

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

FEBRUARY 21, 2018

+ + + + +

The Regular Public Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- FREDERICK L. HILL, Chairperson
- LESYLLEE M. WHITE, Board Member
- CARLTON HART, Board Member (NCPC)
- LORNA JOHN, Board Member

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY HOOD, Chair of the Zoning Commission
- PETER MAY, Zoning Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ANNE FOTHERGILL
CRYSTAL MYERS
MAXINE BROWN-ROBERTS
MATT JESICK

The transcript constitutes the minutes from
the Public Meeting held on February 21, 2018.

C-O-N-T-E-N-T-S

Case No. 19581, Application of Latin American
Montessori Bilingual Charter School 4

Case No. 19415A, Application of Verizon Wireless . . . 27

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

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9:50 a.m.

MR. MOY: Thank you, Mr. Chairman. That would be case application number 19581 of the Latin American Montessori Bilingual Charter School. Pursuant to 11 DCMR Title X, Chapter 9 for Special Exception under subtitle U, Section 205.1(a), this would establish a public charter school in the R-16 Zone at 5000 14th Street, NW, quarter, Square 2711, Lot 802. The board last heard this application at its public hearing on February 14 and continued to today.

CHAIR HILL: Okay, great. Thank you, Mr. Moy. Is the board ready to deliberate? Okay. I can go ahead and start.

I guess it was three months ago when we first started hearing this, actually. I didn't realize it when I was going back and taking a look again at the record. I went back and took a look at the record again and all the testimony, including all of the different conditions that were proposed.

I thought that what was kind of interesting as I was looking back at the record was that I'm kind of, in terms of us deliberating, I think that we have a pretty fair and interesting system in terms of how we're set up wherein there was a party in opposition and the party in opposition were people that were directly affected by the project. This does

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1 happen often with us, where those people that are directly
2 affected by the project can come together and form a
3 committee and then have an opportunity to influence what's
4 going to happen here.

5 And so I say that because I think that is the way
6 that I would want it, in that you're the one living right
7 next door to something and so you can kind of come together
8 and influence the system. I think that in this case, the
9 party's task in opposition which was Cindy Law, did have that
10 opportunity.

11 I say that also because through the testimony that
12 we heard there was, you know, the testimony of the Office of
13 Planning in terms of what they thought of the project and the
14 criteria that they went through in order to get to their
15 decision which was to, they thought that the project met the
16 standards and should be approved.

17 And then the ANC 4C, they also went through the
18 project and agreed that it should also be approved. I think
19 the vote was six to zero to one. DDOT didn't have any
20 concerns in terms of what was going on, which in a lot of
21 what was being brought up was adverse impact or traffic
22 concerns and the amount of activity that this would bring on
23 to the neighborhood.

24 There were, again, I guess, there were 65 letters
25 in support, there was a petition in support, there were 18

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1 or so letters in opposition, and I say all that because to
2 me it seems like the process works and that a body who, in
3 terms of sheer numbers, they're not the same as, I mean it's
4 not a popularity contest, but they're not the same numbers
5 as all the people that are in the ANC and the ANC is an
6 elected body with commissioners who go through elections,
7 they're there to represent the community, and they thought
8 that this project met the standards and should be approved.

9 Then, and I might be repeating myself somewhat,
10 that the organization that lived in the immediate
11 neighborhood, they wanted to, they were opposed and wanted
12 to have their say as to what was going to happen with the
13 project. And from that, they worked with the school and came
14 up with a list of conditions. And those conditions were
15 really what I was kind of looking for in terms of whether I
16 thought that the conditions would help allay any concerns
17 that that organization Cindy Law might have with the project
18 moving forward.

19 I thought that the conditions were actually pretty
20 strong. I thought there were a lot of conditions that the
21 applicant was going to have to go through to getting to the
22 number that it needed to have the project move forward in
23 terms of the 600 students.

24 What I kept going back and forth again was just
25 kind of like the adverse impact to the community, even though

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1 the ANC had approved it, as did the Office of Planning,
2 meaning they thought that the adverse impact -- that the
3 standards overall had been met for the project. There are a
4 couple of things I'd like to talk about a little bit more if
5 we get to them, in terms of the conditions being kind of
6 strengthened a little bit in terms of if we were to approve
7 this, that's why I'm kind of waiting until we get to see
8 where we are with everyone else.

9 But the conditions like condition number ten, when
10 the order is written up making sure that it's spelled out the
11 intent of the language which was in pages 21 and 22 of the
12 DDOT report which was in Exhibit 45, and pages 1 and 2 of the
13 applicant's submission in Exhibit 121, so it's clear to that
14 condition. I guess I'll actually speak to all of them now.

15 Then there was some discussion about the, and this
16 was after our initial hearing and then the decision-making,
17 where we were talking about extending the time frame for when
18 Cindy Law would be notified that the applicant was intending
19 to try to get a Certificate of Occupancy to go up to 600
20 students. The condition was going to be 30 days. I thought
21 that our discussion giving the party's status in opposition
22 90 days, if they did feel that there was some opposition that
23 they had to the applicant moving to 600 students, they'd have
24 their time to get better organized in order to put up any
25 opposition to that moving forward in terms of the

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1 application.

2 I guess the other item that I thought, in terms
3 of the conditions, wherein the Cindy Law was interested in
4 having a LAMB parent from their SMD, which was 4C02, rather
5 than the ANC4C I would be comfortable, again ask the, and
6 I'll go through this again with the order if we do get to
7 that point, but writing it such that they can look for a
8 parent in ANC4C02, and if they can't find one then take a
9 parent from ANC4C. I don't know if there's somebody, there
10 may or may not be a parent there.

