



This transcript constitutes the minutes from the Special Public Meeting held on February 27, 2007.

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<u>AGENDA ITEM</u>	<u>PAGE</u>
<u>WELCOME:</u>	
Geoffrey Griffis . . . . .	4
 <u>1815 19<sup>TH</sup> STREET, LLC</u>	
<u>APPLICATION NO. 17564:</u>	
WITHDRAWN . . . . .	6
 <u>WASHINGTON INTERNATIONAL SCHOOL</u>	
<u>APPLICATION NO. 17560:</u> . . . . . 6	
MOTION TO APPROVE APPLICATION 17560:	10
Condition 1 . . . . .	15
Condition 2 . . . . .	15
Condition 3 . . . . .	15
Condition 4 . . . . .	15
Condition 5 . . . . .	16
Condition 6 . . . . .	16
Condition 7 . . . . .	19
Condition 8 . . . . .	19
Condition 9 . . . . .	20
Condition 10 . . . . .	21
Condition 11 . . . . .	22
Condition 12 . . . . .	24
Condition 13 . . . . .	26
VOTE TO APPROVE WITH CONDITIONS APP. 17560	31
 <u>CIH/VMS RESTORATIONS, LLC</u>	
<u>APPLICATION NO. 17364:</u> . . . . . 32	
Patrick Brown . . . . .	37
MOTION TO APPROVE APPLICATION 17364:	50
VOTE TO APPROVE APPLICATION 17364:	50
 <u>ADJOURN:</u>	
Geoffrey Griffis . . . . .	54

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
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P-R-O-C-E-E-D-I-N-G-S

9:42 a.m.

CHAIRPERSON GRIFFIS: Good

morning, ladies and gentlemen. Let me call to order a Special Public Meeting of the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. I appreciate everyone's patience this morning. Often times the Board has decisions that we need to make during our unscheduled decision time, so we set a Special Public Meeting.

I don't believe that it will take us very long to get through the agenda on this and again I apologize for not coming out immediately as scheduled as we were waiting for additional Members to join us, but we have decided to move ahead and they will come in as they arrive.

Copies of today's hearing agenda are available for you. They are located at the table where you entered into the hearing room. You can see where you are on the

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1 schedule. I am going to dispense with this  
2 except just to say that I would ask that  
3 everyone turn off their cell phones, at this  
4 time, so we don't disrupt the proceedings and  
5 the transmissions.

6 I will give lots more detail in  
7 the opening of the hearing which will  
8 hopefully be in a matter of short course, but,  
9 at this point, let me say a very good morning  
10 to Ms. Bailey with the Office of Zoning, Ms.  
11 Bushman also with the Office of Zoning, Ms.  
12 Monroe with the Office of Attorney General and  
13 Mr. Moy with the Office of Zoning.

14 Mr. Mann is with us. He is  
15 representing the National Capital Planning  
16 Commission and the Vice Chair, Ms. Miller, is  
17 also here.

18 With that, let's move directly  
19 into our decision making and call the first  
20 case for decision, if you would, please, Mr.  
21 Moy.

22 MR. MOY: Yes, sir. Good morning,

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1 Mr. Chairman and Members of the Board. Before  
2 I do that, sir, I would like to -- as a  
3 preliminary matter, the Application No. 17564  
4 of 1815 19<sup>th</sup> Street, LLC was withdrawn by the  
5 applicant on February 14, 2007 and is  
6 identified as Exhibit 38. So pursuant to  
7 3113.10, there is no further action of the  
8 Board on this particular case.

9 CHAIRPERSON GRIFFIS: Excellent.

10 I appreciate that and that was, obviously, up  
11 for a decision this morning and has been  
12 withdrawn. No decision will be needed and no  
13 action taken by the Board. Very well. Let's  
14 move ahead.

15 MR. MOY: Yes, sir. The next  
16 decision case is Application No. 17560 of  
17 Washington International School. At the last  
18 hearing, the staff would note that the  
19 application had been amended and now reads  
20 pursuant to 11 DCMR 3104.1, for a special  
21 exception under section 206 to (a) amend  
22 Condition No. 1 of Application No. 17082 to

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1 increase the number of faculty and staff from  
2 102 to 110, (b) amend Condition No. 2 of  
3 Application No. 16189 to increase the number  
4 of students from 425 to 450, (c) modify the  
5 site plan to expand the dimensions of the  
6 existing soccer field, relocate the existing  
7 basketball court, relocate the existing  
8 building known as the Gardner's Cottage and  
9 related landscaping and other ancillary site  
10 work to the foregoing.

11 This is in the R-1-A District at  
12 premises 3100 Macomb Street, N.W., Square  
13 2084, Lots 840 and 841. Staff knows that this  
14 was formerly Lot 837.

15 On February 13, 2007, the Board  
16 completed public testimony, closed the record  
17 and submitted -- and scheduled its decision on  
18 February 27<sup>th</sup>. The Board requested that the  
19 applicant submit a proposed summary order with  
20 conditions. The record was also open for the  
21 ANC to file any additional response.

22 The staff will conclude by saying

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1 that the applicant filed their proposed order  
2 with 13 conditions for the Board's review and  
3 consideration and that filing is identified as  
4 Exhibit 40 in your case folders. And that  
5 completes the staff's briefing, Mr. Chairman.

6 CHAIRPERSON GRIFFIS: Excellent.  
7 Thank you very much, Mr. Moy. I do appreciate  
8 it. And, of course, the background of this  
9 that he had approved certain aspects of the  
10 campus, which is now under construction, that  
11 wasn't necessarily a part of this. And  
12 looking at this, we had the approval  
13 recommendation from the Office of Planning.  
14 We also had an agreement with the community as  
15 it was stipulated by ANC-3C.

16 We did note in the record, of  
17 course, that the property was located in a  
18 Historic District, Cleveland Park Historic  
19 District. We had numerous letters of support  
20 in the overall record and certainly the record  
21 of the Friends of Tregaron Foundation. It's  
22 Exhibit 34, I believe.

