

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

JUNE 3, 2008

+ + + + +

The Regular Public Meeting convened in Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER      Chairperson  
MARC LOUD                      Vice-Chairperson  
SHANE DETTMAN              Board Member  
MARY OATES WALKER      Board Member

ZONING COMMISSION MEMBER PRESENT:

GREGORY J. JEFFRIES      Vice-Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY                      Secretary  
BEVERLEY BAILEY              Sr. Zoning  
Specialist



T A B L E O F C O N T E N T S

	<u>Page</u>
Application No. 17656, Alley Cat Mews, LLC . . . . .	6
Application No. 17747, Appeal of Stephanie Wallace . . . . .	21
Application No. 17759, Protestant Episcopal Cathedral Foundation of the District of Columbia . . . . .	52

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3  
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P R O C E E D I N G S

10:59 a.m.

CHAIR MILLER: This meeting will please come to order. Good morning, ladies and gentlemen. This is the June 3<sup>rd</sup>, 2008 public meeting of the Board of Zoning Adjustment.

My name is Ruthanne Miller. I'm the chair of the BZA. Joining me today to my right is Mr. Marc Loud, our vice chair, and Mr. Greg Jeffries from the Zoning Commission.

To my left is Mary Oates Walker and Shane Dettman, board members, and next to Mr. Dettman is Mr. Clifford Moy from the Office of Zoning, Ms. Lori Monroe from the Office of the Attorney General, and Ms. Beverly Bailey from the Office of Zoning.

Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door. We do not take any public testimony at our meetings unless the Board asks someone to come forward.

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

8           I want to apologize for keeping  
9 you waiting. However, we had some last minute  
10 pleadings that the Board had to review very  
11 carefully, and some intricate issues in these  
12 cases.

13           So we are now ready to go forward  
14 with our meeting. Does the staff have any  
15 preliminary matters?

16           MR. MOY: Good morning Madam  
17 Chair, Members of the Board. We do, but I  
18 think it would be ideal to handle the  
19 preliminary matters case by case.

20           CHAIR MILLER: Thank you. I also  
21 would like to say that we have three cases  
22 scheduled for decision-making this morning,

1 and we are going to be changing our order of  
2 our deliberations, and do Application No.  
3 17656 of Alley Cat Mews first, followed by  
4 Appeal No. 17747 of Stephanie Wallace second,  
5 and last, Application No. 17759 of Protestant  
6 Episcopal Cathedral Foundation of the District  
7 of Columbia.

8 Just to explain, part of our  
9 reasoning for that is the Board has discretion  
10 to change the orders of its decision anyway.  
11 But Mr. Jeffries is here to participate on  
12 Alley Cat Mews and Stephanie Wallace, and so  
13 that's why we're proceeding with those two  
14 first.

15 But I also anticipate that  
16 Protestant Episcopal Cathedral Foundation has  
17 a lot of conditions in that case at issue, and  
18 that may take some time to go through them.

19 So that being said, why don't we  
20 proceed then with calling Alley Cat Mews.

21 Application No. 17656

22 MR. MOY: Yes. That first case,

1 Madam Chair, is Application No. 17656 of Alley  
2 Cat Mews, LLC, pursuant to 11 DCMR 3103.2, for  
3 a variance to allow the construction of a  
4 detached single family dwelling on an alley  
5 lot that does not directly abut an alley that  
6 is at least 30 feet in width, and is not  
7 directly accessible from a public street along  
8 an alley or alleys of not less than 30 feet in  
9 width, under Subsection 2507.2 in the R-1-B  
10 district on an alley lot at the rear of Reno  
11 Road, Chevy Chase Parkway and Harrison Street,  
12 N.W.

13 This is in Square 1877, Lot 37.  
14 On April 8<sup>th</sup>, 2008, the Board completed public  
15 testimony, closed the record and scheduled its  
16 decision on June 3<sup>rd</sup>. The Board requested  
17 additional information to supplement the  
18 record.

19 This included proposed findings of  
20 fact and conclusions of law from the Applicant  
21 and the parties, as well as the letter from  
22 the D.C. Fire and Emergency Medical Services

1 Department.

2           These filings were filed on the  
3 record, timely filed Madam Chair. The letter  
4 from the fire marshal is identified in your  
5 case folders as Exhibit 52. Also in your case  
6 folders is a filing from the Applicant,  
7 identified as Exhibit 55.

8           Part of that filing, the Board may  
9 want to -- the staff would advise looking at  
10 that as a preliminary matter, because in  
11 addition to the proposed findings of fact and  
12 conclusions of law, there's also a filing of  
13 supplemental materials.

14           The second filings for findings of  
15 fact and conclusion of law is from the party  
16 opposition, identified as Exhibit 54, and last  
17 is also from the party opposition, a Motion to  
18 Strike the Applicant's Supplemental Materials.  
19 This is identified as Exhibit 56.

20           With that, staff is going to  
21 conclude its briefing, Madam Chair.

22           CHAIR MILLER: Okay. I think we

1 ought to take up as a preliminary matter  
2 Exhibit 56, the Motion to Strike Applicant's  
3 Supplemental Materials that Mr. Moy made  
4 reference to.

5 In essence, that motion states  
6 that the materials that were submitted by the  
7 Applicant were not authorized by the Board,  
8 that the Board closed the record except for  
9 proposed findings and conclusions of law, and  
10 the memo from the Fire Emergency Medical  
11 Services.

12 As I recall, we also advised the  
13 parties that they could address the memo or  
14 letter from the Fire Emergency Medical  
15 Services in their proposed findings and  
16 conclusions of law, and the record was closed  
17 for everything else.

18 I would agree with the opponents  
19 that this motion would be -- that this -- if  
20 we were to accept these materials, it would be  
21 unfair and it would prejudice the other  
22 parties, because they add evidence in the

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1 record that the other parties didn't have an  
2 opportunity to respond to. Do others have  
3 comments on that?

4 (No response.)

5 CHAIR MILLER: Okay. In general,  
6 our regulations allow us to waive our rules  
7 for good cause and no prejudice to any party.  
8 But in this particular case, I think there  
9 would be prejudice to obviously the other  
10 parties, and I don't see the good cause there.

11 So if there's a concurrence of the  
12 Board, then we will strike Applicant's  
13 supplemental materials.

14 (No response.)

15 CHAIR MILLER: Okay. I think now  
16 we can get into the merits of this case. In  
17 essence, Alley Cat Mews seeks a variance from  
18 2507.2, to build a one-family dwelling on a  
19 triangular lot that's bounded on all sides by  
20 alleys less than 30 feet in width.

21 Originally in this case, the  
22 Applicant filed an area variance and we heard

1 arguments as to whether this would be  
2 considered a use variance or an area variance,  
3 and the Board decided that this is a use  
4 variance.

5 We have a full record on that  
6 deliberation, so I don't think we need to  
7 dwell on that. 2507.2 states that a one-  
8 family dwelling shall not be erected or  
9 constructed on an alley lot unless the alley  
10 lot abuts an alley 30 feet or more in width,  
11 and has from the alley access to a street  
12 through or an alley or alleys not less than 30  
13 feet in width.

14 So that's the regulation they're  
15 seeking the variance from. As we stated in  
16 our last deliberations about the use variance-  
17 area variance, the first test is the same for  
18 use or area variance. It's uniqueness or  
19 exceptional condition.

20 The second test is different. It  
21 deals with undue hardship instead of practical  
22 difficulty, and the language for that in the

1 regulation reads that the strict application  
2 of any regulation adopted under this  
3 subchapter would result in exceptional and  
4 undue hardship upon the owner of such  
5 property.

6 If those first two prongs were  
7 met, then we'd look at whether there would be  
8 any adverse impacts to the public or  
9 impairment of the intent, purpose and  
10 integrity of zone plan, as provided in zoning  
11 regulations, if we were to grant the relief  
12 that's sought.

13 The Applicant in this case has  
14 said that there's a confluence of factors that  
15 give rise to uniqueness here, citing the  
16 *Gilmartin* case. So I think that's one thing  
17 we should keep in mind. Then with respect to  
18 undue hardship, we've had guidance from the  
19 Court of Appeals that that means that  
20 Applicant must demonstrate that a reasonable  
21 use cannot be made of a property in a manner  
22 consistent with the zoning regulations.

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1 That's from *Gilmartin*.

2 I also think that the *Palmer* case  
3 is most significant, and that case stands for  
4 the proposition that the inability to put  
5 property to more profitable use or loss of  
6 economic advantage is not sufficient to  
7 constitute hardship.

8 I also, in my reading at least of  
9 the case law, I think that as in the area  
10 variances, we need to look at the first two  
11 prongs somewhat together, that whatever it is  
12 that's exceptional and unique about the  
13 property leads to an undue hardship upon the  
14 owner.

15 I think the parties testified on  
16 this as well. The first factor, dealing with  
17 exceptional conditions or undue hardship, one  
18 aspect of it is that sure, that the property  
19 must have some distinct qualifications, so  
20 that if we were to grant a variance in this  
21 case, there wouldn't be many other similar  
22 properties that we would actually be doing a

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1 text amendment.

2 That's one aspect of uniqueness.  
3 But I think the other aspect of uniqueness  
4 goes to something that leads directly to the  
5 hardship that the Applicant is complaining  
6 about.

7 Now I think in this case, the  
8 Applicant has said that the uniqueness is that  
9 it's a triangular lot surrounded by public  
10 alleys on all sides, and the public alleys  
11 comply with the D.C. Fire Code, and that this  
12 property complies with all other zoning  
13 requirements in the R-1-B district.

14 So then we need to see, in  
15 addition to, you know, is this so unique in  
16 that way from all other properties that we  
17 think it's unique, and/or how does that lead  
18 to the hardship that they're complaining  
19 about.

20 Now the hardship alleged in this  
21 case is that it will be able to develop the  
22 property with a matter of right use. I think

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1 they looked at other uses that would be  
2 allowed, such as a parking garage or artist  
3 studio, and they're arguing that they're not  
4 economically variable, that there's not really  
5 a market for that.

6 I think I remember other arguments  
7 for why they're unique and would their  
8 hardship would be. In this case, the other  
9 side certainly is arguing that the hardship is  
10 the profit, that actually this case is being  
11 brought by a contract purchaser under  
12 authorization by the owner.

13 But basically in this case, the  
14 owner has different offers of purchase. One  
15 is to the contract purchaser who brought the  
16 case in this case, and then Mr. Eads, who is  
17 a neighbor and a party in this case and  
18 Greenpeace have made offers which are of a  
19 lesser amount.

20 Mr. Eads, at the last hearing, at  
21 least said that under oath that he would  
22 purchase the property for the last offer that

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1 was made by Greenpeace, and I think that was  
2 for \$50,000. The offer that is on the table  
3 by the contract purchaser in this case, Mr.  
4 Woodring, is for \$125,000, if I have my facts  
5 correct.

6 So I'll turn to others  
7 momentarily. In my analysis, basically of  
8 this case, in looking at the uniqueness and  
9 the hardship arguments, I don't see a  
10 particular uniqueness that leads to the  
11 hardship complained of.

12 I think that the hardship is that  
13 they can't develop a house on this property  
14 that would be more profitable for the owner  
15 and the contract purchaser, than if they  
16 didn't develop and sold the property to the  
17 neighbors, Mr. Eads and Greenpeace.

18 We've had other cases where we  
19 have found exceptional conditions for a use  
20 variance, where there's something different  
21 about the property, and that there may be an  
22 improvement on it that imposes certain

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1 hardships that are different from other  
2 properties, or that the property around the  
3 subject property may be undergoing changes  
4 that are different from other properties.

5 The one case that comes to my mind  
6 is No. 16815, Adams Alley, LLC, where we had  
7 a warehouse on an alley lot. So I don't  
8 really see a case being a hardship, and more  
9 importantly, I don't see undue hardship  
10 because this seems to me to fall squarely  
11 within *Palmer*, that the variance, if we  
12 granted the variance it would be so that the  
13 owner would make a profit.

14 I see that the property can be put  
15 to reasonable use, and that there are  
16 prospective purchasers who would like to put  
17 it to the use of a garden or a community park.  
18 I think I'm going to pass. Now I'll let  
19 others address these issues if you'd like.

20 MEMBER LOUD: Madam Chair, I think  
21 you've laid it out very thoroughly. The only  
22 thing that I would add, in addition to what

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1       you said, is that when we get to the  
2       discussion of alternative uses to the  
3       property, the testimony suggested that the  
4       offer to purchase the property by the  
5       neighbor, I think Mr. Eads as well as by the  
6       Greenpeace intervenor, would have rendered a  
7       39 percent profit to the Applicant's  
8       purchaser, which suggests again that there's  
9       an alternative use for the property that has  
10      some immediate applicability to the Applicant  
11      in this case.

12                 So the undue hardship element is  
13      hard to meet. In addition to which I'll just  
14      throw in that the ANC was opposed to it.  
15      That's our exhibit number -- I don't actually  
16      have the exhibit number in front of me, but  
17      I'll find it.