11 And then there was just a couple of items in
12 conditions number 26 and 27 that would say, 'shall not exceed
13 the listed times' rather than the fixed times, because it
14 seemed a little unclear. But in ending my thoughts here and
15 opening it up to others, again, I thought that the way the
16 system's set up wherein the immediate community has a voice
17 and has an opportunity to express themselves, and I think did
18 a great job, and it went back and forth for months and
19 months.

20 The applicant, I think, did their best to try to
21 come up with conditions that had some teeth to it so that
22 they could move forward. And again, saying that the Office
23 of Planning had provided their analysis, and they believed
24 that the standards had been met, as well as the ANC. So I
25 believe that the conditions moving forward and that the

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1 applicant was citing that the 600 was needed for the project.
2 That was another thing that I thought about in terms of --
3 The main thing that I thought about was again, whether those
4 conditions were strong enough to allay any, stop any concern
5 from the opposition because at the end of the day, if this
6 school is there with 600 people and everyone's happy, then
7 that's all we're trying to do, or make sure that it's not
8 that they, it didn't seem that anyone was opposed to the
9 school or students or their mission, it was whether or not
10 these, the number of people there in the neighborhood was
11 going to affect the neighborhood themselves.

12 So, would anyone like to go next? Ms. White?

13 MEMBER WHITE: I can give it a shot. This was a
14 very extensive case. There were 170 submissions for this
15 case. We all pretty much have full time jobs and it was very
16 time-consuming but it's our job to make sure that we go
17 through the complete record, the testimony, and look at the
18 criteria for the special exception request that was made by
19 LAMB to establish a public charter school in the R-16 zone,
20 located at 5000 14th Street NW.

21 I'm sorry if I'm a little redundant in terms of
22 repeating some of the same things that you're saying, but
23 again, I reviewed the record as I indicated and looked at
24 OP's report, the ANC's report, Cindy Law's submissions, the
25 applicant's submissions, DDOT's submissions, submissions from

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1 all the concerned individuals that were both opposed and
2 supportive of this particular project.

3 Also, I looked at the proposed final conditions
4 on both sides that were submitted, and I think that once you
5 get into the proposed conditions, you get down to almost
6 Exhibit 163, so it's very extensive.

7 This is a special exception request for public
8 charter school use under subtitle U 205.1(a) in the R-16 zone
9 pursuant to U 202.1(m), and the co-ed location of a public
10 charter school pursuant to U 202.1(n). The applicant is
11 requesting approval now. The eventual maximum enrollment of
12 600 students with 110 staff under the arrangement that would
13 set forth a lower enrollment during the co-locating with a
14 private school called Kingsbury School during the interim
15 period.

16 The applicant under the conditions would have to
17 show compliance with the performance monitoring plan that was
18 also extensive to the satisfaction of DDOT. As part of the
19 special exception request, I looked at whether granting the
20 request will adversely affect neighboring properties in
21 accordance with the zoning regs and zoning maps.

22 Obviously when you have a bump up in enrollment,
23 there will be some impact but the issue is whether or not it
24 was to the point where it was substantial and it negatively
25 impacted that area.

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1 The PNP reports that were submitted would continue
2 until 1), a minimum of three years of reports have been
3 submitted or LAMB increases its enrollments to a max of 600
4 students, whichever is later, and 2), the two latest
5 consecutive years demonstrate that the school is in
6 compliance with the PNP plan.

7 The PNP plan for LAMB that I looked at will result
8 in a report for DDOT once a year. The conditions set forth,
9 a good neighbor policy and partnerships which include setting
10 up a liaison committee, including a nine-member committee
11 that Chairman Hill indicated where one of the conditions,
12 which I did not have a problem with at all, was that they
13 would include a parent that actually resides within ANC 4C.
14 The meetings are expected to be conducted every quarter.

15 I felt that the conditions included were
16 extensive. There were conditions that controlled things like
17 lighting, noise, design. The conditions include pre-school
18 operations and population, hours of operation which would be
19 from seven a.m. to six p.m. Monday through Friday, and the
20 maximum number of students which is really kind of the crux
21 of I think what's the most sensitive of these issues, is the
22 number of students that LAMB is asking. They're indicating
23 that number shall not exceed 600 and the staff shall not
24 exceed 110.

25 During the interim period when both LAMB and

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1 Kingsbury are in the building, the maximum number of students
2 that I looked at shall not exceed 310 and the staff shall not
3 exceed 36, I believe. After Kingsbury departs the property,
4 LAMB has to provide Cindy Law with an application and all
5 accompanying documentation at least, originally it was 30
6 days but I think the request was that it be increased to 90
7 days before LAMB applies for the certificate of occupancy to
8 expand into the remainder of the building and increase the
9 student and staff count.

10 One of the things that I looked at, I wanted to
11 make sure that everybody had some skin in the game, here LAMB
12 has to demonstrate to DDOT and report to the Zoning
13 Administrator that it's in compliance with the PNP. LAMB has
14 to demonstrate that it's in compliance with all the
15 conditions and if LAMB is not in compliance with the PNP and
16 all the conditions and they're not met, they they're not
17 going to be granted the certificate of occupancy.

18 That was one of the things I kept asking during
19 the hearing, was whether or not, you know, if they got the
20 number, the permission to get to 600, whether or not they
21 would have to meet those conditions prior to being able to
22 bump it up to 600. I found that the conditions were strict
23 and they don't allow LAMB to get that C of O if they're not
24 in compliance.

25 Finally, we have conditions in place for

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1 construction management, for renovations, and also for the
2 construction of the gym to prevent adverse impacts on the
3 community. So I know I'm being a little long-winded here but
4 I found overall, I found that the conditions that were in
5 place were strict enough and they held LAMB accountable
6 enough to make sure that they were abiding by the community's
7 needs before they were able to get that certificate of
8 occupancy in order to bump up their numbers up to 600.

