make sure that  
9 the school is being held -- well, everybody will know  
10 exactly what was said at these meetings so there won't  
11 be any question later as to whether the school said  
12 this or, you know.

13                  So, I think the neighborhood meetings are  
14 a very important part of making sure that our  
15 community works, because there are always issues going  
16 on. There's a lot of stress between the school and  
17 the neighbors as to, you know, about all sorts of  
18 issues. If the school doesn't have some way of  
19 knowing these stress points, the poor communication we  
20 had before will reappear.

21                  So, I think we need to make sure that this  
22 quarterly meetings work, are there and work as a  
23 mechanism to be of -- as communication mechanisms.

24                  The same thing with the annual report.  
25 The annual report is important, too. When we wrote

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1 these proposed conditions, we tried to have a  
2 mechanism to make sure that everybody knew about them  
3 in the community because we changed the distribution  
4 system to make it more widespread. It's based on  
5 addresses rather than names of people, which means  
6 instead of -- because a lot people don't live in our --  
7 -- a lot of owners don't live in our neighborhood. So,  
8 we made it based on occupants rather than -- so,  
9 everybody in the community has a better idea of what's  
10 going on.

11 So, communications are very important. I  
12 mean, we do have a -- the community does have a  
13 feeling of trust towards the school. I hate to see  
14 that disappear.

15 CHAIRPERSON MITTEN: Well, and the trust  
16 is built up by having a relationship, and when there's  
17 -- the forum doesn't exist to maintain the  
18 relationship, that's when things fall apart.

19 MR. KESSLER: Right, because the school  
20 was sort of, you know, isolated in the community.  
21 They were doing their thing, but these issues that you  
22 see addressed in this thing, where if you look at  
23 early orders, were the same issues that were in the  
24 earlier orders and discussed in earlier testimony.

25 CHAIRPERSON MITTEN: So, you're satisfied

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1 then that the conditions in the proposed conditions  
2 will be sufficient to maintain the dialogue between  
3 the --

4 MR. KESSLER: I hope so. Well, I mean, I  
5 did the first draft on here.

6 CHAIRPERSON MITTEN: Well, certainly as  
7 long as you're the SMD commissioner, Mr. Kessler.

8 MR. KESSLER: Well, I still live in the  
9 community because I live right next to the school.

10 CHAIRPERSON MITTEN: Okay.

11 MR. KESSLER: But, yes. No, I would hope  
12 so. What we tried to do with these conditions is to  
13 encourage communication but also make sure we had a  
14 way of monitoring what was going on. So, we have this  
15 communication but nothing was, you know, it was a bit  
16 lost. You know, we have a historical record, which  
17 was a part of the problem we had when we didn't have  
18 meetings because we didn't know what was going on,  
19 okay, with the school.

20 It was a real problem in 1992 because the  
21 school -- basically you had a whole proposal, and they  
22 handed it to the community and said this is the way  
23 it's going to be, and that case ended up in the Court  
24 of Appeals, okay, and so it was really, I think, in  
25 everybody's interest to make sure that there was

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1 communication before the process got too far and make  
2 sure everything was resolved.

3 CHAIRPERSON MITTEN: One suggestion that I  
4 might make because I know that you all have a  
5 particularly outstanding website and other ANC's in  
6 Ward 3, I assume have similar liaison committees with  
7 the private schools that exist. If the existing  
8 community liaison committees were listed on your  
9 website, then anyone who had a concern would know that  
10 hey, there's something out there that I might be able  
11 to participate in.

12 MR. KESSLER: That's a very good idea.

13 CHAIRPERSON MITTEN: That's all.

14 VICE CHAIRPERSON ETHERLY: Thank you very  
15 much, Ms. Mitten. Any cross examination of the ANC by  
16 the Applicant? Okay, the Applicant is indicating  
17 none.

18 Mr. Schachter, any cross examination  
19 questions of the ANC at this time? Okay, Mr.  
20 Schachter is indicating no.

