

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY,
MARCH 7, 2006

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:10 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS J. ETHERLY, JR.	Board Member
JOHN MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Chairperson
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OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON

This transcript constitutes the minutes from the public meeting held on March 7, 2006

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

10:10 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order our Public Meeting of the 7th of March, 2006. This is the District of Columbia Board of Zoning Adjustment. I am Geoff Griffis, Chairperson. Joining me today is Vice-Chair Ms. Miller and Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann. Representing the Zoning Commissioner in our first decision this morning is Ms. Mitten.

Copies of today's hearing agenda are available for you. We do have three cases for decisions this morning and we will get right to that. I would just ask that people please turn off cell phones and beepers as we are transmitting live again on the Office of Zoning's website, but also creating the official transcript with the court reporter so we don't want to disrupt any of those transmissions.

Of course, this is the time to call cases for deliberation and decision by the Board. The hearing has been completed at this point. Unless specifically noted no other information is accepted into the record. We welcome everyone here but we are not calling people up for additional testimony.

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1 That being said, let me say a very good
2 morning to Ms. Bailey on my far left, Ms. Glazer with
3 the Office of the Attorney General and also Mr. Moy
4 with the Office of Zoning. I would ask Mr. Moy if you
5 are ready to call the first case for the decision.

6 MR. MOY: Yes, sir. Good morning, Mr.
7 Chairman, and members of the Board. The first of
8 three cases for decision this morning begins with
9 Application No. 17383 of the Lab School of Washington,
10 pursuant to 11 DCMR 3104.1, for special exceptions to
11 permit an increase in faculty and staff from 94 to
12 190, and an increase in student enrollment from 310 to
13 330, at 4759 Reservoir Road, N.W. and to permit the
14 use of 4749 Whitehaven Parkway for administrative
15 offices under section 206, and for accessory parking
16 spaces for an existing private school under section
17 214, in the R-1-B District at premises 4749 Whitehaven
18 Parkway, N.W. and 4759 Reservoir Road, N.W. (Square
19 1372, Lot 25 and Square 1374, Lot 840).

20 On November 22, 2006, the Board completed
21 public testimony on the application and scheduled its
22 decision on March 7, 2006. The Board requested the
23 following post-hearing documents.

24 Staff would actually like to begin with
25 the preliminary matter, Mr. Chairman, because there

1 were some filings that were untimely, a filing that
2 was not requested by the Board, and also a filing by
3 the ANC. Filings that are untimely is DDOT's
4 supplemental report which arrived yesterday March 6,
5 2006, No. 1.

6 No. 2, we also have an untimely filing
7 from the applicant's engineer which is identified as
8 Exhibit No. 70 in your case folder. That was
9 submitted also yesterday, March 6, 2006.

10 Third, we have a filing that is untimely
11 from the ANC which is identified in your case folders
12 as Exhibit 69 dated February 24, 2006. It was a
13 letter addressed to the Board in response to the
14 "great weight" issue raised by the applicant's
15 attorney.

16 Let's see. What else? Let me also jump
17 to the filing that the Board had not requested. There
18 is an exhibit in your case folders as Exhibit 62 dated
19 December 1, 2005, from a Daniel, I think it's
20 pronounced, Clydeman and Ms. Selter, a letter in
21 support of the application. This is dated December 1.
22 The record had already been closed.

23 Finally, there is a request from the ANC
24 for the Board to delay its decision and that letter is
25 dated February 24, 2006, identified in your case

1 folders as Exhibit 69. That completes the staff's
2 briefing, Mr. Chairman.

3 MR. GRIFFIS: Excellent. Thank you very
4 much, Mr. Moy.

5 First, Board members, let's take up the
6 late filings. Mr. Moy has adequately and completely
7 addressed each of those. There are three as I note
8 them of specific requirement for action from the
9 Board. The first is Department of Transportation's
10 additional and supplemental report. Is there any
11 opposition or concern, comments from the Board about
12 taking that into the record? Not noting any, then
13 let's move ahead.

14 MS. MITTEN: Mr. Chairman.

15 MR. GRIFFIS: Yes.

16 MS. MITTEN: I'm sorry. I was just a
17 little slow.

18 MR. GRIFFIS: Good.

19 MS. MITTEN: I don't have any objection to
20 taking it into the record but it raises questions
21 rather than answering questions for us. I just want
22 to note that as you go forward that we will have to
23 deal with the unresolved issues.

24 MR. GRIFFIS: Excellent. Second is the
25 Exhibit 70, the applicant's structural engineer in

1 response to some of the earlier letters of 2006 from
2 the ANC. Then the last is the ANC's letter responding
3 to the issue of great weight.

4 I would be of the opinion of accepting all
5 those rather than finding relevancy or pertinence, but
6 rather just taking them into the record for our own
7 complete deliberation unless there is any concern,
8 comment on that, opposition. Very well. We will take
9 those and accept the untimely and late filings.

10 I'm going to make one quick note and take
11 response if need be. Exhibit No. 66, of course, was
12 the applicant's -- rather, that's actually the other
13 piece which was the transportation management plan.
14 Before I get to that, attended to or attached with
15 that was the entire filing of proposed orders,
16 findings, and conclusions.

17 Although the Board didn't require that to
18 be submitted, I don't think that there is anything in
19 our regulations, and certainly not in my mind, that
20 precludes or prohibits an applicant from submitting
21 those as long as we have the time allotted for a
22 decision.

23 Of course, those are never put out for
24 responses or re-responses. That is kind of the final
25 submission so I don't think there is additional action

1 required on that. However, with that submission, I do
2 believe, as Ms. Mitten actually has said well with the
3 DDOT report, there is also important information on
4 Exhibit 66 that was submitted into the record.

5 With that I'll make sure that everyone is
6 comfortable to opening the record to accept those. I
7 don't hear any objections to that. Let's go then to
8 the substance of how we deal with this new
9 information. It seems to me that there was -- Ms.
10 Mitten said correctly the supplemental report raises
11 some questions -- well, yes indeed, directly raises
12 some questions.

13 The other aspect is with this new
14 information that is submitted in. The opportunity for
15 the ANC applicant to address this substantive
16 submission has not been provided for. Certainly we
17 can move ahead without giving that opportunity if we
18 feel that would be the appropriate way to proceed.
19 Otherwise, we will need to look at how we deal with
20 this information within our procedures.

21 Let me open it up for other comments
22 initially, or if I have not addressed any of the
23 submissions.

24 MS. MILLER: Well, I know that -- I don't
25 believe we have addressed specifically there is a

1 motion by ANC-3D to delay our decision until May so
2 that they can hold a hearing and consider the TMP.

3 MR. GRIFFIS: Good.

4 MS. MILLER: And that may just roll into
5 our discussions about I think there have been certain
6 issues related to traffic which is key in this issue
7 that have just come to our attention and probably do
8 need further hearing on. I think we should discuss
9 how we want to proceed with that if we do. Certainly
10 keeping the record open and other things.

11 MR. GRIFFIS: Excellent. Ms. Mitten, did
12 you have a comment?

13 MS. MITTEN: I just want to endorse the
14 notion of the fact that we do need to have a further
15 hearing on the narrow issues that are really left
16 unresolved by DDOT's position on the, I guess, two big
17 issues being the TMP and the proposed use of the 43
18 angled parking spaces on White Haven Parkway to
19 satisfy or to create some of the necessary supply
20 because by the applicant's own admission, without
21 those things -- well, without those parking spaces
22 they will not be able to satisfy the demand they
23 predict having for parking even with an effective TMP.
24 DDOT goes further to raise questions about the
25 effectiveness of the TMP as proposed.

1 MR. GRIFFIS: Right. Two critical issues
2 that I think in my mind perhaps raise some questions
3 for the Board because it seems as if DDOT is not
4 directly addressing the impact or how the parking
5 would fit or not fit into the application, but rather
6 is holding on a more general principle position of not
7 supporting parking on public space.

8 That seems to me that it might need a
9 little more investigation or clarification. Okay.
10 Others? Very well. Ms. Miller did correctly indicate
11 the fact that the ANC had asked us to postpone our
12 decision on this. I think, if I'm understanding
13 correctly, the strong consensus for the Board is to
14 agree with that position.

15 I think in my own look at the schedule I
16 don't agree that we would set this off so far.
17 Setting it to April or May, or even perhaps further,
18 does not seem to serve anybody involved in this
19 directly. I would propose this. I think it is
20 important with the new information from DDOT that we
21 actually open the record and set this for a limited
22 hearing so that we would postpone the decision on
23 this.

24 I would propose that we have written
25 submissions allowed into the record of which we will

1 be very specific of what they should be that will
2 address two of those aspects. One is the DDOT report
3 and the second is the new information as it is related
4 in the record for the Transportation Management Plan.

5 One of the other aspects that I think the
6 Board is going to address with the TMP are the
7 specific of it. Perhaps we could get some direction
8 as to what else should come in to the record for the
9 Board's processing and deliberation. However, I say
10 we could set this for submissions. Set it for a
11 limited hearing.

12 We would require, or certainly use all the
13 force that we can muster up, to actually have a DDOT
14 representative here to present their analysis thereby
15 opening themselves up to Board questions and
16 clarifications and also to cross-examination by the
17 ANC and the applicant.

18 I don't think that is going to take a lot
19 of time but I think we can get right to it and get
20 into the substance of it. We would then from that
21 information move ahead to a decision. I propose that
22 we do that on the 4th of April. That would be the
23 first hearing in the afternoon.