9 Those are some of my thoughts. I at this point
10 would be leaning on the side of being supportive of the
11 relief that they are seeking, primarily because of the strict
12 conditions that were in place that would prevent LAMB from
13 moving forward before they could increase enrollment.

14 I did not look at the financing issue, that was
15 not an issue that, I mean I asked about it but it wasn't an
16 issue that we, as a board, I think, would be considering in
17 order to make a decision either way whether to grant the
18 relief that they're seeking.

19 CHAIR HILL: Thank you. Mr. Hart?

20 VICE CHAIR HART: Thank you, Mr. Chairman and Board
21 Member White. I'm not going to add a whole lot to what's been
22 said already. After looking through the record, reading
23 through the exhibits that were submitted to us, listening to
24 the testimony that has been provided and also understanding
25 that the applicant is looking to, may have actually proffered

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1 or they've given the conditions that have been included in
2 the record that both of the board members here have spoken
3 about, I also feel that I could support the application.

4 I understand that all of these, the way that the
5 conditions are described, if one of the conditions,
6 regardless of which one it is, is not met, then the
7 applicants would not be able to go for their C of O. They
8 have to do all of the conditions that have been set forward.

9 And the changes that the chairman described, I'm
10 actually in support of as well. More clarity for the
11 condition number ten around the PNP and those sorts of
12 things. Condition 30, the 90-day time frame, and also
13 allowing the 4C02, ANC4C02 member to be on the advisory group
14 that's being created for this. I'd be in support of
15 specifying that as well.

16 I guess I didn't want to add a whole lot because
17 I think you all have provided a lot of the testimony or the
18 discussion that I would have raised anyway, and that's it.

19 CHAIR HILL: Thank you, Mr. Hart. Chairman Hood?

20 CHAIR HOOD: I want to thank all my colleagues for
21 their comments. This case, as you know, has been very
22 exhausting. I've been thinking about it, even to as early as
23 this morning, how to proceed. I don't think this is going to
24 be a showstopper for me. At the end of all this, I'm really
25 most of all thinking about the kids that are going to be

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1 educated.

2 But I can tell you, I've been all around the barn,
3 I tried to do John Parsons' way. How can we strike a balance
4 between what we've heard from the party in opposition as well
5 as the school? I was trying to figure out, okay, what are the
6 checks and balances that we can put in place? I mentioned
7 some of this earlier.

8 Just because we haven't done this before, this is
9 what I was thinking last night, well, maybe Anthony Hood you
10 need to get off what you all have always done on the BZA and
11 look at some new ways. Because I wanted to make sure there
12 was a venue for the community to have checks and balances,
13 some checks as we progress to move towards that total.

14 Just because I haven't been around for the total,
15 to go straight to whatever the request is and we've always
16 had checks and balances, doesn't mean that the way that we
17 used to do it was always the best or right way.

18 There are new ways, a lot of things that are
19 happening now in society, and maybe these checks and balances
20 in which the conditions that are there may work, and I don't
21 want to be flipping a coin or tossing it up and just say,
22 we'll see what happens, because I've been around long enough
23 to see some of the results that have worked and some of them
24 have not worked.

25 You think about these decisions, and years from

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1 now and my colleagues, you will think about that when you're
2 riding up and down 14th Street and you will say, I had
3 something to do with this. You think about those things once
4 you've been around a while, and the impacts.

5 Getting back to the zoning issues, I think that
6 the conditions, hopefully, that have been proposed will work.
7 I know there's been a lot of give and take. For me it wasn't
8 about who sat on the committee. For me, it boiled down to if
9 this doesn't work, what is the venue, how can the community
10 come back and express their concern with DDOT and the Zoning
11 Administrator?

12 That's what it was for me. Because typically, this
13 is the forum. This is the forum right here. So now, unless
14 I'm mistaken, I just do not recall, we're now taking that
15 forum away because we believe these conditions as Board
16 Member White so eloquently put it, will take care of the
17 issue. I'm kind of in agreeance with her, but I'm just hoping
18 that those entities, DDOT and the Zoning Administrator,
19 follow through with it. We need to make sure, and I can tell
20 you, I've been trying to figure this whole thing out.

21 How do I get it back here? Or as John Parsons
22 would do, he was very creative and unfortunately I'm not that
23 creative, I just want to make sure that the onus is not put
24 on, it's not a struggle for the community to be able to
25 convince them. I have a lot of, I got a good feel from the

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1 folks from the school. I believe the, from what I hear around
2 town, they're educating well, they're going by the record,
3 I think it even shows whether they get up to 600 or not is
4 a whole other story.

5 But we also heard the concerns of the community.
6 So really, it's not a showstopper for me, I'm ready to move
7 forward with this as my colleagues have mentioned, I'm just
8 hoping that if this works, if everyone does what they are
9 supposed to do, then that way that would take away my
10 proceeding with caution from not coming back to the board.

11 I have never done that, I still have reservations
12 even what I'm saying now as far as taking this away from the
13 board and not giving the community a forum, but I believe as
14 Board Member White said, and I hate to be redundant, because
15 this is how my thinking has been since last night again,
16 thinking about this case.

17 Maybe it's time for me to move forward and
18 progress, and maybe there is other ways to do things as
19 opposed as always coming back to the board after a track
20 record. I haven't seen that done yet, so this will be at
21 least my first time experiencing how this goes, and I hope
22 this works out exactly how we are sitting here describing it.
23 Sometimes it does, and sometimes it doesn't.

