

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

DECEMBER 3, 2002

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 2:30 p.m., Geoffrey H. Griffis, Chairperson, presiding.

PRESENT:

GEOFFREY H. GRIFFIS, Chairperson
ANNE MOHNKERN RENSCHAW, Vice Chairperson
DAVID ZAIDAIN, Board Member
PETER MAY, Zoning Commission

STAFF PRESENT:

SHERI M. PRUITT, Secretary, BZA
BEVERLEY BAILEY, Office of Zoning
CLIFFORD MOY, Office of Zoning
JOHN NYARKU, Office of Zoning

JOHN MOORE, Office of Planning
STEPHEN MORDFIN, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, ESQ.

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

2:30 P.M.

CHAIRMAN GRIFFIS: Good afternoon, ladies and gentlemen, will the meeting please come to order? This is the 3rd of December, 2002 public hearing of the Board of Zoning Adjustments of the District of Columbia. My name is Geoff Griffis. I am Chairperson. With me today is Ms. Anne Renshaw, Vice Chair. Representing the National Capital Planning Commission is Mr. Zaidain. On my left and representing the Zoning Commission this afternoon with us Mr. May.

Copies of today's hearing are available to you. They are located at the table as you enter into the hearing. Please let me know if there are not available copies and we'll make additional ones for your use.

A couple of quick things. These proceedings are being recorded, so we ask several things. First of all, when speaking to the Board, you'll come to the table and the microphone needs to be on. Also, anyone giving testimony from the Board needs to fill out two witness cards. Witness cards are available at the table in front of us and also at the table where you enter the hearing room. Those

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1 witness cards go to the reporter who is on my right.

2 We also ask that people turn off any cell
3 phones or beepers at this time so we don't disrupt any
4 public hearing and we would ask that people refrain
5 from making any disruptive noises or actions in the
6 hearing room.

7 The order of procedure today for the
8 variances and special exceptions will be statement and
9 witnesses of the Applicants. Second we will have any
10 Government reports attendant to the application. That
11 includes such things as Office of Planning reports and
12 the Department of Transportation. Third would be
13 reports from the Advisory Neighborhood Commission.
14 Fourth would be parties or persons in support of an
15 application. Fifth would be parties or persons in
16 opposition. Sixth, we will have closing remarks by
17 the Applicant.

18 Cross examination of witnesses is
19 permitted by the Applicant and parties. The ANC in
20 which the property is located is automatically a party
21 in the case.

22 The record will be closed at the
23 conclusion of each hearing, except for any material
24 specifically requested of the Board and the Board will
25 be very specific on what materials are to be submitted

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1 and when they are to be submitted into the Office of
2 Zoning. After those additional materials are
3 received, the record will be closed and no other
4 information will be accepted by the Board.

5 The Sunshine Act requires that a public
6 hearing in each case be held in the open and before
7 the public. However, the Board, consistent with its
8 rules of procedure and the Sunshine Act, enter into
9 executive session during or after a public hearing on
10 a case in order to review the record or to deliberate
11 on the case.

12 The decision of the Board in contested
13 cases and in all cases is to be based exclusively on
14 the public record and so, we do ask that people
15 present today not engage Board Members in conversation
16 so that we don't give the appearance to the contrary.

17 We will make every effort to conclude the
18 afternoon session by 6 o'clock. I do not anticipate
19 any major problem doing that and I'd like to say,
20 first of all, I appreciate everybody's patience for
21 the afternoon session as we're starting a little late.

22 Our morning session went well beyond its scheduled
23 hour.

24 At this time, the Board will consider any
25 preliminary matters. Preliminary matters are those

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1 which go to whether a case will or should be heard
2 today such as a request for postponements,
3 continuances or withdrawals or whether proper and
4 adequate notice of the hearing has been given. If you
5 are not prepared to go forward today or if you believe
6 that the Board should not proceed with a case now is
7 the time to bring it to the Board's attention and I
8 will take any of the cases with a preliminary matter,
9 if they will approach the table. If not, I will go to
10 Staff and also with the Office of Zoning staff a good
11 afternoon. Ms. Pruitt is with us and Mr. Moy and Ms.
12 Bailey on my very far right and Ms. Monroe
13 representing Corporation Counsel is with us today.

14 Any preliminary matters? Ms. Bailey.

15 MS. BAILEY: Mr. Chairman, Members of the
16 Board, good afternoon. Yes, Mr. Chairman, there are
17 two. First has to do with Application 16954 of
18 Columbia Bay Corporation. That application was
19 withdrawn, Mr. Chairman, so no additional action is
20 required by the Board at this time.

21 CHAIRMAN GRIFFIS: Thank you.

22 MS. BAILEY: The second preliminary matter
23 has to do with the first case and it's Application No.
24 16956, Mr. and Mrs. Marc Raphael. We do not have an
25 affidavit in the file on this case, Mr. Chairman.

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1 CHAIRMAN GRIFFIS: Okay, and that's the
2 affidavit of posting.

3 MS. BAILEY: Of posting.

4 CHAIRMAN GRIFFIS: Very well. Why don't
5 we call the case and then we can address that issue,
6 if you think that's appropriate?

7 MS. BAILEY: Absolutely.

8 CHAIRMAN GRIFFIS: Okay.

9 MS. BAILEY: Application No. 16956 of Mr.
10 And Mrs. Marc Raphael, pursuant to 11 DCMR 3104.1, for
11 a special exception to allow the construction of an
12 addition to an existing single-family dwelling under
13 section 223, not meeting the side yard requirements,
14 section 405, and pursuant to 11 DCMR 3103.2, a
15 variance to allow the construction of an open deck
16 occupying the side yard under subsection 2503.2. The
17 property is located in the R-3 District at premises
18 2901 29th Street, N.W., Square 2106, Lot 16.

19 Please stand to take the oath. Do you
20 solemnly swear or affirm that the testimony that you
21 are about to give in this proceeding will be the
22 truth, the whole truth and nothing but the truth?

23 Thank you. And please come forward and
24 have a seat at the table.

25 CHAIRMAN GRIFFIS: Good afternoon. I

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1 would have you turn on the mic and introduce
2 yourselves, please?