21 Thank you both again very much. I really  
22 appreciate it. Excellent report. Excellent  
23 presentation.

24 Mr. Zaidain, I'm sorry.

25 MEMBER ZAIDAIN: If you could suggest that

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1 while they're at the table, if they had a chance to  
2 look through the OP report, but then they probably  
3 have been speaking for the last 20 minutes.

4 MR. KESSLER: I'm part of the way through.  
5 Could I get a few more minutes?

6 VICE CHAIRPERSON ETHERLY: Okay, sure.  
7 But thank you for reminding me, Mr. Zaidain.

8 MEMBER ZAIDAIN: I'm going to stay on you,  
9 Mr. Etherly.

10 VICE CHAIRPERSON ETHERLY: Please do.  
11 Please do. Just giddy up here.

12 Okay, at this particular point in time, I  
13 think it would be appropriate to move to any testimony  
14 on behalf of persons or parties in support of the  
15 application. If there are any persons or parties here  
16 to testify in support of the application, please feel  
17 free to step forward.

18 In the words of my dear esteemed chairman,  
19 seeing no mad dash to the table, I think it would be  
20 appropriate to move forward to persons or parties in  
21 opposition. This would be the appropriate time, Mr.  
22 Schachter, if you are prepared to present any  
23 testimony or present your case in opposition to the  
24 application, please feel free to step forward. The  
25 table is yours.

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1           MR. SCHACHTER: Thank you. I just want to  
2 make a couple of short points, and I think it will be  
3 evident that my position is not necessarily in  
4 opposition to the application but of great concern and  
5 one of non-opposition with conditions.

6           Just to put this matter in a little bit of  
7 historical perspective, the school was originally  
8 constructed I believe in 1963 or the mid-1960's. The  
9 enrollment was approximately 200 students, or the cap  
10 on enrollment was 200 students. That was based on  
11 essentially the very same infrastructure that is  
12 depicted on the aerial photograph of the Office of  
13 Planning's report to the BZA.

14           As you can see from the photograph, this  
15 is a residential neighborhood. There are no  
16 commercial undertakings in the neighborhood. Instead,  
17 there are mostly single and double family homes with  
18 very narrow streets. In particular, Alton Place,  
19 which I live on and which borders the school to the  
20 north, is a very narrow street with two lanes of  
21 traffic barely passing one another with the lanes of  
22 parked cars.

23           Later, the school came to the BZA and was  
24 authorized to expand its enrollment up to 215  
25 students, yet the infrastructure, the roads around the

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1 school, remained the very same.

2 Now, the school is applying for a cap of  
3 226 students with again the very same infrastructure.

4 What this means from my perspective is that more and  
5 more and more cars are barreling down my street  
6 between 7 and 9 a.m. in the morning, and bigger and  
7 bigger and bigger trucks are coming down my  
8 residential street at 4 and 5 and 6 and 7:00 in the  
9 morning.

10 The school has been very good in working  
11 with me and other neighbors to address these concerns,  
12 and I appreciate that, and those matters are being  
13 resolved to my satisfaction in the proposed  
14 conditions, but this history of expansion highlights  
15 the need to create a mechanism for strict enforcement  
16 with the Board's orders. I took that step several  
17 months ago with my complaint of noncompliance, which  
18 many of the alleged violations are in the record as  
19 part of my application for party status.

20 I have withdrawn my complaint of  
21 noncompliance in large part because I believe that the  
22 school moving forward is going to address these  
23 concerns and comply. But the impact on the  
24 neighborhood, the expansion of the school over the  
25 course of time does impact the neighborhood, and this

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1 application is going to impact the neighborhood more  
2 as a result of more students and more cars bringing  
3 those students to and from the school, and more  
4 supplies being brought to an away from the school.

5 The second matter, I guess I've touched on  
6 it. I just want to re-emphasize that the neighborhood  
7 is quite concerned about compliance with the  
8 conditions of the BZA. We hope that in the future,  
9 the school will continue to show its compliance with  
10 any new conditions that the school is obligated to  
11 comply with in this order, and we hope that the order  
12 addresses all of the items that have been submitted in  
13 proposed conditions.