24 For me though, condition number 10 and 30, what
25 it boil down in the venue, Mr. Chairman. The adverse impacts,

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1 the communities will let you know if you're not doing
2 anything right. We're making a decision here, it's almost
3 like doing something and not being able to see it.

4 It's almost like, I don't really want to say this,
5 but it's almost like playing a number, hoping your number
6 comes out. That's what it is for me, the way we're moving
7 this forward, because for me, taking away the venue for a
8 community is a showstopper. It's not a showstopper in this
9 case for me because of the conditions, but I'm very hesitant,
10 I'm still hesitant but I'm going to go ahead and move forward
11 but I would like to proceed in caution as we go through the
12 conditions.

13 That's where I'm, you might say I'm rumbled, but
14 it's been rumbled and rambling for myself individually since
15 last night, so that's where I am.

16 CHAIR HILL: Chairman Hood, I would also just kind
17 of continue to have a little bit of further discussion with
18 this wherein I didn't think that this was an easy decision
19 to come to either in terms of, you know, we look at each
20 individual case. And I haven't been here a long time, you've
21 been here a much longer time than I have, and I don't
22 necessarily think that the way that you guys have been doing
23 things is necessarily the wrong way.

24 In this case, in this individual case, this also
25 came down for me, right, this particular school, this

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1 particular applicant, this particular situation, the fact
2 that they needed, the application is for the 600. If we
3 didn't go with the 600 again, we're starting this all over
4 again, basically, I think. You're now, these conditions were
5 conditions that the applicant said were for the 600.

6 Obviously we as a board can do whatever we want to do,
7 or I shouldn't say that, we get to decide the conditions, but
8 to then in this situation start this again in terms of where,
9 you know, you were talking about the children, the school,
10 the community on the whole, seem to be in favor of this as
11 well as the Office of Planning, I guess what I'm trying to
12 get at is I'm not saying this is the new way that I'm signing
13 up for.

14 I'm saying because of these conditions, because
15 of this applicant, because of the support that they have had
16 through the overall ANC and the Office of Planning, that's
17 how I'm getting to be able to live with these, to say that
18 these conditions have enough teeth to move forward.

19 Because as you say, we drive around, we're in the
20 community, we drive places, well then something like, oh,
21 that didn't work. And you don't want to be on the side of
22 something that --- I guess, just to clarify my point to your
23 point in terms of we actually are having a discussion here,
24 is that it is this particular case why I'm able, me
25 personally, why I'm able to, and the board can also chime in

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1 if they think they want to in terms of this, that the 600 is
2 what the application is before us, and it was the comfort
3 level that the community has signed off to these conditions
4 and do I, just now, just talking about my own personal
5 struggle with this, did I think that the conditions had
6 enough teeth to get me through that as opposed to them coming
7 back here again.

8 And the way that the application was put forward
9 was that if the 600 didn't happen again, this site might not
10 happen. They might be in a whole new, I mean, that was just,
11 but the main thing for me was, and I'll end it here with
12 this, is that I'm not stating that this is the new way or
13 something different that I think I've only seen happen, that
14 has happened with me in the two and a half years, right,
15 you're up now with 20 something like that?

16 And so, you know, I'm not proposing something
17 different. I'm saying in this particular case with this
18 particular situation that's why I'm where I am with the
19 conditions. Anyone else?

20 MEMBER WHITE: I think just the short of it for me
21 is that I believe that there were enough teeth in the list
22 of conditions that were put forth that we'll still need to
23 incorporate in some form of an order, that if LAMB did not
24 play their role properly they're not going to get to the 600.
25 They're not going to get the certificate of occupancy. And

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1 for me, assuming that DDOT and the Zoning Administrator and
2 the community and these committees that are in place are
3 monitoring this process on a monthly basis as well as the
4 fact that Cindy Law will have to be given notice when they're
5 preparing to make an application for certificate of
6 occupancy.

7 For me, there were enough checks and balances in
8 place to prevent them from kind of just jerking the community
9 around and not complying with the specific conditions and
10 their obligations to the kids and the community. So for me,
11 that was sufficient to give me some comfort that this thing
12 was not going to fall apart.

13 CHAIR HOOD: Mr. Chairman, I didn't say this the
14 new way. It's new to me, because I've been on a lot of cases
15 and I've seen them come back after five years and it's
16 worked. This was the venue for us to vet out what the few
17 problems were. At one time, that's how the board got campus
18 plans in the city, because we used that back to the zoning
19 commission. The board had it once and then it went back to
20 the zoning commission.

21 To me, the venue for discovery of facts is what
22 I was trying to figure out. How do we get there? But it looks
23 like, as you all have already stated, the conditions in this
24 case may allude to this. I'm thinking we've had some really
25 knockdown, drag out issues when it comes to private schools

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1 and schools in neighborhoods. Here in recent years, they have
2 worked out. I'm just saying for me to format, and maybe I had
3 to rethink myself, just because that's how we used to do it
4 doesn't mean that's how we've always got to do it. Maybe
5 there are other ways to do it.

6 But I just keep wondering about the venue for the
7 residents. But I believe, though, with DDOT and the Zoning
8 Administrator and the residents that you do have who may be
9 opposed to this now, things may change. They may come back
10 or you may hear later on that everything's working fine, and
11 that's kind of the report that I'm hoping to get. Then that
12 means that the decisions we made here today, like I say, this
13 is not a showstopper for me.

14 After thinking, I think a move forward at the end
15 of the day. Zoning is important. Adverse impacts is
16 important. The venue for discovery of facts is important, but
17 when I put all that set aside with what's going on around
18 here recently, I'm thinking about the kids. That's why, Mr.
19 Chairman, and we'll go from there.