3 MS. RAPHAEL: I am Linda Raphael, the co-
4 owner of the property of 2901 29th Street, N.W.

5 CHAIRMAN GRIFFIS: Okay.

6 MR. DONOVAN: I am Peter Donovan, the
7 architect helping the Raphael's with this addition.

8 CHAIRMAN GRIFFIS: Mr. Donovan, just for
9 the record, we need an address.

10 MR. DONOVAN: 3749 McKinley Street, N.W.

11 CHAIRMAN GRIFFIS: Okay. Do you want to
12 just quickly address --

13 MR. DONOVAN: Yes, I can address that
14 because it's my fault. I was getting all the
15 paperwork for the Raphaels and I just didn't know that
16 we had to have that affidavit. Now I have talked to
17 John Moore and has a picture showing that we put that
18 up. I think it went up November 8th, but we do not
19 have an affidavit and that's really my fault.

20 MS. RAPHAEL: It actually went up before
21 the 8th, but Mr. Moore visited our home on the 8th and
22 took his photographs, so the photograph represented
23 here is of November 8th.

24 CHAIRMAN GRIFFIS: I see. Okay. So it's
25 your statement that, in fact, it was posted for the

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1 correct amount of time, just the filing of the
2 affidavit, certified that it was posted, was not put
3 into the office.

4 MR. DONOVAN: That's right.

5 CHAIRMAN GRIFFIS: Okay. Board Members,
6 clearly, we'll have to waive our rules in posting to
7 continue with this case.

8 Do I hear any objections? If there are
9 any -- yes?

10 MEMBER ZAIDAIN: Again, if we get to the
11 case today would it be appropriate to ask for the
12 affidavit or is the waiving of the rule just --

13 CHAIRMAN GRIFFIS: No, that's not
14 inappropriate. The waiver has been -- do you have it?

15 MR. DONOVAN: I must have it. It's the
16 paperwork that came with the sign.

17 CHAIRMAN GRIFFIS: I see.

18 MR. DONOVAN: It's something we can
19 provide for the record.

20 CHAIRMAN GRIFFIS: Mr. May?

21 COMMISSIONER MAY: All we're waiving is
22 the -- all we're planning to do is leave open the
23 record to receive the affidavit later? Is that --

24 CHAIRMAN GRIFFIS: Right, waive the rule
25 to continue today.

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COMMISSIONER MAY: I think that's done as a matter of course.

CHAIRMAN GRIFFIS: Indeed,

COMMISSIONER MAY: No problem.

CHAIRMAN GRIFFIS: Very well, then I'll take as a consensus. We can proceed and we'll look for the submission of the waiver form.

MR. DONOVAN: And we will submit it to the Board's Office?

CHAIRMAN GRIFFIS: Indeed, to the Office of Zoning. Okay, that being said, let's jump right in. I think it is fairly clear in most of the filings of what we have here, so what I'm going to turn over to you is just to briefly summarize the case, the context and the test for the variance, not a special exception and we'll move on from there.

MR. DONOVAN: Sure. We are trying to put a rear yard addition on this house. It's two rooms deep. This house happens to sit on the corner at 29th and so it has a pie shaped lot. There are three lots there are very pinched toward the back alley.

By going out in a straight line with the addition that's already there, in order to get a decent space that forces us to encroach on that side

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1 yard which is on the north side of the property. We
2 are trying to hold the rear yard in compliance, but no
3 matter what we do along that left side, the north
4 side, we encroach on that setback on the side yard.

5 If we were to set back that addition, then
6 it falls in the driveway and the structure becomes
7 somewhat difficult. It is a one-story addition,
8 except for a small corner tucked against the two-story
9 addition of the neighbor on the south, but for the
10 most part it's a sloping roof, a hip roof that's very
11 low in scale and extends in the back.

12 CHAIRMAN GRIFFIS: Okay, so in terms of
13 the variance, clearly there's a unique shape of a lot,
14 actually as it is looked at with a triangular type
15 building, actually limits your ability to construct
16 the addition into the side yard and as you just stated
17 and also in the record it's stated that if you
18 accommodated the side yard, I believe it was a column
19 would drop in the driveway or some structure would be
20 impeding the driveway.

21 Very well, Board Members clear?
22 Questions. Okay.

23 Anything you want to add on the special
24 exception which is clearly in addition to an existing
25 building under Section 223?

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1 MR. DONOVAN: Explain that again?

2 CHAIRMAN GRIFFIS: Indeed. This
3 application is actually coming in for a special
4 exception which is frankly the first step that allows
5 you to do an addition. Clearly, this addition has
6 been gone to a requirement for a variance. You just
7 outlined the variance case. The special exception
8 under 223 lists certain items that need to be
9 addressed. For instance, the addition won't impact
10 the light and air to neighboring properties. The
11 privacy and use of adjoining neighbors won't be
12 impeded.

13 MR. DONOVAN: Right, these are the burden
14 of proof statements that we've submitted?

15 CHAIRMAN GRIFFIS: Yes.

16 MR. DONOVAN: And that discussion. I
17 think because it is a one-story addition and the use
18 is the same that there's not going to be any impact on
19 the change of the condition as it is now.

20 We are not projecting behind where it
21 would impact on someone else's rear yard addition and
22 these lots along there are full of rear yard
23 additions. In fact, that one corner is very overgrown
24 with bamboo.

25 Light is not an issue. The addition to

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1 the south side is two stories and so we are not
2 looming over their property. Parking remains the
3 same. I'm not sure what other --

4 CHAIRMAN GRIFFIS: Okay, there was
5 communication with adjoining neighbors and there
6 weren't any concerns or large issues that --

7 MR. DONOVAN: That's correct. They had
8 full notice of the ANC meetings and issued no
9 objection and Mr. Raphael has spoken with both of them
10 and they clearly have no problem with it and intend to
11 do their own addition as well.

12 CHAIRMAN GRIFFIS: Okay. Mr. May?

13 COMMISSIONER MAY: I have a couple of
14 questions about what you're planning with regard to
15 the deck. It's hard to tell from the plan information
16 that was presented, we don't have an awful lot of
17 information here, but do I understand correctly that
18 you're basically building to the property line with
19 the deck?

