

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

SEPTEMBER 13, 2005

+ + + + +

The Board convened in the Former Council Chamber, First Floor, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

CAROL MITTEN	Chairperson
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist
TRACEY W. ROSE	Senior Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

JOHN MOORE
MAXINE BROWN-ROBERTS

This transcript constitutes the minutes
from the public meeting held on September 13, 2005.

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

10:07 a.m.

CHAIRPERSON GRIFFIS: A very good morning to everyone and welcome back after our August recess it should be obvious to everyone we're in a different location. So, we'll probably have quite a bit of technical changes and accommodations, but we do appreciate everyone living through the renovations.

If you went upstairs, you'll see that there are all new offices proposed and on their way for the Office of Zoning which will accommodate, I think, quite well the public's participation in this process, but do accept our apologies to all visitors for hearings and the meeting today and we certainly hope that everyone found this room easily enough and as I said off the record, please find those wandering aimlessly that should be in here and direct them to the right place if we do not do that.

Let me just do a couple of quick housekeeping items. First of all, if -- let me just state that the same rules apply as upstairs in our hearing room. We ask that people not have food or drinks in this room.

Anything that you do bring into this room, we would ask that you please take them with you.

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1 There are trash receptacles that are available for
2 you. If you do not need to take what you brought in
3 home with you, please dispose of it yourself.

4 We are not being broadcast on the web down
5 in this room, but we are being recorded, of course,
6 officially by the court reporter and I will state that
7 again in -- in the official openings.

8 With that, let me call the 13th of
9 September of 2005 public meeting of the Board of
10 Zoning Adjustment to order.

11 My name is Geoff Griffis, Chairperson.
12 Joining me today is the Vice Chair Ms. Miller and also
13 our esteem colleague Mr. Etherly.

14 Representing the National Capital Planning
15 Commission with us is Mr. Mann and we will in our
16 public meeting have differing participations by the
17 Zoning Commissioners as the case warrants.

18 Copies of today's agenda are available for
19 you. I do believe they're on the table where you
20 entered into the hearing room. You can pick those up.
21 I am going to be juggling the schedule this morning a
22 little bit and let me get right to that.

23 First, I would like to hear 17306 which is
24 the first case on the agenda.

25 Second, we will go to 17276 which is

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1 Phillips Park. There are two motions in that and we
2 will take that up second on our agenda.

3 Third, we will move into 17320 which is
4 that application of the St. Alban's School.

5 We will then take a short break, return
6 for the fourth and fifth cases for decision this
7 morning. That being 16566-F Georgetown University and
8 17411 which is a motion to dismiss an appeal.

9 I believe everyone present is well aware
10 of our procedures in the public meetings, but let me
11 just restate the fact that I would ask them to turn
12 off their cell phones and beepers so that we don't
13 have disruption of our deliberation. We obviously
14 will not be hearing testimony in the cases that I've
15 indicated as first three in the morning, but this will
16 be the time for you to listen to us review the case
17 and deliberate it -- deliberate on it and come to a
18 decision.

19 With that, let me say a very good morning
20 to Ms. Bailey who's with the Office of Zoning and also
21 Mr. Moy who is on my left. Mr. Nyarku, very far left,
22 is also with the Office of Zoning who will be
23 attending to the Board. The Office of Attorney
24 General is represented.

25 And let us move on and call the first case

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1 for decision this morning.

2 SECRETARY MOY: Yes, sir, good morning,
3 Mr. Chairman and Members of the Board.

4 The first case is a motion for a minor
5 modification of approved plans pursuant to -- which
6 was to application number 17306 of Hannah Reisman,
7 pursuant to 11 DCMR 1202 and 3104.1, for a special
8 exception under Section 223 to allow an addition to an
9 existing single-family dwelling not meeting the rear
10 yard requirements, Section 404, in the CAP/R-4
11 District at premises 227 C Street, S.E. That's in
12 square 763, lot 24.

13 On April 19th, 2005, the Board completed
14 public testimony on the application and approved it by
15 a bench decision. A summary order was issued on the
16 same day. A filing for a motion for the modification
17 was on June 2nd, 2005 and is in your case package
18 identified as Exhibit 31.

19 Finally, Staff would like to also add that
20 the ANC, ANC-6B, in a letter dated June 28, 2005, was
21 filed into the record, that's Exhibit Number 33, where
22 the ANC indicated in their letter that the -- that
23 given the -- the -- the modification not warranting a
24 review by the full ANC Commission and that completes
25 the Staff's briefing, Mr. Chairman.

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1 CHAIRPERSON GRIFFIS: Excellent. Thank
2 you very much, Mr. Moy, and let me also step back a
3 second and say I neglected to wish a very good morning
4 to Ms. Rose who's also with the Office of Zoning and
5 with us today.

6 Mr. Moy, thank you. Excellent review of
7 where we are with the motion for minor modification in
8 17306.

9 I think that with such a small scope and
10 clearly understood by the Board that we ought to start
11 our deliberation under a motion and I would move
12 approval of the minor modification that approves the
13 plans as submitted in the record at this time and ask
14 for a second.

15 MEMBER MANN: Second.

16 CHAIRPERSON GRIFFIS: Thank you, Mr. Mann.
17 I think we can look easily to Exhibit Number 31 in the
18 record, also was provided the -- the prior and I know
19 we looked at the past record. These are certainly
20 minor and don't have any impact that would change my
21 assessment or deliberation on the original
22 application. In fact, this is removing some of those
23 elements of which were critical to the 223 special
24 exception.

25 And I'll open it up to others.

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1 If there is no further comment on that, we
2 do have a motion before us. It has been seconded. I
3 would ask for all those in favor signify by saying
4 aye.

5 (Ayes.)

6 CHAIRPERSON GRIFFIS: Opposed? Why don't
7 we record the vote?

8 SECRETARY MOY: Staff would record the
9 vote on the motion of the Chair to approve the motion
10 for a minor modification, seconded by Mr. Mann. Also
11 in support of the -- of the motion is Ms. Miller.
12 With a vote of 3 to 0 to 1, no Zoning -- 3 to 0 to 1.
13 Mr. Etherly not participating on the case.

14 We do have, Mr. Chair, a absentee ballot
15 submitted from Mr. Jeffries who -- who did participate
16 on the case and his vote is to grant the motion for a
17 modification.

18 Therefore, it would give a final vote of
19 4 to 0 to 1.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you very much, Mr. Moy.

22 Why don't we move on then to the second
23 case?

24 SECRETARY MOY: The second case has to do
25 with application number 17276 of Phillips Park, LLC

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1 which that application was pursuant to 11 DCMR 3104.1
2 for a special exception from Section 2516 of the
3 Zoning Regulations to allow the construction of a
4 theoretical lot subdivision for single-family homes in
5 the R-1-A zone district at 2101 Foxhall Road, N.W. in
6 square 1346, lot 822.

7 We have two motions before the Board. The
8 first motion which you may want to take up second, Mr.
9 Chair, is a motion for reconsideration pursuant to
10 Section 3126 and a motion requesting a minor
11 correction to the final order.

12 The motion for reconsideration was filed
13 by the Friends of Whitehaven, a party in -- in the
14 opposition, and that is identified in your case
15 records -- case folders as Exhibit 71.

16 There is a filing in opposition to this
17 motion by the -- by the applicant and that is
18 identified in your case folders as Exhibit 72 and that
19 was filed on August 12th, 2005.

20 Finally, we have a -- as I said earlier,
21 a motion requesting a minor correction to the final
22 order and that is identified as Exhibit 70 dated
23 August 2nd, 2005 and I'll -- I'll stop there, Mr.
24 Chairman.

25 CHAIRPERSON GRIFFIS: Whoa. Okay.

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1 Excellent. Thank you very much, Mr. Moy.

2 What I'd like to do, Board Members, is
3 take up the first -- the second motion first. That
4 would be the motion requesting a minor correction of
5 the final order and I think it is well briefed in the
6 last submission. It is a minor correction to the
7 written order.

8 I do note in the August 2 submission,
9 Exhibit -- our Exhibit Number 70, that the -- the --
10 the stated section is 2516.6C and, you know, quite
11 frankly, I'm not sure if I have the current regs, but
12 it seems to me it's 2516.B that is the -- indicating
13 the -- the dimensional requirements of 25 feet width.
14 C goes to the turning radius of 60 feet, but I think
15 we're all understood of exactly what is being
16 corrected in this and if not, we bring that to light.

17 Let me open it up to any comments
18 initially from Board Members if there are any.

19 If there are no initial statements from
20 the Board, I would suggest that we continue
21 deliberation under a motion.

22 I would move approval of the minor
23 correction to the final order as is indicated and
24 stated in submission Exhibit 70.

25 MEMBER ETHERLY: Seconded, Mr. Chair.

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1 CHAIRPERSON GRIFFIS: Thank you very much,
2 Mr. Etherly.

3 Let's move ahead. It seemed to be very
4 clearly laid out the fact of -- based on the -- the
5 record, some of the -- the testimony and also on the
6 draft order that was submitted to the Board. The
7 dimensional requirements shifted around a little bit
8 as to proposed and then what was actually required and
9 -- and melded into a statement that was not exactly
10 clear. This will hopefully and eventually bring some
11 clarity to -- to our order.

12 Let me open up to any other deliberative
13 comments. If they're not, then we do have a motion
14 before us. It's been seconded and ask for all those
15 in favor signify by saying aye.

16 (Ayes.)

17 CHAIRPERSON GRIFFIS: And opposed? Very
18 well. Mr. Moy.

19 SECRETARY MOY: Staff would record the --
20 the vote as 4 to 0 to -- 4 to 0 to 0 on the motion by
21 the Chair to approve the minor correction to the final
22 order. Seconded by Mr. Etherly. Also in support of
23 the motion, Ms. Miller and Mr. Mann. We have an
24 absentee ballot from Mr. Parsons who participated on
25 the case and he has voted to -- to -- to also grant

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1 the minor -- minor correction to the final order which
2 will give a final vote of 5 to 0 to 0.

3 CHAIRPERSON GRIFFIS: Excellent. Thank
4 you, Mr. Moy.

5 Let's move ahead then to the second motion
6 before us. There are two elements involved in that
7 and generally stated they are first -- well, first of
8 all, it's a motion for reconsideration --
9 reconsideration of our decision in the hearing itself.

10 The two elements are the fact that -- that
11 we erred in a finding of fact that stated that there
12 were over three acres of wetlands that were non-
13 natural or were essentially artificial and the second
14 element in this motion is some concern of the elements
15 that were stricken from the record based on a witness
16 presented and that is Julie Moore and based on what
17 was or what was not taken into consideration
18 deliberation and was, therefore, reflected in the
19 order.

20 Taking both of those, let me open it up.
21 Let's start with however the Board wants to take
22 those. I'll hear comments. Ms. Miller.

23 VICE CHAIRPERSON MILLER: Well, I'll just
24 set the stage in that our standards for
25 reconsideration are -- our standards are in our regs,

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1 3126.4. It says that -- that we can consider a motion
2 for reconsideration where it's shown that there's
3 something clearly erroneous in our decision and then
4 if the party is seeking a rehearing, they need to show
5 that -- that new evidence could not have been
6 reasonably presented at the original hearing.

7 So, taking, I guess, the first issue about
8 that we made a mistake with respect to the finding
9 that are three acres of non-natural wetlands, I don't
10 think that -- I don't see in the record that -- that
11 we've made a mistake and the party, I don't think,
12 made a good case on the record that -- that we had and
13 I think that the record is supported by substantial
14 evidence.

15 So, then we get to the question of whether
16 there should be a rehearing and again, I don't see
17 that this party has made a showing that they couldn't
18 have reasonably presented evidence on this issue at
19 the hearing that they want to present now.

20 CHAIRPERSON GRIFFIS: Good. I absolutely
21 agree in terms of a test of what it would take to open
22 up the record or actually reconsider this.

23 I think there may -- I -- I would concede
24 the fact that in my mind that perhaps there could be
25 some misunderstanding of the amount of acreage that we

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1 put in a finding, but I think it is read in full with
2 the findings of fact and as to our decision, it was
3 very clear and it was clear in my mind. I think it
4 was clear in the Board's decision that we understood
5 that there were some natural and -- and some non-
6 natural.

7 Whether we made a mistake of actually
8 putting square footages or acreage numbers on it, I --
9 I don't -- I'm not going to -- to determine, but I
10 don't think that it's a critical failing of our
11 hearing or deliberation or certainly of the issuance
12 of the order and I don't think it rises as -- as Ms.
13 Miller has said beyond the threshold of what we could
14 take up in terms of the motion for reconsideration in
15 granting it.

16 Ms. Miller.

17 VICE CHAIRPERSON MILLER: I just want to
18 add also that I believe that we did rely on -- on
19 testimony from a Department of Health representative
20 and also that -- that this issue regarding the
21 protection of the wetlands will be addressed by the
22 Department of Health at the time of the issuance of
23 permits. So, I -- I don't think that -- that what we
24 said is the last word on -- on that issue.

25 CHAIRPERSON GRIFFIS: Excellent.

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1 Excellent. And I think the submission by the
2 applicant states that very well.

3 In fact, going to that issue, there was
4 substantial, as you've indicated, substantial factual
5 evidence presented and testimony presented on it and
6 I think we heavily relied on that in terms of our
7 deliberation both from the surrounding parties and
8 participants and also the applicant.

9 Very well. Is there anything else on that
10 first element?

11 Then we can move on to the second. The
12 Friends are obviously requesting that the Board accept
13 all the information and documents filed on March 28th
14 and that was pertaining to the issues of wetland
15 protection and it went directly to the declaration of
16 Julie Moore.

17 I would start out first of all saying --
18 again reiterating what Ms. Miller said in terms of the
19 threshold of what it would take for us to accept a
20 motion for reconsideration whether we had made an
21 error in our deliberation or hearings or that there
22 was evidence that is now available that could not have
23 been presented at the hearing.

24 First of all, Ms. Moore did personally
25 testify. The follow-up written submission was

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1 accepted by the Board except for that information that
2 was new.

3 There was certainly no -- no opportunity.
4 There was certainly no indication or evidence at this
5 point that there was not an available time or resource
6 to have heard any of that in the hearing and quite
7 frankly, I think we did a substantial and more than
8 sufficient job in addressing that when we removed it
9 from the record.

10 Now, clearly, we had the filing not all of
11 which was removed from the record, but parts of which
12 were and I think it was -- it was very clear in the
13 Board's point and I think it adequately reflects in
14 our order.

15 Let me open it up to others. Ms. Miller.

16 VICE CHAIRPERSON MILLER: Yes, I think
17 that what this Board was doing was following its
18 regulation 3121.5 which deals with when the record is
19 closed and -- and it says that the record shall be
20 closed following the public hearing except that the
21 record may be kept open for a stated period for the
22 receipt of specific exhibits, information or legal
23 briefs as may be directed by the presiding officer.

24 And my recollection in this case is that
25 the record was closed at the end of the hearing except

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1 for certain specified items including findings of fact
2 and conclusions of law and that we accepted their
3 findings of fact and conclusions of law, but struck in
4 our consideration new evidence because it was
5 submitted after the record was closed.

6 CHAIRPERSON GRIFFIS: Good. Excellently
7 said.

8 I -- I -- I absolutely agree and I think
9 it can be adequately said that the Board hasn't in
10 both of these elements committed any sort of
11 irreversible error on -- on striking the action that
12 we did strike, the declarations. Really more, I think
13 as I said before we discussed it. We deliberated on
14 it and we decided at that point and this seems to be
15 revisiting the same issue again. There it is.

16 Anything else? Comments?

17 Very well. I would move now the motion
18 for reconsiderations as stated and ask for a second.

19 VICE CHAIRPERSON MILLER: Second.

20 CHAIRPERSON GRIFFIS: Thank you very much,
21 Ms. Miller. Further deliberations, comments?

22 Good. I think it's been well said that --
23 that the threshold of -- of which we could or would
24 approve a motion for reconsideration have not been met
25 and oh, indeed.

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1 VICE CHAIRPERSON MILLER: Mr. Chairman,
2 Mr. Parsons is -- is -- was not able to be with us
3 today and I believe he submitted something that
4 perhaps Mr. Moy could read into the record with
5 respect to his position on this case.

6 SECRETARY MOY: Yes, thank you, Ms. --
7 Vice Chairperson.

8 Mr. Parsons did submit an absentee ballot
9 with comments. The comments read as follows: "The
10 BZA has consistently relied upon the Department of
11 Health to review and stipulate additional
12 environmental protection of waters of the District of
13 Columbia as the Board of Health determines appropriate
14 and necessary at the time of consideration and
15 issuance of permits for ultimate construction of BZA
16 approved development. The protection of natural water
17 flows that may exist in the vicinity of the referenced
18 three acre area will be evaluated at the time any --
19 any clearing or construction permits are applied for.
20 The BZA appropriately relied upon the applicable
21 District agencies to follow their legally required
22 responsibilities."

23 CHAIRPERSON GRIFFIS: Comments? Very
24 well. Thank you, Mr. Moy.

25 I tend to absolutely agree with the last

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1 sentence in that paragraph and that is, of course, we
2 do rely on the jurisdiction and authority of other
3 agencies to do which -- to enforce or review what is
4 with jurisdiction.

5 I don't necessary agree with the first
6 board statement that we rely on the Department of
7 Health, but I don't want to get into the details of
8 that. I think the point as I understand what Mr.
9 Parsons narrative has just indicated is the fact that
10 there are other regulatory agencies that go
11 substantively into issues.

12 Now, I would also say that as I agree with
13 that so did the applicant in Exhibit Number 72 and
14 spent some time on -- on addressing that issue of --
15 of whether -- what line the Board walks to before it
16 crosses over into other jurisdictions and -- and
17 cited, in fact, a court case and has indicated that in
18 that case we did, in fact, act appropriately and in
19 this case, we would also and have in issuing our
20 decision and order.

21 Very well. Is there anything else then?
22 Good.

23 To summarize, I think we can look to the
24 conclusion as submitted in Exhibit 72 which states
25 that the Friends of the Whitehaven have failed to

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1 proffer any new evidence that could have -- could not
2 have been presented at the hearing and I think that is
3 the opinion of the Board.

4 The Board's decision was also based on
5 substantive evidence in the administrative record and
6 require no further clarification. I think, in fact,
7 we went through substantial and it shows in our order
8 and our own deliberation briefly this morning, but
9 certainly, on the full deliberation and I think that
10 -- we should as we have the motion before us to deny
11 the motion for reconsideration, I think we should, in
12 fact, look to rely on our order as issued with the
13 correction that we've made this morning.

14 Final comments? If there are no other
15 comments on that, then we do have a motion before us.
16 It's been seconded. Ask for all those in favor
17 signify by saying aye.

18 (Ayes.)

19 CHAIRPERSON GRIFFIS: And opposed? Very
20 well. Mr. Moy.

21 SECRETARY MOY: Yes, sir, the Staff would
22 record the vote on the motion of the Chair, the motion
23 to deny the motion for reconsideration, seconded by
24 Ms. Miller. Also in support of the motion is Mr. Mann
25 and Mr. Etherly which is a vote of 4 to 0 to 1. We do

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1 have an absentee ballot from Mr. Parsons who
2 participated on the case and his vote is to deny the
3 motion for reconsideration which then would give --
4 give -- would give a final vote of 5 to 0 to 0.

5 CHAIRPERSON GRIFFIS: Ooh. Boy, I can't
6 hit that. Thank you, Mr. Moy.

7 Then why don't we move on to the next case
8 in the morning which we have changed the schedule
9 briefly, but let's call application 17320.

10 SECRETARY MOY: Yes, sir. Application
11 number 17320 of St. Alban's Church -- School on behalf
12 of the Protestant Episcopal Cathedral Foundation of
13 D.C. pursuant to 11 DCMR 3104.1 for a special
14 exception to permit additional facilities including
15 renovation of athletic fields and related structures
16 and construction of a performing arts center serving
17 a private school under Section 206 in the R-1-B
18 District at premises 3101 Wisconsin Avenue, N.W.
19 That's in square 1944, lot 25.

20 On July 26, 2005, the Board completed
21 public testimony on the application and requested
22 additional information from the applicant, ANC-3C and
23 the Office of Planning in the form of a supplemental
24 report.

25 The office has received the following from

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1 the applicant on August 2nd, 2005 and that is
2 identified in your case folders as Exhibit 47.

3 The office has also received filings from
4 the District Department of Transportation and the
5 Office of Planning and they are identified -- these
6 documents are identified as Exhibit 48 and 50
7 respectively.

8 The office -- let me -- let me rephrase
9 that, sir. Staff has received filings from DDOT,
10 Office of Planning. Yes, Exhibit 48 and Exhibit 50.

11 Also, on August 26, the Staff Office has
12 received a response to the supplemental report
13 submitted by OP and DDOT and that's in your case
14 folders identified as Exhibit 51.

15 Also, although not requested by the Board,
16 DDOT filed on September 6th, 2005 a memorandum
17 detailing the outcome of a meeting that Staff had had
18 with the applicant, ANC-3C and that is identified as
19 -- as Exhibit 52.

20 The office has also received for the
21 record proposed findings of fact, conclusions of law
22 from ANC-3C and the applicant and these documents are
23 identified in your case folders as Exhibit 53 and 54
24 respectively.

25 And that will conclude the Staff's

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1 briefing, Mr. Chairman.

2 CHAIRPERSON GRIFFIS: Good timing, Mr.
3 Moy. Let us as she get's acclimated welcome Ms.
4 Mitten who is a participant on this case. As Ms.
5 Mitten is aware, we've just the case, application
6 17320 and we asked Mr. Moy to speak slowly while you
7 got your seat.

8 So, we are ready to proceed with this,
9 Board Members. Let's open it up. We do have the last
10 submission. Mr. Moy's gone through the litany of that
11 which we had requested and that which is in the record
12 at this point.

13 I will open it up to Board Members to go
14 through a deliberation and also to address
15 specifically if we are moving in the direction of
16 approval, the specific conditions that will be
17 attached to any order of approval.

18 Let me generally state that I was as I
19 said in the hearing impressed with the amount of work
20 from the design perspective that had gone into the --
21 the plan in terms of redoing some of the edges and the
22 -- and the -- and the fields and really balancing that
23 of the views from the street, from the public's
24 perspective, but also in terms of the experience on
25 site.

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1 I -- it is an -- it is an important
2 aspect, but not the most critical aspect of our own
3 deliberations under 206, but all those elements
4 obviously touched those aspects that are critical to
5 us and that is, did any of these elements, the
6 massings, the placements, the edging, did they create
7 any objectionable conditions be it noise, traffic or
8 number of students or any other objectionable
9 conditions.

10 We're well aware of the details and the
11 facts and the Board has spent a lot of time going
12 through this. So, let me open it up to others for
13 statements or get right into the specifics.

14 Mr. Mann, thank you.

15 MEMBER MANN: I would just to follow up on
16 that make a general comment that I think that we saw
17 a lot of design elements incorporated into this
18 project that were specifically or that specifically
19 took into consideration potential -- potential
20 conditions that could occur like excessive noise or
21 parking issues and I think the buildings and
22 recreational fields and whatnot were perhaps cited in
23 a way that was trying to deal with those issues before
24 they became issues.

25 CHAIRPERSON GRIFFIS: Good. I absolutely

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1 agree and -- and actually, I think a critical point of
2 that is we'll get into some of the noise projection
3 from the athletic activities and then the -- the --
4 the fans and the crowds that might be there and -- and
5 -- and I would go further.

6 What you're saying is that -- when I
7 reviewed the plans and the testimony presented, there
8 was a substantial amount of consideration of using
9 one, the existing grading and -- and obviously,
10 athletic fields are flat surfaces, but they're on
11 different levels based on the existing grading that
12 happens on the -- and I'll call it the campus.

13 Also, as -- as -- as I saw it and as some
14 of the testimony went to, that design elements went to
15 opening up actual vistas or views from the street and
16 from the site, so, as you were participating or as you
17 were walking by. All of which I think lend to the --
18 as you were saying, Mr. Mann, the detail of how this
19 was to impact the surrounding around. So, that does
20 go directly to 206. Good.

21 Others? Yes, Ms. Miller.

22 VICE CHAIRPERSON MILLER: I just want to
23 note that we're looking at the standard set forth in
24 206 and 206 as written, looks like it generally
25 relates to the location of a school and the school has

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1 been here for a long time, but I know this Board has
2 applied this to any development of new buildings, et
3 cetera on the property and that's what we'll be
4 looking at here and there are -- there are three
5 different buildings here. One is renovating upper
6 school and extending a new wing. One is modifying
7 fields and one is a new art center.

8 So, there are three different things that
9 we will be looking at and I think when we look at that
10 to see if there are adverse impacts, we should be --
11 we look at one, are there -- are there adverse impacts
12 now and then are there -- is there a case that they're
13 likely to be adverse impacts from these changes and
14 also, I -- I just want to say that the -- the world
15 that we're looking in it I think we -- we have our
16 regulations and then we also have the Court of Appeals
17 cases which in general talk about a reasonable
18 accommodation between schools and neighborhoods. So,
19 that the legitimate interests of either one are not
20 interfered with.

21 CHAIRPERSON GRIFFIS: Very well. Others?
22 Very well. Let's go into then the -- the specifics of
23 the case findings as they relate to any of the issues
24 under 206. Ms. Mitten.

25 COMMISSIONER MITTEN: Is it your intent to

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1 go through the proffered conditions one by one or how
2 do you -- how do you want us to put issues on the
3 table?

4 CHAIRPERSON GRIFFIS: I was open to
5 suggestions, but absolutely, I think that's what we
6 usually do and I think that frames it very well. So,
7 we can start with that.

8 If there are no -- if no one wants to
9 highlight a -- a finding of fact, but have those facts
10 come out of the review of the conditions? I think
11 that's appropriate to move ahead in that fashion at
12 this point.

13 Yes, Ms. Miller.

14 VICE CHAIRPERSON MILLER: Then I -- I --
15 I would guess then that we would tie that analysis to
16 206.2 or 206.3.

17 CHAIRPERSON GRIFFIS: Um-hum.

18 VICE CHAIRPERSON MILLER: Okay.

19 CHAIRPERSON GRIFFIS: Here I was going to
20 let you all so, but I can certainly show you exactly
21 where to go on this one.

22 Mr. Etherly, did you have a comment,
23 question?

24 MEMBER ETHERLY: No, I was -- I was going
25 to inquire, Mr. Chair, as to whether or not it would

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1 simply be appropriate perhaps for us to operate under
2 a motion which would then lead us to the condition
3 discussion.

4 CHAIRPERSON GRIFFIS: Good. I like that.
5 Yes, absolutely.

6 MEMBER ETHERLY: If -- if that will be
7 appropriate at this time, Mr. Chair, it would -- it
8 would be my motion to move approval of application
9 number 17320 of the Protestant Episcopal Cathedral
10 Foundation on behalf of St. Alban's School pursuant to
11 DCMR 3104 for a special exception under Section 206
12 to allow additions to an existing private school in
13 the R-1-B District at premises 3101 Wisconsin Avenue
14 with conditions to be discussed shortly and agreed to
15 by a majority of the Board.

16 CHAIRPERSON GRIFFIS: Excellent. I would
17 second the motion. Let's move ahead then.

18 Mr. Etherly, would you like to take that
19 charge or would you like me to move the Board to --

20 MEMBER ETHERLY: I'll just -- I'll offer
21 a starting point, Mr. Chair.

22 CHAIRPERSON GRIFFIS: Good.

23 MEMBER ETHERLY: As -- as you've already
24 indicated, I think as other Board's -- other Board
25 Members have spoken to, there has been a tremendous

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1 amount of work that's been put in to this particular
2 application by all of the parties involved inclusive
3 of, of course, the applicant and the ANC and I think
4 that that work has -- has -- has been herculean to say
5 the least, but has resulted in -- in -- in a
6 tremendous amount of progress that oftentimes we don't
7 see in cases that involve our educational
8 institutions.

9 So, I'm -- I'm -- I've been very pleased
10 with that and I think we have a very good foundation
11 to start. From clearly as has been indicated in some
12 of the submittals, we do have some -- some areas where
13 there are -- there are objections or shall we say
14 differences in opinion between the applicant, the ANC
15 and other affected members of the community. So, I
16 look forward to that conversation as -- as we ensue.

17 As -- as we look to I believe it was
18 Exhibit Number 54, Mr. Chair, there were a number of
19 conditions identified by the applicant as being -- as
20 being a cause for concern in -- in their review of the
21 ANC's list and I will perhaps offer that as -- as --
22 as a starting point unless other members have very
23 specific issues.

24 But, I -- I will just note for the benefit
25 of my members as I reviewed that particular submittal,

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1 I found most of the -- most of the arguments of the
2 applicant to be somewhat reasonable with respect to
3 some of the concerns that they had. In particular, I
4 know that -- that there -- there are questions about
5 programming, regarding the use of the parking garage
6 and in particular as it relates to the performing arts
7 center and I will definitely look forward to some
8 discussion on how the Board may want to approach and
9 deal with that particular issue.

10 CHAIRPERSON GRIFFIS: Excellent.

11 MEMBER ETHERLY: I'll leave it at that,
12 Mr. Chair.

13 CHAIRPERSON GRIFFIS: Thank you and I
14 think that you're absolutely right that they have --
15 the applicant has addressed some of the motions.

16 Let's state fully in case there is any
17 disagreement to some of the base facts. Ms. Miller
18 mentioned the elements of which we're reviewing this.
19 206 is an interesting point. It does look to and
20 speak directly to the establishment and here we have
21 over time taken it to look at continuing review and
22 that's just what it has evolved into in terms of
23 private schools.

24 This school is proposing to maintain its
25 current enrollment. They do have a goal of students

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1 and they have proffered a maximum of 579 students.

2 We do have both OP and DDOT recommending
3 approval of the application. They both came in with
4 some conditions of which we can look to also in our --
5 in our own deliberation. I know we've reviewed and
6 digested substantially all of those.

7 As was laid out by Ms. Miller, we were
8 looking at the -- the wing extension, the performing
9 arts and the reconfiguration of the athletic fields.
10 Of course, those spin off in 206, all of those aspects
11 that are traditional in looking at private schools and
12 that is the parking impact, the noise impact. The
13 utilization impact is somewhat specific to this piece.

14 I would ask then that we go through and
15 look to conditions and as we talk to the conditions,
16 tie them to the order and most specifically -- rather
17 them to the facts presented in the case and most
18 specifically, tie them to the -- the testimony and
19 evidence presented in the case that we feel -- the
20 Board feels need to be conditioned in order to
21 mitigate or potentially mitigate an -- a potential
22 adverse impact.

23 So, we'll open it up. Mr. Etherly, did
24 you want to take on the first or I'm sorry. Ms.
25 Mitten, did you have?

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1 COMMISSIONER MITTEN: Well, I don't know
2 when you would like to discuss this particular item
3 because sometimes we talk about timing issues at the
4 beginning of the discussion and sometimes we talk
5 about it at the end. I think there's some merit maybe
6 to taking this up in the beginning.

7 But, is the -- one of the -- the first
8 proposed condition from the applicant which is
9 troubling to, me and I think it will affect the
10 conversation that we have, is that they would like to
11 have the flexibility to proceed in two phases and the
12 second phase which would be the performing arts
13 center, there would be -- they would basically have
14 ten years to begin construction on the performing arts
15 center.

16 And this is -- you know, timing issues, we
17 have these when we do PUDs as well and, you know,
18 there's -- typically, there's a similar window on PUDs
19 as a -- as a BZA order where you have to apply for a
20 building permit within two years and then start
21 construction within three and the reason for that is
22 because you're making a decision with a particular set
23 of facts and there's -- there's going to be a
24 significant amount of change on this, you know, if we
25 call it a campus, the larger campus with the

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1 completion of the parking garage at some point in the
2 future.

3 And I'd be very concerned about making the
4 decision about the performing arts center on the set
5 of facts that exist today, but then they don't need --
6 they won't necessarily construct it for ten years when
7 the set of facts may be completely different. So, I'm
8 -- I'm really concerned about the conditions we put in
9 place given that they might not be building it for ten
10 years.

11 CHAIRPERSON GRIFFIS: Right.

12 COMMISSIONER MITTEN: So, I don't know if
13 you want to have that discussion now or at the end,
14 but I think it will impact how we view the conditions
15 we put in place.

16 CHAIRPERSON GRIFFIS: Indeed and as this
17 is condition number one, I think it's appropriate to
18 take it up at this point.

19 I -- I -- I tend to agree that I -- I was
20 a little concerned of -- of how we do that. However,
21 I also -- of -- of the understanding of the difficulty
22 in having to start all of this in large part within
23 two years in order to effectuate or to utilize the --
24 the order.

25 I think we ran into this -- well, I know

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1 we ran into this issue in a previous case in terms of
2 looking at a master plan that was then going to be
3 phased in.

4 I guess the point I would make on this is
5 that even though we're making the -- making the
6 decision based on today's facts, we're not expecting
7 that this performing arts center is not going to be
8 there in ten years. I would certainly imagine that
9 they would want to build this as quickly as possible,
10 but it may not be feasible to do that within two years
11 because of some of the other issues involved in doing
12 that large of a development.

13 But, I'm not convinced at this point -- I
14 think -- I think we need to have some discussion on
15 what we think would be changing then that might impact
16 a decision that we'd make today. Is it actually all
17 those that we have presented? Would it actually be
18 making a better situation in the future in terms of
19 the construction of the -- the parking structure, in
20 terms of anticipation of what will be or do we really
21 need to be concerned, which I'm open to hearing, to be
22 concerned that it would so substantially change within
23 the next ten-year period?

24 Is that -- does that make sense?

25 COMMISSIONER MITTEN: It -- it -- it does

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1 make sense. I guess there's -- there's a couple of
2 things that I would say. I understand what -- your
3 point about the fact that they would probably want to
4 proceed as quickly as possible, but may not be able to
5 proceed and that's all the more reason why, you know,
6 if -- if -- if they think they can proceed, then you
7 put them on a short window. If they can't, they come
8 back and they make representations to the Board about
9 why they need an extension and it allows for the
10 opportunity for at least there to be a discussion in
11 the event that background conditions have changed
12 which we would lose if we just let them -- we allow
13 them to have a ten-year window to begin construction.

14 I think the -- the thing that is probably
15 the biggest wild card in what might happen within the
16 next ten years, is what -- what is the impact of the
17 parking garage? You know, everybody anticipates that
18 the parking garage would be utilized fully and that it
19 will be managed in a way that will significantly
20 relieve any adverse impacts on the neighborhood, but
21 we -- we don't -- we don't know that.

22 And one of the reasons is that we don't
23 know and they don't know yet how the financial set up
24 is going to work. They know they're going to charge
25 for parking and they -- they have certain -- certainly

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1 they have a -- there's going to be a balance between
2 charging too much and causing people not to use the
3 parking garage, but they need to charge enough to --
4 to recoup their investment. So, they're going -- you
5 know, they're going to try and find that happy medium
6 where they keep the parking garage utilized.

7 But, you know, we just don't have any
8 experience in a residential neighborhood like this
9 with a parking garage where you pay to park, where
10 there's at least the opportunity for people to park in
11 the neighborhood. We don't know what the success of
12 that's going to be.

13 So, that to me is the biggest wildcard
14 about what might happen and that is a significant
15 factor for the performing arts center because it's
16 going to be bringing large groups of people into the
17 neighborhood with the expectation that they would park
18 in the parking garage, but we just don't know that.

19 CHAIRPERSON GRIFFIS: Good. I think
20 that's an important point and what I'd like to hear
21 from you, Ms. Mitten and other Board Members, is
22 what's our perspective or what's the facts of how much
23 increased use we're actually talking about.

24 I -- I think we'd be absolutely
25 appropriately set if this was a brand new institution

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1 or private school that was being built and we couldn't
2 measure. We didn't know.

3 In ten years, yes, the world changes, but
4 first of all, the reconfiguration of the athletic
5 fields, I don't think is -- there -- there is a lot of
6 detail in who's using or not using in the summer.
7 But, overall, the -- the increase in use is not what
8 the reconfiguration is about and I wasn't -- it is --
9 it is my understanding in reading the record that the
10 performing arts center actually substantially
11 increases the attendance. I mean these -- the -- the
12 -- the -- certain performances are already currently
13 happening just in different parts. Already have -- is
14 a consolidation all into one.

15 So, I guess my -- my question is are you
16 -- are you looking at this as such an increase
17 intensity of use that it is difficult for us to
18 understand what the impacts will be or is this, as I
19 see it, more as the -- as the building of the parking
20 structure in order to accommodate that -- that
21 intensity of use that's current and that is project to
22 go forward?

23 COMMISSIONER MITTEN: I don't disagree
24 with your point about the -- you know, that -- that
25 there's not a dramatic intensity of use associated

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1 with the performing arts center.

2 I guess I go back to the threshold point
3 of my -- at least my understanding that the reason for
4 building the parking garage is that there -- that the
5 -- that the Cathedral Foundation or the -- the
6 grouping of entities there perceive -- because this is
7 a significant investment, they perceive that there's
8 an existing adverse impact on the neighborhood related
9 to parking.

10 CHAIRPERSON GRIFFIS: Okay.

11 COMMISSIONER MITTEN: Because otherwise if
12 they didn't perceive that, then they wouldn't make
13 this huge investment. They're not in -- they're not
14 speculating that they're going to make money off the
15 parking garage. They're hoping to break even on the
16 parking garage.

17 CHAIRPERSON GRIFFIS: Right.

18 COMMISSIONER MITTEN: So.

19 CHAIRPERSON GRIFFIS: Okay. And that's a
20 -- that's an excellent point to bring up because I --
21 I think if I'm not mistaken that we need to look at
22 the impacts of the application of the St. Alban's
23 School and I think that's what's difficult and -- and
24 -- and the specifics of this is that the parking
25 garage is accommodating all the other uses that are

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1 actually not before us and so, I know it's difficult
2 for me to kind of separate out those aspects, but I
3 don't think we can -- I don't think it's appropriate
4 for us to lump this entire -- this application into
5 the entire issues of which that structure is -- is
6 meaning to solve.

7 COMMISSIONER MITTEN: And I'm not -- and
8 I'm not suggesting that we should. I guess what I'm
9 saying is -- is in any other case, you -- you don't
10 look at the property or the -- the -- the project in
11 question in isolation.

12 CHAIRPERSON GRIFFIS: Um-hum.

13 COMMISSIONER MITTEN: You look at it in a
14 context.

15 CHAIRPERSON GRIFFIS: Um-hum.

16 COMMISSIONER MITTEN: Well, that context
17 is intended to change. The parking -- you know, the
18 degree -- the -- the traffic and parking impacts will
19 change. That's the intention.

20 CHAIRPERSON GRIFFIS: Okay.

21 COMMISSIONER MITTEN: It's -- and the
22 intention is that will -- it -- that it will improve,
23 but there's no guarantee that it will improve.

24 CHAIRPERSON GRIFFIS: Right. Right.

25 COMMISSIONER MITTEN: So.

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1 CHAIRPERSON GRIFFIS: I don't disagree.
2 I think you're absolutely right. We look within the
3 context, but what's affecting the context is what is
4 being proposed by St. Alban's and that's where I go
5 back to the issue of I don't see in this application
6 the proposal that the intensity of use is such that we
7 could not project out any difficulties if they -- if
8 they built the performing arts in that time frame.

9 COMMISSIONER MITTEN: When you say that
10 though, I guess my concern is what do you -- what do
11 you have in your head about what is the background
12 condition related to the general state of parking in
13 the neighborhood and are you -- is -- is -- is it in
14 your head that -- and it may be because that's what
15 the representations have been that parking -- the --
16 the background conditions will improve and I'm saying
17 in -- in ten years, we'll know whether that, in fact,
18 is the case and -- but, it's not guaranteed.

19 CHAIRPERSON GRIFFIS: Right.

20 COMMISSIONER MITTEN: So, if the
21 performing arts center isn't going to be built for ten
22 years, why can't we have that conversation when it's
23 ripe and make sure that what our expectations were
24 today actually came to -- came true.

25 CHAIRPERSON GRIFFIS: Right. Right.

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1 Procedurally, I think that's very well said and I
2 would tend to move in that direction generally
3 speaking in a procedure.

4 However, looking at the specifics of the
5 case as presented before us, first of all, in my own
6 deliberation, I'm not persuaded by the evidence
7 presented that there's a large or any significant on-
8 street parking adverse impact created. We had several
9 of the adjoining neighbors testify to the fact that
10 they couldn't find parking. We also had the applicant
11 testify to the fact that the surrounding houses, the
12 majority of which if not all of which, I don't -- I
13 remember looking at the data trying to find anyone
14 that didn't have a driveway. That there is off-street
15 parking made available.

16 There was no specific events or times or
17 elements or calculations that was presented in the --
18 in the hearing that showed me or persuaded me that
19 there was such a substantial or any overflow parking.
20 That it was overwhelming we're actually having adverse
21 impact on the surrounding area.

22 So, I guess that's where I -- where I go
23 to when -- when we look at okay, so, what is this
24 going to solve? For -- for -- from my perspective, my
25 deliberation, the -- what is being proposed by St.

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1 Alban's this garage is not going to solve any of those
2 adverse conditions created by the performing arts
3 center or the reorientation of the athletic fields.