24 I would schedule no more than 60 minutes
25 to have this done. Again, this is a limited scope

1 hearing. In my understanding what we would do is have
2 a DDOT representative here, present their report and
3 analysis, take Board questions and cross-examination,
4 and then we would allow time for the applicant to
5 present a response to that information.

6 Obviously any witnesses would obviously
7 then be open to Board questions and cross. That would
8 enclose the hearing again. Submissions I would
9 suggest that we have within about two weeks from
10 today.

11 Those submissions, as I understand the
12 Board, and its limited comments this morning, and I'll
13 open it up for others, would be written submissions in
14 response to the DDOT report that is already in the
15 record, written responses to the TMP, or any of --
16 well, to the TMP.

17 I think that we could ask the applicant
18 also to address perhaps just the language but to
19 address the TMP as a more measurable and enforceable
20 document. Let me let others speak to anything else in
21 that direction.

22 MS. MITTEN: Mr. Chairman.

23 MR. GRIFFIS: Yes.

24 MS. MITTEN: Just to your last point which
25 is as written the TMP is not written towards

1 enforceability. I think if we could clarify and just
2 by way of example, for instance, it says that the Lab
3 School of Washington currently offers free shuttle bus
4 service between the school and various metro stations.

5 Then it has their schedule but they are
6 not saying they are committing to operate on that
7 schedule. Also there is reference made later related
8 to the night school that there is a shuttle that
9 operates in conjunction with the night school but that
10 is not on the schedule so I think we need to know
11 precisely what they are committing to so that can be
12 enforced.

13 I think there is some -- I think it just
14 needs to be tightened. I think the spirit of it is
15 generally there. Also since DDOT has some concern
16 about the effectiveness of the Transportation
17 Management Plan, and most of the measures, I believe,
18 have been put into operation at this point in time, I
19 think it would be appropriate for the applicant to
20 report on the effectiveness of the various measures
21 that they have suggested.

22 For instance, I think they had given us
23 some information about how many people were taking the
24 shuttle but they could also tell us how many people
25 are carpooling and just what is the status of the

1 measures that they have taken so far. I think that
2 will help us decide whether DDOT's concerns are well
3 founded or not.

4 MR. GRIFFIS: Okay. I tend to agree. I
5 think the Board has seen enough of these that I would
6 agree that some factual evidence of how it's working
7 knowing full well that it isn't fully implemented or
8 showing exactly the completeness of what it might
9 eventually do if so implemented.

10 Very well. Other comments from the Board?

11 MS. MILLER: I just want to comment on the
12 ANC's motion to delay our decision making until May,
13 and that is that I think that the ANC raised good
14 points for it to have time to address the TMP. We
15 also have stated that we think there should be more
16 time to take a look at the TMP and DDOT's report.

17 The Board can't design its schedule around
18 the ANC once a month and in some cases the ANC does
19 have the authority to have a special meeting and that
20 this would probably be one of them in which that could
21 be utilized. It just does allow at least them to have
22 the opportunity to do what they need to do to
23 participate in the hearing.

24 MR. GRIFFIS: Thank you. Very well.
25 We've laid it out there. I would note that the

1 applicant's representative is here. Correct? Why
2 don't you come up and I would have the ANC come up
3 just to make sure that we can answer any procedural
4 questions that they might have at this time or --
5 well, there it is.

6 Ms. Prince.

7 MS. PRINCE: Allison Prince, Pillsbury,
8 Winthrop, Shaw, Pittman. I want to be clear on what
9 we are embarking on and I do want to note it is of
10 utmost importance that DDOT attend the hearing. This
11 report was filed and I received it this morning at 10
12 minutes before 10:00 --

13 MR. GRIFFIS: As did we.

14 MS. PRINCE: -- despite unbelievable
15 efforts to get DDOT input to meet with DDOT to make
16 sure that DDOT had the information that it needed to
17 adequately evaluate our TMP. It is quite
18 disconcerting to me to be confronted with a report at
19 the 11th hour like this.

20 MR. GRIFFIS: Right. Let me interject
21 there because I think the Board was feeling the same
22 way. We were literally handed it when it came over to
23 some of us late last night and that's our concern. To
24 proceed into a deliberation at this point with this
25 leaves, I think, too much unknown so I think that is

1 our whole point of setting this to gather more
2 information and answer some of the questions that we
3 have of it.

4 MS. PRINCE: I have no issue with that.
5 I think that it's important information. It is just
6 very unfortunate that the dialogue didn't happen
7 earlier for DDOT to be able to say, "We were given the
8 information and this is our conclusion based on the
9 information." I'm trying to get a handle on the
10 further hearing because I haven't had anything quite
11 like this. The presentation is by DDOT.

12 MR. GRIFFIS: That's correct.

13 MS. PRINCE: The applicant is given an
14 opportunity to respond. The ANC and any other parties
15 are given an opportunity to respond. It's as simple
16 as that.

17 MR. GRIFFIS: Right. In terms of putting
18 it directly, we are opening the record for a very
19 narrow scope in the hearing. We will only address,
20 and we will only have addressed, the information that
21 arises out of DDOT's analysis.

22 MS. PRINCE: Excellent.

23 MR. GRIFFIS: Good morning.

24 MS. GALIS: Good morning, Mr. Griffis.

25 Thank you for hearing the ANC on this issue. We felt

1 that given the fact the Transportation Management Plan
2 was available in January and we didn't receive it
3 until a month later, we would like to have time to
4 consider it so we thank the Board for that.

5 I don't know whether you are aware or not
6 but DDOT has made a policy of not copying the ANCs on
7 these reports. We are --

8 MR. GRIFFIS: Did they just neglect it or
9 did they actually implement a policy?

10 MS. GALIS: They actually are not -- it's
11 a policy now so we get to come back and go through the
12 files so our first opportunity to see this will be
13 after this hearing.

14 MR. GRIFFIS: Okay.

15 MS. GALIS: We weren't aware it was in
16 there.

17 MR. GRIFFIS: Indeed. Indeed. Okay. We
18 will absolutely pick it up. I can tell you it was
19 received by the Office of Zoning at 5:57 last night so
20 it's better that they would have sent it directly to
21 you. Okay. Any difficulty with the 4th? Any
22 procedural questions that you have?

23 MS. GALIS: I think we will make
24 arrangements. Thank you.

25 MR. GRIFFIS: Excellent. Thank you very

1 much. We do appreciate it.

2 Ms. Prince, any follow-up, procedural
3 questions, clarifications?

4 MS. PRINCE: None. Thank you.

5 MR. GRIFFIS: Excellent. Thank you both
6 very much. We are set for first in the afternoon on
7 the 4th. Again, thank you, Ms. Mitten. We will set
8 this for a limited time and just be very aware it is
9 a limited scope and also a limited time. We have a
10 very, very full afternoon but I'm going to call this
11 first in the afternoon.

12 My assessment is that it would take us no
13 more than 45 minutes, 60 minutes perhaps. Obviously
14 I don't have control over the Board questions and they
15 can get unruly sometimes as you have seen this
16 morning. Cross-examination, of course, takes some
17 time. However, presentations shouldn't be that
18 timely.

19 Ms. Miller.

20 MS. MILLER: Just procedurally I just want
21 to make sure. Mr. Moy listed several documents that
22 came in late and I'm not sure we addressed all of them
23 but can we say that it is the consensus of this Board
24 that all the documents that were filed are accepted
25 into the record?

1 MR. GRIFFIS: Excellent. Yes.
2 Absolutely. But to that we have specifically laid out
3 the detail of which the record is open for additional
4 submissions. Did I state that it is the 22nd of March
5 that we will have submissions into the record?

6 MR. MOY: I believe two weeks from today
7 would be March 21st, Mr. Chairman, 3:00.

8 MR. GRIFFIS: Excellent. We are going to
9 do it that Wednesday at 3:00 which is the 22nd if that
10 facilitates.

11 MR. MOY: Okay. That would be the 22nd.

12 MR. GRIFFIS: Again, that is any written
13 submissions or responses to the DDOT and/or the
14 applicant's filing from the ANC. Okay. Very well.
15 Clear? Thank you very much. I regret that we are not
16 able to proceed with this this morning but I think
17 this will actually be certainly more productive for
18 everyone involved in this.

19 With that, thank you. There won't be any
20 other official announcements of this or the timing.
21 This will serve and we will see you all on the 4th.
22 Very well.

23 Mr. Moy, if you wouldn't mind, let's move
24 ahead.

25 MR. MOY: Yes, sir. Before I move ahead,

1 just one minor note for the record. Attached to
2 Exhibit 66 is a letter from Rev. Milton Jordan who was
3 granted party status and that letter is his written
4 statement withdrawing his opposition to the
5 application.

6 MR. GRIFFIS: Excellent. That is an
7 excellent point and I don't know if the ANC is aware.
8 I know the applicant is aware as they submitted it in
9 regarding this case but we did have a party in
10 opposition and that opposition has withdrawn its party
11 status and, therefore, there are only two participants
12 continuing on with the applicant and the ANC. Thank
13 you, Mr. Moy.

14 MR. MOY: The next case then, Mr.
15 Chairman, is Application No. 17420 of 1123 11th, LLC,
16 pursuant to 11 DCMR 3103.2, for a variance from the
17 lot occupancy requirements under section 403, and a
18 variance from the rear yard requirements under section
19 404, to allow an eight-story rear addition to an
20 existing building for nonprofit office and residential
21 apartment use in the DD/R-5-E District at premises
22 1123 11th Street, N.W. (Square 341, Lot 807).