20 MR. DONOVAN: Yes. I think it's clear on
21 the plat.

22 COMMISSIONER MAY: That's what it seems to
23 show.

24 MR. DONOVAN: The deck now is quite old,
25 older than 10 years, older than when the Raphaels

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1 purchased the house which may be important. It's
2 unusual in that it does go all the way to the property
3 line on the north side. It is lower than 48 inches
4 off the grade at that point and in fact, all across
5 the back except at the drive.

6 COMMISSIONER MAY: It's lower than 48
7 inches as measured at the side of the house?

8 MR. DONOVAN: And the rear at grade.

9 CHAIRMAN GRIFFIS: Is it below the level
10 of the first floor of the residence?

11 MR. DONOVAN: Yes. It exists now, two
12 steps down or maybe three steps, I forget. It is
13 lower than the height of the floor level.

14 COMMISSIONER MAY: What I'm struggling
15 with is why this -- the provisions by which you need
16 to have a variance for the side yard I would think
17 would also mean that you would need a variance from
18 the rear yard requirement, but the fact that it's
19 below four feet means that it doesn't need a variance
20 at all?

21 CHAIRMAN GRIFFIS: It doesn't go to lot
22 occupancy.

23 COMMISSIONER MAY: If it were above four
24 feet it would go to lot occupancy?

25 CHAIRMAN GRIFFIS: Yes. If it goes above

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1 the first floor of the residential house.

2 SECRETARY PRUITT: I spoke with Mr. Bellow
3 in reference to that need. He confirmed that yes, you
4 can measure the four feet from anywhere along the
5 side. You don't even have to measure it from the back
6 of the deck which would be much higher. But also it's
7 below the first floor level, so on two counts it
8 doesn't count as lot occupancy and therefore rear yard
9 setback is not required or rather it doesn't impinge
10 upon it.

11 COMMISSIONER MAY: But it does so require
12 a variance with regard to the side yard?

13 SECRETARY PRUITT: I believe -- because
14 the side yard, if I have the calculations, are less
15 than five feet. Like a really small amount under five
16 feet.

17 CHAIRMAN GRIFFIS: But where is that
18 dimension from? What's the point that it gets to four
19 feet because --

20 COMMISSIONER MAY: Well, they're building
21 right on the property line, so there's no feet.

22 CHAIRMAN GRIFFIS: On one side. We're
23 only talking about this side which in the plan
24 drawings is north?

25 COMMISSIONER MAY: What I don't understand

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1 it -- it's been a little while since I've sat on a
2 case that got into this side yard thing. It's
3 probably been a year. So I just -- I'm not sure
4 whether -- I mean if this triggers a variance for the
5 side yard requirement, why doesn't it trigger a
6 variance for the rear yard requirement? Because if
7 it's not tall enough, you're saying if it's not tall
8 enough, why is it -- I mean it has to go up to a
9 certain height for it to exist.

10 MR. DONOVAN: To count as coverage.

11 COMMISSIONER MAY: To count as coverage.

12 MR. DONOVAN: That's right.

13 COMMISSIONER MAY: Or to count as even a
14 structure.

15 SECRETARY PRUITT: I see what you're
16 saying.

17 COMMISSIONER MAY: I'm glad you're seeing
18 what I'm saying because I'm having a hard time saying
19 it.

20 SECRETARY PRUITT: I understand what
21 you're saying.

22 MS. MONROE: Mr. May?

23 COMMISSIONER MAY: Yes.

24 MS. MONROE: 253.02 which is cited by OP.
25 It says a structure, not including a building, no

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1 part of which is more than four feet above the grade
2 at any point may occupy any yard required under the
3 provisions of this title. Any railing required by the
4 D.C. Building Code shall not be calculated in the
5 measurement of this height. I think that covers both
6 yards and I also think that the question of the rear
7 yard and side yard would both be subsumed under the
8 253 special exception.

9 CHAIRMAN GRIFFIS: Right. So the other
10 thing we're really dealing with is the special
11 exception for the addition within the side yard.

12 MS. MONROE: Which I think would include
13 any question as to the side yard or the rear yard.

14 COMMISSIONER MAY: Right. So I don't see
15 a variance.

16 CHAIRMAN GRIFFIS: Nor did I. You're not
17 alone in questioning this.

18 COMMISSIONER MAY: When I first read it I
19 thought why are we asking for a rear yard variance at
20 all.

21 CHAIRMAN GRIFFIS: Right.

22 COMMISSIONER MAY: But it's that four foot
23 rule that always throws me.

24 Had it been over four foot then we would
25 be -- and I'm guessing the reason why the existing

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1 deck was built two steps down may have been to avoid
2 this problem previously.

3 CHAIRMAN GRIFFIS: That would make sense.

4 Okay, well, there it is. Anything else you want to
5 add?

6 MR. DONOVAN: Now that you ask. This has
7 been a really long process. It's been at least a
8 couple of years, for design purposes, but also working
9 through the regulatory red tape and that sort of thing
10 and we finally come to this Board and we're trying to
11 figure out, we were trying to do an addition that
12 would pass, that we thought was not asking for too
13 much and now that we've sort of looked at this thing
14 so long, I'm wondering if there's not some mechanism
15 whereby if we wanted to go two more feet or four more
16 feet, we would like to do that unless we have to go
17 back and do it all and I think I know the answer.

18 MS. RAPHAEL: Not the side, but back,
19 because we were led to believe, initially, that this
20 was as far back as we could close in and now we think
21 that perhaps that's not the case.

22 CHAIRMAN GRIFFIS: First, what led you to
23 believe that that was as far back as you could go?

24 MS. RAPHAEL: Just information that Mr.
25 Donovan had gotten on percentage of lot, etcetera. So

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1 we thought we were going -- we wanted to go back the
2 maximum and we thought that this was the maximum. But
3 now we understand that it may not be, although we're
4 not -- and we're not asking here, obviously, for a
5 variance on that, but I wanted some clarification on
6 how far back we could possibly go.

7 COMMISSIONER MAY: Can I offer something
8 here? It looks like the addition at the point when it
9 is closest to the side yard, or to the side property
10 line there, looks like it's about five feet. Is that
11 right?