14 The last brief item I'd like to raise  
15 addresses Board Member Mitten's concern about  
16 condition 18. I agree that the language of the  
17 traffic control plan is less than ideal in terms of  
18 creating enforceable standards, and I would request  
19 that the Board leave the record open so that the  
20 parties could try and revise that condition and  
21 perhaps also add language to the conditions, as Board  
22 Member Miller identified regarding the farmer's  
23 market.

24 I have every confidence that within a  
25 short period of time, probably two weeks, the parties

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1 could resolve any final revisions to the proposed  
2 conditions.

3 With that, again, so long as the Board  
4 adopts these conditions proposed and submitted by the  
5 school, I would not oppose granting the application.

6 VICE CHAIRPERSON ETHERLY: Okay, well  
7 thank you very much for your testimony and your time,  
8 Mr. Schachter. Please sit tight.

9 Questions from my Board colleagues. Ms.  
10 Mitten?

11 CHAIRPERSON MITTEN: I guess I just wanted  
12 to make a statement in response to what Mr. Schachter  
13 had raised, which is we are as concerned as you are  
14 that our conditions are enforced because, you know, we  
15 have community folks come and raise issues, and we say  
16 oh, if we put these conditions in place, everything  
17 well be fine, but if the conditions aren't in force,  
18 then we've sort of failed in our representation to the  
19 community people, and that there won't be adverse  
20 impacts, which is exactly why there was this position  
21 created within the Office of Planning to address  
22 noncompliance with orders from the BZA and the Zoning  
23 Commission.

24 So, we're very sensitive to that, and we  
25 will join with you and any efforts that you have in

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1 the future. You know, if you have compliance issues,  
2 please avail yourselves of the services of the office.

3 That's why the position was created, because we were  
4 as concerned as you are on the broad enforcement of  
5 our conditions. So, I just wanted to let you know  
6 that we have that same concern, not related to  
7 Sheridan specifically, just, you know, across the  
8 board.

9 MR. SCHACHTER: Well, just to give some  
10 historical perspective on this, the last Board order,  
11 I believe it was in the early 1990's, perhaps 1990 or  
12 1991, the Board's final order in that proceeding which  
13 allow the expansion of the school up to 215 and the  
14 expansion of the physical plant, that record, that  
15 final order, also notes community concerns about  
16 compliance with the prior orders, special conditions  
17 that were part of the 1963 prior order.

18 So, there is some history of community  
19 concern about compliance with the Board's orders. I  
20 have been made aware of this office's availability to  
21 address those, and I'm also confident that the school  
22 now takes compliance with the Board's order seriously.

23 I hope that, you know, it's conduct will conform to  
24 the Board's orders in the future.

25 CHAIRPERSON MITTEN: We're counting on it.

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1 VICE CHAIRPERSON ETHERLY: Thank you very  
2 much, Ms. Mitten. Any other questions? Mr. Zaidain?

3 MEMBER ZAIDAIN: Yes, I just had a follow-  
4 up along those lines. You said that your -- I want to  
5 make sure I'm clear. You said that your complaint of  
6 noncompliance was withdrawn by you. What was the  
7 reasoning for that?

8 MR. SCHACHTER: I withdrew the order after  
9 I have reached the final agreement, I believe late  
10 last week, on the language of all 18 special  
11 conditions, as well as a side letter which has been  
12 sent by the school to the ANC regarding two ancillary  
13 matters.

14 Once all of those items were resolved in  
15 exchange for the school's agreement to those  
16 accommodations with me on those special conditions, I  
17 agreed to withdraw my complaint.

18 MEMBER ZAIDAIN: So, it was based on these  
19 proceedings. What was the impact of filing this  
20 complaint, I guess is my question. Was the school  
21 contacted? Were you contacted, in terms of, I mean,  
22 did this complaint resolve the issue, or was it this  
23 proceeding that resolved the issue for you?