20 CHAIR HILL: Thank you. What's the gentleman's name
21 that you mentioned? You said somebody was really smart?

22 CHAIR HOOD: Oh, John Parsons. I would have never
23 told him that he was up here with me. He's retired and gone.
24 He's very smart.

25 CHAIR HILL: He's not gone gone, is he?

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1 CHAIR HOOD: No, no, he's retired.

2 CHAIR HILL: Okay. He must be dancing. All right,
3 then I'm going to go ahead and make a motion. What I like to
4 do though is ask again, OAG or when the report is being
5 written up, that we're approving this or I'm going to make
6 a motion to approve this, including the final set of
7 conditions that are in Exhibit 163A, except for I would like
8 to ask that condition number 10 be spelled out to include
9 again the intent of the language on pages 21 and 22 of DDOT
10 Support Exhibit 45 and pages 1 and 2 of the applicant's
11 Submission Exhibit 121, so it's clear to the teeth that are
12 in that condition.

13 Also, I'd like to change condition number 12 to
14 where the parent that is included in the committee be from
15 ANC 4C02, and if that's not possible, if they can't find
16 someone from ANC 4C02 then to have a parent from ANC4C be
17 included.

18 We'd also then like to change conditions or add
19 that conditions number 26 and 27 should say 'shall not exceed
20 the listed times,' rather than the required fixed times, and
21 then also change condition number 30 so that it goes from 30
22 days' notice to 90 days' notice so that --- Yes?

23 VICE CHAIR HART: Can I also change condition
24 number 2, which describes the loading management plan in
25 transportation demand benefit program? They just need to

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1 describe on pages 11 and 12 in Exhibit 31A(1), I think that
2 we just want to make sure that they get to more specificity
3 to it, as we did for condition number 10, which kind of adds
4 more specificity to what those conditions and what those
5 programs' plans are.

6 CHAIR HILL: Okay. So we'll ask for that to be done
7 as well. All right, so ---

8 CHAIR HOOD: Mr. Chairman?

9 CHAIR HILL: Yes.

10 CHAIR HOOD: I was looking, I know that the
11 school's supposed to be giving reports to the ANC and the,
12 I mean, not the ANC, to DDOT and the Zoning Administrator but
13 I was also wondering if we could include the ANC as well. If
14 it's in there, I just missed it.

15 CHAIR HILL: Okay. So then you're asking Chairman
16 Hood for reports that were going to be submitted to DDOT and
17 the zoning commission also be submitted to the ANC?

18 CHAIR HOOD: To DDOT and the ZA also be submitted
19 to the ANC so that way it will give the community a chance
20 to look at some of the discovery and if they have any
21 counter-intuitive information then that way they don't have
22 to go to DDOT. They'll also be served with a copy.

23 CHAIR HILL: Okay. I'll add that clarification to
24 the conditions, or ask that OAG add that clarification,
25 whoever's writing the order, I should say, on number 30, that

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1 those reports be also submitted to the ANC.

2 Okay. So all those conditions being clarified, I
3 would make a motion to approve application number 19581 as
4 captioned and read by the secretary with all of the
5 conditions and all of the adjustments that we just mentioned,
6 and ask for a second.

7 CHAIR HOOD: Second.

8 CHAIR HILL: Motion made and seconded. All those
9 in favor aye.

10 (Chorus of ayes.)

11 CHAIR HILL: All those opposed? The motion
12 passes, Mr. Moy.

13 MR. MOY: The staff would record the vote as 4-0-1,
14 on the motion of Chairman Hill, to approve the application
15 further with it being requested along with the conditions as
16 the Chair has cited in his motion. Second the motion, Mr.
17 Anthony Hood. Also in support, Ms. White, Vice Chair Hart,
18 and we have a board member not participated, she was not here
19 for the hearing in this case. Motion carries.

20 CHAIR HILL: Is that a full order, Mr. Moy?

21 MR. MOY: Yes, sir.

22 CHAIR HILL: Thank you.

23 MS. GLAZER: Mr. Chair?

24 CHAIR HILL: Yes?

25 MS. GLAZER: Do you want to ask for a proposed

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1 order from the applicant's counsel?

2 CHAIR HILL: Okay. So if we could get a proposed
3 order from the applicant's counsel as well, that would be
4 helpful. Thank you.

5 Okay, Ms. Glazer, so that proposed order then
6 would include, we will get the proposed order which will
7 include all the conditions with all the specifications that
8 we just listed.

9 MS. GLAZER: It would include those modifications
10 as passed by the board.

11 CHAIR HILL: Okay, great. Thank you.

12 (Pause.)

13 All right, Mr. Moy. So we are going now to a
14 hearing case, correct?

15 MR. MOY: Yes, sir.

16 CHAIR HILL: Okay. And then again, just to clarify
17 for the people that are here, I think I'm going to go through
18 the order again. We're doing 19672, then we're going to go
19 back to the decision case concerning, I forget the number
20 again, the Verizon case, and then we're going to go to 19685
21 and 19695 and then we're going to come back to 19629 and
22 we're going to follow the order.

23 So if you're anywhere below, if you're in the
24 back, you're going to be here for a while. Just to let you
25 know, the meeting, you can go do some work outside or come

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1 back, it's going to take a little time to get to the end of
2 the docket.

3 (Whereupon, the above-entitled matter went off
4 the record at 10:27 a.m. and resumed at 10:30
5 a.m.)

6 CHAIR HILL: All right, Mr. Moy. Okay, you guys.
7 We're going to get started again, but I just wanted to kind
8 of fill everybody in a little bit as to where we are. We're
9 going to do the decision case for the Verizon case first.

10 Then, we're going to go next to -- we're going to
11 change the order a little bit and we're going to pull
12 Application -- did I -- oh, there it is. Application 19680
13 is going to go after the Verizon case.

