

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

APRIL 28, 2009

+ + + + +

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., Marc D. Loud, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson
SHANE L. DETTMAN, Vice Chairperson,

ZONING COMMISSION MEMBER PRESENT:

GREGORY N. JEFFRIES, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

The transcript constitutes the minutes from the Public Meeting held on April 28, 2009.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

TABLE OF CONTENTS

	<u>PAGE</u>
PRELIMINARY MATTERS	5
<u>APPLICATION NO. 17889 OF THE PRESIDING</u> <u>BISHOP OF THE CHURCH OF JESUS</u> <u>CHRIST OF LATTER-DAY SAINTS</u>	5

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

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

2 (11:35 a.m.)

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

5 Good morning, ladies and gentlemen.

6 This is the April 28th public meeting of the
7 Board of Zoning Adjustment of the District of
8 Columbia.

9 My name is Marc Loud, Chairperson.

10 Joining me today are Vice Chair Shane Dettman
11 to my right, and to his right Mr. Greg
12 Jeffries from the Zoning Commission. Mr.
13 Dettman represents the National Capital
14 Planning Commission.

15 To my left is Mr. Clifford Moy,
16 Secretary of the Board of Zoning Adjustment.
17 To his left is Ms. Mary Nagelhout from the
18 Office of Attorney General, and Ms. Bailey,
19 Zoning Specialist from the Office of Zoning.

20 Copies of today's meeting agenda
21 are available to you and are located to my
22 left in the wall bin near the door. We do not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 take any public testimony at our meetings,
2 unless the Board asks specifically for someone
3 to come forward.

4 Please be advised that this
5 proceeding is being recorded by a Court
6 Reporter and is also webcast live.
7 Accordingly, we must ask you to refrain from
8 any disruptive noises or actions in the
9 hearing room. Please turn off all beepers and
10 cell phones.

11 Does the staff have any preliminary
12 matters?

13 SECRETARY MOY: Yes, we do, Mr.
14 Chairman. We can address that as we get to it
15 on this one case.

16 CHAIRPERSON LOUD: Thank you.
17 Would you, then, like to call the case?

18 SECRETARY MOY: Yes, sir. Yes,
19 sir. Good morning, Mr. Chairman, members of
20 the Board. That case for decision is
21 Application Number 17889 of the Presiding
22 Bishop of the Church of Jesus Christ of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Latter-Day Saints. This is pursuant to 11
2 DCMR 3104.1, for a special exception to
3 construct a new two-story church on a vacant
4 lot, under Subsection 1555, in the Sixteenth
5 Street Heights Overlay (SSH)/R-1-B District at
6 premises 4901 16th Street, N.W. The site is
7 in Square 2710, Lot 15.

8 Staff also notes for the Board that
9 this application was amended to include
10 variance relief from the off-street parking
11 requirements under Subsection 1553.2 of the
12 overlay.

13 At its decision meeting on March
14 24, 2009, the Board deliberated and reached
15 the conclusion that additional information was
16 required to supplement the record. And,
17 accordingly, the Board requested specific
18 information with respect to traffic impacts
19 primarily from the applicant and from the
20 parties and ANC-4C.

21 Very quickly, Mr. Chairman, the
22 applicant made its filing, and that document

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is identified as Exhibit 56, dated April 9,
2 2009. Responses to the filing from the
3 applicant haven't been -- have been made by
4 the opposition party, which is the Carter
5 Barron East Neighborhood Association. Those
6 documents are identified as Exhibits 53 and 54
7 in the record.

8 The Board also allowed the
9 applicant to file a response to the exhibits
10 by the parties. Those filings are in the
11 record. The first one is a response to the
12 comments from CBENA for short, which is the
13 Carton Barron East Neighborhood Association.
14 That exhibit number is 57. The applicant has
15 also responded to the filing from DDOT, and
16 that exhibit is 59.

17 Staff also notes that there is also
18 a DDOT filing, which is dated April 23, 2009.
19 That document is identified as Exhibit 58.