12 MR. DONOVAN: I think it's less. Of the
13 existing addition?

14 COMMISSIONER MAY: No, the new addition.

15 MR. DONOVAN: Four feet, I think.

16 COMMISSIONER MAY: It's four feet?
17 Because if it's four feet, then we're talking about a
18 variance for the side yard requirement, right?

19 (Pause.)

20 MR. DONOVAN: I think that's what we're
21 dealing with on the addition. It's the side yard
22 that's presenting us the problem.

23 COMMISSIONER MAY: Right, and as soon as
24 you start going straight back, you're impinging on the
25 side yard and that's where you get into special

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1 exception territory.

2 Now if you kept eight feet off that
3 property line, you could do anything you want as a
4 matter of right, up to eight feet off the side yard,
5 side property line and then 20 feet off the rear
6 property line.

7 MR. DONOVAN: As long as we didn't go over
8 the coverage.

9 COMMISSIONER MAY: Right, as long as you
10 don't go over the coverage. But if it's true that
11 it's only 35 percent, it's hard to believe that you
12 would do that.

13 MR. DONOVAN: Right.

14 COMMISSIONER MAY: When you go to -- when
15 you get less than five feet though, there's a
16 different standard, is that right?

17 MS. MONROE: Are you talking less than
18 five feet per yard or height?

19 COMMISSIONER MAY: For the side yard.

20 MS. MONROE: I think it's anything less
21 than five feet is included in lot occupancy. It's
22 included in the building area.

23 COMMISSIONER MAY: Right.

24 MS. MONROE: So that would up the lot
25 occupancy.

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1 COMMISSIONER MAY: Right, but even within
2 the side yard requirements there's an eight foot
3 minimum unless there is an existing structure that
4 impinges on it at which point you can do anything, so
5 long as you maintain a minimum of five feet.

6 SECRETARY PRUITT: It becomes a
7 nonconforming structure because prior to 58, five feet
8 was a typical side yard requirement. So you can
9 extend that, but you can't -- you would need another
10 type of variance if you encroached on that.

11 COMMISSIONER MAY: Right, what I'm saying
12 is that -- because they've got this triangular shape,
13 they can extend back with that addition and as soon as
14 that addition goes more than five feet or cuts the
15 side yard by more than five feet, then we're talking
16 about a variance for the addition. Is that right?

17 CHAIRMAN GRIFFIS: Well, first of all, in
18 terms of changing the application, to change the
19 dimension at this point I think is problematic. Only
20 because what we have is certain things that are
21 submitted. Office of Planning would have to resubmit.

22 DHC should probably resubmit because their letter and
23 their standing would change. The entire application
24 would change.

25 What I propose is first of all we'll get

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1 to the bottom of whether the variance for the side
2 yard is actually required and properly before us.
3 Then we move ahead, if this comes into an approval by
4 the Board, there's nothing precluding you from coming
5 in for a modification and that probably is more
6 burdensome than having us change it right now, but
7 it's not as burdensome as putting the entire
8 application together.

9 So with that side yard variance, actually,
10 let's let you conclude and then we'll go to Office of
11 Planning because they're very articulate on these
12 issues.

13 MR. DONOVAN: Well, first of all, we
14 appreciate you all looking at this today. It is a
15 long process and I apologize for some of the lack of
16 clarity on the deck and the side yard, but I think the
17 crux of the problem is that once we extend back and
18 trying to keep that room in a regular shape, that's
19 when we encroach on that side yard and so that's why
20 we're asking for permission to be able to do that.

21 CHAIRMAN GRIFFIS: Very well, thank you.

22 MR. DONOVAN: Thank you.

23 CHAIRMAN GRIFFIS: Very well, let's go to
24 Office of Planning and welcome them this afternoon.

25 MR. MOORE: Good afternoon, Mr. Chairman

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1 and Members of the Board. The extent of OP's
2 articulation in this case is to stand on the record.

3 CHAIRMAN GRIFFIS: That's swell.

4 (Laughter.)

5 CHAIRMAN GRIFFIS: No, I think it's
6 absolutely appropriate. It's an excellent report.
7 However, do you want to just walk through because you
8 did, in fact, outline the various tests and it's your
9 understanding that it is properly before us for the
10 variance of the side yard.

11 Did you want to just articulate that? Is
12 it because -- actually as I'm looking at it, Mr. May,
13 the site plan is becoming clearer to me. We're at a
14 side yard with that addition of four feet.

15 Is that the number you're seeing?

16 (Pause.)

17 Okay, forgive us for a little bit of off-
18 the-record review of the application.

19 I think we just want to be absolutely
20 certain in what the easiest process is.

21 Frankly, well, it's interesting because
22 the variance test can be made, but I think the
23 consensus right now, the opinions that we're getting
24 is if you don't require a variance, then this all
25 comes under 223 which does deal with a side yard and

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1 the rear yard would not be an issue.

2 That being said, let us -- is there any
3 questions of the Board of Office of Planning's report,
4 an excellent report, again with great graphics that
5 help illuminate the case that's before us? Any
6 questions?

7 Any questions of Office of Planning?

8 MR. DONOVAN: No, I don't believe so.

9 CHAIRMAN GRIFFIS: Do you have the Office
10 of Planning report?

11 MR. DONOVAN: We saw it before the
12 hearing.

13 CHAIRMAN GRIFFIS: Okay. Very well, let's
14 move on then. And we do have ANC letter dated
15 November 4. Ms. Renshaw, do you have that?

16 VICE CHAIRPERSON RENSHAW: The letter from
17 ANC 3C is signed by Nancy MacWood, Chair, and she
18 advises the Board that the Commission met in October.

19 The date is not stated. A quorum was present. They
20 considered the application and the ANC Commissioners
21 have no objection to the proposed project and they
22 were unanimous in the vote.

23 CHAIRMAN GRIFFIS: Thank you very much.
24 Any questions from the Board?

25 Did you see the letter from the ANC?

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1 MR. DONOVAN: I do not think we saw that.