23 This case was originally set for Decision
24 on February 21, 2006, at a special public meeting.
25 The Board rescheduled its decision to March 7, 2006,

1 on the applicant's request for more time to file
2 specific post-hearing documents. That was filed on
3 February 21 and is identified in your case record as
4 Exhibit 34.

5 With that, staff would conclude its
6 briefing. Thank you, Mr. Chairman.

7 MR. GRIFFIS: Excellent. Thank you very
8 much, Mr. Moy.

9 Let's move right ahead. Mr. Moy is
10 correct that at the applicant's behest we set this
11 decision off to today. We do have the additional
12 filings and that is the sun and shade studies. We
13 also have some court cases attended to the position
14 from the applicant. And I would note that the
15 vicinity site plan with proposed building is also
16 submitted. All is helpful in regards to processing
17 this application.

18 Let me open up a little bit in that I have
19 some concern with this application. I don't --
20 perhaps it is not as clear as it might be but, of
21 course, in any of the variances cases a test needs to
22 be made is uniqueness in the property and how that
23 uniqueness causes practical difficulty in fully
24 complying with the zoning regulation.

25 With that if a variance or a relief was

1 granted that it wouldn't impair the intent and
2 integrity of the zone plan map or the public good. As
3 we look at this, I think the standard of unique is met
4 in several fashions.

5 The historic nature of the existing
6 building, the smaller site, the dimensional aspects of
7 the site. I would even put in somewhat the buildings
8 adjacent that are new that are under construction or
9 completed construction. Where it starts to diminish
10 for me in understanding is the practical difficulty
11 that arises out of that uniqueness.

12 When we look at the applicant's position,
13 it is fairly clear that the processing through the
14 Historic Preservation Board and conceptual approval
15 has been met with the fact that this addition needs to
16 be set back off the face of the street, 11th Street,
17 and off the face of the existing structure.

18 What I'm not clear about is why it had to
19 move all the way back 37 feet. I know that in the
20 case and the testimony there was some discussion of
21 the fact that there is a break beyond, one might say,
22 the primary massing of the structure. Then there is
23 a secondary which is a lower piece that looks like it
24 may have been added to the back or not. I don't know.
25 It seems to make some sense in terms of a break line

1 and an addition coming and growing up out of that.

2 But I'm still left wanting for whether
3 that was actually a move directly from Historic
4 Preservation. I'm not familiar in the cases that have
5 come before us that Historic Preservation has required
6 the setback entirely off the main building but rather
7 additions can be somewhat set back but not entirely
8 removed from the building.

9 Why should I care? Well, I care only
10 because when it comes down to it, it raises itself to
11 a larger procedural question in my mind and that is
12 this. I don't see, nor has there been a case made,
13 that there is a practical difficulty outside of this
14 direct impact of the conceptual approval. In some
15 respects it almost ties our hands to approving it
16 because HPRB has required this.

17 In my mind what I think I need further is
18 additional information of what really is the substance
19 behind the requirement from Historic Preservation. Is
20 there a magical number of 37 feet because if we are
21 starting to put it into the perspective of design,
22 setback, and massing, I think we are balancing from
23 our zoning regulations perspective of we do have an
24 impact on the back. Right?

25 But more importantly we have an impact on

1 the front and that is that a 37-foot setback away from
2 buildings that are basically on the property line in
3 the front I think creates an urban design element that
4 isn't very strong to say it nicely. In fact, I think
5 it would not serve this specific building or the block
6 in its entirety so I'm not sure how its balance with
7 that is good preservation standard or good
8 preservation design to require something like that.

9 I guess I feel there is something else
10 that isn't in the record. I apologize that it didn't
11 hit me during the hearing where we could have asked it
12 directly. At this point I have more of a concern of
13 just proving something based on another Board's
14 requirement without seeing the direct link to making
15 the case here.

16 Really my understanding is if Historic
17 Preservation or if this building placement wasn't 37
18 feet back, obviously then it wouldn't need the relief
19 here so there has to be something -- I guess there has
20 to be something persuasive about why preservation will
21 want to take a move that specific and that large.
22 I'll open it up to others.

23 MR. ETHERLY: Thank you very much, Mr.
24 Chair. I appreciate the Chair's position but I think
25 -- I feel this is perhaps just a little more

1 straightforward than the perhaps the Chair has laid it
2 out in this particular instance. Not that I didn't
3 appreciate the last five minutes of discourse but I
4 think it's an easy, fairly straightforward case.

5 I am definitely although this body is very
6 clear in how we deal with the issue of precedent in
7 terms of each case standing on its own, I am fairly
8 certain that we have had other instances in the past
9 where we have dealt in a fairly straightforward and
10 concise manner with HPRB decisions that have design
11 and kind of zoning consequences by virtue of what HPRB
12 has suggested that an applicant do.

13 While there would perhaps have been, shall
14 we say, some utility to having more information
15 brought forward by HPRB in their guidance and
16 direction to the applicant, I don't necessarily see
17 the absence of that information as being a fatal flaw
18 in this particular case.

19 I think the presentation was fairly
20 straightforward in terms of the ramifications from a
21 design standpoint of HPRB's directive regarding the
22 massing of this building at its front and what in turn
23 happens at the rear of the property.

24 Once again, I'm sensitive to the Chair's
25 concerns in this regard but I think the logical

1 outcome of the Chair's position would be essentially
2 send the applicant back and say have HPRB write us
3 more stuff so it's just a little more clear. That is
4 kind of one piece.

5 If it's perhaps a deeper question as to
6 the rationale or thinking of HPRB in that regard, to
7 an extent I also understand the Chair's position there
8 but HPRB's purview is HPRB's purview so I would just
9 be hesitant at veering too close towards second guess
10 what HPRB's thinking is regarding their decision on
11 this particular massing. I'll leave those particular
12 two points where they are.

13 As it relates to the remainder of the
14 variance test, of course, I'll just note for my
15 colleague's consideration, of course, we had what I
16 thought was very helpful testimony from property
17 owners at the rear of the property regarding impacts
18 as it relates to the massing and impacts of the
19 building there.

20 As was alluded to, we had shadow studies
21 that were submitted. I did not find that testimony to
22 be compelling enough to the level to render the
23 variance test unsuccessfully met in this particular
24 instance, if you will.

25 That is definitely not to say that there

1 are impacts that would be experienced by the property
2 owners at the rear of the subject property, but I did
3 not feel that the case was made that those impacts
4 rose to the level of doing serious harm and damage, if
5 you will. I'm not couching that in the appropriate
6 test terms but I trust my colleagues will get the gist
7 of my direction. Thank you, Mr. Chair.

8 MR. GRIFFIS: Absolutely. Thank you very
9 much. That was very well said. Let me address the
10 impact because I agree with you there. I think we did
11 have good testimony from the adjacent neighbor in the
12 rear. However, I don't think it was persuasive that
13 this building if approved would have a negative impact
14 or more negative impact than would be expected.

15 It's an interesting piece, I think we said
16 in the public hearing, of how the zoning overlay is
17 allowing the height and, therefore, that would make
18 the impact -- in fact, if we look at it as in the
19 record, we haven't confirmed this or not, but the
20 adjacent buildings were built matter of right. They
21 have obviously set the massing that is appropriate for
22 the zoned district so it is hard for us to look at
23 something that is being proposed within those
24 boundaries so I tend to agree with you there.

25 I guess to be clear, that is my hesitation

1 here because I don't want to second guess, as you
2 said, HPRB. I just don't understand why or what
3 rationale they would have in requiring something of
4 this nature to proceed in that fashion.

5 Therefore, rather than finding that I
6 don't have a persuasive variance test made before me
7 without just accepting that HPRB required it, I would
8 ask that more substance be brought to it but that is
9 just one opinion.

10 MS. MILLER: There is another opinion that
11 agrees with you. I think that this case does fail on
12 the practical difficulties prong. I don't think that
13 we can abdicate our role in analyzing a variance by
14 just accepting a decision by HPRB that doesn't explain
15 anything.

16 I think this is the first in my experience
17 that I can recall where it really turns -- this whole
18 case turns on the HPRB decision. Yet, we have no
19 rationale for that decision. Making our variance test
20 and looking at the practical difficulty standard, we
21 have to find the compliance with the area restriction
22 would be unnecessarily burdensome.

23 Just to take it on face value that it's
24 unnecessarily burdensome because HPRB approved a
25 certain design I think would not meet the standard.

1 Usually when we are considering HPRB's decisions
2 either they are one factor or we understand it. It's
3 not something that we do just on blind faith. I'm not
4 sure whether HPRB might take a look at this and find
5 that it isn't necessary to have the building so far
6 set back.

7 They didn't explain that it had to be set
8 back like this because of some reason related to
9 Historic Preservation. I don't think that is asking
10 too much to have that information in our record if it
11 exist for our decision making.

12 MR. GRIFFIS: Very well. Others?

13 MR. ETHERLY: Again, I understand where
14 both of my colleagues are coming from in this regard.
15 The applicant did include a copy of the HPRB report at
16 the rear of Exhibit No. 26 dated February 24, 2005.
17 Again, while the HPRB report's language might not
18 necessarily be as detailed as we would like, I did
19 find it to be fairly clear and decisive for me. As we
20 are talking specifically about it, I'll just read it
21 briefly into the record verbally for purposes of our
22 deliberation.