20 Staff also notes that in the
21 applicant's response to the DDOT's document
22 that the applicant also requested or made a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 motion that the DDOT's filing as being
2 untimely. And if the Board were to waive that
3 report to the record, they are requesting a
4 waiver of the rules to allow to comments.

5 In terms of preliminary matters,
6 staff also notes that back at its last meeting
7 on March 24th, the Board's last meeting on
8 March 24, 2009, the Exhibit Number 44 was held
9 in abeyance.

10 Very quickly, just for your
11 recollection, this Exhibit 44 is a signed hard
12 copy of an ANC letter, which was faxed into
13 the Zoning Office on March 3rd, and that
14 document was identified as Exhibit 28, which
15 arrived well in advance of the March 24th
16 meeting.

17 Secondly, in reference to the
18 applicant's issue regarding the untimeliness
19 of the DDOT's submission, staff would like to
20 note for the Board that it is the staff's
21 records that both Office of Planning and DDOT
22 were given a deadline of response of April

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 23rd, which would make the DDOT's filing
2 timely.

3 The last preliminary matter, Mr.
4 Chairman, is a letter from a Sean Wieland, the
5 letter identified as Exhibit 55, dated
6 April 21st. And this document was not
7 requested by the Board at its last meeting on
8 March 24th.

9 The Board is to act on the merits
10 of the special exception and variance relief.

11 And that completes the staff's briefing, Mr.
12 Chairman.

13 CHAIRPERSON LOUD: Thank you, Mr.
14 Moy. Appreciate it.

15 Why don't we do this, going through
16 the preliminary matters in the order that you
17 listed them out. I think Board members have
18 reviewed the filings and the different issues
19 raised by the filings, so -- and are ready to
20 proceed in terms of moving beyond preliminary
21 matters so we can get into the decisionmaking.

22 The first item that you mentioned

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 was Exhibit 44, which is the ANC hard copy
2 report. And even though technically it was
3 filed late, we did receive at Exhibit 28 a
4 faxed version of the same document. And under
5 3100.5, we are allowed to waive our rules.

6 So unless hearing objection from
7 other Board members, what we will do is allow
8 the ANC Exhibit 44 in as part of our record.

9 All right. And with respect to
10 what you raised as a second issue, and this is
11 the issue of the DDOT report, Exhibit 58, we
12 will just stand on your record and your
13 correction for applicant's benefit that the
14 DDOT was originally given until April 23rd,
15 that they did meet the April 23rd deadline.
16 So that we will, again, allow Exhibit 58 to be
17 part of the official record.

18 We will also allow Exhibit 59,
19 which is a response of the applicant to that
20 report, to be a part of our record as well, as
21 I believe we had indicated earlier that we
22 wanted the -- to give the applicant an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 opportunity to respond to the DDOT report.

2 So, again, unless there are
3 objections from other Board members, that is
4 how we will proceed on that.

5 Excellent. And moving right along,
6 the Sean Wieland correspondence, which is
7 Exhibit 55, our Rule 3121.9 is very clear that
8 once the record closes the only thing that
9 will be allowed in is information that the
10 Board specifically requested. We did not
11 request that, and so for that reason this
12 Exhibit 55 will not be allowed to become part
13 of our record.

14 And then, finally, there is an
15 Exhibit 50, which is a CBENA submission that
16 includes both what they self-described as
17 closing summation, as well as some specific
18 responses to the traffic/transportation report
19 that the applicant submitted.

20 At Exhibit 52, the applicant
21 requests that the CBENA closing summation part
22 of that document be stricken. Again, I think

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Board members have taken a look at this. It
2 is self-described as a closing summation, but
3 that only refers to the first couple of
4 paragraphs in the document.

5 All of what is included in the
6 first couple of paragraphs is already on the
7 record anyway. It is already in our record.
8 The submission of it through Exhibit 50 is
9 just a rehash of that, and we didn't
10 specifically leave the record open for that.

11 So, again, unless there is Board
12 objection to that, we will go ahead and strike
13 the first two paragraphs of Exhibit 50 that
14 are self-described as closing summation. But
15 the remainder of the document that speaks to
16 transportation impacts will be allowed in.