14 And then, we're going to go back to the order
15 again. So, with that, Mr. Moy, you can start us off whenever
16 you like.

17 MR. MOY: Thank you, Mr. Chairman. Okay. Before
18 the Board is Application Number 19415A of Verizon Wireless.
19 This is a request for a modification of consequence to the
20 time limit condition of BZA Order Number 19415 to allow the
21 temporary location of a Cell on Wheels, or COW, in the RF-1
22 Zone on Square 643E Lot 800.

23 CHAIR HILL: Okay, great. Thank you. And one
24 other item, we're probably going to take a lunch break,
25 probably like 1:00. So, just to let you know. So, is the

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1 Board ready to deliberate? Okay.

2 So, as I understood this, this is, again, a
3 modification of consequence and there are posting and timing
4 issues that we need to do that, even though it possibly could
5 have already expired, in terms of like the time has already
6 elapsed and people haven't -- the parties in the ANC, no one
7 has submitted anything to this particular modification of
8 consequence.

9 However -- so, at the very minimum, I wouldn't
10 want to do this now, I would want to go through the time line
11 and establish dates. And, Mr. Moy, you can help us do that.

12 But before -- unless the Board has any other
13 thoughts on that -- but before I do that, I was wondering if
14 the Board themselves have any other issues or questions
15 concerning the modification of consequence?

16 COMMISSIONER MAY: Mr. Chairman, actually, I know
17 this may be a bit irregular, but I'm wondering if the
18 Applicant is actually present and we could ask a couple of
19 questions?

20 CHAIR HILL: Okay, great. Yes, hold on one second.
21 Wait, wait, wait, wait a minute, wait a minute, hold on, no,
22 wait a minute.

23 So, I did this the last time and -- that's okay --
24 and so, I did this the last time and I can't -- if I -- and
25 I'll let Ms. Glazer let us know in terms of time -- I want

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1 to make sure, Mr. Commissioner, I guess there are some issues
2 and questions that you do have.

3 The last time we did this, where I brought people
4 up during a decision making, it ended up turning into a
5 hearing, which then turned into a whole other thing, that I
6 didn't really understand.

7 So, if people come forward and the ANC isn't here
8 and the other people that were parties in opposition aren't
9 here, then it won't work.

10 COMMISSIONER MAY: That's fine.

11 CHAIR HILL: Sure.

12 COMMISSIONER MAY: No that would work.

13 CHAIR HILL: Sure. Oh, yes --

14 COMMISSIONER MAY: Okay.

15 CHAIR HILL: -- no, that's okay, I'm just trying
16 to --

17 COMMISSIONER MAY: I -- no, that --

18 CHAIR HILL: Right. So, Ms. Glazer, can you tell
19 me what is our process?

20 MS. GLAZER: Well, Mr. Chair, there's two comments
21 from OAG. One is that the ANC had ten days to respond, I
22 believe that period of time has expired already. And I
23 understand you're reading that rule strictly about setting
24 a time table, but the Board needs to evaluate whether that
25 would really be necessary in this case.

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1 Second of all, if you want to call the Applicant
2 up and it's merely to discuss procedural scheduling matters,
3 I don't think there's a problem. The problem is when you
4 hear testimony at a meeting.

5 CHAIR HILL: Okay. So, what OAG is saying is that
6 the time line issues do not come into -- the correct amount
7 of time has lapsed?

8 MS. GLAZER: The time that the -- the request was
9 filed and served, I believe, on February 5. Ten days,
10 therefore, expired from that --

11 CHAIR HILL: Okay.

12 MS. GLAZER: -- February 5 date.

13 CHAIR HILL: Okay. All right. And so, now,
14 Commissioner May, the questions that you might have, I
15 suppose -- and I'm perfectly satisfied with reopening this
16 as a hearing again, if that's what you'd like to do, or if
17 there are some questions that the Applicant can submit in
18 writing. But if you would like to set a time to hear this,
19 then we most certainly can.

20 COMMISSIONER MAY: Okay. So, I guess, I have a
21 question for the OAG first. I have a number of comments
22 about things that I think we'd want to see before we consider
23 granting an extension.

24 MS. GLAZER: Okay. Well, the Board could either
25 set a time frame to deliberate or could deliberate now. And

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1 in deliberations --

2 COMMISSIONER MAY: Okay.

3 MS. GLAZER: -- you're free to express your --

4 COMMISSIONER MAY: All right. So, maybe I'll --

5 MS. GLAZER: -- concerns.

6 COMMISSIONER MAY: -- just talk for a minute and
7 then, we'll see where we go. How about that?

8 CHAIR HILL: Sure, go ahead.

9 COMMISSIONER MAY: Okay. So, and unfortunately I
10 think for the Applicant, they have the misfortune of setting
11 this Cell on Wheels, as it were, directly along my commuting
12 route and so, I ride by it every day. And so, I've been
13 watching it for more than a year and it's not been a very
14 pretty sight.

15 Now, granted, it's a bit removed from the rest of
16 the neighborhood, so it's probably not as impactful, except
17 to somebody like me who cares about the things that I see
18 along the way. I'm sure that there are people in the
19 neighborhood that are concerned about things too.

20 But the maintenance of the site has been very poor
21 from the very beginning, and didn't get any better after we
22 had the hearing and made the decision, even though I think
23 we were assured that they were going to do more work to clean
24 things up.

25 I think at that time, it was in the winter and

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1 they couldn't do turf restoration and things like that.
2 Well, nothing happened. Or if it did, it was done so poorly
3 as to be unnoticeable. And they did do some things. They
4 put gravel out inside the enclosure and then, the grass
5 started growing up around it, and the grass started growing
6 up along the fence.