4 I guess to make that point maybe more
5 direct, I'm wondering if there weren't the other
6 associated uses in the surrounding area, would we be
7 talking so substantially about the parking problems.
8 We certainly wouldn't be talking about such a massive
9 parking structure being built.

10 VICE CHAIRPERSON MILLER: I just want to
11 add --

12 CHAIRPERSON GRIFFIS: Yes.

13 VICE CHAIRPERSON MILLER: -- something
14 that I don't think that we should throw out phasing
15 because of that concern. I think that phasing is a
16 result of good master planning and working with the
17 community and it -- it contemplates fund raising and
18 has some, you know, positive characteristics that go
19 with it.

20 I think we can, as the Chairman said, look
21 at the evidence and project out, but if you -- if you
22 or others of us on the Board don't feel comfortable
23 projecting out that far, I -- I think another
24 alternative would be to put in a relieve valve. If
25 like ten years from now, the -- the parking has -- has

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1 gotten terrible in the neighborhood or traffic is
2 terrible as a result of the garage, that maybe they
3 could come before the Board.

4 I know we don't have that right now as --
5 as far as making modifications to orders, but I -- I
6 don't think it's the phasing that's -- that's the
7 problem.

8 COMMISSIONER MITTEN: Well, and -- and
9 maybe it isn't and maybe other people aren't -- aren't
10 troubled by it as much as I am and I guess -- I guess
11 maybe the reason I'm troubled by it most is because
12 unless I overlooked something, this is the first time
13 I've heard about the phasing and the desire to have a
14 ten-year window and so, there wasn't an airing of any
15 concerns that, you know, the community might have had
16 on the subject and so, I feel a little disadvantaged
17 by not having anything in the record that would
18 support departing from our normal -- the -- the normal
19 timing on the order and, you know, we've had -- as I
20 said in some PUDs, we've had -- you know, there have
21 been requests for phasing, but we've talked about it
22 and like I said I'm open to the fact that I may have
23 overlooked it, but I don't remember that being
24 something that was presented or discussed.

25 CHAIRPERSON GRIFFIS: Good. Well, that's

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1 a good point that I'd like to address and lets hear
2 from other Board Members if the -- they recollect the
3 presentation from the applicant of the phasing
4 elements.

5 Mr. Mann, did you want to speak to that?

6 MEMBER MANN: I'd like to ask Ms. Mitten
7 a question if I could.

8 CHAIRPERSON GRIFFIS: Sure.

9 MEMBER MANN: This might be discussing the
10 same thing, but put in a different way. It sounds
11 like at the moment you've developed a scenario where
12 the preferred alternative might be to assess the
13 impacts of the parking garage before approving
14 development of the performing arts center, but as I
15 understand it, the performing arts center is being
16 deferred mostly as a cost consideration. I don't know
17 definitively if that's true, but let's assume for the
18 moment that it is.

19 If the applicant were proposing to build
20 the performing arts center right now or within the
21 next two years, how would that change your analysis of
22 the situation?

23 COMMISSIONER MITTEN: It wouldn't change.
24 I mean that's the way I would like to approach it.
25 Because I'm uncomfortable and this -- this is not

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1 isolated to this case. This comes from a lot of -- a
2 lot of other circumstances and when we've had cases
3 that have -- where we've had requests for extensions,
4 this -- again, before the Zoning Commission, we have
5 an opportunity each time they come for an extension to
6 say have the background conditions changed?

7 It gives you the chance to revisit it and
8 make sure that those -- those underlying conditions
9 that, you know, if we -- if we put them on the normal
10 time frame, you know, the two years to get a building
11 permit and three years to start construction, I would
12 be comfortable proceeding that way and I -- and I
13 would be comfortable with, you know, if they're -- if
14 they're -- if they need an extension to provide an
15 opportunity for that to come back, but to let there be
16 a public airing at that time.

17 Because I've seen time and time again where
18 background conditions have changed.

19 MEMBER MANN: When you're talking about
20 background conditions, are you talking about
21 background conditions that pertain only to the
22 operation of the -- of the close or -- or background
23 conditions that are external to school like changes in
24 traffic or neighborhood density or --

25 COMMISSIONER MITTEN: Typically, it is a

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1 change in -- in -- in external condition. Because
2 it's -- you make the decision in a context and that's
3 important and that's why, you know, traffic studies
4 are done and that's why DDOT waives in with, you know,
5 with their opinion on -- on future impacts and that's
6 why the Office of Planning sets out the, you know, the
7 -- the development context and I frankly, you know,
8 given the way Washington is these days, I wouldn't
9 pretend to predict what conditions would be ten years
10 from now.

11 So, I guess I'm just -- I'm just troubled
12 by foreclosing the opportunity for future discussion
13 if, in fact, this doesn't get billed, you know, for
14 ten years.

15 MEMBER MANN: It seems to me that you
16 present an argument that cuts both ways, but -- and --
17 and I think you can make some sort of argument that
18 some sort of intensive analysis is required for every
19 single use that's going to occur that could
20 potentially affect traffic for X number of years and
21 then use that argument either way to bolster the
22 argument.

23 So, I'm not certain that I would -- would
24 be against the phasing.

25 COMMISSIONER MITTEN: I -- I don't sense

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1 that I'm persuading much of anybody, but I did want to
2 put my concerns out there.

3 VICE CHAIRPERSON MILLER: Ms. Mitten, let
4 me just ask you this on -- on the line that I was
5 pursuing. Would you feel comfortable if -- if, for
6 instance, in granting approval for the arts center or
7 for this special exception in this case if there was
8 something that said after it's built or a year after
9 it's built they'd come back before the Board on that
10 question of -- of -- I'm just throwing this out. I
11 don't know if it's in our regulations, but on -- on
12 usage. Is it working out? Do there need to be other
13 conditions to limit cars or whatever it is?

14 I just don't think that it's -- I
15 personally don't think it's the phasing question. I
16 think it's -- you're saying ten years down the road
17 you don't know if there might be a problem.

18 COMMISSIONER MITTEN: Well, that -- I mean
19 that's certain true. The -- the -- the approach that
20 we take typically -- we have -- we have sort of two
21 approaches. One is we give people orders that -- that
22 have a -- that have a finite life. We approve it for
23 a particular period of time because we want to see
24 something come back and we want to revisit it because
25 we think well, you know, conditions could change. So,

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1 that's one approach which is kind of what you're
2 suggesting. That they would come back after some
3 period of time.

4 And then the other approach typically when
5 people building something like this and it's not a --
6 it's not a use, it's -- it's construction that's going
7 to have a life 30/40/50/100 years, we don't have them
8 come back because they've made a big investment. So,
9 and I understand that and I -- and I wouldn't -- I
10 wouldn't want to take that approach with an investment
11 of this kind.

12 But, I -- my view is if you're going to
13 make that investment ten years from now, come back in
14 ten years and let's talk about it then. That's --
15 that's -- that's typically the approach that the
16 commission has taken which is bring something to us
17 when it's ripe.

18 CHAIRPERSON GRIFFIS: Good. I think --
19 and -- and I think the fact in my understanding in
20 looking at numerous private schools that have now come
21 before that have such long-term projects. I -- I
22 think Ms. Miller said it correctly that they may be in
23 a different realm than a developer proposing a class
24 A office building downtown which they need to get in
25 and out of the ground quickly.

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1 This involves an awful lot of
2 coordination, fund raising and it may take years and
3 years before they're actually even ready to put in for
4 a permit, but then how do you start that process
5 without having some assurance that you can actually do
6 it. It's -- we've been presented, limitedly in this
7 case, but certainly in others, the -- the complexity
8 of -- of pulling this type of project together.

9 Ms. -- Ms. Miller, you bring up an
10 excellent point of is there -- is there a compromise
11 here that we might entertain and discuss and I think
12 that we should take a little bit of time to look at
13 that.

14 My concern is that if we went in that
15 direction, I'm not sure just making a statement that
16 come back and tell us is it all working works well.
17 We're going to need to be very definitive of what
18 measure that we're looking for and then thinking about
19 that, I was thinking well, who does the measurement
20 and how is actually going to be presented.

21 We can get through that I believe, but
22 then I go to the specifics of the case that -- that we
23 get into now and -- and remembering the hearing and --
24 and my own review of the -- the facts, again, I go
25 back to okay, well, where is the evidentiary items

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1 that we're trying to mitigate here? Where is it and
2 I am -- as this individual on the Board, I am not
3 persuaded that this is the largest impact for us in
4 this application and so, again, I'm not persuaded that
5 that is what needs to set it back for a secondary
6 hearing.

7 VICE CHAIRPERSON MILLER: No, I -- I agree
8 and I'm not -- I -- I don't think we're there yet and
9 I just want to say that in other cases, sometimes we
10 have put a time limit on our special exception because
11 there's development in a neighborhood that's changing.
12 You know, it's downtown. I think we know that things
13 are going to be changing and I think we have to look
14 at the context that this special exception is being
15 offered in. Is this a neighborhood that is changing?
16 How drastically do -- is there evidence in the record
17 that things are going to change?

18 CHAIRPERSON GRIFFIS: Do you have an
19 answer to that?

20 VICE CHAIRPERSON MILLER: Well, I have an
21 opinion, but I think we ought to go through the
22 conditions. I just think that we don't just deal with
23 it in a vacuum.

24 Yes, I think this is -- it's been
25 represented it's in a very stable residential

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1 neighborhood and -- and the school and the close have
2 been there for a long time. So, I don't -- traffic on
3 Wisconsin Avenue may be changing as a result of other
4 things, but that's, you know, I think we should look
5 at the evidence.

6 Though if we look at the conditions, I
7 just want to make sure that we -- we are -- if that's
8 okay if we turn to the condition. There were so many
9 different conditions that were submitted. If we could
10 just be reading off the same page to begin with.

11 CHAIRPERSON GRIFFIS: Do you want us to go
12 to page 14 of 19 of the proposed order? Exhibit 54.

13 MEMBER ETHERLY: And -- and -- and -- and
14 that was, Mr. Chair, I believe where -- where Ms.
15 Mitten was -- was -- was taking us in terms of -- of
16 her start.

17 What -- what -- what I'm -- what I've done
18 -- what I'm suggesting is essentially we, of course,
19 have Exhibit Number 54 which has already been
20 reference, the applicant's exhibit which runs through
21 concerns that they had regarding the ANC's proposed
22 conditions, but at the close of that exhibit, outlines
23 the proposed order, conclusions of law and the
24 findings of fact and perhaps it's a workable process
25 to go through those conditions as -- as they have been

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1 set forth beginning at page 14 of 19 and then perhaps
2 cross-referencing back where there are some
3 discrepancies between the applicant's position and the
4 ANC's position.

5 Of course, once again, the ANC's submittal
6 at Exhibit Number 53 runs through their conditions in
7 -- in excellent detail with the adverse impact and
8 mitigating condition language and then, of course, the
9 rationale and similarly, of course, at Exhibit Number
10 47, you also have a straight -- straightforward
11 recitation of the conditions as they've been offered
12 by the -- by the applicant.

13 But, I would perhaps suggest just starting
14 at 14 of 19, going through the conditions.

15 CHAIRPERSON GRIFFIS: Excellent. Let's do
16 and let's -- let's -- we -- we have gone through
17 initially condition one. I would like to return to
18 that at the end of our deliberation on the rest of the
19 conditions.

20 MEMBER ETHERLY: No objection, Mr. Chair.

21 VICE CHAIRPERSON MILLER: I just also want
22 to throw out why we're discussing these conditions and
23 the conditions can be to -- usually, they're to
24 mitigate objectionable or adverse conditions that have
25 been identified in the hearing.

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1 In this case, the applicant has stated
2 that these conditions are necessary to insure
3 parameters for school operations that will insure that
4 no objectionable or adverse affects will be created.

5 So, I -- I guess maybe it's easy to --
6 easier to focus as we go through the conditions
7 whether or not we -- we really think there is an
8 adverse impact that's been shown or, you know, whether
9 this is the -- to insure that there won't be.

10 And also, some of these conditions, I
11 think, when we're evaluating them, they're being
12 proffered by -- some of them are by the applicant
13 themselves whether or not we find that they're
14 necessary and I -- I think perhaps we can -- need to
15 address that, too. Whether we think that they're
16 necessary or -- or just accepting them because --
17 because of the desire of the applicant to put
18 parameters on.

19 But, I would say in general that I think
20 parameters are important to a certain extent if you
21 got to measure objectionable conditions. For
22 instance, if the student enrollment could just grow
23 expedientially with no limitation whatsoever, then we
24 wouldn't be able to tell whether there would be an
25 adverse impact down the road. So, I think they are

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1 helpful to that extent.

2 CHAIRPERSON GRIFFIS: Condition Number 2
3 then goes to the fact of the -- the current enrollment
4 and then the discussed and offered total maximum
5 permitted enrollment of 579.

6 I think we ought to write this condition
7 if it is so accepted by the Board not to establish
8 this 2 percent overage account, but rather that that
9 condition states that -- that the maximum permitted
10 enrollment is 579. We can, in fact, include in the
11 findings of facts that the goal is 568 and that there
12 is a utilization and a fluctuation, but it is not. It
13 -- it seems to me to be going further on in a
14 condition that we don't necessarily need and it's more
15 of a finding. We certainly wouldn't require them or
16 be out of order if they fell below 568 or we don't
17 need to get into that kind of detail.

18 The other issue of the 143 faculty and
19 staff, they've broken it down into several iterations.
20 One is full-time equivalent faculty and staff. They
21 also break out the part-time and full-time.

22 It would seem to me from the evidence
23 presented that the -- the total faculty and staff
24 persons which I think is a -- a better way of
25 assessing, in fact, that's the way I looked at this

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1 application, would be 143 persons, faculty and staff.

2 Yes.

3 VICE CHAIRPERSON MILLER: I don't read it
4 that way.

5 CHAIRPERSON GRIFFIS: Okay.

6 VICE CHAIRPERSON MILLER: And I think that
7 that's where we've had this discussion with respect to
8 full-time equivalents. The full-time equivalents can
9 be divided between several part-time employees and,
10 therefore, this number is -- is hard to enforce and I
11 -- I personally don't think that the -- you know, the
12 Board hasn't yet made a finding that it's necessary to
13 have a limit on the use of that.

14 I think that perhaps it should be stated
15 as their intention, but what I don't want to see
16 happen is a battle down the road that they had, you
17 know, ten part-time employees and that wasn't
18 contemplated by our condition. Because we really
19 didn't have evidence in the record that there was a
20 need to have a strict cap here and --

21 CHAIRPERSON GRIFFIS: I think we might be
22 saying the same thing.

23 VICE CHAIRPERSON MILLER: -- we need to be
24 careful with it. Okay.

25 CHAIRPERSON GRIFFIS: I -- I want a total

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1 person count. I don't want to differentiate between
2 full-time equivalents or how many part-times or full-
3 times and they stated the fact that they have 143
4 persons.

5 Although in the first sentence in that
6 condition, they say 143 --

7 VICE CHAIRPERSON MILLER: FTEs.

8 CHAIRPERSON GRIFFIS: -- FTEs and look at
9 in paren the actual count is 128 and 15 which is 143.

10 VICE CHAIRPERSON MILLER: It is right now,
11 but again --

12 CHAIRPERSON GRIFFIS: So, you're saying
13 they may want to --

14 VICE CHAIRPERSON MILLER: They may want to
15 make some changes down the road and divide another
16 full-time position into two part-time positions.

17 CHAIRPERSON GRIFFIS: I see. I see.

18 VICE CHAIRPERSON MILLER: And --

19 CHAIRPERSON GRIFFIS: Okay.

20 VICE CHAIRPERSON MILLER: -- I, you know,
21 I don't think there's evidence in the record that --
22 that this -- this should be a problem --

23 CHAIRPERSON GRIFFIS: Okay.

24 VICE CHAIRPERSON MILLER: -- if they do
25 that, but I just wanted to be -- I just don't want to

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1 have any battles down -- down the road. That it's
2 clear that --

3 CHAIRPERSON GRIFFIS: Okay.

4 VICE CHAIRPERSON MILLER: -- that they --
5 they can do this.

6 CHAIRPERSON GRIFFIS: So, are you
7 suggesting that condition number 2 read the number of
8 students would be 579 and leave it at that?

9 VICE CHAIRPERSON MILLER: No, I have no
10 problem with their 143 FTEs. It -- it just -- I just
11 want --

12 CHAIRPERSON GRIFFIS: I see.

13 VICE CHAIRPERSON MILLER: -- it
14 understood. I mean the -- that that number -- the
15 number of employees and staff actually will -- will --
16 could fluctuate under this order.

17 CHAIRPERSON GRIFFIS: Okay.

18 VICE CHAIRPERSON MILLER: But, I don't
19 have a problem with that.

20 CHAIRPERSON GRIFFIS: Our discussion at
21 this point then generally condition number 2 goes to
22 579 students and employee of 143 FTEs.

23 Mr. Etherly, difficulty with that?

24 MEMBER ETHERLY: No objection, Mr. Chair.

25 CHAIRPERSON GRIFFIS: Okay.

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1 MEMBER ETHERLY: I agree with the
2 direction. With -- and -- and -- and you are
3 eliminating the -- the -- what I agree also is
4 superfluous language regarding 2 percent increase over
5 that goal.

6 The language as it relates to St. Alban's
7 may increase the number of students, faculty and staff
8 only with the approval of the Board of Zoning
9 Adjustment, would you include that language or also
10 strike that? I would strike that as well.

11 CHAIRPERSON GRIFFIS: Yes, I would strike
12 that.

13 MEMBER ETHERLY: Excellent and then I
14 think there was some -- some disagreement with regard
15 to the submittal of some type of November 1 report to
16 -- to the ANC.

17 CHAIRPERSON GRIFFIS: Good and that goes
18 up to your issue of the address of those issues and I
19 think the objection as I read it is having a listing
20 of specific faculty and staff as a -- not something
21 that the -- St. Alban's is able to do, but that they
22 could provide as they're stating here no later than
23 November 1 each year a total number --

24 MEMBER ETHERLY: A count.

25 CHAIRPERSON GRIFFIS: -- of students and

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1 faculty and staff for the academic year. I'm open to
2 the discussion on that.

3 MEMBER ETHERLY: I would have no objection
4 to the language as it's -- as it is proposed by the
5 applicant here no later than November 1 of each year
6 submittal of the total number of students, faculty and
7 staff.

8 CHAIRPERSON GRIFFIS: Okay. Ms. Miller.

9 VICE CHAIRPERSON MILLER: Yes, I think
10 that -- I think that that's well stated because I
11 think the number is the issue and that's what the
12 community wants to know and that's where the impact is
13 on the number not the names.

14 And are we striking the -- the part about
15 that they can increase the number of students, faculty
16 and staff only with the approval of the Board of
17 Zoning Adjustment because --

18 CHAIRPERSON GRIFFIS: That's correct.

19 VICE CHAIRPERSON MILLER: Yes, okay.

20 CHAIRPERSON GRIFFIS: That's -- that we --
21 that's a statement of fact.

22 VICE CHAIRPERSON MILLER: We --

23 CHAIRPERSON GRIFFIS: We don't need --

24 VICE CHAIRPERSON MILLER: Exactly.

25 CHAIRPERSON GRIFFIS: -- in the condition.

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1 Okay. Anything else on two?

2 Very well. Let's move on to three.
3 Parking situation for faculty, staff, students. St.
4 Alban's will require faculty, staff and students who
5 drive to school do not have valid zone three
6 residential parking permits to park on the close and
7 between the parking garage to relocate under the
8 cathedral bond in designated off-street parking or on
9 the areas of the street not restricted to zone three
10 parking.

11 St. Alban's shall direct faculty, staff
12 and students with the zone three RPPs to park on the
13 close before resorting to on-the-street parking.

14 It seems to me a condition of intention.

15 Comments?

16 VICE CHAIRPERSON MILLER: I think it goes
17 to mitigate park -- or preclude parking problems in
18 the neighborhood and I think perhaps we should discuss
19 whether we found that there were parking problems and
20 my recollection is that applicant's traffic expert
21 identified many parking spaces available during the
22 day and that the parking garage was going to provide
23 for 307 new parking spaces.

24 We went through a lot of figures about the
25 parking demand at St. Alban's and whether it was being

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1 met.

2 So, this -- first of all, I guess I don't
3 find that there is a drastic problem, but I do find
4 that -- or I do think that it would be -- that the --
5 it would be good for the garage to take the cars that
6 are parking on the streets, off the street and into
7 the garage.

8 This whole requiring cars or not allowing
9 them to park on public streets, I think is very
10 problematic. I think we really have to find that
11 there is an egregious state of the parking problems in
12 the neighborhood to disallow people who are otherwise
13 entitled to park on the street and I think that it
14 also creates problems in neighborhoods where some of
15 the students live or visit other students in the
16 neighborhood and then what's happened if they're
17 parking on the street and how is it enforced and I
18 just don't think that --

19 CHAIRPERSON GRIFFIS: Enforcement is a big
20 issue.

21 VICE CHAIRPERSON MILLER: Yes.

22 CHAIRPERSON GRIFFIS: I would tend to
23 agree. However, I disagree with you a little bit on
24 this aspect. I think that having a program as it's
25 been offered by the applicant to require faculty and

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1 staff and students who drive to be accommodated with
2 parking is appropriate for two reasons.

3 One, I don't think that the evidence was
4 necessarily presented in this case that that is a
5 problem. However, a condition can try to mitigate a
6 potential problem and I think looking at the number of
7 students and the number of faculty and -- and staff,
8 that if you put 140/150/200 cars on the street, there
9 would be an impact.

10 Would it be absolutely catastrophic? I --
11 I don't know if I can measure that, but there would be
12 a negative impact to that and then specifically
13 directly to it, 206.3, as private schools do not have
14 a parking requirement set forth in the regulations,
15 but rather have to accommodate ample parking.

16 It is again asked of us to establish and
17 judge and set the level of what is ample and what is
18 not.

19 So, I think this does go to fulfilling the
20 requirements that -- in that in terms of 206.3 and I
21 think it is a base level of which can be done and that
22 is a requirement of it.

23 How they require it or how they program
24 it, I don't think we necessarily can get into, but the
25 mere fact that they do require it. Therefore, you

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1 would be -- there -- there would be some remedy within
2 the -- the schools operating agreements. That's for
3 their own enforcement to do and then anything on the
4 public streets, obviously, that are illegally parked
5 would be for other agencies to enforce.

6 VICE CHAIRPERSON MILLER: You know, I
7 think I may have jumped the gun because I -- going
8 into -- it's later on where they talk about not
9 parking on the street, but I -- I am not sure how they
10 differentiate between the zone three residential
11 parking permit people and the rest of the students or
12 faculty. Why shouldn't everybody be -- if there's a
13 space for the -- required to park, I think the -- I
14 think perhaps it was because there was maybe not a
15 space for everybody on the -- you're right. It's not
16 all that enforceable. It's a good policy.

17 CHAIRPERSON GRIFFIS: Okay. Others?

18 MEMBER ETHERLY: Well, I don't know that
19 I can add much that's going to help us bring this to
20 any decision, but I tend to agree with Ms. Miller in
21 that the problem that I have is that while I -- I
22 think it seems like a fine idea that the school should
23 enter into some sort of agreement with its faculty and
24 students to enforce parking in a way that fulfills
25 certain objectives.

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1 The problem that I have is telling people
2 that they can or cannot park in areas where they're
3 legally allowed to park independent of some sort of
4 larger traffic management plan.

5 I mean if they want to condition --
6 condition that or make -- make parking restrictions a
7 condition of their employment or their enrollment,
8 then -- then that's fine, but I just don't see this as
9 the smoothest mechanism to achieve that. I'm not
10 quite certain how to resolve that.

11 CHAIRPERSON GRIFFIS: Okay. Yes, Ms.
12 Mitten.

13 COMMISSIONER MITTEN: I -- I guess on that
14 point, I'd be inclined to accept the conditions as
15 it's proffered by the applicant and -- and kind of
16 leave it at that. Because I -- what I don't agree
17 with -- with what the ANC was suggesting which is
18 that, and Ms. Miller spoke to, which is prohibiting
19 someone who has a legal right to park on the street to
20 -- to kind of reach that far.

21 If the -- if the applicant can do
22 something to encourage people who otherwise have that
23 right to park elsewhere, great. Let's let them try
24 and pursue that, but for the Board to impose something
25 more restrictive, I'm merely uncomfortable with that.

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1 So, I -- I would say that the way the
2 applicant has proffered this is what I'd be -- be --
3 as far as I'd be willing to go.

4 MEMBER ETHERLY: I would agree, Mr. Chair.

5 CHAIRPERSON GRIFFIS: Very well. Other
6 comment on that?

7 VICE CHAIRPERSON MILLER: My only comment
8 is -- is on the last, you know, sentence. To the
9 extent that we adopt conditions that are -- are hard
10 to enforce, I mean how -- how do you require students
11 with zone 3 RPPs to park on the close before resorting
12 to on-street parking? Does that mean that -- I mean
13 I'm just -- you know, maybe this is minutia, but they
14 have to drive all around the close first to make sure
15 there's no parking and then -- then park on the
16 street.

17 It -- it seems kind of unrealistic.
18 Somehow it seems like it would be better if -- if the
19 school provided spaces for the faculty, staff and
20 students with the number that they can provide. Then
21 -- then the rest of those students, you know, but
22 anyway, I understand part of this was that some of
23 them are on a first-come, first-served basis.

24 I mean we can put this in. It's just it's
25 hard -- it's very hard to enforce.

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1 CHAIRPERSON GRIFFIS: I absolutely agree
2 and -- and absolutely, in the case, we've tried to put
3 out there needs to be exact clarity so that people
4 understand that there needs to be a measurable element
5 and that -- that, of course, lends itself to
6 enforceability. The last sentence I tend to agree.
7 However, it does seem to go to the intent of what is
8 being proffered in -- in the overall condition or
9 requirements.

10 I'd be -- I'd be just as well to keep it
11 in at this point and move on unless others feel
12 differently.

13 Very well. We have condition three has
14 been discussed. Let's move on to four, parking during
15 construction of the Foundation garage. Now, that is
16 talking about providing off-site temporary parking
17 during the construction phase.

18 Comments? Questions on that? Is everyone
19 amenable to keeping it in as stated?

20 If there's no objection to that, then
21 let's move on to five which is the parking management
22 activities. The Foundation at St. Alban's will
23 encourage its employees to participate in the
24 Foundation's "Commuter Rewards Programs" which is part
25 of the submission and we'll put an exhibit number on

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1 that if this condition is accepted. Which would
2 reduce parking demand among the faculty and staff.

3 Comments on that? Yes, Mr. --

4 MEMBER MANN: Can this be part of the
5 larger traffic management program and does it need to
6 be listed with such specificity rather than just as
7 part of the TMP?

8 CHAIRPERSON GRIFFIS: I don't -- I'm not
9 aware of any reason why it couldn't be in -- in a
10 larger condition.

11 MEMBER MANN: I just don't see it as -- I
12 don't know where the enforceability is again with the
13 words like will and could, gets employees to
14 participate.

15 CHAIRPERSON GRIFFIS: Right.

16 MEMBER MANN: I don't know how you enforce
17 that.

18 CHAIRPERSON GRIFFIS: Right.

19 COMMISSIONER MITTEN: I was just going to
20 say well, you enforce it by saying give us evidence
21 that you encouraged your employees. So, I think, you
22 know, it's not unenforceable. It's just not -- you
23 know, it's -- there's gradations of compliance with
24 it.

25 CHAIRPERSON GRIFFIS: Yes, I -- I think --

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1 in -- in order to address this, I think one of the
2 best conditions that we've done in terms of writing
3 them when we have plans submitted into the record is
4 that we condition the fact that the applicant would
5 implement their plans as shown in exhibit as decided
6 whether it be transportation management or this
7 parking management.

8 So, we're looking for implementation of
9 the management activities and -- and we've also lent
10 flexibility to changing those plans as long as there
11 is one in place that goes to in this case parking.

12 MEMBER ETHERLY: But, I would -- I -- I
13 agree with Ms. Mitten's observation, but I -- I would
14 also -- I think there is a kernel of -- of -- of
15 utility in Mr. Mann's observation about perhaps
16 broadening the language. I think the spirit of that
17 particular proposed condition number 5 is to speak to
18 St. Alban's taking steps to encourage alternative
19 methods of transportation separate and apart from
20 actually driving to the facility.

21 So, if there is perhaps some additional
22 language that can be added to broaden that condition
23 whether it's the Foundation in St. Alban's will
24 encourage its employees to utilize public
25 transportation, mass transportation and other, you

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1 know --

2 CHAIRPERSON GRIFFIS: Right.

3 MEMBER ETHERLY: -- I'm suggesting some
4 kind of directions. I believe Mr. Mann has hit on
5 something in terms of perhaps broadening it so the
6 applicant's efforts aren't simply limited to the
7 commuter rewards program which is an excellent
8 suggestion I might add.

9 So, I don't know if there's some lines
10 that can be added to do that, Mr. Chair.

11 CHAIRPERSON GRIFFIS: Yes, I think there
12 might well be. I mean I think it will, in fact,
13 encompass and -- and consolidate a couple of
14 conditions that are about to come forward. So, maybe
15 we look at it in that -- in that frame. What we could
16 add to. I certainly don't hear the Board saying that
17 they want to remove condition five, but what will we
18 add to condition five when we go through.

19 Is that amenable to everybody at this
20 point?

21 MEMBER ETHERLY: Yes.

22 CHAIRPERSON GRIFFIS: Okay. Let's move on
23 then and look at the exact language of five and come
24 back to six, parking policy registration. Beginning
25 September 2005, St. Alban's shall establish a parking

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1 policy for its faculty, staff, students that will be
2 consistent with condition 3 and 4 above. Correct
3 policy will require any student, staff or faculty
4 member who drives to school to register his or her
5 vehicle in the school and to display the identifying
6 sticker on his or her vehicle that will facilitate
7 compliance with the parking policy.

8 In some sense, Mr. Mann, that might
9 consolidate into five. Is that correct?

10 MEMBER MANN: I believe those are all
11 elements of -- of what should be --

12 CHAIRPERSON GRIFFIS: Okay. And, in fact,
13 I would say -- dare say seven would also go into it
14 and possibly even eight, but let's take up any
15 specifics on six. Comments? Deliberative? Ms.
16 Miller, did you indicate you had something to say?

17 VICE CHAIRPERSON MILLER: Well, I was just
18 looking at the transportation management plan and I
19 think that, you know, a lot of these are set forth in
20 that plan and I'm not sure whether we would want to
21 say that they should just comply with their
22 transportation management plan which would take them
23 all in there, but --

24 CHAIRPERSON GRIFFIS: Which is exactly
25 where Mr. Mann was going.

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1 VICE CHAIRPERSON MILLER: Exactly.

2 CHAIRPERSON GRIFFIS: Okay.

3 VICE CHAIRPERSON MILLER: But, my concern
4 is I have to really, you know, examine this to see
5 whether they -- they might want some flexibility in --
6 in that plan for which a condition might not get --
7 you know, if we said they had to comply with all of
8 these, then maybe we -- we'd have to give them some
9 leeway to change if circumstances suggested it would
10 be a good idea to change. So, we can see as we go
11 along.

12 MEMBER MANN: Well, the -- the larger goal
13 that I had in mind was I'm just thinking of -- it's
14 probably easier to enforce a condition that says they
15 will implement or -- or they will have a traffic
16 management plan than to say we're going to somehow
17 enforce every single condition that's not necessarily
18 enforceable by --

19 CHAIRPERSON GRIFFIS: Right.

20 MEMBER MANN: -- by BZA.

21 VICE CHAIRPERSON MILLER: Right.

22 CHAIRPERSON GRIFFIS: In fact, that's what
23 we've done in the past. I think is -- is a productive
24 way to deal with large programs and plans which does
25 lend themselves the flexibility of changing. We --

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1 we've been specific in some conditions where the
2 evidence was before us that they needed flexibility to
3 see how things were going to work or not work. This
4 I don't think is that case, but to -- to include in
5 the one condition that Foundation at St. Alban's will
6 implement their TMP I think would be appropriate.

7 MEMBER MANN: But, the -- the other thing
8 is how can a -- a TMP allows for a changeover time
9 that Ms. Mitten was discussing earlier?

10 CHAIRPERSON GRIFFIS: Um-hum.

11 MEMBER MANN: I mean TMPs are flexible and
12 are meant to respond to current conditions. Whereas,
13 our conditions or some of these proposed conditions as
14 stated are meant to be more static and I just believe
15 that this allows them to respond to evolving
16 conditions in a way that really captures the spirit of
17 what they're trying to accomplish.

18 CHAIRPERSON GRIFFIS: I agree, Mr. Mann.

19 MEMBER ETHERLY: As Ms. Miller commented
20 a little bit on the -- on the Commuter Rewards
21 segment, you know, I actually, Mr. Chair, on -- on
22 second review find the language to be sufficient. As
23 -- as it -- as it is currently worded, I think it
24 captures everything that -- that needs to be captured.

25 Whether you want to consolidate five, six,

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1 and seven, I'm -- I'm open to that, but I'm actually
2 comfortable with -- with those conditions as they are
3 worked in the -- as they are already set up after --
4 after reviewing.

5 I -- I think it gets at what we're trying
6 to get at.

7 CHAIRPERSON GRIFFIS: Others, comments on
8 that point? Comments at that point?

9 Here's one of the considerations, Mr.
10 Mann, that I -- I -- I think I understand from you is
11 that we could save the implementation of -- of the
12 TMP, but is there flexibility to revise it and I
13 didn't see anything in the TMP that shows when it's
14 reviewed or how it might be reviewed or impacted.

15 But, I think, first of all, five, six,
16 seven and a couple of others of these are taken
17 directly from the document. So, it's almost -- we're
18 doing the same thing in each way however we want to
19 word it.

20 But, yes, Ms. Miller.

21 VICE CHAIRPERSON MILLER: I don't know.
22 I mean I guess my problem here is that I don't know
23 whether we're jumping the cart because I -- I feel
24 like we're going through these conditions and we're
25 saying oh, yes, that sounds like a good idea,

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1 whatever.

2 But, we haven't really decided whether
3 there are traffic problems to mitigate or potential
4 traffic problems that might be caused by the buildings
5 and I think that would help -- help me certainly to
6 focus on -- on are these necessary conditions or are
7 they just policies that the applicant is willing to
8 implement and -- and we think they're fine, but we
9 don't necessarily think they're necessary.

10 CHAIRPERSON GRIFFIS: What's going to
11 happen to establish that point?

12 VICE CHAIRPERSON MILLER: Well, perhaps if
13 we -- I mean I don't want to necessarily throw. I
14 said we -- we could go through the conditions and we
15 are doing that. I'm just having trouble making the
16 connection now. We'll -- because I think that, okay,
17 if I look at -- at the fields, are the fields going to
18 create more traffic?

19 You know, are -- is that -- what are we
20 trying to mitigate? What are we trying to --

21 CHAIRPERSON GRIFFIS: I think these
22 conditions are mitigated. The impact of the faculty,
23 staff and students and -- and for me, I don't see any
24 reason or -- or testimony or evidence that would
25 persuade me that there wouldn't be an impact with the

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1 numbers that we're being presented.

2 VICE CHAIRPERSON MILLER: There's no --
3 there's no increase that -- that we're talking about.
4 So, then you're saying that you think the evidence is
5 there that there is a problem? They still make --

6 CHAIRPERSON GRIFFIS: There's -- there's
7 no increase, but -- but currently, they're providing
8 a certain amount of parking on site. It's all being
9 reconfigured and so, now, we're looking at in this
10 reconfiguration in this new facility -- in one aspect,
11 we don't need to look at these conditions as negative,
12 but rather as positive of how these are then going to
13 be dealt with, you know, within the new orientation
14 and the new facilities.

15 MEMBER ETHERLY: And I -- I would add, Mr.
16 Chair, perhaps this -- this would help Ms. -- Ms.
17 Miller that I do recall from our discussion of the --
18 the traffic analyses that was done by the applicant,
19 there were I think in my opinion some clear
20 indications of -- of concern around level of service
21 regarding some of the relevant intersections that --
22 that surround the close as we talked about some of the
23 alternative entrance and exit and ingress points for
24 -- for some of the bus traffic for example or for
25 traffic that might be related to some of the school

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1 events.

2 I think that were strong indications that
3 there was a tie at least in my opinion as you looked
4 at the data. I'm not suggesting that the applicant
5 said this, but I think as you look at some of the
6 traffic analysis data, I felt that there was -- there
7 was probably some connection with activity and
8 operations on -- on the close and in particular at the
9 school and the overall level of service conditions
10 that were analyzed at some of the subject
11 intersections.

12 So, as I approach some of these
13 conditions, I feel that we are -- are, in fact,
14 addressing some traffic impacts that have been
15 demonstrated and anticipating some likely impacts that
16 would arise if these conditions were not, in fact,
17 included in the order by the introduction of the new
18 performing arts center and the expansion of other
19 fields.

20 I definitely understand your concern and
21 I agree with you wholeheartedly that as this Board has
22 done before with your leadership definitely insuring
23 that we are -- are being very specific about our
24 condition language and the rationale for that
25 language. I think we're on very solid ground here in

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1 terms of the language that we have in front of us.

2 VICE CHAIRPERSON MILLER: Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Yes.

4 VICE CHAIRPERSON MILLER: I -- I think
5 that this order also -- it probably serves two
6 purposes.

7 One is to -- is to capture whatever
8 conditions need to address the adverse impacts that
9 result from what's specifically being requested, but
10 the orders that -- that are the special exceptions
11 that grant -- that -- that affect this property,
12 they're -- they're very old and so, I don't think
13 there's -- there's some fundamentals that were never
14 captured in another order that I think we're -- you
15 know, and everybody's sort of acting in good faith.

16 Is trying to capture like what's -- what's
17 the enrollment? You know, what's the amount of
18 faculty? What are the sort of basic conditions that
19 we're operating under here and so, I think they don't
20 necessarily specifically speak to what's being
21 proposed, but they're sort of trying to just capture
22 everyone's understanding of, you know, how big is this
23 school intended to be and how many people are intended
24 to be using it and -- and because the other orders are
25 so old and don't necessarily speak to it.

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1 So, I think we're doing two things through
2 this order.

3 CHAIRPERSON GRIFFIS: Okay. Good. I
4 think we should proceed and look at the specific
5 conditions with -- and -- and I absolutely agree with
6 what Ms. Mitten said. Some of -- some of this is
7 establishing the existing situation. Some of it is
8 looking at the future.

9 And then, Mr. Mann, I will return to you
10 for further comment on it because frankly re-reviewing
11 the transportation management plan it is almost
12 identical to all the conditions that are in here.

13 So, the question is more of a -- an ease
14 understanding perhaps of the writing of the order, but
15 certainly the elements and substance are identical.
16 So, how we put it in is really the fundamental
17 question and how we look at it as being enforceable
18 under our order.

19 So, going then to six, parking policy
20 registration, is there any other further comment on
21 that?

22 If not, let's move to seven which is the
23 enforcement of parking policy which was indicated that
24 St. Alban's would require each parent to agree to the
25 parking policy when the parent signs each year's

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1 enrollment contract.

2 Students that violate the schools parking
3 policy would be subject to disciplinary action which
4 will escalate with repetitive violations and which may
5 include non-renewal of enrollment contract for the
6 following year.

7 Any comments, concerns, edits on that?
8 Yes, Mr. Mann.

9 MEMBER MANN: I -- I just want to say I
10 don't see that as an enforceable BZA condition.

11 VICE CHAIRPERSON MILLER: I -- I -- I
12 agree. I think it's a very good policy and I think
13 the school needs to have it, but again, does this mean
14 that the BZA police are going to go out and enforce
15 it. I don't think so.

16 MEMBER MANN: But, I do believe that it
17 can be part of a transportation management program --

18 VICE CHAIRPERSON MILLER: Right.

19 MEMBER MANN: -- which can be a condition.

20 COMMISSIONER MITTEN: Maybe -- maybe we're
21 -- I'm just not on the same wavelength, but I see that
22 as enforceable because the enforcement is this policy
23 -- the way you would enforce it is show me your
24 enrollment contract. Is this a -- is this a component
25 of it?

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1 CHAIRPERSON GRIFFIS: Right.

2 COMMISSIONER MITTEN: That's how it's
3 enforceable.

4 CHAIRPERSON GRIFFIS: Right. The
5 enforceable aspect is that the parent -- each parent
6 has signed an enrollment contract.

7 VICE CHAIRPERSON MILLER: I think it's
8 enforceable. I mean I think it's enforceable by the
9 school, but are you saying it's enforceable by the BZA
10 because we'll -- we'll be able to see whether they
11 have these contracts?

12 COMMISSIONER MITTEN: Right. If -- if --

13 VICE CHAIRPERSON MILLER: Okay.

14 COMMISSIONER MITTEN: -- somebody were
15 complaining, the -- the -- the DCRA inspector would go
16 out and say I need to see a, you know, a generic
17 version of your enrollment contract.

18 VICE CHAIRPERSON MILLER: Okay.

19 COMMISSIONER MITTEN: And I need to verify
20 that, in fact, this is a component of it. That's how
21 they would do it.

22 VICE CHAIRPERSON MILLER: Okay. Good.

23 MEMBER MANN: But, then this would also
24 imply that they can say well, I need to see whether or
25 not you renewed students that were disciplined.

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1 COMMISSIONER MITTEN: I'm sorry.

