

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

MAY 18, 2010

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH H. MOLDENHAUER, Chairperson
SHANE L. DETTMAN, Vice Chairman, NCPC
NICOLE SORG, Board Member

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner (NPS)
MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)

OFFICE OF ZONING STAFF PRESENT:

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

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO.null

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from the Special Public Meeting held on May 18, 2010.

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

2 9:30 a.m.

3 CHAIRPERSON MOLDENHAUER: This
4 meeting will please come to order.

5 Good morning, ladies and
6 gentlemen. This is the May 18, 2010 Public
7 Meeting of the Board of Zoning Adjustments for
8 the District of Columbia.

9 My name is Meridith Moldenhauer,
10 Chairperson.

11 Joining me today to my right is
12 Vice Chair Shane Dettman, a representative of
13 the National Capitol Planning Commission. To
14 his right is Peter May, a representative of
15 the Zoning Commission. And to my left is
16 Nicole Sorg, mayoral appointee.

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

20 We do not take any public
21 testimony at our meetings unless the Board
22 asks someone to come forward.

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1 Please be advised this proceeding
2 is being recorded by a court reporter and is
3 also being Webcast live. Accordingly, we must
4 ask you to refrain from any disturbing noise
5 or actions in the hearing room.

6 Please turn off all cell phones
7 and beepers.

8 Does the staff have any
9 preliminary matters?

10 SECRETARY MOY: Good morning,
11 Madam Chair.

12 I think that we ought to take
13 things on a case-by-case basis.

14 CHAIRPERSON MOLDENHAUER: Thank
15 you very much.

16 The first case for today?

17 SECRETARY MOY: Yes. Again, good
18 morning Madam Chair and members of the Board.

19 The first of two cases for
20 decision this morning is a Motion from ANC-8D
21 for Reconsideration of Application No. 17973
22 of the District of Columbia Library, pursuant

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1 to Section 3126 of the Zoning Regulations.

2 The original application, as the
3 Board will recall, was pursuant to 11 DCMR
4 3103.2 for a variance from the off-street
5 parking requirements of subsection 2101.1, in
6 order to construct a new, full-service
7 neighborhood library in the R-2 District at
8 premises 115 Atlantic Street, Southwest
9 (Square 6172W, Lot 813).

10 On April 19, 2010, the Board
11 received the request for reconsideration of
12 the Board's decision to Application No. 17973.
13 That document, Madam Chair, is identified in
14 your case folders as Exhibit 46.

15 There was also a response to the
16 filing from the applicant. It's in the form
17 of two filings. The first is dated May 11,
18 2010; the second dated April 26, 2010;
19 exhibits 48 and 47, respectively.

20 I should add that the second
21 filing, the Exhibit 48 dated May 11, was
22 mailed to confirm the timeliness of their

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1 first filing, which is Exhibit 47.

2 Other than that, the Board is to
3 act on the merits of the motion for
4 reconsideration, pursuant to Sections 3126.6
5 and 3126.4.

6 That completes the staff's
7 briefing, Madam Chair.

8 CHAIRPERSON MOLDENHAUER: Thank
9 you very much.

10 Before us this morning is the
11 request for reconsideration under Case No.
12 17973. This is for the DC Public Library.

13 In discussing and reviewing the
14 filing today -- I'll hold on one moment for
15 OAG.

16 One of the preliminary matters
17 first that we'll take care of is the issue of
18 admitting or not admitting the filings by the
19 applicant's attorney, Arent Fox, which is our
20 Exhibits 47 and 48.

21 We received another filing this
22 morning from Ms. Jones, chair of the ANC-8D,

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1 requesting that we deny the waiver of our
2 rules for a late filing.

3 For the purposes of reviewing this
4 case, we feel as though there's been
5 sufficient documentation as to the filing,
6 showing that there would not be any prejudice
7 in regards to their argument to counter the
8 motion for reconsideration. Thus, we'll admit
9 those into our record.