23 Actually, I won't read it but keep in mind
24 that part of what is at issue here is a rowhouse that
25 is part of the subject property. The relevant

1 language of the HPRB report notes that when reviewed
2 in January the Board directed the applicant to
3 consider pushing the new construction back to the rear
4 wall of the main body of the rowhouse rather than
5 cantilevering it over the house, removing the fourth
6 floor on top of the rowhouse, and simply remove the
7 small rear L rather than encasing it within the new
8 construction.

9 It is my sense as you look at this report
10 that there was an effort on the part of HPRB to
11 clearly give some consideration to the impact of the
12 proposed construction on the existing rowhouse there.
13 But, again, I'm perhaps going to stop there because I
14 don't want to begin speaking for HPRB and trying to
15 interpret language that I feel is relatively
16 straightforward.

17 Perhaps just cutting to the chase, Mr.
18 Chair, there simply are two options. We postpone the
19 decision and encourage the applicant to seek
20 additional information or clarification, if you will,
21 from HPRB. Clearly I don't think the applicant can
22 themselves provide that information. That may,
23 indeed, be one option.

24 Or, of course, the second option is to
25 move forward. Recognizing that while we don't have

1 present the fifth member on this particular Board, we
2 may indeed have a proxy in this particular regard. I
3 am open to the option if it's the case that this comes
4 down to an up or down vote, we don't necessarily get
5 into this level of detail in terms of our
6 deliberations, but let's just kind of cut right to the
7 party and stop with the up-front stuff.

8 I'm comfortable. If there is a majority
9 of the Board that feels as though that additional
10 information will help to fill out the case, I'm
11 comfortable with that. Again, I'll note that I feel
12 in the past we have been fairly straightforward in
13 terms of our reliance on HPRB regarding their
14 decisions and the impacts of those decisions from a
15 zoning standpoint.

16 I'm comfortable with that position but
17 would, of course, encourage any of my other colleagues
18 to lean in at the appropriate time with perceptions
19 and positions on how they feel about that course of
20 action.

21 MR. GRIFFIS: Thank you, Mr. Etherly. I
22 appreciate that. I agree with you that we have had
23 numerous cases where HPRB has been a substantive
24 element in the test for the variance. I don't
25 disagree that it is an important one. My experience

1 has been that with those reports there is very
2 informative, or at least understandable, reasonings
3 behind a Board's decision and movement.

4 We may, in fact, disagree with that and
5 have in the past disagreed with that, or we may not
6 and move ahead and support it. Even in the reading on
7 the conceptual consent calendar staff report, the one
8 piece that gives me some pause is that it looks as
9 though the proposal was to rip off the fourth floor
10 and put the new in front.

11 They were saying they were supporting not
12 doing that but moving it all the way back. I guess my
13 point would be if we are looking at this as the
14 reasoning why a variance is needed and it's also the
15 basis of the test to be granted it, don't we open
16 ourselves up to the ability to request are there
17 alternatives whether in constructability or placement
18 that might actually remove the relief request
19 required.

20 MR. ETHERLY: No, because I would think
21 that would take us somewhat perilously close to
22 sitting in place of HPRB which is my worry in this
23 case.

24 MR. GRIFFIS: Interesting. Okay. Others?

25 MR. MANN: Yeah. I would agree with what

1 I think I heard so far, that is that the uniqueness
2 was made. In my opinion I don't think this project
3 actually would create any terribly adverse impacts.
4 I do think when it comes to the practical difficulty,
5 the interpretation of that staff report is probably
6 the part where I would differ with Mr. Etherly's
7 interpretation.

8 The use of the word consider in the staff
9 report that I think maybe we differ on. It says,
10 "When reviewed in January this Board directed the
11 applicant to consider pushing the new construction
12 back to the rear wall of the main body of the
13 rowhouse. It seems that's all that the applicant did
14 was consider that and almost to the exclusion, at
15 least as introduced into the record, of any other
16 alternatives.

17 It seems like that was the only
18 consideration that was given. It doesn't seem to me
19 that the staff report absolutely directed them to do
20 that. It was only to be a consideration and not
21 necessarily the only direction that they got.

22 MR. GRIFFIS: Interesting point. Okay.
23 Others? Good. We'll step out a little bit and here
24 from the applicant who I notice is present here. Let
25 me just state before we actually have them address us

1 briefly on this nonsubstantive but factual matter.
2 The element, in my opinion, that I do believe, as
3 we've stated, that the zoning that is here is
4 appropriate in terms of the height.

5 The impact hasn't been persuasive in my
6 mind, the negative impact or adverse impact, but
7 rather it fails on several accounts that we have all
8 gone through now, practical difficulty. One I don't
9 think I really hit, public good is something that is
10 very nonspecific. I think the Board is very
11 conservative in its discussions and utilization of
12 that as a critical test and threshold.

13 As I put all of this together in this
14 case, I do think that we are not serving the public
15 good if we are not pushing the limit of understanding
16 if not actually having this front come back up. As I
17 look at the testimony in the record of the public
18 hearing, the whole point about enclosing a cavern and
19 kind of a canyon of sorts.

20 Setting this back almost 40 feet and for
21 the dimension of the width seems to be precarious if
22 not making it appear to be kind of a missing tooth on
23 that block. I don't think I would hold that strongly
24 in terms of denial just on that aspect but when you
25 put all the confluence of the details together it

1 becomes an issue for me that I think we are all served
2 if we might perhaps get additional information. With
3 that, I'll have you introduce yourself for the record.

4 MR. SMITH: Thank you, Mr. Chair and
5 members of the Board. My name is Norman Smith. I am
6 the architect of record on the project. Just a couple
7 quick responses since some of these issues have been
8 brought up and discussed more thoroughly than they
9 were before, particularly in regard to the HPRB.

10 I kind of feel like I'm preaching to the
11 choir, being preached to by the choir. I think some
12 of the issues that you have raised about how HPRB
13 responded to our original conceptual drawings are well
14 taken. That said, the fact that the use consider in
15 that is the velvet glove of Historic Preservation and
16 Review Board.

17 I think anybody that is here and respects
18 the work that they do would but also understands the
19 terms that they use to couch their direction to
20 architects and designers and developers and owners.
21 I think the simple fact of using the word consider
22 should not be construed as voluntary or that we had
23 any place else to move on this. We did not.

24 MR. GRIFFIS: I think what we are trying
25 to get to, the real question of which we will allow

1 you to respond, perhaps not now, but that is what was
2 the motivating factor for the staff or the
3 Preservation Board for setting this back?

4 MR. SMITH: Well, this brings up another
5 issue which is, I think, to some extent what some of
6 the Board members, and you, Mr. Griffis as well, are
7 requesting perhaps additional clarification from HPRB.
8 That said, I can try to address it based on the fact
9 that I was there. I think it really comes down to
10 site lines. Whether you agree with that issue from
11 Historic Preservation Review Board's perspective or
12 not, they were very concerned that this eight-story
13 addition not "loom over the front of the building."

14 We, in fact, made a very similar argument,
15 the missing tooth argument that you made, which is
16 that with the approved building -- soon-to-be-
17 constructed building to the north of 1125 and the
18 existing building 1111, both of which are by-right
19 buildings.

20 This lot is very much like that. They did
21 n o t a g r e e w i t h t h a t .

22 They felt that it was very important for
23 this addition to be pulled very far back. We started,
24 I believe, at about 20 to 24 feet trying to make sure
25 that we had adequate footprint because obviously we

1 cannot go side to side. We can only go front to back
2 on this lot. That is one of the inherent difficulties
3 on this lot. It is very small and very bunkered.

4 We obviously were unsuccessful at that.
5 The impression that I came away with from HPRB was two
6 fold. It's a question of site lines which is why they
7 asked that the fourth floor addition be removed
8 because they believed that would be seen from across
9 the street given the width of 11th Street. And then,
10 of course, that also had an impact on moving the
11 addition back.

12 I think that they felt that the knuckle,
13 I guess is the best way of putting it, to break the
14 dog leg between the main portion of the building,
15 which is face on line, face on line, to the dog leg
16 portion which is face on line on the south, and dog
17 leg where it sits back and creates what is currently
18 a nonconforming courtyard on the north, was a clear
19 enough place to break the building. That was due in
20 part -- I will say on the record that I do disagree
21 with that but that is my opinion.

22 MR. GRIFFIS: Any impact on the existing
23 structure that they were concerned about?

24 MR. SMITH: I was just going to get to
25 that. One of the issues was how we were going to

1 support the structure as if it were brought forward
2 and we have proposed a series of intumescent sprayed
3 steel columns that would, in fact, penetrate the
4 existing building. But I think that is to be done
5 very delicately. It's been done in the past and I
6 think it will continue to be done.

7 MR. GRIFFIS: What would be their concern
8 with that?

9 MR. SMITH: To be quite honest with you,
10 I was not clear about that. It is probably not
11 important now. It's a matter of public record if you
12 need to find this out but there was one Board member
13 in particular who was concerned about that as an
14 issue, albeit one that was inside the building. We
15 tried to assure the Board --

16 MR. GRIFFIS: Let me try to understand
17 what would be their concern? It would be what, that
18 the interior would be impacted?