17 Any objection or concerns from the
18 Board?

19 (No response.)

20 Okay. Does that take care of the
21 preliminary matters, Mr. Moy?

22 SECRETARY MOY: Yes, sir.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: Okay. Thank
2 you.

3 Okay. Let me recap very briefly
4 some of the procedural history and factual
5 summary on this case, and I think we can begin
6 our deliberations on the Latter-Day Saints
7 case.

8 In this case, in terms of
9 procedural history, the applicant is the owner
10 of a vacant lot that housed a convent that was
11 demolished in 2007. And the applicant filed
12 for a building permit from the DCRA in August
13 '08 to build a church.

14 But during the lead-up to the
15 filing of the building permit, the ANC-4C
16 petitioned the Zoning Commission -- I believe
17 it was April 15th -- to extend the Sixteenth
18 Street Heights Overlay, so that it would
19 include the square that the applicant's
20 property is on, Square 2716.

21 Because the applicant filed its
22 building permit after application -- building

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 permit application, rather, after the Zoning
2 Commission set down the case for public
3 hearing, the applicant then filed with BZA on
4 September 25, '08, for Section 1553, special
5 exception relief.

6 On January 7, '09, the applicant
7 then amended its request for relief to seek a
8 variance from Section 1553.2(b)(2), a
9 provision that prohibits parking lots between
10 a principal building and a public right-of-
11 way, and also prohibits driveway access from
12 crossing any public right-of-way.

13 That was some of the procedural
14 history. Just very briefly in terms of
15 factual summary, and then we can move into the
16 test for relief and some of the analysis and
17 deliberation.

18 The applicant's project seeks to
19 construct a two-story, 35,682 square foot
20 church. That includes a 279-seat main
21 sanctuary, in addition to which there will be
22 classrooms, four offices, a multi-purpose

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 room, a clergy office, particularly for
2 counseling, and 72 parking spaces, I believe
3 48 surface and the balance underground.

4 The facility is for two
5 congregations that have outgrown their
6 existing facilities -- the Mount Pleasant
7 Branch Congregation, which is a Spanish-
8 speaking congregation, and what is called the
9 Washington, D.C. Third Ward Congregation.

10 Classrooms are integral to worship
11 requirements in the Latter-Day Saints church,
12 according to the submissions, because worship
13 includes both the sanctuary services, but then
14 also targeted gospel teaching to different
15 ages, interest groups, and levels. And those
16 take place in the classroom.

17 There will be two services on
18 Sunday, a 9:00 a.m. to 12:00 noon service for
19 one of the congregations, and 1:00 p.m. to
20 4:00 p.m. service for the other congregation.

21 The building is routinely closed on
22 Mondays. There is a youth ministry for youth

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 ages 12 to 18 which meets once, sometimes
2 twice, weekly. Usually, there are about 30
3 young people in that meeting, and then there
4 are groups that meet sporadically on Thursday,
5 sometimes on Friday, but not on a consistent
6 basis.

7 There is one quarterly meeting of
8 women that takes place. It is about 70 women
9 that come in for homemaking classes. But,
10 again, that is a quarterly meeting.

11 The project includes three
12 pedestrian entrances into the building, one
13 each from Emerson, Piney Branch, and 16th
14 Street. There is vehicular access only from
15 Piney Branch. All of the classroom space --
16 Emerson, there is a 105-foot steeple at the
17 corner of 16th and Emerson.

18 And I believe that is a very quick
19 summary of the facts in the case.

20 In terms of the analysis, the
21 applicant seeks a special exception under
22 Section 1553, which is the section of our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 regulations governing what happens in the 16th
2 Street Heights Overlay, and then applicant
3 also seeks a related variance pertaining to
4 Section 1553.

5 The requirements for a special
6 exception, as I noted, are in Section 1553. I
7 am going to go through those in a moment. And
8 the requirements for the variance are in our
9 Section 3103.

10 That sets the predicate for review
11 of the elements of this case, as well as the
12 testimony and the evidence in this case. And
13 I think what I would like to do now is walk
14 through each element of the applicable law,
15 and then discuss the evidence in the record.