10 Having those being admitted, we'll
11 now go on to discussing the merits of the
12 motion for reconsideration.

13 I'm in a unique position this
14 morning in discussing with my other Board
15 Members. I initially was the sole dissenter
16 on the case, thus my views on the case are
17 obviously swayed more towards a motion for
18 reconsideration. I think that there are some
19 new -- maybe not new issues, but maybe issues
20 that had already been considered by the Board
21 and that are flushed out more in this motion
22 for reconsideration. There is an issue

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1 potentially in regards to the applicant's
2 statements regarding the number of public
3 transit that service the area. And then, the
4 accuracy or inaccuracy of those facts that
5 were potentially relied upon or not relied
6 upon by the other Board Members that voted in
7 favor of the case.

8 I think from my initial view that
9 the applicant had not made the variance test
10 for parking, and that they were requesting a
11 magnitude of relief that could have been
12 provided, as was shown by the prior building.
13 I don't think that ANC makes an argument in
14 regards to their continued reference to a
15 desire not to have the building demolished.
16 Rather, we have to actually look at just the
17 facts before us in regards to the variance
18 test.

19 By removing those issues and
20 removing that point from the applicant's
21 opposition, I don't consider that at all. I'm
22 really just considering the issues that are

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1 being presented in regard to the topography,
2 how that potentially relates or does not
3 relate to the proving of exceptional
4 circumstances; and most importantly, I think,
5 the real weakness in their case in regards to
6 the third prong public detriment.

7 I do think there are some new
8 issues that are raised that may not have been
9 considered. But as I said, I may be the sole
10 dissenter again.

11 I'll open up the Board for
12 additional deliberations today.

13 COMMISSIONER MAY: Ms. Chairman,
14 I'd like to address the motion for
15 reconsideration.

16 First of all, what I'd like to say
17 is that I'm still amazed that in this project,
18 DC Public Libraries is attempting to build a
19 library to serve the community, and they have
20 not been able to persuade the community that
21 their solution is the right solution for that
22 community library. It's just hard to fathom

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1 why we don't have DC Public Libraries and
2 community members here together requesting the
3 necessary relief for this particular project.
4 That's the way it should be happening. As I
5 said, I just find it baffling.

6 That having been said, I think
7 that this decision was properly decided
8 before. I think the case was made that a
9 variance was needed for parking. The building
10 certainly could have been designed differently
11 and maybe the number of parking that could
12 have been provided would have been different.
13 Nonetheless, a parking variance, in my view,
14 would be necessary. And I think the case was
15 made that it could be made, and that it would
16 not cause real problems for the neighborhood
17 if the variance was granted.

18 With regard to the specific
19 information that was contained in the motion,
20 I don't see significant new information,
21 information that could not have been known at
22 the time of the hearing, or frankly,

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1 information that contradicts the basis for
2 making the decision in the first place. Some
3 of the facts that were made were, I think,
4 tangential to the primary reasons for granting
5 the variance. So even if there was new
6 information there, I would not find it
7 particularly relevant.

8 I'm inclined not to grant the
9 motion for reconsideration.

10 VICE CHAIRPERSON DETTMAN: Madam
11 Chair, I'm in agreement with Mr. May and
12 certainly echo his comments regarding the
13 interaction of DCPL and the community.

14 It's unfortunate that this is a
15 public building and it seems apparent to me
16 that DCPL has not listened to the public,
17 especially when on their Web site it says that
18 their base program will be modified by
19 information from and about the community that
20 will be served. Though it doesn't impact the
21 Board's analysis of this case, I think it's
22 certainly worth noting once again that it's

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1 unfortunate that the relationship between the
2 community and DCPL is not as successful as it
3 probably should be.

4 Nonetheless, I think that the
5 Board did make the correct decision in
6 rendering its approval of the variance for
7 parking.