18                 But they did oppose it in a vote  
19      of 5 to 2. Exhibit No. 18? Thank you. A  
20      vote of 5 to 2, and the single member district  
21      commissioner opposed it as well. In addition  
22      to which intervenors Eads and the Greenpeace

1 group opposed it as well.

2 Initially, Lawrence Hahnower (ph)  
3 was to be an intervenor, but that was  
4 withdrawn. There was also a petition signed  
5 by about 100 neighbors, I believe, in the  
6 immediate area. So they raised concerns about  
7 things such as privacy, of having the front  
8 and the side yards of the proposed project  
9 abut their rear yards. They raised issues of  
10 potential light from the two-story structure  
11 creating shade on their properties, as well as  
12 on the garden that had been created by the  
13 Eads family.

14 So there were a number of concerns  
15 being raised by the community, that suggested  
16 that there would in fact be some detriment to  
17 the public good, at least with respect to the  
18 immediately 27 abutting property owners, and  
19 to a larger extent, the surrounding community.

20 CHAIR MILLER: Others? I do note  
21 that there was also a letter in the record  
22 from Council Member Mary Cheh. There are two

1 at Exhibits 27 and 40. At Exhibit 40, Council  
2 Member Cheh was just bringing to our attention  
3 to the majority of the ANC voted against the  
4 variance, and she agreed with their analysis  
5 and found their arguments persuasive.

6 I think she noted that a lot of  
7 home owners in this case had purchased their  
8 properties with the understanding that that  
9 property couldn't be developed as a single  
10 family dwelling, at least without a variance.  
11 That's what was brought before us.

12 Okay. I think that in finding  
13 that the Applicant did not meet the first two  
14 prongs of the test, we don't really need to go  
15 into the third prong, whether or not there  
16 would be an adverse impact if relief were  
17 granted, because -- and I think it's the  
18 consensus of the Board that relief is not  
19 going to be granted, because the first two  
20 prongs have not been met.

21 Okay. Are there any other  
22 comments?

1 (No response.)

2 CHAIR MILLER: Not hearing from  
3 anyone, then I would move to deny Application  
4 No. 17656 of Alley Cat Mews, LLC, pursuant to  
5 11 DCMR Section 3103.2, for a variance to  
6 allow the construction of a detached single-  
7 family dwelling on an alley lot that does not  
8 directly abut an alley that is at least 30  
9 feet in width, and is not directly accessible  
10 from a public street along an alley or alleys  
11 of not less than 30 feet in width, under  
12 Subsection 2507.2, on an alley lot at the rear  
13 of Reno Road, Chevy Chase Parkway and Harrison  
14 Street, N.W. Do I have a second?

15 MEMBER LOUD: Second.

16 CHAIR MILLER: Further  
17 deliberation?

18 (No response.)

19 CHAIR MILLER: All those in favor  
20 say aye.

21 (Chorus of ayes.)

22 CHAIR MILLER: All those opposed?

1 (No response.)

2 CHAIR MILLER: All those  
3 abstaining?

4 (No response.)

5 CHAIR MILLER: And would you call  
6 the vote please?

7 MR. MOY: Yes, Madam Chair. Staff  
8 would record the vote as 5 to 0 to 0. This is  
9 on the motion of the Chair, Ms. Miller, to  
10 deny the application. Seconded by Mr. Loud.  
11 In support of the motion Ms. Walker, Mr.  
12 Dettman and Mr. Jeffries.

13 CHAIR MILLER: Thank you.

14 Application No. 17747

15 MR. MOY: The next case for  
16 decision is Appeal No. 17747 of Stephanie  
17 Wallace, pursuant to 11 DCMR 3100 and 3101  
18 from a September 28<sup>th</sup>, 2007 decision of the  
19 Zoning Administrator to deny the issuance of  
20 a building permit, allowing the reconstruction  
21 of a portion of a pre-existing one family  
22 dwelling in the R-1-B district at premises

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1 5013 Belt Road, N.W. That's in Square 1756,  
2 Lot 64.

3 On May 20<sup>th</sup>, 2008, the Board  
4 concluded oral testimony on the intervenor's  
5 motion to dismiss, as well as confirming the  
6 Board's scheduled decision date on June 3<sup>rd</sup>.  
7 At the public meeting, the Board's second  
8 action would also be to act on the Appellant's  
9 motion for summary judgment, testimony of  
10 which was completed on April 29<sup>th</sup>, 2008.

11 Again, the Board is to act on the  
12 merits of both of these motions. With respect  
13 to filings, Madam Chair, we have what staff  
14 would identify as preliminary matters. The  
15 first is in your case folders, identified as  
16 Exhibit 39. This is a filing dated May 27<sup>th</sup>,  
17 2008 by the intevenors, entitled Second  
18 Addendum to Intervenors Reply Brief in Further  
19 Support of Their Motion to Dismiss and For  
20 Related Relief, again, Exhibit 39.

21 Subsequent to that, of course, is  
22 a filing from the Appellant, dated yesterday,

1 June 2<sup>nd</sup>, 2007, identified in your case  
2 folders as Exhibit 40. It's identified as the  
3 Appellant's Notice of Related Appeal and  
4 Motion to Amend Appeal to Incorporate Directly  
5 Related Denial by the Zoning Administrator.

6 With that, the staff is going to -  
7 - that completes the staff's briefing, Madam  
8 Chair.

9 CHAIR MILLER: Thank you. Well,  
10 we have a preliminary matter that I want to  
11 raise, and see if we want to resolve it at  
12 this point or not. But as Mr. Moy stated, the  
13 Appellants filed a Notice of Related Appeal  
14 and Motion to Amend Appeal to Incorporate  
15 Directly Related Denial by Zoning  
16 Administrator under 11 DCMR Section 401.1.

17 We just were reading that this  
18 morning, and I would state that, you know, it  
19 also states that it was served on the parties  
20 on June 2<sup>nd</sup>. So obviously the other parties  
21 have not had an opportunity to respond to this  
22 motion. So we won't be taking it up at this

1 point.

2                   However, I think what we should do  
3 is schedule times for responses before the  
4 hearing, which is scheduled for July 15<sup>th</sup>. We  
5 can do that at the end of the deliberation if  
6 that's better, or we could do it right now.  
7 Okay, well let's do that at the end.

8                   The purpose of our meeting today  
9 is to rule on the pending motion to dismiss  
10 and motion for summary judgment. Also, as I  
11 recollect and approach this, we were going to  
12 try to determine if there were any issues that  
13 we could decide as a matter of law, even if we  
14 were not going to dispose of the whole case as  
15 a matter of law.

16                   So when we left the last hearing,  
17 I think that I heard from all parties that  
18 there were issues in dispute, and I think that  
19 the Board has determined that there are issues  
20 in dispute, and we will be going forward with  
21 a hearing on July 15<sup>th</sup>.

22                   But I do want to go through some

1 of the arguments that were made in the  
2 motions, and have a little bit of discussion  
3 of whether or not there are any issues that  
4 can be decided as a matter of law or not.

5 The first is the motion to dismiss  
6 that's been filed by the intervenors. It was  
7 called Motion to Dismiss By Applicants of  
8 Party Status and For Related Relief, dated  
9 April 24<sup>th</sup>, 2008, and that's our Exhibit No.  
10 25.

11 In essence, I would agree with  
12 DCRA, that the motion to dismiss should be  
13 denied because the Applicant has stated a  
14 claim upon which relief can be granted. The  
15 Applicant has alleged that the Zoning  
16 Administrator erred in interpreting and  
17 enforcing or applying the zoning regulations.

18 In particular, the Appellant  
19 alleged that the ZA -- appealed the ZA's  
20 decision, that the previously-existing  
21 structure had been intentionally destroyed and  
22 therefore non-conforming side yards cannot be

1 restored and does not comply with 405.8, and  
2 (2) the unforeseen termite damage does not  
3 comply with 2001.6. That's the ZA decision  
4 that I see as being appealed.

5 So in looking at the motion to  
6 dismiss beyond that, okay, I don't think it  
7 could be dismissed for failure to state a  
8 claim, because I think that a claim has been  
9 stated.

10 Are there any arguments in there  
11 that can be decided as a matter of law, and  
12 one issue that I think the Board should  
13 discuss is whether or not unforeseen termite  
14 damage, which is what was cited in the VA's  
15 decision as a reason for not applying 2001.6,  
16 that that does not constitute --

17 Well, it does not comply with  
18 2001.6, and I read into that that that does  
19 not constitute a casualty or an act of God.  
20 Can we decide that as a matter of law? I  
21 think that's the question I want to put on the  
22 table.

1           The parties briefed this somewhat.  
2           Neither term is defined in our regulations,  
3           and our regulations then state that we should  
4           look to Webster's, if it's not in our  
5           regulations. Webster's had a few different  
6           definitions for casualty.

7           I think the one that the Appellant  
8           put forward was a person or thing that has  
9           failed, been injured, lost or destroyed as a  
10          result of an uncontrollable circumstance. Now  
11          I think that I have in my notes an election.  
12          I don't know why. I think that must have been  
13          a typo.

14          When we looked in Webster's, it  
15          said "uncontrollable circumstance or of some  
16          action." Act of God is not defined in  
17          Webster's. It is addressed in certain case  
18          law in the Court of Appeals. Certain case law  
19          that was submitted to us in, I believe, the  
20          *Scandia* case.

21          I actually also looked at that in  
22          Black's Law Dictionary. I think, in essence,

1 the Appellant is really pursuing that this is  
2 a casualty not an act of God. There I think  
3 is a difference, but I'm not sure how clear I  
4 am on that. But act of God in the case law  
5 has been defined more as exclusively by the  
6 violence of nature, without the interference  
7 of persons at all.

8 So my question is can we consider  
9 termite damage an uncontrollable circumstance,  
10 or some action; how do we interpret that  
11 word? Can we interpret that to exclude  
12 termites? Can we make a finding, based on the  
13 pleadings or as a matter of law that termite  
14 damage is an uncontrollable circumstance or is  
15 not intended to be encompassed by 2001.6 as a  
16 matter of law, or do we need further  
17 information on that?

18 So I'd like to throw that out to  
19 the Board members.

20 (No response.)

21 CHAIR MILLER: Well, since I'm not  
22 hearing anything just yet, I also would say

1 that we did get further testimony, I guess, in  
2 the record that the damage from the termites  
3 had occurred long before the purchase of the  
4 property, and that then we also have heard  
5 that maybe some of the damage occurred from  
6 water. The ZA decision references unforeseen  
7 termite damage.

8 So anyway, I would like to pose  
9 the question, whether this can be decided as  
10 a matter of law, or whether we need more facts  
11 or more briefing on that question.

12 (No response.)

13 MEMBER LOUD: Let me just ask,  
14 Madam Chair, is the purpose of the inquiry to  
15 narrow for a future, I guess the July 15  
16 hearing, to remove this one issue of several  
17 from our consideration on July 15; that is  
18 specifically, there being termite damage and  
19 whether or not that caused the collapse.

20 So that if we do remove that one  
21 issue, we're still dealing with the issue of  
22 whether groundwater potentially caused the

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1 collapse, or whether there was some  
2 intentional misconduct by the Applicant that  
3 caused the collapse. Is that the point of the  
4 discussion right now?

5 MEMBER JEFFRIES: Okay. I thought  
6 we were just trying to just narrowly define  
7 what casualty meant, and not whether there was  
8 any -- whether there was -- exactly what  
9 caused the structural failure of this house,  
10 but really trying to get to the bottom of that  
11 definition. Madam Chair, am I mistaken?

12 CHAIR MILLER: No, I think that if  
13 we feel that we need more information on what  
14 a casualty is.

15 MEMBER JEFFRIES: But not what  
16 actually caused -- I mean there's two separate  
17 things there. You know, one is what this  
18 Board considers a casualty to be, and then  
19 there's another issue about really what caused  
20 the structural failure, and being comfortable  
21 with what the facts are.

22 CHAIR MILLER: The way I was

1 looking at it is that the Zoning Administrator  
2 denied the permit on two grounds. One was the  
3 that previously-existing structure had been  
4 intentionally destroyed and therefore a non-  
5 conforming side yard cannot be restored and  
6 does not comply with 405.8. That is not at  
7 all touched by our discussion on this termite  
8 issue.

9                   Number two was the Zoning  
10 Administrator's conclusion that the unforeseen  
11 termite damage does not comply with 2001.6.  
12 So the intervenor made the argument that  
13 that's, as a matter of law, I believe termite  
14 damage can't comply with 2001.6 because 2001.6  
15 references casualty and act of God, and  
16 termite damage doesn't fall in that category.

17                   All I'm saying is, you know, are  
18 we prepared to find that that's true as a  
19 matter of law. If that were to be true, then  
20 that would eliminate that claim of error. We  
21 would find that the ZA did not err on that,  
22 because termite damage is not a casualty or

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1 act of God.

2 Now if we're not sure whether  
3 termite damage should be considered a casualty  
4 or not based on the briefings still, then we  
5 don't need to decide that today. So it would  
6 have narrowed -- if we would have decided, it  
7 would narrow the hearing, because we would  
8 just be hearing the first grounds.