2 MEMBER MANN: It also includes non-renewal
3 of the enrollment contract for the following year
4 which means that we'd have to ask the enforcement
5 officer to check renewal records.

6 COMMISSIONER MITTEN: Well, read it
7 carefully though. Because it says which may include.
8 It doesn't say it shall include.

9 CHAIRPERSON GRIFFIS: In some respects,
10 this is different than the other offerings in -- in
11 that it is leaving open, which I think the Board had
12 previously concerns of, leaving open what that
13 disciplinary action is. Rather than the Board getting
14 into establishing exactly what disciplinary action
15 should be.

16 But, Mr. Mann, what I understand you
17 saying is that this still doesn't -- this still gets
18 us too involved in the minutia of the operations of --
19 of the school. I -- okay.

20 Others?

21 MEMBER ETHERLY: I -- I tend to agree with
22 -- with Ms. Mitten's position on that particular
23 language. I understand the concern regarding
24 enforceability, but it would be my understanding that
25 the -- the primary enforcement aspect of that

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1 particular condition would be as -- as Ms. -- Ms.
2 Mitten indicated.

3 If I'm a DCRA inspector, I go to the site.
4 I request to see a copy of that contract and -- and
5 that's going to be the primary enforcement tool. If
6 it's not there, it can't be demonstrated, then -- then
7 we would have an issue in my opinion.

8 CHAIRPERSON GRIFFIS: Okay. So, could it
9 be, Mr. Mann, Mr. Etherly, Ms. Mitten, Ms. Miller,
10 this condition number seven enforcement probably would
11 read as St. Alban's will require each parent to agree
12 to the parking policy where the -- the parent signs
13 each year's enrollment contract. Students who violate
14 the parking -- school's parking policy will be subject
15 to disciplinary action and leave it at that.

16 COMMISSIONER MITTEN: If you want to leave
17 anything off, I wish you'd get the -- the next clause
18 and maybe leave off the last clause. Because I think
19 the fact that it will escalate --

20 CHAIRPERSON GRIFFIS: I see.

21 COMMISSIONER MITTEN: -- is important,
22 too.

23 CHAIRPERSON GRIFFIS: Okay. Good. Very
24 well. Which will escalate with repetitive violations.

25 Mr. Mann, does that address your concern?

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1 No.

2 MEMBER MANN: I just don't know how we're
3 going to measure the escalation of -- of repetitive
4 violations.

5 CHAIRPERSON GRIFFIS: The ball's over
6 here.

7 MEMBER ETHERLY: Yes. Yes. Yes. Let me
8 -- let me volley backwards on that one. No, I -- I
9 understand the concern and I think we're -- we're --
10 where we oftentimes struggle is the tension between
11 trying to craft conditions that are measurable and
12 specific and are grounded in some identifiable
13 indicator if -- if you will.

14 The flip side of that is I think there is
15 to an extent an aspirational role that BZA orders
16 still nevertheless play and I think we're -- we're --
17 we're firmly in an area where some of this language is
18 going to be somewhat aspirational in that I think --
19 I think there needs to be a recitation of what this --
20 what this Board will expect or require in that policy.

21 So, I -- I understand the concern and
22 especially the concern that well, does this then mean
23 that we will have to police and parse the language
24 and, you know, have an appropriate inspector out there
25 to actually go over it.

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1 But, I -- I just think I -- I -- I'm
2 concerned about throwing the baby out with the bath
3 water by pulling that language out. Because I think
4 the -- the -- the message, the aspirational message is
5 a very important one and that is insuring that there
6 are appropriate levels of -- of disciplinary action
7 that are included in the school policy with regard to
8 violations.

9 VICE CHAIRPERSON MILLER: I -- I -- I
10 agree with Mr. Mann. The Court of Appeals has
11 addressed the whole question about the Board
12 interfering too much in internal affairs of schools
13 and disciplinary action, I think is -- is one of those
14 areas.

15 Second, I don't know what the evidence is
16 that -- that -- that would lead us to impose this.
17 We're -- we're just accepting this proffer from the
18 applicant.

19 So, I -- I would be in favor of drawing
20 the line where the Chairman left it subject to
21 disciplinary action.

22 COMMISSIONER MITTEN: The -- the -- I
23 think the reason why this is appropriate to accept it
24 with all but the final clause is that this is the
25 teeth. This gives the teeth.

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1 Anything else is to use -- I mean I -- I
2 take -- I -- I just want to adapt a little bit of what
3 Mr. Etherly said which is anything else is just
4 aspirational and this is -- this is the way we get the
5 teeth to say to the school, yes, you have all the best
6 intentions and this is where the rubber hits the road
7 where it's not just you're asking parents to comply.
8 You're asking students to comply. It's that there
9 will be enforcement and there will be real
10 enforcement.

11 To say subject to disciplinary action
12 alone, you know, it could be now, they could write a
13 letter and say you know this is a violation of our BZA
14 order and please don't do that again and that's not --
15 that's not disciplinary action at all.

16 So, I think the idea of escalation is that
17 even if the -- even if the first gesture is just a
18 strongly worded letter, that there will be something,
19 you know, more onerous that will -- that will happen,
20 you know, if you keep -- if there's repeated
21 violations and I wouldn't intend to suggest what that
22 should be which I think that would be interfering too
23 much.

24 But, I don't -- I think this is the only
25 way you can be, you know, that the order has any --

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1 any way of being -- that we have any way of enforcing
2 all these aspirational things that are in the order.

3 VICE CHAIRPERSON MILLER: I -- I
4 understand what you're saying. I hear what you're
5 saying about teeth, but we usually apply teeth when
6 we've found a problem that really needs to be
7 mitigated and I don't know what that evidence is.

8 COMMISSIONER MITTEN: And -- and that I
9 think goes back to the point I was trying to make
10 earlier which is imagine -- I think people are trying
11 to say look, we have a lot of people that are parking
12 on the campus and we'd like it to stay that way. You
13 know, we'd like people to continue to be drawn into
14 the campus and -- and -- and that's sort of one of the
15 -- one of the -- if we were dealing with this as a
16 fresh thing, that they were coming new and asking for
17 this, then the adverse impact would be well, if the
18 people don't park on the campus, then that's going to
19 cause an adverse impact. So, this is the way of
20 insuring that they do park on the campus.

21 It's -- and -- and -- but, because this is
22 -- we're -- we're trying to capture sort of the status
23 quo plus what's being requested, this is the way to
24 keep people on the campus.

25 VICE CHAIRPERSON MILLER: Well, this --

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1 this is where I want to separate the issues. Because
2 there's no -- there's no increase in student
3 enrollment. So, we're talking about students here.
4 In the current state, can the -- is the campus
5 accommodating well enough the students who need
6 parking and this is calling for disciplinary action
7 with teeth, et cetera and -- and my question is well,
8 what's the evidence that -- that there's a problem
9 that rises to that level?

10 We're not talking about the performing
11 arts center which is unknown which may bring in lots
12 of cars at a certain hour. We're talking about
13 student parking and I think we should -- we should
14 look at the evidence. Is there evidence that -- that
15 requires this teeth?

16 And it's not to say that the applicant
17 can't have a policy with teeth. It's just should the
18 Board be imposing that?

19 MEMBER ETHERLY: I think -- I think in
20 answer to that question keep in mind that 206.2 does
21 have I think language which suggests that the Board is
22 also compelled to look somewhat at potential future
23 conditions and I want to be very circumspect about how
24 I use that language because I think Ms. Miller's
25 concern is -- is -- is a good one and that is that you

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1 can't necessarily be so forward looking that you lose
2 sight of what the current reality is.

3 But, I read Section 206 in part to state
4 that a private school must be located so that it is
5 not likely to become objectionable to adjoining and
6 nearby property because of noise, traffic, number of
7 students or otherwise objectionable conditions and I
8 think to an extent the language that -- that we are
9 struggling with and -- and rightfully so because I
10 think this Board, of course, wants to get it right,
11 the language speaks to what would be a likely outcome
12 if there were not satisfactory enforcement.

13 And I know as we will discuss perhaps in
14 short measure the issue of the performing arts center
15 and that question of -- of a fee. The question is if
16 there isn't any teeth to the policy and this is not --
17 not to suggest that our -- our -- our young charges at
18 St. Alban's are scofflaws by any stretch of the
19 imagination, but it is to state that if there -- if
20 there were not teeth, would there be a likelihood that
21 the most expedient thing to do rather than going into
22 the close itself will be to grab a spot that is
23 available somewhere on the boundary of -- of the close
24 and I think this language gets to insuring that that
25 likelihood does not -- does not come to pass.

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1 VICE CHAIRPERSON MILLER: Mr. Etherly, I
2 -- I think that what I'm trying to do is separate the
3 issues. Because here nothing has changed. We're not
4 increasing the student enrollment. There's a history
5 of years and years and years of the school in the
6 neighborhood and nothing is going to change with
7 respect to this -- this factor because there's no
8 increase in student enrollment.

9 That's why I don't see the need for
10 drastic -- well, I don't know for teeth or whatever
11 from us.

12 I think when we get to the performing arts
13 center, that is something that is new and your points
14 about that would go -- go to that one.

15 CHAIRPERSON GRIFFIS: And -- but, the
16 existing condition is the provision of 154 off-street
17 parking for faculty, students and staff. That's the
18 current condition.

19 VICE CHAIRPERSON MILLER: It's only going
20 to improve though. They're going to have a garage.
21 So, how is -- how is --

22 MEMBER ETHERLY: Correct. But --

23 CHAIRPERSON GRIFFIS: Right. But --

24 VICE CHAIRPERSON MILLER: -- why would we
25 need, you know, disciplinary action against the

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1 students?

2 CHAIRPERSON GRIFFIS: But, you're not held
3 by the 154 as -- as -- as numerous persons have said.
4 Now, this -- this order is taking us into the next
5 decade and beyond.

6 So, what -- what are we outlining? What
7 are we saying has to be provided?

8 And here we have a program that's saying
9 that they will provide all the parking for the faculty
10 and staff that drive that don't have zone three
11 stickers. So --

12 VICE CHAIRPERSON MILLER: I -- I guess my
13 concern is really from the direction of the Court of
14 Appeals that we not interfere with their disciplinary
15 procedures for the most part unless it's, you know,
16 really warranted and I don't see that it's warranted.
17 I don't see any problem. These are -- a lot of these
18 are proffers by the school and I think that it's --
19 it's maybe a good neighborhood policy for the schools
20 to say to the community, look, this is how we're going
21 to discipline and -- and that's great.

22 I think -- I think we just need to be
23 careful in drawing the line between what the school is
24 telling the neighborhood it'll do and what we are
25 making an -- an enforceable condition.

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1 CHAIRPERSON GRIFFIS: Okay. So, you're
2 advocating that it would read the violation of
3 school's parking policy would be subject to
4 disciplinary action and leave it at that. Okay.

5 Mr. Etherly, your last word on seven.

6 MEMBER ETHERLY: Oh, you know, I'm -- I
7 definitely don't necessarily view myself as the
8 deciding vote on this question. I mean I -- I can
9 live with that language. I definitely can, but I
10 think the observation that Ms. Miller raises is -- is
11 an important one as -- as we move forward here on this
12 deliberation and others and I don't want to lose sight
13 of -- of what I think is attention, but -- but -- but
14 a good one between insuring that our conditions are
15 enforceable and clearly grounded to some actual
16 factual piece that we're trying to deal with, but at
17 the same time, I believe Section 206 does include
18 language so as to not likely become objectionable that
19 enables us to be somewhat forward looking in terms of
20 life after the increasing enrollment or life after the
21 introduction of -- of the performing arts center in a
22 case like this.

23 But, I'm comfortable with -- with that
24 language as it stands. But, I think the larger point
25 is an important one that we will probably come back to

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1 again not only in this case, but in others.

2 CHAIRPERSON GRIFFIS: Good. Ms. Mitten.

3 COMMISSIONER MITTEN: I -- I guess I just
4 would like to make one pitch for the -- the more
5 extensive language of seven and -- and I guess what I
6 would say is if -- if one subscribes to Ms. Miller's
7 point of view, then you have to reject seven in its
8 entirety because you're suggesting that we don't need
9 this at all and so, I would suggest we either reject
10 seven in its entirety or we embrace seven in its
11 almost entirety.

12 You know, the -- the philosophy that
13 you're -- that you're espousing suggests that, you
14 know, seven is -- is beyond our -- beyond the
15 authority that we have because the record doesn't
16 support it. So, if you believe that, then you have to
17 reject seven wholesale and I would not be in favor of
18 doing that.

19 VICE CHAIRPERSON MILLER: Okay. Let me
20 just say this. I -- first of all, the applicant
21 proffered this and I -- but, I think that -- what I'm
22 dropping off is getting involved in how they're going
23 to discipline. I think that there's a difference in
24 saying okay, it'll be subject to disciplinary action,
25 but that's within the purview of the school how they

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1 do their -- how they discipline their students. That
2 -- that's why I would stop there.

3 I think it has the enforceability that you
4 were concerned about. Because we're -- we -- we're
5 going to know that they have these enrollment
6 contracts that parents have to sign. That's something
7 we can see.

8 But, we -- you don't want to create a
9 situation where people are going to be litigating that
10 they're in violation of -- of their disciplinary
11 action before the Board. I think that's what the
12 Court was trying to tell us not to get involved in the
13 intricacies of -- of -- of the type of disciplinary
14 action the school will take.

15 CHAIRPERSON GRIFFIS: Okay. So, we have
16 two strong opinions of including the entire seven, one
17 to edit it and one to remove it totally.

18 Let's move on. We may have to come back
19 to seven.

20 Visitor cars and buses, visitors who drive
21 to school events and activities including by events
22 summer programs and the performing arts center and who
23 do not have valid zone three parking stickers will be
24 required to park cars in those areas identified in
25 condition three.

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1 St. Alban's School will inform all visitor
2 schools in writing of the designated visitor parking
3 and will require visitors from such schools to park in
4 those areas identified in condition three above to the
5 extent parking is available. Buses will be required
6 to park on the close or in designated off-street
7 parking spaces and we did have -- have as an
8 indication of where those buses would be provided
9 spaces.

10 Comments. Yes.

11 VICE CHAIRPERSON MILLER: I like the last
12 sentence that buses will be -- be required to park on
13 the close or in designated off-street parking spaces.
14 I think that that's clearly enforceable.

15 The -- the rest of it, I -- you know, I
16 don't -- I don't see how that's going to be enforced
17 human nature-wise. They don't say how they're going
18 to require these visitors. You know, it seems like a
19 good goal or -- or maybe -- maybe we do need some
20 teeth that's not in here. So, I -- I don't think it's
21 a good condition.

22 CHAIRPERSON GRIFFIS: Okay. You -- you
23 want to be --

24 VICE CHAIRPERSON MILLER: And again, it's
25 restricting people -- you know, it's like restricting

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1 people's right to park on our streets, you know. Why
2 have they -- do we have evidence in the record that it
3 is such a great problem. I mean I -- I know it's --
4 it's preferable that there be less cars on
5 neighborhood streets. I think I would rather see
6 incentives in these conditions or something rather
7 than this -- these like will require. I -- I -- it
8 just doesn't mean very much to me.

9 CHAIRPERSON GRIFFIS: Right.

10 COMMISSIONER MITTEN: I'm going to agree
11 with Ms. Miller on this one. The -- because you don't
12 have any -- there's -- there's no way to discipline a
13 visitor. There's -- what are you going to do, you
14 know? So, to suggest that you can require them to do
15 something, it's -- it -- it isn't enforceable.

16 When we get down later into the use of the
17 athletic fields by other -- by others, I think then we
18 get into the opportunity that if you're being given a
19 right by the school, then they have the opportunity to
20 require compliance with their parking policy by -- by
21 revoking that right if you don't comply. That's how
22 you get compliance from their other entities.

23 And for visitors or buses or whoever that
24 -- because the -- the ANC was talking about the fact
25 that some buses park illegally on neighborhood streets

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1 which is something I face in my own -- on my own
2 street everyday. It's an enforcement issue. You
3 know, it's a -- it's a -- it's a DPW enforcement
4 issue. It's not -- I don't know that we can -- we can
5 hope to -- to extend that to the school, you know,
6 that they become the enforcer or that they become --
7 you know, I don't know how they would make buses not
8 park on the street, you know. The way the -- you're
9 suppose to penalize those people and they're suppose
10 to get a ticket.

11 So, I think we can -- to some extent, we
12 can capture the spirit of eight as we move down, but,
13 you know, visitors, I don't know how you could
14 possibly enforce that.

15 VICE CHAIRPERSON MILLER: I -- I want to
16 back up a little bit though. I -- I think the way I'm
17 looking at this is like the requirement is very vague,
18 but there are certain things that if we can put in
19 here what St. Alban's will do and I look in here a
20 second look and it says St. Alban's will inform all
21 visitor schools in writing of the designated visitor
22 parking or its parking policies. That's enforceable.
23 I think they should do that. They can -- they could
24 tell them this is where they -- they should park when
25 they come to the school and that will take them off.

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1 But, I also think that they -- you know,
2 maybe we should say -- I mean we're not going to say
3 that -- I don't know that we have the information to
4 do this, but it would be better if it said that St.
5 Alban's will provide parking on site for, you know,
6 visiting schools or whatever. That would be an
7 enforceable --

8 CHAIRPERSON GRIFFIS: Right.

9 VICE CHAIRPERSON MILLER: -- meaningful
10 condition.

11 CHAIRPERSON GRIFFIS: It's almost as if
12 we're looking for the number of -- of parking that
13 would be provided.

14 I think that we ought to look at it this
15 way in condition number eight hearing the Board
16 Member's comments that the finding of fact is -- is
17 that this large parking structure is going to be
18 constructed, that a certain portion of that is going
19 to be designated for utilization of St. Alban's School
20 and that we would in this condition note that it would
21 be required that St. Alban's inform the visiting
22 schools of -- of their visiting parking policies and
23 where the parking is made available and absolutely
24 keep in the buses are required to park on the close
25 and designated off-street parking spaces. Leave it at

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1 that.

2 COMMISSIONER MITTEN: I just want to
3 capture one thing that Ms. Miller said which is that
4 instead of saying the -- the last sentence, buses will
5 be required to park on the close, that you say
6 adequate parking to accommodate buses for visiting
7 teams or whatever will be provided on the close and --
8 and the schools will be directed to those spaces.

9 So, it's a kind of a -- it puts the
10 responsibility on the school to provide it and then to
11 direct them to it.

12 CHAIRPERSON GRIFFIS: Okay. That's fine.
13 I think we can add that in terms of the provision
14 of --

15 COMMISSIONER MITTEN: But, I -- but, I
16 would want to eliminate the first sentence because
17 that's the one I -- because it says visitors -- it
18 basically says visitors will be required to park their
19 cars in those areas designated. You can't do that.
20 I mean you can't enforce that.

21 CHAIRPERSON GRIFFIS: Right. No, and
22 that's what I was noting that actually the condition
23 would start more towards St. Alban's will inform
24 visiting schools --

25 COMMISSIONER MITTEN: Yes.

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1 CHAIRPERSON GRIFFIS: -- in writing of the
2 designated visiting parking. Because what we have is
3 a finding has -- has been presented that there is
4 going to be parking built and provided. With that,
5 the visitors need to know where it is and what the
6 school's policy is.

7 Nine. Yes, good. St. Alban's summer
8 programs, in order to minimize any potential adverse
9 impacts on neighboring properties, St Alban's will
10 limit the hours of outdoor summer programs from 8:00
11 a.m. to 7:00 p.m. St. Alban's shall designate
12 vehicular pickup and drop-off locations on the close
13 for participants in the summer programs.

14 Comments? I don't think we need the St.
15 Alban's shall designate, but vehicular pickup and
16 drop-off locations will be provided on the close for
17 participants in the summer programs.

18 The -- the enforceability is not that they
19 were designated, but that it happens. Okay.

20 Any other comments?

21 MEMBER MANN: A minor comment just to
22 perhaps give greater clarity to this condition and
23 that is delete in order to minimize any potential
24 adverse impacts on neighboring properties.

25 CHAIRPERSON GRIFFIS: Right.

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1 MEMBER MANN: And just start the condition
2 St. Alban's will.

3 CHAIRPERSON GRIFFIS: Indeed. I would --
4 I would agree. That's not a sensitive, but an
5 editorial writing I tend to agree with.

6 VICE CHAIRPERSON MILLER: My understanding
7 is and I have to pull it and I'm not sure how we're
8 going to deal with this, but I -- I -- this may be --
9 have happened before, but I know in this case, I
10 think, that the ANC has a different proposal and do
11 you want to look at their's now or do you want to just
12 go --

13 CHAIRPERSON GRIFFIS: Good. Take it up.
14 Absolutely.

15 The ANC was proposing that existing summer
16 programs in the hours of 8:00 a.m. to 3:30 p.m.
17 Stopping in the afternoon. It would allow extensions
18 for different sizes of events. Depends on where you
19 look.

20 Additional comments?

21 VICE CHAIRPERSON MILLER: Okay. I -- I
22 don't think there was evidence in the -- at the
23 hearing or in the record to support limiting the hours
24 to the extent that the ANC proposed.

25 Again, we have a situation where a

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1 school's been operating for a long time. So, there is
2 a record and I don't think the record shows that
3 there's an adverse impact here that needs to be
4 mitigated by curtailment of use in the hours that it's
5 allowed to operate.

6 CHAIRPERSON GRIFFIS: Okay. Others? Very
7 well.

8 Moving on to ten, performing arts center,
9 this is indicating that St. Alban's would limit the
10 hours of events at the performing arts center from
11 8:00 a.m. to 11:00 p.m., Sunday through Thursday and
12 8:00 a.m. to midnight on Friday and Saturday.
13 Performances at the performing arts center not
14 including rehearsals or practices would be held on no
15 more than 100 days during any calendar year which
16 corresponds to the existing conditions except as
17 provided herein. The performing arts will only be
18 used by the PECF institutions and will not be rented
19 out or otherwise used for commercial purposes.

20 In rare circumstances, the performing arts
21 center may be made available on a limited basis to a
22 non-PECF not for profit institutions or a community
23 organization that has a compelling need for use of the
24 performing arts center or has suffered the loss of use
25 of a similar facility and requires temporary relief

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1 from such loss.

2 First of all, I think in the end it's very
3 interesting wording, but I think it's -- the intent is
4 -- I absolutely agree with it. It seems to me that
5 there are circumstances that we cannot predict, but
6 it's absolutely appropriate to share facilities
7 perhaps on a temporary basis. It doesn't impact
8 greatly the -- necessarily the surrounding impacts of
9 what the order is looking to condition.

10 I go to a specific circumstance that I've
11 heard of actually, an occurrence of -- in Washington
12 with our private schools where we actually were under
13 somewhat of a siege with the sniper activities and --
14 and there were certain schools that were not letting,
15 not all schools, not letting their children be outside
16 and there were schools that did not have the indoor
17 facilities in order to recreate the children, but they
18 could not share in other institutions around,
19 private/public, whichever, because there were certain
20 conditions based from this Board and other orders that
21 would not allow a certain amount of time or occupancy
22 or outside enrollments or nonacademic depending on the
23 -- the school circumstance itself.

24 I don't think there was ever any intent.
25 Certainly, there was never any projection or thought

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1 process from this Board that a circumstance of that
2 magnitude might arise, but this seems to speak to
3 hopefully never a condition of that severity, but of
4 rare circumstances that might arise.

5 Ms. Miller.

6 VICE CHAIRPERSON MILLER: I think that,
7 you know, that -- that leads me to the general
8 statement I want to make or proposal and that -- that
9 -- that these conditions may be temporarily lifted in
10 rare circumstances to respond to a community emergency
11 or something like that. Because I also heard, you
12 know, in this world with respect to, for instance,
13 hurricane Katrina that, you know, if there's a student
14 enrollment cap, that a school would not be able to
15 take in students, you know, who were displaced by an
16 emergency of that sort and I don't think that this
17 Board would intend to impose that kind of restriction
18 either.

19 CHAIRPERSON GRIFFIS: Ms. Mitten.

20 COMMISSIONER MITTEN: I'd be really
21 concerned about building that kind of a flexibility
22 into our orders and Katrina's a good example. Because
23 while on the one hand we think of it as very
24 temporary, we have no idea how long it's going to take
25 to deal with, you know, accommodating the people who

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1 have been displaced. So, it could be -- you know, it
2 could be months. It could be -- it could be years.
3 I mean we just don't know.

4 So, even though we all think it's going to
5 be maybe a matter of days or weeks, it may not be and
6 that's -- and -- and so, I would just be really
7 concerned about building that in because even though
8 the condition or the -- the opportunity to depart from
9 the condition arose from an emergency, the way that
10 the resolution of that emergency plays out could take
11 a really long time.

12 So, I don't know. I'd be afraid of that.

13 VICE CHAIRPERSON MILLER: You know, I --
14 I hear what you're saying and I'm really kind of
15 raising a philosophical question, but maybe it could
16 be in the -- and it may be a regulation that might be
17 needed, but maybe if it were phrased as minor
18 flexibility for instance that would allow a school to
19 take in free students or something like that, you
20 know.

21 CHAIRPERSON GRIFFIS: Others, comments.

22 The performing arts center, is there any
23 difficulty in terms of excepting the condition of the
24 times, 8:00 a.m. to 11:00 on Sunday through Tuesday,
25 8:00 to midnight Friday and Saturday? This, of

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1 course, does not include practices and rehearsals.
2 Any difficulty there? Not noting -- yes.

3 VICE CHAIRPERSON MILLER: I don't know if
4 we should just pause and -- and I'm sure that the --
5 the ANC has some other time recommended. I'm not sure
6 whether Office of Planning or DDOT did. Do you want
7 to look at that now?

8 CHAIRPERSON GRIFFIS: Now would be the
9 time.

10 The ANC was recommending a differing
11 number of events. Times also.

12 MEMBER ETHERLY: Mr. Chair, as -- as you
13 indicated, there is a -- there is a difference between
14 the position of the ANC and the applicant here and I
15 think this is an area where -- where -- where I -- I
16 tend to perhaps have a -- have a -- a somewhat
17 different position from -- from that of -- of the ANC.

18 Let me deal first with the -- with the
19 issue of -- of performance times and -- and any
20 limitation that's different from what's been offered
21 by the applicant.

22 Part of the prism through which I -- I
23 have viewed this case and -- and perhaps some of these
24 very specific issues is also the fact of -- of -- of
25 the nature of the corridor that -- that we are talking

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1 about. That corridor, of course, being Wisconsin
2 Avenue.

3 I think as -- as -- as we attempt to deal
4 with traffic issues and other issues throughout that
5 segment of the city, I think there are some very
6 practical considerations that -- that impact the flow
7 of traffic in this corridor that -- that extend well
8 beyond the close and -- and the St. Alban's use here.

9 As many of us, of course, are aware, we
10 have a fairly active and vibrant restaurant community
11 just up the street that contributes traffic to this
12 area. All of this just to -- to -- to note that as we
13 get into this issue of timing, I -- I -- I -- I note
14 well the concerns that were raised by the ANC as they
15 discuss this particular issue.

16 In particular, the time that it may take
17 to -- for patrons to necessarily get out of -- out of
18 the garage following a performance and perhaps walking
19 through. That if you have a performance that ends at
20 11:00 p.m, you could conceivably, of course, have
21 traffic that might stretch into some late -- some late
22 hours, but I think part of the -- part of the -- the
23 -- the caution here is not trying to necessarily use
24 this order to abate some of the larger traffic issues
25 that are just part and parcel of living in a -- in --

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1 in the urban environment that we find ourselves.

2 On again, all that being said, I -- I find
3 the time -- the time as it is laid out of the
4 performance hours to be appropriate for -- for this
5 type of facility.

6 I would agree with -- with -- with the
7 applicant that there is somewhat of a -- of a
8 distinction perhaps to be made between comparing
9 performances at Sidwell Friends with performances at
10 -- at this particular site as the ANC endeavored to do
11 in this particular indication. So, I wasn't
12 necessarily moved by that particular -- particular
13 argument.

14 Further, but on somewhat different
15 grounds, as it relates to the issue of limiting
16 performances, I will -- I will most certainly come
17 back to the language that Ms. -- Ms. Miller utilized
18 earlier in our deliberation here and that was language
19 regarding getting into the -- the fine -- the -- the
20 -- getting into the operational aspects of -- of our
21 schools and I think this is one area where -- where we
22 find ourselves firmly at the -- at -- at the boundary
23 of.

24 I do not recall compelling testimony with
25 regard to existing performances on campus nor did I

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1 necessarily recall testimony that spoke to a
2 significantly more aggressive or larger programming of
3 the performance arts center space compared to what is
4 currently taking place on campus.

5 Clearly, as the -- as the ANC was right to
6 indicate, you are talking, of course, about a larger
7 audience capacity, but I do not recall anything in the
8 record that spoke to more aggressive programming such
9 that -- and I'm not suggesting that the ANC is -- is
10 trying to say that we're looking at off off Broadway
11 coming to St. Alban's and that's not to make light of
12 the ANC's concerns here, but it is to note that I just
13 do not recall and I perhaps invite my colleagues to --
14 to refresh my recollection if they recall that, but I
15 do not recall anything that suggests that -- that we
16 were going to have a much more aggressive performing
17 schedule that would raise any -- any traffic concerns
18 with regard to the hours as they are currently
19 proposed or that would suggest the need for limitation
20 on the number of events at -- at the property.

21 Thank you, Mr. Chair.

22 CHAIRPERSON GRIFFIS: Thank you. Yes
23 response.

24 VICE CHAIRPERSON MILLER: I would concur
25 with Mr. Etherly that we have a history here and it --

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1 it appears that the -- the number of days is -- is not
2 being increased. They're just -- the performances are
3 being consolidated or -- or switched to the new
4 performing arts center and that there hasn't been a
5 limitation on hours and I don't believe that we had
6 evidence in the record that there was a problem with
7 respect to parking and traffic for performances.

8 CHAIRPERSON GRIFFIS: Thank you. Others.

9 COMMISSIONER MITTEN: I just want to be
10 sure that we incorporate a -- a suggestion that was
11 made by the ANC and endorse by DDOT and it's in DDOT's
12 September 2nd memo to us which is that access from the
13 garage should be limited to the Wisconsin Avenue exit
14 for events scheduled to end after 10:00 p.m. to
15 minimize late evening traffic on residential streets
16 and that, of course, would be after construction of
17 the garage, but I think that's an important element of
18 this to keep the traffic on the -- the -- the main
19 street.

20 VICE CHAIRPERSON MILLER: I would be
21 opposed to that because I think that the applicant
22 addressed that very well in that the -- the garage
23 from what I understand has been designed with two
24 exits in order that there not be congestion and a
25 whole build-up of traffic on Wisconsin Avenue and that

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1 there are also residents across the street on
2 Wisconsin Avenue even though it's -- it's a -- a
3 busier street than the other.

4 I think it would create more of a problem.
5 I -- I don't think we have the evidence in the record
6 to -- to impose that.

7 COMMISSIONER MITTEN: Well, I think --

8 VICE CHAIRPERSON MILLER: I think that
9 they could -- that DDOT and -- and the school would
10 work out -- should be able to work out the best flow
11 of -- of the traffic.

12 CHAIRPERSON GRIFFIS: As condition 17 is
13 trying to indicated.

14 COMMISSIONER MITTEN: I guess I would just
15 wonder why we would reject a recommendation from who
16 would be our expert in this case, you know, advising
17 us, you know, through the Office of Planning which is
18 DDOT when we have a -- when we have a recommendation
19 from them.

20 VICE CHAIRPERSON MILLER: Well, we have --
21 we have a recommendation from them, but we really
22 didn't have them before us making this recommendation
23 so that we could explore it with them. All we have is
24 their recommendation.

25 COMMISSIONER MITTEN: Well, and it's --

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1 VICE CHAIRPERSON MILLER: I don't --

2 COMMISSIONER MITTEN: -- it's a
3 recommendation that was made as a -- as an additional
4 submittal, but -- but I guess what -- what I heard you
5 say was that we don't have any evidence in the record
6 to suggest why we should do this and what I'm saying
7 is that we have a recommendation from DDOT which is --
8 you know, I would -- I would like to know on what
9 basis we would reject that recommendation.

10 VICE CHAIRPERSON MILLER: Okay. I'm
11 looking at DDOT's report and I see a recommendation
12 that says access from the garage should be limited to
13 the Wisconsin Avenue exit for events scheduled to end
14 after 10:00 p.m. to minimize late evening traffic on
15 residential streets.

16 That's it. That -- that -- that's like --
17 that's a statement and I think it's a statement that
18 we should seriously consider, but then that doesn't
19 mean that we end there. I think that the applicant's
20 responded very thoughtfully to that -- to that
21 statement.

22 I guess, Ms. Mitten, my other concern is
23 this is ten years out that we're projecting again and
24 that we leave the flexibility of St. Alban's to work
25 with DDOT to work out the best plan especially since

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1 we don't have much evidence in the record on this.

2 They proffer that in their condition
3 number 17 saying that St. Alban's will work with DDOT
4 to study appropriate garage exit points for PAC events
5 and I think that this is going to be a general concern
6 for the close as a whole.

7 CHAIRPERSON GRIFFIS: You mean the ingress
8 and egress?

9 VICE CHAIRPERSON MILLER: From this lot,
10 yes, not just St. Alban's. I don't know that we have
11 evidence in the record that St. Alban's is -- has --
12 is likely to create such a different situation as to
13 necessitate our imposing this condition.

14 CHAIRPERSON GRIFFIS: I tend to agree, Ms.
15 Miller, and actually, I was a little bit take aback by
16 the second bullet of the DDOT report that access from
17 the parking should be limited to Wisconsin Avenue for
18 -- for the reason that Ms. Miller is -- is stating.
19 Is that I -- I wanted some substantive rationale for
20 how they got there.

21 It seems to fly in the face of a lot of
22 the expert witness testimony that we have found before
23 us and that is the more you disperse traffic, the less
24 impact it is in the surrounding area and here we have
25 DDOT saying you know what? We -- we need to dump

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1 everybody from the same place into the same area.

2 I'm not so sure that I'm convinced just by
3 that mere statement that that's the correct way to go,
4 but rather that perhaps it is something that should be
5 looked at and dealt with -- with the St. Alban's and
6 DDOT as -- as it's actually implemented.

7 Ms. Mitten.

8 COMMISSIONER MITTEN: I agree with what's
9 been said about, you know, it would be nice to
10 understand more why DDOT was making this
11 recommendation.

12 I guess I think it's a little ironic that
13 we would be saying well, we're rejecting DDOT's
14 recommendation now, but we'd like the applicant to
15 work with DDOT to work out the best plan.

16 I mean I would presume that DDOT is making
17 a recommendation of what they think if the best plan
18 and I think that -- that one of the things to keep in
19 mind is that traffic at night is louder than traffic
20 during the day and I think that's why they're trying
21 to force it onto Wisconsin Avenue is because it's --
22 you hear it more because there's less background
23 noise.

24 So, that's just me articulating what my
25 experience has been, but I would just -- I -- I think

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1 to me it's a sound recommendation and I'd just like to
2 advocate for it as best I can absent having DDOT here
3 to explain it to us.

4 VICE CHAIRPERSON MILLER: Could -- could
5 I ask -- could I ask you what evidence in the record
6 you would be relying on other than DDOT's
7 recommendation? Is it just that because DDOT says it
8 we do it?

9 COMMISSIONER MITTEN: No, because there's
10 been -- there have been other occasions where I've
11 disagreed with DDOT based on some other evidence in
12 the record, but I guess what I have yet to hear
13 articulated -- what I hear articulated is let the
14 applicant and DDOT work it out as if we didn't have a
15 recommendation from DDOT, but -- but we do.

16 So, that's -- that's what's confusing me.

17 VICE CHAIRPERSON MILLER: I just want to
18 ask you also how do you reconcile this with your
19 concern that how -- how things are going to be ten --
20 ten years from now? Why should they be stuck to
21 something like -- as specific as this when we don't
22 know what -- what the situation's going to be ten
23 years from now?

24 COMMISSIONER MITTEN: I guess because the
25 same reason I'm willing to proceed forward is on a

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1 short-term basis which is based on everything we know
2 now this is the recommendation that's being made.

3 It may turn out if we know more in the
4 future that there would be a different recommendation
5 made, but we're -- but we're not allowing ourselves
6 the opportunity to hear that changed condition at the
7 time we make the decision.

8 VICE CHAIRPERSON MILLER: Okay. And --
9 and then my next question is what do we know now that
10 would prompt us to impose this condition other than
11 DDOT recommended it?

12 COMMISSIONER MITTEN: I don't have -- I
13 mean I -- I think it makes -- I -- I can justify and
14 I don't want to testify. So, I'm not going to -- I'm
15 not going to other than what I suggested about the
16 fact that Wisconsin Avenue is the more heavily
17 traveled street and that traffic is -- that vehicular
18 sounds are louder at night that -- which I would
19 presume would be part of the -- part of the rationale
20 underlying.

21 I -- I mean I don't -- I don't have
22 anything because as you said DDOT didn't explain it.

23 I just think it's a sound recommendation.

24 CHAIRPERSON GRIFFIS: Also, clarifying
25 your comments, Ms. Mitten, about sound, I think I

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1 absolutely understand your -- the -- the intent. I
2 don't think that -- that the -- you -- you -- you
3 mentioned -- maybe this is more funny than anything
4 else, but you mentioned that it -- that the sound of
5 traffic is louder at night than it is during the day.
6 Yes, I know, but -- and the perception.

7 COMMISSIONER MITTEN: It's perceived to
8 be.

9 CHAIRPERSON GRIFFIS: Exactly.

10 COMMISSIONER MITTEN: Yes.

11 CHAIRPERSON GRIFFIS: And that's exactly
12 where I'm going. The reason why and I think you're
13 exactly right.

14 You don't want a lot of noise at 10:00 at
15 night because you're relaxing and it's nighttime and
16 it's in a residential area.

17 So, it seems to me if we look at the --
18 what was presented in this that the DDOT and I would
19 have assumed that DDOT would want to disperse traffic
20 much more quickly than to have it all in one point and
21 all in one location which would essentially elongate
22 that adverse condition, that noise. Perhaps
23 potentially increase the time of backup. So,
24 integration of traffic coming out of the event and I'm
25 not so sure why two exits wouldn't disperse the

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1 traffic more quickly, effectively and efficiently.

2 If -- if we look at taking it off the
3 residential streets, I go back to what Ms. Miller was
4 bringing up. Is that the evidence in the record shows
5 that this whole area is surrounded by residential
6 although Wisconsin is a larger traffic artillery or
7 artery.

8 But, again, I think that with -- with the
9 roads that are surrounding it it might be well served,
10 two points, to quickly dissipate the traffic that's
11 coming and going at that hour and to -- to -- to allow
12 some flexibility as they change and as it's absolutely
13 -- as it's actually implemented so that there might be
14 some -- somehow that we lend some flexibility in
15 having DDOT look at it.

16 I would -- I would point the Board's
17 direction to number -- Exhibit 54 with the applicant's
18 submission Number 6 and I'm not clear. Maybe there's
19 some clarity that can be brought, but the sixth
20 paragraph in the center of it says "During the
21 approval process for the parking garage, the District
22 Department of Transportation concurred with the
23 Protestant Episcopal Cathedral Foundation that two
24 exits are needed to disperse traffic quickly and
25 efficiently after cathedral events."

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1 That seems to be saying well, why did they
2 say it in that position and here we have a different
3 position taken in terms of dispersal of events and
4 times.

5 So, again, I go back to it seems to me in
6 -- in my limited experience of expert witnesses of
7 traffic engineering that are before us that have all
8 consistently said the more alternatives you have, the
9 less traffic impact you have. I'm not sure how I
10 could rely on DDOT's statement in isolation that says
11 it would be better of if there's only one exit.

12 That's where I am. Others.

13 MEMBER MANN: I agree with your position
14 on that.

15 CHAIRPERSON GRIFFIS: Okay. Where are we
16 then with additional information, edits on ten? We
17 still have the language in terms of use or are we --
18 and putting in flexibility with rare circumstances.
19 Are we ready to move on to 11, limitations on St.
20 Alban's? I think it might be expeditious to say that
21 the Board would look to -- to write in the intent of
22 the last sentence in -- in the performing arts center.
23 If I have a consensus on that, we -- we can write that
24 in as the intent that there might be some flexibility
25 in very extreme rare circumstances that utilization of

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1 the arts center could be invoked.

2 MEMBER ETHERLY: My concern -- I'm
3 entirely in agreement with the -- with the spirit of
4 -- of the language. My concern is getting into this
5 -- the -- the thicket of trying to determine exactly
6 what -- you know, what -- what those circumstances
7 might be. What -- what would constitute them.

8 As I said, I -- I appreciate the spirit of
9 it. I -- I would just rather rely on -- on -- on the
10 goodness and kindness of neighbors to be able to come
11 together and identify when those circumstances arise.
12 You know, no one's going to stand up and quote the
13 text and -- and -- and language of a BZA order, but
14 rise to the occasion and do what needs to be done.

15 So, I -- I would be inclined just to stay
16 away from that entirely.

17 VICE CHAIRPERSON MILLER: I think the
18 opposite. I think that the -- the language allows the
19 -- the neighbors and the school to come together and
20 recognize that. I really find it hard to believe that
21 neighbors would be down here challenging, you know,
22 that kind of reaching out on a time of need. But, I
23 think when it's not in there, the school might be --
24 I think it might be afraid to violate the order.