8 The ANC raises a number of
9 arguments related to public transit, on-street
10 parking, and the existence of a parking lot
11 across the street. I don't think that the
12 Board relied upon the existence of that
13 private parking lot across the street in its
14 decision, in terms of relying upon it as an
15 adequate place for people to park who are
16 patronizing the library.

17 I think the Board was raising the
18 fact that there is a parking lot across the
19 street that serves the commercial
20 establishment across the street. Since the
21 commercial establishment can provide its own
22 parking, that would relieve the demand for on-

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1 street parking surrounding the library.

2 Aside from the actual building
3 program that the library is seeking to
4 construct, I think that the site is
5 substantially constrained by means of the
6 retaining wall, the topography, and the
7 practical difficulty that would be placed upon
8 the property owner if having to provide
9 underground parking.

10 So in terms of the degree of the
11 variance that was sought, I think that the
12 case has been made to warrant the grant of the
13 variance.

14 MEMBER SORG: Well, the first
15 thing that I should do is state for the record
16 that I've reviewed the record in this case
17 fully. And I think where I come down is just
18 on the other side of granting the motion for
19 reconsideration.

20 I think that I would echo the
21 sentiments that Mr. May and Mr. Dettman began
22 with, regarding the relationship between the

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1 DC Public Libraries and the community,
2 especially in this case and especially in this
3 community.

4 I also would add that the first
5 point in the building program, which was
6 something that was under discussion in the
7 previous hearing, is that the library should
8 be welcoming and comfortable for the whole
9 community. But as it stands, it seems to me
10 that the previous decision by the Board didn't
11 rely on the issues that were brought up in the
12 motion delivered by the ANC that I thought
13 were convincing.

14 Unfortunately, based on the
15 availability of street parking that we
16 understand which was discussed in the previous
17 hearing, as well as the topography and the
18 existing variance from the required number of
19 spaces in the existing library -- it brings me
20 down just on that side of the issue, I think.

21 COMMISSIONER MAY: Madam Chair, I
22 would make a motion if we're ready?

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1 CHAIRPERSON MOLDENHAUER: Yes.

2 Is there any further deliberation?

3 At this point in time, if there's
4 a motion on the floor?

5 COMMISSIONER MAY: I would move
6 that we deny the Motion by ANC-8D for
7 Reconsideration of Application No. 17973 of
8 the District of Columbia Public Library.

9 VICE CHAIRPERSON DETTMAN: Second
10 the motion.

11 CHAIRPERSON MOLDENHAUER: The
12 motion has been made and seconded.

13 All those in favor say aye?

14 ALL: Aye.

15 CHAIRPERSON MOLDENHAUER: All
16 those opposed?

17 Aye.

18 Mr. Moy, can you please read back
19 the vote?

20 SECRETARY MOY: Yes, Madam Chair.

21 Staff records the vote as 3-1-1.

22 This is on the motion of Mr. Peter May to deny

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1 the motion by ANC-8D for reconsideration of
2 the Board's decision. Seconded by Mr.
3 Dettman, the Vice Chair. Also in support of
4 the motion, Ms. Sorg. Opposed to this motion
5 is the Chair, Ms. Moldenhauer. And we have no
6 other Board Members participating.

7 Again, the vote is to deny the
8 reconsideration on the vote of 3-1-1.

9 CHAIRPERSON MOLDENHAUER: Thank
10 you very much, Mr. Moy. At this time, if you
11 can read the next case for decision this
12 morning?

13 SECRETARY MOY: Yes, Madam Chair.

14 The next and last case for
15 decision in the Public Meeting session is
16 Application No. 18059. This is of Shiloh
17 Baptist Church of Washington, pursuant to 11
18 DCMR 3104.1 and 3103.2.

19 This is for a variance from the
20 lot occupancy requirements under section 403,
21 and a special exception to allow the
22 construction of a community service center

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1 under section 334, in the R-4 District, at
2 premises 1522 9th Street, Northwest (Square
3 397, Lot 31).