9 We would still get into whether  
10 that structure had been intentionally  
11 destroyed, if so, whether there could be a  
12 non-conforming side yard restored under 405.8.  
13 There's still the question of estoppel and  
14 laches; there's issues about fraud and intent  
15 and what the permits authorized and was there  
16 a vesting.

17 So anyway, I just thought the  
18 question about termite damage, whether we  
19 could look at that and say as a matter of law  
20 it's not encompassed by the regulation or not.

21 If we can't say that, then that  
22 would mean, I think, at least two things. One

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1 is I don't think it's an act of God personally  
2 from what I've read, that was briefed before  
3 us. Casualty seems to be a little broader.  
4 We could get more briefing on that.

5 Another thing we could hear -- we  
6 haven't heard from the Zoning Administrator,  
7 how he came to that conclusion, you know,  
8 because we haven't had a hearing yet.

9 MEMBER LOUD: Madam Chair, I think  
10 I was not moved to a point of conviction by  
11 the pleadings, as to the definition of  
12 casualty. In addition to that, I don't  
13 necessarily see how if we do carry that issue  
14 forward to July 15, it will complicate in any  
15 way the hearing. I don't think there's a lot  
16 of disputed testimony about whether or not  
17 there was termite damage; it's just a question  
18 of do we interpret termite damage as being a  
19 casualty.

20 So I don't think it would  
21 necessarily prolong the hearing on July 15<sup>th</sup>.  
22 Again, I'm not -- I wasn't moved to a point of

1 conviction that the pleadings really went into  
2 the available case law on the question of  
3 casualty, and I'm very uncomfortable rendering  
4 a decision based on the Webster dictionary  
5 definition.

6 I don't know this for certain, but  
7 to me there have to be some insurance cases  
8 out there, somewhere that talk about casualty  
9 in a slightly more detailed and substantive  
10 manner than some of -- certainly than  
11 Webster's dictionary, and in some of the cases  
12 that were brought forth in the pleading.

13 So I'm a little uncomfortable  
14 making that decision. But I would -- I am  
15 open to listening to my colleagues on the  
16 Board, and seeing what others think.

17 MEMBER DETTMAN: Madam Chair, I'm  
18 in agreement with Board Member Loud. I think  
19 this is an issue that can't be resolved as a  
20 matter of law today. I think the information  
21 that we have before us doesn't quite get us  
22 there.

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1 I think we do need a little bit  
2 additional information. When you look to  
3 Webster's No. 6, I think it's obvious that we  
4 have something. We have a thing that has  
5 experienced a failure. But the latter part of  
6 that definition with respect to uncontrollable  
7 circumstance or of some other action, or some  
8 action actually says.

9 I'd be interested in getting some  
10 sort of filing prior to the July 15<sup>th</sup> hearing  
11 from both parties, in terms of their  
12 explanation as to was this uncontrollable or  
13 controllable.

14 CHAIR MILLER: I think that's a  
15 good point. So it's a consensus that we're  
16 not going to decide this as a matter of law at  
17 this point. Okay. I think that raises a good  
18 point about getting a little bit more  
19 information about casualty and Mr. Loud.

20 We have the Webster's dictionary,  
21 but that's not a lot to go on. I guess I'm  
22 not even clear whether it's termites per se or

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1       whether it depends when the damage occurred,  
2       if it was over by the time -- is that a factor  
3       in casualty, if you buy a property that's  
4       already been damaged, whether that's a factor.

5               So I think that that issue could  
6       be fleshed out a little bit better, for when  
7       we actually have to make the final decision in  
8       this case. So, okay. I don't think we're  
9       going to decide --

10              MEMBER JEFFRIES: Madam Chair, I  
11       do have a question. So what are the  
12       expectations as it relates to getting more  
13       information about the definition of casualty  
14       and so forth? I mean is it competing  
15       dictionary definitions or information from  
16       insurance companies? I mean what exactly do  
17       we suppose we're going to be getting?

18              CHAIR MILLER: Well, I think Mr.  
19       Loud said that he would think that there would  
20       be some case law out there on casualty that we  
21       haven't gotten, particularly in the insurance  
22       field, if there's something that's helpful.

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1 I would also anticipate that the  
2 Zoning Administrator would have something to  
3 say on that issue at the hearing and --

4 MEMBER JEFFRIES: So we are asking  
5 the Zoning Administrator to step up and  
6 provide --

7 CHAIR MILLER: Yes. I mean but I  
8 think that that's normal, because he would be  
9 defending his decision in any event. So one  
10 of his grounds for his decision was that the  
11 termite damage didn't comply with 2001.6. So  
12 I would expect that he would testify as to why  
13 he came to that conclusion.

14 MEMBER JEFFRIES: I'm just hoping  
15 that we can give as much direction as  
16 possible, and not keep this open-ended in  
17 terms of, you know, those who are listening to  
18 us at the hearing, that we don't move far  
19 afield and we can get this as narrow as  
20 possible. That's all.

21 So I'm just, you know, the  
22 universe of places to get this definition. I

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1 just, that we don't get enveloped with lots of  
2 information about casualty.

3 I mean there's a few places that  
4 we can get it from, because it just seems that  
5 this could really, you know, just run all  
6 over. I'm just concerned about that.

7 So I mean but absolutely. I mean  
8 the Administrator, the Zoning Administrator  
9 should give an opinion. Maybe there's case  
10 law. I mean I don't know that there's any  
11 other definitions. But my hope is that we  
12 could in general try to keep this hearing as  
13 narrow as possible.

14 Maybe it's not possible, but you  
15 know, that's the way I'd like to go.

16 MEMBER OATES WALKER: Madam Chair,  
17 I would also suggest that any briefing that we  
18 receive on casualty encompass references to  
19 act of God in other sections of the  
20 regulations. There are other sections,  
21 subsections in this particular section 2001  
22 that relate to act of God, and also refer to

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1 fire, collapse, explosion.

2 So it would be interesting to hear  
3 opinions on whether we can look to those other  
4 provisions, to try to discern the meaning of  
5 casualty in 2001.6.

6 CHAIR MILLER: I think I would ask  
7 for like a clarification from the Appellant,  
8 whether Appellant is characterizing the damage  
9 as an act of God or just a casualty, because  
10 I think there seemed to be an indication that  
11 the Appellant was speaking to casualty. I  
12 think it's either/or, casualty or act of God.

13 So that probably would be helpful  
14 to the parties if he wasn't -- if they're not  
15 talking about act of God, they wouldn't have  
16 to brief act of God too much. So but anyway  
17 --

18 MEMBER JEFFRIES: All right.  
19 We're just really dealing -- well okay,  
20 because as a subset of casualty, it could be  
21 an act of God. I mean if we took just looking  
22 at act of God in absolute terms, I mean do we

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1 understand what that means, without looking  
2 for anyone to walk us through that.

3 So I just want to make certain  
4 that we just narrow what kind of review we're  
5 going to be getting here, because you know, so  
6 --

7 CHAIR MILLER: I think you're  
8 saying the same thing I'm saying really, in  
9 that if they're not really talking act of God,  
10 that they should just draw on casualty if  
11 that's what they're talking about.

12 MEMBER JEFFRIES: I think that, I  
13 mean act of God is a subset of part of the  
14 definition of casualty, and I guess I'm just  
15 again trying to get us to sort of narrow this  
16 in terms of what our questions are here.

17 I think that Commissioner Walker,  
18 Board Member Walker, you know, that was good  
19 in terms of really, you know, leading people  
20 with bread crumbs to just exactly what we're  
21 trying to get to.

22 CHAIR MILLER: All right. Maybe

1 it's a phrase that goes together, in any  
2 event, that just needs to be addressed,  
3 because that's what we'll be evaluating, you  
4 know, a lot of the evidence with respect to.

5 So I guess the bottom line is to  
6 if the parties can see if there's any more  
7 authority on that, and then to clarify whether  
8 or not that's affected by whether it's  
9 controllable or not controllable, or any other  
10 facts or issues that the Board would need to  
11 decide.

12 Good faith, foreseeability and any  
13 of those other issues. That's what I  
14 anticipate hearing about at the hearing, okay.  
15 Anything else that the Board -- well, we can  
16 talk about the motions for summary judgment as  
17 well.

18 In general, we found that there  
19 were a lot of legal issues in dispute, and  
20 that none of these questions could be resolved  
21 as a matter of law. I think that the  
22 briefings, though, have focused the issues.

1 Anything else anyone wants to say on this?

2 MEMBER JEFFRIES: I just want to  
3 say, I mean from what I said, you know. I'm  
4 open, but I don't see how termite damage is an  
5 act of God in terms of that. So I just want  
6 to put that on the record. I can perhaps see  
7 some additional information, if someone's  
8 looking to make that claim. But I just want  
9 to give everyone in earshot that, you know,  
10 from where I sit, I don't see how that can be.

11 So but if someone wants to make  
12 that case, I'm open to hearing it. But I just  
13 want to make certain that they understand at  
14 least that's how I'm looking at this. I don't  
15 see an act of God here.

16 CHAIR MILLER: I concur with you,  
17 and I just think -- I think the case law on  
18 that was very compelling, as well as Black's  
19 Law Dictionary, when I looked at that. I  
20 think the question now comes to, you know,  
21 what's a casualty and to me, is it an issue  
22 whether or not it's controllable.

1 Well, I'm under the impression  
2 that it is controllable by Terminix or  
3 whatever.

4 MEMBER JEFFRIES: There's an  
5 industry based on it, so that's how to deal  
6 with it.

7 CHAIR MILLER: I'm not sure what -  
8 - you know. But maybe we need more facts on  
9 the record to make a definitive statement, and  
10 also, you know, the issue of well, what if  
11 it's done before you even buy the property; is  
12 that considered a casualty.

13 So I guess we can at least let the  
14 parties know some of our concerns or where  
15 we're at this point.

16 MEMBER JEFFRIES: They can craft  
17 their responses accordingly and not --

18 CHAIR MILLER: Right, and focus on  
19 that.

20 MEMBER JEFFRIES: Yes.

21 CHAIR MILLER: And again, I  
22 probably did say this, but I certainly am

1 interested in seeing, hearing about what  
2 exactly the permits authorized and then the  
3 questions of vesting, and then we do get into  
4 fraud and intent and those issues with  
5 estoppel and laches. Okay. Anything else?

6 (No response.)

7 CHAIR MILLER: All right. I think  
8 what we should do is vote on the motions.  
9 Maybe we can do it all together. I think we  
10 can, the motion to dismiss and the motion for  
11 summary judgment.

12 The motion to dismiss because it  
13 can't be decided as a matter of law.  
14 Somewhere there's a claim upon which relief  
15 can be granted, and the motion for summary  
16 judgment denied because there are clearly  
17 material issues in dispute. Is there a  
18 second?

19 MEMBER LOUD: Second, Madam Chair.

20 CHAIR MILLER: Further  
21 deliberation?

22 (No response.)

1 CHAIR MILLER: All those in favor  
2 say aye.

3 (Chorus of ayes.)

4 CHAIR MILLER: All those opposed?

5 (No response.)

6 CHAIR MILLER: All those  
7 abstaining?

8 (No response.)

9 CHAIR MILLER: Would you call the  
10 vote please?

11 MR. MOY: Yes, Madam Chair. Staff  
12 would record the vote as 5 to 0 to 0 on a  
13 motion from the Chair, Ms. Miller, I believe,  
14 to deny both motions, a motion to dismiss and  
15 a motion for summary judgment. Seconded by  
16 Mr. Loud. Also in support of the motion Ms.  
17 Walker, Mr. Dettman and Mr. Jeffries.

18 CHAIR MILLER: Okay. When we  
19 began deliberations, I mentioned there was a  
20 motion that was filed and we were going to set  
21 a schedule for briefing prior to the July 15<sup>th</sup>  
22 hearing.

1 I think that we should add to the  
2 briefing addressing the concerns that were  
3 raised by Board members, in some manner the  
4 parties addressing the question of casualty  
5 and the issues that relate to that prior to  
6 the hearing.

7 (Pause.)

8 CHAIR MILLER: You know, thinking  
9 aloud, I'm just wondering the Appellants have  
10 filed this Notice to Amend, and so what we  
11 would do would be a response to that.

12 But we talked about Appellants  
13 perhaps clarifying whether they're only  
14 addressing casualty or act of God in addition,  
15 so that perhaps the parties could be more  
16 focused and not go into the whole case on acts  
17 of God, if we're only talking about casualty.

18 So I'm just wondering if they  
19 should go first on that issue, and then the  
20 intervenors and DCRA can respond.

21 (Pause.)

22 CHAIR MILLER: Okay. I think

1 that's fair. I want to make sure what's fair,  
2 but what I'm saying is they already have a  
3 pleading to which the intervenors and DCRA are  
4 going to be responding to, and we'll set a  
5 date for that, and that's their Notice to  
6 Amend.