25 MEMBER ETHERLY: I would disagree. I

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1 think we've seen just precisely the opposite and
2 definitely not -- do not allow. I think we've seen
3 just the opposite.

4 VICE CHAIRPERSON MILLER: Where have we
5 seen the opposite?

6 MEMBER ETHERLY: I -- in terms of as you
7 used a particular reference or experience that we've
8 recently been confronted with here in the District and
9 I -- I just -- my concern is getting into the
10 difficulty of trying to determine when such
11 circumstances would exist. Is it -- you know, is it
12 a small fire at another school that would require. Is
13 it -- is it if construction's going on at a sister or
14 -- or neighboring institution. You know, is that a
15 set of -- a circumstance that would allow that to
16 happen?

17 What I meant to -- what I meant to state
18 is -- is -- is clearly not that -- that I would expect
19 that there would be any concern or opposition from the
20 community in such an instance, but I just think it's
21 a slippery slope to get into in terms of trying to
22 craft language for it.

23 VICE CHAIRPERSON MILLER: Let me -- can I
24 make one other point here? Again, I don't think that
25 we have found that there is an objectionable condition

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1 that needs to be mitigated and this is a condition
2 that's being proffered by the applicant. So, I'm not
3 sure what we're worried about. Again, I mean this
4 school has a history of years of operation here with
5 no -- well, I am sure there are some limitations, but
6 I don't know what they are. But, I don't think a
7 limitation on use of the performing arts center.

8 So -- so, we --

9 MEMBER ETHERLY: Wait.

10 VICE CHAIRPERSON MILLER: -- you know,
11 what is a slippery slope that we're worried about. I
12 think, you know, we don't want them to rent out. I
13 think that's a big concern of neighbors and a
14 legitimate concern and that is put in here, but
15 they're not talking about renting out. They're
16 talking about -- they say rare. I mean maybe we can
17 craft it better, but --

18 MEMBER ETHERLY: Oh, no. No, my -- my
19 apologies. I thought you were suggesting language
20 that was different from what was already included in
21 number ten.

22 VICE CHAIRPERSON MILLER: Oh.

23 MEMBER ETHERLY: No, I'm entirely
24 comfortable with the language as it currently stands.

25 VICE CHAIRPERSON MILLER: Okay. Good.

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1 Oh.

2 MEMBER ETHERLY: I thought you were
3 offering something different.

4 CHAIRPERSON GRIFFIS: Oh, good.

5 VICE CHAIRPERSON MILLER: Good.

6 CHAIRPERSON GRIFFIS: Okay. I didn't
7 understand that at all.

8 VICE CHAIRPERSON MILLER: Okay.

9 MEMBER ETHERLY: Here we go. Moving on.

10 CHAIRPERSON GRIFFIS: I think we're good.

11 MEMBER MANN: I actually see things
12 slightly differently and I'd like to offer this.

13 At the moment, we have three fairly
14 ambiguous phrases in here, in rare circumstances, on
15 a limited basis and a compelling need and I see that
16 almost in a similar way to the -- when we were talking
17 about enrollment allowing a 2 percent flexibility.

18 Well, if we took out the ambiguous phrases
19 and said the performing arts center may be made
20 available to non-PECF not for profit institution or
21 community organization for use of the performing arts
22 center that has suffered the loss of a -- use of a
23 similar facility, request temporary relief from such
24 loss, then the only thing that we're lacking right
25 there is a number.

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1 And so, the -- the whole thing -- I think
2 that the problem with this whole condition -- this
3 portion of the condition is that no matter how we
4 phrase that in rare circumstances, on a limited basis
5 or compelling need, it's completely open to
6 interpretation and without any number, I don't know
7 how that's going to be enforceable.

8 CHAIRPERSON GRIFFIS: Good. I think
9 that's very well done.

10 COMMISSIONER MITTEN: So --

11 CHAIRPERSON GRIFFIS: Yes.

12 COMMISSIONER MITTEN: -- Mr. Mann, would
13 you then suggest that we say everything that you said
14 leaving out those -- those ambiguous phrases and then
15 say something like no more than three days per year or
16 something?

17 MEMBER MANN: That would be the ideal
18 scenario if we are -- if we're able to come up with
19 that number, but I don't think that we can come up
20 with a number that's going to accurately reflect
21 potential conditions.

22 VICE CHAIRPERSON MILLER: I -- I would
23 disagree. I mean I just think this is like a safety
24 valve and that if there was a pattern of making the
25 performing arts center available to non-profits or

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1 whatever and not in emergency situations or rare
2 situations, then -- then there would be a record that
3 they may have violated the order, but I think if we
4 just put it in rare situations, it's -- it's
5 understood. I don't think we can anticipate a number.

6 CHAIRPERSON GRIFFIS: Agreed. I think
7 we're going to have to rely on the rationality of all
8 involved to come to a clear understanding of temporary
9 if such rare circumstances do arise and I think Mr.
10 Mann's compromise suggestion in editing out some of
11 the more nondescriptive language in there puts it
12 directly, too. There's clearly a loss. There's a
13 similar type of facility that is obviously in need and
14 that temporary need could be provided for through the
15 performing arts center.

16 Unless there's major objection, I'd
17 suggest that we move on now.

18 Okay. Let's go to 11 which goes to
19 limitations of the use of the athletic fields.

20 St. Alban's would not schedule
21 simultaneous scrimmages or games with other schools on
22 the athletic fields with the following exceptions and
23 those are the smaller of the tennis matches, the make-
24 up games canceled due to inclement weather or other
25 similar unanticipated events.

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1 Mr. Mann will have a comment on that
2 phrase.

3 Additionally, St. Alban's will not
4 schedule more than five athletic tournaments involving
5 more than one visiting school per year on its athletic
6 fields.

7 The -- the substantive of that, I think
8 that was very well addressed in the -- as most of
9 these were, but this specifically in the hearing and
10 I know that we had specific direct questions trying to
11 anticipate what kind of events and tournaments might
12 simultaneously be done and this seems to be an
13 appropriate limitation on those.

14 But, other comments.

15 MEMBER MANN: I think it's largely
16 justified as it's written and I would suggest saying
17 the following exceptions: one, tennis matches and
18 two, make-up games. It doesn't matter why they're
19 canceled.

20 CHAIRPERSON GRIFFIS: Okay. Right. Yes,
21 and -- and I was a bit perplexed by what other similar
22 unanticipated events would be. It's probably going to
23 be a game of some sort that had to be made and if it's
24 unanticipated, then it's probably a make up. Right?
25 Okay. Good enough.

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1 COMMISSIONER MITTEN: I think it's -- I
2 think that other unanticipated events is modifying the
3 -- the cause of the cancellation.

4 MEMBER MANN: Right.

5 COMMISSIONER MITTEN: The cancellation
6 could be canceled -- the -- the game could be canceled
7 because of inclement weather or some other thing that
8 caused it to be canceled.

9 CHAIRPERSON GRIFFIS: Oh, even more recent
10 to take it out.

11 COMMISSIONER MITTEN: More reason to take
12 it out?

13 CHAIRPERSON GRIFFIS: Yes, I mean why --

14 COMMISSIONER MITTEN: Well, then somebody
15 can say well, that game was canceled because of the
16 sniper. It wasn't canceled because of a rain storm.
17 So, you can't make it up. That's what you wouldn't
18 want to --

19 CHAIRPERSON GRIFFIS: Exactly.

20 COMMISSIONER MITTEN: So, I think it's --
21 I think the -- the language as it is fine.

22 VICE CHAIRPERSON MILLER: I agree. I
23 don't know why we change it.

24 COMMISSIONER MITTEN: And just for the --
25 just to add to it, the ANC doesn't object to it. They

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1 are happy.

2 CHAIRPERSON GRIFFIS: Indeed. But, isn't
3 -- isn't Mr. Mann being rational in saying a make-up
4 game that's canceled is a make-up game that's canceled
5 which would be the exception. Why do we care why it
6 was canceled?

7 COMMISSIONER MITTEN: Oh. Oh. Oh. Yes.

8 CHAIRPERSON GRIFFIS: So, he's scratching
9 the whole thing.

10 COMMISSIONER MITTEN: Well, what would it
11 say? Just --

12 CHAIRPERSON GRIFFIS: It would say the
13 following --

14 COMMISSIONER MITTEN: Make-up games.

15 CHAIRPERSON GRIFFIS: -- exceptions, one,
16 tennis matches and two, make-up games.

17 COMMISSIONER MITTEN: Oh, yes, I like
18 that.

19 CHAIRPERSON GRIFFIS: Yes. Good. Less is
20 more.

21 Twelve, limitations on non-school uses of
22 athletic fields during academic year, I'm not going to
23 read the entire thing. It's in front of us.

24 Comments on this.

25 COMMISSIONER MITTEN: This -- this was one

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1 place where when you get into the -- sort of the
2 mechanics of it and you're giving permission to
3 someone, a non-school entity to use the facility, I
4 think this is an opportunity where you would want to
5 have similar language that you have in number seven
6 which is that you would have this agreement and it
7 would require compliance with the parking policy and
8 the noncompliance with the parking policy might result
9 in revocation of the permission to use the -- the
10 athletic fields.

11 And I think we had talked about that
12 during the hearing and I -- I think the applicant
13 indicated when -- when we were talking through it that
14 they wouldn't have a problem with that. So, I would
15 just advocate for some additional language that sort
16 of captures all that parking stuff in -- in a -- in a
17 similar way as is -- as is captured in number seven.

18 CHAIRPERSON GRIFFIS: Good. I do recall
19 the same testimony on question and answer and in the
20 hearing and what you're saying is look if you're --
21 you're offering this, let's call it amenity, then
22 there are responsibilities in -- in -- in being able
23 to utilize that.

24 Ms. Miller, nothing?

25 VICE CHAIRPERSON MILLER: No, I -- I just

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1 wanted to be clear what she was saying, but I think I
2 understand that. It's the same kind of provisions
3 that we wanted in number eight. Was it eight?
4 Visitors coming.

5 CHAIRPERSON GRIFFIS: That's seven.

6 COMMISSIONER MITTEN: Seven.

7 VICE CHAIRPERSON MILLER: Seven.

8 CHAIRPERSON GRIFFIS: It's seven in terms
9 of what -- in terms of having disciplinary actions or
10 in fact, maybe revoke until -- you go into a level of
11 revoking the ability to utilize the fields. I'm not
12 saying that's what we're going to put in the
13 conditions.

14 VICE CHAIRPERSON MILLER: I -- I don't --
15 do we want to jump into their disciplinary action
16 again?

17 CHAIRPERSON GRIFFIS: No, that's not what
18 I'm saying.

19 COMMISSIONER MITTEN: No. No.

20 CHAIRPERSON GRIFFIS: But, there would be
21 some sort of -- the -- I think what Ms. Mitten is
22 saying is that if you're providing this ability to use
23 the field, then you have -- you have some force in
24 implementing what you require them to do whether it be
25 behavioral or whether it be parking, whether it be

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1 time of use.

2 VICE CHAIRPERSON MILLER: Okay. That's
3 why I was looking to number eight where -- which
4 addressed visitor parking. That they would be subject
5 to the same types of restrictions. The parking be
6 designated on the -- on the close or something for
7 visitors.

8 COMMISSIONER MITTEN: Right.

9 VICE CHAIRPERSON MILLER: Or for these
10 teams or whatever.

11 COMMISSIONER MITTEN: Right. And I guess
12 what -- what I'm -- there's -- well, there's two
13 things. One is visiting teams are not the same as the
14 entities contemplated in number 12 and in number 13.

15 So, when you have visiting teams, you're
16 saying look, there's the parking. We provided you
17 some parking. Go park over there.

18 VICE CHAIRPERSON MILLER: Right.

19 COMMISSIONER MITTEN: This one would be
20 okay, you're some outside entity unrelated to the
21 school. You're not competing with the school. We
22 have a use agreement and part of that is you -- you
23 agree -- you the -- you the -- the non-school user
24 agree to comply with certain things and that would
25 include our parking policy and if you don't, then

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1 the -- the agreement's subject to revocation due to
2 noncompliance.

3 That's the teeth to -- to capture that --

4 VICE CHAIRPERSON MILLER: Their agreement
5 with for instance the coach and the team that's
6 allowed to practice on -- on the fields. Is that what
7 you mean?

8 COMMISSIONER MITTEN: If that's a non-
9 school use.

10 VICE CHAIRPERSON MILLER: If they violate
11 the parking, that you're suggesting that they then not
12 be allowed to use the field or something like that in
13 the future?

14 COMMISSIONER MITTEN: That that -- that
15 that be one possible mechanism for enforcing the --
16 the parking policy.

17 CHAIRPERSON GRIFFIS: We're suggesting
18 that this -- St. Alban's would establishing the
19 enforcement, the -- the -- the disciplinary action,
20 but you want a disciplinary action stated within this.
21 Is that correct?

22 COMMISSIONER MITTEN: No, I mean in the
23 same way that I didn't want to get into the minutia of
24 how the school does their business when we were
25 talking about seven, saying something like

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1 disciplinary action or whatever suggests that there
2 will be a consequence --

3 CHAIRPERSON GRIFFIS: Right.

4 COMMISSIONER MITTEN: -- for
5 noncompliance.

6 CHAIRPERSON GRIFFIS: But, are you looking
7 for us to prescribe that consequence?

8 COMMISSIONER MITTEN: No.

9 CHAIRPERSON GRIFFIS: Right. That's --
10 that's the only clarification I was trying to bring.
11 I think that raised some concern here.

12 COMMISSIONER MITTEN: But, the -- I guess
13 the only thing -- just for the same reason that I
14 liked number seven, originally I liked number seven,
15 I mean I still like number seven as it was written.
16 Which, you know, if you take that last clause of
17 number seven which says to the child, if you don't
18 comply, then non-renewal of -- you know, we may not
19 renew your contract. I would like to also say to the
20 -- you know, the non-school user and we may not let
21 you use our fields anymore if you don't comply. It's
22 not that we won't. It's just that we might not.

23 I -- I just like that to be there because
24 that's sort of the strongest action the school can
25 take.

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1 VICE CHAIRPERSON MILLER: It's possible
2 though that we could say something like that this is
3 subject to the same -- they're subject to the same
4 parking requirements as, you know, set forth in this
5 order or whatever and it would be St. Alban's that
6 would be maybe in violation if these teams violated
7 those parking provisions.

8 I think it's a good idea if they -- if
9 they answer to some kind of an enforcement, but I'm
10 not sure how to phrase it here unless we say that they
11 should institute some kind of enforcement which is
12 general because we're not going to say what that
13 enforcement is going to be.

14 COMMISSIONER MITTEN: Here's how I would
15 -- this is just a off the top of my head adaptation of
16 number seven which is that St. Alban's will require
17 each non-school user of its athletic fields to agree
18 to the parking policy when the non-school user signs
19 its use -- usage agreement.

20 Non-school users who violate the school's
21 parking policy will be subject to disciplinary action
22 which may include non-renewal of the use agreement or
23 something like that.

24 VICE CHAIRPERSON MILLER: I -- I guess
25 where I'm at right now is I think it's -- I like your

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1 beginning that they shall, you know, sign an agreement
2 that they'll comply with the parking requirements, but
3 then I just don't -- I hesitate when we jump into like
4 disciplinary action or something as a result.

5 COMMISSIONER MITTEN: We're not telling
6 them what to do. We're just telling them they can't
7 do nothing. You know, it's -- because if you say --
8 it's okay -- if you don't say it, then it's okay to do
9 nothing and then -- then you don't have a real
10 condition, an enforceable condition.

11 VICE CHAIRPERSON MILLER: Okay. I just
12 want to back up one more step. Again, I'm not sure
13 that we even had objectionable conditions that we're
14 trying to mitigate. So, that we need to be cautious
15 when we get into requiring disciplinary action.

16 I don't know. Maybe it could be in their
17 TMP and -- and if that TMP has flexibility to add
18 things that would cover this.

19 CHAIRPERSON GRIFFIS: Is it in the TMP?
20 I mean I don't see us as having a procedure to include
21 it in it unless we throw all these conditions out and
22 adopt Mr. Mann's recommendation.

23 What does it state, Mr. Mann?

24 MEMBER MANN: It states almost the exact
25 same thing as the condition.

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1 CHAIRPERSON GRIFFIS: Right. I -- what
2 I'm saying is is it in the TMP that there's actually
3 disciplinary action if the non-PECF users violate the
4 parking policy?

5 VICE CHAIRPERSON MILLER: I don't know.
6 I -- I just think the onus should be on the school and
7 maybe -- I mean it has here that they should direct
8 them to parking places. Maybe we should add that they
9 should provide parking for them and -- and direct
10 them.

11 I just don't know that we have evidence
12 that rises to the level of, you know, getting into
13 disciplinary action against visitors or the kids for
14 the soccer. I mean I understand what you're saying.
15 I think it's a good policy. If -- if you have someone
16 using your fields violating your -- your parking
17 provisions, then they should be subject to
18 cancellation, but whether we want to impose that is --
19 is another story.

20 COMMISSIONER MITTEN: I guess my feeling
21 is just to go back to sort of the general statement is
22 if you believe that the parking policy -- if you
23 believe that the parking policy is -- should be a --
24 should be a condition of the BZA order so that yes, we
25 want there to be these controls, it's important that

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1 they be there to mitigate existing adverse impacts or
2 potential adverse impacts or likely adverse impacts.

3 If you go back to that threshold question,
4 then for each set of users, potential users, where you
5 have the opportunity to have a mechanism to require
6 compliance with that parking policy, I think we should
7 avail ourselves of that opportunity. Because then
8 you're saying we're not just gesturing at it saying
9 good idea, hope it works. We're saying it's important
10 enough to us that we help you make it work.

11 So, that's -- that's kind of the -- the
12 theme that I've been trying to advocate which is do it
13 with the students, do it with the non-school users, do
14 it with whoever you can by whatever -- you know, if
15 you have an agreement with them, a written agreement
16 with them.

17 CHAIRPERSON GRIFFIS: Anything else?

18 VICE CHAIRPERSON MILLER: Just want to say
19 that's exactly my -- my dilemma here. You know, I
20 agree with if you're going to have conditions, you
21 should have teeth to enforce them or what good are
22 they, but on the other hand, we -- we haven't -- when
23 have conditions normally, they are because we find a
24 problem that has to be solved and addressed and do we
25 find that this is a problem that has to be addressed

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1 that way.

2 CHAIRPERSON GRIFFIS: Or is it
3 anticipation of a potential problem?

4 COMMISSIONER MITTEN: Okay. Let's --
5 let's -- let's leave parking aside for just a second
6 and go back to the -- what I had said when we started
7 which I think is the secondary purpose of this order
8 which is to sort of capture existing -- the existing
9 understandings and existing conditions and say we want
10 the status quo to be maintained. If -- if -- if you
11 believe that we -- okay, there's not adverse impact
12 being -- we're not addressing an existing adverse
13 impact. So, why are we having a condition? Why would
14 be have a parking policy, everything's fine. So,
15 forget parking now.

16 With that in mind, why would be address
17 enrollment? There's no problem about enrollment.

18 VICE CHAIRPERSON MILLER: No, but the
19 reason we address enrollment, it was proffered by the
20 applicant and I think makes sense is that if there's
21 no limitation on it whatsoever, you know, it could
22 like triple say and then that would create a problem.

23 COMMISSIONER MITTEN: Um-hum.

24 VICE CHAIRPERSON MILLER: So, the school
25 is saying -- they don't -- they don't mind saying

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1 we'll be subject to this enrollment because we have no
2 plans whatsoever to increase. This is -- this is --
3 this is the right capacity for the school, the program
4 and so, we can deal with these numbers and given these
5 numbers, this is what happens with parking spaces or
6 given these numbers, this is what happens with
7 performances.

8 So, I think those numbers are pretty
9 important. You know, if you doubled the numbers,
10 maybe you -- you might double the performances or
11 something I mean --

12 COMMISSIONER MITTEN: Um-hum.

13 VICE CHAIRPERSON MILLER: -- and the
14 parking spaces. So, that -- that's where I am on the
15 numbers.

16 COMMISSIONER MITTEN: Okay. And so, what
17 I -- what I -- how I would extend that is they're
18 saying look, this -- this works for us. So, we don't
19 have a problem proffering the condition about
20 enrollment.

21 Same thing with parking policies. This
22 works for us. They've had a parking policy and so,
23 we're -- we're fine with proffering the Board that the
24 parking policy works. We're willing to prove to you
25 that we -- we're -- that it -- it works. We'll make

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1 work. The community need not fear because we're going
2 to have this -- this provision in agreements to make
3 sure that it works. It works today. That it continue
4 to work into the future.

5 I -- I think that it's the same kind of a
6 thing where we're trying to capture and insure that
7 the status quo does not deteriorate. To me, it's the
8 same thing.

9 MEMBER MANN: Do you think that condition
10 number 12 is specifically trying to address parking
11 issues only or parking issues and non-parking issues?

12 Because it seems to me that it's
13 addressing more than just parking. I mean we've got
14 a sentence in here that talks about the use of the
15 fields and then it says that those users that don't
16 have zone three parking will do something. Then it
17 says that they'll be permitted to use the fields
18 subject to certain things or except as follows and (a)
19 is one thing and (b) is back to parking and then (c)
20 and (d) are not.

21 So, do you think the intention of this is
22 solely to deal with parking or to deal with parking
23 and other issues?

24 COMMISSIONER MITTEN: No, I think 12 and
25 13 are both about dealing with the -- all the aspects

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1 of use of the athletic fields by non-school users and
2 one of those elements is parking.

3 MEMBER MANN: Okay. So, parking in one
4 alternative could be that everything to do with parking
5 or traffic could be taken out of that so that that's
6 dealt with separately as a parking or traffic --
7 transportation issue and the only thing that you're
8 left with then is the actual utilization of the
9 facilities.

10 COMMISSIONER MITTEN: I'm sorry. I don't
11 -- I don't -- I didn't -- I didn't follow the
12 significance of what you're -- what are you
13 suggesting? I just didn't get it.

14 MEMBER MANN: It ties back into the
15 original suggestion that transportation management can
16 be addressed holistically under a transportation
17 management program and then we can enforce
18 transportation management without precluding the
19 enforcement of how particular facilities are used
20 regardless of their traffic conditions.

21 COMMISSIONER MITTEN: I guess the reason
22 that -- that I was suggesting this approach is because
23 whatever you want to say, whatever you want to
24 condition for a non-school user like, you know, your
25 -- the use -- your use has to end by a certain time

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1 and whatever, that -- that they would have a use
2 agreement that sort of outlines different provisions
3 and one of those provisions would relate to the
4 parking policy.

5 VICE CHAIRPERSON MILLER: How about St.
6 Alban's shall be required to enter into a use
7 agreement with non-PECF users that requires them to
8 comply with their TMP or something like that?

9 COMMISSIONER MITTEN: And if we could add
10 in noncompliance may result in revocation of such an
11 -- of the use agreement that --

12 VICE CHAIRPERSON MILLER: I guess -- see
13 my problem here is that I know that this -- we know
14 from the evidence that this activity has been going on
15 for years without objectionable conditions being at
16 least brought to my attention in the hearing. So, why
17 do we need to take that additional step about
18 revocation?

19 COMMISSIONER MITTEN: Well, we did have
20 testimony that there are adverse impacts. You -- you
21 might not -- you might not agree with the -- the
22 severity of them or -- or --

23 VICE CHAIRPERSON MILLER: From this type
24 of use by the non-PECF users?

25 COMMISSIONER MITTEN: Yes, that's -- the

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1 ANC speaks to that.

2 CHAIRPERSON GRIFFIS: Mr. Mann, Ms.
3 Miller, let me ask you if we were to add in a clause
4 12, whatever it would be, E that indicated that some
5 of the language that Ms. Mitten has offered looking at
6 seven that noncompliance with the proper parking
7 procedures would result in some disciplinary action,
8 if possible revocation of the use of the fields, if
9 that was added into here or was added into a
10 transportation management plan, that's not the issue
11 or is it?

12 Actually, for Mr. Mann, because is this --
13 is the substance of what's being said an issue or
14 where it shows up?

15 VICE CHAIRPERSON MILLER: To me, it's --
16 it's what they do. I mean I think that that's a
17 problem that the school has with a user. I think it's
18 violating the provisions of the BZA order. What is it
19 going to do about it? Is it going to revoke the usage
20 agreement? Is it going to assess penalties? It is
21 going to -- I don't know. I just kind of feel like
22 why do we need to address what it's going to be.

23 CHAIRPERSON GRIFFIS: But, Ms. -- Ms.
24 Mitten hasn't -- I haven't heard her indicating such
25 detailed disciplinary action, but rather that there

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1 would be some disciplinary action.

2 I understand that you're saying well, how
3 do we hold accountable these non-users or summertime
4 users and put the school at jeopardy, but here's the
5 nexus that I see. The school is somehow prospering,
6 whatever that means, but prospering by allowing
7 utilization of their field and with that, they also
8 have a responsibility in order -- in the larger
9 community.

10 So, I don't have much difficulty in
11 saying, you know, they probably ought to, you know,
12 make sure that everyone using the -- the facilities
13 behaves.

14 VICE CHAIRPERSON MILLER: Okay. I guess
15 I feel like the onus should be on -- on St. Alban's,
16 but --

17 CHAIRPERSON GRIFFIS: And it is.

18 VICE CHAIRPERSON MILLER: St. Alban's
19 would be in violation if it's -- if -- if these users
20 are in violation.

21 CHAIRPERSON GRIFFIS: And they are. They
22 would be violation if they allowed the continued --

23 VICE CHAIRPERSON MILLER: Why don't we
24 leave it at that?

25 CHAIRPERSON GRIFFIS: -- use.

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1 VICE CHAIRPERSON MILLER: I mean if the
2 non-users violated, St. Alban's would be in violation
3 and I mean, therefore, the neighbors or whoever would
4 have redress because St. Alban's would be in violation
5 of the order and leave it up to St. Alban's as to how
6 they want to make sure these non-users -- I mean these
7 non-PECF users comply.

8 I mean I certainly want to add that they
9 would be -- these -- these non-users -- non-PECF users
10 would be subject to the same TMP policy, the same
11 requirements of this order.

12 CHAIRPERSON GRIFFIS: Okay. And that's
13 where we are then.

14 COMMISSIONER MITTEN: Okay. Can I just?

15 CHAIRPERSON GRIFFIS: Yes.

16 COMMISSIONER MITTEN: I'm -- I'm -- I
17 could go in that direction, but we would have to alter
18 like number three for instance which sort of seems to
19 capture what the requirement is and then we go --
20 later, we say how you -- how you enforce that policy.

21 So, number three says St. Alban's will
22 require faculty, staff and students who drive to
23 school and who don't have the -- the RPP sticker to
24 park on the close including the parking garage. Okay.
25 Well, then we'd then have to extend that to non-school

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1 users of athletic fields and so on and then -- then
2 you can say that non-compliant -- and they can -- they
3 can figure out how to -- they can -- how they enforce
4 it, but that I think if we extend, you know, include
5 in a number three non-school users of athletic fields,
6 then you can go there where you want to -- where you
7 want to go.

8 VICE CHAIRPERSON MILLER: I agree.

9 CHAIRPERSON GRIFFIS: So, I'm sorry. So,
10 there seems to be an offer that Ms. Mitten we wouldn't
11 have included in 12 and 13, but rather in three. But,
12 have a language that would be inclusive of three and
13 12 and 13.

14 COMMISSIONER MITTEN: Right.

15 CHAIRPERSON GRIFFIS: Okay. It's
16 amenable. I haven't lost, Mr. Mann, your issue that
17 we'll revisit towards the end which we'll -- we'll do
18 with all these.

19 Okay. So, 13, are there any other --
20 other comments on 13 which goes to the limitation of
21 the non-school use of athletic fields during the non-
22 academic year? These are the -- the summertime. That
23 seems to be closely linked to 12 with unless being
24 used by St. Alban's, the track shall be available for
25 public use subject to any restrictions placed on use

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1 by St. Alban's.

2 Anything else on that? Additions?
3 Concerns?

4 VICE CHAIRPERSON MILLER: Well, I mean I
5 just want to note for the record I -- I think that the
6 ANC offered more restrictive conditions, but I don't
7 think that the evidence in our hearings showed that
8 they were necessary. That again -- that -- that the
9 school's been operating without any limitations for
10 all these years and this is the first time I think
11 that they're putting limitations upon themselves. I
12 don't think there's evidence in the record that
13 further limitations should be necessary.

14 CHAIRPERSON GRIFFIS: Right. I think we
15 need to keep it in perspective although a lot of times
16 these conditions take on larger than life proportions
17 of the emphasis that we put it, but I -- it's pretty
18 clear to me that hearing the testimony and I think
19 that we all understand the fact that the -- the
20 primarily use of these is for the school and that
21 there are times where I think that the evidence and
22 the testimony was -- for instance, if a -- if a coach
23 has a -- has a -- a team of participants that aren't
24 all St. Alban's, they use the field, it isn't as if
25 this is tournament central and just being more

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1 utilized for outside, but --

2 VICE CHAIRPERSON MILLER: I want to back
3 up though and correct myself a little bit. In -- in
4 dealing with the athletic fields, if something is a
5 little bit different, I mean they're being
6 reconfigured and -- and the bleachers are going to
7 hold more people. So, then there was a question about
8 noise and to that effect is number one and I think
9 that the evidence in the record showed that -- that
10 the noise would not rise to a -- a level that would be
11 objectionable.

12 And then there was a question about
13 traffic. Would -- would -- because the bleachers
14 would hold more people would -- would it attract more
15 cars and what I got from the hearing was that no, the
16 same events are going to be held, for instance, you
17 know, if there's a homecoming or whatever, it's the
18 same event. It attracts the same amount of people and
19 that for the most part, they're just going to be
20 accommodated more comfortably.

21 CHAIRPERSON GRIFFIS: Okay. Good.
22 Correction. Clarification?

23 Fourteen, limitations of amplified noise.
24 Comments? Edits? Corrections?

25 I don't think it reasonable just to keep

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1 in language that St. Alban's shall take reasonable
2 steps to minimize noise to -- to the neighborhood from
3 events on athletic fields. I think that the evidence
4 in the record shows that the orientation and the
5 setback and the field layout have taken that into
6 consideration and I don't know -- as has been well
7 said by Mr. Mann this morning, how do we actually --
8 where's the clarity of that in measurable aspect for
9 the enforceability of it?

10 No use of lighting on the athletic fields
11 at any time. I think we can change the language there
12 for exactly what was presented in the evidence and
13 that is that they are not providing athletic field
14 illumination. Clearly, we're not getting into any
15 sort of safety lighting along pathways or anything of
16 that sense. So, we need to put language in there that
17 indicates that they would not be able to illuminate
18 the fields with light.

19 Okay. Anything else?

20 COMMISSIONER MITTEN: Are we --

21 CHAIRPERSON GRIFFIS: Yes.

22 COMMISSIONER MITTEN: -- are we -- I
23 thought -- I thought they had agreed to -- that there
24 would be no amplified sound and it doesn't say that.
25 It says they'll take reasonable steps to minimize

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1 noise and that they'll not use any lighting except for
2 safety lighting. It doesn't say they won't have
3 amplified sound.

4 CHAIRPERSON GRIFFIS: Good point to bring
5 up. I wasn't clear on that because I thought they had
6 indicated that there would be some amplification of
7 the announcing of the athletics.

8 How do you do that otherwise?

9 COMMISSIONER MITTEN: You don't have an
10 announcer. You just have people follow the game.

11 CHAIRPERSON GRIFFIS: Are you all looking
12 at that?

13 VICE CHAIRPERSON MILLER: What?

14 CHAIRPERSON GRIFFIS: 3D. Amplified.
15 Amplified.

16 COMMISSIONER MITTEN: They do make
17 reference to an announcer calling the game for their
18 -- at least for their homecoming football game. So,
19 they do -- they do use an announcer from -- at least
20 part of the time.

21 CHAIRPERSON GRIFFIS: The issue before us
22 right now for discussion is just whether there is
23 limitation on the amplified noise, whether there's
24 limitation on the announcing of the athletic events.

25 Ms. Mitten has brought it to the

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1 attention. I just need to hear if there is comment on
2 that.

3 I'm not sure. Are you advocating -- I
4 don't think -- I didn't understand you to be
5 advocating one direction or other, but bringing it to
6 attention for discussion.

7 COMMISSIONER MITTEN: I had it in my head
8 that they were not going to have amplified sound.

9 CHAIRPERSON GRIFFIS: Okay.

10 COMMISSIONER MITTEN: And that's clearly
11 not the case and I don't know that I'm going to
12 advocate for anything. I just want -- I just had it
13 in my head that they had.

14 CHAIRPERSON GRIFFIS: Right. Others have
15 other recollections. My recollection was that that
16 was an initiative brought forth that we were going to
17 prohibit. Okay. Then I will stop trying to pull
18 teeth on this end and move on to 15.

19 Tennis club parking, St. Alban's shall
20 direct members, the required staff and employees on
21 the -- the tennis club who do not have valid zone
22 three parking permits to park in those areas
23 identified in condition number three when they drive
24 to St. Alban's tennis courts. Again, directing
25 members. Comment?

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1 COMMISSIONER MITTEN: Can we -- the only
2 comment I would have is can we add tennis club patrons
3 to the list in three? So, we have students, faculty,
4 staff, non-school users of athletic fields and tennis
5 club patrons.

6 CHAIRPERSON GRIFFIS: Excellent. I don't
7 have any disagreement with that unless others do.

8 VICE CHAIRPERSON MILLER: No, I just want
9 to clarify what -- what we're doing here. Like I
10 don't understand why tennis club patrons are even
11 addressed. I don't remember hearing anything. I
12 guess because they're in the population that arrives
13 at the campus. I guess so. I didn't hear any
14 testimony that -- that they were a problem.

15 COMMISSIONER MITTEN: I -- I thought that
16 they were a problem for the relatively small subset of
17 the community that's approximate to where the tennis
18 courts are. That's what I remember hearing about.

19 VICE CHAIRPERSON MILLER: Okay. I mean I
20 -- you know, I think -- I think it's -- I think it's,
21 you know, pretty good for the staff and employees, but
22 -- and I think that when you say direct members, it's
23 -- it's -- it doesn't have -- this doesn't have teeth
24 and -- and I think we should recognize that.

25 CHAIRPERSON GRIFFIS: There's -- the

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1 requirement here and the enforceabilities that St.
2 Alban's would have directed.

3 VICE CHAIRPERSON MILLER: That's right.
4 That they -- it's like encourage them. Direct and
5 encourage them.

6 CHAIRPERSON GRIFFIS: It's a bit of an
7 unamplified --

8 VICE CHAIRPERSON MILLER: It's not like
9 the people are going to be arrested if they park on
10 the public street though.

11 COMMISSIONER MITTEN: Well, I think it's
12 -- you know, there's -- there's --

13 VICE CHAIRPERSON MILLER: Like the BZA
14 police. Right.

15 COMMISSIONER MITTEN: -- there's two
16 things. One is if they -- you know, if they have a
17 valid RPP sticker, they're entitled to park in the
18 street and then if they don't, they're entitled to
19 park there for two hours. You know, it's sort of like
20 whatever. I don't know how long a tennis game is, but
21 okay.

22 CHAIRPERSON GRIFFIS: Depends. If Mr.
23 Etherly's playing, you better watch out.

24 Okay. Well, I think the intent is -- is
25 -- is a consensus from the Board and we'll figure out

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1 how we actually perform that in 15.

2 Sixteen, use and parking liaison
3 committee, there was some indication from the ANC to
4 be very prescriptive. There is opposition to that.
5 It's before us whether there is one, not or what the
6 layout should be. Right now, the applicant is
7 proffering the condition that they would provide a
8 contact person and contact information.

9 Additions? Edits? Concerns?

10 COMMISSIONER MITTEN: I think typically
11 with committees like this we have -- we have taken a
12 -- you know, sort of the broad brush approach and not
13 got into trying to micro-manage who's going to be on
14 it and how many times they're going to meet and who's
15 going to keep the minutes and all of that. So, I --
16 I think that the condition as it's proffered is fine.

17 CHAIRPERSON GRIFFIS: Good. I tend to
18 agree. In fact, we run into great difficulty if we
19 get too far beyond what's actually stated here. Quite
20 frankly, St. Alban's would provide a contact point
21 number, e-mail address for neighbors who wish to
22 report any failure to comply with the usage parking
23 conditions therein. The last sentence is sufficient
24 for my consideration.

25 However, I don't object to that only in

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1 the first part which would be the establishment of an
2 neighborhood liaison committee and that would be
3 compose as the St. Alban's and the -- and the
4 neighbors decide on their own.

5 Okay. Anything else on 16?

6 Then we're at 17 which is the last of the
7 applicant's proffered conditions which was going to
8 coordination with DDOT. Routinely requesting that
9 DDOT and other appropriate D.C. agencies enforce
10 parking restrictions in the immediate neighborhood and
11 also that St. Alban's would work with DDOT to study
12 appropriate garage exit points for PAC events.

13 Comments? Concerns?

14 Okay. If there isn't anything
15 additionally, then Mr. Mann's last item I think we
16 ought to revisit or do you have additional --

17 VICE CHAIRPERSON MILLER: Well, yes, I
18 mean in general I think that the ANC raised an
19 important concern and I -- I believe OP may have acted
20 as well and -- and that -- and I -- I share it to some
21 extent and I just want to raise it for discussion.

22 And -- and that is that this new parking
23 lot is being presented as the answer to parking
24 congestion in the neighborhood, but there really --
25 there really isn't teeth or whatever as far as I can

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1 tell with respect to people using it. We've got these
2 conditions that say shall require or shall direct or,
3 you know, I don't really know the force of those.

4 And -- and I found it a little bit
5 disconcerting that the Cathedral made some
6 representations that it was going to be charging for
7 use of this lot to its parents, et cetera.

8 What I -- what I would like -- I don't
9 believe that, you know, it rises to the level of
10 conditions per se, but I would like to -- I think to
11 encourage the close to create incentives for its
12 visitors in particular to use the lot as a first
13 resort. I think that if they're charging for it, it
14 may not be a first resort. The first resort may be
15 the neighborhood which is what the neighborhood --
16 neighbors were complaining about in this proceeding.

17 So, I think that -- I just think that
18 there are creative ways. Perhaps if the close could
19 look at that. Is charging -- I know that St. Alban's
20 may have to pay its fair share of this garage, but
21 perhaps charges could be done in different ways such
22 as surcharges on tuition or -- or charges for the lot,
23 incorporated in the ticket for the performance or
24 whatever it is.

25 So, to try to create a situation where the

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1 lot is the first resort and not the second resort.

2 I just wanted to throw that out. I think
3 it's a legitimate concern, but I don't think that --
4 that we have enough evidence per se unless other
5 people can identify it to actually require that the
6 school do that. So.

7 CHAIRPERSON GRIFFIS: Excellent. Good
8 point. Comments? Reactions?

9 COMMISSIONER MITTEN: I -- I guess I agree
10 with Ms. Miller first of all that we shouldn't -- we
11 can't incorporate it in the conditions, but it's --
12 it's a concern. It's -- it's a big concern and I'm
13 sure it's a concern for the school or the whole -- you
14 know, all the -- all the entities. Because they need
15 to recover the investment somehow and it's a question
16 of how they're going to do that and when you have a
17 neighborhood that's basically, you know, to put it,
18 you know, simply full of free parking and then you
19 charge discreetly for parking, that's -- that's --
20 that discourages people. So, if there's more creative
21 ways about building the charges in and saying the
22 ticket costs you a little bit more, but your parking
23 is free, then, you know, maybe people would be more
24 inclined to park in the garage. So, I think that's a
25 good suggestion. But, it's a -- it's going to be a

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1 challenge for all of them.

2 CHAIRPERSON GRIFFIS: Yes, I think it's a
3 -- is a very excellent point and it's going to be a
4 challenge. I -- some of the issues of not being in
5 the condition also arise to the fact that this is a
6 shared situation and -- and us putting the onus on one
7 entity, St. Alban's, that doesn't control the
8 financial or the -- the actual specifics of that is
9 very difficult, but it should be very clear and so, I
10 think it was very well stated that it is certainly a
11 part if not strongly recommended from the Board that
12 some provision be made to have no instant cost for
13 parking in this. So, that it is the first choice not
14 a -- a secondary thought of whether one should pay or
15 find something else first.

16 Okay. Anything else then on this?
17 Specific conditions, other elements.

18 I want to just very briefly bring up Mr.
19 Mann's point again so that we don't -- and -- and --
20 and if -- if I understand it correctly, what Mr. Mann
21 is advocating is the conditions that would incorporate
22 essentially three through 17 could be consolidated
23 into one paragraph indicating that this St. Alban's
24 would maintain and implement a transportation
25 management plan and that would -- that would cover all

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1 of the conditions that followed.

2 Is that appropriately stated, Mr. Mann?

3 MEMBER MANN: That is appropriately
4 stated. I just believe that that's somewhat
5 enforceable condition and allows greater flexibility
6 to deal with changing conditions in the future, but I
7 don't think that I need to say much more than that.