16 And let me begin with, to a certain
17 extent kind of jumping around, but to simplify
18 let me begin with the variance test, and walk
19 through the test, elements of the evidence,
20 and then go through a special exception, with
21 the clear understanding that the variance is
22 from a section of the special exception. That

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 is understood, but in terms of just making it
2 really simple to go through, I am going to
3 start with the variance test.

4 In order to establish the variance
5 test, the applicant must show that he has a
6 unique or exceptional situation that creates a
7 practical difficulty as to which there is no
8 substantial detriment to the public good, nor
9 any harm to the zone plan.

10 With respect to the first element
11 of that, whether the property is unique or
12 exceptional in any manner, there was evidence
13 that the property is an unusual, upside-down
14 T-shaped property. That is, if you are facing
15 north from Emerson Street, the property is
16 shaped like a T, an inverted T, with frontage
17 on four streets -- 16th Street, Emerson, Piney
18 Branch, and Farragut.

19 That testimony came from Mr.
20 Pierce, who is the architect for the
21 applicant. It is also found in a number of
22 exhibits, including Exhibit 22 and Exhibit 26,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 as well as the OP report, which is Exhibit 29.

2 The unique shape of the property
3 would have to create a practical difficulty
4 for the applicant in order for the applicant
5 to prevail in terms of the relief. And in
6 this case there was testimony that established
7 -- there was testimony, certainly, going to
8 the issue of practical difficulty.

9 The testimony included the fact
10 that it is not possible to provide any kind of
11 surface parking or access to surface or
12 underground parking if Section 1553.2(b)(2)
13 were strictly adhered to, because the
14 applicant's site has these four street
15 frontages. In other words, any driveway
16 accessing a surface or underground lot would
17 necessarily have to cross the public way on
18 one of those four street frontages. So it
19 would be impossible, and certainly very, very
20 difficult to comply with that.

21 In addition to there being a unique
22 and exceptional situation that causes a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 practical difficulty for the applicant, the
2 applicant would have to show that there is no
3 substantial detriment to the public good if
4 relief were to be granted. There was a
5 tremendous amount of testimony on this issue
6 by the applicant, by the ANC, by the Office of
7 Planning, the Department of Transportation,
8 and the party status, party CBENA. And a lot
9 of it revolved around traffic impacts, parking
10 impact, and the like.

11 What I am going to do is go through
12 some of that testimony, and the defer to my
13 colleague, Mr. Dettman, who I think will go
14 through additional components of the
15 testimony.

16 But with respect to whether or not
17 there was going to be substantial detriment to
18 the public good, there was abundant testimony,
19 which was not contradicted in any way, that
20 there would be 72 parking spaces, which would
21 exceed both the requirement under the D.C.
22 zoning regulations 2101, which only require

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 28.

2 It also would exceed the number of
3 parking required by the ITE, Institute of
4 Transportation Engineers' formula, which would
5 require 46 parking spaces. So that that
6 evidence tended to suggest that the
7 availability of parking far exceeding what the
8 requirements were would prevent the
9 neighborhood streets from absorbing the excess
10 demand.

11 Secondly, there was a March 2009
12 traffic study by the applicant, and their
13 experts -- and they had experts qualified at
14 the hearings -- which concluded that the
15 chapel could be established without adversely
16 affecting the use and enjoyment of the
17 neighboring and nearby properties due to
18 traffic.

19 And then, that study and the expert
20 witness who testified at the hearing, Ms. Amy
21 Norris, who was affiliated with the T3 Design
22 Group, began to break it down with some

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 detail. She noted, for example, that the --
2 on either Emerson or Piney Branch the roadway
3 capacity for a level of service D is 167
4 vehicles in one hour, and that her study
5 showed that the actual Sunday vehicle count on
6 either of those two streets any way in one
7 hour would be about 36 vehicles, suggesting
8 that there would still be tremendous capacity
9 left on either street.