19 MR. SMITH: Again, I feel that I'm in a
20 position of trying to speak for the Board and I don't
21 happen to agree with them on this issue, but I can say
22 that there were two issues. One was the sort of
23 fingering down through the building of the structure,
24 and the second was their concern about how that
25 structure would be fireproofed and how the fire

1 assembly rating at the floor level where that
2 penetration occurred would be maintained.

3 MR. GRIFFIS: Is that a preservation
4 issue?

5 MR. SMITH: It is not, in my opinion, a
6 preservation issue. No, sir.

7 MR. GRIFFIS: Is it going to impact the
8 design?

9 MR. SMITH: Not as far as we were
10 concerned. We were prepared to move ahead with that
11 design and we felt it was a good one. They did not
12 agree with us about that and that is essentially the
13 gist of their argument. That is a portion of the
14 reason why we are here. That is why they made us go
15 to 37 feet. I don't personally think that it should
16 be back that far.

17 MR. GRIFFIS: Well, we could support that
18 and deny the application.

19 MR. SMITH: Could you do both?

20 MR. GRIFFIS: Support not putting it back
21 that far. It's a quandary. I mean, I think there is
22 a better scenario for all of this. I'm going not have
23 you give too much more in addition in testimony as we
24 do have a party in opposition which I don't believe is
25 present. Is that correct? Is the party in opposition

1 in this case present?

2 MR. SMITH: Mr. Griffis, may I just
3 mention one more thing?

4 MR. GRIFFIS: Sure.

5 MR. SMITH: This was the third hearing
6 from HPRB and I think the direction that they gave us
7 was very, very clear at that point. We didn't go
8 through them one time on this. There were countless
9 meetings with staff. The third meeting --

10 MR. GRIFFIS: Well, it changed the number
11 of stories, too. Correct? Wasn't there originally
12 five or eight?

13 MR. SMITH: We have always been looking at
14 eight when we went to HPRB and came to you.

15 MR. GRIFFIS: But there was an option for
16 five if I recall. Is that right?

17 MR. SMITH: An option for five?

18 MR. GRIFFIS: Stories.

19 MR. SMITH: Where?

20 MR. GRIFFIS: In the addition.

21 MR. SMITH: Well, I'm not sure I
22 understand what your question is.

23 MR. GRIFFIS: It's not important. Okay.
24 So where are you in the preservation process?

25 MR. SMITH: With the funding and staffing

1 situation at DCRA, it takes quite a long time to get
2 a building permit these days even if it's third party
3 certified which this one is not. We are in for a
4 permit with five stories which is the by-right
5 situation. That is simply a place holder.

6 MR. GRIFFIS: Right. I'm not asking about
7 that. I'm asking about HPRB because the report we
8 have -- you said you have been there three times.
9 This was on our consent calendar for conceptual
10 review. Do you anticipate or have you scheduled
11 another hearing before the Board?

12 MR. SMITH: Well, we would if we have your
13 approval obviously for the eight stories. I mean,
14 it's a chicken and egg problem because then we have to
15 go back to them on that because we have the conceptual
16 review but now we have to come to you for the relief
17 and then we go back to them on the eight stories.

18 MR. GRIFFIS: Right. It seems to me there
19 is -- I mean, our hands are much more bound because we
20 can't have conversations outside of this record so we
21 are kind of struggling and maybe even looking inept.
22 However, hopefully that is not too true.

23 I guess as we are in the process here with
24 the schedule, and you will obviously have to go back
25 to HPRB, I think it is important to understand that

1 this Board's position of the deliberation that has
2 been said today, but I wonder if we don't have an
3 opportunity to answer some of these questions and
4 maybe get some clarification as to is it not possible
5 to move this out.

6 It seems to me, and maybe in my
7 characterization I'm mistaken to the exact degree, but
8 if this were to set back 20 feet we probably wouldn't
9 be here for relief. The difficulty is where do we
10 fall and how did it happen without creating a huge and
11 immense amount of additional work on everybody's part.
12 Opinion on that?

13 MR. SMITH: My opinion?

14 MR. GRIFFIS: Sure.

15 MR. SMITH: I would love to have -- I
16 don't mean this facetiously but I would love to have
17 you speak to HPRB about it. I am not trying to be
18 difficult or facetious about it.

19 MR. GRIFFIS: No, not at all. That's
20 exactly what should happen and I just don't know how
21 I can do that.

22 MR. SMITH: I think that it should in the
23 future but I would ask that you not penalize this
24 owner, this client, because of that though. I happen
25 to agree with you. I think there are a couple of

1 larger issues at play here but I think --

2 MR. GRIFFIS: Directly put this Board has
3 never been frivolous in setting things off and I don't
4 think we would do anything that would penalize an
5 owner in proceeding. What I am gleaning right now is
6 that I am not sure this would be successful if called
7 for a motion and a vote.

8 In order to forestall that, perhaps we
9 still have a process going on. It's not as if this
10 would necessarily hold things up. I think if we set
11 this for additional information and set this for a
12 decision, we are able to gather. Conceivably there
13 are two things that happen. We get further
14 information in from -- three things I would say
15 hypothetically.

16 One, staff is listening today from
17 Historic Preservation and all of a sudden is
18 enlightened and decides that they can see something
19 new. There is a new design that is presented that
20 actually maybe does away with the relief request.
21 That moves it out of here.

22 Secondly, perhaps there is further
23 clarification from the Board and maybe there are
24 adjustments but not full relief removed and we are
25 back with a little bit of adjustments. Lastly, HPRB

1 and all the information doesn't change, nothing
2 changes here, and we have the application before us.
3 That scenario even, I think, adds additional
4 information for, I think, probably more productive
5 deliberation.

6 MR. SMITH: May I ask you a question in
7 response to that?

8 MR. GRIFFIS: Two seconds. Comments from
9 the Board?

10 MS. MILLER: Perhaps we could issues some
11 kind of a decision continuing this hearing in order to
12 get or to allow an opportunity to get the information
13 we need for HPRB's decision and articulating our
14 concerns about the practical difficulty test perhaps
15 so that HPRB would be on notice as to what this Board
16 is grappling with with respect to their decision.

17 MR. GRIFFIS: Right. I think that is
18 absolutely critical. I don't put it all on HPRB. I
19 mean, I think this is a process obviously that the
20 architect and the developer has gone through and the
21 give and take of HPRB. I think those are the two main
22 critical players in furthering this.

23 Yes, you had a question.

24 MR. SMITH: What would be the most helpful
25 thing from your standpoint? I mean, should we provide

1 you the public record of the HPRB meeting? I think
2 the minutes of it are going to be much more clear
3 about what their thinking was than the sort condensed
4 version that we have here.

5 MR. ETHERLY: I'll just note, Mr. Chair,
6 this is exactly what I was fearful of. The applicant
7 is absolutely right. They are between a rock and a
8 hard place because we are asking them for something
9 that they can't provide. I mean, how do you resolve
10 it?

11 I see no other way than casting this as
12 you are penalizing the applicant for HPRB just not
13 perhaps articulating clearly enough what their
14 rationale is. How do we do it? Do we ask for it? Am
15 I hearing that you feel it would be inappropriate or
16 improper for us to technically ask for it?

17 MR. GRIFFIS: I think we can ask for it.
18 I mean, I think the Board can ask for clarification
19 from HPRB. We can put it in writing and send it to
20 them. It would be easy just to pick up the phone and
21 have a conversation. However, that's where I am but
22 let's hear others.

23 MR. ETHERLY: I would suggest then that we
24 just move forward and do it. I mean, we are wasting
25 time talking if that's what needs to be done to get

1 this Board to a majority of moving forward on what I
2 feel is a straightforward case. Let's do it. It will
3 take two minutes to sort that out and we'll be done
4 and move on to the next case.

5 MS. MILLER: I think we are just talking
6 about how should we do it. I guess I would propose
7 perhaps issuing a decision continuing this hearing
8 until a certain date to allow the applicant to take
9 one more chance at meeting the practical -- showing
10 the practical difficulty test has been met,
11 particularly with respect to HPRB's decision and then
12 we can -- I mean, perhaps articulate why HPRB's
13 decision is not sufficient for our purposes.

14 Then the applicant can take it to HPRB or
15 we can send it to HPRB but it wouldn't be necessarily
16 directed to HPRB procedurally. I really think we give
17 great difference to HPRB in almost all of our
18 proceedings in which historic preservation is a
19 factor.

20 I think they need to give a little bit of
21 difference to us as well. If we are going to make a
22 decision on practical difficulty or adverse impact or
23 have any meaning in our proceedings, we can't just
24 rubber stamp a statement that they have directed the
25 applicant to do something.

1 MR. ETHERLY: Putting it bluntly I don't
2 want to put this applicant in the middle of a shoving
3 match between BZA and HPRB. This has been something
4 that we have always kind of skirted around. Not
5 necessarily always throughout the tenor of my time on
6 this Board, but essentially that is what I view this
7 as. Let's just simply be honest about it. I feel
8 very, very strongly, unequivocally strongly about
9 that.

10 MS. MILLER: Mr. Etherly, I --

11 MR. ETHERLY: We either seek the
12 clarification from HPRB that we feel is necessary to
13 give a majority of the Board a comfort with this
14 particular case but I think trying to look for a
15 middle ground, which I appreciate your suggestion is
16 trying to do, but I think that kind of further
17 complicates and further muddies the water in terms of
18 trying to ask the applicant to themselves seek
19 additional clarification or reargue, if you will.
20 That would be my concern.