4 This application notes, Madam
5 Chair, that this application was amended on
6 May 11 to add variance relief from the off-
7 street parking requirements under subsection
8 2101.1.

9 On May 11, 2010, the Board
10 completed public testimony, closed the record,
11 and scheduled its decision on May 18, 2010.
12 The Board requested additional information to
13 supplement its record by Friday, May 14, 2010.
14 On that date the ANC did file their letter,
15 their resolution in support of the
16 application. That document is identified in
17 your case folders as Exhibit 30.

18 Other than that, the Board is to
19 act on the merits of the requested Zoning
20 relief.

21 That completes the staff's
22 briefing, Madam Chair.

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1 CHAIRPERSON MOLDENHAUER: Thank
2 you very much.

3 This case before us is for a
4 nonprofit organization to create and build a
5 community service center. Previously it was
6 a vacant building that was for residential
7 purposes when it was initially constructed.

8 They are going to combine that
9 with a vacant lot adjacent to the vacant
10 residential building, build a community
11 service center that would provide services
12 that would be in conjunction with the church's
13 programmatic needs and services, and serve the
14 community in conjunction with their Victory
15 Village program.

16 We heard testimony from Mr. Greg
17 Prioleau in regards to the Victory Village
18 purpose and the intent of that service. The
19 record was a little thin in that regard. But
20 we did elicit this information during the oral
21 testimony where he stated that the mission of
22 the church would be to provide additional

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1 services, and potentially to have outsourced
2 these as tenants.

3 Also, to obtain other nonprofits
4 that would obviously be constrained by the
5 Zoning requirements under section 334,
6 community service center, which specifically
7 articulates what type of services could be
8 provided, such as job training, facilities,
9 family counseling, consumer cooperatives, or
10 other facilities that are similar in nature
11 and purpose.

12 Mr. Prioleau confirmed and
13 testified that they would be consistent with
14 the mission of the church and that they had
15 not yet identified tenants. But any tenants
16 would satisfy the requirements of section 334,
17 and would also be consistent with the church's
18 purpose.

19 The applicant also testified that
20 they would be designing a building that would
21 eventually be built to suit in the interior,
22 but that the needs of their community included

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1 some handicapped individuals and some elderly
2 individuals. Thus the need to have ADA
3 compliance was very important.

4 Mostly, the variance reliefs that
5 I saw were satisfied by the structure of the
6 building; the fact that the building was
7 initially designed as a residential property;
8 and in order to satisfy these programmatic
9 needs of the community and of the church, they
10 would need lot occupancy relief and parking
11 relief. And they would obviously need the
12 special exception relief to provide the
13 center.

14 In addition to that, there was
15 testimony by the applicant that the facility
16 would only be operating Monday through Friday,
17 that they would have most of their individuals
18 coming to the facility between 8:30 and 5:00
19 p.m. They would be walking or driving;
20 they're three blocks from the Metro.

21 In addition to that, there was a
22 woman that came in, Ms. Ilana Knopf from 1534

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1 8th Street, who testified in opposition to the
2 case. She brought up a couple of different
3 points that the applicant then confirmed they
4 would take care of, such as providing a gate
5 on the rear of the facility to make sure the
6 parking would be locked after hours.

7 We then discussed issues of the
8 trash in which the architect, Michael Knight,
9 identified on the plans an area in the rear of
10 1533 9th Street, Northeast where they would
11 provide a trash facility, but indicated that
12 their tenants would not be needing an
13 exorbitant amount of trash or services to that
14 effect.

15 There were statements regarding
16 the loading potentially to disrupt the
17 neighbors, either by noise or by parking
18 issues in that regard. There was testimony by
19 the applicant that there would not actually be
20 that much loading, that the types of services
21 that would be provided would simply be
22 requiring loading and service to the effect of

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1 having a delivery here and there for paper and
2 things like that. So there would not be a
3 large detriment in regards to alley use or
4 loading concerns.