24 MR. SCHACHTER: Well --

25 MEMBER ZAIDAIN: I'm frankly curious

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1 because I've never seen this form before, and I know  
2 we have the Office of Zoning has the position in the  
3 Office of Zoning to enforce the orders, and I was  
4 unaware that we have a specific formal process for  
5 that. I guess I've always known it's existed, but  
6 that's the first time I've seen this order. So, I'm  
7 curious as to how that process worked.

8 MR. SCHACHTER: I learned about the  
9 complaint of noncompliance process within I think the  
10 last year, and as I understand it, it is a new process  
11 in an attempt to insure compliance with zoning orders.

12 Frankly, I filed it in order to make sure that I'd  
13 get heard in this proceeding.

14 MEMBER ZAIDAIN: Oh, okay.

15 MR. SCHACHTER: And I think that it has  
16 had that salutary effect.

17 MEMBER ZAIDAIN: Okay, so you kind of  
18 filed it, you know, in anticipation of it becoming an  
19 issue here. It wasn't just because -- if the hearing  
20 wasn't there, I guess we would be in a different  
21 situation, so I guess you're not a good test case to  
22 ask.

23 MR. SCHACHTER: Well, I would just add  
24 that in the event that we were not able to reach  
25 agreement on the conditions if the school didn't make

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1 compromises in its position, then I would not have  
2 withdrawn the complaint, and I would have liked to  
3 have seen it adjudicated.

4 MEMBER ZAIDAIN: Okay, thank you very  
5 much.

6 VICE CHAIRPERSON ETHERLY: Ms. Miller?

7 MEMBER MILLER: I'd like to ask you if  
8 there are any conditions in this new proposed  
9 conditions that make you feel particularly confident  
10 that the school is going to comply now, as opposed to  
11 before. I heard from Mr. Kessler, and I haven't  
12 compared old orders, that some of these conditions  
13 came from before. So, I'm wondering if there are some  
14 conditions in particular that are more important than  
15 others that give you that comfort level?

16 MR. SCHACHTER: No, I can't say I have  
17 that comfort level yet. Since the filing of my  
18 complaint in July, I believe there have been early  
19 deliveries. As recently as last night, there was an  
20 event at the school which caused me to park three  
21 blocks from my house, and I think on the other hand,  
22 we've taken all the steps we can think of right now to  
23 try and change the school's conduct in the future.

24 Assuming compliance with these 18  
25 conditions, I am confident that my concerns will be

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1 addressed. I don't know that any of them are going to  
2 make it any more likely to get compliance, if that's  
3 what your question was.

4 MEMBER MILLER: That was, but it seems to  
5 me that you're also coming from somewhere else, that  
6 there's some reason that you're assuming compliance  
7 now. Is it because you have a better relationship  
8 with the school because of this ongoing dialogue?

9 MR. SCHACHTER: I think the record of the  
10 school's efforts to address my concerns. The school  
11 is obviously, in my view, making efforts to address my  
12 concerns. I unfortunately may have been the  
13 squeakiest wheel on the block, and I feel like I'm  
14 getting some measure of oil right now. It's hard for  
15 me to predict, though.

16 Unfortunately, you know, the headmaster  
17 may change, and a different attitude may be taken on  
18 by the school next month or next year or three years  
19 from now, and I don't feel like my crystal ball is  
20 sufficiently clear to predict their compliance.

21 I don't think anything in these conditions -- these  
22 conditions should enable us to monitor compliance well  
23 if they're adhered to strictly.

24 For example, in the annual report, as part  
25 of the record, you may see the annual report from two

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1 years ago. It was a one sentence letter from a  
2 student's parent's law firm which said in one  
3 sentence, the school is in compliance with all  
4 conditions, when it was clear to me that no  
5 investigation was made, that the statement was made in  
6 the face of dozens of outstanding violations. If  
7 that's what next year's annual report looks like,  
8 hopefully it's truthful, and then that's all that  
9 needs to be said, but I do have a feeling that the  
10 school is more serious about compliance now, and you  
11 know, the future actions will tell.