21 MS. MILLER: I just want to say I think
22 unlike some of my colleagues I think there is an
23 impact in the back on the neighbor. Whether that
24 rises to the level of the third prong I don't know,
25 but our regulations are there for a purpose, Our rear

1 yard setbacks are there for a purpose. When we give
2 a variance from them we recognize all those three
3 prongs and I feel that if we are going to do that, we
4 need to understand the reasoning for each.

5 Just to say because HPRB said so I don't
6 think is quite enough. In all the cases I've seen,
7 and when I've relied on HPRB they have a full report
8 explaining the impacts, why is it necessary for
9 historic preservation. We just don't have that in our
10 record here.

11 MR. GRIFFIS: Excellent. All very well
12 said. Mr. Etherly, I don't perceive this as actually
13 a pushing or shoving match between one Board and
14 another but rather just looking for a clarification of
15 procedure on our end. I don't think we need to make
16 it anymore -- Mr. Etherly is correct, we don't need to
17 take a lot more time with this.

18 I think that the Board can request
19 information or clarification of their consent approval
20 in terms of the setback here. Once that comes to the
21 record, obviously the applicant would be given that
22 and also the party in opposition.

23 They would be given an opportunity to
24 respond to that and then we can set this for a further
25 decision based on that written submission so we keep

1 the record open for HPRB's submission, clarification,
2 and responses from the applicant and party. Problems?

3 MR. MANN: I have a question. Are we
4 asking then simply only for additional information
5 from HPRB?

6 MR. GRIFFIS: Yes.

7 MR. MANN: And they may respond in any
8 number of ways. Are we excluding additional
9 submissions from the applicant such as other
10 information from the HPRB public record that may
11 bolster his practical difficulty case?

12 MR. GRIFFIS: No, I don't think we could
13 exclude it. I just don't want to make this a huge
14 amount of filing or requirement of filing.

15 MS. MILLER: Are we also leaving the door
16 open for HPRB to take a look at this to see if a
17 design might be approvable by them that didn't need
18 this variance relief?

19 MR. GRIFFIS: Somewhat.

20 MR. SMITH: Are you asking us then to go
21 back to HPRB? I mean, what process are we supposed to
22 follow in saying, "Can you guys look at this again
23 because BZA doesn't feel comfortable with why you are
24 telling us to go back this far so can you think about
25 it again?" I mean, that to me does feel like it's

1 going to be a very difficult position to be placed in.
2 I guess I'm a little unclear as to how we would go
3 about doing that.

4 MR. GRIFFIS: They are going to give a
5 quick clarification of why they think 37 feet is some
6 magical number, although it ends at some change in the
7 massing and in context.

8 MR. SMITH: Right.

9 MR. GRIFFIS: If they do that, then
10 conceivably if HPRB feels strongly that is the
11 perspective, then I agree with Mr. Etherly we are not
12 going to second guess that position of the Board that
13 is looking at it. It's just that, quite frankly, it
14 could just take a paragraph or two. Or it may open it
15 up and just say, "Gosh, we didn't know. We thought
16 the applicant wanted this and we are supportive," or
17 whatever it is.

18 MR. SMITH: Um-hum. Okay. So we just
19 need to essentially get the public record that
20 supports or clarifies why they said it is 37 feet or
21 nothing. And then sort of highlight that, I guess, so
22 that it is -- am I not getting it?

23 MS. MILLER: Personally, to me that
24 wouldn't be sufficient but it might be for the other
25 Board members. If you just get the public record in

1 because you are relying on HPRB's position and their
2 official position is probably not in their minutes.
3 It's probably like ours where there is give and take
4 of discussion. I mean, I think HPRB should have the
5 chance to explain more fully or to reevaluate based on
6 the variance problem. How we get that message out --

7 MR. GRIFFIS: We are going to request --
8 the Board will request a HPRB submission on
9 clarification of their support and recommendation. As
10 I said, we will have that served on the parties and
11 the applicant and the record will be open for response
12 to that. Why is that hard to understand?

13 MS. MILLER: I just wouldn't want to
14 preclude their reevaluating based on the variance
15 issue.

16 MR. GRIFFIS: HPRB? No, because that is
17 stepping into a whole other process. That is asking
18 the applicant to on our direction go back to another
19 public hearing before the Board. The HPRB doesn't
20 just sit around and make decisions as they want. They
21 will have the hearing. A design would have to be
22 presented. Hopefully HPRB -- I know HPRB is not
23 sitting there redesigning things or making up
24 alternatives and then giving them back to an
25 applicant. I think that's what we should do

1 MS. MILLER: How about if we issued an
2 order directed at the applicant but we copied HPRB
3 with it.

4 MR. GRIFFIS: What order? What do you
5 mean issue an order?

6 MS. MILLER: Well, what we are doing is we
7 are continuing the case and the reason we are
8 continuing the case is because of our concern about
9 the practical difficulty issue which is related to the
10 HPRB decision.

11 MR. GRIFFIS: Right. I don't think it
12 takes an order. I think we can do that without
13 waiting for an official order or decision because,
14 quite frankly, I don't know how we do that
15 procedurally and I think we can expedite this very
16 quickly.

17 MS. MILLER: Okay.

18 MR. GRIFFIS: I think that's what we'll
19 do. In terms of the public record, the HPRB public
20 record, it is public record so the Board can avail
21 themselves to get that. I don't think we will ask you
22 to submit that in.

23 MR. SMITH: Okay.

24 MR. GRIFFIS: I think in response to HPRB,
25 which I'm anticipating will be less than a page, in

1 response to that if there were highlighted aspects of
2 the public hearing that you think is pertinent, that
3 would be fine. I don't have any difficulty in taking
4 that.

5 Again, take note that we are not trying to
6 create a whole other file or whole other hearing on
7 this. I think this can really precise and complete
8 for our deliberation on this. With that, let me hear
9 last any other concerns from the Board. Very well.
10 Nothing?

11 I'm going to lay out a schedule then as I
12 see that we can do. We are going to put the biggest
13 onus on ourselves to get something back in from
14 Preservation by the 15th of March, which is a
15 Wednesday. That would allow us to -- I'll ask the
16 applicant how much time they might think that they
17 need to respond to that. I can give you a week. I
18 can give you two weeks. Two weeks we could set this
19 for April 4th decision making. We'll put it first
20 thing in the morning.

21 MR. SMITH: I think the April 4th in two
22 weeks will be fine.

23 MR. GRIFFIS: In which case we'll keep the
24 record open for your filings until the Wednesday prior
25 to the 4th which is --

1 MR. MOY: That's actually the 22nd.

2 MR. GRIFFIS: 22nd.

3 MR. MOY: Wednesday.

4 MR. GRIFFIS: Is that enough time?

5 MR. SMITH: That basically give us one
6 week after assuming that we get everything from HPRB
7 on the 15th.

8 MR. GRIFFIS: Yes.

9 MS. MILLER: Do we know when HPRB even
10 meets? Does that matter?

11 MR. GRIFFIS: We're not asking for a
12 meeting. There's no official action from the -- we're
13 not asking for a new decision from HPRB. Maybe that's
14 what's not being very clear. We are asking -- I
15 anticipate that the staff is going to be able to
16 reiterate the Board's position, their conceptual
17 approval of this project. This isn't going to re-
18 present to HPRB. There is nothing to re-present at
19 this point.

20 MS. MILLER: Okay. It just seems kind of
21 quick turnaround when we don't know how much time they
22 might need. That give them less than a week.

23 MR. GRIFFIS: Those Boards move fast, let
24 me tell you.

25 MR. SMITH: Mr. Chair, I don't think there

1 is any problem from our standpoint from only having
2 one week turnaround assuming that we do get it from
3 HPRB on the 15th because I think that in itself is the
4 majority of information that you need anyway. We can
5 augment and clarify and highlight it a little bit but
6 I don't think we need to beat it to death either
7 because I think that will speak for itself.

8 MR. GRIFFIS: Excellent. We'll set that
9 as a filing date and then we'll take note if
10 additional time is needed. If you are aware of that,
11 just let staff know and they will let the Board know.
12 Conceivably we will be flexible in terms of getting
13 your submissions back in but would like to have it
14 timely enough.

15 MR. SMITH: Okay. Thank you. That is the
16 22nd then?

17 MR. GRIFFIS: That's right. 3:00 on the
18 22nd.

19 Yes, Mr. Moy.

20 MR. MOY: If the staff can beg of the
21 Board because the mail-out is typically on Thursday.
22 Is it possible for a response on the day before on
23 Tuesday the 21st? Would that be a great hardship for
24 any responses?

25 MR. GRIFFIS: Doesn't Wednesday at 3:00

1 help us there or no? Not so much, I guess.

2 MR. MOY: It could but we have found in
3 the past that actually the day before actually helps
4 our internal process if that's possible.

5 MR. GRIFFIS: Okay.

6 MR. SMITH: We can try but the 15th is a
7 Wednesday and then we have the holidays. That means
8 we're talking about Tuesday, March 21st which really
9 is essentially only about three days when it's all
10 said and done which I do believe might not be long
11 enough.

12 MR. GRIFFIS: We just bought ourselves a
13 week because my schedule that I'm looking at we don't
14 have a hearing on the 28th so we need to go to the
15 entire next week. Is that right? Okay.

16 MR. MOY: That's correct.

17 MR. GRIFFIS: Forgive me. I should get a
18 real calendar in front of me, not our schedule
19 calendar. So it's not the 21st, it's the 28th.
20 That's two weeks.