8 CHAIRPERSON GRIFFIS: Okay. Good. And I
9 think that's very clear. Let me have some comments
10 and reactions to that.

11 MEMBER ETHERLY: And it would be your
12 understanding that the substance of those conditions
13 that are being -- that would be condensed into that
14 one condition would that still somehow or somehow be
15 included in the text of this order? I mean how do you
16 retain that substance that we just went through in
17 that one condition?

18 MEMBER MANN: Substance regarding --

19 CHAIRPERSON GRIFFIS: I think what he's
20 getting to is how would we reference it? If five
21 years from now someone picks up this order and say
22 okay, we want to enforce this condition and it's --
23 there -- there is to be maintained and implemented
24 transportation management item one, where do we go for
25 it and two, what's in it?

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1 VICE CHAIRPERSON MILLER: Do we ever
2 require an applicant to update the BZA on a year
3 basis? I think sometimes we do with enrollment
4 numbers, but -- because are you talking about having
5 these general conditions, but also that they might be
6 subject to change because -- if there's TMP subject to
7 change?

8 CHAIRPERSON GRIFFIS: Well, I think that's
9 what Mr. Mann and I won't think for him, but --

10 VICE CHAIRPERSON MILLER: Yes.

11 CHAIRPERSON GRIFFIS: -- my understanding
12 is that yes, that there would be flexibility. That I
13 think is a good point, but also raises some major
14 concern from me and I think that's what Mr. Etherly
15 was going to. Is okay, if you take it all out, well,
16 where is it and how do we know what's to happen and
17 what isn't to happen?

18 What do you think, Mr. --

19 MEMBER MANN: I think that's a legitimate
20 question, but to answer what would be in the
21 transportation management plan would be something akin
22 to conditions that would be designed to provide
23 answers to the neighborhood that the school would
24 continue to operate reasonably and in conformance with
25 Section 206.

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1 CHAIRPERSON GRIFFIS: Um.

2 MEMBER ETHERLY: I'm opposed, Mr. Chair.

3 CHAIRPERSON GRIFFIS: Others.

4 COMMISSIONER MITTEN: I'm with Mr.
5 Etherly. I really think that there's a certain amount
6 of specificity that's required to even have
7 enforcement and to give the -- I mean we basically
8 would be giving the applicant complete discretion on
9 the content of the transportation management plan and
10 that's just -- given that -- given that the core of
11 this is all about parking and traffic, I would -- I --
12 I would just really be troubled by that.

13 CHAIRPERSON GRIFFIS: Others.

14 VICE CHAIRPERSON MILLER: So -- so, my
15 understanding is if -- if we have an order with the
16 conditions and then there's the TMP attached as an
17 exhibit, not attached as an exhibit, what -- that the
18 -- that there's a separate TMP, that that TMP could be
19 changed at a later date provided that it wasn't
20 inconsistent with our order. Okay.

21 CHAIRPERSON GRIFFIS: Yes, Mr. Mann.

22 MEMBER MANN: No, I can understand that --
23 that differing viewpoints and the advantages and
24 disadvantages of that sort of scenario and while it
25 might not be something that's adopted with this order,

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1 I just think that these items need to be taken into
2 consideration in the future regarding the
3 enforceability of conditions.

4 CHAIRPERSON GRIFFIS: Excellent and -- and
5 I think that's well said, Mr. Mann. I -- I fully
6 understand what your intent is here. I know the
7 intent is to look at this, as you indicated,
8 holistically.

9 I mean we have this plan, this management
10 plan. How do we actually get this done and have --
11 lend itself to the flexibility and is it by not
12 conditioning all the specificity, but putting it all
13 into one document that is implemented and maintained.

14 I think you're absolutely correct in going
15 in that direction. I think it's not appropriate at
16 this juncture in this specific application at this
17 time, but -- and I know the Board will keep in mind
18 that frame when next week visits a similar situation
19 and ask for that perhaps ahead of time and really
20 phrase our -- perhaps our decisions or at least our
21 deliberation and submissions on that.

22 COMMISSIONER MITTEN: Can I -- can I just
23 make a --

24 CHAIRPERSON GRIFFIS: Yes.

25 COMMISSIONER MITTEN: I just want to make

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1 two comments. One is that in PUDs in particular, we
2 often have a stand-alone transportation management
3 plan that sort of, you know, it's vetted on its own
4 and then references made to compliance with it, but
5 that becomes a fixed thing. So, that if the applicant
6 wants to depart from it, they have to come back. It's
7 not that they're given discretion to modify it on
8 their own.

9 CHAIRPERSON GRIFFIS: Right. Good point
10 and we've always had difficulty in -- in how we
11 incorporate it in our orders and we have gone to
12 actually adopting it as a finding of fact that it is
13 in existence and maintain and implement it, but I
14 think that brings an interesting point of whether
15 there's a vehicle for the Board and an order to say
16 that there's this stand-alone document that -- that
17 should be implemented.

18 Okay. That being said, is there anything
19 else on this application, statements, conditions,
20 deliberation, comments.

21 We have one more issue in this.

22 Ms. Miller, did you have an additional
23 issue? I thought Ms. -- Ms. Miller does not have
24 another issue.

25 We have -- the one outstanding issue that

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1 we had not as I understood been decisive on and that's
2 condition number one going to the phasing. So, let's
3 revisit that just briefly and then we can move ahead
4 as I think everything else is in order here and there
5 is a motion. It's been seconded and condition -- so,
6 we're looking at condition number one which goes to
7 whether the performing shall start within ten years of
8 the issuance of this order.

9 COMMISSIONER MITTEN: Since I was
10 advocating for that, I'll -- I'll just maybe say I --
11 I -- I didn't get the sense that I was getting any
12 support for my position. So, I'm not going to press
13 it other than to say that I'm going to vote in favor
14 of the motion as -- and with the condition as it
15 stands, but -- but I just want to be on record and --
16 and say again to the BZA that, you know, there's --
17 there's a lot of reasons why one does not approve
18 something that may be built ten years in advance
19 because it gives you the opportunity to revisit the
20 background conditions and, you know, one of the
21 closing statements that Ms. Miller made had to do with
22 the operation of the parking garage and that we hope
23 this will be the parking choice of first resort, but
24 we don't know.

25 So, that's among the reasons why I was

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1 suggesting that it would worthwhile to have them if
2 they -- if they can't, in fact, build it sooner, that
3 they would come back and we would see perhaps how the
4 parking garage was operating, but I -- just as a
5 general principle, I'm -- I'm concerned about
6 approving things like this with such a -- a broad
7 window.

8 CHAIRPERSON GRIFFIS: Very well. Others.
9 Comments. It's not required.

10 VICE CHAIRPERSON MILLER: No, I just want
11 to make sure that there wasn't something we were going
12 to come back to that we haven't come back to. Is that
13 possible?

14 CHAIRPERSON GRIFFIS: Could be.

15 VICE CHAIRPERSON MILLER: Okay.

16 CHAIRPERSON GRIFFIS: We've spent hours on
17 this already. I think that did -- I think that was --
18 that was the last condition that I had stated that we
19 were going back to.

20 MEMBER ETHERLY: Just -- just for the sake
21 of clarity, did we -- did we put to bed the issue of
22 the single -- the single Wisconsin Avenue exit for
23 performing arts center performances that end after a
24 certain time? That was discussion pursuant to on my
25 notes condition number -- what was formerly condition

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1 number ten on page 16 of 19 at Exhibit Number 64.

2 Just a question of use of the Wisconsin
3 Avenue exit as the sole exit for performances ending
4 after a certain point.

5 COMMISSIONER MITTEN: My recollection is
6 that that was another occasion where I was
7 unsuccessful in advocating my position.

8 MEMBER ETHERLY: I would be inclined to
9 agree with you. To make sure that we had touched upon
10 it.

11 CHAIRPERSON GRIFFIS: Right. That was
12 not added.

13 MEMBER ETHERLY: Thank you, Mr. Chair.

14 CHAIRPERSON GRIFFIS: As I understood, 17
15 stood also in terms of that review for that time.

16 Okay. If there's nothing else that is in
17 the recollection of the body, then we do have the
18 motion before us. It has been seconded and
19 conditioned. I would ask that all of you in favor of
20 the motion signify by saying aye.

21 (Ayes.)

22 CHAIRPERSON GRIFFIS: Opposed?
23 Abstaining?

24 COMMISSIONER MITTEN: And, Mr. Chairman,
25 just before --

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1 CHAIRPERSON GRIFFIS: Yes.

2 COMMISSIONER MITTEN: -- the vote is
3 called, that's -- just to clarify and that's sort of
4 with the changes that we agreed to by consensus.

5 CHAIRPERSON GRIFFIS: I'm sorry. Yes,
6 absolutely so and what this will do is just for our
7 procedure and actually for the public so they
8 understand it, we have all of us taken notes. Staff
9 has also been taking notes. We will consolidate all
10 of those as a draft goes around to the Board's review.
11 That draft will then go back for final review and then
12 issuance. So, we will make sure that all of our
13 comments and edits are -- are -- are put into the
14 final order.

15 Very well. Anything else on this? Mr.
16 Moy, if you wouldn't mind just recording the vote.

17 SECRETARY MOY: No, sir, very happy to.
18 The Board voted on the motion of Mr. Etherly to
19 approve the application with conditions as stated by
20 the consensus of the Board. Seconded by the Chair,
21 Mr. Griffis. Also, in support of the motion, Ms.
22 Miller, Mr. Mann and Ms. Mitten. The vote of 5 to 0
23 to 0.

24 CHAIRPERSON GRIFFIS: Good. Thank you
25 very much, Mr. Moy.

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1 I think it's appropriate for me to update
2 our schedule at this time. It's getting close to
3 unfortunately 1:25. We are halfway through our
4 morning meeting. We have two addition decisions to
5 make. We are going to need to take at least a 20-
6 minute break at this point and come back. I don't
7 anticipate taking more than an hour on those two
8 decisions and then we would move right into the
9 afternoon.

10 What -- what I would anticipate doing is
11 going straight in after our meeting to the first
12 couple of cases -- cases in the afternoon that have
13 preliminary matters and trying to get through those
14 preliminary matters and then we would assess whether
15 there would be time for the Board to take a quick
16 lunch break. So, for that, the afternoon session,
17 those that are here for it, I would anticipate that we
18 would not call that until at least 2:30 at this time.

19 We will be back as I say at this point
20 within 15 or 20 minutes. Thank you.

21 (Whereupon, at 1:26 p.m. off the record
22 until 2:31 p.m.)

23 CHAIRPERSON GRIFFIS: Very well. Let's
24 resume the morning session.

25 Mr. Moy, if you wouldn't mind calling the

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1 next case for our consideration.

2 SECRETARY MOY: Yes, sir, the next case is
3 -- is a certification of -- of the Revised Campus Plan
4 adopted by the Board of Zoning Adjustment to
5 Application Number 16566-F, as in foxtrot, of the
6 President and Directors of Georgetown College. This
7 was pursuant to 11 DCMR 3104.1 for a special exception
8 for the review and approval of the University Campus
9 Plan years 2000-2010 under Section 210 in the R-3 and
10 C-1 Districts at premises bounded by Glover Archbold
11 Parkway to the west, the National Park Service
12 property along the Chesapeake & Ohio Canal and Canal
13 Road to the south, 35th Street, N Street to 36th
14 Street and 36th Street to P Street to the east and
15 Reservoir Road to the north.

16 On April 5th, 2005, the Board approved the
17 issuance of a new order. The Board approved the
18 applicant's campus plan subject to conditions.

19 CHAIRPERSON GRIFFIS: Mr. Moy, I'm going
20 to interrupt you.

21 SECRETARY MOY: Yes.

22 CHAIRPERSON GRIFFIS: As -- as it's 2:30,
23 we're already running late. Not that you have moved
24 us to be late, but this a long reading and an opening
25 of this and frankly, the Board has very expeditious

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1 directions and that will be for the next two cases.

2 In looking at the case that Mr. Moy was
3 halfway through calling on the Georgetown case, of
4 course, the Board's responsibility at this juncture
5 was to review the -- the revised submitted campus plan
6 that was reflective of that deliberation direction
7 from the Board.

8 There was the community's response to
9 elements that were not -- that -- or asserted to have
10 not been included in that and we just want to bring
11 exact clarification and quick clarification to that.

12 As we -- the Board in its executive
13 session has decided to do the following. We're going
14 to request -- request that the university submit their
15 response to the community's concerns. There was
16 indication in the record that that was already
17 prepared. However, the process was not made available
18 in our proceedings. We are now making that process
19 available.

20 That submission would be required into the
21 Office of Zoning by this Thursday and we'll go through
22 the dates.

23 We would then give a very limited
24 opportunity for the community to respond directly to
25 those elements that the university brings forth in

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1 that submission and that is it. That's the entire
2 opening of this record.

3 We will then hear this -- rather decide
4 this on the 27th of September.

5 This will continue the -- the life of this
6 for two more weeks.

7 Mr. Moy, is that -- is that clear?

8 SECRETARY MOY: Yes, sir. Do you want me
9 to repeat that again?

10 CHAIRPERSON GRIFFIS: First, let me ask if
11 any Board Members had any comments or if I've
12 adequately reflected? If there are no other comments,
13 then yes, why don't we do that and run through the
14 schedule.

15 SECRETARY MOY: Okay. Then the -- working
16 backwards, then the special public meeting would be
17 scheduled for September -- Tuesday, September 27th in
18 the morning at 9:00, sir. Special public meeting.

19 The applicant's submission would be due
20 this Thursday, September the 15th and responses from
21 the neighborhood would be due Thursday, September
22 22nd.

23 Is that doable?

24 CHAIRPERSON GRIFFIS: Just for
25 clarification, Mr. Moy, I think we ought to set it for

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1 special public meeting at 9:30 on the 27th just to
2 insure that we get our executive session in and we can
3 start the day at that point.

4 Okay. Anything else on that then?
5 Comments? Questions? Very well.

6 Obviously, if there's procedural questions
7 or clarifications that are required, certainly, the
8 Office of Zoning Staff can accommodate that.

9 Let's move to the next and the last case
10 in the morning before us for a decision. That is case
11 number 17411.

12 Mr. Moy, I'm going to ask also that you
13 just announce the -- the title of the case and I'll
14 take it from there.

15 SECRETARY MOY: Okay. This is the motion
16 to dismiss the appeal of the appeal number -- of 17411
17 of Paul Basken and Josh Meyer.

18 I can just leave it at that, Mr. Chairman.

19 CHAIRPERSON GRIFFIS: Excellent. Let's do
20 so. We do obviously have a motion to dismiss in this
21 case and we had set this for a decision making on the
22 motion only and that was in order to expedite our own
23 schedule. This -- the -- the appeal case is set for
24 months in the future.

25 However, today, it appears that the

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1 majority of the Board is not prepared to go forward
2 with a decision on the merits of the motion to dismiss
3 and so, we are going to do the following.

4 We are going to call this for hearing.
5 This will be a limited hearing on the motion only and
6 that will be set for the third case on the 20th of
7 September and that is next week if I'm not mistaken.
8 Is it? Yes. The third case.

9 We have one case on the schedule that has
10 been withdrawn and so, the time opportunity is there
11 for it. We will ask that -- all the participants of
12 which have been contacted already for submissions in
13 response to this motion, we will be re-contacting them
14 and this will be the formal announcement to indicate
15 that that will be called.

16 The allotment of ten minutes will be
17 provided to every participant and what we are going to
18 do is set up a panel. Each participant will be at the
19 -- the interveners, the appellees, the appellants are
20 going to sit at the table. We are going to walk down
21 this panel with ten minutes.

22 After that, we will take Board's questions
23 and then we'll dismiss and I believe we will be able
24 -- I fully anticipate that we'll be able to take
25 action on the 20th after hearing that.

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1 I'm going to open the floor to the Board
2 Members at this point to ask a couple of clarifying
3 questions to make sure that all participants address
4 these specific issues.

5 And the first will come from me and that
6 is there -- we will need a copy of their certificate
7 of occupancy put into the record or clarification of
8 whether that has actually be issued or the date of
9 which it was issued.

10 Others.

11 VICE CHAIRPERSON MILLER: Having read the
12 pleadings in -- in this case with respect to the
13 motion to dismiss, I have certain questions and I just
14 think that I might as well throw them out at this time
15 and perhaps the parties can focus some of their
16 presentation on that.

17 One is what -- what is the triggering
18 event in this case? Is it the building permit or the
19 certificate of occupancy? If the building permit,
20 why? If the certificate of occupancy, why? If it was
21 the building permit, are there exceptional
22 circumstances that hinder the filing of the appeal and
23 if so, identify those.

24 There's a factual issue that was raised by
25 the appellant that the intervener's attorney told the

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1 appellant that the appeal date was a certain date. I
2 believe August 10th and I would like a response to
3 that if possible.

4 This may go to DCRA who I hope will
5 appear, but what does conditioned upon zoning approval
6 mean on a -- on a -- on DCRA permits and/or other
7 papers?

8 I think that's it for my general questions
9 that came to me upon reading the pleadings.

10 Thanks.

11 CHAIRPERSON GRIFFIS: Anything else? Any
12 other questions?

13 I think it would be clear -- I don't --
14 I'm not sure we'll have another time to give
15 direction, but perhaps we will. But, be that as it
16 may, I think it should be well understood by those
17 that will participate in this very expeditious ten-
18 minute address to the Board that we are not going into
19 the substantive merits of the case outside of that
20 which is pertinent to deciding the timeliness. It
21 should be very well cautioned that the utilization of
22 that time will go directly to the heart of those
23 issues.

24 I'm a little bit concerned with some of
25 the questions that Ms. Miller brought up, but I think

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1 they should be taken into context. The utilization of
2 somebody's ten minutes answering back and forth about
3 he said and told me to do whatever I did will be non-
4 productive. But, that's up to those participants and
5 how they use their time.

6 Certainly -- well, there it is.

7 VICE CHAIRPERSON MILLER: I -- I have one
8 more and that is to identify exactly what the error is
9 that's complained of without getting into the merits
10 of the appeal. It's probably --

11 CHAIRPERSON GRIFFIS: Good. I think
12 that's somewhat redundant to your first issue. I
13 think it has to be very clear and obviously, by posing
14 the question it isn't clear to the Board is -- what's
15 actually being appealed. We have to know to know
16 what's being appealed if we're going to set
17 timeliness. Well, you know, when does the clock start
18 and stop? Based on what issue?

19 Again, that should be able to be
20 accomplished without getting into the incredible
21 substance of -- of the appeal itself.

22 As I say, depending on the outcome of that
23 limited hearing for the preliminary matter in this
24 case, we may well move into a full appeal and
25 obviously, that will be the substance of which -- or

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1 the time at which the substance will be heard.

2 Okay. Anything else?

3 VICE CHAIRPERSON MILLER: I just want to
4 make one other comment. I think that we have written
5 pleadings from the appellant, the intervener and the
6 ANC, but not from DCRA, the appellee. So, that --
7 that they certainly could file one before that date if
8 they choose to. Correct? I think it might be useful
9 if they -- if they did that.

10 Thank you.

11 CHAIRPERSON GRIFFIS: Yes, but let's be
12 clear because --

13 VICE CHAIRPERSON MILLER: Um-hum.

14 CHAIRPERSON GRIFFIS: -- the -- the record
15 was open for responses to the motion.

16 VICE CHAIRPERSON MILLER: Um-hum.

17 CHAIRPERSON GRIFFIS: So, the record is
18 still open for those that did not respond to the
19 motion.

20 VICE CHAIRPERSON MILLER: Right.

21 CHAIRPERSON GRIFFIS: So, if that DCRA
22 response came in, I -- I don't think -- it's not my
23 anticipation that we're going to revisit, just to say
24 that we'll leave the record open for responses to all
25 the responses. We're done in terms of the

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1 submissions, but the record's still open for DCRA.

2 VICE CHAIRPERSON MILLER: Sure.

3 CHAIRPERSON GRIFFIS: Okay. Good.

4 Anything else? Very well.

5 If there anything else, Mr. Moy, that we
6 need to address in the morning session?

7 SECRETARY MOY: No, sir, that takes care
8 of the morning session.

9 CHAIRPERSON GRIFFIS: Very well. If
10 there's nothing further then, let's adjourn our
11 morning session.

12 As indicated, we're going to just -- we
13 will call the afternoon session for the hearings at
14 3:00. Thank you all.

15 (Whereupon, the hearing was recessed at
16 2:43 p.m. to reconvene at 3:00 p.m. this same day.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

3:30 p.m.

CHAIRPERSON GRIFFIS:

Good afternoon, ladies and gentlemen. Let me call to order the public hearing of the 13th of September 2005. This is, of course, the Board of Zoning Adjustment for the District of Columbia.

I am Geoff Griffis, Chairperson.

Joining me today is the Vice Chair, Ms. Miller and Mr. Etherly. Representing the National Capital Planning Commission with us is Mr. Mann.

And we will not as I am aware of have a Zoning Commission member with us this afternoon.

Copies of today's hearing agenda are available for you. They are located on the table where you entered into the hearing room. You can pick it up and see what we will get to with the rest of the afternoon.

I do apologize for us starting late. We had a very busy schedule in the morning. Sometimes our decision makings pile up and we're not -- can't always anticipate how long it will take for deliberation and as we see, it took quite some time.

There are a couple of very important

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1 elements that I will go through in the opening and I
2 will get right to them.

3 First of all, I'd ask that everyone turn
4 off their cell phones and beepers at this time so we
5 don't have a disruption of the hearings and those
6 people giving testimony.

7 Normally, we would be upstairs. Most of
8 you would be aware of that. Many of you are not. Our
9 Office of Zoning and hearing room is being renovated
10 and will be hopefully ready within the next two weeks.
11 So, if you are to be before us next week, you should
12 check the schedule on where we will exactly be.

13 Once finished, the room will be well
14 accommodated for good public participation in the
15 zoning process.

16 Attendant to where we are today also, I
17 ask that, of course, anything that you've brought in
18 with you that you take out and I say this according to
19 the Board. That means trash.

20 But, other than that, normally we are
21 broadcast live on our website. We are not able to do
22 that in this hearing room.

23 However, we do have the court report who
24 is creating an official transcript and -- and they are
25 sitting to my right on the floor.

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1 Attendant to that, we ask that you fill
2 out two witness cards prior to coming forward to speak
3 to the Board. Those witness cards do go to the
4 recorder. That is obvious so you can be given credit
5 for the important things you will say into the record.

6 The order of procedure for special
7 exceptions and variances as follows, first, we start
8 with the applicant and their case presentation of the
9 case.

10 Second, we will go to any government
11 reports attendant to the application.

12 Third, we'll hear from the Advisory
13 Neighborhood Commission.

14 Fourth, we'll hear from persons or parties
15 in support of an application.

16 And fifth, we'll hear persons or parties
17 in opposition to a application.

18 Sixth, finally, we will return to the
19 applicant for any closing remarks or rebuttal
20 testimony that they may need to provide.

21 Cross examination of witnesses is
22 permitted by parties in a case. It's important to
23 understand that the responsibility of cross
24 examination is for parties as established in the case.
25 The ANC within which the property is located is

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1 automatically a -- a party in the case and will,
2 therefore, obviously then be allowed to cross examine.

3 Nothing precludes this Board from limiting
4 the direction or time of cross examination. I don't
5 often have to intervene in cross examination, but it's
6 important to understand that you want to be direct and
7 definitive in your questions and you will have your
8 opportunity to provide testimony and case presentation
9 and not all that needs to happen during the cross
10 examination.

11 The record will be closed at the
12 conclusion of each hearing on the case. It's also
13 important to understand that this Board will be
14 deliberating on the record that's created before us
15 today. That meaning all the submissions that were put
16 into the record and the testimony and any other
17 additional information that's provided today.

18 At the end of the hearing unless the Board
19 keeps the record open for very specific information,
20 we are very specific on what is to be submitted into
21 the record if it's left open, if we do not specify
22 those, the record would be closed and therefore, no
23 other information is accepted. Meaning no other
24 information would be part of our decision.

25 The Sunshine Act requires that this Board

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1 conduct its hearings in the open and before the
2 public. This Board does enter into executive session.
3 We do that either before or during a hearing on a
4 case. This is for reviewing the record or
5 deliberating on a case and it is in accordance with
6 our rules, regulations, procedures and most
7 importantly is in accordance with the Sunshine Act.

8 We will make every effort to conclude our
9 afternoon session at a reasonable time tonight.
10 Hopefully by 6:00. I'll update obviously people as we
11 get rolling very quickly into the schedule and were we
12 are and how much further we will need to go and, of
13 course, if there are scheduling difficulties, as your
14 case is proceeding, you can bring that to our
15 attention.

16 That being said, let us go to a good very
17 good afternoon to Ms. Bailey on the right representing
18 the Office of Zoning and also the Office of Attorney
19 General , Ms. Glazer is with us.

20 Let us ask, Ms. Bailey, if you are aware
21 of any -- actually, in fact, let me ask if everyone
22 that is prepared to testify or thinking about
23 testifying if you would please stand and give your
24 attention to Ms. Bailey, she's going to swear you in.

25 MS. BAILEY: Please raise your right hand.

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1 Do you solemnly swear or affirm that the testimony you
2 will be giving today will be the truth, the whole
3 truth, and nothing but the truth?

4 CHAIRPERSON GRIFFIS: Excellent. Now, we
5 can appropriately go to whether there are any
6 preliminary matters for the Board's attention in this
7 afternoon's cases.

8 Ms. Bailey, when you're ready. If you are
9 aware of any preliminary matters, Ms. Bailey will
10 indicate those. If you have a preliminary matter --
11 here have a preliminary matter, preliminary matters
12 are those which relate to whether a case will or
13 should be heard today, requests for postponements,
14 continuances, withdrawals, whether proper and adequate
15 notice has been provided of an application. These are
16 elements of preliminary matters that the Board might
17 want to take up prior to calling the case.

18 If you have a preliminary matter or think
19 you do, you can have a seat at the table in front of
20 us as an indication and I will ask, Ms. Bailey, if
21 you're aware of any that the Board should view.

22 MS. BAILEY: Yes, Mr. Chairman, it has to
23 do with application number 1731 -- I thought I had it.
24 Should I say good afternoon as well.

25 17274, Mario Alas and Haydee Varegas,

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1 there is a request for a continuance of the hearing on
2 this case.

3 CHAIRPERSON GRIFFIS: Very well. Is the
4 applicant present? Is anyone involved in this case
5 present?

6 Ms. Bailey, am I correct in my
7 understanding that Exhibit Number 24 is the only
8 submission to date -- for today's hearing?

9 MS. BAILEY: Yes, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Indeed. Board
11 Members, I'll draw your attention to Exhibit Number 24
12 that reads Dear Mr. Jerrily Kress. "I need to
13 postpone the hearing date Tuesday, September 13th,
14 2005. Please reschedule."

15 I only bring this to our attention because
16 there's a basis of which we will entertain preliminary
17 matters for continuances. This is not the first
18 requested by this applicant. I don't see any reason
19 to persuade me to grant a postponement and reschedule
20 this and so, I'm somewhat at a loss of what we might
21 do and with the applicant not even present today to
22 address it, perhaps I'm at even more of a loss, but
23 I'll open it up for others for their comment or
24 understanding.

25 VICE CHAIRPERSON MILLER: My understanding

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1 is that this is the third request for a postponement
2 and given that, I think that it should be supported
3 with good reason. That, you know, by the time we get
4 to the third one, it's less compelling to -- to grant.

5 I don't think -- and I don't think there
6 is a good reason to grant this.

7 I think our history has been, you know,
8 often maybe two postponements and by the third time,
9 it's like three strikes you're out unless you at least
10 give us a good reason and -- and that's not present
11 here.

12 CHAIRPERSON GRIFFIS: Good. Okay. As --
13 and you are correct, we -- we have set this for three
14 hearings, January, March and September.

15 Others. Any other comments?

16 We take this obviously as a motion to
17 postpone or continue before us and without adequate
18 and substantive reasoning why, we would do that, I
19 would have to move denial of the motion to continue
20 and ask for a second.

21 VICE CHAIRPERSON MILLER: Second.

22 CHAIRPERSON GRIFFIS: Thank you. All of
23 you are -- if there are any other further
24 deliberations if there's any requirement for. Not
25 noting any other comments, we do have a motion before

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1 us. It's been seconded. Ask for all those in favor
2 signify by saying aye.

3 (Ayes.)

4 CHAIRPERSON GRIFFIS: And opposed? Why
5 don't we record the vote then?

6 MS. BAILEY: Mr. Chairman, the vote is
7 recorded as 4-0-1 to deny the -- the motion to
8 postpone the hearing. Mr. Griffis made the motion.
9 Ms. Miller second. Mr. Mann and Mr. Etherly are in
10 agreement.

11 CHAIRPERSON GRIFFIS: Excellent. Let's
12 move ahead then.

13 MS. BAILEY: Staff has no other
14 preliminary matters, Mr. Chairman.

15 MEMBER ETHERLY: Pardon the interruption,
16 Mr. Chair. Just inquiring as we just denied the
17 motion for a postponement on the prior case, my -- my
18 question was whether or not that then presages some
19 additional action that we have to take with that case
20 to dispose of it or -- or otherwise hold it in
21 abeyance.

22 CHAIRPERSON GRIFFIS: I think that's very
23 logical. I think we do need a second step on this.
24 I think we'd have to -- I think we have to hear a
25 motion from the Board to dismiss.

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1 MEMBER ETHERLY: And I would --

2 CHAIRPERSON GRIFFIS: Ms. Glazer, do you
3 agree?

4 MS. GLAZER: Yes, Mr. Chair.

5 CHAIRPERSON GRIFFIS: There it is.

6 MEMBER ETHERLY: And I would -- I would be
7 inclined to agree with that direction, Mr. Chair.

8 CHAIRPERSON GRIFFIS: So moved. Seconded?

9 MEMBER ETHERLY: Seconded.

10 CHAIRPERSON GRIFFIS: Thank you. Very
11 well. Any other deliberation, comments on it?

12 We have a motion to dismiss the
13 application. I'll ask for all in favor signify by
14 saying aye.

15 (Ayes.)

16 CHAIRPERSON GRIFFIS: Opposed? Excellent.
17 Let's move on then. Yes.

18 MS. FERSTER: Andrea Ferster.

19 CHAIRPERSON GRIFFIS: Oh, you guys are so
20 far away up here. Needs to be a little closer.

21 MS. FERSTER: Andrea Ferster, Council for
22 Friends and Neighbors of Square 3191, case number
23 17349. We have filed a motion to dismiss that
24 application.

25 CHAIRPERSON GRIFFIS: This was -- okay.

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1 Good. Who else is here?

2 MS. GIORDANO: I'm sorry. Cynthia
3 Giordano and we have a preliminary matter for case
4 17355.

5 CHAIRPERSON GRIFFIS: Okay. What's your
6 preliminary matter?

7 MS. GIORDANO: A motion to dismiss or
8 postpone it was filed with the Commission last -- I
9 mean the Board last Thursday. Maybe you don't have it
10 in front of you.

11 CHAIRPERSON GRIFFIS: This is like
12 motion's practice day. Motions --

13 MS. GIORDANO: I have a copy.

14 CHAIRPERSON GRIFFIS: No, we have it. I
15 -- I don't mean to be --

16 MS. GIORDANO: Oh.

17 CHAIRPERSON GRIFFIS: -- too comical. We
18 -- we've seen them all.

19 Ms. Ferster, it's -- when was yours
20 submitted? The 13th?

21 MS. FERSTER: Our -- our motion was filed
22 on September 13th.

23 CHAIRPERSON GRIFFIS: That would be today.

24 MS. FERSTER: Oh, no, I'm sorry. It was
25 filed on Friday.

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1 CHAIRPERSON GRIFFIS: Okay. Stamped in on
2 the 13th then. It probably didn't make it in the
3 file.

4 MS. FERSTER: Friday at 3:20. I guess it
5 was -- no, I -- I -- I filed it Friday morning. I --
6 and I have a stamp that shows it in the morning. Let
7 me get my stamp.

8 CHAIRPERSON GRIFFIS: Okay. I think it's
9 going to be most expeditious if we -- if we call the
10 cases. We'll take up the preliminary matter. The --
11 the -- 17355 is the first case to go and then we'll
12 take up the second preliminary matter at the calling
13 of the case as they're both motions that are very
14 substantive. It will take some time to get into that.

15 Agreed?

16 MS. GIORDANO: Okay. The only reason I
17 brought it up was because I thought you were moving
18 on.

19 CHAIRPERSON GRIFFIS: Right. No. No.
20 It's absolutely appropriate to do so and sorry if I've
21 befuddled things.

22 So, we'll -- we'll call your case and then
23 we'll take up the motion at that time.

24 In which case, let's move right into
25 calling the -- the second case of the afternoon

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1 session.

2 MS. BAILEY: Are we on the Stettinius'
3 case, Mr. -- okay. Application number 17355 of Joseph
4 Stettinius, excuse the pronunciation, pursuant to 11
5 DCMR 3104.1 for a special exception to allow side
6 additions to an existing single-family dwelling under
7 Section 223 not meeting the side yard requirements.
8 That's Section 405. The property is zoned R-1-B and
9 it's located at 3051 Avon Lane, N.W., Square 1282, Lot
10 258.

11 CHAIRPERSON GRIFFIS: Good. Thank you.
12 Very well. Ms. Giordano, you have a preliminary
13 motion to dismiss and you're representing the
14 applicant. Is that correct?

15 MR. HORSEY: Yes, I do. Outerbridge
16 Horsey, architect representing Regina and Joseph
17 Stettinius.

18 I have a response to that motion, Mr.
19 Chairman.

20 CHAIRPERSON GRIFFIS: Excellent. Let me
21 just clarify first of all the motion so that we're all
22 on the same focus here.

23 The -- the -- the issue is that you want
24 the applicant to come in compliance with the building
25 code requirements prior to coming to the Board for

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1 this application.

2 MS. GIORDANO: Correct. The -- actually,
3 it's a matter of statute as well that a building
4 permit is required before a property owner proceeds to
5 erect certain kinds of structures which these are
6 covered. It's -- it's a matter of statute and
7 building code.

8 And the idea being that, you know, the --
9 these structures aren't even on. They haven't had any
10 zoning review or any zoning computations done and it
11 seems to me out of order to go ahead and consider some
12 additional structures on the property when the Zoning
13 Administrator hasn't even signed off on these
14 structures that were constructed recently without
15 permits and they include a pool house, the -- a roof
16 over a deck making it a porch.

17 CHAIRPERSON GRIFFIS: Indeed.

18 MS. GIORDANO: And a trellis and some gate
19 -- gate structures.

20 CHAIRPERSON GRIFFIS: Indeed.

21 MS. GIORDANO: The pool house obviously
22 being the most substantive.

23 CHAIRPERSON GRIFFIS: Good. Okay. And
24 I've gotten way ahead of myself. Because, Ms.
25 Giordano, we need to take up your request for party

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1 status first and then we'll get into the motion. Of
2 course, we're going to address all of that.

3 Board Members, first of all, do you have
4 preliminary questions on the request for party status
5 of the filing, Exhibit Number 22, that you can re-
6 view for that.

7 Not learning any --

8 MEMBER ETHERLY: No objection.

9 CHAIRPERSON GRIFFIS: Okay.

10 Mr. Horsey, do you have the application
11 for party status? Do you have a copy of it?

12 MR. HORSEY: Yes.

13 CHAIRPERSON GRIFFIS: Do you have any
14 comments of it? Do you have a position?

15 MR. HORSEY: We -- we have no opposition.

16 CHAIRPERSON GRIFFIS: No opposition.

17 MR. HORSEY: Other than I think their
18 claim to party status -- well, we'd like to oppose it,
19 but their claim is pretty clear.

20 CHAIRPERSON GRIFFIS: Okay.

21 MR. HORSEY: I think they have the right
22 to be a party.

23 CHAIRPERSON GRIFFIS: Very well. I don't
24 have any difficulty either. I think that they meet
25 the special test for being granted party status.

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1 Unless there's any objection be taken, it's the
2 consensus of the Board to move ahead into the -- the
3 motion to be taken up.

4 Let me find some clarity, Ms. Giordano.
5 Are you indicating that some of the aspects that have
6 not been reviewed properly or as you're asserting that
7 don't comply with the D.C. building construction laws
8 are not part of this application, but they need to be
9 remedied first before an application comes?

10 MS. GIORDANO: Yes, within the last few
11 years, these structures were built on the subject
12 property without permits and I'm just suggesting that
13 that situation should be corrected. Permits should be
14 obtained for those, proper reviews done before the
15 Board considered an exception to the zoning
16 regulations for that property.

17 CHAIRPERSON GRIFFIS: I see.

18 MS. GIORDANO: And I guess this letter
19 indicates that the Old Georgetown Board has
20 preliminarily approved them, but the Georgetown Board
21 doesn't permit structures in the District of Columbia.
22 They just do a concept review for the design and it's
23 really not relevant and the question is whether a
24 building permit application has been filed and a
25 permit has been issued.

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1 And the Board, you know, I -- I'm sure
2 you're well aware that, you know, the situation with
3 the -- the zoning inspection office at present and I
4 understand from the Fine Arts Commission staff that
5 they -- when they became aware that these structures
6 hadn't been permitted, referred them to the inspection
7 and never got any follow-up, but I'm suggesting that
8 the Board as one part of this process should also see
9 to it that the -- the construction and the D.C. laws
10 are followed and that property owners get permits --

11 CHAIRPERSON GRIFFIS: Absolutely.

12 MS. GIORDANO: -- for structures that
13 require them.

14 CHAIRPERSON GRIFFIS: I don't think we
15 have any disagreement that the law should be followed.

16 However, what I need to get right into
17 then is where we have actually the jurisdiction under
18 our procedure to preclude an applicant from coming
19 forward if there's an allegation of -- of non-
20 permitted construction prior.

21 Because quite frankly, then every -- what
22 I need you to do is point in the regulations of where
23 that requirement is made to grant an application.
24 Because that -- it should be then threshold for
25 everyone that walks in the door to say look, we are in

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1 total compliance with all building codes, regulations.
2 These are our whole history of permits. Our elevators
3 are working. Our windows work. You know, we -- and
4 I'm not aware that we do that.

5 MS. GIORDANO: Right. I -- I don't think
6 you're going to find it in your regulations, but
7 certainly as a matter of case law, unclean hands is a
8 well-established doctrine for seeking discretionary
9 relief before a zoning body.

10 And here, you know, a postponement may be
11 more appropriate. The idea being that, you know,
12 bring the property into zoning compliance first before
13 you consider the exception.

14 CHAIRPERSON GRIFFIS: Okay. Indeed. Any
15 initial questions from the Board?

16 VICE CHAIRPERSON MILLER: Well -- well,
17 two. I mean one is it sounds like you're suggesting
18 as -- as good public policy that we should postpone
19 because these other permits haven't been gotten yet
20 and then you mentioned case law regarding unclean
21 hands. Are you referring to just case law in general
22 about unclean hands or is there some specific --

23 MS. GIORDANO: In the zoning context. I
24 can certainly provide something and I didn't bring it
25 with me, but probably the Office of Attorney General

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1 could comment on the fact that unclean hands is -- can
2 be a factor in zoning cases. The courts have
3 acknowledged that.

4 And as a matter of the specific interests
5 of this adjacent property owner, many times the Board
6 has postponed hearings on the request of an adjacent
7 property owner in order to clarify a record that's
8 what we're interested in here, as well that the
9 property is in compliance with zoning now and the
10 zoning computations are based upon computations that
11 can be discernible in the public record.

12 VICE CHAIRPERSON MILLER: That was my
13 second question. Is your request for postponement
14 based on not having computations that are necessary to
15 evaluate this case?

16 MS. GIORDANO: It's both and in this case,
17 we can't go to the Zoning Office to look up the zoning
18 computations for the property and find out, you know,
19 whether these additional structures are going to tip
20 the balance or not in terms of the lot occupancy or
21 other zoning computations and pool houses in
22 particular have been structures in this -- in the city
23 where there have been issues about whether they exceed
24 the requirements for accessory structures.

25 CHAIRPERSON GRIFFIS: Any other questions?

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1 MR. HORSEY: Mr. Chairman, may I comment
2 at some point?

3 CHAIRPERSON GRIFFIS: Yes. Absolutely,
4 you will, but let me just finish questioning Ms.
5 Giordano. Any -- any further? Okay.

6 And -- and one important one that was just
7 brought up was the -- the computations and Mr. Horsey
8 is now going to address that as he's done in the
9 written submission that's just been handed to the
10 Board and I hope Ms. Giordano has a copy of it.

11 It states that he's certifying, in fact,
12 that the full house, rear porch and trellis have been
13 included in the zoning computations submitted 26
14 April.

15 I'll let you follow up, Mr. Horsey, you
16 have additional address to that notion.

17 MR. HORSEY: Right. I just wanted to make
18 sure that point was clear. That they are included in
19 the 36 percent lot occupancy calculation that we
20 performed and -- and in terms of the -- in terms of
21 the approval, this issue has been matter of public
22 record for over -- over two months.

23 Had we been -- you know, had -- had there
24 been a clear-cut policy that we should have proceeded
25 to get these permits before, we certainly could have.

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1 They're -- they're minor structures. The Office of
2 Planning in their report on page -- has a picture of
3 two of the -- of the -- page three has a picture of
4 the pool house and the trellis and you can see that
5 they're very minor structures.