12 VICE CHAIRPERSON ETHERLY: Okay. Thank  
13 you, Mrs. Miller. Thank you again, Mr. Schachter.  
14 Any cross examination on behalf of the Applicant? The  
15 Applicant has indicated none.

16 Any cross examination on behalf of the  
17 ANC? If you could, please step up -- cross  
18 examination for Mr. Schachter. Okay, indicating none.

19 Let me return to the outstanding question  
20 of any cross examination of the Office of Planning.  
21 If I could ask the ANC to step forward if you have  
22 cross examination, questions of the Office of  
23 Planning. I thank OP for remaining steadfast with us  
24 here. While you're there, please Commissioner, please  
25 feel free to make yourself comfortable at the table.

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1                   Mr. Schachter, while you still have the  
2                   mike, were there any cross examination questions that  
3                   you had of the Office of Planning report?

4                   MR. SCHACHTER: I don't feel like I'm in a  
5                   position now to ask any questions, nor do I ask for  
6                   any leave to ask them later.

7                   VICE CHAIRPERSON ETHERLY: Okay, thank  
8                   you, sir. Thank you again for your testimony and  
9                   participation this afternoon.

10                  Commissioner Kessler, yes, sir.

11                  MR. KESSLER: I have one question. On  
12                  page eight of the report, there's a paragraph that  
13                  seems to indicate that the Planning Commission is  
14                  recommending supplementing of parking in the parking  
15                  lot with on street parking spaces. Just what I want  
16                  to know is is that what they're trying to say.

17                  It says no additional area on site parking  
18                  available for parking to the location in the existing  
19                  parking lot. However, parking is permitted along Yuma  
20                  Street frontage of the subject property and most of  
21                  the 36th Street frontage, providing adequate space for  
22                  three additional parking spaces. No parking is  
23                  permitted along the subject property's frontage. So,  
24                  is he recommending that the parking spill over to the  
25                  public streets?

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1           That's my question, and if it is, I think  
2           the neighborhood would have a problem with expanding  
3           the parking to the public streets.

4           MR. MORDFIN:       In response to that  
5           question, we were not intending that the parking lot  
6           overflow into the public streets.

7           MR. KESSLER:   Well, I mean, it definitely  
8           says adequate space for three additional parking  
9           spaces. I'm just reading the language. I just want  
10          to make sure that this is not OP policy to recommend  
11          that a school have parking spaces on the street.

12          MR. MORDFIN:       No, no, we were not  
13          intending that that should be interpreted that there  
14          would be parking spaces provided on the street for the  
15          school.

16          MR. KESSLER:   Okay, so as long as the  
17          Board then takes note of that, just so they won't  
18          think that maybe we're just talking about when you're  
19          talking about the parking plan.

20          CHAIRPERSON MITTEN: Perhaps, Mr. Mordfin,  
21          you could give Mr. Kessler some comfort if you would  
22          say what you did mean by that.

23          MR. MORDFIN:   Well, what we meant by that  
24          is that there's only 37 parking spaces within the  
25          parking lot, and should additional people come to the

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1 school at any point, that without parking in front of  
2 somebody else's house, they could park directly in  
3 front of the school and not impede the access to and  
4 from any of the surrounding residents, and that there  
5 would be room for, if the additional three showed up,  
6 that they would not park directly in front of  
7 somebody's house.

8 MR. KESSLER: All right. I just wanted to  
9 make sure that that's understood because I mean, one  
10 of the proposals that was made at one of these  
11 neighborhood meetings, it was to change the parking on  
12 the Alton Place side to what, three parking instead of  
13 no parking.

14 VICE CHAIRPERSON ETHERLY: No, it was an  
15 excellent question. Excellent question. I thank for  
16 you for that follow-up.