7 I was just suggesting that perhaps  
8 they go first in identifying whether they're  
9 talking about a casualty and an act of God or  
10 just a casualty, and then addressing the  
11 issues related to casualty that the Board  
12 should consider, and then DCRA and intervenors  
13 could respond.

14 Then we could do a reply that  
15 would respond to both the opposition or  
16 whatever position of DCRA and intervenors on  
17 the motion to amend and on the casualty issue.  
18 Does that sound right? Okay.

19 I wonder if there's some dates so  
20 there's enough time. So what it would mean is  
21 we're going to have one pleading filed by  
22 Appellant. We can just set another date for

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1       them to file a pleading on the casualty  
2       question. Then we would set a response date  
3       to both the amendment question and the  
4       casualty issue, and then a reply date if we  
5       have time for that in the schedule. Do we  
6       have time for that? Otherwise, we just do the  
7       oppositions or responses.

8                   MR. MOY: Yes. I'm trying to sort  
9       out whether or not those are four separate  
10      filing dates, or can they be combined into two  
11      separate dates.

12                   CHAIR MILLER: They're two dates  
13      I'd set.

14                   MR. MOY: Okay, great.

15                   CHAIR MILLER: This motion, one  
16      date -- we already have this notice that's  
17      been filed. We have one date. Appellant  
18      files casualty briefing. A second date --  
19      three dates, sorry. Second date, intervenor  
20      and DCRA respond to the notice and the  
21      casualty arguments. Third date, Appellant  
22      files a reply to both of those, if we have

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1 time in the schedule for a reply.

2 That just kind of just goes with  
3 what the court does. If we don't have time  
4 in the schedule, I think we could stop with  
5 the opposition. I think it's in our  
6 discretion whether we want to have another  
7 date.

8 MR. MOY: Okay. I think let's try  
9 this for size. Working backwards from July  
10 15<sup>th</sup>, I would suggest using the Monday  
11 deadline. So perhaps working backwards, the  
12 third filing or submission would be July the  
13 7<sup>th</sup>.

14 The second submission deadline  
15 could be July 23<sup>rd</sup>. That gives me two weeks  
16 interim, and rather June 23<sup>rd</sup>. Thank you, Mr.  
17 Dettman. The other date being either June 9<sup>th</sup>  
18 -- well, let's say June 9<sup>th</sup>, if that's not too  
19 soon, which would be next Monday.

20 If that's too soon, we can go to  
21 June 13<sup>th</sup>, the Friday, to allow a little bit  
22 more time, and still be able to keep the other

1 two dates that I've just suggested.

2 So again, the first date could be  
3 Friday, June 13<sup>th</sup>. The second date, June 23<sup>d</sup>,  
4 which is a Monday, and the third submission  
5 date, Monday, June -- or rather July 7<sup>th</sup>. How  
6 does that sound?

7 CHAIR MILLER: That sounds okay to  
8 me. I think we could go out of deliberation  
9 at this point if the parties are here and have  
10 any concerns about those dates. I see DCRA is  
11 here and actually the Appellant's here.

12 I just would ask if, you know, if  
13 you have any concerns. I don't think the  
14 intervenor is here, though. Intervenor is  
15 here? Okay. These are just scheduling dates.  
16 I think that if you have a concern about the  
17 dates, let us know.

18 Do you want to introduce  
19 yourselves for the record briefly?

20 MS. BOLLING: Assistant Attorney  
21 General Melinda Bolling for DCRA.

22 MS. MADDOX-LOVENE: Assistant

1 Attorney T. Gail Maddox-Lovene for DCRA.

2 MR. GREEN: Assistant Attorney  
3 General Matthew J. Green, Jr. for DCRA.

4 MR. LEVOYNE: John Levoyne,  
5 intervening party.

6 MR. BROWN: Patrick Brown for the  
7 Appellant.

8 CHAIR MILLER: Does anybody have  
9 any concerns with the dates, or do you need us  
10 to reiterate them?

11 MS. BOLLING: DCRA has no problem  
12 with the dates, Madam Chair.

13 CHAIR MILLER: Thank you.

14 MR. LEVOYNE: I'm wondering if it  
15 would be possible to confer with the other  
16 intervenors, as they are unavailable at this  
17 time, if we could put off the decision for  
18 these dates.

19 CHAIR MILLER: We don't really  
20 operate that way. Unfortunately, all our  
21 decisions are made on the public record. So  
22 and it doesn't depend on anybody's appearance.

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1 So I'd say it just depends on if for some  
2 reason you felt that there wasn't sufficient  
3 time or something like that. You know what  
4 I'm saying?

5 Your date was, the intervenor's  
6 date, I understand, and the DCRA date would be  
7 the 23<sup>rd</sup>, is that correct, to respond to the  
8 notice that's already been filed. But also to  
9 whatever the Appellant may file, and I think  
10 the issue would be, you know, if it's filed on  
11 the 13<sup>th</sup>, do you have enough time? Otherwise,  
12 Mr. Moy had talked about the 9<sup>th</sup>, and then  
13 that question was well then does the Appellant  
14 have enough time.

15 If you're not sure yet, I can ask  
16 the Appellant their opinion on the 13<sup>th</sup> versus  
17 the 9<sup>th</sup>, which affects your time to respond.  
18 Okay. Do you have --

19 MR. BROWN: My preference is for  
20 the 13<sup>th</sup>, just to give a little more time.

21 CHAIR MILLER: Okay.

22 (Pause.)

1 CHAIR MILLER: You know Mr. Moy,  
2 actually there seems to be a lot of space  
3 between the 23<sup>rd</sup> and 7<sup>th</sup>, all right. Maybe we  
4 could change that date. Oh wait, I'm sorry.

5 I think the question is between  
6 June 13<sup>th</sup> and the 23<sup>rd</sup>, there's only ten days,  
7 right? If we extended that time for the  
8 intervenor, I think there needs to be less  
9 time for the reply, for the last pleading. So  
10 maybe we can do that.

11 Where would we go if we gave the  
12 intervenor a little bit more time, instead of  
13 the 23<sup>rd</sup>, that they would have a longer time.

14 MR. MOY: Well, in that case,  
15 instead of Friday the 13<sup>th</sup> --

16 CHAIR MILLER: If we kept the 13<sup>th</sup>  
17 and we changed the --

18 MR. MOY: Oh, you want to keep the  
19 13<sup>th</sup>.

20 CHAIR MILLER: Yes. If we changed  
21 the 23<sup>rd</sup> date, made that a little later.

22 MR. MOY: Okay. So June 23<sup>rd</sup>. If

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1 you'd like, we can extend that to the end of  
2 the week, of Friday, the 27<sup>th</sup>.

3 CHAIR MILLER: Uh-huh, right.  
4 That's okay. Okay, all right. I think that's  
5 good. All right. Then if there's nothing  
6 else, we will see you on the 15<sup>th</sup>. Want to  
7 just reiterate the dates one more time so  
8 everyone's clear?

9 MR. MOY: Yes ma'am. The first  
10 submission day is Friday, June 13<sup>th</sup>. The  
11 second submission date is Friday, June 27<sup>th</sup>,  
12 and the last submission date is Monday, July  
13 7<sup>th</sup>.

14 CHAIR MILLER: Okay, good. Okay.  
15 Thank you very much.

16 MR. GREEN: Thank you, Madam  
17 Chairman.

18 Application No. 17759

19 MR. MOY: The next and last case  
20 for decision, Madam Chair, I'll go ahead with  
21 the reading. It's Application No. 17759.  
22 This is of the Protestant Episcopal Cathedral

1 Foundation of the District of Columbia,  
2 pursuant to 11 DCMR 3104.1 for a special  
3 exception to permit additions to an existing  
4 private school under Section 206 in the R-1-B  
5 and R-5-D districts, at premises 3609 Woodley  
6 Road, N.W. That's in Square 1922, Lot 17.

7 On May 13<sup>th</sup>, 2008, the Board  
8 completed public testimony, closed the record  
9 and scheduled this decision on June 3<sup>rd</sup>. The  
10 Board requested additional information to  
11 address questions or issues from the hearing,  
12 to supplement the record.

13 Staff is prepared to go over each  
14 of these, if the Board desires. Otherwise,  
15 staff will just say that the post-hearing  
16 documents have been filed.

17 First is from the Applicant. This  
18 is identified in the case folders as Exhibit  
19 32. The second filing, which is staff would  
20 identify for the board as a preliminary  
21 matter, is a filing from Ms. Mitrovitch, a  
22 letter dated May 30, 2008, identified in the

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1 case folders as Exhibit 33.

2 The third and final filing is from  
3 -- or rather the next filing is from the ANC,  
4 dated May 30, 2008, identified as Exhibit 34.

5 The last filing, which is from the  
6 Applicant, identified as Exhibit 35, also a  
7 preliminary because it is Applicant's response  
8 to both the ANC's filing and Ms. Mitrovich's  
9 filing of May 30<sup>th</sup>. The Board is to act on  
10 the merits of the special exception relief.  
11 That completes the staff's briefing, Madam  
12 Chair.

13 CHAIR MILLER: Thank you, Mr. Moy.  
14 Why don't we deal with the preliminary  
15 matters? As I understand it, we received two  
16 documents that were not necessarily authorized  
17 to be filed, and that we closed the record at  
18 the end of the hearing except for certain  
19 specified documents. These weren't specified.

20 The first one is a letter dated  
21 May 29<sup>th</sup>, 2008 from Millica (ph) Mitrovitch,  
22 and it addresses the issue about the impact of

1 the addition on her property.

2 Then the second letter is dated  
3 June 2<sup>nd</sup>, 2008 from Holland and Knight, on  
4 behalf of the Applicant, which is a response  
5 to that letter as well as arguments that were  
6 submitted in ANC 3C's filing.

7 I would suggest that we accept  
8 these documents into the record, that they do  
9 meet the standards of good cause and no  
10 prejudice to any party. The letter from Ms.  
11 Mitrovitch addresses an issue that the Board  
12 was concerned about, and was under the  
13 understanding that the parties would -- not  
14 the parties, because she's not a party, but  
15 that this individual and the Applicant would  
16 be addressing outside of the hearing as  
17 something to work out.

18 The letter from Holland and Knight  
19 responds to that, and I don't think raises any  
20 new evidence or anything like that with  
21 respect to the ANC's legal arguments. So I  
22 would recommend that we waive our rules and

1 accept these into the record.

2 (No response.)

3 CHAIR MILLER: Okay. I see that  
4 the consensus of the Board is to do that, so  
5 they are accepted and we will consider them in  
6 our deliberations.

7 Okay. Moving to the merits of  
8 this application, it's an application for a  
9 special exception under Section 206, for an  
10 existing school, to renovate and construct  
11 additions. These additions include an  
12 additional floor to Scott Hall and portions of  
13 Procter Hall; a new entry pavilion and other  
14 minor alterations in addition to Procter Hall  
15 Pavilion.

16 Also in this application, the  
17 Applicant is seeking to increase its student  
18 enrollment to 546 to 585, and staff from 105  
19 to 150 full time equivalents.

20 So in evaluating this application,  
21 we need to look at 206, which states that  
22 private schools shall be located so that it's

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1 not likely to become objectionable to  
2 adjoining or nearby property, because of  
3 noise, traffic, number of students or  
4 otherwise objectionable conditions.

5 This school is located on the  
6 Cathedral Close with two other schools and has  
7 been subject to BZA orders since 1964. So  
8 what we're looking at is in essence whether  
9 the additions requested and the increase in  
10 student enrollment and faculty would lead to  
11 any adverse impacts, and if so, what  
12 conditions might be necessary to mitigate  
13 against these adverse impacts.

14 I don't think that there is much  
15 concern about the application in general. But  
16 there is about the conditions. The ANC has  
17 basically said that they are not opposed to  
18 the application, provided that the Board  
19 adopts their conditions.

20 So I think that the conditions are  
21 what's actually key to our deliberations. I  
22 think that we should divide it up between

1 consideration of the addition and then  
2 consideration of the increase in student and  
3 faculty numbers, because those go to different  
4 issues.

5 So when we're looking at the  
6 addition at the hearing, we were concerned  
7 about whether there might be an adverse impact  
8 on a neighbor across the street, which is the  
9 woman that we just referred, Mitrovitch, who  
10 submitted her letter that we just adopted into  
11 the record.

12 So I think that we should look at  
13 her letter and concerns, and see if we want to  
14 add any conditions that address them, and look  
15 at the submission by Holland and Knight. I  
16 think that's our Exhibit No. 35, which  
17 proposes a condition to address her concern,  
18 and see if NCS' condition is adequate or if we  
19 want to recommend any others.

20 We also have conditions  
21 recommended by Office of Planning and the ANC,  
22 we can look to see if any of those touch upon

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1 this issue. But I think that the two letters  
2 go most directly to those impacts.

3 (Pause.)

4 CHAIR MILLER: If you recall, the  
5 issue is that this house is across the street  
6 from where the addition is going to occur, and  
7 the neighbor was concerned about privacy and  
8 light into her windows, and also what she  
9 would be seeing across the street, I think,  
10 with respect to like mechanical equipment.