10 The supplemental traffic impact
11 study, which went into 16th Street traffic and
12 transportation issues, because those had been
13 left out of the March 2009 study, similarly
14 concluded that the 16th Street traffic,
15 inclusive of the traffic that this site would
16 generate, resulted in 16th Street operating
17 at, respectively, 67 percent and 82 percent of
18 its capacity, even with one through lane. And
19 that was our Exhibit 56 at page 25.

20 And, again, Mr. Dettman will go
21 into that in much greater detail. I am sort
22 of outlining the evidence, some of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 evidence.

2 On the same issue of whether there
3 would be substantial detriment to public good,
4 ANC-4C, at our Exhibit 28 and at the hearing
5 as well -- well, first let me start with
6 Exhibit 28. In Exhibit 28, they voted
7 unanimously against the special exception,
8 citing a number of concerns. Some were land
9 use, some were not land use.

10 The land use concerns included the
11 traffic, the size of the building relative to
12 the comp plan, and the rocky east area
13 element, the number of perceived congregates,
14 the parking and the perceived lack of parking
15 availability, and the weekday hours of
16 operation.

17 With respect to some of these
18 issues, the evidence, for example, with
19 traffic, as I suggested, tended to show that
20 on Emerson and on Piney Branch that a level of
21 service D could be maintained, and that the
22 expert study showed that the road capacity for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 both of those streets would not reach --
2 sorry, the traffic generated by the project
3 would not reach the road capacity for either
4 of those projects. And, on 16th Street,
5 similarly so.

6 With respect to the number of
7 perceived congregates, that was a perception
8 that the ANC had, but it wasn't borne out by
9 any of the evidence that was submitted, at
10 least from this Board member's perspective.
11 In fact, what the evidence tended to show was
12 that although the applicant had a membership
13 for one congregation that was around I think
14 160 perhaps, no more than 70. Over the last
15 five years, last four years, from 2005 to
16 2009, no more than 70 were ever in church at
17 one single time.

18 And with respect to the larger of
19 the two congregations, I think the Third
20 District Congregation, that even though there
21 was a membership of 481, no more than 165, 170
22 had ever attended church in the last four

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 years. And I think that goes to the
2 anticipated number of trips that would be made
3 to the site, just as well as the intensity of
4 use on the site.

5 So it was a concern raised by the
6 ANC, but it was not later borne out by any
7 evidence presented by the ANC. And the
8 applicant presented some evidence tending to
9 suggest that it would not be an issue.

10 With respect to weekday hours of
11 operation, the applicant put on some evidence
12 suggesting that there would be very little use
13 of the building during the week, that this was
14 not a congregation that would organize
15 activities that are associated with other
16 types of churches, as, for example, bingo
17 games or community meeting events, community
18 movies, and the like. They would be closed
19 all together on Monday, and really not have
20 very much use after that, except for targeting
21 some evenings for youth.

22 So, again, that was an issue raised

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 by the ANC, but the evidence following the
2 raising of the issue did not bear it out.

3 I am going to leave the other
4 issues regarding parking and transportation to
5 Mr. Dettman, who is going to walk us through
6 some of the transportation components of the
7 requirement.

8 And I am going to close the
9 variance analysis by saying that the
10 Department of Transportation raised a couple
11 of issues that they thought would be relevant
12 to this whole issue of substantial detriment
13 to the public good, one of which related to
14 the location of a driveway at Piney Branch and
15 Emerson.

16 And the Department of
17 Transportation wanted this driveway located 60
18 feet from the Piney Branch and Emerson
19 intersection, and the applicant later agreed
20 to do that. So with the record before the
21 Board now, that driveway location has been
22 relocated to 60 feet from the intersection.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 The Department of Transportation
2 also had some questions regarding the site
3 line from the driveway, given that there would
4 be a six-foot perimeter wall, a screening
5 wall, around the surface lot. And the
6 applicant did go back and resubmit for the
7 Board data and graphs demonstrating that the
8 site line would be one that would not present
9 any danger to both pedestrians on the street
10 as well as persons exiting or entering into
11 the surface lot.