2 CHAIRMAN GRIFFIS: Do you understand what
3 they said though?

4 MR. DONOVAN: Yes, we do. And that was
5 our understanding of what they would send along.

6 CHAIRMAN GRIFFIS: Okay. I don't have any
7 other notes on submission attendant to this. Is there
8 anyone here today to give testimony on this
9 application which is Application 16956, either in
10 support or in opposition?

11 Very well, not seeing any indication of
12 it, I can go to you for last comments, closing
13 remarks, any jokes?

14 MR. DONOVAN: It's been too long a process
15 for jokes. No, we appreciate your help in reviewing
16 this and hopefully passing it. We appreciate it.

17 CHAIRMAN GRIFFIS: Okay, good. Are you
18 clear, and do you have any problem or comment on the
19 fact that if we take this up as just a special
20 exception under Section 223?

21 MR. DONOVAN: No, I believe I understand
22 that change.

23 CHAIRMAN GRIFFIS: Okay. What I'm going
24 to do, Board Members, is everyone under the same
25 understanding and consensus on this?

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1 Then we would modify the application to
2 reflect a special exception which would allow the
3 construction of this addition and what I'll ask for is
4 -- I guess we do need a motion for that. So I would
5 move and ask for a second.

6 MEMBER ZAIDAIN: I'll second.

7 CHAIRMAN GRIFFIS: Thank you very much.
8 All in favor, signify by saying aye.

9 (Ayes.)

10 Any opposed?

11 (No response.)

12 I will have submitted into the record a
13 memo from the Board that will outline the reasoning
14 why we've reached that conclusion and I'll ask that
15 our Compliance Officer and Corporation Counsel work
16 together to do that, so it will be in the record and
17 you should pick up a copy just by reviewing that.
18 Actually, when you drop off the waiver, you can pick
19 up that memo.

20 MR. DONOVAN: And that deals with the deck
21 construction along the property line?

22 CHAIRMAN GRIFFIS: That's correct.
23 Actually, it's the addition and the deck.

24 MR. DONOVAN: Okay, right.

25 MS. RAPHAEL: And in terms of how far back

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1 we're going, what does this say now?

2 CHAIRMAN GRIFFIS: Six feet, I believe, in
3 other words, what we're showing you.

4 MS. RAPHAEL: So if we want to go back
5 further than six feet, then we should go for this
6 modification?

7 CHAIRMAN GRIFFIS: Right, then you're
8 coming back to talk to us.

9 MS. RAPHAEL: All right.

10 CHAIRMAN GRIFFIS: And it will also be as
11 enjoyable as it is today.

12 (Laughter.)

13 MS. RAPHAEL: This was fun. It's the
14 length of time. I was just wondering, do you first
15 get a building permit for this and then you could
16 start and then you get modification or do you have to
17 wait until all that is --

18 CHAIRMAN GRIFFIS: I'm not sure I can
19 adequately give you the information that you need in
20 terms of strategy of how to do that. I think it might
21 be advantageous if, perhaps before you leave, you went
22 and talked to staff in the Office of Zoning and get
23 some quick questions on what that might do, what it
24 might impact in the application and get a feel for
25 timing and how that might be brought back, if that is,

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1 in fact, what you're anticipating doing.

2 MS. RAPHAEL: Thank you.

3 CHAIRMAN GRIFFIS: Okay. Anything else
4 then, Board Members? Any other questions,
5 clarifications?

6 If not, I would move approval of
7 Application 16956 for special exception to allow the
8 construction of existing single family dwelling under
9 Section 223 which has not met the side yard
10 requirements listed under Section 405 and this is for
11 the premises of 2901 29th Street, N.W.

12 I'd ask for a second.

13 VICE CHAIRPERSON RENSHAW: Second.

14 CHAIRMAN GRIFFIS: Thank you very much,
15 Ms. Renshaw.

16 I think in fact, adoption of the
17 submission from the Applicant and also the Office of
18 Planning report does justice to the special exception
19 case. The Applicant today has given us indication of
20 the no impact in terms of light and air and also in
21 the record and written submission and I think it is
22 very clear cut. So that being said, I'd ask for
23 anyone else to speak to the motion? If not, then all
24 those in favor say signify by saying aye?

25 (Ayes.)

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1 Opposed?

2 (No response.)

3 Thank you all very much. As you had a
4 bench decision, I'm assuming that you would request a
5 summary order. Is that correct?

6 MR. DONOVAN: Yes.

7 CHAIRMAN GRIFFIS: I can explain the
8 difference.

9 MR. DONOVAN: Maybe you should.

10 CHAIRMAN GRIFFIS: Okay, a full order
11 includes findings of fact and conclusions of law. It
12 goes to the entire case and it's a lengthy process for
13 the issuance of an order. A summary order basically
14 says who showed up and what we did. It goes out
15 pretty quickly.

16 MR. DONOVAN: The latter sounds --

17 CHAIRMAN GRIFFIS: Indeed, timing is of
18 essence. Perhaps I shouldn't be so flippant on the
19 record about what these things are, but it's been a
20 long morning.

21 All right, I think we can do that with
22 summary order and I will attach to that a note, if not
23 a footnote on that summary order the fact there's a
24 memo containing, dealing with the change of the
25 application by the Board.

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1 MEMBER ZAIDAIN: Mr. Chair, we did want to
2 get a copy of the affidavit --

3 CHAIRMAN GRIFFIS: Yes, you're very aware
4 of that?

5 MR. DONOVAN: Right.

6 CHAIRMAN GRIFFIS: Good, so that will be
7 submitted and we're holding back the memo until he
8 gives us the affidavit.

9 Good. We're all set. Thank you all very
10 much.

11 Let's move right on to the next case, if
12 you would.

13 MS. BAILEY: Application No. 16955,
14 Spanish Education Development Center, Inc., pursuant
15 to 11 DCMR 3104.1, for special exception for a child
16 development center and private school, totalling 100
17 children, ages 2 to 10 years, 75 adult students and a
18 total of 12 staff, under sections 205 and 206, and
19 pursuant to 11 DCMR 3103.2, a variance from the off-
20 street parking requirements under section 2101. The
21 property is located in the R-5-B District at premises
22 1840 Kalorama Road, N.W., Square 2553, Lot 826.