11 So NCS has proposed a condition  
12 that states as follows: "NCS shall install  
13 interior window coverings (shades, draperies  
14 or the equivalent) on the new windows on the  
15 north side of Procter Hall that faces Lowell  
16 Street, N.W.

17 "Additionally, NCS shall enhance  
18 landscaping or install other screening  
19 elements in the Lowell Street side of the  
20 project, subject to HPRB approval, to screen  
21 mechanical equipment."

22 Ms. Mitrovitch has said that one,

1 she wanted NCS to provide coverings for the  
2 new Procter Hall windows that would occlude  
3 light and sight lines into her house; two,  
4 that the above-mentioned mechanical box was  
5 likely to become somewhat large and that it  
6 would be hidden from sight by landscaping and  
7 a fence.

8 Three, that landscaping would be  
9 provided by NCS. There would be Evergreen  
10 tall enough to screen the lower portion of the  
11 new windows up to the second set of windows.  
12 Also, that NCS would ask the city for  
13 additional planting along the Lowell Street  
14 sidewalk strip and generally would work with  
15 me on reasonable suggestions for the Lowell  
16 Street planting plan.

17 Four, that the gate on the trash  
18 structure would be changed to something that  
19 completely occluded the view of the trash from  
20 the street. Five, she wants assurance that  
21 lights in Procter Hall would not be on at  
22 night.

1                   Okay. So I think these are what  
2 we need to evaluate in front of us. Based on  
3 the evidence that was in the record before us,  
4 as to what we think adverse impacts might  
5 arise as a result of this addition, and then  
6 what conditions would mitigate them and what's  
7 within our jurisdiction.

8                   Okay. I think that it's a good  
9 condition, in my view, to say that NCS shall  
10 install interior window coverings (shades,  
11 draperies or the equivalent) on the new  
12 windows on the north side of Procter Hall that  
13 faces Lowell Street, N.W. I think that's a  
14 good condition, you know, in and of itself.  
15 It's very specific and it addresses  
16 specifically the problem of privacy and light.  
17 Do you all agree with that?

18                   MEMBER OATES WALKER: I agree,  
19 Madam Chair, and I question if it's the case  
20 that there's a condition requiring the  
21 installation of some window coverings, that  
22 there's a need for the assurance that lights

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1 would not be on at Procter Hall in the  
2 evening.

3 It seems to me that if there are  
4 coverings to prevent light from shining on the  
5 neighbor's home, that it would be unnecessary  
6 to say that they not be able to use the lights  
7 at night.

8 CHAIR MILLER: Yes, I would agree,  
9 and I don't remember hearing any testimony on  
10 that. It's, you know, what time that would  
11 occur or anything like that. So I would be in  
12 agreement.

13 I'm not sure that I remember too  
14 much about the mechanical equipment screening,  
15 but NCS has agreed to screen it, and I think  
16 that's a good idea. I mean I think it's  
17 directly across the street. So that I think  
18 the question is, is NCS' phrasing the right  
19 condition, or is there something we need to do  
20 to change it?

21 I think one of the differences is  
22 Ms. Mitrovitch talks about a fence and NCS

1 doesn't, and I didn't hear enough testimony to  
2 be convinced that a fence is necessary.

3 So I think I would be in favor of  
4 giving NCS the flexibility for landscaping and  
5 other elements. But maybe it could be phrased  
6 differently. I don't know. How do you see  
7 it?

8 MEMBER OATES WALKER: No, I agree.  
9 I think that NCS' condition includes a  
10 reference to "other screening elements." They  
11 may be contemplating a fence or something  
12 else, but I agree that they should have the  
13 flexibility to come up with the best solution.

14 CHAIR MILLER: Plus they also  
15 include "subject to HPRB approval." Okay. So  
16 why don't we make that -- is that okay with  
17 you, Mr. Dettman? Okay. So I want to make  
18 the second condition that NCS shall enhance  
19 the landscaping or install other screening  
20 elements on the Lowell Street side of the  
21 property, subject to HPRB approval, to screen  
22 mechanical equipment.

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1 All right. Ms. Mitrovitch also  
2 suggests that NCS provide Evergreen tall  
3 enough to screen the lower portion of the new  
4 windows. Also, that NCS would ask the city  
5 for additional planting along the Lowell  
6 Street sidewalk strip and generally would work  
7 with her on reasonable suggestions for the  
8 Lowell Street planting plan.

9 Okay. I would say certainly with  
10 respect to the second part of this, that we  
11 can't require NCS -- we can't require the city  
12 to do the additional planting. So that I  
13 don't think it's an appropriate condition for  
14 us to require NCS to ask the city for  
15 something, and to work with her. It's just  
16 too unenforceable, I think this whole thing.

17 Also, I would say that I don't  
18 recall hearing about adverse conditions  
19 related to the lower portion of the windows.  
20 Do you?

21 MEMBER OATES WALKER: I think the  
22 neighbor was concerned about there being

1 direct sight lines into her home. So I think  
2 this condition may be a reference to that  
3 concern. I'm guessing.

4 CHAIR MILLER: I see it as a  
5 beautification thing, that she's across the  
6 street and she wants landscaping to be in  
7 front of the walls that don't have the  
8 windows?

9 MEMBER OATES WALKER: Well, it  
10 says that she wants landscaping to screen the  
11 lower portion of the new windows, up to the  
12 second set of windows. So I think this has to  
13 do with the sight line into her home.

14 CHAIR MILLER: Well, do you think  
15 it's something we need to add, if they have  
16 the blinds already?

17 (Pause.)

18 CHAIR MILLER: All right. We're  
19 looking at the pictures. But I mean so I  
20 think that may be going too far, to require  
21 them to cover up all the windows on the first  
22 level.

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1           It's not required on the other  
2 school windows. I mean I don't know. We  
3 didn't really hear any -- did we hear  
4 testimony on that, that those would be  
5 necessary? I don't remember hearing testimony  
6 about her concern of privacy, people looking  
7 from inside out. On the higher levels, yes.

8           MEMBER OATES WALKER: I think  
9 that's right.

10           MEMBER DETTMAN: Madam Chair, I  
11 don't remember any testimony specific to the  
12 lower portion of the windows on Procter.  
13 However, I do understand the concern with  
14 respect to privacy across the street.

15           Since we're sort of keeping the  
16 language of this condition a little bit  
17 general with respect to the landscaping, is it  
18 possible that we could just sort of tack on --  
19 I think what we're considering right now is  
20 enhanced landscaping or install other  
21 screening elements on the Lowell Street side  
22 of the project, subject to HPRB, to screen

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1 mechanical equipment and increase -- address  
2 other privacy concerns, or some sort of  
3 language that deals with that.

4 CHAIR MILLER: Maybe you can show  
5 me where this is, because I think that, you  
6 know, if it's reasonable, I'm certainly open  
7 to it. But I think that the person who is  
8 proposing a condition needs to really show  
9 what the adverse impact is that we need to  
10 mitigate, and I'm not seeing it. But do you  
11 want to show me?

12 (Pause.)

13 CHAIR MILLER: I guess I would be  
14 opposed to this motion, because I don't think  
15 that the case was made as to why the lower  
16 portion had to be screened, and I don't know.  
17 I don't know what the impact is on the  
18 children inside, whether all these Evergreens  
19 are going to block all their light and whether  
20 that's a good idea. So I just wouldn't be --  
21 I wouldn't be in favor of it.

22 MEMBER OATES WALKER: I agree,

1 Madam Chair. I think your recollection about  
2 the testimony at the hearing is correct. The  
3 neighbor expressed concerns about the sight  
4 lines from the windows at the top of the  
5 structure, and not about the lower windows.  
6 So I think that this condition would be  
7 excessive.

8 CHAIR MILLER: Okay. I think that  
9 there is one more request. Four, that the  
10 gate on the trash structure would be changed  
11 to something that completely occluded the view  
12 of the trash from the street.

13 MEMBER OATES WALKER: Was it Mr.  
14 Dettman's suggestion about adding trash to the  
15 last condition is a good one? So it would  
16 read "Additionally, NCS shall enhance  
17 landscaping or install other screening  
18 elements on the Lowell Street side of the  
19 project, subject to HPRB approval, to screen  
20 mechanical equipment and trash."

21 CHAIR MILLER: Okay. I think  
22 that's a good idea too. I mean even though I

1 don't specifically remember this, I think it's  
2 something that is reasonable and obvious as to  
3 why it should be screened, and I can't imagine  
4 any adverse impacts on the flip side.

5 So okay. I think that covers it  
6 for conditions relating to impact on the  
7 neighboring property there, does it not?  
8 Okay. So I think that we should get in front  
9 of us proposed conditions, the ANC's proposed  
10 conditions and Office of Planning's proposed  
11 conditions, to look at the rest of the  
12 conditions.

13 MEMBER DETTMAN: Madam Chair,  
14 before moving on, I just want to just bring up  
15 one point. I was just looking at the  
16 collection of e-mails that was included in  
17 Exhibit No. 33. This is specific to the trash  
18 enclosure.

19 It says "We discussed the fact  
20 that the current gate on the trash structure  
21 is an open wrought iron fence. You agree that  
22 the fence/gate should be a completely closed

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1 structure to bar views from Lowell Street of  
2 the overflowing trash cans."

3 I'm just wondering, the way we  
4 just crafted the last condition sort of  
5 addresses this issue with the landscaping  
6 solution, and I'm just wondering if what we  
7 really should be exploring is -- install other  
8 screening elements.

9 Okay. I think the way that  
10 condition reads, I neglected to see that we  
11 also included other screening elements,  
12 landscaping and other screening elements. So  
13 I think that's fine.

14 CHAIR MILLER: Okay, good point.

15 (Pause.)

16 CHAIR MILLER: Okay. I think we  
17 can start with NCS' proposed conditions, and  
18 if we're aware that Office of Planning or the  
19 ANC has a different condition that goes to the  
20 same point, we can consider it at that time.  
21 If we're not aware of it, then we can, you  
22 know, just then go on to Office of Planning

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1 and look at them, and then the ANC.

2 Okay. The first condition set  
3 forth by NCS is number of students, faculty  
4 and staff. "NCS shall establish a maximum  
5 student enrollment of 585 students. NCS may  
6 employ no more than 150 full time equivalent  
7 faculty and staff."

8 This represents certainly what  
9 they want to do in their application, with  
10 respect to increasing student enrollment and  
11 staff. There is no objection to those  
12 numbers.

13 Of course, the ANC has no  
14 objection based on the conditions. I'm not  
15 going to say that over and over again, but  
16 that's a standing, I think, position of the  
17 ANC.

18 Presently, NCS has 145 FTEs,  
19 according to my records, and 577 students. So  
20 it's actually not a large increase at all from  
21 the status quo. It's an increase from the  
22 numbers in the previous orders. So it

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1 certainly brings them into compliance with  
2 those earlier numbers, which I think was  
3 stated as objectives or whatever. But it sets  
4 a cap on these numbers.

5 I guess my position is that the  
6 caps, you know, they're a good idea because  
7 they set parameters, and then we can evaluate  
8 traffic and parking, you know, based on them.  
9 But I think in general, the school has been  
10 operating with those numbers without adverse  
11 impacts on the community.

12 We'll get to, you know, parking  
13 and traffic issues. But I think in general  
14 that's my understanding. We also did discuss  
15 the question of at the hearing, FTEs versus a  
16 specific number as it relates, I think, to the  
17 parking spaces was the concern.

18 If I'm not mistaken, I think the  
19 number was something like a maximum of 152  
20 persons on the property at one time. Is that  
21 your recollection? Okay. Then we'll get into  
22 parking, and I think that they had enough

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1 parking for those numbers.

2 So even though the Board has been  
3 pretty much getting away from FTEs, I think  
4 that in this situation, we should accept that  
5 number. The ANC did not object to it. We use  
6 that in St. Alban's order, which also is on  
7 the close. So I think it would be good to be  
8 consistent with that anyway. Any concerns  
9 about this first condition?

10 MEMBER OATES WALKER: Are you  
11 referring to number of students, faculty and  
12 staff, that particular condition, or are you  
13 referring to the condition related to parking  
14 spaces?

15 CHAIR MILLER: Just number one,  
16 faculty and staff.

17 MEMBER OATES WALKER: I think  
18 that's fine.

19 CHAIR MILLER: Okay.

20 MEMBER DETTMAN: Just a couple of  
21 things. I'm looking at their language, the  
22 exact language that was submitted by NCS, and

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1 in parentheses it has at the end "NCS may  
2 increase the number of students, faculty and  
3 staff only with approval of the BZA." Are we  
4 going to be carrying that forward?

5 CHAIR MILLER: Okay. I think  
6 you're looking at the wrong condition.

7 MEMBER DETTMAN: Oh.

8 CHAIR MILLER: They submitted, if  
9 I'm not mistaken, they submitted conditions  
10 originally at the hearing, but then they went  
11 back to the drawing board and submitted a  
12 proposed order with conditions, Exhibit No.  
13 32.