6 What we discussed with the Old Georgetown
7 Board and the D.C. Historic Preservation Board and --
8 and I would take issue with Ms. Giordano's comment
9 about the Old Georgetown Board not being, and I think
10 they would too, part of the regulatory process and
11 certainly, the Historic Preservation Division who
12 participates in their meetings has -- that we agreed
13 that we would submit the final drawings for a permit
14 with the drawings for whatever addition project either
15 comes out of this meeting or as a result of this
16 meeting, one way or the other.

17 So, that's what we agreed. I mean we can
18 -- the permit drawings are easy to do. They're --
19 they're -- so, I see no reason why -- we're all here
20 now. Everybody's down here ready to -- ready to
21 testify as to the merits of our specific case.
22 There's nothing in these accessory structures that has
23 anything to do with our special application -- special
24 exception application. I don't think we should be
25 penalized.

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1 When I found out about it, when the
2 Stettinius were -- were fully aware of what -- what
3 was -- what the situation was, we took measures to
4 address and I don't think we should be penalized for
5 that. I think --

6 CHAIRPERSON GRIFFIS: Follow-up questions.
7 Mr. Mann.

8 MEMBER MANN: Which of the structures had
9 to be included in the computation of the lot
10 occupancy?

11 MR. HORSEY: The -- the pool house, the
12 trellis and the -- the rear porch. Which,
13 incidentally, contrary to Ms. Giordano's statement,
14 did not replace a deck. It replaced a fixed awning
15 not a retractable awning that I have a photograph of.

16 The gate does not exceed the four-foot
17 high height limit. So, it's not included in lot
18 coverage.

19 CHAIRPERSON GRIFFIS: Any other questions,
20 clarifications? Anything else? There it is.
21 Deliberation. Comments.

22 MEMBER ETHERLY: Mr. Chair, I -- I --

23 CHAIRPERSON GRIFFIS: Yes.

24 MEMBER ETHERLY: -- I'm -- I'm just not
25 convinced. The initial reaction is that I would have

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1 to guess, perhaps an educated one, that -- that there
2 are other channels through which these concerns can be
3 addressed whether it's enforcement through DCRA.
4 Would be kind of the first -- the first thought that
5 would come to mind rather than this being the
6 appropriate venue for -- for -- for prosecuting
7 concerns as relates to -- to those permitting issues.

8 So, it would be my inclination based on
9 that ground alone, Mr. Chair, to -- to deny the
10 motion. That's -- that's kind of my initial reaction.

11 CHAIRPERSON GRIFFIS: Very well. Yes, I
12 don't see -- I don't see this issue rises to the level
13 of just missing the application. So, I would concur
14 with your thoughts in that.

15 MEMBER ETHERLY: And -- I'm sorry, Mr.
16 Chair. Just because you did -- you did reference and
17 reminded me that the -- the motion did, of course,
18 note either an outright dismissal or postponement and
19 I would agree with you that -- that -- that ground as
20 it's been argued to this point would not satisfy --
21 would not constitute grounds for dismissal or
22 postponement in my opinion.

23 Thank you.

24 CHAIRPERSON GRIFFIS: Good. And -- and I
25 would go further -- well, I would agree with that and

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1 would add that the -- also just postponing the
2 hearing, it seems to me that we're here for a special
3 exception. I would look at the impacts under 223 of
4 what is being proposed. Of course, it's what's being
5 proposed under the existing condition.

6 Where we would factor in whether it was
7 permitted correctly, built correctly, constructibility
8 and such, I think goes beyond our -- our jurisdiction.
9 I think that we would not say that we -- we wouldn't
10 want proper permitting and documentation to have
11 happened, but I'm not sure how we step back and
12 preclude an application from going forward in order to
13 remedy that situation and I have more assurance of the
14 fact that this has been brought to light and public
15 light at this point, now, it's on the record, that it
16 will be, in fact, remedied.

17 Now, the -- the -- the reality of the
18 remedy may well be it has to be removed. It's just
19 not so certain that perhaps it may not get permitted.
20 I'm not projecting or forecasting anything.

21 But, what we have before us right now I
22 think is a -- is a -- a straightforward enough
23 application that we should proceed with and,
24 therefore, I would move that we deny the motion to
25 dismiss and postpone at this time and ask for second.

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1 MEMBER ETHERLY: Seconded, Mr. Chair.

2 CHAIRPERSON GRIFFIS: Thank you, Mr.
3 Etherly. Comments.

4 VICE CHAIRPERSON MILLER: I -- I just
5 would like to further address the question of the
6 computations which I think is a second issue.

7 I -- I am not convinced by what I heard
8 that there are computations outstanding that would
9 necessitate postponing this case. We have in the
10 opposition that was filed the architect certifying the
11 computations that are relevant to this case.

12 So, it seems like the information is here
13 and that there's no reason to postpone.

14 CHAIRPERSON GRIFFIS: Well, and
15 importantly, the representative of the applicant is
16 here to be cross examined or questioned in the case.
17 We have established the party in this case and that's
18 then -- others, comments?

19 I think it's appropriate to move quickly
20 ahead then to get into the substance of this case.

21 We do have a motion before us. It has
22 been seconded. Let me ask for all those in favor
23 signify by saying aye.

24 (Ayes.)

25 CHAIRPERSON GRIFFIS: Opposed? Excellent.

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1 Ms. Giordano, we'll look forward to
2 hearing your case.

3 Let's move ahead.

4 MS. GIORDANO: All right. I'd like to
5 call our witnesses to the table please.

6 CHAIRPERSON GRIFFIS: Why don't we hear
7 the applicant's first.

8 MS. GIORDANO: Oh, I'm sorry.

9 CHAIRPERSON GRIFFIS: Then we'll -- yes,
10 that's okay. I know we're trying to move things along
11 here.

12 MS. GIORDANO: I'm use --

13 CHAIRPERSON GRIFFIS: Unless we want to do
14 it all at the same time. Then -- when you're ready,
15 Mr. Horsey.

16 MR. HORSEY: Thank you, Mr. Chairman. I
17 want to do this as quickly as I can without -- first
18 of all, this is the site plan.

19 CHAIRPERSON GRIFFIS: I'm sorry.

20 MR. HORSEY: I'm sorry.

21 CHAIRPERSON GRIFFIS: Why don't you move
22 one of the -- just one mike closer to the --

23 MR. HORSEY: Okay.

24 CHAIRPERSON GRIFFIS: Oh, and I'm sorry.
25 But, we do have a party here that is going to present

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1 their case. I'm going to ask you to move over on this
2 side so that you can see this. We can pull those
3 boards out just a little bit and please feel free to
4 move around to make sure that you're seeing everything
5 that -- that -- that we are.

6 And is this -- these photographs that
7 you're showing now have been submitted into the record
8 or no?

9 MR. HORSEY: Yes.

10 CHAIRPERSON GRIFFIS: Good.

11 MR. HORSEY: The -- the drawings I'm
12 showing you deviate from what we originally submitted
13 in a very minor way and I'll -- I'll point out those
14 changes that were done at the request of the Old
15 Georgetown Board.

16 These site is located at 3051 Avon Lane.
17 Avon Lane goes from Avon Place south of R Street to
18 31st Street. It was originally built off of Avon
19 Place and the structures -- these two structures were
20 built at the same time in 1948. Adjacent is a large
21 tennis court and three accessory buildings.

22 Our project includes a -- an attached
23 existing one-story garage and a three-story dwelling.
24 You can see them here. Here's the -- the dwelling
25 here and the garage on Avon Place. This garage and

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1 then over here, you see the space between the back of
2 the garage and the house. Here's the rear of the
3 house with the porch structure. Another view is the
4 view of the garage and the gate. Here's a view of the
5 garage and the second story or the attic story on the
6 house behind and here is a view of the house from the
7 tennis court of the adjoining property

8 Our project proposes three additions. A
9 one-story addition here. Right in here replacing this
10 bay window. A two-story addition wrapping around the
11 main house, abutting up against the tennis court and
12 the second one-story addition at the rear of the
13 structure.

14 These isometric drawings probably
15 illustrate it most clearly.

16 This is the view from the southeast
17 showing the existing house, the garage, the three
18 accessory structures, the tennis court and here are
19 additions here. The one-story addition in the garden.
20 The two-story addition wrapping around and the one-
21 story addition in the back. It's behind there.

22 Here you see the existing house with the
23 side yard, the attached garage in the front.

24 Here's our one-story addition in the rear.
25 Two-story addition wrapping around. You can just see

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1 the top of the one-story addition in the southeast
2 corner. Here is the tennis court next door along with
3 the three accessory buildings.

4 Existing first-floor plan. Proposed
5 first-floor plan. We propose to enclose this one-
6 story addition here along the property line as a
7 library and enclosing the rest of the side yard to
8 enlarge a very small kitchen here and connect it
9 directly to the -- to the garage and then the third
10 addition here is this garden room in the southeast
11 corner replacing the bay window.

12 The second floor, the only addition here
13 is the master bedroom which again connects to the
14 garage and goes to the side lot line.

15 This is the elevation from Avon Lane
16 existing here. Proposed here is our one-story garden
17 room structure in the corner and two-story master
18 bedroom behind the garage.

19 This is the rear. We're also proposing a
20 small chimney and fireplace and here's the one-story
21 addition at the rear and the side yard here and the
22 two-story addition beyond.

23 Finally, the front, this is actually the
24 front of the house which you access off of Avon Lane.
25 Come down past our one-story addition. You go in the

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1 front door of that one-story addition with a two-story
2 addition behind. Here's the existing porch and new
3 chimney in the back and this is the view from the
4 neighbor's tennis courts. This is the existing
5 structure and proposed.

6 One of the issues that -- that will be up
7 for discussion amongst others is the amount of windows
8 in this and you'll note that the actual amount as they
9 affect the privacy of the tennis court and you'll note
10 that -- that the actual window -- number of windows
11 that face the property -- the neighboring property now
12 gets reduced by about a third.

13 Finally, I'd like to talk about the -- I'd
14 like to go a little bit through the criteria, let me
15 put these back up here, for the special exception.

16 The criteria are very specific with regard
17 to our application and as -- as the Office of Planning
18 calls out in their very thorough report, it really
19 affects substantial impact on the neighboring
20 property.

21 The adjacent house -- this shows the
22 neighboring tennis court with the three accessory
23 structures, one story, one and a half story and two
24 story structure. This is our property here. You
25 notice about the same -- a good deal of our property

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1 doglegs down to Avon Place, about 23 percent of the
2 property which provides a fair amount of open space and
3 basically un-buildable by -- by my clients, but
4 certainly is open space for the neighborhood.

5 The -- the criteria is that an addition
6 shall not have a substantial adverse impact on the use
7 or enjoyment of abutting dwelling or property. In
8 particular, the light and air available to neighboring
9 properties shall not be unduly affected.

10 The -- the house, the actual single-family
11 house on this property is about 110 feet away. Across
12 the tennis court, you see the very end of it.

13 These two illustrations are taken from the Office of
14 Planning report and enlarged. You can also see the
15 structure, the single-family house, here and here's
16 our site there. So, it's about 120 feet away.

17 So, the impact on that house itself is --
18 is negligible if -- if -- if existent and it's hard to
19 construe that the impact on a -- on a -- on a 7200
20 square foot tennis court where four people play by a
21 one-story addition 20 feet long and a two-story
22 addition 27 feet long really qualifies as -- as
23 substantial impact.

24 Another criteria is the privacy, use and
25 enjoyment of neighboring properties cannot be unduly

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1 compromise and again, I think the same argument can be
2 made. This is a very large property. We have a
3 tennis court nearby and the additions that we're
4 making are more or less the size of the additions --
5 of the -- already on that property on the south side
6 of the tennis court.

7 The third criteria is the addition
8 together with the original building as viewed from the
9 street, alley and other public way shall not
10 substantially protrude upon the character, scale and
11 pattern of houses along the subject street frontage.
12 I think we comply with that and satisfy that
13 requirement as well. We've been before the Old
14 Georgetown Board twice and gotten approval both times.

15 Oh, I should go back and tell you what's
16 changed. In the drawings, the Old Georgetown Board
17 asked us to refine this structure. Basically is the
18 only change to this from the drawings that you have.
19 This has gotten a little bit more developed. Added
20 the cupolas. We got cupolas as well.

21 Finally, I'd like to just go through the
22 process a little bit. The -- we started this process
23 in mid-April. Went to the ANC.

24 CHAIRPERSON GRIFFIS: Just turn the mike.

25 MR. HORSEY: Oh, I'm sorry. We submitted

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1 to the ANC and to the Old Georgetown Board. The
2 Stettinius contacted their neighbor and solicited
3 their opinions and eventually won the support of all
4 the abutting neighbors including the neighbors that
5 are here today in opposition.

6 And, in fact, at the request -- specific
7 request of the neighbors, the Friendlys who are here
8 today in opposition, my clients postponed our initial
9 ANC meeting to give them more time and which is
10 worthwhile eventually because they came to agreement
11 and said that they would support the project and even
12 encouraged us to put more windows on the tennis court
13 to relieve the unbroken brickwork.

14 We've been to the ANC twice. Three times,
15 in fact and gotten their approval all three times.

16 So, finally, that -- that concludes my
17 opening remarks. I'd like the opportunity to come
18 back and address any comments that they have
19 afterwards.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you very much. Questions from the Board?
22 Clarifications? Ms. Miller.

23 VICE CHAIRPERSON MILLER: Could you just
24 clarify how many windows are going to be on the side
25 abutting the tennis court?

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1 MR. HORSEY: Right now, the ANC and their
2 motion on the -- on the special exception gave us
3 unanimous approval contingent upon the rule on these
4 windows. We would like to keep this window here in
5 the kitchen. Even if the wall ends up being covered
6 by ivy as we expect it will, just to get some sense of
7 daylight. This is the property line window.

8 This window here which is in the staircase
9 and again doesn't really admit much view, we're
10 willing to give up if the Board deems that necessary.

11 And what was here before, you can see the
12 window of the existing kitchen, two windows from the
13 bedroom upstairs and a window from the interior of the
14 house. This window --

15 VICE CHAIRPERSON MILLER: -- where the
16 kitchen is?

17 MR. HORSEY: There would be one window now
18 like this.

19 VICE CHAIRPERSON MILLER: Okay. Thank
20 you.

21 CHAIRPERSON GRIFFIS: I'm trying to
22 reconcile the comment you made and I think it's also
23 in your written submission about the addition reduces
24 a third the number of windows. Is that what you said?

25 MR. HORSEY: Yes. Well --

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1 CHAIRPERSON GRIFFIS: I count 11.

2 MR. HORSEY: This is about 60 square feet
3 of windows here. So, we're about 40 foot here.

4 CHAIRPERSON GRIFFIS: So, I see. So, it's
5 not the number, but rather the square footage.

6 MR. HORSEY: Right. Right. Square
7 footage. Right.

8 CHAIRPERSON GRIFFIS: Okay. Yes.

9 MEMBER MANN: Explain to me if you can the
10 relationship of the neighboring property. Is the
11 tennis court and those four accessory structures along
12 with a home all on one piece of property that's next
13 door?

14 MR. HORSEY: Yes. Correct.

15 CHAIRPERSON GRIFFIS: Oh, you're not --
16 you're not getting picked up. You can actually take
17 that out of the -- that monstrous thing.

18 MR. HORSEY: Yes, this property next door
19 has these three accessory structures and I guess
20 there's a fourth one there, a small one. These are
21 attached. The third one's attached to our garage and
22 then the main house is here. Single-family house.

23 The -- there's an apartment building to
24 the north side.

25 The neighborhood's a mixed neighborhood

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1 with -- with row houses here. In fact, we have a --
2 the zoning district boundary line actually cuts right
3 through our property with R-3 on one side and R-1-B on
4 the other.

5 MEMBER MANN: So, there's an accessory
6 structure right now that's connected to the garage on
7 your property.

8 MR. HORSEY: Correct. Correct. They're
9 all -- they're all three -- these are the three
10 neighboring accessory structures all connected and
11 they share a -- a -- a common wall with our garage
12 which is also on the line. In fact, where that garage
13 -- when it was -- when it was created as a lot that
14 fronted on Avon Place, it was in the rear yard in
15 theory before the zoning regulations were created.

16 Now, it's in the front yard which is a
17 non-conforming condition which we are removing by our
18 project by attaching to it.

19 MEMBER MANN: And does the addition -- if
20 the addition were built, does that abut the property
21 line next to the tennis court?

22 MR. HORSEY: Yes, it would go right up to
23 it. It would eliminate -- we're -- we're requesting
24 a 100 percent side yard relief which would be
25 necessary in any case were we just simply to attach to

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1 the garage here. It would eliminate the side yard and
2 create a court, but we're seeking also permission to
3 in-fill the side yard.

4 MEMBER MANN: Thank you.

5 MEMBER ETHERLY: If I could, Mr. Chair,
6 while we're -- while we're looking at the -- the
7 isometric that's -- that's presently up, Mr. Horsey,
8 could you -- could you speak a bit to -- I understand
9 the respond and I think it's an acceptable one
10 regarding the -- the -- the reduction essentially of
11 windows on the side that abuts the tennis court.

12 MR. HORSEY: Um-hum.

13 MEMBER ETHERLY: Could you speak to
14 whether or not there is any change with regard to the
15 massing of the -- of the existing property versus the
16 proposed condition? Is there -- is there a change in
17 terms of the massing or does the massing stay the same
18 relative to the tennis court?

19 MR. HORSEY: No, we're -- we're adding
20 more mass right up against the tennis court. There's
21 a two-story element here. Right now, there's a fence
22 which I can show you here. Where is it? And, in
23 fact, it might be -- sorry. Somewhere here. Here it
24 is.

25 We're adding the one-story structure here

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1 and a two-story structure right up against the tennis
2 court.

3 This is how it looks now. These two
4 photographs were submitted to the public record at the
5 ANC meeting by Mr. Friendly in statement of opposition
6 at that time trying to show the difference between the
7 ivy-covered fence that's there now and our proposed
8 addition which would come right up to the property
9 line.

10 I have two comments about that. One, that
11 when Mr. and Mrs. Stettinius moved in, this is what
12 the ivy-covered fence looked like. They planted the
13 ivy to give themselves some more privacy and this
14 other picture down here shows what the fence could
15 look like if -- if the Friendlys planted ivy on their
16 side after our addition was built. Basically the
17 same.

18 So, the windows here are the existing
19 windows. This is the only window that you would see
20 in the stairwell. The other one we'd like to keep
21 would be behind the ivy there.

22 MEMBER ETHERLY: So -- so, with respect to
23 the question of -- and I'm kind of pursuing the issue
24 of air and light here. There is a -- if you're
25 looking at the -- the existing condition now, you are

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1 essentially losing some edging at the higher -- at the
2 higher portions of the proposed addition. Correct?

3 MR. HORSEY: Correct.

4 MEMBER ETHERLY: Okay. Has there either
5 -- and feel free, of course, if the answer is no, has
6 there been any assessment of what the light and air
7 impact is by virtue of losing this opening here and by
8 here for -- for purposes of the record, I'm indicating
9 the top most picture in the applicant's presentation.
10 These pictures haven't been submitted into the record.
11 So, they won't have to be, but just for purposes of
12 the record, I'm --

13 MR. HORSEY: Right.

14 MEMBER ETHERLY: -- okay. Have you taken
15 a look at that or --

16 MR. HORSEY: Sure.

17 MEMBER ETHERLY: -- can you offer an
18 opinion on the impact based on -- on your
19 understanding of -- of the proposal?

20 MR. HORSEY: I think it goes back to the
21 criteria and I can offer you my opinion which is that
22 it doesn't come close to qualifying as undue affect.
23 You know, to -- to say that the -- and remember, we're
24 taking this from halfway across the tennis court. The
25 actual house from which these zoning regulations are

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1 designed to protect primarily is 110 feet away.

2 So, the impact of -- of this area in here
3 that we are in-filling here on the house itself 110
4 feet away is -- is negligible. The impact here I
5 think it's really a matter of weighing the criteria
6 and you have four people playing tennis on a tennis
7 court. Sure they need light and they need the air.
8 I -- I -- I -- I submit that there's plenty of light
9 and air even with our addition for those four people.

10 MEMBER ETHERLY: Let me ask -- ask you a
11 question. I'll -- I'll disclose for the benefit of
12 the record as I always that being an avid tennis
13 player myself sometimes get curious about these
14 things.

15 MR. HORSEY: Right.

16 MEMBER ETHERLY: But, of course, that --
17 that has no import here and I will feel very able to
18 sit on this case impartially and not allow my tennis
19 love to come into play here. No pun intended.

20 But, seriously, with respect to the
21 statement that you just made, is it -- is it your
22 sense that as we talk about undue impact to light and
23 air that that language specifically references light
24 and air that would -- relative to another property as
25 opposed to in this instance I think we will probably

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1 here some testimony from the party in opposition
2 regarding impact on the tennis court in particular?
3 Is it -- are -- are you contending that there is some
4 -- some slightly different standard if you will for a
5 tennis court as opposed to a structure?

6 MR. HORSEY: My -- my -- my conceptual
7 understanding of the zoning regulations is that
8 they're there to promote the health, safety and
9 welfare of people living in Washington, D.C. and using
10 their property for their own enjoyment and so, the
11 primary -- the primary purpose of the protection to --
12 to -- is -- is basically to the dwelling. If there's
13 an open field there, if there's a swimming pool, the
14 tennis court and I think it's also in consideration of
15 the entire boundary of this property.

16 You know, we are -- we had a -- a row
17 house here ten feet away and we're doing this, it
18 would be very different from the situation that we
19 have which is -- I don't know how big the property is,
20 a quarter of an acre or something, three-quarters of
21 an acre I guess. How big is the property? Anyway,
22 the -- I just go back to the undue impact. That's --
23 that's all. That's all I compare.

24 MEMBER ETHERLY: Thank you.

25 MR. HORSEY: Yes.

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1 MEMBER ETHERLY: Thank you, Mr. Chair.

2 VICE CHAIRPERSON MILLER: Well, when I
3 look at the regulations, it -- it says dwelling or
4 property and without having heard the other side yet,
5 it appears that this case would be about interfering
6 with the privacy or enjoyment of the tennis court and
7 I think that is something that we can consider under
8 the regulations.

9 And I guess when I look at your pictures,
10 I mean it looks to me like well, all that's necessary
11 to protect that is to, you know, put up another fence
12 with ivy. I guess my question is given that the
13 tennis court's already built, could they put that
14 fence up with ivy without interfering with the space
15 that's necessary for the tennis court?

16 MR. HORSEY: Well, actually, our intention
17 is to maintain the fence that's there. To remove the
18 ivy that grows from our property which I think we
19 would all agree is our right and to maintain the fence
20 that we agree or we -- we are pretty sure is on their
21 property and another -- and to maintain that fence and
22 to allow them the possibility of growing ivy on their
23 fence.

24 VICE CHAIRPERSON MILLER: Oh, are you
25 saying that the same fence is going to remain?

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1 MR. HORSEY: Yes, that's our intention.

2 VICE CHAIRPERSON MILLER: Oh, okay.

3 MR. HORSEY: Yes.

4 VICE CHAIRPERSON MILLER: I thought that
5 it -- that --

6 MR. HORSEY: Right.

7 VICE CHAIRPERSON MILLER: -- you were
8 building to the property line and -- and that was
9 going to come down.

10 MR. HORSEY: That -- that was the
11 original. When -- when we were all in -- in agreement
12 about this, that was the original discussion and
13 that's why it's not shown on these drawings, but now,
14 we have -- we -- it is our intention to maintain the
15 fence.

16 VICE CHAIRPERSON MILLER: You're going to
17 maintain the fence, but it's on their property?

18 MR. HORSEY: On their property. I mean to
19 make sure it stays there.

20 VICE CHAIRPERSON MILLER: Okay. Thank
21 you.

22 MEMBER MANN: Did you say that the number
23 and placement of the windows was dictated by guidance
24 from HPRB?

25 MR. HORSEY: The Old Georgetown Board

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1 asked us to design some relief into this wall. We
2 wanted some light in the kitchen especially in the
3 stairwell and -- and the neighbors, the Friendlys, in
4 their original letter of -- of support encouraged us
5 to put windows in. So, that -- that's what the
6 windows were about.

7 As I said, we're willing to -- we'd like
8 to keep the one in the kitchen if possible. We're
9 certainly willing to give this one up in the
10 staircase. We can put a skylight in or a window
11 around the corner.

12 MEMBER MANN: So, the guidance that you --
13 the --

14 MR. HORSEY: And we'd have to go back to
15 the Old Georgetown Board.

16 MEMBER MANN: The -- the guidance that
17 you've received so far from the Old Georgetown Board
18 did or did not dictate that a particular maximum or
19 minimum number of windows would be on --

20 MR. HORSEY: It did not. It did not. We
21 -- we have shown here recesses in the window in the
22 wall to -- to sort of break up the wall and if we
23 eliminated this, we would replace it with a similar
24 recess just to give the wall some detail and
25 character.

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1 MEMBER MANN: So, the number of windows is
2 actually being accomplished through some negotiation
3 process outside of the purview of an official --

4 MR. HORSEY: I think -- I think they would
5 accept that. Yes and we'd have to go back to them
6 with whatever -- you know, whatever we negotiate and
7 see how they feel about it.

8 MEMBER MANN: Thank you.

9 CHAIRPERSON GRIFFIS: Any other questions
10 from the Board?

11 You indicated the -- the existing
12 conditions and structures have been characterized to
13 the lot occupancy and the lot occupancy has been
14 indicated as being proposed to increase to 36 percent.
15 Is that correct?

16 MR. HORSEY: yes.

17 CHAIRPERSON GRIFFIS: And did you submit
18 the calculations?

19 MR. HORSEY: I submitted in the -- in the
20 typical form. Yes.

21 CHAIRPERSON GRIFFIS: Just -- but, you
22 didn't have a site plan where they're shown to be
23 calculated?

24 MR. HORSEY: No, I'd be happy to submit
25 that.

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1 CHAIRPERSON GRIFFIS: I see. Okay. So,
2 they're -- they're stated though. Okay.

3 MR. HORSEY: They're stated in the -- in
4 the spreadsheet that is part of the application.

5 CHAIRPERSON GRIFFIS: Very well and the
6 existing condition at this point is 24 percent lot
7 occupancy. It's moved to increase to 36 percent which
8 is well under the actual allowable of 40 percent. Not
9 invoking any of the aspects of the 223.

10 Okay. If there's no other questions --

11 MR. HORSEY: When I -- when I said that,
12 did I -- I did take the opportunity to -- to go down
13 and before we even submitted to the Old Georgetown
14 Board to review this with the Zoning Administrator and
15 to -- to clarify some issues and -- and he said that
16 -- that -- that you had a -- you know, because it's --
17 it's theoretically a corner lot and I wanted to
18 confirm that the rear yard is not where it was
19 originally. It was now the side yard and he confirmed
20 that and -- and it was his opinion that -- that
21 removing the non-conforming addition was a positive
22 aspect of this and it was also -- I'm sorry. It was
23 -- it was his opinion that the attachment -- the
24 removing of the -- the attachment to the garage and
25 the removing of -- of the non-conforming condition was

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1 a good thing.

2 I asked him about the impact of light and
3 air on the tennis court and the three accessory
4 structures and actually pointed out that one of them
5 was being used as a dwelling and he said well, it
6 can't really be considered a dwelling because it's not
7 allowed by the zoning regulations even if it's there.
8 So, the light and air impact on that can't really be
9 evaluated. Those were his comments.

10 CHAIRPERSON GRIFFIS: Any other questions?
11 Very well. Cross? No cross. Indeed. Very well. We
12 can move on then.

13 Let's go to the government reports. We do
14 have as already been cited and pointed to, graphics
15 already used.

16 MR. MOORE: Good afternoon, Mr. Chair and
17 Members of the Board in your new digs.

18 The Office of Planning will stand on the
19 record in support of this application and will
20 entertain any questions.

21 CHAIRPERSON GRIFFIS: We've got things to
22 do this afternoon. We're moving along right away.
23 Good. Any follow-up questions from the Board on the
24 Office of Planning's report?

25 MEMBER ETHERLY: Very -- very briefly, Mr.

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1 Chair, I think the report was -- was detailed as
2 always.

3 Mr. Moore, I'll just ask you the same
4 question that I engaged the applicant's representative
5 in with regard to the tennis court. I think I
6 understand where your report falls on this particular
7 question, but could you speak a little bit to any
8 impact on air and light with regard to the
9 introduction of the increased massing on the side near
10 the tennis court?

11 MR. MOORE: First, as you mentioned,
12 you're an avid tennis player. I would think that a
13 tennis court that was open on three sides and closed
14 on one side once you figure out the air flow, it would
15 give you some sort of an advantage in terms of
16 serving.

17 But -- and also I think that you tennis
18 players also use where there is a wall. I think you
19 all call them hitting walls. But, as it relate to
20 light and air, when you look at the direction of the
21 flow for light and air which is east/west, it's not
22 going to be anymore restriction to light and air than
23 is in the existing condition right now.

24 The two-story portion may have some affect
25 on limiting, but I don't think it would be to the

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1 extent that it would be very harmful to four people
2 playing on a tennis court.

3 MEMBER ETHERLY: Um-hum.

4 MR. MOORE: They'll still be able to
5 breathe and I think there's more than adequate light
6 that would shine on that court.

7 MEMBER ETHERLY: Okay.

8 MR. MOORE: The impact would probably be
9 in reverse of the applicant and to put up with the
10 pounding of tennis balls as opposed to the -- anyway.
11 My opinion.

12 MEMBER ETHERLY: Okay. And -- and I
13 appreciate that and -- and part of the thrust of my
14 questions are one, anticipating some of the testimony
15 that we -- that we may hear from the party in
16 opposition and -- and -- and once again, in all -- in
17 all seriousness, there is the practical aspect of
18 additional shadows that may conceivably fall on the
19 court.

20 Did the Office of Planning or did you in
21 -- in the context of your site visit have an
22 opportunity to give some -- some thought to whether or
23 not there would be the introduction of increased
24 shadows on the tennis court by virtue of the -- of the
25 proposed structure?

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1 MR. MOORE: If tennis is played on the
2 court during the morning hours, there could be some
3 shadows that because of light coming from the east, of
4 course and across the structure may -- portions of the
5 court could be a little dark. Again, if you are very
6 good at tennis, you can forget it and make that an
7 advantage.

8 MEMBER ETHERLY: Okay.

9 MR. MOORE: Of course, in the afternoon,
10 that maximizes it. You actually would have -- you'd
11 be able to play later in the afternoon because the sun
12 would be coming in from the west.

13 So, in terms of balance, I think again,
14 there is a minimum effect if any -- if any.

15 MEMBER ETHERLY: Okay. Thank you. Thank
16 you, Mr. Chair.

17 CHAIRPERSON GRIFFIS: Ms. Miller.

18 VICE CHAIRPERSON MILLER: Good afternoon,
19 Mr. Moore. With respect to 223.2(b), the privacy of
20 use and enjoyment of neighboring properties shall not
21 be unduly compromised, it -- it seems like if the
22 building is coming closer to the property line that
23 privacy would be decreased at least with respect to
24 the people who are using the tennis court.

25 MR. MOORE: I would totally agree with

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1 you, Vice Chair, if it were the house on the east
2 side. Because the house on the east side of the --
3 the structure is actually within maybe 25 or 30 feet
4 of the structure, but I'm hard pressed to make that
5 same statement for a structure that's more than 100
6 feet away. If there were a house even on the other
7 side of the tennis court.

8 VICE CHAIRPERSON MILLER: Well, I'm just
9 talking about enjoyment and use of the tennis court of
10 that part of the property and -- and I'm not even --
11 I would suspect that you would say at least that it --
12 it -- unduly compromised is -- is a bit further than
13 impacted or decreased, but isn't it impacted somewhat
14 if -- if -- if the building is closer to the tennis
15 court?

16 MR. MOORE: Yes, but again, I think much
17 of the impact would be on the applicant's house not
18 the tennis player.

19 VICE CHAIRPERSON MILLER: From the noise
20 of the tennis playing?

21 MR. MOORE: Maybe that's why it's set
22 apart -- that -- in that location on the lot. I don't
23 know.

24 VICE CHAIRPERSON MILLER: Thank you.

25 CHAIRPERSON GRIFFIS: Good. Last thing,

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1 do you want to just talk a little bit -- your report
2 indicates that this is not going to visually intrude
3 on the character, scale or pattern. It's been
4 testified to the fact that this is a kind of eclectic
5 neighborhood. Of course, it is an R-1-B zone. You
6 don't find that moving this structure to the property
7 line is out of character with the pattern and the
8 scale of the houses and the street frontage?

9 MR. MOORE: No, I don't, Mr. Chair. As a
10 matter of fact, if you look at the OP photograph that
11 the applicant offered, I guess it would be to the
12 south right across the block. There's a large
13 structure there. I think you can almost see that
14 there's been the same kind of additions to the top of
15 the building, of the house recently.

16 I couldn't exactly get up in there, but if
17 you look directly across from the subject property on
18 the south side of the block.

19 CHAIRPERSON GRIFFIS: Um-hum.

20 MR. MOORE: The structure here. You can
21 almost see that there's been this similar kind of
22 addition put on that house. So, when I said that it's
23 basically match the character of the neighborhood,
24 it's looking at the same kind thing that's happened
25 already in the community.

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1 CHAIRPERSON GRIFFIS: Okay. Anything
2 else? Any other questions?

3 Does the applicant have any cross of the
4 Office of Planning?

5 MR. HORSEY: I do -- do want to just cite
6 this. Took the opportunity to review the original
7 commission order that instituted these regulations and
8 the Office of Planning --

9 CHAIRPERSON GRIFFIS: Do you have any
10 questions or cross of Mr. Moore?

11 MR. HORSEY: Oh, no, but I wanted to cite
12 something they had said.

13 CHAIRPERSON GRIFFIS: Okay. And I'll give
14 you follow up for --

15 MR. HORSEY: Okay. All right. Thank you.

16 CHAIRPERSON GRIFFIS: -- conclusions once
17 I get through everything. Does the applicant have any
18 cross of Office of Planning or the party in
19 opposition?

20 MS. GIORDANO: No, not at all.

21 CHAIRPERSON GRIFFIS: Any cross? Okay.
22 Very well. Let's continue on then with government
23 reports. We do have -- has been cited the Exhibit
24 Number 21 in our record which is the Commission of
25 Fine Arts, Old Georgetown Historic Board submission.

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1 ANC-2E. Is the ANC member present? ANC-2E.

2 We have the ANC recommending approval of
3 the application is Exhibit Number 23. I'll give an
4 opportunity for the Board to comment on that if need
5 be. Not hearing any opportunity or need for that,
6 that's all the government reports attendant to the
7 application that I have.

8 Let me ask if there are persons in support
9 of the applicant here today to provide testimony?
10 Persons in support.

11 Come on up and pick a comfortable chair.
12 Sure if you'd like.

13 Well, I'm going to have you -- there he
14 is. He's handing you a mike.

15 Of course, persons presenting testimony
16 are allotted three minutes. I'll keep track of that
17 and good.

18 MR. GABRIEL: My name is Robert Gabriel
19 and I am the neighbor immediately to the east of the
20 Stettinius subject property. My wife and three kids,
21 family live in this property here. I'm just going to
22 sort of do this visually because I think it's -- will
23 make it a little clearer.

24 So, we have the property that is north of
25 their front yard, east of their house about 20 -- 20

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1 feet to the east as -- as Mr. Bailey alluded and we
2 also own this 900 lot to the north of their house.
3 So, we're sort of on all sides.

4 We are very much in support of the
5 Stettinius' proposed project. We have across our side
6 yard eight or ten rental buildings that have non-
7 conforming setbacks. They're built right up to their
8 property line and almost into our back yard. There's
9 a slight alley that separates us. So, I can -- I can
10 appreciate setbacks.

11 We did an addition to our house a couple
12 of years ago. The Stettinius were very supportive and
13 very patient with our project and I think their
14 request for relief here would be -- would be a huge
15 improvement over the existing conditions. It would
16 connect their house to the garage.

17 Our light and air would be somewhat
18 impacted, but -- but it really doesn't -- doesn't
19 phase us.

20 And as far as, you know, them being good
21 neighbors and -- and having done everything they've
22 said they're going to do, in the two years that we've
23 lived there, they've been very above board and -- and
24 straightforward with us.

25 That's really it. I'm -- I'm just -- I'm

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1 here as the immediate neighbor. These -- both these
2 houses were constructed in the late '40s and we -- we
3 are very much in support of their -- their project.

4 Thank you.

5 CHAIRPERSON GRIFFIS: Thank you very much.

6 Is there questions from the Board?

7 Mr. Horsey, do you have any cross
8 examination of the witness?

9 Ms. Giordano, any cross?

10 CHAIRPERSON GRIFFIS: Thank you very much.

11 Anybody else? Persons present. Very well then. I
12 think we're ready. Party in opposition. Unless
13 there's persons present in opposition that would like
14 to go first. Is there anyone else that wants to
15 testify before the Board? Okay.

16 MS. GIORDANO: Good afternoon. For the
17 record, my name's Cynthia Giordano.

18 We're just handing three items to the
19 Board. The first one is just to add a little levity
20 to the afternoon. It's a cartoon from yesterday's
21 Washington Post which we thought was really kind of
22 funny on the eve of this hearing.

23 First of all, we'd like to request about
24 ten minutes if that's okay with the Board. We've got
25 a couple of witnesses. The Friendlys here are

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1 represented by Lucinda Friendly to my left and Alfred
2 Friendly. The property is owned in trust for three
3 siblings, the Friendly family. Five. Sorry. I've
4 met three, I think, of the five.

5 And Nate Gross to my far left is -- is
6 from Arnold & Porter as you know. He had some
7 involvement previously when he was on the Office of
8 Planning Staff with bringing this special exception
9 provision to the Zoning Commission. So, he is going
10 to testify on the intent of the -- the regulation as
11 well as the impacts on the abutting property.

12 And I think we all understand by now that
13 the -- the Friendlys own the property immediately to
14 the west of the subject property and that the side
15 yard which would be eliminated with this addition
16 immediately abuts the tennis courts located on their
17 property.

18 Their property's about three-quarters of
19 an acre. It's been in the family for some time and
20 initially, they did -- they were inclined to support
21 this special exception.

22 The property was -- is on the market and
23 it was under contract. They had a purchaser that
24 lived in Georgetown and was very familiar with the --
25 the property and the setting and unfortunately, when

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1 the contract purchaser learned of this BZA case, they
2 basically voided the contract and --

3 MR. HORSEY: Mr. Chairman, can -- can I
4 object to this testimony? We've -- we've heard this
5 several times in the regulatory hearing. We have no
6 proof of this. This is what they call hearsay. We
7 don't know why these people withdrew. This -- this is
8 a very old house. Needs a huge amount of money. You
9 know, it could be a million reasons.

10 MS. GIORDANO: Well, the -- the Friendlys
11 can testify themselves on that, but I'm explaining --

12 MR. HORSEY: I'd like to --

13 MS. GIORDANO: -- I -- I think it's very
14 pertinent. You indicated that the Friendlys supported
15 this initially and I think it's important to explain
16 why they have changed their position and this was the
17 precipitating event and it really became clear to them
18 at that point that this proposal has an impact on the
19 property and they will speak more directly to that,
20 but I -- I did want to explain the reason for -- the
21 precipitating reason for the change of heart and their
22 understanding about how this proposal would affect
23 their property.

24 With that, I would like to ask Mr.
25 Friendly to provide his remarks.

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1 MR. FRIENDLY: Thank you very much. Thank
2 you, Mr. Chair.

3 My name is Alfred Friendly. My -- in
4 addition to my sister, my brother Nicholas is here.
5 The other two trustees of the property are -- don't --
6 don't live in Washington and couldn't -- couldn't be
7 present.

8 My concern is to be sure that you all --
9 that the Board understands that at tennis court is
10 just as much a matter of concern under Section 223 as
11 anybody else's backyard, the Stettinius pool and so
12 forth.

13 The -- in the case of our property, the
14 tennis court is a particularly valuable part of the
15 property. It's the reason we own the property.

16 In 1939, my mother persuaded my father to
17 come to look at it. He wouldn't even look at the
18 house, but he did walk off the space in the backyard,
19 agreed that a tennis court would go in there and
20 agreed with my mother who at that point had two
21 children that the great big house, the third floor
22 could be rented. It was all right. She could buy it.
23 She had three more children and the third floor got
24 very busy.

25 So did the tennis court. It was an

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1 extension of our family life. It's where my parents
2 taught us all to play tennis. It's where we brought
3 our friends to play tennis. It's where my parents
4 brought the charities that they cared about to stage
5 fund raising benefits and those were the Community
6 Council for the Aging, I'm sorry, Community Council
7 for the Homeless, the Arts for the Aging, Fillmore
8 Arts Center, and the Alliance Francaise among others.

9 That was a court where our -- one of our
10 extended family members taught kids from the
11 Metropolitan Police Boys and Girls Club which is
12 around the corner from our house to play tennis for
13 several years.

14 For thirty years, it was an extension of
15 my father's professional life as well. It's where he
16 brought -- he was a reporter and the managing editor
17 of The Washington Post which is not why that cartoon
18 got in yesterday. We have a long reach, but we don't
19 have that kind of clout. The -- he brought his
20 sources, his colleagues. It was a morale builder. It
21 was very important on -- on all kinds of fronts and it
22 still it.