12 And, in fact, in the final
13 submission of the DDOT, which I alluded to
14 earlier that we were going to allow in, DDOT
15 did not seem overly enthusiastic about the
16 overall transportation study, but they did
17 suggest that there was nothing fatal in it
18 that would cause it to object to granting of a
19 special exception.

20 So I am going to read into that
21 DDOT's acquiescence or agreement with the
22 applicant correcting the issue of the site

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 line from the driveway.

2 With that, I will move to the
3 special exception analysis. The first element
4 of the special exception analysis, which is
5 1553.2(a), states that "The non-residential
6 use is capable of being established and
7 operated without adversely affecting the use
8 and enjoyment of neighboring and nearby
9 properties due to traffic, noise, design, or
10 other objectionable conditions."

11 And with respect to that issue,
12 there was a tremendous amount of testimony and
13 an expert report, so on, that came into our
14 record. And I believe Mr. Dettman is going to
15 lead us through a discussion of that.

16 VICE CHAIRPERSON DETTMAN: Thank
17 you, Mr. Chairman. And I think I can be brief
18 here. I think you have done a great job
19 laying out the analysis for the variance and
20 the special exception, including some of the
21 most pertinent points with respect to traffic.

22 So I think what I will do is I will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 just make two observations about maybe how the
2 supplemental traffic report was put together,
3 and then just maybe lift up some of the most
4 important numbers that came out of this study,
5 as they pertain to parking and congestion, and
6 the number of trips that can be anticipated.

7 The two observations I will make
8 about how the study was put together is that
9 the applicant retained the services of a new
10 transportation engineer. That is Wells and
11 Associates. And Wells and Associates, instead
12 of -- we told the applicant to go back and
13 look at 16th Street and either do one of two
14 things, either provide us with a recalculation
15 of the trip generation, you know, and possibly
16 relying upon the ITE standard, or just justify
17 the methodologies that they had used.

18 And what Wells and Associates has
19 done is provided us with a recalculation of
20 the trip generation numbers using a different
21 methodology. And the methodology is that on
22 March 29th and April 5th, the transportation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 engineer conducted surveys of the actual
2 traffic and parking characteristics of the
3 existing congregation that will assemble at
4 the new site.

5 In addition to that, they also, via
6 telephone, surveyed families who regularly
7 attend services, but did not attend on March
8 29th.

9 And that approach is slightly
10 different than what the Board typically sees.

11 Usually what we see is either a reliance on
12 the ITE standard or, in lieu of that, an
13 analysis of three comparable sites. But that
14 is not to say that what they did use is
15 invalid or not. It can't be supported.

16 In fact, in DDOT's submission they
17 do recognize that a new approach was taken.
18 They state that the new approach -- the
19 supplemental analysis bases future demand upon
20 the current traffic patterns of Latter-Day
21 Saints, and that they are not aware of any
22 fatal flaws that would require them, as you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 stated, to object to the special exception.

2 So since the city's transportation
3 experts don't see a problem with this survey
4 approach, I think that the Board can rely upon
5 that as well.

6 Secondly, the second way that the
7 Wells and Associates study diverges from the
8 previous study, our Exhibit Number 30, is that
9 instead of looking at an a.m. an a p.m. peak
10 hour, they looked -- they considered a peak
11 hour being the hours between 12:00 noon and
12 1:00. And the reason why they did that is
13 that was -- that is going to be the time where
14 these two congregations are changing over.

15 And so I think that is a fair
16 approach, since that is the time where you are
17 going to see the most amount of turnover and
18 people coming in and out of the site. So I
19 think looking at 12:00 noon to 1:00 is
20 acceptable.

21 So, very quickly, with respect to
22 capacity and congestion on 16th Street and the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 surrounding streets, the earlier traffic study
2 did a very good job of looking at potential
3 impacts on surrounding streets, with the
4 exception of 16th Street. And what that study
5 found was that after full buildout -- I think
6 was 2011 -- the neighborhood streets were
7 going to continue to operate at an acceptable
8 level of service. I think they had said C or
9 better.