17 All right, having gone through testimony  
18 in support and testimony in opposition, I think we're  
19 at the appropriate point in time. Mr. Depuy, if you  
20 would, if you have any rebuttal testimony or any  
21 redirect at this time. Otherwise, we'd like to move  
22 to your closing. We are at that point in time.

23 MR. DEPUY: Thank you, Mr. Chair and  
24 members of the Board. It didn't appear to me as if  
25 there were any outstanding questions of the Board that

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1 would require me to bring any of our witnesses back,  
2 so unless there are specific questions.

3 MEMBER MILLER: If I could just stop you  
4 there for one second, I did want to provide Mr.  
5 Plummer the opportunity to address the provision six  
6 and seven that talk about restrictions of the use of  
7 the school on weekends and evenings. The ANC  
8 addressed it, but they said that might be more  
9 appropriate for Mr. Plummer. So, I just wanted to let  
10 you know that that opportunity is still out there if  
11 he wants to address it, or if you want to address it.

12 MR. DEPUY: Well, I was going to suggest  
13 that as part of the submission by the parties of the  
14 proposed order that we address the wordsmithing  
15 through that process, but if there are any factual  
16 questions that you'd like me to bring Mr. Plummer up,  
17 I'd be glad to do that.

18 VICE CHAIRPERSON ETHERLY: I mean, I think  
19 it's an excellent point for follow-up. I would be  
20 comfortable with just simply seeing that addressed in  
21 the proposed findings of facts and conclusions of law.

22 I think of course the Applicant and Mr. Plummer have  
23 heard the exchanges taking place around that issue of  
24 the more commercialized use of a school, so to speak,  
25 to pick up on Commissioner Kessler's expression, but I

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1 think that can be dealt with in the proposed findings  
2 of fact and conclusions of law, but it's an excellent  
3 point for follow-up because that could, as we've seen  
4 in some other instances, although every BZA case  
5 stands on its own two or four or 12 feet.

6 There are instances in other settings  
7 where that becomes a significant point of concern for  
8 the community.

9 Any other questions? Mr. Depuy?

10 MR. DEPUY: Okay, thank you. I would  
11 suggest that rather than keep the record, as Mr.  
12 Schachter requested, that we deal with the question of  
13 clarifying and revising if necessary any of the  
14 proposed conditions through the submission by the  
15 parties of a proposed order and proposed conditions.

16 It seems to me that there are really no  
17 issues outstanding that require the record to be left  
18 open, and we would suggest that the Board not leave  
19 the record open after the hearing.

20 CHAIRPERSON MITTEN: Could I just make one  
21 response to that, which is that Mr. Schachter said,  
22 you know, this could all be handled in a very short  
23 period of time, and if you just do it through your  
24 proposed findings of fact and conclusions of law, he  
25 won't have the opportunity to comment.

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1 I think, you know, the spirit is there in  
2 the transportation management plan that's been  
3 proposed, and I think, you know, with a very short  
4 window of time, you could do some wordsmithing, run it  
5 by Mr. Schachter, give him the opportunity to respond,  
6 and you know, I'm not talking about an extended period  
7 of time.

8 MR. DEPUY: Yes, we would have done that  
9 in any event, but we'll go with whichever the Board  
10 decides on that topic. We will definitely work  
11 cooperatively with Mr. Schachter and all parties on  
12 all language. We've done that for quite some time.

13 VICE CHAIRPERSON ETHERLY: Okay. That  
14 concludes your presentation at this point in time?

15 MR. DEPUY: Yes. I would simply say in  
16 closing that we believe we've satisfied the special  
17 exception tests which are our burden with respect to  
18 the relief we need, namely that the changes proposed  
19 are modest, that they can be dealt with in terms of  
20 screening. The physical improvements can be dealt  
21 with effectively through screening and through  
22 soundproofing with respect to the bays.

23 The physical changes to the parking lots  
24 are in fact designed to accommodate more parking on  
25 site and to relieve any parking pressure on the

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1 neighborhood streets. The additional students can be  
2 accommodated without any adverse effects on  
3 neighboring property or the community. So, therefore,  
4 we think we've satisfied the burdens with respect to  
5 the special exception.