23 He died in 1983. My mother ten years
24 later began to feel fragile which it turned out she
25 really wasn't, but she decided that to keep the

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1 property in the family was -- much the best way to go
2 was to keep it -- to put it in trust for the five of
3 us so that we would have the latitude, the possibility
4 of continuing to own it as a rental property or buying
5 each other out. Unfortunately, none of us has won the
6 lottery and that option isn't really a real one.

7 And when she died in January of this year
8 and we put her ashes with my father's by the tree by
9 the side of the tennis court, we all faced the reality
10 that we really had to sell the house.

11 And at about the same time that Joe who
12 was being very helpful as a neighbor, those vines are
13 important, he's helped put the tennis court in shape.
14 He and Reg returned the balls that fall into the pool
15 or let us go into their side yard to retrieve them.
16 At about the same time that he approached us on the
17 issue of the special exception, we were trying to set
18 up a way to put the house on the market.

19 It went on the market and it sold very,
20 very quickly to our considerable surprise. It sold to
21 exactly the kind of people we wanted to sell it to.
22 Another family. They happened, in fact, to live three
23 blocks down the street and they bought it because
24 they're tennis players. That's kind of a luxury.

25 They pulled out of the contract at some

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1 cost to themselves, and if the Board would like, we
2 can certainly produce the documentation of that
3 transaction, because they became aware of the plans
4 and the request for the special exception.

5
6 We want to sell it to a family. We think
7 it's still possible. We have been told -- rather our
8 -- at least our brokers have been told they got an
9 opinion from an attorney, I think he may know him,
10 Wayne Quinn.

11 MS. GIORDANO: Mr. Quinn.

12 MR. FRIENDLY: The lot is so big, it could
13 be broken up into a -- into two -- at least two,
14 perhaps three more lots and developed. We don't want
15 to see that happen. We want to use -- we want to find
16 a family, we believe we can again, that will use the
17 property as we have and use it, I stress, the whole
18 property, who will enjoy it themselves as we have and
19 who'll preserve the court and the yard as open space
20 as we have for the benefit of themselves, their
21 friends, our neighbors and the entire Georgetown
22 community.

23 Thank you.

24 MS. GIORDANO: Our next witness is Lucinda
25 Friendly and Lucinda has done some study of the

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1 impacts on the tennis court particularly with related
2 -- with relation to the shadows, light and air on the
3 tennis court and the drainage of the tennis court.

4 MS. FRIENDLY MURPHY: Thank you for
5 listening to our concerns. I am the third of the five
6 generations who have been under the roof of that house
7 and I've lived in D.C. most of my life and been active
8 in D.C. affairs, the six-school complex, the public
9 schools right near by.

10 And I spent the first 20 years as a
11 landscape -- a landscape designer and I've done lots
12 of designs around Georgetown and have some sense of
13 light, water, air and so forth. I just bring that as
14 some sort of a credential. I did that for 20 years.

15 And, however, the last 20 years I have
16 been an artist and I work in the building. There are
17 the three accessory buildings. The one closest to the
18 Stettinius property is a two-car garage which I have
19 appropriated half of mostly for storage of paintings.
20 It doesn't have anything else in it, but racks and
21 paintings.

22 The next building was originally a
23 carriage house and that's where I have been working
24 for 20 years and the next building, it was a stable
25 which my parents converted to staff quarters I think

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1 in '79 with all the permits required. It is a legal
2 dwelling. I just wanted to bring that up and,
3 therefore, the court is closed in on the south side.

4 I have been working in that studio for 20
5 years and I've seen it rain and I see what happens on
6 the tennis court with regard to light and air and
7 basically, I have -- I have really four -- four
8 concerns which I'll address very, very briefly. Some
9 of them have already been raised.

10 The main thing to know -- one of the main
11 things to know is the court is made of clay. It is a
12 red clay court with a hard true finish. It's a kind
13 of a gray gravel. It's one of the few soft courts if
14 you want to call it that and the reason it's soft when
15 it rains, you can't walk on it or play on it until it
16 dries. It's very important it be able to dry if
17 you're going to use it. You can't -- literally can't
18 walk on it much less play on it. So, my concern is
19 with the light and the air and the water very
20 definitely.

21 It would also be very hard for us to plant
22 anything on our side because it's clay and when it's
23 wet, it's really wet and when it's not, things don't
24 grow terribly well in clay. So, the idea of being
25 able to grow vines up their house is not necessarily

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1 a reality.

2 Almost 80 percent of our land drains in
3 the direction of the Stettinius property as -- and
4 their property and the Gabriel's all drain to the east
5 towards Avon. So, the water which does not sink into
6 the water table on our property and not all of it does
7 when it rains heavily, maybe a quarter of the court
8 might have standing water on it in the heavy
9 thunderstorms in the summertime and that water drains
10 to the east side of the court, the Stettinius side and
11 to the south corner of that area there where we have
12 a -- a dry well and a drain.

13 But, even with that, there -- it takes a
14 long time sometimes after a rainstorm for the water to
15 dissipate from the court. A lot of it sits against a
16 little tiny retaining wall on which that fence is
17 placed and it sits there for quite some time, goes
18 down into the water table because is a ten-foot gap
19 between the edge of the court and the existing
20 building.

21 I'm concerned that the construction of the
22 foundations right on the property line even though I
23 guess the wall will not be centered on the property
24 line, I think Mr. Horsey told me he'll put it right on
25 -- he'll do the footings, but not center the wall.

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1 He'll put it right against the -- those footings,
2 those foundations will prevent that water which has
3 now got a way to go down and some time before it
4 encounters the existing foundations, that will not be
5 an option. So, I worry about the foundations. That's
6 one of my concerns.

7 The other one is that when -- and you can
8 see -- I think you can -- if you -- you have this
9 background document and if you look, you can -- when
10 you see this. This is the fence we're talking about.
11 This is the -- the garage, my studio which was a
12 carriage house and the other building is out of the
13 picture in that. You can barely see this little
14 retaining wall in that photograph on page one.

15 It's tiny. It's three inches high. It --
16 it only -- I mean we don't get water higher than that,
17 but we can have water standing there and so, I'm
18 concerned about the foundations.

19 In addition, I'm concerned about the --
20 the next page, if you go to page two, my brother got
21 up and took some photos early in the morning and you
22 can see it. We're close to the -- to the equinox
23 right now. So, this sort of gives you a rough idea of
24 the sunlight, but you can see how the shadow is now
25 and how it will be. So, it'll be considerably --

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1 several hours more before the sunlight will hit that
2 most damp area of the tennis court. The court that --
3 the part that most needs to have light.

4 In addition by closing off the connection
5 between the house and the garage, the -- the wind
6 which in the summertime is prevailing southeast will
7 be entirely cutoff. So, that wind which helps us
8 after thunderstorms and things like that will not be
9 available to dry that area of the court.

10 So, we'll have the foundations and no --
11 less wind and less light making it harder to have that
12 area dry.

13 Additionally, one concern I have, I'm not
14 quite clear on, is if the wall is sitting right on the
15 property line, what happens to the rainwater coming
16 off these new -- the new roof? Will there be a
17 gutter? Will it project over our land?

18 I am also concerned that it -- and how
19 will they maintain it and if there is a gutter, I know
20 tennis balls get stuck in gutters and even downspouts
21 because I quite frequently climb fence. In -- on page
22 three, you can see the garage and I quite often have
23 to climb this fence to take the tennis balls out of
24 the gutter or the downspouts there because they stick.

25 Now, that possibly -- I just don't -- I'm

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1 not quite clear from the plans what -- how that water
2 will be dealt with, but I feel that the -- that we
3 will lose -- I don't -- I can't really guess how many
4 days a year or how much time, but I definitely think
5 that our enjoyment and use of the tennis court will be
6 impacted for sure by this construction and so, I hope
7 you will take that in -- those concerns into your
8 deliberations.

9 Thank you so much.

10 CHAIRPERSON GRIFFIS: Thank you very much.

11 MS. GIORDANO: Our last witness is Mr.
12 Gross.

13 MR. GROSS: Afternoon, Members of the
14 Board. I'm Nathan W. Gross for the record.

15 First, I'd like to point out that in the
16 northern part of Georgetown there is a substantial R-
17 1-B District outlined in yellow on this map. It
18 extends over almost to 25th Street on the east. It
19 includes the subject area.

20 You can see the difference in density of
21 development in the R-3 townhouse section of the
22 neighborhood compared with the intent of the single-
23 family neighborhood in the R-1-B.

24 Of course, being an historic area, there
25 are indeed some non-conforming structures, but the

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1 intent of the R-1-B District relating to the side yard
2 provisions before us today is an eight-foot side yard
3 beside a detached house. In effect, creating a 16-
4 foot open space domain between two detached houses.

5 Even in the R-3 and R-4 zones, a detached
6 house still requires the two eight-foot side yards.
7 So, the zoning regulations are quite strong in this
8 intent.

9 The proposed addition imposes very
10 substantial end to the entirety of this side yard in
11 the relevant area. The two-story addition is 29 feet
12 long and the one-story addition is 20 feet long. So,
13 you have the entirety of a ten foot seven inch
14 existing side yard completely built on for a length of
15 49 feet.

16 This connects with an existing 20-foot
17 garage for a total distance of 69 feet occupying the
18 side yard setback area and we believe that's directly
19 contrary to the intent of the zoning regulations and
20 you see it graphically in the isometric, two and half
21 story and the one story.

22 Until today, it was our understanding that
23 the -- the existing ivy colored -- covered fence would
24 come down, but you can see the contrast. You have an
25 existing vine-covered fence. Behind it is a ten foot

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1 seven foot side yard and then -- and then you have a
2 sheer wall even if it's covered with a fence somehow
3 and I'm not sure how feasible that would be.

4 This is quite an imposition aesthetically
5 and I would submit from the backyard, it's -- it's an
6 encroachment visually.

7 As to windows, I would note that part of
8 the intent of the zoning regulations is those windows
9 are suppose to be eight feet away. These existing
10 windows are ten foot seven inches away and so, the
11 number of windows may remain about the same, but
12 there's quite a difference when they're on the
13 property line.

14 I would also comment that if this were a
15 fence, it's maximum height would be eight feet under
16 the building code. Whereas, here we have
17 substantially more height obviously.

18 Also regarding distance from the
19 Friendly's house, I would say that in most side yard
20 variance cases what happens is you have a rear edition
21 on a house that comes back to about the same depth --
22 depth as the adjacent house, but then they want to go
23 off to the side and they have side windows going into
24 the neighbor's yard and I think more often than not,
25 it's privacy of the use of the yard rather than --

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1 rather than windows -- looking at windows in the
2 adjacent house that's at issue in the side yard
3 variance cases.

4 I want to read a comment and testimony
5 made by the Office of Planning when Section 223 was
6 adopted. "Homeowners, architects and builders should
7 look first to a matter-of-right addition and only
8 apply for special exception relief if there case has
9 significant need and merit."

10 I would add that the Board of Zoning
11 Adjustment which referred this issue to the Zoning
12 Commission suggested that a case should be made kind
13 of showing that you can't really do a reasonable
14 addition without this special exception. It's not
15 suppose to be just virtually a matter of right.

16 And in the instant case, we have 24
17 percent lot occupancy and one would think that with
18 all this rear yard to work with something matter of
19 right could be done. Pretty obviously you have a
20 simple back porch with a roof held up by four posts.
21 That could be removed and a substantial addition be
22 built there, two or three stories possibly including
23 a porch on the ground level without putting all this
24 mass into the side yard setback area

25 And based on all these considerations, we

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1 would request denial of the application.

2 MR. FRIENDLY: Clarifying point, Mr.
3 Horsey. Mr. Horsey mentioned our -- our discussion
4 with Joe and -- you know, about the windows. That was
5 in May and my understanding, it could have been wrong,
6 was that because it was to be a wall on the property
7 line, the technology to be used would be firebrick
8 which is opaque. I understand that technology has
9 advanced. The windows can be made so that you can see
10 through them. Thank you.

11 MS. GIORDANO: Thank you. Any questions
12 from the Board?

13 VICE CHAIRPERSON MILLER: Okay. I have a
14 couple.

15 Mr. Gross, I just wonder if you can
16 perhaps elaborate a little bit more on your statement
17 that this is clearly contrary to the intent of the
18 zoning regulations and I think you mean on top of --
19 of a finding of, you know, whether light and air or
20 privacy are impacted that this -- this particular
21 situation is beyond that. A violation of the intent
22 of the zoning regulations.

23 MR. GROSS: Yes, indeed, Ms. Miller. My
24 point is that the intent of the zoning regulations
25 prefers matter-of-right development. Then -- then a

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1 degree of relief is an exception, but it is an
2 exception and then you have the variance and when the
3 Board recommended this Section 223 and the Zoning
4 Commission adopted it, I don't think they meant for it
5 to be virtually a matter of right. There's still the
6 general concept in the R-1 zones of an eight-foot side
7 yard on -- on both properties.

8 VICE CHAIRPERSON MILLER: Thank you and
9 Ms. Friendly, I -- I -- I'm still a little bit
10 confused about this fence with the vine. Whether it's
11 -- it's -- it's staying where it is or whether it
12 would have to be moved onto the clay of your -- of the
13 tennis courts.

14 MS. FRIENDLY MURPHY: At the moment, the
15 -- it's -- the fence pictured, it sits on a little
16 tiny retaining wall. It's some cinder block and we
17 put a little extra brick on it. I don't even know
18 that it's cemented in and that fence sits on that wall
19 on our property and we'd prefer not to have the fence
20 removed. I do use it to climb up and get tennis
21 balls, but I'm not sure if this permit is granted what
22 we would do. I mean there wouldn't be a lot of point
23 having a kitchen window that slams right up against a
24 fence that is completely covered with ivy. Why put
25 the window in?

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1 I -- I don't know whether once -- if the
2 building were constructed and a new owner bought the
3 property, they're certainly welcome to take down the
4 fence. It is on our property and ordinarily, we would
5 not want to take -- take the fence down. It has its
6 uses. We had vines growing on it. They weren't as
7 dense as this and I don't know where the roots came
8 from, but there's a beautiful porcelain berry vine
9 that always ran up every summer and ran across the top
10 of the fence and I think that vine is still there
11 despite the ivy, but it's sort of buried in it and I
12 don't where the roots of that are. They're certainly
13 not obvious on our side.

14 VICE CHAIRPERSON MILLER: And I also just
15 want to just clarify that the testimony of both -- of
16 you, Mr. and -- both Mr. and Mrs. Friendly, that --
17 that -- that the use and enjoyment would be impacted
18 by number one, privacy. Number two, there would be
19 more shadows so that the conditions wouldn't be as
20 comfortable to play tennis in and --

21 MS. FRIENDLY MURPHY: It's not even so
22 much a question of comfort. It's a question of
23 whether we could even play. My -- my fear is that the
24 added water unable to drain out to the east would keep
25 the -- because its clay, it'll sit there and

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1 conceivably, it could -- could be a problem for the
2 edition because that water's going to be sitting
3 against those foundations sometimes for days down
4 underneath, but I don't know. I just -- my concern is
5 that -- that we would literally not be able to use the
6 court because it would be too wet because of the loss
7 of light and air and the foundations and possibly
8 overflow from the gutters. But, I don't understand
9 the gutters. So, I can't really --

10 MR. FRIENDLY: It just isn't the tennis
11 court water. The water -- the rain water that lands
12 on the court is most of the water that goes across the
13 court, but some of the water that goes across the
14 court comes from elsewhere on the property. The
15 problem is it builds in that southeast corner. That's
16 exactly where the new shadows would fall and exactly
17 where the air would be blocked.

18 MS. FRIENDLY MURPHY: Most of the property
19 is --

20 VICE CHAIRPERSON MILLER: It builds up now
21 or the --

22 MS. FRIENDLY MURPHY: It -- even now there
23 is some, but because there is light and air and the
24 possibility of the water going into the water table,
25 it drains usually relatively fast. I mean spring and

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1 fall -- or spring, we have to wait until it dries. In
2 the fall, we usually play sometimes December, even the
3 first of January, but then the spring months, we have
4 to wait for it dry. We put it in shape. Every year
5 you have to work on it and get it back in shape and
6 then as soon as it's dry, we start to play.

7 What I'm concerned about is both the
8 spring drying will be much delayed and the summer
9 which is our prime time we love to play, those
10 thunderstorms which are so heavy, the water, as my
11 brother points out, comes across a good deal of the
12 property and sometimes comes -- we have a retaining
13 wall this -- where the -- where you can't really see,
14 but this is a probably three-foot retaining wall on
15 the west side, but sometimes I have watched water come
16 pouring out the underneath of that wall in the heavy
17 rainstorms and go -- travel across the court to the
18 Stettinius side and sit there. Some of it goes into
19 the drain.

20 The drain has -- in -- in -- the neighbor
21 before, a lovely gentleman, was having problems with
22 water stand -- the water from our property, the tennis
23 court and so forth standing against his footings which
24 were -- which are now ten feet seven inches away and
25 he asked if we could do something about it and we

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1 worked together and put the drain which drained out
2 through that property and he had no further problems.

3 So, I don't know where that water's going
4 to go. It's -- if there aren't drains there, it's
5 going to sit against those foundations and there's
6 nothing we can do about it. We can't change the
7 drainage of the entire property or even of the tennis
8 court.

9 VICE CHAIRPERSON MILLER: Thank you.

10 (Whereupon, at 5:02 p.m. the evening
11 session began.)
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E-V-E-N-I-N-G S-E-S-S-I-O-N

5:02 p.m.

CHAIRPERSON GRIFFIS: You mentioned the ivy growing on the fence. How high is the highest point of the fence? Do you know?

MS. FRIENDLY MURPHY: It looks about ten feet. It's the height of that garage which I think is a ten-foot garage.

CHAIRPERSON GRIFFIS: So, it steps up to a higher -- higher height?

MS. FRIENDLY MURPHY: No, it's consistent all the way. That's their trees. Those are trees that the Stettinius have planted that are the higher ones.

CHAIRPERSON GRIFFIS: So, there's some trees in the --

MS. FRIENDLY MURPHY: Those are trees. They planted lots of trees and have beautiful screening for the swimming pool and also the dust that would be coming. You know, if somebody plays, it's -- when it's dry, it's a little dusty. So, those trees protect their pool and backyard and side yard from --

CHAIRPERSON GRIFFIS: Okay.

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1 MS. FRIENDLY MURPHY: -- everything.

2 CHAIRPERSON GRIFFIS: Now, I'm not sure I
3 understand this, but briefly, there's the water that's
4 flowing now. You said that there's the retaining wall
5 that's there. It's about three inches high off of the
6 court and the water never raises above that level and
7 that's where it sits.

8 MS. FRIENDLY MURPHY: Correct. On the
9 other side it drops.

10 CHAIRPERSON GRIFFIS: So, when you put a
11 building there --

12 MS. FRIENDLY MURPHY: Pardon.

13 CHAIRPERSON GRIFFIS: If you put a wall
14 there, what would be the different condition?

15 MS. FRIENDLY MURPHY: If you put a wall
16 there, it has to have footings. This is a little --
17 a little wall. I doubt that it goes down more than a
18 foot, maybe two. I don't know what that fence sits
19 on. I've never dug it up.

20 On the Stettinius side, there is more of
21 a drop.

22 CHAIRPERSON GRIFFIS: Explain the drain.
23 There's a drain there.

24 MS. FRIENDLY MURPHY: Yes, there --
25 current, there is a drain in this corner. If you look

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1 on page -- it's kind of messy because we're trying to
2 work on it and make it even better. Page three. In
3 that corner where the garage meets that ivy-covered
4 fence, there is a drain there. So, there -- this --
5 the -- this -- and you can see the little -- it's the
6 -- the height of a brick, that retaining wall on our
7 side. It drops down a foot -- 18 inches on the
8 Stettinius side. So, it's not much of a retaining
9 wall. But, it keeps the clay and the court in and --
10 and -- but, we have a drain that -- in that corner,
11 but it just takes time and it --

12 CHAIRPERSON GRIFFIS: I'm trying to
13 understand what -- what -- what the different -- what
14 the impact would be. How would the condition change?
15 Whether --

16 MS. FRIENDLY MURPHY: Instead of having
17 this much of a footing, you would have whatever. I
18 mean I presume if they're going to build a two-story
19 wall, that you're going to have some pretty good
20 foundations right there against the property line that
21 the water will have to run down. Instead of just
22 being able to go down and through gradually, it will
23 be held against that foundation wall I presume. I
24 don't know how deep the foundations have to go, but I
25 presume they're going to be a lot -- one, they're

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1 going to be a lot closer and two, I presume they're
2 going to be a lot more solid and a lot deeper.

3 CHAIRPERSON GRIFFIS: Okay.

4 MS. FRIENDLY MURPHY: Making it more
5 difficult for the water to flow in the direction it
6 wants to flow, i.e., east.

7 CHAIRPERSON GRIFFIS: Okay.

8 MS. GIORDANO: Are there any other
9 questions from the Board?

10 MEMBER MANN: Yes, Mr. Friendly, you said
11 that the tennis court was particularly valuable, but
12 it was unclear to me at the conclusion of your
13 testimony whether or not that value is economic value
14 or sentimental value.

15 MR. FRIENDLY: I think it's -- it's -- the
16 court itself -- the court itself is -- is --

17 MEMBER MANN: You -- you said that -- you
18 said the tennis court was particularly valuable.

19 MR. FRIENDLY: As a -- as -- as something
20 that makes the property itself unique and something
21 that has a history. But, it's the uniqueness and as
22 -- since we are now obliged to try and sell the
23 property, it's an -- a very significant asset unless
24 we decided to sell it to a developer whom -- and I
25 don't think anybody in the neighborhood or anybody in

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1 the community and certainly nobody in our family wants
2 that to happen.

3 MEMBER MANN: Regarding those sort of
4 aspirations for a buyer, are you going to place or
5 have you placed any sort of covenant or restriction --

6 MR. FRIENDLY: I'm sorry. I'm more than
7 a little deaf.

8 MEMBER MANN: In -- in regard to the
9 aspirations that you have for a particular buyer --

10 MR. FRIENDLY: Um-hum.

11 MEMBER MANN: -- have you placed any sorts
12 of covenants or restrictions to insure that there's no
13 subdivision of the property or that --

14 MR. FRIENDLY: No.

15 MEMBER MANN: -- nothing of that sort
16 happens.

17 And I'm not certain who can answer this
18 one, but why was your initial support of this project
19 withdrawn?

20 MR. FRIENDLY: Why was it withdrawn?

21 MEMBER MANN: Yes.

22 MR. FRIENDLY: Because -- because the sale
23 -- the collapse of the sale to the perfect buyer
24 frankly at a price that was lower than we had
25 initially asked because they were the perfect buyer.

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1 Fell through when they became aware of the plans and
2 said I'd be happy to provide the lawyers' letters that
3 use the terms of Section 223 about the privacy of use
4 or enjoyment is the reason we are voiding the
5 contract.

6 MEMBER MANN: Thank you.

7 VICE CHAIRPERSON MILLER: I just want to
8 ask a follow-up question to that. I mean based on
9 your experience with that one purchase at least --

10 MR. FRIENDLY: Again, I'm really sorry.

11 VICE CHAIRPERSON MILLER: I'm sorry. I
12 want to follow up on Mr. Mann's --

13 MR. FRIENDLY: Yes.

14 VICE CHAIRPERSON MILLER: -- questions
15 about the value of the tennis court.

16 MR. FRIENDLY: Um-hum.

17 VICE CHAIRPERSON MILLER: From what I
18 heard you say, I think that anyone who was interested
19 in buying your property as a whole would be interested
20 in it in large part because of the tennis court and
21 that if -- correct me if I'm wrong because this is
22 what I -- I -- I thought you were saying and that,
23 therefore, if the tennis court was impacted so that a
24 lot of time it wouldn't be able to be used because of
25 the water or lack of drying, privacy, et cetera, the

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1 value of the property as a whole would be diminished.

2 MR. FRIENDLY: I don't mean to be flip,
3 but if Averill Harriman were alive or Joe Fowler both
4 of whom were croquet fiends wanted the property,
5 they'd probably turn the tennis court into a croquet
6 court. They wouldn't want it wet either.

7 The -- it is a -- a space, an enormous in
8 Georgetown almost unique open space. There's one
9 other property called Evermay which is now a
10 foundation. There's one on -- just off Reservoir Road
11 that's shared by two properties. No other clay courts
12 that I know of in Georgetown. Finally, they've put
13 some at -- at Hains Point.

14 It's not just that it's a tennis court.
15 It's a clay court for people with knees that are not
16 as good as Mr. Etherly's. Clay is a really important
17 surface and I -- I'm 67 and I still try and play once
18 a day and I even run around. I couldn't do that on a
19 hard court, but it's -- the -- the court is a -- the
20 property is -- is -- is special, but one of the -- the
21 thing that makes the property so special is -- three-
22 quarters of it is the court.

23 VICE CHAIRPERSON MILLER: Right. Thank
24 you.

25 MR. FRIENDLY: Two-thirds/three-quarters.

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1 MEMBER ETHERLY: Well, if I could just --
2 just one -- one question and -- and this might perhaps
3 be directed to Mr. Gross or -- or if either of the
4 Friendlys would like to respond to it or even Ms.
5 Giordano.

6 But, what's to say that you don't
7 necessarily simply just have a drainage issue? One
8 that isn't necessarily going to be exacerbated or --
9 or ameliorated in any extent by the -- by any
10 construction on the adjacent property. What's to say
11 you're just simply dealing with an environmental
12 condition that is just part and parcel of the property
13 that you have?

14 And I'm open to -- to --

15 MS. GIORDANO: Right. It's -- it's a --

16 MEMBER ETHERLY: -- you know, being --

17 MS. GIORDANO: -- it's a light and air
18 issue as well. The light and the air affect the
19 drying of the tennis court regardless of what the
20 drainage is. I mean clay is not going to drain
21 quickly.

22 MEMBER ETHERLY: Correct.

23 MS. GIORDANO: But, I think, you know, I
24 think that anybody looking at this situation would
25 rather not have a house right on a property line, you

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1 know, adjacent to you. I mean that's the whole point
2 of a side yard. I mean I -- I just think it's a very
3 obvious thing regardless of the unique aspects of the
4 clay court and all. It obviously impacts this
5 property.

6 If you were looking to purchase this
7 property or you've lived on this site, I mean how
8 would you feel about it? I mean the -- the other
9 neighbors aren't abutting this new addition. It's --
10 it's -- to me, it's -- it's -- it's just self-evident.

11 MEMBER ETHERLY: Okay. Thank you.
12 Appreciate it.

13 MS. GIORDANO: And I -- I just want to add
14 to that that it's not an issue of begging my
15 neighbors or, you know, suggesting that the neighbors
16 shouldn't have as large a house as they want, but
17 there -- there appears to be ample room on this
18 property for an addition without encroaching upon the
19 abutting property.

20 CHAIRPERSON GRIFFIS: Mr. Gross, just to
21 follow up on your question, I think it raises some
22 interest in the Board and that is the -- the question
23 of -- the intent of the zoning regulations is to move
24 the property owner to add or build in compliance with
25 the regulations. I don't think anyone would refute

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1 that in terms of that's why we have regulations.

2 However, we do have the relief valves and
3 it comes in special exceptions and variances.

4 You made the comment though, however, that
5 one should pursue the matter of right first prior to
6 moving and certainly, in the rear of this structure,
7 it would be easy enough to do. Here we have just a
8 covered porch.

9 Are you aware of what's on the second
10 floor of this house?

11 MR. GROSS: No, I'm not getting into room
12 layouts or what the architect would have to do.

13 CHAIRPERSON GRIFFIS: Okay. And -- and
14 this is -- I just want to go because nor am I and nor
15 am I perhaps able to assess this, but conceivably
16 there are bedrooms on that floor. Can you just
17 elongate that house and facilitate the utilization of
18 what they're proposing to do in terms of -- in terms
19 of the new space that's provided?

20 My point being is -- is what they're --
21 what they're proposing in their massing of the one-
22 story and two structure, is that analogous to just
23 putting an addition on the rear of the structure or is
24 there some use and spacial relation to the house
25 itself?

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1 MR. GROSS: My point is that very often an
2 architect designing an addition will first show the
3 homeowner three conceptual alternatives and before
4 going to details and very often these might involve
5 rearranging uses within the existing house, combining
6 a couple of rooms and do something that might be -- if
7 you did option A, that particular function might be in
8 the addition. If you did option B and it's at the
9 rear, maybe the functions change and use the interior
10 in different ways and obviously, they're -- they're
11 issues of connecting with certain rooms and access
12 points and stairways and I'm obviously not qualified
13 to do it, but -- but --

14 CHAIRPERSON GRIFFIS: Okay.

15 MR. GROSS: -- design -- is setting a
16 direction here and we're just saying that they should
17 look at that first.

18 CHAIRPERSON GRIFFIS: Well, and -- and I
19 think that's an important clarification. Neither you
20 nor I as I understand what you're saying understand
21 the interiors or the layouts of this, but what you're
22 saying, your assessing is certainly we'd hope if not
23 -- you would -- I guess if I'm understanding you
24 correctly, you're asserting that options should have
25 been pursued if they were not. Is that correct?

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1 MR. GROSS: That is correct.

2 CHAIRPERSON GRIFFIS: Okay. Ms. Miller.

3 VICE CHAIRPERSON MILLER: Yes, I just have
4 one more follow up for Mr. Gross. Because I've looked
5 at the regulations on the special exception and the
6 legislative history and -- and I've seen the comments
7 of Office of Planning or -- or why the Board asked for
8 these regulations to being with and I think it makes
9 sense, you know, to look at whether or not they could
10 have done an addition that didn't encroach on the
11 property.

12 But, I didn't see that that -- it didn't
13 make it into the regulation per se and -- and I don't
14 know whether you have a comment as to why we can --
15 can interpret the -- the -- the intent of the
16 regulation that way when it didn't make it into the
17 regulation itself.

18 MR. GROSS: Well, I think it's just the
19 difference between the word matter of right and the
20 word exception. I mean matter of right is what you
21 can do by just applying for a building permit and
22 exception is something that might be a good thing or
23 it might not be good thing. So, you have a public
24 hearing to decide whether it is.

25 So, I mean I think the preference is

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1 always matter of right.

2 VICE CHAIRPERSON MILLER: Thank you.

3 MS. GIORDANO: If I can just add onto
4 that, I think matter of right assumes that the -- the
5 standards that we have in the city for impacting
6 adjacent properties are met and an exception requires
7 a review of that. That's the whole point of the
8 exception.

9 CHAIRPERSON GRIFFIS: Mr. Gross said we
10 don't make it easy. In fact, we turned off the air
11 conditioning.

12 MS. GIORDANO: I noticed that.

13 CHAIRPERSON GRIFFIS: Okay. Any other
14 questions from the Board? Very well. Cross.

15 MR. HORSEY: I do.

16 CHAIRPERSON GRIFFIS: Couple of questions.
17 Good. Why don't we get you a comfortable chair next
18 to a microphone up there?

19 MR. HORSEY: Just a -- a couple of
20 questions. Outerbridge Horsey for the applicant.
21 About the drainage.

22 I can address you, Alfred.

23 Isn't it true that in the initial
24 agreement with Joe and Reg that -- where you initially
25 gave your support which you withdrew as is, of course,

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1 your right, that you -- that they agreed to accept and
2 -- and improve at their own expense the drainage for
3 the tennis court?

4 MR. FRIENDLY: I don't what they --

5 MR. HORSEY: Isn't that --

6 MR. FRIENDLY: -- -- I don't what they --

7 MR. HORSEY: Would you like me to read it?

8 MR. FRIENDLY: I have -- I have their
9 letter, but I don't have anything binding, Mr. Horsey,
10 from them. Any -- we talked about it. Drainage was
11 then a very significant matter. I thought we were on
12 the same --

13 MR. HORSEY: Well, what do you mean
14 binding? Let me ask you. Was it part of the
15 agreement? And we can ask corporation counsel --

16 MR. FRIENDLY: We don't have an agreement,
17 sir.

18 MR. HORSEY: Oh, okay. You don't have an
19 agreement. So, you're saying now that you never
20 agreed to support them. I thought you said --

21 MR. FRIENDLY: I don't have that --

22 MS. FRIENDLY MURPHY: My brother is one of
23 five trustees.

24 MR. FRIENDLY: No. No, it's not that
25 Lucinda.

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1 MS. FRIENDLY MURPHY: Oh, all right.

2 MR. FRIENDLY: But, I mean --

3 MS. FRIENDLY MURPHY: We don't have an
4 agreement anyway.

5 MR. FRIENDLY: By agreement, do you mean
6 an informal agreement? It certainly was. As --

7 MR. HORSEY: I have a signed letter to the
8 ANC. I have a signed letter from you.

9 MS. GIORDANO: I don't -- I don't --
10 personally don't think this is appropriate. I mean I
11 think he's clearly badgering Mr. Friendly.

12 MR. HORSEY: Well, all right.

13 CHAIRPERSON GRIFFIS: What we're going to
14 do is just simple questions on cross and simple
15 answers.

16 MR. HORSEY: Okay.

17 CHAIRPERSON GRIFFIS: If they can be
18 constantly yes or no, that's appropriate and I think
19 I understand your -- your -- your question and that is
20 was there or is there an agreement that the applicant
21 would take care of the drainage during the
22 construction of their addition?

23 MR. HORSEY: And -- and in perpetuity.

24 MR. FRIENDLY: There was a letter which
25 I'd be glad to submit for the record from the

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1 applicant. I think you might have it in the record.
2 From the applicant to us on May 26th. Very -- very
3 clearly spelling out exactly what Mr. Horsey is asking
4 about.

5 The response to that letter was our
6 statement of the assent to the ANC and the Old
7 Georgetown Board. It did not incorporate specific
8 reference to -- to the letter of May 26th. It talked
9 about drainage. It talked in general terms and it
10 talked about the windows in general terms, too.

11 But, then there was a letter -- there was
12 to have been a letter of indemnification which we
13 haven't yet received.

14 CHAIRPERSON GRIFFIS: Understood. It's
15 out there. It's not agreed upon. Next question.

16 MR. HORSEY: Well, the -- the real point
17 of my question is that -- is aren't you in the process
18 of now installing a drain to take care of the drainage
19 and taking it into the street?

20 MR. FRIENDLY: It will -- it will take
21 care of the drainage of the property as it now exists
22 with the light and air that comes onto it and without
23 any blockage of -- of the drainage that now exists.

24 MR. HORSEY: So, I take your answer to be
25 yes.

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1 MS. GIORDANO: He already stated --

2 MR. HORSEY: Thank you.

3 MS. FRIENDLY MURPHY: He showed the
4 picture with the -- the digging.

5 MR. HORSEY: That's the only -- that's the
6 only question I have.

7 CHAIRPERSON GRIFFIS: Very good. Any
8 redirect?

9 MS. GIORDANO: No.

10 CHAIRPERSON GRIFFIS: Good. Very well.
11 Thank you all very much.

12 MS. GIORDANO: Thank you.

13 CHAIRPERSON GRIFFIS: We do appreciate it
14 and thank you for being patient and being with us most
15 of the day.

16 Let's move ahead then for any --

17 MR. FRIENDLY: Oh --

18 CHAIRPERSON GRIFFIS: Yes, sir.

19 MR. FRIENDLY: Okay. Sorry. Thank you
20 very much.

21 CHAIRPERSON GRIFFIS: Okay. Let's go to
22 questions from the Board. First and follow ups after
23 that testimony and then are you presenting rebuttal
24 testimony or going right to conclusions?

25 MR. HORSEY: I'm presenting rebuttal

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1 testimony to some of the things they said.

2 CHAIRPERSON GRIFFIS: Excellent. Why
3 don't we go ahead with that then.

4 MR. HORSEY: I think first we should deal
5 with the issue of the drainage. Ms. Friendly's
6 testimony focused in large part on that. I think --
7 it's my understanding that the drainage of the tennis
8 court is the responsibility of the owners and that
9 they are undertaking to satisfy that responsibility on
10 their own at their own expense. So, I -- I don't see
11 that has much bearing on our -- on our application.

12 The fence is ten feet high. I measured it
13 myself and it is our proposal that the existing fence
14 is to remain and basically will conceal our one-story
15 addition which is about ten feet high. So, the only
16 thing sticking above it will be the two-story
17 addition.

18 The very nice vine that Ms. Friendly
19 alluded is a porcelain berry vine that comes from the
20 Stettinius property as well.

21 The ANC said and made a point of remarking
22 when the issue of growing plants on the tennis court,
23 that given the size of the court and the size of the
24 property, they thought that the owners of the tennis
25 court should be able to find a way to grow vines on

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1 their own property and not rely on their neighbors for
2 ivy to cover the fence.

3
4 The issues of the foundation can be
5 addressed. We -- we have engineers and hydrologists
6 so that we can deal successfully with the issue of the
7 foundation and keep the existing fence in place.

8 According to Mr. Stettinius, the -- the --
9 this issue of the -- the impact on the height of the
10 two-story addition affecting the -- not allowing the
11 court to dry out, a simply solution might be to water
12 it less. Apparently, it gets watered every morning.
13 That -- that would be my -- my offer to that, a
14 solution.

15 According to Mr. Stettinius, the wind
16 blows from the southwest and not from the southeast.
17 So, in theory, our addition would not affect the air
18 movement over the tennis court.

19 I, too -- I'll jump in the -- jump in the
20 -- jump in the game here. I'm an avid tennis player.
21 I watch the U.S. Open. I saw lots of people playing
22 in sun. I saw people playing in shade and I saw
23 people playing in both.

24 I don't think that additional shade on the
25 tennis court adversely impacts the ability of someone

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1 to enjoy playing tennis. Somebody mentioned to be
2 able to hit a ball against the wall. That's a --
3 that's an added attraction. I think the Stettinius
4 might be agreeable to that.

5 And finally, the -- the issue of privacy
6 with respect to the tennis court, I -- I think we can
7 deal with that if we haven't dealt with it enough. We
8 can eliminate all the windows.

9 As the Office of Planning pointed out in
10 their report, they -- we have already effectively
11 reduced -- increased the privacy on the tennis court
12 by reducing the net number of windows that currently
13 overlook it. I -- I think we're -- we're adhering to
14 that part of the -- of the standard.

15 And that's -- that's all I have to say in
16 terms of rebuttal.

17 CHAIRPERSON GRIFFIS: Have you detailed
18 this out to know what foundation it is going to be?

19 MR. HORSEY: No, we have not gotten that
20 far.

21 CHAIRPERSON GRIFFIS: Okay.

22 MR. HORSEY: We have conceptual --
23 actually, I do have one rebuttal issue which has to do
24 with the matter of right.

25 While -- while we -- while we haven't

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1 investigated in any significant way the drawings, it's
2 pretty clear, first of all, that we have an unusual
3 site. We had mentioned that -- we have an unusual
4 site. About 23 percent of our open space doglegs down
5 to Avon Place. It's basically un-buildable.

6 We have -- Mr. and Mrs. Gabriel live right
7 now door. An addition to the back would obviously
8 impact them in a much greater way than any impact to
9 this house or the tennis court and similarly, an
10 addition to the front would also impact them and
11 possibly the neighbors across the street in addition
12 to causing more construction and possibly eliminating
13 the use of the garage.

14 So, in terms of pursuing matter of right,
15 as you said, the regulations don't require that.

16 And finally, I -- I would like to quote
17 too from case number 840 which established these which
18 in the -- in the notes in that transcript that --
19 provided by the Office of Planning, it actually
20 specifically says and I quote "For example" -- this is
21 in regards to a side yard requirement, whether it
22 should be done by percentage or -- or not and it says
23 quote "For example, in an R-1 zoned district with an
24 eight-foot side yard requirement, a deviation may have
25 a sound basis at zero side yard depending on the

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1 character of the abutting lot."

2 So, it's clear that that was at least
3 something that was contemplated and I would argue that
4 -- that this is a legitimate case where the next house
5 next door is 120 feet away.

6 So, that's the end of my rebuttal. I do
7 have a closing statement.

8 Do you have anymore questions?

9 VICE CHAIRPERSON MILLER: What would you
10 say the sound basis here is?

11 MR. HORSEY: I'm sorry.

12 VICE CHAIRPERSON MILLER: I think you made
13 reference to a statement in the legislative history
14 about a sound basis for deviating from the eight-foot
15 side yard.

16 MR. HORSEY: I would say that the fact
17 that the main house next door which I think is the
18 primary intent of the zoning regulations to -- to
19 provide privacy is 120 feet away and the impact on the
20 tennis court on four players as we've discussed here
21 is -- is, in my opinion, not great. I just don't see
22 what would -- how people would not be able to enjoy
23 the use of the tennis court to the full extent they do
24 now if it has a wall that's ten feet higher than --
25 than what the fence is now. Especially when they have

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1 walls of similar heights at the other end of the
2 tennis court where they've been playing for -- for
3 many years.

4
5 VICE CHAIRPERSON MILLER: And one other
6 thing came up, a question about the gutters or
7 something and how --

8 MR. HORSEY: Yes, I'm sorry. Thank you
9 for raising that. The gutter we -- we can accommodate
10 that and -- and Mr. Stettinius tells me that the
11 tennis ball in the gutters and elsewhere are currently
12 an issue and will continue to be an issue.