5 In addition to that, we delayed
6 the decision on this case in order to confirm
7 that the ANC was in support of the
8 application. We did receive our Exhibit 30,
9 which is from ANC-2C dated April 21, 2010,
10 which indicates that they had a meeting on
11 April 7, 2010 in which this case was presented
12 before them, that they voted to support the
13 variance and special exception relief that was
14 sought unanimously on a 4-0 vote, and that
15 there was a quorum present. So this letter
16 does satisfy our requirements for great
17 weight, and we will give great weight that the
18 ANC is in support.

19 Based on all of this, I would be
20 in support of the application, too, with a few
21 conditions.

22 At this point I will open up the

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1 deliberation to any additional members to see
2 if there's any additional points they want to
3 add.

4 COMMISSIONER TURNBULL: Thank you,
5 Madam Chair. I would concur with your
6 analysis.

7 I would just make a point that it
8 is key that the tenants are looking to follow
9 the same mission as the mission of the church.
10 I don't know whether that should be part of
11 what we want to put in our order. But I think
12 that's a critical element that we all
13 understood, that the tenants are basically
14 following the mission of the church. I think
15 at the time when it came up, we didn't realize
16 there were tenants going in.

17 I guess my only other concern is
18 under the variance aspect of it. Although ADA
19 is obviously a critical element, from my
20 standpoint I don't think ADA -- I mean,
21 everybody would be coming before us saying,
22 "Our building doesn't meet this because of

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1 ADA." I think, again, get back to the mission
2 and the topography that would indicate some
3 need for a variation to handle people in this.
4 ADA is there; it's necessary. But it's kind
5 of like a building code element, also.

6 I would get back to the mission,
7 that it's a nonprofit, the service that it
8 performs; that ADA is a part of it but it's
9 not the principal reason why we're granting
10 the variance.

11 CHAIRPERSON MOLDENHAUER: I
12 absolutely agree with you. I think during the
13 hearing, I actually asked OP if it was more of
14 an ADA issue or if it was rather the fact that
15 it was a residential building and that there
16 was no other way to provide it. They could
17 only have provided so much parking on the rear
18 of the facility without potentially doing a
19 partial demo of the building.

20 I do agree with you. I don't
21 think that ADA issues are ever an exceptional
22 condition.

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1 Here, I think, there is
2 potentially a unique hybrid where there is the
3 property. But at the same time, it may be
4 more of the programmatic needs that require
5 elderly for the facility, which I heard on
6 testimony. But I do agree that, for the
7 record, it's definitely not just the ADA.

8 I would disagree with OP's report,
9 which is our Exhibit 26, which actually relies
10 upon that as satisfying the first prong.

11 Is there any additional
12 deliberation?

13 MEMBER SORG: Thank you, Madam
14 Chair.

15 I just wanted to add a couple of
16 other points on the alignment of the tenants
17 with the mission of the church. There are a
18 couple of ways that I thought this project was
19 characterized by the representatives of Shiloh
20 Baptist Church that were encouraging and that
21 I thought were at the core of this.

22 Characterizing the tenants that

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1 they were looking for as an outsourcing of
2 nonprofit activities already undertaken by the
3 church was, I think, a good characterization.
4 Also, I was encouraged by the fact that
5 representatives of the church indicated that
6 they would be using an application process to
7 identify the nonprofit users whose operations
8 were in line with their mission.

9 In addition, I think that this
10 project sounds like it could be a really good
11 use of church-owned property, especially in
12 this corridor. It is -- we can remember, I
13 think -- a vacant building that would be
14 revitalized.

15 A further point on that is you can
16 look at these kinds of endeavors as sort of a
17 nonprofit incubator, in the sense of
18 nonprofits having a tough time of it these
19 days. Providing flexible office space like
20 this, I think, could be very good for the
21 community.

22 That said, I'm not sure that I

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1 would be in support of conditioning the relief
2 on something specific with regard to the
3 tenants following the mission of the church,
4 because I think that's a hard thing for us to
5 define. I think that if we were to include
6 something about that, the language would have
7 to be very carefully considered so that the
8 church could have latitude with regard to the
9 tenants that they were considering.