21 MR. MOY: That's right, the 28th or 27th.

22 MR. GRIFFIS: The 27th.

23 MR. MOY: The 27th would be Monday.

24 MR. GRIFFIS: Does that make sense?

25 MR. SMITH: The 27th is a Monday.

1 MR. MOY: That's correct. Would that be
2 good?

3 MR. SMITH: Yes, that would be fine. Oh,
4 I'm sorry. Can we have the 28th, please? Would that
5 be okay?

6 MR. GRIFFIS: Excellent. That's right.
7 That gives us ample time.

8 MR. SMITH: Plenty of time.

9 MR. GRIFFIS: Okay.

10 MR. SMITH: I just want to confirm then
11 the hearing is still the 4th of April. Right?

12 MR. GRIFFIS: The meeting, yes.

13 MR. SMITH: The meeting.

14 MR. GRIFFIS: Right.

15 MR. SMITH: Okay. Thank you.

16 MR. GRIFFIS: Good. Thank you very much.

17 Mr. Moy, did you want to restate all
18 those?

19 MR. MOY: I could.

20 MR. GRIFFIS: Okay.

21 MR. MOY: Decision by the Board April 4th
22 in the morning. I'm going backwards here. Responses
23 from parties March 28th, Tuesday. Written statement
24 from the staff of HPRB, the Ides of March, or March
25 15th.

1 MR. GRIFFIS: Excellent. Excellent.

2 Thank you very much, Mr. Moy.

3 Any questions on calendar, schedules,
4 submissions?

5 MR. SMITH: I don't believe so.

6 MR. GRIFFIS: Good. Thank you very much.
7 We appreciate your understanding of this and I think
8 this will move us ahead in a productive manner for
9 everyone.

10 MR. SMITH: Good. Thank you.

11 MR. GRIFFIS: Thank you very much.

12 With that being said, Mr. Moy, why don't
13 we move ahead then.

14 MR. MOY: Yes, sir. The next and last
15 case for decision is Application No. 17428 of Maja T.
16 Rasheed (Kuumba Learning Center), pursuant to 11 DCMR
17 3104.1, for a special exception to allow a child
18 development center which in the previous advertisement
19 we had 38 children but that was amended to 40
20 children, infants through 12 years, and 10 staff)
21 under section 205, in the R-5 District at premises
22 3328-3330 Martin Luther King, Jr. Avenue, S.E. (Square
23 5978, Lots 1036 and 1037).

24 On February 21, 2006, the Board heard
25 public testimony on the application and scheduled its

1 decision on March 7, 2006. The Board requested
2 specific post-hearing documents and those documents
3 were filed by the applicant on March 1st and is
4 identified in your case folders as Exhibit 34.

5 The Office of Planning also filed as
6 requested a supplemental report which is identified in
7 your case folder as Exhibit 35. Staff would conclude
8 its briefing here, Mr. Chairman.

9 MR. GRIFFIS: Thank you very much, Mr.
10 Moy.

11 Let's move quickly into this. Mr. Moy has
12 laid out that we did have an additional post-hearing
13 filing. I think the most critical one, of course, was
14 the Office of Planning's clarification of the
15 utilization of the front. There were some questions
16 and Office of Planning had some recommended conditions
17 and conclusions about drop off and loading. In my own
18 deliberation I looked at this case and thought it,
19 frankly, quite problematic to be bringing traffic into
20 the alley.

21 One, it didn't directly -- the access in
22 was off the very rear, not even just the middle of the
23 block but the next street up. I think you always have
24 to test, I believe, a little bit of common sense of
25 where would you first go and that way you could see

1 that it might logically work. I don't think it was
2 that persuasive that it was detrimental in the front.
3 We did have the adjacent property owner talk about not
4 finding parking spaces. I think we will get
5 specifically into that very quickly.

6 My point being, however, I didn't support
7 at all requiring the entire drop off and pickup into
8 the alley because the other aspect of it was it seemed
9 fairly problematic not only in entering and exiting
10 putting that volume into that, but also how the rear
11 would be utilized and where one might be able to queue
12 up or drop off and then move on.

13 Again, it doesn't seem like it was flowing
14 very well. I think the record shows quite clearly
15 that we are not looking at a huge amount of traffic in
16 terms of drop off and pickup. There are several, I
17 would say two or three, at a time and that is very
18 expeditious.

19 I think it is critical the recommendation
20 of a condition from Office of Planning that a staff
21 member or appropriate number of staff be required to
22 escort the children when being dropped off. That is
23 my opening remarks. Let me move ahead. Mr. Etherly,
24 I believe, has some opening comments.

25 MR. ETHERLY: Thank you very much, Mr.

1 Chair. I'm just going to be very quick and to the
2 point with my comments. I apologize to my colleagues
3 that due to an emergency I'll need to be leaving
4 shortly on business but I just wanted to note that I
5 felt that the application was indeed successful and
6 compliant with the special exception, as well as, of
7 course, all of the requirements of Section 205. I
8 agree with the ultimate outcome of the Office of
9 Planning with regard to use of the front area for
10 pickup and drop off.

11 I understood the direction in which the
12 applicant was going with regard to potentially
13 directing traffic off of Martin Luther King, Jr.
14 Avenue and into the rear but given the varying numbers
15 of access points it is probably a more straightforward
16 operation just to direct all of the traffic to the
17 front of the property and the additional submittal by
18 the Office of Planning helps to buttress that.

19 I think with respect to the issue of staff
20 parking, clearly there is sufficient parking as it
21 relates to the rear of the property for staff and the
22 additional arrangement that is held with the National
23 Children's Center with regard to any additional
24 parking that may be necessary.

25 My colleagues will recall we had a little

1 bit of discussion on the record about whether or not
2 there was a formalized written agreement with NCC but
3 given, one, the number of available parking spaces
4 that are available on the NCC property, and the rarity
5 with which those spaces are indeed populated to their
6 fullest extent based on the testimony of the applicant
7 I'm comfortable that arrangement, be it informal or
8 more formal, is more than sufficient to address any
9 parking overflow needs that may exist.

10 I'll also note for the record as we did
11 have substantial testimony from other residents about
12 concerns regarding the operation of the center, I am
13 very comfortable that the center's application is
14 consistent with Section 205 and the special exception
15 that is being sought here.

16 I will note, however, that as there was
17 substantial discussion about the issue of the
18 Homeowners' Association agreement and things along
19 those lines that I didn't find this venue to be an
20 appropriate venue for, shall we say, enforcement of
21 those types of considerations.

22 I'll just kind of note that for the record
23 and encourage the Board to address that as it may deed
24 appropriate but I don't necessarily think that a
25 condition or anything is necessary in that regard.

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I'm saying that more just to acknowledge the testimony that was given by some of the neighboring property owners, but that testimony did not suggest to me that there is any clearly identifiable traffic concerns that are generated, any objectionable traffic concerns that are generated by the operation of the center and the expansion of the center to 40 children. I will be voting in support of the application, Mr. Chair. Thank you.

MR. GRIFFIS: Excellent. Thank you very much. I'll touch on the Homeowners' Association documents. I know Mr. Hood, who was also with us in this hearing, and I believe has sent in an absentee ballot. I note he was most concerned with the issue of the requirements or prohibitions of any Homeowners' Association. I think he said it well in the hearing and I would tend to agree with your statement, Mr. Etherly, and also Mr. Hood's.

The Homeowners' Association might be more restrictive than the zoning regulations and/or our order if approved with conditions and that restriction would have to be compiled with meaning our order wouldn't supersede or disregard anything that is done with the Homeowners' Association and any sort of

1 bylaws that they enter into. I think that is an
2 important aspect to note in our own deliberation.
3 Very well. Other comments?

4 MR. ETHERLY: I'll also just note very
5 quickly, Mr. Chair, because we did have some brief
6 discussion about the issue of planting and some of the
7 existing work that had been done in the front of the
8 building as relates to Section 205.6. Of course, the
9 Board may look at the issue of design, screening,
10 buildings, planting, what have you. I just wanted to
11 note for the record that I don't think it's necessary
12 to explore any conditions as relates to planting or
13 screening.

14 I think the front of the building is
15 maintained and what is clearly a character that is
16 consistent with the residential nature of the
17 property. I just wanted to highlight that for the
18 record because we had some discussion about some of
19 the care that was being given to the front of the
20 building.

21 MR. GRIFFIS: Excellent. Excellent
22 points.

23 Others?

24 MS. MILLER: I don't anticipate that we
25 are going to be issuing conditions that are contrary

1 to the Homeowners' Association agreement but I just
2 want to comment that in general that agreement would
3 be enforceable in a different form. That's not
4 something that we are necessarily dealing with here.
5 We considered their concerns at the hearing and that
6 is how it is involved in this case.

7 MR. GRIFFIS: Excellent. Let's move ahead
8 then. Is there action proposed by the Board?

9 MR. ETHERLY: Mr. Chair, if it's
10 appropriate at this time, it would be my motion to
11 move approval of Application No. 17428 of the Maja T.
12 Rasheed (Kuumba Learning Center), pursuant to 11 DCMR
13 3104.1, for a special exception to allow a child
14 development center under section 205 in the R-5
15 District at premises 3328-3330 Martin Luther King, Jr.
16 Avenue, S.E. I would invite a second.