23 Please stand to take the oath. Do you
24 solemnly swear or affirm that the testimony that you
25 are about to give in this proceeding will be the

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1 truth, the whole truth and nothing but the truth?

2 Thank you. And please have a seat at the
3 table, Ms. Giordano.

4 CHAIRMAN GRIFFIS: Good afternoon.

5 MS. GIORDANO: Good afternoon, Board
6 Members, Cynthia Giordano for the record from Arnold
7 and Porter law firm. With me are my colleagues, Pally
8 O'Cole who has been providing legal advice to the
9 Spanish Education Center for a number of years and
10 Nate Gross, our zoning specialist. We have two
11 witnesses this afternoon. I'd like to ask them to
12 join me at the table at this time.

13 (Pause.)

14 If the Board is ready to proceed, by
15 introduction the Spanish Education Center has been in
16 existence on this site for approximately 30 years.
17 They have a C of O, an existing, valid C of O for 100
18 children for a school. The Center has really evolved,
19 also along the lines of a day care center. So the
20 Zoning Administrator recommended that they also obtain
21 a certificate of occupancy for a child development
22 center. So that's part of the reason why we're here
23 today.

24 In addition, they have developed an
25 evening school component which grew out initially of a

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1 need for some parental training and also to help the
2 parents of the children enrolled in the school who
3 mostly were children of Hispanic background, that were
4 learning English and a program developed to help the
5 parents also learn English as a second language.

6 So I think it was initially an appropriate
7 accessory use to provide some education component for
8 the parents, but over the years it has taken on a life
9 of its own. It's expanded beyond just the parents of
10 the children enrolled in the school and is now a very
11 well known and well needed component of the school
12 which educates adults in English as a second language
13 and includes adults of many nationalities at this
14 point.

15 CHAIRMAN GRIFFIS: And you're saying it's
16 actually occurring and continuing use?

17 MS. GIORDANO: That's right.

18 CHAIRMAN GRIFFIS: And what is the
19 population of the use now, both children and adults?

20 MS. GIORDANO: The children -- we're not
21 asking for any increase. The existing C of O is for
22 100 children.

23 CHAIRMAN GRIFFIS: Right.

24 MS. GIORDANO: And that's what we're
25 asking for today and it really is just to make clear

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1 that we also have a child care component here.

2 CHAIRMAN GRIFFIS: Is the actual
3 population of use?

4 MS. GIORDANO: I believe it is. I'm going
5 to ask Ms. Martha Egas who is in charge of that
6 program to answer the question, if that's okay.

7 CHAIRMAN GRIFFIS: Sure.

8 MS. EGAS: The children enrolled in the
9 program right now, it's 54 preschool aged children and
10 15 school aged children.

11 CHAIRMAN GRIFFIS: Okay.

12 MS. EGAS: Sixty-five.

13 CHAIRMAN GRIFFIS: Under a hundred?

14 MS. EGAS: Yes.

15 CHAIRMAN GRIFFIS: Okay.

16 MS. GIORDANO: And with me also is Jose
17 Gonzalez who is in charge of the adult education
18 component in the evening.

19 Unless the Board has any further questions
20 at this time, I think we should just proceed with the
21 testimony of the witnesses. We'll start with the
22 school, the day program which is both a school for
23 kids 2 to 10 years old and also provides before and
24 after school care for children. And I'd like to ask
25 Ms. Egas to give an overview of the program and to

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1 explain -- to address all the special exception
2 criteria, the drop off and pick up of the students,
3 number of staff, etcetera.

4 CHAIRMAN GRIFFIS: Let me interrupt you
5 there because clearly in the submission that we have,
6 I ask my Board to object if they disagree, as you've
7 just stated, we have essentially a continuing use
8 that's now before us for a special exception. I have
9 not seen any evidence in the record that has brought
10 to light any sort of adverse impact on this and so I'm
11 wondering if you couldn't just stand on the record in
12 terms of the child development center.

13 Is there any concern with that?

14 VICE CHAIRPERSON RENSHAW: No.

15 CHAIRMAN GRIFFIS: Okay.

16 MS. GIORDANO: On that, that would be
17 fine. In fact, we have very broad based support in
18 the community for this school and --

19 CHAIRMAN GRIFFIS: We got a few letters in
20 the record.

21 (Laughter.)

22 MS. GIORDANO: So if the Board would like,
23 then we will just move on with the testimony of Mr.
24 Gonzalez.

25 CHAIRMAN GRIFFIS: Yes.

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1 MS. GIORDANO: There is some sharing of
2 staff between the two programs, but I think he can
3 explain that and --

4 CHAIRMAN GRIFFIS: I think what I'm
5 looking for and the Board is looking for is just a
6 clarity of what's actually happening and the special
7 exception falls -- we're familiar with it and we can
8 put those pieces together. Just give us a picture, a
9 snapshot would be helpful and then we can move on.

10 MR. GONZALEZ: Sure. What we were saying
11 before is that the situation has been happening for
12 about 30 years now. Our program has been in existence
13 for about 30 years and it has grown, but it hasn't
14 grown at all for the last, I would say, 15 of those 30
15 years. We've kept the students at a maximum of 15
16 students in each class and we only have four
17 classrooms there, so there's a maximum of 60 students
18 that can be helped at any time. So there's no
19 expansion at all in the program. It's just basically
20 putting it on paper that we are going to have these
21 students there and basically with day care, with child
22 care for the parents who are there in the program
23 until 9 p.m.

24 CHAIRMAN GRIFFIS: I see. And the adults
25 in terms of the after -- or the evening area.

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1 Currently you have how many? Sixty?

2 MR. GONZALEZ: Right now we have 48 in the
3 program, but we have 60 capacity.

4 CHAIRMAN GRIFFIS: Do they come all at
5 once, or does enrollment mean you -- they stagger?

6 MR. GONZALEZ: They come all at once in
7 the program, yes.

8 CHAIRMAN GRIFFIS: I see. Okay. Go
9 ahead.

10 MS. GIORDANO: Did you just want to go
11 ahead with your prepared --

12 MR. GONZALEZ: The situation is that those
13 people come in with a program. They live in the area.

14 They've been probably parents of the children who
15 were in the preschool. They don't use up any parking
16 facilities or anything because they normally use
17 public transportation or they walk to it because the
18 center is very close. We're on Kalorama Road which is
19 the center, more or less, of the Adams-Morgan/Columbia
20 Heights/Mount Pleasant area so people can actually
21 walk by without any problem and get to the center.