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1                   With that then, let's get into the  
2                   specifics. When we left after the hearing,  
3                   there was specific direction given to the  
4                   applicant. Mr. Moy has indicated that a  
5                   proposed order was to be submitted, but more  
6                   importantly, we had requested that any  
7                   conditions that were discussed during the  
8                   hearing and were proffered and/or up for  
9                   understanding of the Board that they would be  
10                  briefed and those that would be proposed by  
11                  the applicant would be added to the proposed  
12                  draft.

13                  Specifically said, we wanted to  
14                  know some of the older ones in previous orders  
15                  whether they were valuable in having us look  
16                  at attaching to our current order. Meaning,  
17                  would they actually go to elements that would  
18                  potentially create an adverse condition and,  
19                  therefore, would be a vehicle which we would  
20                  mitigate or eliminate an adverse condition and  
21                  if so, we needed, of course, the description  
22                  of how it would do that. How it would be

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1 measurable. How it would be understandable.  
2 And how it would be enforceable and then what  
3 was that element of which would be adjusted.

4 I think it was very clear in the  
5 conditions that were laid out why those that  
6 were removed or not included in the draft  
7 order and why we have the ones we do. Now, it  
8 is up to us to decide whether it is an  
9 approval that this Board would like to pursue  
10 and then, if so, what conditions are attached  
11 to that order.

12 So with that, I think it's  
13 expeditious to move directly into a motion and  
14 I would move approval of Application 17560 and  
15 that is of the Washington International  
16 School. It was for the special exception  
17 allowing the increase to the private school  
18 number of faculty and staff. We will get to  
19 those numbers, but I just want to be concise  
20 and get through the motion and ask for a  
21 second on that. And, of course, it is for the  
22 premises at 3100 Macomb Street, N.W., and I

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1 would ask for a second.

2 VICE CHAIR MILLER: Second as to  
3 be conditioned.

4 CHAIRPERSON GRIFFIS: Yes, I'm  
5 sorry, absolutely. Very well. I think then  
6 under the motion let's go directly to the  
7 conditions and I'll turn it over or open it up  
8 for Board Members to discuss those or I'll  
9 take them on if need be.

10 VICE CHAIR MILLER: I just want to  
11 make a preliminary statement about the case.  
12 In that, basically in this case, we were  
13 looking at whether the increase in enrollment  
14 and faculty and staff would have an adverse  
15 impact, particularly with respect to traffic  
16 and parking and that there was a traffic study  
17 presented in the case and the evidence showed  
18 that it would not have any adverse impact,  
19 that the school has been operating since 1972  
20 without adverse impacts on parking and  
21 traffic.

22 They can accommodate a great many

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1 of the student drivers on site. So the  
2 conditions, I think, for the most part go to  
3 what's left to mitigate against adverse  
4 impacts. And also, since the school has been  
5 existing so long, there was time to determine  
6 whether or not there were any adverse impacts  
7 with respect to noise or other impacts that  
8 schools can have and that was no evidence in  
9 the record of that.

10 I also want to say that the ANC is  
11 in support of this application and there is  
12 just one condition, it seems, that they are  
13 proposing that is new for us to consider that  
14 the applicant did not necessarily support and  
15 then a lot of the other provisions. We asked  
16 them to look at the past orders and see if  
17 there were some that just didn't apply any  
18 more. And they went back to the ANC and the  
19 Friends of Tregaron and they all looked at  
20 them and then presented conditions to us.

21 And I looked at the new conditions  
22 that they presented and compared it to the

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1 Office of Planning's report, which I think is  
2 a good reference, which sets forth all the old  
3 conditions from previous orders and it looks  
4 to me that they actually did remove ones that  
5 were no longer relevant that may have applied  
6 to construction that was at issue in previous  
7 orders.

8 CHAIRPERSON GRIFFIS: Excellent.  
9 And during the hearing, of course, we did go  
10 through a lot of those and gave some direction  
11 on our initial understanding of what would be  
12 appropriate or not appropriate or what  
13 actually would need reediting. And I  
14 appreciate it. Actually, the applicant's  
15 representative, in terms of their submission,  
16 just stating a general clause of the removal  
17 of the conditions that were related to the  
18 construction or building of the projects.

19 So I think that covered it, rather  
20 than getting into each and every one. I mean,  
21 it was pretty clear on face, for instance, old  
22 Condition 13, "Air conditioning condensers

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1 will be placed on the roof of the gymnasium  
2 and shall at all times be hidden from view."

3 We would imagine that that is done  
4 and not a rolling condition as part of the  
5 functioning of the school. Okay. Then I  
6 think we ought to set forth our understanding  
7 then and any conditions attached to this. I  
8 do adopt in the motion the application  
9 specifics as advertised and that is for the  
10 number of faculty and staff from 102 to 110,  
11 increase the number of students from 425 to  
12 450.

13 And then under the special  
14 exception, there was review by the Board for  
15 the expansion and the size of the soccer  
16 field, the relocating of the outdoor  
17 basketball court, as actually just read by Mr.  
18 Moy in calling the case, relocating the  
19 existing buildings and undertaking the  
20 landscaping and site work on the campus.

21 And then, of course, Ms. Miller,  
22 you have gone to really the heart and

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1 substance of the 206 review for us and that is  
2 the elements that were brought up within the  
3 case and the parking and the traffic. So  
4 let's go.

5 We have Condition 1 that has been  
6 proposed that the school shall conduct its  
7 regular education and athletic activities  
8 between 8:00 a.m. and 6:00 p.m., Monday  
9 through Friday. Any concerns, edits? Very  
10 well. We will maintain that one.

11 The maximum number of students  
12 would not exceed 450. Also comments?  
13 Additional faculty not exceed 110 is Condition  
14 3. Condition 4 goes to the grounds of the  
15 school being maintained and landscaped at all  
16 times.