7 And so, somebody came out and hacked away some of
8 the overgrown grass and then, sprayed the area around the
9 fence with Roundup to kill all the grass so that it wouldn't
10 happen again. Or at least, that's what it seemed like,
11 because it was clearly a chemical intervention, not just
12 somebody cutting the grass.

13 The -- and I think part of the problem is that the
14 conditions there have continued. Granted, it's better now
15 than it was. I mean, for a long time, it was a temporary
16 fence that was being pushed out of the way.

17 I had to actually physically move the temporary
18 fence out of the way several times, because it had -- whoever
19 had come and serviced the facility just let that temporary
20 fence sit on blocks, sort of spill out into the sidewalk.

21 Again, they did finally put in a fence that's
22 mounted in the ground, so it got better. But it took a long
23 time. Since then, just the other day, there was some sort
24 of work that was going on at the site and as a result, they
25 brought equipment, some sort of -- I'm not sure what work

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1 they were doing, but they were driving vehicles of some sort
2 up to this fenced area.

3 Which means driving it down a sidewalk and across
4 a portion of the park, the playing field there. And so, now,
5 what was dormant grass, because of the timing and the
6 moisture in the soil, is now more or less mud. So, they've
7 wrecked a bit of the grass.

8 And then, also, I mean, this is a minor point, but
9 it's not insignificant, somebody spray painted some graffiti
10 on the -- it's a chain-link fence that has inserts in it, so
11 you have a surface of some sort. Somebody put some graffiti
12 on it and it's been sitting that way for three or four
13 months.

14 So, I would like to know very specifically from
15 the Applicant what they intend to do to clean up the site
16 immediately to address these issues and I would like to know
17 from the Applicant what they intend to do for the permanent
18 restoration of the site.

19 And I would like the ANC to weigh in on what they
20 would like to have done. Now, if that can all be done with
21 submissions, then I'm satisfied with that. Because I don't
22 think I need a whole lot of debate with the Applicant on it,
23 I just want to see what they're going to do.

24 CHAIR HILL: Okay. Thank you, Commissioner.

25 MS. GLAZER: Mr. Chair?

1 CHAIR HILL: Yes, sure.

2 MS. GLAZER: I'm sorry to interrupt --

3 CHAIR HILL: It's all right.

4 MS. GLAZER: -- but I think, given Mr. May's
5 comments, the Board may want to consider looking at Section
6 703.11, which says that any Member of the Board may remove
7 any item from the consent calendar for any reason.

8 And it sounds like the Board may want to take
9 other steps, or at least Commissioner May may want to take
10 other steps. And they're outlined in 703.13.

11 COMMISSIONER MAY: So, Ms. Glazer, I mean, I'm
12 aware that we can -- that any one of us can remove it from
13 consent.

14 MS. GLAZER: Okay.

15 COMMISSIONER MAY: But is -- again, I don't have
16 a particular need to talk to the Applicant, I've given my
17 speech, if we get sufficient filings from the Applicant and
18 we have a response from the ANC, then I would think that we
19 could still handle it just in a further decision making. Is
20 that --

21 MS. GLAZER: I guess it depends on whether the
22 Board wants to handle it totally on papers at this point.
23 But if -- it's not really a consent matter if you have
24 opposition from the ANC or if you want to see anything else
25 from the ANC. We have nothing in the record from the ANC.

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1 COMMISSIONER MAY: Right.

2 MS. GLAZER: And rules state that you go back to
3 the original parties in the application to get more
4 information.

5 CHAIR HILL: Okay. We can -- we're going to keep
6 talking about this just for a little bit longer. First of
7 all, I'm shocked that -- I remember this and it was
8 contentious and it went on for hours and people were angry.

9 And it was -- and so, what you're bringing up,
10 that just, again, surprises me and then, now makes -- part
11 of the discussion was the site and how the site is maintained
12 and how it affects the community in its maintenance.

13 And so, I'm very -- I mean, I'm shocked that the
14 most simplest thing to get this thing to keep moving along
15 is now turning into a discussion. So, at the very -- and
16 this is where I would also look to OAG and -- okay. I was
17 trying to remember if Ms. White was here for this or not --

18 MEMBER WHITE: I was new.

19 CHAIR HILL: You were new? Oh, good for you. And
20 so, that --

21 MEMBER WHITE: And I was shocked too.

22 CHAIR HILL: Yes. Well, right. So, if there --
23 and, Ms. Glazer, I guess I'm just trying to understand, it
24 sounds as though Commissioner May has specific information
25 that he wants, because now they're asking for an extension

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1 of six months.

2 So, specific information as to how they're going
3 to address the issues that had been brought up by the
4 community and in terms of testimony, as to how the site was
5 going to be maintained and how the site is going to be
6 maintained now for the next six months, for the extension.

7 So, if there were something that the Applicant
8 could submit in writing that -- I think there might even have
9 been a second question, I can't recall, that Commissioner May
10 had -- but were able to respond in writing to the issues that
11 are being brought up, or the questions that he has here.

12 And then, we would get responses from the parties,
13 because I recall, there was also a party in opposition, ANC,
14 party in opposition, then we would have written testimony to
15 then look at it for decision making.

16 So, we would set a date for submissions from the
17 Applicant. Then, we would set the seven days after that for
18 the ANC and parties to respond. And then, we could come back
19 as a decision.

20 MS. GLAZER: I'm not sure I follow everything. I
21 think we should try to simplify the process. And perhaps the
22 best thing to do would be to set it, continue it for a short
23 period of time on the hearing calendar and let the Applicant
24 appear and the ANC can appear and submit anything it wishes
25 and the Board will deliberate at that point, since there may

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1 be some discussion, some colloquy at least, between Board
2 Members and the Applicant.