22 Our staff is composed mostly of community
23 people also, so they really also -- none of our
24 teachers at the present time has a car. The only
25 people on our staff that has a car is myself and my

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1 coordinator for the ESL program and I am there only
2 off and on and he's there full-time.

3 So I can't see any impact in that, since I
4 said we've been doing this for at least 20 years, the
5 way it's set up now, so there's no real expansion of
6 the program. We have the same teaching staff. We
7 have the same number of people who are coming into the
8 center and leaving the center every day Monday through
9 Friday.

10 MS. GIORDANO: And if we could just
11 clarify in the record and in our prehearing statement
12 as well that there are not more than four teachers for
13 the evening program on site at any one time, four
14 teachers at a time. There are a total of --

15 MR. GONZALEZ: We have a total of 12
16 teachers on staff, but as I mentioned before, we only
17 have four classrooms, so we only have four teachers at
18 any given day and teachers co-teach, so there are two
19 teachers for every class and that's why we have a
20 teaching staff of 12, but I can't remember a day where
21 we had all 12 teachers there at one time.

22 CHAIRMAN GRIFFIS: I see. So when you say
23 co-teach --

24 MR. GONZALEZ: One teacher teaches
25 Monday-Tuesday, another teaches Wednesday-Thursday-

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1 Friday.

2 CHAIRMAN GRIFFIS: I see.

3 MS. GIORDANO: Right, and these teachers
4 are nonsalaried teachers. So that's part of the whole
5 sharing arrangement.

6 CHAIRMAN GRIFFIS: I see.

7 MS. GIORDANO: So there are no more than
8 four teachers on sight at any one time. There are
9 three staff and one additional staff person who is
10 shared with the Child Development Center. So that
11 person arrives in the morning and stays through in the
12 evening. So that's a total of seven staff on site at
13 any one time for the adult program.

14 And Mr. Gonzales, if you could just
15 reiterate how the teachers get to the site and how you
16 get to the site and where you park?

17 MR. GONZALEZ: Our teachers normally take
18 public transportation. If they don't walk, normally
19 they come from their offices and after work they come
20 directly to the center using public transportation.

21 Personally, I get there at 6:31 to open up
22 the parking space on Columbia Road which is a
23 commercial area and I park my car there all the time
24 so I don't use up space on Kalorama either. Our
25 coordinator obviously does the same thing because he

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1 comes in, we only work in the afternoons because the
2 program is only in the afternoons and evenings, so
3 nobody is there in the morning for our program, so we
4 don't use up any parking space at all in that sense.

5 So there may be one parking space used by
6 our coordinator when he's there in the evening, but
7 nothing else.

8 CHAIRMAN GRIFFIS: Okay, then the morning
9 program is the child development center?

10 MR. GONZALEZ: Yes.

11 CHAIRMAN GRIFFIS: Okay. Any other
12 questions of the Board?

13 MS. GIORDANO: Just one further point, if
14 you could explain why paying for parking would be a
15 hardship on the program, I think that would be
16 helpful.

17 MR. GONZALEZ: I guess it's kind of
18 self-explanatory. We're a nonprofit organization and
19 in addition, we really fight to fund raise to be able
20 to meet the demands of our student population of the
21 children, of the adults, so it would be a definite
22 hardship.

23 Actually, we would definitely be able to,
24 if we could, financially, for the center, provide
25 parking for staff people be it in the morning or the

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1 evening, it would be fantastic because we would avoid
2 a number of tickets that we've gotten in terms of some
3 staff getting. But the situation is that we can't
4 afford to do so because our status is nonprofit.

5 CHAIRMAN GRIFFIS: Okay, and also in the
6 written submission there is the practical difficulty
7 about building parking on the site in order to
8 accommodate the requirements which clearly if there is
9 no parking in the rear of the building now, the rear
10 of the building is actually being used for playground
11 and open area?

12 MR. GONZALEZ: It's a very nice open area
13 for the children which I believe is a requirement to
14 keep the children in a safe environment. We cannot
15 destroy that in order to put in parking spaces.

16 CHAIRMAN GRIFFIS: Actually, there is one.
17 I don't know who answered it, but there was one
18 indication that it was properly buffered in the rear,
19 or "reasonably" was the phraseology. How is it
20 actually screened or buffered for sound?

21 MS. EGAS: We have screens. The
22 playground is surrounded by a screen, wire screen.

23 CHAIRMAN GRIFFIS: Oh, I see. Like a
24 chain link fence?

25 MS. EGAS: Yes. It is worth mentioning

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1 that both properties have wood fence.

2 MS. GIORDANO: The abutting properties.

3 (Pause.)

4 CHAIRMAN GRIFFIS: Yes, Ms. Renshaw.

5 VICE CHAIRPERSON RENSHAW: Question. I'm
6 looking at Exhibit 5, the front of your building and
7 you have a number of stairs up to the main entrance.
8 Is there a door at the street level for handicapped?

9 MS. EGAS: No, our building is not -- we
10 don't have any handicap --

11 VICE CHAIRPERSON RENSHAW: No handicap
12 accessibility.

13 Therefore, you don't have any elevator
14 inside the building?

15 MS. EGAS: No.

16 CHAIRMAN GRIFFIS: Anything else?

17 VICE CHAIRPERSON RENSHAW: I'm looking at
18 the rear of your building and the fire escape. Is
19 that a metal fire escape?

20 MS. EGAS: Iron.

21 VICE CHAIRPERSON RENSHAW: Iron, metal.

22 MS. EGAS: Yes.

23 VICE CHAIRPERSON RENSHAW: Thanks.

24 CHAIRMAN GRIFFIS: Sometimes you like to
25 step over into building code issues just for fun.

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1 VICE CHAIRPERSON RENSHAW: It's always
2 good to ask.

3 CHAIRMAN GRIFFIS: Indeed. Anything else?
4 I think Ms. Renshaw is going to bring up or has
5 evidenced some interesting points that she'll at some
6 point maybe need to look at, but it's beyond our
7 jurisdiction.