6 With respect to the three variances  
7 necessary, we also believe we've satisfied our burden  
8 there, that the additional spaces in the parking spot  
9 on Alton Place are substandard. Therefore, we need a  
10 variance from the 9 x 19 size requirement in order to  
11 accommodate more spaces, and we also need the same  
12 relief to accommodate the tandem spaces because the  
13 new spaces, as has been testified, are not directly  
14 accessible from street or alley. However, by adding  
15 the spaces, we are able to have the drive aisle remain  
16 open and unobstructed at all times.

17 Finally, with respect to the additional  
18 parking which is only for future expansion of  
19 students, testimony by Mr. Wells and others is that  
20 there is no parking problems, but if there is any need  
21 for any parking off the site, there is ample parking  
22 available. Again, as Mr. Mordfin indicated, without  
23 blocking driveways or interfering with residential  
24 property.

25 So, we feel, in summary, that we've

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1 satisfied the burdens with respect to the three  
2 variances as well, and would therefore request that  
3 the Board approve the application subject to the  
4 conditions that have been discussed here today.

5 Thank you very much.

6 VICE CHAIRPERSON ETHERLY: Excellent.  
7 Thank you very much, Mr. Depuy. Thank you very much  
8 also for soldiering on in the face of adversity. We  
9 wish you well with your vocal chords.

10 Here's what I'd like to suggest. I'd like  
11 to suggest that we set this for November decision  
12 making with the concurrence of staff and colleagues.  
13 I believe we have maybe one or two additional  
14 submissions that would need to come in prior to that  
15 date, and I think chief amongst that, and perhaps the  
16 only additional submission by my recollection would  
17 be, shall we say, a revised, more detailed cut at the  
18 transportation management plan. That's my  
19 understanding of the only piece that's out there.

20 I'll look to my colleagues. If there are  
21 any other additional pieces of information that they  
22 deem necessary for submission. What I'm thinking  
23 overall is there would be a first set of submissions  
24 and then responses would come at the appropriate point  
25 in time after those submissions have been reviewed by

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1 the parties, and with those responses would come  
2 proposed findings of fact and conclusions of law.

3 Essentially what we're looking at is a  
4 time table that would run through October for those  
5 submissions, responses, and the proposed findings of  
6 fact and conclusions of law, and then the decision  
7 making in November.

8 Is there any other information that's been  
9 left out? Let me come to Mrs. Miller.

10 MEMBER MILLER: My understanding is that  
11 the parties are going to make another cut at the  
12 conditions, in particular, six and seven, to make sure  
13 they don't preclude uses such as the farm market and  
14 perhaps other community uses that they might not wish  
15 to preclude.

16 VICE CHAIRPERSON ETHERLY: Okay. Mr.  
17 Zaidain?

18 MEMBER ZAIDAIN: I was going to actually  
19 just kind of agree with what Ms. Miller just said, and  
20 it would be nice if they were all -- it seemed like  
21 there was some general consensus in the room, and I  
22 think there was a mention by one of the parties that  
23 there may be an opportunity to discuss this more among  
24 the groups. It would be great if we kind of got the  
25 same set of conditions proposed by all three parties,

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1 but I know that may not be possible, but I think that  
2 would be helpful.

3 VICE CHAIRPERSON ETHERLY: Okay. I think  
4 Ms. Miller's point and your point, Mr. Zaidain, are  
5 very much on target. I think we're probably close to  
6 that point. I recall that the ANC's submission did  
7 not have the most updated version as their Attachment  
8 A, but I believe their Attachment A would in fact have  
9 been the same attachment that was submitted by the  
10 Applicant.

11 What we're looking at then, Mrs. Bailey,  
12 is submission of revised transportation management T&P  
13 and revised conditions, and of course while we cannot  
14 mandate it, we would encourage the parties I think to  
15 continue the collaborative spirit that they've  
16 demonstrated prior to coming here. We always like to  
17 see that.