14 MEMBER DETTMAN: I have it, thank  
15 you. The only thing is I was looking at DCOP  
16 as well as ANC's proposed conditions, and  
17 there's a requirement for an annual report to  
18 the ANC with respect to the student and staff  
19 levels? I didn't know if that was something  
20 that we wanted to take up. I can read it from  
21 the DCOP report if you'd like.

22 CHAIR MILLER: I think that's a

1 good idea. I think that that's something that  
2 we're going to get to further on, because NCS  
3 has a proposed condition related to the  
4 liaison committee, their reports and stuff.  
5 Okay. So hold that thought though, to make  
6 sure that, you know, we get that one right.

7 All right. Two, parking spaces  
8 for faculty, staff and students. "NCS will  
9 require faculty, staff and students who drive  
10 to school and who do not have valid Zone 3  
11 parking permits to park on the Close in  
12 allocated off-street parking.

13 "The Foundation will provide 176  
14 parking spaces on the Cathedral Close and the  
15 Woodley North Campus for use by NCS faculty,  
16 staff, students and visitors."

17 Okay. Taking the second sentence  
18 first, 176 parking spaces on the Close and  
19 Woodley North Campus. That meets the  
20 requirements of the parking regulations set  
21 forth in 2100. That exceeds it actually.  
22 2101.1 has parking requirements for schools,

1 two spaces for every three faculty or staff,  
2 and then 100 spaces -- well, one for every ten  
3 spaces in the largest assembly space, and that  
4 would be 100 here.

5           Anyway, I believe that their  
6 requirement -- where is it, it's like 140,  
7 something like that, and they have 176 spaces.  
8 Yes. So when you calculate their parking  
9 requirement on FTEs and assembly space, their  
10 176 spaces exceeds the number that they're  
11 required to have.

12           So I don't think that that's an  
13 issue here, 176 not being enough. Okay, but  
14 I do think it is an issue about students who  
15 drive to school who don't have valid Zone 3  
16 parking permits, having to park on the Close.

17           I think that the ANC is concerned  
18 that all students who drive to school,  
19 regardless of whether they have a valid Zone  
20 3 parking permit, should be required to park  
21 in the close.

22           MEMBER OATES WALKER: I will point

1 out that the Office of Planning also made that  
2 recommendation.

3 CHAIR MILLER: Okay. Now we  
4 explored that a little bit at the hearing, I  
5 think. My memory was that there weren't that  
6 many students who fell into the category of  
7 having this Zone 3 parking permit.

8 It's also my recollection that  
9 there was enough -- since it was only a few,  
10 and there was more than ample parking, that  
11 the Close could accommodate those students.  
12 So -- well, go ahead.

13 MEMBER OATES WALKER: We didn't  
14 hear testimony about a very small number. I  
15 believe it was either three or four students  
16 this school year who had valid residential  
17 parking permits.

18 This particular condition, though,  
19 relates to not only students but also faculty  
20 and staff. I don't know if we heard the  
21 number of students, faculty and staff who have  
22 valid zone parking permits.

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1                   CHAIR MILLER: Right, because I  
2 remember that to about four students or so.  
3 Then I think we have to -- so we're not sure  
4 about the impact of parking on the Close then,  
5 if we were to require all of them to park on  
6 the -- the faculty and staff to park in the  
7 Close.

8                   I think we have to weigh that  
9 against the testimony and evidence we have  
10 about available parking on the streets, which  
11 would go to adverse impact on the neighbors.  
12 What I remember is that Mr. Slade found that  
13 there were plenty of parking spaces available  
14 when he did his studies, that the headmistress  
15 had no complaints about parking.

16                   But the ANC had concerns about  
17 parking on the streets that were kind of  
18 general, you know, that there's a problem. We  
19 didn't have a lot of people come down here, if  
20 any, to complain about parking.

21                   I don't know. I would suggest  
22 that the students be required, perhaps, to

1 park in the Close, since it was only about  
2 four. I don't know. What do you think? We  
3 just don't know about the faculty and staff,  
4 I guess, at this point.

5 MEMBER OATES WALKER: Well, but  
6 we've made a decision about a reasonable  
7 number of full-time equivalent faculty and  
8 staff members.

9 CHAIR MILLER: And that the  
10 parking actually is ample to accommodate them.

11 MEMBER OATES WALKER: So my  
12 recommendation would be in Condition No. 2,  
13 that we just delete the phrase that references  
14 the Zone 3 parking permits. So that first  
15 sentence would read "NCS will require faculty,  
16 staff and students who drive to school to park  
17 on the Close in allocated off-street parking."

18 CHAIR MILLER: Okay, okay. Number  
19 three, parking management activities. "NCS  
20 shall continue to participate in PECF-  
21 sponsored parking demand management  
22 activities, designed to reduce parking demand

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1 amongst students, faculty and staff.

2 "These measures include  
3 encouraging the use of public transportation,  
4 making available reduced fare Metro passes,  
5 offering credits for bicycle commuters and  
6 other measures as may be provided by PECF from  
7 time to time such as remote parking and  
8 shuttle service between the Close and the  
9 nearby Metrorail station."

10 Fine with me. Is that fine with  
11 you all?

12 (Pause.)

13 CHAIR MILLER: Basically, you  
14 know, it reflects a commitment to take these  
15 actions, that are specific pretty much. Okay.

16 Parking policy and registration.  
17 "NCS shall continue to require faculty, staff  
18 and students who drive to school to register  
19 their vehicles with the school, and to display  
20 an identifying sticker on each vehicle that  
21 will facilitate compliance with the parking  
22 policy."

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1                   Oh, I don't know if I'm going to  
2                   read all this. Okay. "NCS will require each  
3                   parent to agree to the parking policy when  
4                   that parent signs each year's enrollment  
5                   contract. Individuals who violate the parking  
6                   policy will be subject to disciplinary action  
7                   by the school.

8                   "NCS shall continue its current  
9                   parking policy addendum established March  
10                  31<sup>st</sup>, 2008, as follows." Then the beginning  
11                  of this paragraphs shows, you know, how it's  
12                  going to enforce its parking policy, which I  
13                  think is good.

14                  Then it goes forward with these  
15                  bulleted policies, and these were, I guess,  
16                  put into effect March 31<sup>st</sup>, 2008, and we  
17                  discussed them at the hearing. You know, my  
18                  concern was that the school's been operating  
19                  for a long time. Why are they doing this now?

20                  But I think they're doing it now  
21                  because they have this application, and they  
22                  focused on these areas. I think the question

1 is, you know, will they stand the test of  
2 time? Should there be conditions in here.

3 As I've reviewed them now, I think  
4 that -- I don't see a problem with them. I  
5 think they're all pretty positive policies.  
6 I guess I could read them one by one.

7 "Parents and students are directed  
8 to use Hearse (ph) Circle, North Road or the  
9 Close parking garage as regular drop-off and  
10 pick-up points, but especially when student  
11 drop-off and pick-up locations are fully  
12 occupied or when they need to pick up on  
13 Woodley Road.

14 "Drivers are directed to pull  
15 forward to the stop sign bars before stopping  
16 to drop off or pick up students when the  
17 driver is the first car in the queue or  
18 immediately behind the car in front of them.

19 "Drivers are prohibited from  
20 dropping off or picking up students west of  
21 Wisconsin Avenue or Woodley Road. Drivers are  
22 also instructed not to block crosswalks or

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1 intersections, particularly at Woodley Road  
2 and Wisconsin Avenue.

3 "Standing or parking on Woodley  
4 Road is prohibited by law but immediate  
5 student drop-off or pick-up is permitted."  
6 You want to stop at one of these?

7 LM Yes, stop. I'm just wondering  
8 if there is an inherent conflict in this  
9 condition. If standing is prohibited by law,  
10 how is it that immediate student drop-off or  
11 pick-up is permitted?

12 CHAIR MILLER: I guess if it's  
13 immediate, it's not standing. If we're not  
14 comfortable with it, we don't have to, you  
15 know -- I think there may be a difference  
16 between standing actually, right?

17 MEMBER OATES WALKER: I don't know  
18 what it is. But other than that, if standing  
19 is not permitted, I mean the school could go  
20 to DOT and ask them to change their reg or to  
21 put up a sign saying "permitted during certain  
22 hours" or something like that in order to make

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1 this work. But you guys can't, so they have  
2 to work that out.

3 CHAIR MILLER: It doesn't really  
4 concern me. I think there's a difference  
5 between standing and immediate drop-off, but  
6 you know, when we were at the hearing, we were  
7 discussing, you know, like how specific does  
8 the condition have to be? Like often  
9 transportation policies are not written out so  
10 specifically in that order, and in fact,  
11 referenced like that they shall comply with  
12 their transportation policy. That's our only  
13 other option. That's our other option here.

14 MEMBER OATES WALKER: Well, I  
15 think that a couple of these conditions were  
16 actually recommended by the Office of  
17 Planning. So I think there's a need for some  
18 specificity. But I'm just concerned about the  
19 Board fashioning a condition that is at odds  
20 with either DDOT policy, and if there's --

21 I just don't know enough about a  
22 standing prohibition. I don't know what the

1 no standing sign really means. So that's my  
2 concern about this particular one.

3 LM Madam Chair, I want to make a  
4 recommendation, because if you look a little  
5 further down, the second to the last one says  
6 "Northbound traffic is prohibited along 36<sup>th</sup>  
7 Street" at certain times, and I'm not sure we  
8 can do that either.

9 I mean I assume northbound traffic  
10 is normally allowed and we can't say it's not  
11 allowed. That's not -- my recommendation  
12 would be, and something along these lines  
13 might work, is take the first paragraph of  
14 this and end up where it says "NCS shall  
15 continue its current parking policy that was  
16 established March 31<sup>st</sup>, 2008." Period.

17 Now in a way, you're condoning  
18 what the policy says by saying they shall  
19 continue that policy. If there's something in  
20 the policy you don't like, you're essentially  
21 condoning it in absentia because you're not  
22 spelling it out.

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1           But it isn't spelled out in our  
2 order. So we're not saying you must allow  
3 standing. You must prevent traffic from  
4 traveling north. It's kind of way of hedging  
5 it, if that would work.

6           CHAIR MILLER: I would be inclined  
7 to have a general statement, something like  
8 NCS shall abide by its parking policy as set  
9 forth in its March 31, 2008 addendum, or we  
10 could refer to it in a different way. To  
11 abide by its parking policy as set forth in  
12 the National Cathedral School procedures for  
13 morning drop-off and afternoon pick-up.

14           The other point I want to make,  
15 and we can see how we do it if we want to do  
16 it is, you know, in the flexibility part, they  
17 have flexibility at the end. You know, I was  
18 concerned when we were being so specific about  
19 where drop-off and pick-up was done, and it  
20 was just done recently, whether it was going  
21 to stand the test of time, or whether they  
22 should be allowed some flexibility to improve

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1 it or if conditions warranted it or if a  
2 better idea came about.

3 So why don't we draw up an  
4 agreement that we don't include the bulleted  
5 points in our order, where we say something  
6 like NCS shall abide by its current parking  
7 policy or by its parking policy set forth in  
8 -- it may be this kind. We'll refer to it in  
9 the right way, whether it says National  
10 Cathedral School procedures or March 31<sup>st</sup>,  
11 2001, whatever. We can look it up. I mean I  
12 don't think -- I think we can give OHA that  
13 leeway to refer to the exact document, instead  
14 of having these bullets, especially since some  
15 of these raise a little bit of concern to that  
16 order. With that, you want --  
17 you're not aware of that?

18 MEMBER OATES WALKER: Yes. I'm only  
19 hesitating because I'm reading the Office of  
20 Planning recommendations, and there are a  
21 couple that are listed in these bullets,  
22 including a prohibition of student drop-offs

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1 on Woodley, west of Wisconsin and the training  
2 of the school crossing guards.

3 So I just think we should consider,  
4 particularly on the training bullet, whether  
5 we might pull that out and establish it as a  
6 separate condition. I just remember there  
7 being a fair bit of testimony at the hearing  
8 about there being a need for the training of  
9 the crossing guards.

10 (Pause.)

11 CHAIR MILLER: Okay. I'm looking  
12 also at the procedures for morning drop-off  
13 and afternoon pick-up, and I don't see the  
14 training of a guard there. So that might be  
15 another reason to make that a condition.

16 That's really so vague though, but  
17 training the guard. I don't have an objection  
18 to it. Do you have an opinion?

19 MEMBER DETTMAN: I'm supportive of  
20 pulling the crossing guard training out and  
21 having it as a separate condition. I tend to  
22 agree with Ms. Monroe where we don't need to

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1 get into the bullet points.

2 We can just sort of end it by saying  
3 they shall continue to abide by their parking  
4 policy. Some of the bullets are a little bit  
5 concerning, especially with respect to traffic  
6 along -- northbound traffic on 36<sup>th</sup>, as well  
7 as this idea of saying "immediate student  
8 drop-off is permitted, but standing or parking  
9 on Woodley Road is permitted by law."