17 MR. GRIFFIS: I'll second that and note
18 that we will have conditions or discussion on
19 conditions in the motion. Is that correct, Mr.
20 Etherly?

21 MR. ETHERLY: Yes, sir. That is correct.

22 MR. GRIFFIS: Very well. Let's move ahead
23 then to -- we have a motion that has been seconded.
24 Let's run down the conditions as the Board would find
25 appropriate. We do have often standard kind of

1 conditions in these that relate directly to section
2 205. Just for a quick clarification the first would
3 be this is approved for the facility -- we had not
4 talked about a time on this. Is there a discussion or
5 reasoning to bring that up to our deliberation?

6 MR. ETHERLY: Good question. I do recall
7 that we had some discussion about the after-hours
8 portion of the program.

9 MR. GRIFFIS: I mean the term of the
10 special exception.

11 MR. ETHERLY: Oh, you mean the length of
12 the special exception itself.

13 MR. GRIFFIS: Right.

14 MR. ETHERLY: I was going to hours
15 quickly. I would not be -- I know at times we have
16 had some animated discussion if it's possible to be
17 even more animated than we were with the prior case.
18 I do recall that sometimes we have particularly
19 animated discussion around whether it's five years or
20 seven years.

21 I haven't seen anything in the record to
22 suggest a need to come back quickly to this so I would
23 be comfortable perhaps as an initial suggestion of
24 maybe a period of five years or seven. But if the
25 Board is so inclined to perhaps look at something in

1 a shorter time frame of three, I'm not so
2 overwhelmingly wedded.

3 MR. GRIFFIS: As far as timing I would
4 support a longer term. This has been in existence
5 since 1982.

6 MR. ETHERLY: Agreed.

7 MR. GRIFFIS: It is a bit of a change.
8 Obviously it's for a special exception. I think I
9 would support anywhere from eight to 10 years if
10 needed. Let's hear from other quickly on that.

11 MR. MANN: I'm willing to accept the
12 longer term also. In this case there a Homeowners'
13 Association that has certain authorities over certain
14 aspects of the operation. I think that serves the
15 purpose of sort of monitoring the way that certain
16 things might happen at the property.

17 MR. GRIFFIS: Okay. Then if it's amenable
18 to Mr. Etherly, why don't we put in for condition
19 where the approval of the city would be for a period
20 of ten years?

21 MR. ETHERLY: No objection, Mr. Chair.

22 MR. GRIFFIS: Very well. Next, "Number of
23 teachers and staff shall not exceed..." We had two
24 different numbers. Do we have clarification? Is it
25 38 or 40? I'm sorry. I don't have my notes right in

1 front of me.

2 MR. ETHERLY: I believe the number was 40,
3 Mr. Chair.

4 MR. GRIFFIS: Forty children ages infants
5 to 12 years and the staff from 7 to 10.

6 MR. ETHERLY: Correct.

7 MR. GRIFFIS: Okay. The operation time as
8 proposed by the applicant was 7:00 a.m. to 6:00 p.m.
9 Monday through Friday. They were also proposed to
10 operate the center during nontraditional hours and
11 that was 3:00 to 11:00. I believe that was also daily
12 and that was just for limited number of children as I
13 recall. Is there any difficulty in having that also
14 enumerated in the conditions?

15 MR. ETHERLY: No objection, Mr. Chair.

16 MS. MILLER: I'm just not clear how we are
17 going to phrase it. I mean, do we need to set hours
18 on this? The child development center is 7:00 to 6:00
19 and what is from 3:00 to 11:00, child care?

20 MR. GRIFFIS: Right. I would say that we
21 could indicate with that we would have -- how would we
22 say it?

23 MS. MILLER: I mean, while you're
24 thinking --

25 MR. GRIFFIS: I don't think we need to

1 differentiate quite frankly.

2 MS. MILLER: Do we need to put hours? I
3 mean, if they are taking care of an infant, that means
4 that it couldn't get picked up at 11:30? I mean,
5 without violating this order?

6 MR. GRIFFIS: Right. I'm in agreement.
7 I'm not sure we need to have --

8 MR. ETHERLY: Just so leave that all
9 together.

10 MR. GRIFFIS: Yeah. There wasn't any
11 persuasive element in the application that there is
12 adverse impact of operation times unless I'm not aware
13 of it. I think that is fine.

14 MR. ETHERLY: No objection.

15 MR. GRIFFIS: Good. We just have, as
16 usual, a staggering drop off and pickup which is more
17 critical. Okay. Others then?

18 MR. MOY: Mr. Chairman, very quickly from
19 the staff. The hours of operation staff is assuming
20 this is weekdays?

21 MR. GRIFFIS: Yes, although I don't think
22 we are actually condition it.

23 MR. MOY: Okay. Just wanted to double
24 check for clarification.

25 MR. GRIFFIS: Good point. Other

1 considerations and other conditions proposed?

2 MR. ETHERLY: In the course of our
3 deliberation do we need to include a formal condition
4 on the issue of pickup and drop-off taking place at
5 the front of the building or do we just leave that as
6 being clear in the deliberation?

7 MS. MILLER: I don't know how it's clear
8 in the deliberation but I would like to address it
9 because I think the Child Development Center has been
10 operating for 23 years in a certain way and most of
11 the drop-off and pickup seems to be in the front
12 though some is in the back. OP at first thought it
13 all should be in the back and then all these problems
14 came out and OP wasn't sure whether they were allowed
15 to park short-term in the front because of bus lanes.

16 But in the latest report OP has said it
17 was mistaken about the parking in the front, that they
18 can do drop-offs in the front. I just would be in
19 favor of not having a condition because I think it's
20 basically working. I think they should have the
21 flexibility to do what works.

22 MR. ETHERLY: No objection.

23 MR. GRIFFIS: I would absolutely agree and
24 I think it has been working and that's what was
25 stated. I think the only aspect that will be a

1 requirement in the rear is that the parking for the
2 staff and teachers will be provided in the rear of the
3 property which was indicated in the application that
4 they could comply with the required parking spaces.

5 MR. MOY: Mr. Chairman, since there is a
6 lull in the discussion, in Exhibit 34, which there I
7 think is the takeoff of the OP recommendation, there
8 is an issue about the appropriate number of staff
9 assigned to escort children between the drop-off and
10 pickup for your consideration.

11 MR. GRIFFIS: Section 2504 indicates that
12 one space for each four teachers and other employees.
13 Three spaces are required in this application if I
14 recall correctly. It is indicating in the record
15 there are four on site parking spaces at the rear of
16 all three lots. I don't know that we need to
17 condition it. It's a fact in the case.

18 However, I'll put it out there. I don't
19 know that we need to condition it because it is a
20 requirement to meet that parking and that the record
21 reflects that is where they are. Should we leave it
22 out?

23 We'll leave that out then and then I would
24 go back to Mr. Moy and the last condition would be
25 although the Office of Planning's language seems to be

1 a little bit undefined, I think rather than saying
2 appropriate number, I would say that we condition that
3 staff will be assigned to escort children between the
4 drop-off and pickup locations into the center.

5 MS. MILLER: I have some problem with this
6 condition. I think I know it is a concern that small
7 children be escorted. I think neither Office of
8 Planning or the applicant really said like how many
9 staff should be available. I mean, we could do
10 something but it would be pretty vague like staff will
11 be available.

12 MR. GRIFFIS: We just said the staff needs
13 to be there.

14 MS. MILLER: They are not all going to
15 need escorting. Twelve-year-olds may not need
16 escorting or some of the parents may be parking and
17 escorting the kids.

18 MR. GRIFFIS: Good. But it doesn't reduce
19 the impact of what we are trying to accomplish in that
20 condition which I think is appropriate. Okay.
21 Anything else? Any other conditions?

22 MS. MILLER: So how are we having that,
23 staff shall be available to escort?

24 MR. GRIFFIS: Staff will be assigned to
25 escort children between drop-off and pickup locations

1 into the center. Good? Acceptable? Mr. Etherly,
2 your motion.

3 MR. ETHERLY: No objection, Mr. Chair.

4 MR. GRIFFIS: Excellent. We do have a
5 motion before us. It has been seconded and
6 conditioned. Any further deliberation? Not noting
7 any I would ask for all those in favor to signify by
8 saying aye.

9 ALL: Aye.

10 MR. GRIFFIS: And opposed? Abstaining?
11 Thank you, Mr. Etherly.

12 Mr. Moy, if you wouldn't mind.

13 MR. MOY: Yes, sir. Staff would record
14 the vote as four to zero to zero on the motion of Mr.
15 Etherly to approve the application with conditions
16 seconded by Mr. Griffis, the Chair. The Board also
17 has an absentee ballot from Mr. Hood who is also
18 participating and his vote is to approve with such
19 conditions as the Board may impose which would give a
20 final vote of five to zero to zero.

21 MR. GRIFFIS: Excellent. Thank you very
22 much.

23 MR. MOY: Summary order or full order,
24 sir?

25 MR. GRIFFIS: I don't see any need since

1 we don't have a party in opposition. Unless there is
2 objection from the Board, we could waive the rules and
3 regulations and issue a summary order which would
4 obviously be conditioned. Not noting any objection,
5 we should do that. Very well. Any other business for
6 the Board this morning?

7 MR. MOY: No, sir.

8 MR. GRIFFIS: Very well then. We will
9 adjourn the morning public hearing. Thank you very
10 much.

11 (Whereupon, at 11:45 a.m. the hearing was
12 adjourned.)

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