17 VICE CHAIR MILLER: I just want to  
18 comment that when I was reviewing the Office  
19 of Planning conditions, it looks like they  
20 take out a previous condition that said  
21 landscaping shall be provided as indicated on  
22 the plans identified as Exhibit 27(a), which

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1 was in the 1997 order. So they have updated  
2 this one to put the landscaping in that it  
3 should be landscaped at all times in No. 4.  
4 So it's not exactly the same as the old one,  
5 but it's an updated condition that reflects  
6 the reality now.

7 CHAIRPERSON GRIFFIS: Good.  
8 Incredibly general, but I don't have any major  
9 issue with that. Condition 5 goes to the  
10 school maintaining the ongoing liaison with  
11 the community and the written agreement with  
12 the Friends of Tregaron and the equivalent  
13 means. Any issues of that? Comments, edits?  
14 Very well. We can maintain that.

15 And 6 goes to developing and  
16 implementing a Traffic Management Plan which  
17 shall include the following, and I think these  
18 are pretty critical elements of 6: 6(a)  
19 Identification encouragement for alternative  
20 transportation modes by means of the school  
21 publication of information materials and in  
22 conjunction with its recruitment processes,

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1 designation of the campus transportation  
2 coordinator with overall responsibility  
3 disseminating information, for morning transit  
4 usage, encouraging ride-share, alternate  
5 transportation means, also I think an  
6 excellent element.

7 (c) goes to the examination and  
8 means of further enhanced efficiency of  
9 morning drop-off, after school pick-up  
10 operations. Any comment, edit on those? I  
11 mean, I think it lays out an interesting  
12 dynamic. I'm not sure we have done this  
13 exactly any other time, but this kind of lays  
14 out the parameters and the scope, kind of the  
15 framework of what the Transportation  
16 Management Plan will do.

17 So although I have some hesitation  
18 in having such general direction, I think it  
19 is appropriate and applicable in this  
20 application, based on the fact of the elements  
21 that they are dealing with, and that is they  
22 can handle everything on campus. Now, they

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1 need the flexibility to make it better than  
2 what it currently is and the flexibility to  
3 change it in the future, if need be, without  
4 losing aspects and sight of these critical  
5 means. Reducing the driving and addressing  
6 any other issues that might come up.

7 VICE CHAIR MILLER: I just want to  
8 make a general comment about some of these and  
9 this one included. In that I don't think that  
10 we are looking at this as super critically as  
11 we might be, because it comes from a previous  
12 hearing.

13 CHAIRPERSON GRIFFIS: Right.

14 VICE CHAIR MILLER: In which the  
15 Board assessed that language after a whole  
16 hearing on it. And so in this case, the  
17 parties have basically agreed among themselves  
18 that this is still relevant.

19 CHAIRPERSON GRIFFIS: Agreed.

20 VICE CHAIR MILLER: Yes.

21 CHAIRPERSON GRIFFIS: Well said.  
22 Okay. If there is nothing further on that,

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1 then we'll go to 7, which is the school shall  
2 provide one-way treatment of the access drives  
3 at all times and it goes on with some  
4 description of that. I have no difficulty  
5 with that. There is a caveat in there, of  
6 course, in temporary conditions, I mean,  
7 during construction and things like that.

8 I think we can adopt that language  
9 or we can edit as we will in the issuance of  
10 the order, but this is obviously an inherited  
11 and well-programmed aspect of ingress and  
12 egress and there is no reason, I feel, that we  
13 need to adjust that. Yes, Ms. Miller?

14 VICE CHAIR MILLER: And I think  
15 the fact that it is still being proffered here  
16 indicates that this has been working.

17 CHAIRPERSON GRIFFIS: Right.

18 VICE CHAIR MILLER: And I think we  
19 heard that during the hearing as well.

20 CHAIRPERSON GRIFFIS: Good.  
21 Condition 8 is all parking lots be constructed  
22 and maintained in a way that won't be a result

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1 of any increased lighting that could adversely  
2 impact neighboring properties, maintain to  
3 prevent headlights in any vehicles. We  
4 actually did an awful lot of review on that in  
5 the last application.

6 I don't think it is harmful to  
7 keep that condition in, but I think that's  
8 exactly what has been done and what is being  
9 proposed. Unless there is comments or edits  
10 on that?

11 9 goes to the school will maintain  
12 storm water collection quality, quality  
13 control system. I know we addressed this in  
14 the hearing. I am of the position, as one  
15 Board Member, just to take this in as it has  
16 been proffered. It's really on the line of  
17 whether it is appropriate for it to be a  
18 zoning condition. There are other applicable  
19 bodies of regulatory review that would get  
20 into that.

21 I note that the applicant had  
22 stated that they would be needing that with

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1 the soccer field. Of course, drainage for  
2 that is specific more so than, you know, one's  
3 landscaping and such. With that though, I  
4 don't have a strong direction that I would  
5 remove it, but I wouldn't have been surprised  
6 if it wasn't offered in.

7 I don't think I would have put it  
8 in, from my perspective of the case. Others?

9 BOARD MEMBER MANN: I think it's  
10 fine just for the reasons that you said. It's  
11 not absolutely necessary, but it does go to  
12 something that we addressed and that is the  
13 soccer field.

14 CHAIRPERSON GRIFFIS: Excellent.  
15 Okay. If there's nothing further on 9, we'll  
16 go to 10, which is the school would require  
17 that students transport to and from the site  
18 and be dropped off and picked up only on the  
19 school grounds, which is also fine. Frankly,  
20 that could be incorporated into 6, but it is  
21 noted in the intent. Whether we actually  
22 write it that way may well be we can review

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1 that later. However, substantively, I don't  
2 have any difficulty with that. Others?

3 11 goes to the school would file  
4 documentation the first week of January every  
5 year verifying the total number of faculty and  
6 staff. What's Board Members' understanding of  
7 where they are filing that? I think we might  
8 want to bring clarification to that and maybe  
9 it's filed with the liaison, the community  
10 liaison that's in Condition No. 5. And,  
11 frankly, maybe we can incorporate those two  
12 into one condition.