10 With this new supplemental study,
11 they specifically focused in on 16th Street,
12 and they essentially concluded the same --
13 using traffic count information that was
14 collected along 16th Street on those two
15 Sundays -- March 26th and April 5th -- and
16 only reflecting the one lane northbound and
17 one lane southbound due to the availability of
18 on-street parking at 16th Street.

19 They conclude that the study area
20 intersections along 16th Street, which I
21 believe were at Colorado, Decatur, and
22 Emerson, were going to continue to operate at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 an acceptable level of service.

2 Finally, with respect to trip
3 generation, essentially what the applicant did
4 is they conducted this survey and was able to
5 generate a rate of the number of people who
6 can reasonably be expected to drive to the
7 future site.

8 And they came up with, of those
9 surveyed, approximately 19 percent of the
10 Mount Pleasant Branch could be expected to
11 drive to the new site, and 28 percent could be
12 expected to drive to -- 28 percent of the
13 Washington, D.C. Third Ward Congregation could
14 be expected to drive.

15 And so what they did is they took
16 that rate, which is meant to replace a rate
17 that you would pull out of ITE, and they
18 applied it to 250 members, being that the
19 maximum capacity of this church is designed to
20 hold 250 members. And so the assumption that
21 they are working under is that we apply this
22 rate to an instance where we have -- we are at

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 maximum capacity of 250 people.

2 And the study resulted in -- the
3 study came up with, for the Mount Pleasant
4 Branch, it could be expected that that branch
5 is going to generate 48 vehicle trips, which
6 is less than the 72 parking spaces being
7 provided.

8 For the Third Ward Congregation,
9 applying the 28 percent driving rate, they
10 said that they could expect to generate 70
11 vehicle trips, which again is below the 72
12 parking spaces that is being provided.

13 I have one final point, and I
14 thought maybe the study could have given us
15 one -- one extra number. In that the current
16 membership of the Mount Pleasant Branch is 183
17 people, and the -- for the other congregation
18 it is 481, yet they only applied their trip
19 generation rate to 250 people.

20 But I seem to be of the opinion
21 that on any given Sunday there is a
22 possibility that every single member that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 belongs to this church could show up for
2 services. And so if you were to take -- and I
3 am not gearing outside of the study. All I am
4 doing is using their rates and applying it to
5 their membership.

6 And if you were to apply the 19
7 percent rate and the 28 percent rate to the
8 full membership, you would find that actually
9 the morning branch, the Mount Pleasant Branch,
10 would generate a lower number than the 250,
11 because they have 183 versus 250.

12 For the afternoon session, you
13 would find that applying that rate to 481
14 people, it would generate -- it would
15 potentially generate 135 trips, which is in
16 excess of the 72 parking spaces being
17 provided.

18 And I make that point because the
19 applicant provided with us -- provided us a
20 thorough analysis of the availability of on-
21 street parking within a two-block radius of
22 the site. And what they found was that within

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 two blocks there are 638 legal curb parking
2 spaces.

3 And they found that on March 26th
4 and April 5th -- let me just turn to that page
5 -- on April 5th, there was a minimum of 157
6 spaces available, vacant, when they did their
7 survey. And for the morning session -- I'm
8 sorry, that was for the morning session, 157
9 spaces. For the afternoon session, there was
10 a minimum of 313 vacant spaces on-street.

11 So in the event that the church
12 does get full turn-out for their larger
13 congregation, and they happen to fill up the
14 72 spaces that are onsite, I think what the
15 applicant has shown us is that within a two-
16 block radius there appears to be enough vacant
17 parking spaces on-street to accommodate any
18 kind of spillover.

19 So I think I will leave it at that,
20 and I am happy to answer any questions from my
21 fellow Board members.

22 CHAIRPERSON LOUD: Thank you, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Dettman. That was an outstanding analysis of
2 the transportation. Interesting, too, because
3 it seems as though they would have -- they
4 would end up having an easier time finding
5 available parking if they hit that 481 than
6 they would find seats in the sanctuary,
7 because it is a 279-seat chapel I think.