13 VICE CHAIRPERSON MILLER: No, I mean the
14 water.

15 MR. HORSEY: And -- and -- and -- pardon
16 me?

17 VICE CHAIRPERSON MILLER: The water flow.

18 MR. HORSEY: The water? Well, it's our
19 obligation to not have any of our drainage go onto the
20 neighbor's property and we will fulfill that. We can
21 do it with in-board gutters. We can extend gutters to
22 the north and south of the two-story addition and
23 drain onto our own property.

24 VICE CHAIRPERSON MILLER: Thank you.

25 MEMBER ETHERLY: Mr. Chair, if I can guess

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1 -- I just wanted to get some clarification and -- and
2 with regard to the existing fence and the -- the small
3 brick wall that we've heard some reference to in -- in
4 the opposing party's testimony, what -- what is your
5 plan for -- for that -- that fence? First of all, is
6 that -- is that considered on the applicant's subject
7 property?

8 MR. HORSEY: There is a wall. The
9 question as seen from Mr. Stettinius side -- there's
10 -- there's certainly concrete block or cinder block
11 here with -- with -- there. You know, I'm not sure
12 what it's made of. Get back down there, I'm going to
13 have to look at it.

14 It is our intent to retain the existing.
15 If we have to incorporate that wall into our
16 structure, we'll do that. We want to maintain the
17 existing fence and I -- I don't have the structural
18 detail that will enable us to do that right now, but
19 I'm confident that we can get it.

20 MEMBER ETHERLY: Thank you. Thank you,
21 Mr. Chair.

22 VICE CHAIRPERSON MILLER: Sorry. I just
23 want to clarify on this wall. How many feet off your
24 property is it or onto their property is it? I mean
25 you're going to built to the property line if this

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1 special exception approved and then is there going to
2 be any space between that and -- and this fence or no?

3 MR. HORSEY: In theory, not. If the Board
4 would like to grant us the allowance to create an
5 illegal court so that we can set our wall back so as
6 to better accommodate that wall to give us that
7 flexibility, that might -- which is, in fact, if we
8 pulled our wall -- our new wall an inch -- even an
9 inch off the property line, it would in theory be an
10 illegal court. So, we couldn't do that. We have to
11 either set back six feet or go right up to the
12 property line.

13 We feel confident we can go right up to
14 property line. The -- the -- from my -- we haven't
15 had it completely surveyed, but from my preliminary
16 measurements, the fence posts are on the Friendly
17 property. The wall straddles the property line.

18 So, the fence can remain. The wall will
19 either be partially disassembled and -- and somehow
20 incorporated into new construction or incorporated
21 into new construction in its entirety so that the
22 fence can remain.

23 VICE CHAIRPERSON MILLER: Okay. So -- so,
24 we don't -- the Board doesn't have to forward an
25 application for a variance from the court

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1 requirements, but --

2 MR. HORSEY: Okay. Well, that's --

3 VICE CHAIRPERSON MILLER: -- it -- what --

4 I just am just following up. How much space would you
5 anticipate or do you think would -- yes, would you
6 seek?

7 MR. HORSEY: We're talking a matter of
8 inches.

9 VICE CHAIRPERSON MILLER: Inches. Okay.

10 MR. HORSEY: Yes, two/three. I'm not
11 sure.

12 VICE CHAIRPERSON MILLER: Thank you.

13 MR. HORSEY: Thank you.

14 CHAIRPERSON GRIFFIS: Anything else? In
15 looking at the design and anticipating the detailing
16 and -- and the structural foundation, you'd -- you'd
17 obviously be excavating adjacent to the tennis court.
18 Correct?

19 MR. HORSEY: Correct. Well, for
20 foundations, there's only one -- one portion of the
21 addition that goes down to the basement level. We
22 just need the staircase. They don't have a basement
23 planned. This is the basement level. All of which
24 is, you know --

25 CHAIRPERSON GRIFFIS: So, there's one

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1 small portion that goes below.

2 MR. HORSEY: Right. This would go down to
3 the basement. This would be on a crawl space and this
4 -- this is also on a crawl space or a slab on grade.

5 CHAIRPERSON GRIFFIS: Would -- would --
6 would -- does the opening of that allow for -- with
7 the consensus of the adjacent property allow for some
8 sort of a below grade tile drainage or some perimeter
9 drainage?

10 MR. HORSEY: I think so. Sure. And --
11 and another part of this almost agreement or whatever
12 we want to agree to it being was that the Friendlys
13 would be indemnified by the Stettinius for any -- any
14 water going into their property which the Stettinius
15 were happy to accommodate and agree to.

16 I think we can find a drainage system to
17 carry any subsurface drainage. The -- the natural
18 flow of water is across. Is from -- is from the west
19 to the east and so, some will inevitably move across
20 the property line. It probably is exacerbated by --
21 by the watering of the tennis court, but it would
22 probably occur naturally anyway. But, I -- I'm
23 confident we can put some sort of drainage system in
24 to accommodate it.

25 CHAIRPERSON GRIFFIS: Okay. Any last

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1 remarks? Sounds so dire.

2 MR. HORSEY: Well, I just have very
3 quickly, we've heard a lot about -- about what
4 happened on the property next door and it's all been
5 good and I think we can agree that -- that the
6 Friendlys' stewardship of that property has -- has a
7 been a good thing for Georgetown.

8 What -- what -- what we're here today to
9 evaluate is really the project that we're proposing in
10 terms of the specific criteria established by Section
11 223 and I without -- I won't go through it all again,
12 but it's my opinion that we have met the requirements
13 of these standards and the Office of Planning agrees
14 with us. ANC-2E unanimously agreed with us. The Old
15 Georgetown Board and the Commission of Fine Arts and
16 Historic Preservation Division have agreed that our
17 design is compatible with the surrounding neighborhood
18 and all the adjacent owners -- initially all of them,
19 now all except one adjacent and abutting owners also
20 agree with us.

21 So, I would ask for your approval of our
22 application. Thank you.

23 CHAIRPERSON GRIFFIS: Thank you very much.
24 Board Members, I think with the lateness of the hour
25 let's set this for a decision and as I pull out the

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1 schedule, I think we would -- I would think -- where
2 I think we should set this for the fourth, our already
3 scheduled public meeting.

4 MS. GIORDANO: Excuse me. In view of the
5 fact that the Board isn't going to make a decision
6 today, can we submit a rebuttal to the final remarks.
7 Can the record be left open for a few days for that
8 purpose?

9 CHAIRPERSON GRIFFIS: I don't know. What
10 do you guys think? Do we need additional information
11 on this?

12 MEMBER ETHERLY: I -- I have no
13 opposition, Mr. Chair. I might be inclined to suggest
14 keep it as tight and as focused as possible.

15 I was going to request some additional
16 information and maybe they could just be rolled into
17 what -- what the party in opposition is suggesting.
18 I would like to see some additional information on
19 what measures are already underway with regard to
20 drainage or -- or shall we say water mitigation that
21 might -- that might already be undertaken by the party
22 in opposition.

23 VICE CHAIRPERSON MILLER: I -- I would
24 like to leave it open for what they might want to
25 address. I would welcome, you know, if there's time

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1 any further filings that you -- if you want in light
2 of any issues that were raised today at the hearing
3 that might not adequately have been addressed.

4 MR. HORSEY: Mr. Chairman.

5 CHAIRPERSON GRIFFIS: Yes.

6 MR. HORSEY: If -- if there is new
7 information and -- and I would like a chance to
8 respond to it in due course. Thank you.

9 CHAIRPERSON GRIFFIS: I'm looking at dates
10 in February to try and decide this.

11 MR. HORSEY: We obviously would like to
12 move ahead with this. We have accommodated them.

13 CHAIRPERSON GRIFFIS: And this analogy is
14 a bit too much for the volley back of responses on
15 this one.

16 Very well. It's come to light that the
17 4th is probably a day that we will not want to
18 schedule a lot of decision makings and additional
19 hearings. So, I'm going to ask if there's any
20 difficulty with setting this for a special public
21 meeting on the 11th of October.

22 Do you see any difficulty in that
23 schedule, Mr. Horsey?

24 MR. HORSEY: I think so.

25 CHAIRPERSON GRIFFIS: Okay. Ms. Giordano,

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1 any objection to that?

2 Very well. Then let's -- let's look at
3 additional information that's been requested.

4 First of all, Mr. Etherly is requesting,
5 Ms. Giordano, of -- of your client a submission of
6 what is the drainage or mitigating construction that's
7 happening to date or anticipated.

8 We'll keep the record open -- well, I
9 think additionally then what we would have is what was
10 -- you had brought up in evidence a letter that was
11 indicated that there might be some shared
12 responsibility or responsibility for water flow and
13 drainage.

14 MR. HORSEY: That was submitted.

15 CHAIRPERSON GRIFFIS: Is it and it's --
16 it's detailed what -- what that level of mitigation
17 would be?

18 MR. HORSEY: No, it doesn't, but we
19 actually did -- Mr. Stettinius and I did meet with a
20 civil engineer prior to making that commitment to
21 figure out how that could be done.

22 CHAIRPERSON GRIFFIS: Very well. I will
23 keep the record open in -- in -- in response to what
24 Mr. Etherly is asking on one side. To also have the
25 record open for you to submit what was anticipated in

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1 -- in that --

2 MR. HORSEY: Right.

3 CHAIRPERSON GRIFFIS: -- in that agreement
4 even though --

5 MR. HORSEY: But, that is no longer.

6 CHAIRPERSON GRIFFIS: -- we understand
7 that it may not be finalized.

8 MR. HORSEY: Right and -- and that -- that
9 is no longer on the table as it were.

10 CHAIRPERSON GRIFFIS: Right. Right.

11 MR. HORSEY: Due -- due to their --

12 CHAIRPERSON GRIFFIS: Right.

13 MR. HORSEY: -- withdrawal.

14 CHAIRPERSON GRIFFIS: Okay. And you can
15 clarify that in your submission if you'd like to do
16 that.

17 MR. HORSEY: Right.

18 CHAIRPERSON GRIFFIS: Okay. Other than
19 that then there's a request from Ms. Giordano for
20 rebuttal to the closing remarks of which we'll need
21 then in by I'd say a week and then responses to that.
22 I don't think we're looking for draft conclusions on
23 this one.

24 Anything else?

25 MR. HORSEY: So, what -- could you clarify

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1 the date for additional --

2 CHAIRPERSON GRIFFIS: Absolutely. Any
3 other information?

4 VICE CHAIRPERSON MILLER: Well, I'm not --
5 I'm not asking for this, but I -- I -- I would welcome
6 if the parties have anything more to say about the
7 legislative history and the intent of the special
8 exception regulation, but that -- that could be
9 addressed if there's anything more to say.

10 CHAIRPERSON GRIFFIS: You're asking the
11 legal counsel if there's anything more to say?
12 Excellent. Excellent.

13 Okay. Why don't we have that all in at
14 the same time then under one submission for the
15 parties in opposition. Ms. Giordano, is there any
16 difficulty in having that done within a week, by
17 Friday next at 3:00? No difficulty there?

18 MS. GIORDANO: A week from this Friday?

19 CHAIRPERSON GRIFFIS: Right. A week from
20 this Friday. I think that gives us ample amount of
21 time. That puts us on the -- does it? Yes, it does.
22 That's -- what's the date, Ms. Bailey?

23 MS. BAILEY: The 23rd of September, Mr.
24 Chairman.

25 CHAIRPERSON GRIFFIS: So, that would be

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1 the 23rd which gives ample time for a week response to
2 that information that's submitted and also to put in
3 your additional information.

4 Obviously, all of this is going to be
5 served. You're all very familiar with that and then
6 we would hear this as a special public meeting at 9:30
7 on the 11th of October.

8 I'll reiterate all these dates or Ms.
9 Bailey actually will walk this down.

10 But, let me give some direction. I note
11 Ms. Miller and she's well stated in asking for
12 legislative history on Section 223 and some Board
13 Members are very well aware of it. I don't think that
14 this case necessarily, I haven't been persuaded, would
15 rise and fall based on the intent of Section 223.

16 I think we've gone through enough special
17 exceptions to understand why it was done. In fact, it
18 was as Mr. Gross actually mentioned somewhat of an
19 impetus of this Board in hearing so many variances of
20 things that did not seem to rise to that level.

21 Any additional information in background,
22 I think is appropriate, but I guess that's my direct
23 direction. Is that is -- let's tie it -- tie it
24 specifically to how it's going impact and inform the
25 -- the deliberation on this case.

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1 Okay. Anything else?

2 VICE CHAIRPERSON MILLER: I just want to
3 say I'm not -- I wasn't exactly asking for it. I --
4 I think it's just an issue that was raised and it --
5 it could be addressed if they wanted to, if they had
6 more to say.

7 CHAIRPERSON GRIFFIS: Right. But, the
8 record's open it or it isn't. So, there it is. It's
9 open. Obviously, you can avail yourselves if -- if
10 needed.

11 Okay. Ms. Bailey, if you wouldn't mind.

12 MS. BAILEY: The submissions are to come
13 in by September 23rd, Mr. Chairman. That's the day
14 that I have and then the responses that would be the
15 following Friday which would be the 30th of September.
16 Is that appropriate? And --

17 CHAIRPERSON GRIFFIS: Good. What day is
18 that, Ms. Bailey?

19 MS. BAILEY: The -- the response is
20 September 30th.

21 CHAIRPERSON GRIFFIS: The day of the week?

22 MS. BAILEY: A week from the 23rd.

23 CHAIRPERSON GRIFFIS: Okay. Okay.

24 MS. BAILEY: And then the decision will be
25 -- is scheduled for October the 11th at Board's

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1 morning session which is the public meeting.

2 CHAIRPERSON GRIFFIS: Excellent.
3 Everybody clear. Yes.

4 MR. HORSEY: I'm not 100 percent clear.
5 So, by the 23rd, the opposition has to file their
6 additional information and then by the 30th, I file
7 mine. Is that correct?

8 CHAIRPERSON GRIFFIS: That's correct.

9 MR. HORSEY: Thank you.

10 CHAIRPERSON GRIFFIS: Good. Anything else
11 procedural? Nothing else. Very well. Thank you all
12 very much.

13 MR. HORSEY: Thank you, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Appreciate your
15 stamina and let us move on to the next case in the
16 afternoon.

17 Let me also just mention while -- right
18 before we get in. We do have additional photographs,
19 Mr. Horsey, that you showed that weren't in the
20 record. So, you're going to make copies of that and
21 also submit those. Is that correct?

22 MR. HORSEY: I have those here.

23 CHAIRPERSON GRIFFIS: Okay. So, you'll
24 leave those today and they'll go into the record.
25 Excellent.

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1 Okay. Let's move ahead then.

2 MS. BAILEY: Application number 17349 of
3 Michael Taylor and it's pursuant to 11 DCMR 3104.1 for
4 a special exception to allow a rare addition to an
5 existing single-family detached dwelling under Section
6 223 not meeting the lot occupancy requirements at
7 Section 403, side yard requirement Section 405, non-
8 conforming structural provisions Subsection 2001.3.

9 The property is located at 6919 6th
10 Street, N.W. It's also known as square 3191, lots 19
11 and 811 and the property is zoned R-B.

12 Mr. Taylor.

13 MR. TAYLOR: Yes, ma'am.

14 MS. BAILEY: Would you please have a seat
15 at the table.

16 CHAIRPERSON GRIFFIS: Very well. In our
17 past calling of this case, we had established the
18 party in opposition. Ms. Ferster is representing
19 Friends and Neighbors of Square 3191. Is that what --

20 MS. FERSTER: That's correct.

21 CHAIRPERSON GRIFFIS: Okay and you've also
22 brought a motion to dismiss and there is an opposition
23 to the motion to dismiss.

24 Very well. We're going to give -- as
25 there is -- I don't know why.

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1 Give you an opportunity to quickly address
2 the motion.

3 MS. FERSTER: Okay. Thank you. Just to
4 give you a little bit of background, this matter did
5 come up on July 12th. The applicant requested to
6 postpone the hearing based on the absence of a
7 topographical site survey that the Office of Planning
8 had requested.

9 The applicant did promise to get that site
10 survey in within a week and the matter was postponed
11 over the objections of Friends and Neighbors of Square
12 3191.

13 We filed our motion on Friday at -- in the
14 morning. I have the stamped copy.

15 We waited until two weeks before the
16 hearing because we assumed -- we -- we wanted to make
17 sure that the material -- even though we had expected
18 it to come in July, it didn't come in in the two weeks
19 prior to this -- this scheduled date. It did not come
20 in. We waited even an additional week and finally, on
21 Friday, September 9th since we did not have this
22 material that had been deemed important enough to
23 postpone the hearing last time around, we filed a
24 motion to dismiss based on the absence of this -- this
25 material.

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1 On Monday, the applicant did file an
2 opposition along with a typographic -- topographical
3 site plan and a series of selected photographs and
4 they're asking for a waiver of the rules in order to
5 allow this material to be submitted now.

6 We -- we understand that the Office of
7 Planning, however, still in the same position that it
8 was back in July as -- of not being able to provide a
9 report on this addition because of the absence of this
10 information in a timely fashion.

11 We feel that the applicant has been given
12 enough time already at a great inconvenience and -- to
13 the neighbors who had all assembled on July 12th and
14 were ready to present their case in opposition. A
15 postponement was granted based on the promise that
16 this material would be given -- provided in a week and
17 yet, you know, two months later, we don't get the
18 material until the day before the hearing. So, we
19 don't feel that the opposition states any good cause
20 for the failure to provide this information within two
21 weeks of the scheduled hearing.

22 This information obviously is a very
23 important part of the applicant's prima facie case
24 because the rules explicitly require graphical
25 representations of the addition and it just isn't in

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1 the record without a waiver of the rules and it wasn't
2 in the record until yesterday.

3 The other point I wanted to make also is
4 that this is -- this addition is in a somewhat
5 different position than an un-built addition because
6 it has been framed and it does exist. So, it is
7 possible to actually view what the -- the visibility
8 of this addition from the adjacent property --
9 properties and to have a good picture of the impacts
10 on the adjacent properties in terms of light and air
11 and privacy as well as the impacts from the street.

12 And based on -- and I'm going to read from
13 the report of the Office of Planning. The Office of
14 Planning did go and visit the property I believe back
15 in July and clearly said "The proposed addition towers
16 over the rear and side yards of the adjacent
17 properties and is viewed as three stories."

18 CHAIRPERSON GRIFFIS: Okay. We're getting
19 beyond the motion. Aren't we?

20 MS. FERSTER: Well, I mean my --

21 CHAIRPERSON GRIFFIS: Let me clarify the
22 question.

23 MS. FERSTER: -- point is I don't think
24 you need to take any evidence in this case. This --
25 that even if you waive your rules, which we don't

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1 think you should do in order to accept the applicant's
2 late material, I don't think they have made a case for
3 demonstrating that their addition is of a size, scale
4 and character that does not impair the privacy, light
5 and air or --

6 CHAIRPERSON GRIFFIS: But, isn't that the
7 whole point of a public hearing? How could we come in
8 and preempt and -- and deny an application saying we
9 clearly see it's not going to be successful when we
10 set forth a public hearing in order to continue with
11 the evidentiary hearing?

12 MS. FERSTER: Well, our position is they
13 had plenty of time to make this case, to provide the
14 information that would have made this case before --

15 CHAIRPERSON GRIFFIS: But, now's the time
16 to make the case.

17 MS. FERSTER: -- and they didn't do it.
18 They had --

19 CHAIRPERSON GRIFFIS: But, they didn't
20 submit the -- they didn't submit the requested
21 information, but they haven't begun to make their
22 case. Have they?

23 MS. FERSTER: Well, your rules do require
24 that this material be submitted two weeks before the
25 hearing and it is an essential element of their case.

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1 CHAIRPERSON GRIFFIS: Which regulation?

2 MS. FERSTER: We -- so -- excuse me?

3 CHAIRPERSON GRIFFIS: Which regulation are
4 you citing for the two weeks?

5 MS. FERSTER: Regulation 223 requires the
6 applicant to present graphical representations as part
7 of their -- their case and --

8 CHAIRPERSON GRIFFIS: Okay.

9 MS. FERSTER: -- and your other -- your
10 procedural -- rules of procedure require that material
11 to be submitted two weeks prior to a hearing.

12 CHAIRPERSON GRIFFIS: The prehearing
13 submission would be two weeks?

14 MS. FERSTER: That's correct. So, our
15 position is that the applicant has had ample
16 opportunities to submit this material.

17 CHAIRPERSON GRIFFIS: Okay.

18 MS. FERSTER: And they didn't do so and
19 now they -- they have submitted some material the day
20 before the hearing and -- and at this point, they --
21 you know, it's too late. They -- they had their
22 opportunity. They have not shown any good cause for
23 -- for -- for this late submission. So, we think the
24 application should be dismissed.

25 The Friends and Neighbors who are all

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1 coming down to this hearing for a second time have
2 been -- you know, obviously, this is their second time
3 all coming down here to come to a hearing on an issue
4 when they have not been given the material that
5 apparently the applicant intends to rely on until the
6 day before the hearing.

7 And we don't have the Office of Planning
8 report either. I mean I don't.

9 CHAIRPERSON GRIFFIS: Right. So, isn't it
10 in some sense that the effect of this -- the -- the --
11 the timing of this submission, doesn't that change
12 your motion for another motion to continue this so you
13 have ample time to review this and address it and
14 allow Office of Planning to do the same?

15 MS. FERSTER: No, because my clients again
16 are opposed to any continuance because again, they're
17 -- they're dealing with a -- a framed existing
18 addition in their backyards. It's an eyesore.

19 CHAIRPERSON GRIFFIS: Okay.

20 MS. FERSTER: And they want this matter
21 resolved.

22 CHAIRPERSON GRIFFIS: Okay. And -- and --
23 and --

24 MS. FERSTER: And preferably summarily --

25 CHAIRPERSON GRIFFIS: -- and you've also

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1 made the statement that -- to the effect that you
2 don't think that this would be persuasive anyway even
3 if it was utilized and we --

4 MS. FERSTER: We -- we don't. We've
5 looked at their -- reviewed the photographs that have
6 been submitted with the -- the topographical site
7 analysis. First of all, the topographical site
8 analysis doesn't even show the topography of the
9 properties on Cedar Street. So, already, we've got
10 several impacted properties that there's no
11 topographical information on in the site analysis. It
12 just shows some of the properties on 5th Street and we
13 have alleged in our request for party status very
14 specific views of properties on Cedar Street, on
15 Butternut Street and on --

16 CHAIRPERSON GRIFFIS: So, you don't think
17 there's a lot of value even at looking at this
18 submitted topographic survey?

19 MS. FERSTER: So, we don't think that this
20 topographical survey is adequate. No, we don't think
21 it -- it satisfies their application.

22 CHAIRPERSON GRIFFIS: Okay. But, doesn't
23 that go to the opposition's motion to dismiss.
24 Doesn't it -- they also agree with you and say this
25 isn't critical to their case?

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1 MS. FERSTER: I'm -- I'm not sure what --
2 what -- whether it's critical or not, but it
3 certainly, to the extent that the Office of Planning
4 felt that it was necessary, it's still adequate and it
5 was the basis for a continuing it before.

6 CHAIRPERSON GRIFFIS: Okay.

7 MS. FERSTER: Also, the photographs that
8 they've submitted are also we don't feel an adequate
9 graphical representation to satisfy their obligations
10 under the rules.

11 CHAIRPERSON GRIFFIS: Okay. But, clearly,
12 that would be something that we'd have to decide and
13 we'd have to hear both sides. It's certainly not
14 taken up in a motion to dismiss that you feel that
15 it's inadequate representation.

16 Let's take other questions. Ms. Miller.

17 VICE CHAIRPERSON MILLER: Well, I was out
18 of the room, I'm sorry, for the beginning of your
19 presentation, but I've read your motion to dismiss and
20 I -- I've heard what you've just said now, but I --
21 I'm not clear exactly on your position. I understand
22 you're seeking dismissal. Now, if -- because of
23 certain things such as the study wasn't submitted
24 within 14 days of the hearing, if -- if the -- if your
25 motion is denied, is your position that you're ready

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1 to go forward today or do you need more time in that
2 the -- the -- the submissions weren't 14 -- submitted
3 within 14 days of the hearing?

4 MS. FERSTER: If you deny our motion and
5 waive the rules in order to allow this material to
6 come in, we are ready to do forward with our
7 opposition case today. Yes.

8 VICE CHAIRPERSON MILLER: Okay. Thank
9 you.

10 CHAIRPERSON GRIFFIS: Anything else?

11 MR. FARMER: Mr. Chairman, Members of the
12 Board, I'm -- I'm John Farmer in appearance for Mr.
13 Taylor in this particular matter. I'm the one who
14 filed the opposition to the motion to dismiss.

15 While I apologize for the lateness of the
16 information, the information was not received until
17 last Friday, the 9th and as -- as we said, Mr. Nunley
18 previously had -- had ordered that information. He
19 indicated to the Board that it would -- it would be
20 occurring, but again, the -- the engineer did have
21 some difficulty apparently, first of all, entering all
22 the properties on -- on the square. Second of all,
23 being able to produce the information in a timely
24 basis.

25 As the Chairman has noted, we don't know

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1 that this is or we don't think that this is critical
2 to the decision of -- of the special exception case in
3 this particular matter. The situation has been well
4 known. The rules and regulations under Section 223
5 don't specifically require topographical information.
6 Just graphical information. We have plans in the
7 records. We have photos -- we have photographs in the
8 -- in the record which we think adequately depict the
9 site and -- and what has actually been built.

10 This case is in a somewhat different
11 posture because while my understanding is at the last
12 hearing the Chair ruled that this would be treated as
13 -- as a -- as a new application, the structure does
14 stand and it does stand in a -- in a particular form
15 and in a particular location.

16 Given that, we don't feel that this
17 prejudices the opposition -- the opposition's case in
18 anyway.

19 CHAIRPERSON GRIFFIS: Very well.
20 Clarifications? Questions? Is the Board ready to
21 move on the -- the motion to dismiss?

22 VICE CHAIRPERSON MILLER: I just want to
23 raise a question. I thought that the Office of
24 Planning had stated that they needed this information.

25 CHAIRPERSON GRIFFIS: They did indeed and

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1 that's one of the main reasons why there's a
2 postponement. Even with the party in opposition
3 opposing the continuance, they were ready to go
4 forward last. We did decide that it would be
5 advantageous to have all the information in.

6 VICE CHAIRPERSON MILLER: Do we have a
7 representative from the Office of Planning here? Oh,
8 hello. Everybody's in a different place here.

9 I guess if -- if the -- my question is to
10 Ms. Roberts. As -- was this provided to you in time
11 for you to be able to make a recommendation today and
12 -- and have it, you know, and have us go forward
13 today?

14 MS. BROWN-ROBERTS: I received the package
15 yesterday evening at 5:00. So, I was not able to --
16 to do a proper review. I don't think I was in the --
17 I was able to -- to look at what was submitted and to
18 see if what I had requested was also submitted and --
19 and I don't think that was done and so, I was not
20 prepared to -- to -- I'm not prepared to go ahead to
21 make a recommendation today.

22 VICE CHAIRPERSON MILLER: And I guess my
23 follow-up question would be if we did go forward today
24 is this something that you feel that you comfortably
25 could address in a supplemental report?

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1 MS. BROWN-ROBERTS: From just taking a
2 preliminary look at what was given to me, I think that
3 I would want to -- I still have some questions that I
4 think wasn't addressed. So, yes, it could be -- it
5 could be addressed as a preliminary report. Yes.

6 VICE CHAIRPERSON MILLER: Okay. Mr.
7 Chairman, we have before us a motion to dismiss this
8 case and based on the testimony and arguments we've
9 heard today, I would move to deny the motion to
10 dismiss.

11 CHAIRPERSON GRIFFIS: Second.

12 VICE CHAIRPERSON MILLER: I don't think
13 that the -- speaking to the motion, I don't think that
14 the arguments that were articulated today rise to the
15 level of -- of grounds for dismissal. They seem to be
16 based on information that was provided late, but the
17 parties have indicated that they can go forward
18 regardless. So, I just don't see grounds for a
19 dismissal.

20 CHAIRPERSON GRIFFIS: Excellent. I agree
21 and just being brief to the motion, I do think that to
22 be so severe as to approve a motion to dismiss based
23 on the lack of information or the projected un-
24 persuasiveness of a case prior to it actually being
25 heard is not the appropriate procedure for this Board

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1 to take.

2 So, let me ask if there's any other
3 deliberation, comments on the motion before us?

4 We have a motion. It's been seconded.
5 The motion is to deny the motion to dismiss. I would
6 ask for all in favor signify by saying aye.

7 (Ayes.)

8 CHAIRPERSON GRIFFIS: And opposed?
9 Abstaining? Very well. We'll record that vote.

10 MS. BAILEY: The vote is recorded as 4-0-1
11 not to -- to deny the motion to deny the motion to
12 dismiss the application. Mr. -- Ms. Miller made the
13 motion. Mr. Griffis second. Mr. Mann and Mr.
14 Etherly's in agreement and there's not a Zoning
15 Commission Member present.

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

18 In order to proceed and I think we should
19 utilize a little bit of the time that we have tonight
20 or I should say the little time we have tonight, I
21 want to move right ahead and have the case
22 presentation made. I'm going to get to the point of
23 full presentation of the case to cross examination.

24 Then I'd like to assess how many people
25 are here present today that were here to give persons

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1 -- to -- to provide testimony and I think we can get
2 to that level.

3 That will take a little bit out of order
4 and then we can assess where we are in terms of time
5 and may set another date. That would mean that
6 everyone that was here to provide testimony might not
7 have to come back again. Let's get through as much as
8 possible this evening.

9 I think we would obviously keep the record
10 open for a supplemental report or a report from the
11 Office of Planning and so, I'm not sure that we'd
12 actually even be able to finish tonight. I know we
13 won't unless we just disregard, in fact, the
14 submission of the Office of Planning's report.

15 That being said, let's move ahead to case
16 presentation. Yes.

17 MS. FERSTER: If -- I -- I probably was
18 not in the room when you said this, but how late did
19 you say that you were planning on going tonight?

20 CHAIRPERSON GRIFFIS: Good and I didn't
21 give a time on it actually, but just for
22 clarification, well, do you know approximately how
23 long you need for your case presentation?

24 MR. FARMER: I would estimate about half
25 an hour to 45 minutes.

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1 CHAIRPERSON GRIFFIS: Indeed. Okay. So,
2 we have that with the Board questions and cross
3 examination.

4 Then I would -- if people are amenable
5 that want to give testimony tonight, we could go to
6 persons present to give testimony and that would be
7 three minutes each.

8 So, I think we're looking at another hour,
9 hour 15, hour and 30 minutes.

10 MR. FARMER: Mr. Chairman.

11 CHAIRPERSON GRIFFIS: Yes.

12 MR. FARMER: We would not object to a
13 delay if that -- if that would convenience the other
14 -- the other side. Otherwise, we're prepared to go
15 forward.

16 CHAIRPERSON GRIFFIS: I'm sorry. I didn't
17 catch --

18 MR. FARMER: I said we would not object to
19 a delay if you want to hear the whole of the case at
20 another time. We -- we would not object. However, we
21 are prepared to go forward at this -- at this time if
22 it -- if it is more convenient for the opposition.

23 CHAIRPERSON GRIFFIS: If that's what
24 you're saying, let -- let's take 30 seconds and assess
25 that. I mean we've been here since 8:00 this morning.

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1 MR. FARMER: I -- I understand.

2 CHAIRPERSON GRIFFIS: And I'm sweating
3 like I've never done before. So --

4 MR. FARMER: I'd like -- I'd like to take
5 off my coat as well.

6 CHAIRPERSON GRIFFIS: -- I'd be fine to go
7 and take a shower, but I'm -- I think the Board is
8 prepared to stay to utilize, you know, as little time
9 as we have this evening. Yes.

10 MS. FERSTER: Well, of course, our
11 position is we'd like the whole case to be heard
12 tonight. If that's not possible, then I think we can
13 discuss another date that would be more convenient,
14 but our preference would be to hear the whole case and
15 I know it's not air conditioned in here. So --

16 CHAIRPERSON GRIFFIS: Right.

17 MS. FERSTER: -- I think that's pretty
18 unlikely that that's going to happen.

19 CHAIRPERSON GRIFFIS: Well, and the
20 option, I -- I don't see anyway we'd hear it all
21 tonight. Just unless we have the -- the record left
22 open. But, with the opportunity that we have, what is
23 your preference? Is it to hear portions of it
24 tonight? To utilize another hour and a half or so or
25 to set a whole new date?

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1 MS. FERSTER: Let me -- let -- let me
2 confer with my clients and I guess one -- one question
3 is setting a new date. What -- what are -- what are
4 the new dates?

5 CHAIRPERSON GRIFFIS: That's a good
6 question. That's what I'm going to figure out while
7 you're talking.

8 Looks like the -- the clearest time where
9 we wouldn't have hopefully another situation like
10 today would be the first case in the afternoon on the
11 24th of October. Twenty-fifth rather. I'm sorry.

12 MS. FERSTER: Is that okay? Okay. We --
13 we have a couple of comments on that.

14 One is that I think they -- they are
15 vetting the dates and I think that -- that date is
16 looking okay, but the -- one issue that we have wanted
17 to raise is that the Office of Planning has said that
18 they don't -- still don't have the information that
19 they want to have and we don't want to be in a
20 position -- this same position again on October 24th
21 with some additional information coming in and -- and
22 no opportunity to respond to it.

23 So, we request that the record be closed
24 and that there be no further submissions so we're not
25 in this situation of information trickling in at the

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1 last minute and not -- and postponement requests based
2 on that, you know, that -- that lack of information.

3 CHAIRPERSON GRIFFIS: But, that's two
4 points and you're saying that Office of Planning still
5 doesn't have information they need, but you want us to
6 close the record.

7 MS. FERSTER: It -- it -- well, we'd like
8 to have the Office of Planning's report.

9 CHAIRPERSON GRIFFIS: Right. That will be
10 hard to do if they can't get the information though.

11 Do you need additional information to do
12 your report?

13 MS. BROWN-ROBERTS: Yes, but I -- I think
14 that I can meet with the applicant sometime maybe this
15 week.

16 CHAIRPERSON GRIFFIS: Okay.

17 MS. BROWN-ROBERTS: And so to explain to
18 them what is it I need and hopefully, they'll have a
19 quick turnaround.

20 CHAIRPERSON GRIFFIS: Okay. Yes.

21 MR. FARMER: We have no objection to that.
22 I would raise the point if what we need is a complete
23 -- what is going to be requested is a complete
24 topographical survey of that square, we'll need the
25 cooperation of the homeowners in that square.

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1 My understanding is that some of the
2 owners did deny the surveyor an opportunity.

3 CHAIRPERSON GRIFFIS: Is that your
4 anticipation to ask for a topographic survey of the
5 square? Of the entire square?

6 MS. BROWN-ROBERTS: Maybe not the entire
7 square, but there are two adjacent properties. I --
8 I think from my preliminary analysis that we need to
9 get some information to show the relationship.

10 CHAIRPERSON GRIFFIS: Couldn't Office of
11 Planning generate that? Let me think of a case.

12 MS. BROWN-ROBERTS: There -- there is a
13 house on this side that we have some concern about and
14 right here. I think those are the two that are most
15 impacted.

16 CHAIRPERSON GRIFFIS: Okay. I mean you're
17 looking for -- just to see how the -- the grade
18 changes --

19 MS. BROWN-ROBERTS: Yes.

20 CHAIRPERSON GRIFFIS: -- and the
21 relationship.

22 MS. BROWN-ROBERTS: Yes.

23 CHAIRPERSON GRIFFIS: I mean you don't
24 need actually a -- an alta or a civil survey.

25 MS. BROWN-ROBERTS: Oh, no. No. No.

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1 CHAIRPERSON GRIFFIS: So -- and so, I'm
2 serious in that we have the Arcato and the GIS that
3 actually Office of Planning generates maps of. Isn't
4 -- is -- is that the level of detail you're looking at
5 in terms of your --

6 MS. BROWN-ROBERTS: I -- I can take a look
7 at -- I think I would like to -- to take a look at
8 that and then let the applicant know. I think that is
9 something that we can work out --

10 CHAIRPERSON GRIFFIS: Okay.

11 MS. BROWN-ROBERTS: -- amongst ourselves.

12 CHAIRPERSON GRIFFIS: Okay. All right.

13 MS. BROWN-ROBERTS: Yes.

14 CHAIRPERSON GRIFFIS: I mean as far as my
15 familiarity is that might well be --

16 MS. BROWN-ROBERTS: May be enough.

17 CHAIRPERSON GRIFFIS: -- the -- on the
18 past Office of Planning's report we had.

19 MS. BROWN-ROBERTS: Yes.

20 CHAIRPERSON GRIFFIS: An excellent
21 relationship map.

22 MS. BROWN-ROBERTS: Yes.

23 CHAIRPERSON GRIFFIS: It shows the
24 building footprints and the topography.

25 MS. BROWN-ROBERTS: Yes, we can -- we can

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1 try that.

2 CHAIRPERSON GRIFFIS: Okay.

3 MS. BROWN-ROBERTS: You know, willing to
4 -- to -- to do that.

5 CHAIRPERSON GRIFFIS: Okay. All right.
6 So, I think that's a -- a viable solution. Anything
7 else then that you would anticipate needing or
8 requiring or is that just stuff that will come up in
9 discussion?

10 MS. BROWN-ROBERTS: It -- it's -- I think
11 it's just stuff that will come up --

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. BROWN-ROBERTS: -- in -- in talking.

14 CHAIRPERSON GRIFFIS: So, in that case,
15 Ms. Ferster, I don't see any other -- anticipation of
16 any other information. Certainly, the Board's not
17 requesting.

18 Do you have any anticipation of additional
19 submissions into the record?

20 MR. FARMER: Only the information as -- as
21 required by the Office of Planning.

22 CHAIRPERSON GRIFFIS: Okay. And so, what
23 we're going to do is we're going to treat that as --
24 as the agency's communication with you. They'll be
25 forthcoming with there report of anything and they can

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1 bring into the record at that time if there's
2 additional information that isn't part of the general
3 knowledge, but I don't anticipate at this point there
4 would be substantial additional information.

5 And then we'd look for the Office of
6 Planning's report to be put in the record as soon as
7 it's generated. As much ahead of time of the 25th as
8 possible would be appreciated.

9 MS. BROWN-ROBERTS: Yes, will be. Yes.

10 CHAIRPERSON GRIFFIS: Certainly, like it
11 a week before so the Board can get it and actually
12 read it.

13 MS. BROWN-ROBERTS: Right. Yes.

14 CHAIRPERSON GRIFFIS: Which would -- we'll
15 get to that date. Okay.

16 Anything else then?

17 MS. FERSTER: Yes, I would state for the
18 record that my clients denied nobody access to their
19 property when the surveyor came on the property on
20 August 25th which was the date the surveyor was there.
21 I might add, you know, quite recently. So, this --
22 that's not an issue here. Nobody have been denying
23 the surveyors access to their property.

24 Perhaps somebody was not home when the
25 surveyor knocked on it -- one person's door, but

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1 nobody -- all my clients who were home at the time
2 allowed the surveyors unto their property.

3 CHAIRPERSON GRIFFIS: Okay. Anything
4 else?

5
6 MS. BAILEY: Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Yes.

8 MS. BAILEY: October 25th. When is this
9 case schedule for the morning or afternoon session?

10 CHAIRPERSON GRIFFIS: I was looking at the
11 first case in the afternoon. Well, I don't think so.
12 Okay. Sorry. Thought we had a -- a closer date, but
13 it doesn't look like that's going to work. Okay.

14 Procedurally, everyone understanding what
15 we're going to do then?

16 What's going to happen with the Office of
17 Planning? The Office of Planning's going to get their
18 report in a week before if not sooner into the record.
19 That will be -- is there -- I would request that --
20 that that's just served on Ms. Ferster as well as the
21 applicant. We can provide copies to everyone so that
22 we all have them timely. When the Board gets it, you
23 will also get a copy of that.

24 That doesn't mean don't come checking,
25 call. Of course, Ms. Ferster's very and Mr. Nunley's

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1 very aware of how to make sure and see what's in the
2 record and what isn't, but at this point, we have not
3 let the record open for any other additional
4 information and we'll look for the presentation of the
5 case and the case in opposition on the 25th then.

6 What other questions can I answer,
7 procedural submissions? I'm sorry. Yes, and then --
8 that -- that is exactly what I meant. Forgot to say
9 it. We'd certainly have that done.

10 Okay. Anything else? Everyone all set
11 then. Understanding. Perfect.

12 Well, thank you all very much. I do
13 apologize for -- for taking up so much time and we
14 look forward to going ahead with this on the 25th.

15 I don't see any reason why we wouldn't.
16 Obviously, I can't predict everything that can happen,
17 but it seems like we will absolutely be ready to call
18 the case and move directly into it.

19 There it is. Thank you all very much.

20 Ms. Bailey, is there any other
21 information?

22 MS. BAILEY: No, Mr. Chairman.

23 CHAIRPERSON GRIFFIS: Okay. In which
24 case, I can adjourn the afternoon hearing and hold for
25 a moment after an executive session that we may, in

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1 fact, recall a public meeting for the Board for
2 perhaps a brief decision. Okay.

3 (Whereupon, the meeting and hearing was
4 concluded at 6:13 p.m.)
5

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