13 I don't know. That may be more  
14 difficult. I think my understanding of that  
15 condition and the limited testimony that we  
16 had on it was the fact that it is, obviously,  
17 for the community's review. So we'll just get  
18 it detailed at some point for that.

19 VICE CHAIR MILLER: I think we  
20 have stated in other cases that certainly not  
21 with the Board.

22 CHAIRPERSON GRIFFIS: That's

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1 correct.

2 VICE CHAIR MILLER: The record is  
3 closed after we make this decision. I mean,  
4 the record has already been closed and that  
5 they can keep those statistics and then if  
6 there is a problem, they can bring it to our  
7 enforcement officer.

8 CHAIRPERSON GRIFFIS: Yes. I  
9 mean, I think the point and fact of that  
10 condition in this specific application is that  
11 the school is keeping a record of it.

12 VICE CHAIR MILLER: Right.

13 CHAIRPERSON GRIFFIS: And whether  
14 that record is pulled for whatever reason and  
15 when it is, that's fine. So why don't we make  
16 those two pieces clear that the school would  
17 maintain records documenting the total number  
18 of staff and faculty the first week of January  
19 of every year. And we could even just say  
20 that that would be available to the community  
21 liaison for review.

22 VICE CHAIR MILLER: Good.

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1                   CHAIRPERSON    GRIFFIS:        Which  
2                   obviously would be.   Okay.  12 is the school  
3                   shall limit the athletic events.  This was a  
4                   great condition.     I say that somewhat  
5                   factiously.     I didn't understand the old  
6                   condition of this.  I'll read it quickly here,  
7                   but the number of athletic events, but they  
8                   have changed the wording of this and "The  
9                   school would limit the athletic events to  
10                  those consistent with the typical member  
11                  schools of Potomac Valley Athletic Conference  
12                  or a comparable high school league, including  
13                  the usual and customary playoff games and  
14                  shall limit non-athletic events during the  
15                  evening hours to 53 per year."

16                  VICE CHAIR MILLER:  It's an old  
17                  condition that's just been updated.

18                  CHAIRPERSON GRIFFIS:  Yes.

19                  VICE CHAIR MILLER:  So I guess I  
20                  don't feel like we need to reassess this  
21                  question.

22                  CHAIRPERSON GRIFFIS:  Right.  My

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1       only question was on that in 12 it was going  
2       to, first of all, I was trying to get to some  
3       of the substance of what were the negative  
4       impacts of athletic events? Why were we  
5       trying to number them? And then what does  
6       come under the wording of typical member  
7       schools and limit the athletic events?

8               So does that mean that non-  
9       competitive events are happening? You know,  
10      could a Saturday soccer game be going on on  
11      that field as it is utilized maybe by school  
12      members or not school members? Maybe that's  
13      a non-athletic event. I think that covers it  
14      under 53 and I think they could all be dumped  
15      in there, it seems to me.

16              Well, there it is. I won't go too  
17      much further into that. I think it's fine as  
18      it stands. It's not perfect.

19              VICE CHAIR MILLER: It's not, but  
20      I think we have to leave it, because we didn't  
21      have testimony on this in our record.

22              CHAIRPERSON    GRIFFIS:        Right.

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1 Good. The school would register all students  
2 who drive to school and require that  
3 identification be visibly placed in or on any  
4 vehicle which is driven by such students.  
5 That is Condition No. 13. Comments on that?

6 VICE CHAIR MILLER: This is the  
7 condition that has been proffered by the ANC.  
8 It was set forth in their ANC resolution,  
9 Exhibit No. 33. And we considered, at least  
10 I certainly did and I think all Board Members  
11 this condition in the back of their minds,  
12 when we were at the hearing and exploring what  
13 had been the impacts over the history of the  
14 school with respect to student parking and  
15 traffic and have there been problems that need  
16 to be mitigated.

17 And we have a study by O.R. George  
18 and Associates that looked at the impacts  
19 which would result from the increase in  
20 enrollment and faculty and staff. And the  
21 conclusion there was that there would be no  
22 adverse impacts. And we heard that there

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1 haven't been over the years.

2 So as the point of our conditions  
3 is to mitigate against adverse impacts, I  
4 would suggest that we not include this  
5 condition, because there is no evidence of  
6 adverse impacts with students driving and  
7 parking.

8 CHAIRPERSON GRIFFIS: Excellent.  
9 Others?

10 BOARD MEMBER MANN: I agree with  
11 that. I wouldn't want to give the impression  
12 though that we precluded them from going  
13 through this process or maneuver on their own  
14 through their TMP though. I just don't think  
15 that we need to include it as a particular  
16 condition.

17 CHAIRPERSON GRIFFIS: Good. I  
18 think that's an excellent differentiation, Mr.  
19 Mann, of what I think Ms. Miller is actually  
20 saying. And I totally agree that, obviously,  
21 in our orders it would go to mitigating  
22 impacts that are, one, based on Zoning

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1 Regulations and are, therefore, within our  
2 jurisdiction to control condition or address.

3 But, two, there would be nothing  
4 that would preclude them from addressing that  
5 if it was required in their judgment in terms  
6 of the management plan. Okay.

7 VICE CHAIR MILLER: I just want to  
8 also read from the ANC resolution, one  
9 paragraph in particular, and this resolution  
10 was approved by a vote of 7-0. It says  
11 "Whereas, WIS has a longstanding Traffic  
12 Management Plan that provides that all cars  
13 enter the school at Macomb Street and all cars  
14 exit onto Klinge Road. And ANC-3C is not  
15 aware of any complaints concerning the  
16 effectiveness of the TMP."

17 And I would just say also that  
18 there isn't anything else in the resolution  
19 that identifies any adverse impacts that have  
20 resulted from the student drivers or the  
21 faculty or staff drivers.