8 So kind of an interesting situation
9 to be in. I am sure they would shout
10 "Hallelujah" if they actually ever got 481 to
11 come to church, given that oftentimes member
12 rolls don't translate into actual attendance
13 at church. You don't want me to preach this
14 morning?

15 Mr. Jeffries? We are joined by
16 Commissioner Jeffries, who had an incident
17 this morning, and we shared it with you
18 earlier. We just really want to thank him for
19 being here. His son was not feeling well this
20 morning, and, nonetheless, he is here, and he
21 has committed to be here all day. And we
22 really appreciate that. It allows us to move

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 forward.

2 Mr. Jeffries, is there anything
3 that you would like to weigh in on?

4 COMMISSIONER JEFFRIES: Not really.

5 I think that, you know, both of you provided
6 exhaustive analysis to the case, and so I
7 think everything has pretty much been covered.

8

9 I will say that I was very thankful
10 for the photographs that were submitted by the
11 Carter Barron East Neighborhood Association,
12 because looking at those photographs sort of
13 reminded me of the 16th Street that I know on
14 Sundays in this area, particularly given the
15 on-street parking, that there will be many
16 instances, or some instances, where there will
17 be congestion and there will be spillover.

18 But I do think that the church,
19 given it has 72 parking spaces, and the size
20 of the congregation, and the size of the
21 actual church building, I think that it will
22 be able to accommodate, with very little

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 adverse impact on the adjacent neighbors, and
2 so forth. And I think it is good that, you
3 know, we are looking at each of these cases
4 going forward on a special exception, so we
5 can look at them on a case-by-case basis.

6 And I think that in this case I
7 think there will be times when there will be
8 some congestion. But I think, by and large,
9 there should be some accommodation, there will
10 be accommodation for parking issues, as well
11 as some traffic issues.

12 And my suspicion is that like with
13 most people, you know, after trying to do 16th
14 Street a few times, you know, you find
15 different ways in which to traverse through
16 these neighborhoods to get to where you are
17 going in that neighborhood. And, again, that
18 has some impact on some of the adjacent
19 neighbors, but I do not think that it will be
20 overwhelming.

21 So I am supportive of going forward
22 on this case.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON LOUD: Are there any
2 objections at this time to calling for a vote?

3 COMMISSIONER JEFFRIES: No.

4 CHAIRPERSON LOUD: Okay. Then,
5 what I would like to do is move approval of
6 Application Number 17889, application for
7 special exception relief under Section 1553,
8 as well as variance relief in the case of the
9 Church of Jesus Christ of Latter-Day Saints.

10 COMMISSIONER JEFFRIES: Second.

11 CHAIRPERSON LOUD: Is there further
12 deliberation?

13 (No response.)

14 Hearing none, I would like to say
15 -- I would like to ask that all in favor of
16 the motion say aye.

17 (Chorus of ayes.)

18 All opposed?

19 (No response.)

20 Any abstentions?

21 (No response.)

22 Mr. Moy, can you call the vote?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 SECRETARY MOY: Yes, Mr. Chairman.

2 Staff would record the vote as three to zero
3 to two, on the motion of the Chair, Mr. Loud,
4 to approve the application pursuant to -- for
5 relief for a special exception and the
6 variance relief, seconded by Mr. Jeffries.
7 Also in support of the motion are Mr. Dettman.
8 No other Board members participating.

9 Again, the final vote is three to
10 zero to two.

11 CHAIRPERSON LOUD: Thank you, Mr.
12 Moy.

13 I do believe that that will close
14 the public meeting for this morning.

15 SECRETARY MOY: That is correct,
16 Mr. Chairman.

17 CHAIRPERSON LOUD: Okay. And that
18 we can now go back into the public hearing.
19 Is there any formality needed to go back into
20 the public hearing?

21 SECRETARY MOY: No.

22 CHAIRPERSON LOUD: Okay. So we can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 now go back into the public hearing.

2 (Whereupon, at 12:15 p.m., the proceedings in
3 the foregoing matter were
4 concluded.)

5

6

7

8

9

10

11

12

13

14

15

16

17

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701