10 But the purple code that we have  
11 here sort of paints the picture that there is  
12 this queuing and standing that's occurring on  
13 Woodley. But again, I don't think that sort  
14 of falls within our jurisdiction. I think  
15 maybe the community could raise this to DDOT  
16 or whatever agency could handle that.

17 CHAIR MILLER: Okay. I'd say  
18 there's a reference in the flexibility  
19 provision that we're getting to. Yes, I agree  
20 with that. Okay. So we're doing a reference  
21 of what they're going to be abiding by, but  
22 the only bullet the traffic guard training,

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1 and then later we'll get to flexibility to  
2 modify their parking policy.

3 MEMBER OATES WALKER: Madam Chair, I  
4 just want to recommend something. If you  
5 don't want to talk about training the school  
6 crossing guard, you can make a general  
7 statement such as "take measures to better  
8 coordinate pedestrian traffic at this  
9 crosswalk," because the point is coordinating  
10 the traffic crosswalk, not how it's done.

11 Whether it's a crossing guard or  
12 three crossing guards or however they want to  
13 do it, and you can be more general if you'd  
14 like. I mean that's a suggestion.

15 CHAIR MILLER: I don't know.  
16 Sometimes when you get so general that you  
17 can't enforce it. Maybe we can come back to  
18 this. It does say train to coordinate  
19 pedestrian traffic. Okay. Well, we didn't  
20 get into a lot of testimony on this, but it's  
21 funny that they have phrased it this way, both  
22 Office of Planning and NCS, this guard needs

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1 training.

2 So I don't think I want to fool with  
3 that too much. So I think we can move on to  
4 -- I just want to clarify, though. You  
5 referenced the Office of Planning specific  
6 point, to prohibit student drop-offs on  
7 Woodley Road west of Wisconsin Avenue.

8 That is referenced in their  
9 procedures. So I wouldn't be in favor of  
10 including it separately. Okay, all right.

11 Visitors cards. Visitors who drive  
12 to school events and activities will be  
13 directed to park their cars in those areas  
14 identified in paragraph two above, to the  
15 extent parking is available.

16 National Cathedral School will  
17 inform all visitors in writing of the location  
18 of visitor parking, and will require visitors  
19 from such schools to park in those areas  
20 identified in paragraph two above, to the  
21 extent parking is available.

22 I don't know. I thought there might

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1 be some redundancy here. I think it probably  
2 should end -- I think it probably should read  
3 visitors who drive to school events and  
4 activities will be directed to park their cars  
5 in those areas identified in paragraph two  
6 above, to the extent parking is available.

7 National Cathedral School will  
8 inform all visitors in writing of the location  
9 of visitor parking. First of all, I don't  
10 think it should be just all visitor schools.  
11 Wouldn't it be like all visitors? Why would  
12 they just do schools?

13 So I would delete that, and I want  
14 to see what paragraph two is.

15 LM I think they probably phrased it  
16 that way, because there's a practical  
17 difficulty with informing all visitors in  
18 writing of the location of visitor parking  
19 prior to their coming. If there's an event  
20 and they've another school to come, then they  
21 can inform them in writing in advance of their  
22 visit. So I think that's probably why it's

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1 phrased that way.

2 CHAIR MILLER: Okay. You know, I  
3 was thinking about prospective applicants,  
4 that category of people who might be coming to  
5 visit the school, and that they'd get this  
6 information from the school, and that  
7 information could include where to park.

8 I'll look and see if the ANC  
9 recommended any other language. I don't know.

10 (Pause.)

11 CHAIR MILLER: Okay. Yes. In the  
12 St. Alban's order it's written that way, that  
13 they inform all visitors. So I think Ms.  
14 Oates is right on that, you know, that is a  
15 communication they control and they don't  
16 control visitors. So that's fine.

17 I think it would be nice if they  
18 inform all other people that are coming that  
19 they know are coming, but I'm not sure how you  
20 put that in. I mean it does say in the first  
21 paragraph they're going to direct all visitors  
22 to park in those areas.

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1           Do you find the rest of that  
2 sentence redundant, or am I misreading it? I  
3 mean I would have ended it, you know, after  
4 visitor parking.

5           MEMBER OATES WALKER: I think that's  
6 fine, to end it after visitor parking.

7           CHAIR MILLER: Okay. I think we're  
8 going to have to look at the ANC separately,  
9 you know, after this, because they might have  
10 concerns that touch on some of these. I think  
11 it's kind of hard to go back and forth at this  
12 moment. So we're almost done with NCS'.

13           Six is Liaison Committee. "National  
14 Cathedral School shall establish a  
15 neighborhood liaison committee composed of  
16 National Cathedral School staff and neighbors  
17 for the purposes of coordinating and  
18 discussing traffic and parking issues, and for  
19 yearly reporting in December on the actual  
20 number of students and the number of faculty  
21 and staff employed by the school.

22           "National Cathedral School will

1 provide a contact phone number and e-mail  
2 address for neighbors who wish to report any  
3 failure to comply with the conditions  
4 stipulated herein."

5 I have a comment or something  
6 possibly to add here, and that would be  
7 possibly, and assuming your response, but a  
8 yearly assessment of the parking and traffic  
9 issue. They talk about that this committee is  
10 for purposes of coordinating discussing  
11 traffic and parking issues.

12 I don't know whether there should be  
13 something assessing it as well referred to  
14 here. It's just a thought. And that thought  
15 is also connected to our concern about, that  
16 the pickup and drop-off procedures kind of be  
17 a living document that they can improve.

18 Well, it could just end the way it  
19 is just now and nothing would be necessary to  
20 add. So I'm just throwing that out.

21 MEMBER OATES WALKER: Well, I think  
22 because they have established a reporting

1 mechanism for neighbors to inform NCS of any  
2 failure to comply with conditions, and because  
3 they are, you know, seeking the input of  
4 neighbors on any problems that existed, that  
5 may be the reporting, the annual reporting  
6 that's referenced here could be expanded to  
7 include complaints or problems that they have  
8 identified during the course of the year.

9 CHAIR MILLER: I guess I feel like  
10 now well, let's see what the ANC has written  
11 in. Perhaps the reporting of faculty and  
12 staff is pretty specific, you know, and it  
13 just shows compliance. That's different from  
14 maybe something with traffic.

15 Perhaps we should just leave it  
16 loose, that this committee is for the purpose  
17 of discussing traffic and parking issues. So  
18 that's general enough framework for them to,  
19 you know, address parking problems. So I'm  
20 kind of now that I threw that out, I don't  
21 know that it's really necessary to add more  
22 language.

1                   MEMBER OATES WALKER: I would  
2 probably make the language a little less  
3 specific. I don't know that we necessarily  
4 need for the report to happen in December. So  
5 it could just require annual reporting on  
6 student enrollment and number of employees.

7                   CHAIR MILLER: I think it would be  
8 good to leave it with a specific month here,  
9 because I do for predictability, and this is  
10 a month that was proposed by NCS. So I guess  
11 it's a month that they don't have a problem  
12 doing that with, you know what I mean.

13                   I mean it's kind of like if we leave  
14 it like annual, then when is it due, and I  
15 don't know. I don't see a problem because  
16 they don't see a problem, you know. It's on  
17 them.

18                   (Pause.)

19                   CHAIR MILLER: It's interesting. I  
20 mean they suggested December. Like for  
21 instance, in the St. Alban's order they do it  
22 in November. But I think that's just like the

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1 predictability, when they can do it. Okay.

2 (Pause.)

3 CHAIR MILLER: Seven, Flexibility.

4 The Applicant shall have the flexibility to  
5 modify its parking policy and vary the  
6 location and number of parking spaces,  
7 provided the number of parking spaces does not  
8 fall below 148. So that was the number that's  
9 required under the regulations, and they now  
10 have 176. Okay, and meets the parking demand  
11 for the school.

12 The Applicant also shall have the  
13 flexibility to modify the design for the  
14 proposed renovations and addition and  
15 introduce landscaping at Lowell Street to  
16 conform to the recommendations of the Historic  
17 Preservation Review Board or its delegate.

18 You know, we often say when we allow  
19 flexibility to modify a design, we said  
20 "Provided that it's not inconsistent with the  
21 relief granted herein." I mean they can't  
22 modify it to the extent of it affects the way

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1 that we -- the grounds upon which we granted  
2 it the renovation.

3 So I think we need to add some  
4 language in there, you know, provided that  
5 it's not inconsistent. Maybe you can help us  
6 on this, but --

7 And I don't have the language right  
8 at the top of my head, but we do this all the  
9 time. So it would be our standard language  
10 that, you know, that it doesn't affect the  
11 relief given. So I would suggest we grant OAG  
12 that leeway to come up with that language,  
13 which we'll review, you know. Okay.

14 (Pause.)

15 CHAIR MILLER: Why don't we look at  
16 Office of Planning's proposed conditions  
17 first, since they're fewer than the ANC's, I  
18 think.

19 MEMBER DETTMAN: Madam Chair, if I  
20 could just say one thing. Back at number  
21 seven, flexibility. Just an observation on  
22 the actual language that we have here. It

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1 says "provided that the number of parking  
2 spaces does not fall below 148."

3 Just looking back at number two, it  
4 says that the Foundation will provide 176  
5 parking spaces on the Cathedral Close. If I  
6 sort of look at those together, it almost  
7 looks like that we're providing an opportunity  
8 for them to move approximately 30 spaces off  
9 of the Close, and still sort of be in  
10 compliance with this number seven, just as  
11 long as they're providing 48 on the Close.

12 So I don't know. We might want to  
13 look at number two and number seven and make  
14 sure that we might want to consider making  
15 sure that 176 parking spaces are always  
16 maintained on the Close, and leave it -- give  
17 them flexibility in terms of varying the  
18 location of them on the Close.

19 CHAIR MILLER: I agree, because we  
20 made our finding based on 176. But I believe  
21 we're making that finding on the basis of 176  
22 spaces, that it's ample. Okay.

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1           Looking at Office of Planning's  
2 proposed conditions. The first one is  
3 prohibition of student drop-offs on Woodley  
4 Road west of Wisconsin Avenue, and that we  
5 stated was included in NCS' parking policy,  
6 which we're referencing in the order.

7           Training the school crossing guard  
8 to better coordinate pedestrian traffic at the  
9 Woodley Road crosswalk with the red light at  
10 Wisconsin Avenue is being included  
11 specifically.

12           Three, requiring students to park in  
13 designated NCS parking space in the Cathedral  
14 Close garage. We talked about this issue of  
15 designated parking spaces at the hearing, and  
16 NCS stated or the Cathedral stated that they  
17 don't designate specific spaces, that  
18 everybody who's allowed to park there has a  
19 certain kind of a pass.

20           They come in on a first-come first-  
21 serve. They start filling up at the bottom  
22 and move up, and that that served a logical

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1 and reasonable purpose, and visitors could  
2 come last. So I didn't see any need for  
3 spaces to be designated. Do you all have a  
4 different opinion?

5 MEMBER OATES WALKER: Was there a  
6 requirement in a prior order that the spaces  
7 be designated?

8 CHAIR MILLER: That could have been  
9 it. I think we might see that when we look at  
10 the ANC filing. But I think those prior  
11 orders were before the Cathedral garage was  
12 built. So they may have served a purpose then  
13 that they don't serve now. Are there  
14 different considerations now?

15 In any event, the Board isn't bound  
16 by the previous orders, if we see a reason to  
17 rule otherwise. I thought that the Cathedral  
18 and NCS had many good reasons for not having  
19 them designated. Do you want to look at that  
20 order now though? Do you want us to pause and  
21 try to find that?

22 MEMBER OATES WALKER: Yes. Why

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1 don't we just table it and perhaps when we get  
2 to the ANC's conditions, we can address that  
3 issue.

4 CHAIR MILLER: Okay. They also say  
5 encouraging the use of Hearse Circle and North  
6 Road Circle and the Close for morning student  
7 drop-off and afternoon pick-up. That also was  
8 included in the procedures for morning drop-  
9 off and afternoon pick-up that we've  
10 referenced in the order.

11 We didn't particularly pull this one  
12 out. I don't think we need to particularly  
13 pull this one out based on my recollection of  
14 evidence in the record, but do you?

15 MEMBER OATES WALKER: No, I agree.

16 CHAIR MILLER: Okay. Then they say  
17 allocation of 175 vehicle spaces in the below  
18 grade garage located on the National Cathedral  
19 Close for the use by NCS students and staff  
20 during operating hours. Since the NCS  
21 administration is apparently separate and  
22 apart from the Foundation, documentation is

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1 needed that the Foundation agrees to allocate  
2 the required spaces on a perpetual basis.

3 Okay. I think we did address this  
4 at the hearing. The application is in fact  
5 brought by the Foundation, and therefore there  
6 isn't a concern or a need for documentation.  
7 That's my understanding based on what was  
8 discussed at the hearing and the relationship,  
9 that any documentation is needed agreeing to  
10 allocate the required spaces.

11 (Pause.)