22 CHAIRPERSON GRIFFIS: Excellent.

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1 Very well. So we would not actually attach  
2 the Condition, as listed, 13 in that. Are  
3 there other conditions that need to be added,  
4 addressed, elements, topics? Very well. If  
5 there is nothing, I would just make note, Ms.  
6 Miller, you had said it, I thought  
7 excellently, but just to readdress the  
8 conditions that have fallen away go directly  
9 to what were more seen as temporary conditions  
10 and not permanent conditions.

11 And of course, the Zoning  
12 Regulations and approvals go to a permanent  
13 condition. A special exception being a little  
14 bit flexible in terms of that. But obviously,  
15 conditions with respect to construction  
16 activities related to the gymnasium, arts and  
17 music building were removed as that would not  
18 be prevalent ongoing.

19 The air conditioning we actually  
20 talked about. I would note that we also  
21 looked at there was conditions of specific  
22 trees and some other elements. And I think we

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1 have addressed actually all of the other  
2 critical pieces from the previous orders into  
3 this. In fact, we have collapsed a couple of  
4 conditions, maintaining the grounds and also  
5 landscaping into one. I think it all has come  
6 together. Okay. Is there anything else? Ms.  
7 Miller?

8 VICE CHAIR MILLER: I just also  
9 want to add that this property, the  
10 landscaping and everything of it, is very well  
11 protected in that HPRB has jurisdiction over  
12 it as well and it is also subject to a  
13 comprehensive settlement agreement between the  
14 school and Friends of Tregaron and I forget  
15 the name of the other party, but this property  
16 is very well looked after.

17 CHAIRPERSON GRIFFIS: Good. The  
18 third-party, of course, is the Advisory  
19 Neighborhood Commission 3C09. Very well. The  
20 agreement between is titled exactly that,  
21 Washington International School, Friends of  
22 Tregaron Foundation, Inc. and the Advisory

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1 Neighborhood, it says, Commissioner 3C09, but  
2 I imagine it is meant to be -- well, who knows  
3 what it is meant to be.

4 VICE CHAIR MILLER: Just for the  
5 record, I think I was referring to the  
6 settlement agreement which I believe is --

7 CHAIRPERSON GRIFFIS: Oh, I see.

8 VICE CHAIR MILLER: -- between  
9 Tregaron Limited Partnership, Washington  
10 International School and Friends of Tregaron  
11 Foundation Incorporated, but yes, the ANC is  
12 also looking after it.

13 CHAIRPERSON GRIFFIS: Excellent.  
14 Perfect. Very well. Is there anything else?  
15 Okay. We do have a motion before us. It has  
16 been seconded, conditioned and seconded. I  
17 would ask that all those in favor to signify  
18 by saying aye.

19 ALL: Aye.

20 CHAIRPERSON GRIFFIS: And opposed?  
21 Abstaining? Why don't we record the vote?

22 MR. MOY: Yes, sir. Staff would

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1 record the vote as 3-0-2. This is on the  
2 motion of the Chairman, Mr. Griffis, to  
3 approve the application as conditioned,  
4 seconded by Ms. Miller, also in support of the  
5 motion is Mr. Mann. We have a Board Member  
6 not participating on the case and a Zoning  
7 Commissioner participating, not present and  
8 not voting.

9 CHAIRPERSON GRIFFIS: Excellent.  
10 Thank you very much, Mr. Moy. I don't see any  
11 reason why we would not waive our rules and  
12 regulations and issue a summary order on this,  
13 unless any Board Members had any concern on  
14 that? There it is then. Let's move ahead and  
15 call the next case for decision this morning.

16 MR. MOY: The next case and final  
17 case for decision making is there is a request  
18 for a modification and clarification of  
19 approved plans and a waiver of the six month  
20 time requirement to Application No. 17364 of  
21 CIH/VMS Restorations, LLC, pursuant to section  
22 3129 of the Zoning Regulations.

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1           As the Board will recall, this is  
2 to the original application that was filed as  
3 -- pursuant to, rather, 11 DCMR 3104.1, for a  
4 special exception to allow the construction of  
5 five single-family row dwellings and two  
6 single-family semi-detached dwellings under  
7 section 353, and pursuant to 11 DCMR 3103.2,  
8 for a variance to allow one parking space in  
9 the front yard of each dwelling unit under  
10 subsection 2116.2 in the R-5-A District at  
11 premises 2300 Block of Skyland Terrace, S.E.  
12 This is in Square 5740, Lot 852.

13           The Board heard this on October  
14 11, 2005. This was a Bench decision on the  
15 same date, of course. The final order was  
16 issued October 13, 2005. On February 16,  
17 2007, the applicant filed a request -- this  
18 request for modification and clarification of  
19 approved plans and the waiver of the six month  
20 time requirement for filing.

21           And this is in your case folders  
22 identified as Exhibit 33. As of today, there

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1 are no other filings in the record. Staff  
2 will conclude by saying that the Board is to  
3 act on the merits of the request for this  
4 modification and clarification of approved  
5 plans to waiver the six month time requirement  
6 pursuant to 3129.

7 Finally, the staff notes that the  
8 Board first considered the preliminary matter  
9 of whether the Board's action on the requested  
10 modification of approved plans provides for  
11 the allowable 10 day response time pursuant to  
12 section 3129.4. Anyways, I'll end there.  
13 Staff is prepared to go into more detail if  
14 the Board needs it. Thank you.

15 CHAIRPERSON GRIFFIS: Excellent.  
16 Thank you very much.

17 VICE CHAIR MILLER: Mr. Moy, I  
18 just wanted to ask you to clarify. When is  
19 your understanding as to when the time runs,  
20 when it's the 10<sup>th</sup> day from when it was filed?

21 MR. MOY: Yes, well, the request  
22 was filed February 16, 2007. The comment

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1 response period should end on March 2, 2007.  
2 This period allows for the required additional  
3 days beyond the 10 days, because of the one  
4 day holiday and three days that we provide for  
5 mailing.

6 VICE CHAIR MILLER: I guess I  
7 would say this, initially, it appears that  
8 this might not be ready to be heard yet, that  
9 the time may not have run for other parties to  
10 respond.