10 CHAIRPERSON MOLDENHAUER: Well, I
11 think in regards to the condition -- and I
12 thank you for your additional comments. I
13 think they were definitely very poignant. But
14 in regards to the flexibility, they really
15 wouldn't have much flexibility.

16 The section I read earlier was if
17 we grant this, they would have to find a
18 tenant that falls into the services under
19 section 334.1, which is a community service
20 center that provides services which may
21 include but are not limited to centers for job
22 training, family counseling, consumer

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1 cooperatives, or other facilities that are
2 similar in nature and purpose.

3 So I think what we were trying to
4 do was just say there's obviously already
5 different options that are played out in this
6 reg that we would be permitting the use for.
7 But then to also just simply say that whatever
8 tenant ends up being in the location or in the
9 facility would have to be consistent with the
10 church's mission, and leave it that vague.
11 Obviously, they would still have to satisfy
12 section 334.1, no matter what; whether we
13 condition it on that issue or not.

14 Mr. Turnbull, would you feel it
15 sufficient if I put forth a motion that did
16 not have that condition, and feel satisfied
17 that they have to provide a service that would
18 satisfy 334.1?

19 COMMISSIONER TURNBULL: I think I
20 could go along with that. I mean, I know that
21 the applicant at the time said that they would
22 be looking for tenants that would be similar

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1 to their mission. And if the church is
2 governed by that then the tenants would be
3 governed by that. That would be fine.

4 CHAIRPERSON MOLDENHAUER: A
5 question, OAG. Can we condition this upon
6 being consistent with the mission of the
7 church, or was that something that we should
8 just leave out?

9 MS. GLAZER: Well, in my opinion,
10 if the applicant satisfies the criteria under
11 section 334, the condition wouldn't be
12 necessary.

13 CHAIRPERSON MOLDENHAUER: If
14 there's no additional deliberation, I will put
15 forth a motion to approve BZA Application No.
16 18059 for Shiloh Baptist Community Service
17 Center, for special exception relief under
18 334, for lot occupancy variance relief under
19 403.2, and a variance relief for parking under
20 2101.

21 Just an additional point of
22 clarification. We were providing a complete

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1 variance for parking in that there was not
2 going to be any statements in regards to any
3 parking off-site or anything to that effect.

4 I will condition this approval on
5 the following conditions:

6 (1) that the business hours would
7 be Monday through Friday, 8:30 a.m. to 5:00
8 p.m.;

9 (2) that the applicant would
10 provide a gate to close the parking area after
11 hours; and,

12 (3) that they would provide trash
13 in the rear of the facility, behind 533 9th
14 Street, Northwest.

15 Do I have a second?

16 MEMBER SORG: I'll second.

17 CHAIRPERSON MOLDENHAUER: Motion's
18 been made and seconded.

19 All those in favor say aye?

20 ALL: Aye.

21 SECRETARY MOY: Staff would record
22 the vote as 3-0-2. This is on the motion of

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1 the Chair, Ms. Moldenhauer, seconded by Ms.
2 Sorg, to approve the application for the
3 variance relief as stated, and as pursuant to
4 three stated conditions. Also in support of
5 the motion is Mr. Turnbull. We have Mr.
6 Dettman not participating on the application,
7 and no other Board Members.

8 Again, the vote is to approve;
9 final vote tally, 3-0-2.

10 CHAIRPERSON MOLDENHAUER: There
11 were no parties in opposition, so we would
12 waive our requirements and have a summary
13 order, please.

14 SECRETARY MOY: Very good; will
15 do.

16 CHAIRPERSON MOLDENHAUER: I
17 believe that concludes our Public Meeting and
18 we will enter into our morning session.

19 (Whereupon, at 10:51 a.m. the
20 meeting was concluded.)
21

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