12 CHAIR MILLER: Also, the Applicant  
13 has agreed to allocate 176 spaces on the  
14 Close. I don't think it has to be  
15 particularly in the below grade garage  
16 necessarily. They just have to provide the  
17 176 spaces.

18 (Pause.)

19 CHAIR MILLER: If we're just looking  
20 at the BZA parking allocation as of the 17<sup>th</sup>  
21 of May, 2008, where all the different spaces  
22 are allocated. It seems to me it doesn't

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1 matter where they're allocated, as long as --  
2 yes, that they provide that number.

3 (Pause.)

4 CHAIR MILLER: Okay. I think we're  
5 done with Office of Planning's recommended  
6 conditions, kind of giving them great weight  
7 on this.

8 I think now we turn to the ANC's  
9 proposed conditions. We have two documents,  
10 I think, that we should be looking at. One is  
11 the ANC resolution, No. 2008-024. That's the  
12 document that we need to give great weight to.

13 Then we have another document dated  
14 May 30<sup>th</sup>, 2008, and we gave the ANC the  
15 opportunity, I believe just like Applicant, to  
16 submit proposed findings and conclusions of  
17 law. I believe that the -- well, they  
18 submitted this document, which isn't quite  
19 that, but we can consider and treat it  
20 somewhat similarly in looking at what  
21 conditions they might be recommending, based  
22 on the evidence in the record.

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1           I think it goes further, and then  
2           the resolution and for some like explanations.  
3           But I think we also have to be wary of not  
4           bringing in additional information or evidence  
5           that went beyond what the Board authorized  
6           when we closed the record.

7           This kind of raises a similar  
8           subject that we addressed in an earlier case,  
9           that that isn't the time to submit new  
10          information or evidence that the other parties  
11          don't have an opportunity to respond to. So  
12          that being said, I think we should start with  
13          the resolution, because we certainly need to  
14          give great weight to that.

15          I think we can go to the conditions  
16          basically, since that's what we're discussing,  
17          and that's what their support or non-objection  
18          is based on. It says in the resolution "Be it  
19          further resolved that ANC 3C will not object  
20          to the enrollment increase or the significant  
21          faculty and staff increase over the previous  
22          BZA approved levels, provided that a new

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1 zoning order pursuant to this application  
2 include the following conditions."

3 Okay. The first is that "An NCS  
4 parking policy for students, staff and  
5 visitors that requires parking on the  
6 Cathedral Close, whether in marked surface or  
7 underground parking spaces. Since adequate  
8 parking is already available on the Close, and  
9 new developments will produce new demands for  
10 limited parking spaces. Okay.

11 They're asking for an NCS parking  
12 policy for students, staff and visitors that  
13 requires parking on the Cathedral Close,  
14 whether in marked surface or underground  
15 parking spaces. Okay.

16 You know, I just have a problem with  
17 requiring visitors to park on the Close as  
18 being unenforceable. I just don't know how to  
19 do that. We have used the terminology that  
20 the schools direct visitors to park on the  
21 Close. The schools have, you know,  
22 enforcement mechanisms against students and

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1 staff. I mean, they can discipline the  
2 students; they can expel the students, they  
3 can whatever.

4 The staff, they can fire the staff,  
5 they can penalize the staff. But I don't  
6 think that there's anything that they can do  
7 to visitors. So I would not be inclined to  
8 change our language from direct visitors to  
9 require visitors, because it's not  
10 enforceable. We always say that our  
11 conditions need to be measurable and  
12 enforceable and directed at mitigating an  
13 adverse impact.

14 So I can see the concern of the ANC,  
15 that they want visitors to park on the Close  
16 and not on the residential streets, since  
17 there's adequate parking. But I don't think  
18 we can go further than requiring the school to  
19 direct the visitors to park there. Does  
20 anybody disagree?

21 Okay. A firm cap on student  
22 enrollment at 585 and faculty and staff at 150

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1 FTEs and an annual reporting requirement of  
2 actual levels to ANC 3C in December of each  
3 year. I think that's in. Okay.

4 Pick-up and drop-off plan to reduces  
5 the amount of pick-up and drop-offs from  
6 public streets, and routes it to North Road,  
7 where there is a new signal to accommodate the  
8 school traffic, and a new off-street pick-up  
9 and drop-off plan recently implemented by NCS  
10 does not ensure any reduction in traffic  
11 problems related to the practice of using  
12 public streets for pick-up and drop-off.

13 I think that the plan that NCS  
14 submitted and that we reference addresses  
15 those concerns, and then we leave flexibility  
16 for NCS to work with the neighbors, you know,  
17 on an annual basis with the liaison committee,  
18 to improve that. So I think that that is  
19 basically addressed.

20 "Be it further resolved that ANC  
21 conditions its no objection to the application  
22 on the assurance from NCS that they will

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1 create and implement a construction management  
2 agreement, consistent with the attached draft,  
3 and that it will include a construction  
4 liaison committee comprised of the two ANC 3C  
5 commissioners whose SMDs are contiguous to the  
6 construction project, and representatives from  
7 each of the residential blocks most likely  
8 impacted by the construction."

9 You know, I'm thinking we should  
10 also have in front of us NCS' response to  
11 this. I think, though, I would say in  
12 general, before even looking at their response  
13 again, that we have consistently stated that  
14 we don't have jurisdiction over construction  
15 management.

16 So I don't think a condition about  
17 that really belongs in our order.

18 MEMBER OATES WALKER: Madam Chair,  
19 the ANC has not included this issue in its  
20 list of conditions. This paragraph just  
21 states that the ANC conditions its no  
22 objection to the application on the assurance

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1 from NCS. It doesn't go as far as requiring,  
2 as far as requesting that it be included in  
3 the order as a condition.

4 CHAIR MILLER: Okay. So it's a  
5 resolved in their ANC resolution, but it's not  
6 really addressed to the Board with respect to  
7 including a condition to that point. Okay.

8 So now I think that we need to turn  
9 to Exhibits 34 and 35, which may touch upon  
10 conditions further from the ANC perspective,  
11 and then the Applicant's response to it and  
12 any other miscellaneous issues that may go to,  
13 you know, impact the previous orders and  
14 things like that.

15 So I think we ought to just take a  
16 look through at the ANC filing and see what  
17 needs to be addressed.

18 MEMBER OATES WALKER: And let me  
19 point out that the ANC summarizes the  
20 conditions that it's requesting in the last  
21 paragraph of this filing.

22 CHAIR MILLER: Well, I don't know

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1 that that covers the whole thing. But this  
2 paragraph says "ANC 3C reiterates its position  
3 that it will not object to the specific  
4 requests in this application, provided the BZA  
5 includes as conditions the items listed in the  
6 ANC 3C Resolution No. 2008-024," which we just  
7 went through, "including caps on enrollment  
8 and staff and faculty," which is included,  
9 "verification annually by NCS to the ANC, that  
10 NCS is in compliance with the caps." That's  
11 included in that liaison committee condition.

12 "A prohibition on NCS students,  
13 staff and faculty and visitor parking on  
14 neighborhood streets during the school day,  
15 and a reduction in on-street drop-off and  
16 pick-up activities, and an increase of those  
17 activities on site."

18 Okay. I think that we have said  
19 that we cannot require visitors to park on --  
20 okay, we can't -- we cannot prohibit visitors  
21 -- the Board cannot order NCS to prohibit  
22 visitors from parking on neighborhood streets,

1 that we didn't want to go that route, that  
2 it's not enforceable and, okay. So we've  
3 already addressed that.

4 We have gone and changed the  
5 condition with respect to staff, faculty and  
6 students parking on the Close. NCS had  
7 proposed allowing those that had their  
8 residential parking permits in this district  
9 to park on this street, and we changed that to  
10 require all of them to park on the Close,  
11 because that is enforceable.

12 Now the last thing here is a  
13 reduction in on street drop-off and pick-up  
14 activities, and an increase of those  
15 activities on site. I don't really see that.  
16 That seems pretty vague to me as a condition.  
17 I think that unless they mean that NCS has a  
18 plan to meet those goals, which we find that  
19 it does, right, by that parking policy?

20 I think that does have directives  
21 that go to those concerns. I think that's  
22 about as far as they can go. I don't know if

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1 that's really -- I mean I'm happy to take a  
2 quick look through and see if there are any  
3 other concerns that the ANC had that should be  
4 addressed.

5 I mean I don't think that this kind  
6 of pleading rises to the level where we have  
7 to address each and every single concern  
8 that's here, because it's not an ANC  
9 resolution. But if there are some that are  
10 pertinent to our decision today, I think we  
11 should address some of them.

12 There's a question about previous  
13 orders, the effect of previous orders. Since  
14 this school has many orders, sometimes the  
15 Board consolidates all the conditions in one  
16 order. But we didn't believe it would work in  
17 this case. I think each of the orders stand  
18 on their own. However, and we might want to  
19 add this to our order, that if there are  
20 inconsistencies, you know, where previous  
21 orders are inconsistent with this order, the  
22 most recent order would apply.

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1           For instance, this said there was  
2 something about in previous orders we may find  
3 that they required the spaces to be marked.  
4 So now we're saying we're not requiring the  
5 spaces to be marked, so we don't see the need  
6 to do that, and we saw the reason that they  
7 weren't.

8           So that's an example. We did ask  
9 for the parties to identify any  
10 inconsistencies in the event we could  
11 specifically clean up some. I think what this  
12 Board, though, does not want to do is, you  
13 know, address anything that the public or  
14 others should have been on notice about, and  
15 would be affected by, and weren't, and  
16 therefore they wouldn't have had the due  
17 process to participate in something that was  
18 going to be changed.

19           I don't think that's the case with  
20 requiring or not requiring markings on the  
21 parking. I think that this -- the parking  
22 that's being required is the subject of this

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1 application, the number of parking spaces and  
2 how they comply with that.

3 Okay. Going through this, I think  
4 there's a point where the ANC says that we  
5 need a landscaping plan to determine  
6 objectionable impacts on Ms. Mitrovitch's  
7 property, and I don't think that we do. I  
8 think we were able to address her concerns,  
9 based on the information that was provided to  
10 us.

11 Basically, it was the screening of  
12 the trash and the mechanical work, and then we  
13 addressed the other concerns.

14 (Pause.)

15 CHAIR MILLER: Okay. I want to note  
16 that there are references to BZA Order No.  
17 16433 that talks about the Athletic Center.  
18 At the outset of this hearing, we were  
19 informed that the Athletic Center was really  
20 not going to be at issue in this case.

21 So I don't want to get too much into  
22 it, but I don't believe that again, the

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1 general parking requirements that we've  
2 addressed in this case alter whatever the BZA  
3 Order No. 16433 states with respect to the  
4 Athletic Center. You know, unless it has  
5 something to do with marking parking, which I  
6 don't recall that.

7 We already addressed the issue of  
8 RPP parking permit holders as another issue  
9 that's raised in this pleading.

10 (Pause.)

11 CHAIR MILLER: All right. Do you  
12 think there's anything else that we need to  
13 address? I mean basically, we really need to  
14 address the -- give great weight to the  
15 resolution, which we did. But as I skimmed,  
16 I mean I've read this thoroughly before and as  
17 I'm skimming it now, I don't think that there  
18 are any other points that we need to make that  
19 bear upon our deliberation on the conditions  
20 for the application.

21 If there's no further deliberation,  
22 then I would move approval of Application No.

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1 17759, of Protestant Episcopal Cathedral  
2 Foundation of the District of Columbia,  
3 pursuant to 11 DCMR Section 3104.1, for a  
4 special exception to permit additions to an  
5 existing private school under Section 206 in  
6 the R-1-B and R-5-D districts, at premises  
7 3609 Woodley Road, N.W., as conditioned.

8 MEMBER OATES WALKER: Second.

9 CHAIR MILLER: Further  
10 deliberations?

11 (No response.)

12 CHAIR MILLER: All those in favor  
13 say aye?

14 (Chorus of ayes.)

15 CHAIR MILLER: All those opposed?

16 (No response.)

17 CHAIR MILLER: Those abstaining?

18 (No response.)

19 CHAIR MILLER: Would you call the  
20 vote please?

21 MR. MOY: Yes, Madam Chair. Staff  
22 would record a vote as 3 to 0 to 1 on the

1 motion of the Chair, Ms. Miller, to approve  
2 the application as conditioned. Seconded by  
3 Ms. Walker. Also in support of the motion Mr.  
4 Dettman.

5 Madam Chair, we also have an  
6 absentee ballot from Mr. Hood, who also  
7 participated on the application, and those  
8 absentee vote is to approve the application  
9 with such conditions as the Board may impose.

10 So that would give a resulting vote  
11 of 4 to 0 to 1, the one being no other Board  
12 member participating.

13 CHAIR MILLER: Thank you. I believe  
14 this is the full order, because we did not  
15 adopt fully all of the ANC's conditions. So  
16 that's how I understood their position.

17 (Pause.)

18 CHAIR MILLER: This concludes our  
19 public meeting. We're going to adjourn before  
20 our public hearing and come back at 2:30.

21 (Whereupon, at 1:39 p.m., the public  
22 meeting was adjourned.)