11 CHAIRPERSON GRIFFIS: Okay.  
12 First, let me welcome Mr. Etherly, who is with  
13 us also, the Board Member who -- I'm so  
14 hesitant of whether I absolutely embarrass him  
15 at this point or maybe a little bit later, but  
16 we are so welcoming of him and he has had a  
17 major life change. I'm not going to spend the  
18 time and go through that right now, but let's  
19 have Mr. -- the representative of this  
20 application is here. Why don't we have him  
21 address that briefly, as this is off -- well,  
22 there it is.

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1           Let's go just directly to the time  
2 then, because our records reflect that  
3 although we want to move this on very quickly,  
4 I think, let me also step back and just state  
5 from my perspective of reviewing the minor  
6 modification. I believe substantively that I  
7 am prepared to move into a deliberation and  
8 decide this as a minor modification.

9           I have one stumbling element and  
10 that is exactly what you brought up, Ms.  
11 Miller, and that is the timing. Whether we  
12 have allowed enough response period.  
13 Although, the ANC hadn't put in a report the  
14 previous, the OP was in support of it. Still  
15 our regulations give us a reporting time.

16           That would just set whether we did  
17 it today. If not today, then it would just  
18 set it for next Tuesday and we would be able  
19 to pick it up and run through the minor  
20 modification. But while we have the  
21 representative here, why don't we just ask him  
22 very quickly if his understanding of the

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1 response time is correct or shared with our's  
2 as that is it was filed on the 16<sup>th</sup> of  
3 February. Therefore, the response time would  
4 have to go to March 2<sup>nd</sup>.

5 MR. BROWN: Mr. Chairman, Patrick  
6 Brown for the applicant. I would differ with  
7 the Board's view of that. It was filed on the  
8 16<sup>th</sup>. It was hand-delivered to the ANC on  
9 that same day, again to avoid the mailing time  
10 provision. It was electronically filed with  
11 all the other parties and you'll see from the  
12 cc list everybody else in North America,  
13 electronically, that same day, again to avoid  
14 the three day period.

15 So that by my calculations, the 10  
16 day period ran yesterday. There is no  
17 exclusion for the holiday, is my understanding  
18 under the rules in counting days. Obviously,  
19 if the filing fell on a holiday, you would  
20 have until the next business day.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. BROWN: But there is no

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1 exclusion from that date. So counting from  
2 the 16<sup>th</sup> without the mailing period, which we  
3 purposefully sought to avoid, the 10 days  
4 expired yesterday and there has been no  
5 response. I have attempted to contact the  
6 ANC, which is, quite frankly, an elusive  
7 organization. They didn't participate  
8 previously.

9 So I think we have met the 10 day  
10 period and the Board is in a comfortable  
11 position to act on the matter this morning.

12 CHAIRPERSON GRIFFIS: Okay. And I  
13 think initially it was our perspective, too,  
14 which is why it was set on the schedule.  
15 Although we would want to be absolutely clear  
16 on this. Are there comments from Board  
17 Members on that?

18 VICE CHAIR MILLER: I would agree  
19 with you, Mr. Brown, that you count the  
20 holiday when it lands on the holiday, but if  
21 we were still going by mailing, it would be  
22 late. But I mean, it would be not time yet.

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1 But now, I note that in your ccs you write  
2 electronically except as noted. Okay.

3 MR. BROWN: And then --

4 VICE CHAIR MILLER: So you served  
5 all these people electronically?

6 MR. BROWN: Yes.

7 VICE CHAIR MILLER: Okay.

8 MR. BROWN: Absolutely. And the  
9 only people who were as noted are the two ANC  
10 Commissioners who were served by hand-delivery  
11 at their home addresses.

12 VICE CHAIR MILLER: How would we  
13 know that from this? Oh, I see, it says by  
14 hand. Never mind. It's clearly -- this is  
15 the first time that I have actually seen  
16 someone indicate that they actually served  
17 electronically or by hand. Okay.

18 MR. BROWN: And I have  
19 confirmation through my secretary that that  
20 occurred. I don't have that with me, but I'm  
21 satisfied that it occurred.

22 VICE CHAIR MILLER: Okay. We were

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1 just saying that our rules require that you  
2 add three days for mailing when it is mailed  
3 and in this case it wasn't mailed, it was  
4 instantaneous.

5 CHAIRPERSON GRIFFIS: Yes, it's an  
6 interesting piece and obviously if the  
7 regulations were absolutely direct on all  
8 these things, we wouldn't be spending the time  
9 that we have to to deal with this. But we  
10 have been through this before in terms of  
11 timing and recommendations, having things fall  
12 on holidays.

13 I'm of an open mind. I don't  
14 think this is going to take us much time. So  
15 let me just hear from Board Members whether  
16 they want to set this for next week or get  
17 into it right away.

18 BOARD MEMBER MANN: I think that  
19 we should go ahead with it today. I think  
20 it's up to Mr. Brown to take the more  
21 conservative approach if he wanted to to  
22 protect his client's interest to make sure,

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1 but he seems relatively confident that we can  
2 go forward with this today and I'm willing to  
3 accept that.

4 CHAIRPERSON GRIFFIS: Excellent.  
5 I think that's well-said.

6 VICE CHAIR MILLER: Mr. Brown, is  
7 there any problem if this were to be heard  
8 next week?

9 MR. BROWN: Time is critical here,  
10 not just for my client, I mean, I think you  
11 see from the substance of what we're asking  
12 for, we have gotten caught in a bureaucratic  
13 maze of some extended duration and a home  
14 again initiative project. We're eating away  
15 at the building to do this project. There is  
16 not going to be any change, I don't believe in  
17 circumstances between now and a week from now.

18 And quite frankly, the Board's  
19 resources are limited and you appear ready to  
20 tackle the matter now. No time like the  
21 present and so I would ask the Board to  
22 consider moving forward on this now.