3 CHAIR HILL: Okay. So, this would then go back on
4 the hearing calendar?

5 MS. GLAZER: Yes, but it wouldn't change the fact
6 that it's a modification of consequence. It wouldn't convert
7 it into a modification of significance, it's just that the
8 Board wants information.

9 CHAIR HILL: Okay. When is Mr. May back with us
10 again? And the order expires March 15, is that what -- so,
11 if the order expires on the 15th, what does that do? And I'm
12 looking to OAG here.

13 MS. GLAZER: I don't believe it's tolled under --
14 let's see -- Section 703.14 says that the mere filing of a
15 modification requested doesn't toll the expiration of the
16 underlying order. So, the Board -- it might be caution to
17 put this on before.

18 COMMISSIONER MAY: Well, we could -- could we take
19 action to toll it? I mean, it just says that it does not
20 automatically toll.

21 MS. GLAZER: Yes, probably you could waive the
22 provision. But -- I don't believe it's one of the provisions
23 that cannot be waived, so you could waive that provision and
24 you could find that it is not tolled and you can grant an
25 extension of the -- a temporary extension and get them in

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1 here, if that's what you want to do.

2 It's really up to the Board whether you want to
3 hear from them, whether you want to just deliberate again
4 after they've made another submission.

5 CHAIR HILL: So, we could deliberate again after
6 they made another submission, but we'd have to --

7 MS. GLAZER: You'd have to direct -- I don't know
8 what the Board wants.

9 CHAIR HILL: All right. So, now, Commissioner May
10 is letting me know that March 7, he will be here. So, we
11 could put this on March 7, just before the 15. We'll do this
12 first in the day, Mr. Moy.

13 And now, we're asking -- now, the procedures
14 again. So, we are asking for something from the Applicant
15 that clarifies the questions that Commissioner May had. And
16 then, parties will have seven days to respond to that, is
17 that how it works? Or now that it's a hearing, they all can
18 just show up?

19 MS. GLAZER: Well, if you're not allowing for
20 testimony, which is probably best, and you only want a
21 written submission, you're just continuing this to another
22 date on the meeting calendar and allowing -- and it might be
23 best to state that the Applicant has to file something within
24 a time period that allows the ANC or anybody else to respond.

25 CHAIR HILL: Okay.

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1 MS. GLAZER: So, to give them the seven --

2 CHAIR HILL: I understand.

3 MS. GLAZER: -- the ANC the seven days.

4 CHAIR HILL: So, Mr. Moy, I'm sorry, if you're
5 looking at the calendar there, if you can kind of work me
6 back to when -- Commissioner May will be back here on the
7 7th.

8 MR. MOY: Yes, working backwards, Mr. Chair, from
9 March 7, seven days for a response is, that deadline would
10 be February 28. Today is the 21st, and the Board could set
11 a date for the Applicants to file, let's say, I would say
12 possibly Monday, February 26.

13 CHAIR HILL: Okay.

14 MR. MOY: Which would be next Monday.

15 CHAIR HILL: Okay. So, Commissioner May, what
16 specifically again would you like the Applicant --

17 COMMISSIONER MAY: So, really, basically just two
18 things. What is their plan to clean up the site and the
19 damage that's been done to the site as a result of this
20 installation? And then -- and so, that's for the next six
21 months.

22 And then, what is their plan for restoring the
23 site, including the schedule for restoring it, once the
24 installation goes away? So, we're going to give them until
25 March -- they're asking for an extension until September 15.

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1 Then, I want to know, does that mean on September 16, they
2 haul away the equipment and on the 17th, they start fixing
3 it back up?

4 I mean, part of the problem is that they're --
5 last time, they blamed the problems with the clean up or the
6 restoration of the site on the fact that the timing wasn't
7 good, the time of year, it's not the time of year to be
8 planting things, and all that sort of stuff.

9 So, I want to know what the timing is going to be
10 on doing that whole restoration.

11 CHAIR HILL: Okay. And the other Board Members can
12 chime in a little bit. And then, I'd like to further know
13 from the Applicant, what proof are we going to have that
14 you've done this? And I'd like to know that.

15 Because, now, suddenly, I'm starting to feel a
16 little bit taken advantage of. I don't want Mr. May to be
17 the person who's going to tell us whether or not Verizon has
18 mowed the lawn and taken care of graffiti. And, otherwise,
19 we'll have another hearing again, okay?

20 Because if we don't get -- I mean, I can't
21 believe, the way this thing went the last time, that a person
22 who just happens to be sitting on this Board is the person
23 telling us about what the site looks like, as to we had hours
24 of testimony about that.

25 So, I hope that whatever gets submitted -- on

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1 which day, Mr. Moy? -- on Monday, right? -- satisfies Mr. May
2 and, now, satisfies me, which is that it will get done.
3 Because the last time Verizon was here, they said it was
4 going to get done and it obviously didn't get done and it's
5 been a year.

6 Maybe we should just have a hearing and just yell
7 at everybody a little bit. Okay, sorry. All right. Okay.
8 We should definitely have lunch before we come back.

9 (Laughter.)

10 CHAIR HILL: Okay. So, we're going to have the
11 filings on the 23rd?

12 MR. MOY: So, once again, Mr. Chair, the Applicant
13 will file to address the Board's concerns by Monday, February
14 26. Parties have the opportunity to respond by Monday, March
15 5. And the Board will be back for its meeting session on
16 March 7.

17 CHAIR HILL: Okay, great. All right. So, we're
18 done with that.

19 (Whereupon, the above-entitled matter went off the
20 record at 12:15 p.m.)

21

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DC BZA

Date: 02-21-18

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

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