18 So, we'd be looking at a revised T&P,  
19 revised conditions, responses to those two submittals,  
20 along with proposed findings of facts and conclusions  
21 of law.

22 Mrs. Bailey being the keeper and magic  
23 worker as it relates to the calendar and time table,  
24 what does that leave us with for dates?

25 MS. BAILEY: I would suggest, Mr. Vice

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1 Chairman, October 14 for the submissions. Is that  
2 appropriate to you, October 14? Does that give you  
3 sufficient time? October 21 would be the responses.  
4 That's a week later, and then October 28 would be the  
5 findings of fact. Of course, Mr. Chairman, a decision  
6 would be on November 4.

7 VICE CHAIRPERSON ETHERLY: Excellent.  
8 Once again, submissions on October 14, responses on  
9 October 21, findings of fact and conclusions of law  
10 proposed, October 28, and our decision making on  
11 November 4.

12 MS. BAILEY: Yes, sir.

13 VICE CHAIRPERSON ETHERLY: Of course, for  
14 Mr. Schachter's benefit, those submittals would be  
15 served on him, as well as any submittals that Mr.  
16 Schachter wants to make. You, of course, would have  
17 to serve those on the Applicant and the ANC as well,  
18 and of course the same would go for the ANC.

19 As always, there is no testimony or  
20 additional information taken in at our November 4  
21 public decision meeting, but you are welcome to attend  
22 and sit with rapt eyes and ears as we discuss and rule  
23 on this matter.

24 Mrs. Bailey or staff, have I missed  
25 anything else there?

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1 MEMBER ZAIDAIN: Mr. Vice Chair, I  
2 actually have a point.

3 VICE CHAIRPERSON ETHERLY: Mr. Zaidain,  
4 I'm sorry.

5 MEMBER ZAIDAIN: One of the things in this  
6 hearing, I mean, we've been focusing on these  
7 conditions and how to make this work in the community,  
8 and I think that it's appropriate given that it's a  
9 special exception, but there is also the variance test  
10 elements to this application which we did touch on, OP  
11 touched on in their report. So, I'm just kind of  
12 throwing it out as a reminder to make sure that  
13 everybody does not forget to address those issues in  
14 their findings of fact because we didn't deliberate on  
15 those as well. I don't want everybody to get overly  
16 focused on the conditions.

17 VICE CHAIRPERSON ETHERLY: Thank you, very  
18 important point, of course. Mrs. Bailey?

19 MS. BAILEY: I think that's it, Mr.  
20 Chairman.

21 VICE CHAIRPERSON ETHERLY: Excellent.  
22 Well, I'd like to thank you all for your time, for  
23 your participation. Mr. Moy?

24 MR. MOY: Just one minor, that the  
25 submissions, we have a due date, a little minor

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1 change, of 3:00 p.m. for submissions of that day.

2 VICE CHAIRPERSON ETHERLY: So, for each of  
3 those dates, October 14, the 21st, 28th, submissions  
4 should be in no later than 3 p.m. here in the Office  
5 of Zoning on those dates, submissions no later than 3  
6 p.m.

7 Excellent, excellent. With that being  
8 said, I think having no further business before the  
9 Board this afternoon, I believe it is appropriate now  
10 to conclude our public hearing of October 30, 2003 --  
11 September 30. I'm already trying to fast forward to  
12 decision making. Once again, I'm just giddy with  
13 power, ladies and gentlemen.

14 All right. That concludes our public  
15 hearing of September 30, 2003. Thank you all for your  
16 time and attention. Thank you to my colleagues, Board  
17 of Zoning, office staff, Office of Planning,  
18 corporation counsel, everyone. Please have a good  
19 evening.

20 MEMBER ZAIDAIN: Are you accepting an  
21 Oscar?

22 VICE CHAIRPERSON ETHERLY: That concludes  
23 our public hearing. Thank you.

24 (Whereupon, the above-referenced matter  
25 was concluded at 3:50 p.m.)

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