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1                   CHAIRPERSON GRIFFIS:   Very well.  
2                   If there is no objection from the Board, Mr.  
3                   Moy?

4                   MR. MOY:   Yes, sir.   I would just  
5                   like to note for the record, Mr. Chairman, in  
6                   terms of computation of time.   Under 3110.2,  
7                   I just want to make it clear, that, and I'll  
8                   just read this it's very short, "In computing  
9                   any period of time specified in this chapter,  
10                  the day of the event, date of the act/event or  
11                  default after which the designated period of  
12                  time begins to run shall not be included.   The  
13                  last day of the period so computed shall be  
14                  included, unless it is a Saturday, Sunday or  
15                  official District of Columbia holiday, in  
16                  which event the period shall run until the end  
17                  of the next day, that is neither a Saturday,  
18                  Sunday nor official holiday."   I just wanted  
19                  to make that clear for the record, sir.

20                  CHAIRPERSON GRIFFIS:   Thank you.

21                  MR. BROWN:   Mr. Chair, following  
22                  up on that, the day of the event, the 16<sup>th</sup>,

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1 was a Friday. We did not count that in  
2 counting the 10 days. The 10 days expires  
3 yesterday, which was not a holiday or  
4 otherwise a Saturday or a Sunday. So I think  
5 we have lived within the guidance provided.

6 BOARD MEMBER ETHERLY: Mr. Chair,  
7 I would also probably echo the comments of my  
8 colleague, Mr. Mann, in terms of a desire to  
9 go ahead and move forward. My colleagues will  
10 note that at the hearing on the underlying  
11 case, there was no, if I recall correctly, ANC  
12 presentation, but of course all of the  
13 adequate notices had been sent out.

14 I would say that in connection  
15 with Mr. Brown's explanation of the mailing  
16 and how that was carried out, I should say the  
17 hand-delivery as well as the electronic  
18 delivery would give me comfort. While it is  
19 not required as some type of requirement  
20 participation that the ANC participated or not  
21 in the prior hearing, I would feel comfortable  
22 moving forward, especially since as we

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1 hopefully will discuss shortly, this is indeed  
2 a minor modification that does not  
3 substantially or materially change the  
4 underlying relief that had been sought.

5 CHAIRPERSON GRIFFIS: Excellent.  
6 Well said and I absolutely agree. I think we  
7 ought to move forward on this. Mr. Moy has  
8 called the case for us and so let us jump into  
9 it. Thank you very much.

10 The element here and I think there  
11 is some confusion that we should probably  
12 address right away and that is, first of all,  
13 I think it was a good position for the Zoning  
14 Administrator to raise a question of whether  
15 he was appropriately reviewing this and,  
16 therefore, was -- in his interpretation,  
17 whether he was correct.

18 I see the position that he is  
19 taking and that is this, he was looking at the  
20 site plan going for approval of the  
21 subdivision. And looking at section 401.6, it  
22 indicates that based on the dimension of the

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1 lot width and lot area, the percentage of  
2 which there would be a minimum of street  
3 frontage calculated or there is a minimum  
4 given of 14 feet. And that's 401.6.

5 And I'll hesitate to make sure I'm  
6 correct as I pull up the regulations here.  
7 And as we look at that, that on its face is  
8 clear. And I think, obviously, this is a lot  
9 that is going to be created after February 15,  
10 1966. However, looking in the R-5 District,  
11 if we had to get to the element of what is the  
12 minimum lot width, so that we could calculate  
13 that 40 percent, we would have to then what?

14 We would have to ask ourselves.  
15 Well, under section 353, of course, a special  
16 exception comes to the Board for the approval  
17 of this subdivision and of the development of  
18 the single-family in the R-5 District. So for  
19 me, I believe, it is absolutely correct, in  
20 fact, as submitted.

21 Asserted by the applicant's  
22 representative and also as asserted by Toye

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1 Bello, Bello and Bello Associates, I am of the  
2 agreement of that reading of the regulations,  
3 that under the special exception, that's  
4 exactly what we are looking at.

5 And, in fact, then I said well,  
6 look, I've got to recall that we even get into  
7 that. As I look at it, there is three  
8 distinct things that I find that put that  
9 element into 353 in this specific case and I  
10 think in the regulations themselves.

11 Well, first of all, the fact of  
12 the matter is that there is, as Mr. Etherly  
13 has said, no material or factual change. The  
14 site plan is what it was when we reviewed it  
15 in the special exception. We also reviewed it  
16 for that rhythm of lots, the lots that went  
17 back, and I remember distinctly going into the  
18 elements of the cross driveway, the easement  
19 that was needed to be made, the parking in the  
20 front, of course, was the variance in the  
21 regulation.

22 We looked at all of those

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1 accesses. We looked at the back piece of  
2 property. However, let's pull it back in and  
3 I say well, didn't we address the street  
4 frontage element? Was that part of our  
5 review? If we say it's part of the special  
6 exception review, where is it evident the fact  
7 that we looked at it?

8 I can say well, I remember talking  
9 about that in terms of how it was done. But  
10 I would go factually to the Office of  
11 Planning's report. In the Office of  
12 Planning's report in their review and analysis  
13 in support of the application it states, I had  
14 it here at one point, in one of the prevalent  
15 paragraphs talking about the lot width and lot  
16 area. Do you have it?

17 VICE CHAIR MILLER: I do.

18 CHAIRPERSON GRIFFIS: It's at the  
19 top of the -- it includes the lot width in  
20 their discussion and in their analysis of the  
21 lot width and area. And I'll find it to cite  
22 it for you. But as I reread that in the

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1 submission, it brought back even more of my  
2 recollection of our own deliberation and  
3 clearly it was part of the Office of  
4 Planning's also.

5 And so in looking at this, first  
6 of all, I don't see any reason why I wouldn't  
7 support this minor modification, because  
8 really we're not asking for any modification.  
9 It's really coming into a strange kind of  
10 clarification of our review under the special  
11 exception of 353.

12 But let me open it up to others  
13 for their comments while I find my citing.  
14 Any other comments on that?

15 MR. BROWN: Mr. Chairman, if I  
16 could point your attention to the top of page  
17 4.

18 CHAIRPERSON GRIFFIS: Right. The  
19 layout of Lots 1 and 3 and the limited street  
20 width and shared access of these lots is less  
21 than optimal. However, the property is  
22 constrained by the slope and layout and OP has

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1 no suggestions to improve the design. The  
2 layout of the buildings is what I was talking  
3 about, which, obviously, was part of their  
4 review analysis and part of our special  
5 exception review and analysis.

6 I don't see how we could remove  
7 it, frankly, from it. I mean, if you think  
8 about the street width and the street access,  
9 that's going to be directly proportional or  
10 directly related to what the dimensions of the  
11 lot size are. R-5-A, of course, has us review  
12 the whole thing together to see if it fits in  
13 in all of our referrals to everything else.

14 So I don't have any difficulty in  
15 proceeding in this fashion, but I'll hear from  
16 others. Nothing else? Well, indeed.

17 VICE CHAIR MILLER: I think you  
18 covered it pretty thoroughly.

19 CHAIRPERSON GRIFFIS: Okay.

20 VICE CHAIR MILLER: I would concur  
21 with you.

22 CHAIRPERSON GRIFFIS: Okay. Very

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1 well. Then I think it's appropriate that we  
2 move expeditiously through this and I would  
3 move approval of the minor modification/  
4 clarification of the approved plans based on  
5 the order in Application 17364 and ask for a  
6 second.

7 BOARD MEMBER ETHERLY: Second, Mr.  
8 Chair.

9 CHAIRPERSON GRIFFIS: Excellent.  
10 Thank you very much, Mr. Etherly. I do  
11 appreciate it. I'm not going to further  
12 deliberate under the motion. I think I have  
13 made my points clear. I'll open it up to  
14 others if they have any comments. Very well.

15 If there is no further comments  
16 then, we do have a motion before us. It has  
17 been seconded. I would ask for all those in  
18 favor to signify by saying aye.

19 ALL: Aye.

20 CHAIRPERSON GRIFFIS: And opposed?  
21 Abstaining? Let's record the vote.

22 MR. MOY: Yes, sir, staff would

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1 record the vote as 4-0-0. This is on the  
2 motion of the Chairman Griffis to approve or  
3 grant the request for modification and  
4 clarification of approved plans and a waiver  
5 of the six month time requirement to  
6 Application No. 17364. Second the motion, Mr.  
7 Etherly, also in support of the motion, Mr.  
8 Mann and Ms. Miller.

9 It also happens, Mr. Chairman,  
10 that in the event that the Board moved ahead  
11 on the preliminary matter, we also have an  
12 absentee ballot from John Parsons, who also  
13 participated on this case, and his absentee  
14 ballot is to approve the request. So that  
15 would give a resulting vote of 5-0-0.

16 CHAIRPERSON GRIFFIS: Excellent.  
17 Thank you very much. Mr. Moy, is there any  
18 other business for the Board in our Special  
19 Public Meeting this morning?

20 MR. MOY: No, sir.

21 CHAIRPERSON GRIFFIS: Excellent.  
22 If there is no further business --

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1 MR. BROWN: Mr. Chair?

2 CHAIRPERSON GRIFFIS: Yes, sir?

3 MR. BROWN: I appreciate the  
4 Board's action. If I could impose further  
5 perhaps on staff to work with them closely to  
6 get a brief, but to the point, order out, so  
7 that we can direct the Zoning Administrator of  
8 the Board's decision and move forward.

9 CHAIRPERSON GRIFFIS: Sure. Yes,  
10 I don't see any reason why we wouldn't waive  
11 our rules and regulations and issue a summary  
12 order on this, as it is a minor mod. I don't  
13 think we could actually do a full order on  
14 this on the basis, unless we reiterated all  
15 that in the past case. So I think that can be  
16 expeditiously handled.

17 Very well. Anything else?

18 MR. BROWN: Thank you very much.

19 CHAIRPERSON GRIFFIS: Thank you  
20 very much. Any other business, Mr. Moy? No  
21 other business? Very well. Then let's  
22 adjourn our Special Public Meeting.

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1 (Whereupon, at 10:31 a.m. a recess  
2 until 2:08 p.m.)

3 CHAIRPERSON GRIFFIS: We just need  
4 to call back into session our Special Public  
5 Meeting. It came to my attention after we had  
6 adjourned that on one of the decision cases in  
7 the morning we had an absentee ballot that may  
8 not have been recorded. And so I would just  
9 open up that proceeding again and, Mr. Moy, if  
10 you wanted to handle that from there?

11 MR. MOY: Yes, sir. Thank you  
12 very much. This was to the second case  
13 discussed in the Special Public Meeting,  
14 Application No. 17560 of Washington  
15 International School. We had, in fact,  
16 received an absentee ballot from Anthony Hood,  
17 who also participated in the case, and his  
18 vote was to approve the application, in which  
19 case, I'm looking through my notes here very  
20 quickly, yes, that would give a resulting vote  
21 on that case as 5-0-0 to approve.

22 CHAIRPERSON GRIFFIS: Excellent.

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1 Good. Any other business for us then?

2 MR. MOY: That's it, sir.

3 CHAIRPERSON GRIFFIS: Thank you  
4 all very much. Let's adjourn.

5 MR. MOY: The Washington  
6 International School.

7 CHAIRPERSON GRIFFIS: Hold on.

8 MR. MOY: All right. Thank you.  
9 I have an addendum to that vote. That vote  
10 should be recorded as 4-0-1, because we had a  
11 Board Member that did not participate on that  
12 case. Okay. So it's 4-0-1.

13 CHAIRPERSON GRIFFIS: Sure.

14 MR. MOY: Thank you.

15 (Whereupon, at 2:10 p.m. the  
16 Special Public Meeting was concluded.)

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