8 So with that, if there's nothing else, we
9 can go to Office of Planning.

10 MS. GIORDANO: I would just note that the
11 building is fully licensed for these uses.

12 CHAIRMAN GRIFFIS: Right.

13 MS. GIORDANO: They've been inspected and
14 licensed.

15 CHAIRMAN GRIFFIS: Indeed, which is, in
16 fact, in compliance with 205.2 which would say that
17 the center be compatible, capable, rather of meeting
18 all the applicable code and licensing requirements.

19 MS. EGAS: I would also like to mention
20 that the said center was the first day care program
21 licensed under National Association for Education of
22 Young Children, NAYC. So it was the first program
23 subsidized by the Department of Human Services, the
24 ninth in the city overall and the first bilingual
25 program.

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1 CHAIRMAN GRIFFIS: Really?

2 MS. EGAS: Yes.

3 CHAIRMAN GRIFFIS: And when was that done?

4 MS. EGAS: 1992.

5 CHAIRMAN GRIFFIS: Indeed. Okay, let's
6 move on to Office of Planning and we can bring up any
7 other questions that we need as they arise.

8 Good afternoon.

9 MR. MORDFIN: Good afternoon, Chairman and
10 Members of the Board. My name is Stephen Mordfin with
11 the Office of Planning and this is BZA Application
12 16955 for the Spanish Education Development Center at
13 1840 Kalorama Road, N.W.

14 This application is for a special
15 exception for the continuation of the existing child
16 development center for 100 children and 12 teachers, a
17 special exception to permit a private school with 75
18 adult education students and 12 teachers and a
19 variance to reduce the parking requirement for the
20 private school to zero. The site is located on the
21 south side of Kalorama Road between 18th Street and
22 Columbia Road, N.W. and it is located within the R-5-B
23 District. It is improved with a three and a half
24 story rowhouse that's been converted to a school with
25 a two-story school building to the east side of the

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1 building. To the rear is an outdoor play area
2 extending back to the public alley, however, it is
3 supported by a retaining wall that prevents vehicular
4 access to the site and there is no vehicular access to
5 the site from Kalorama Road.

6 All surrounding uses are residential. A
7 child development center has been in operation at the
8 site for more than 30 years and the application
9 indicates that the existing lack of parking for the
10 center is grandfathered. The building has been used
11 for a school since at least 1960.

12 The application is in conformance with
13 Section 205 of the zoning regulations for a child
14 development center and that the application indicates
15 that the facility will be properly licensed. It
16 should not create objectional traffic conditions since
17 this proposal is for continuation of the existing use
18 and most children are walked to and from the site.

19 The application contends that the existing
20 lack of parking is grandfathered. No changes are
21 proposed to the existing outdoor play space. No
22 changes are proposed to the facility and no parking is
23 proposed. No off-site play area is proposed and the
24 Board has not approved another child development
25 center within the subject square and the Office of

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1 Planning is not aware of any others within 1,000 feet.

2 And the D.C. Department of Health has submitted a
3 letter recommending approval of the child development
4 center.

5 This application is also in compliance
6 with Section 206 of the zoning regulations for private
7 schools in that the application is for a private
8 school and not a trade school. The use is proposed to
9 operate between 6 p.m. and 9 p.m. within the existing
10 building and that most of the students are expected to
11 walk to the site and the application will be in
12 conformance with the required amount of off-street
13 parking provided that the parking variance that is a
14 part of this application is also approved.

15 The application includes a request to
16 reduce the parking requirement to zero. Although
17 there is no opportunity to provide parking on site,
18 the majority of the students are expected to walk to
19 the school. DDOT has informed the Office of Planning
20 that the variance will have a negative effect on the
21 neighborhood as on-street parking within this
22 neighborhood is at a premium. Therefore, DDOT
23 recommends that some -- therefore, DDOT recommended to
24 the Office of Planning that some of the students park
25 within the commercial parking lots within the

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1 neighborhood and the Office of Planning recommends
2 that the Applicant obtain the use of two off-street
3 parking spaces for use by other students or teachers.

4 It is the Office of Planning's conclusion that the
5 Applicant has satisfactorily met the criteria for the
6 special exception relief of Section 205 and 206 and
7 variance relief from Section 2101.1 provided the
8 Applicant provide a minimum of two off-street parking
9 spaces. And that concludes the Office of Planning's
10 report.

11 CHAIRMAN GRIFFIS: Thank you very much.
12 Just for clarity, does the Office of Planning support
13 the DDOT recommendation that offsite parking be
14 obtained by the Applicant?

15 MR. MORDFIN: Yes.

16 CHAIRMAN GRIFFIS: Indeed. Any questions
17 from the Board?

18 Does the Applicant have any questions of
19 the Office of Planning?

20 MS. GIORDANO: No further comments other
21 than that I don't think was clear on the facts that we
22 presented previously to the Office of Planning and
23 DDOT that all of the teachers are not on the site at
24 one time. In fact, there are only four on site at one
25 time. That may have had some bearing on their

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1 recommendation.

2 CHAIRMAN GRIFFIS: Indeed. Okay, any
3 other questions, comments, clarifications? That being
4 said, let's run through the other exhibits and
5 submissions that we have attendant to this case and
6 correct me if I miss any or incorrectly state it. We
7 do have a letter supporting the application from the
8 Department of Health, Office of Latino Affairs,
9 Department of Human Services, the D.C. Public Schools
10 and that would leave us at ANC-1-C which -- oh, indeed
11 and the Kalorama Citizens Association which submitted
12 a letter also in support.

13 I think we can move then to -- unless
14 there are others here --

15 MS. GIORDANO: I think there is a witness
16 here in support also.

17 CHAIRMAN GRIFFIS: Okay. Let's go to ANC
18 Report 1-C.

19 VICE CHAIRPERSON RENSHAW: Mr. Chairman, I
20 don't think we have a letter in the file, at least it
21 wasn't in my file, but there was reference made that
22 1-C has --

23 CHAIRMAN GRIFFIS: Are you aware of
24 whether one was submitted? I thought I saw one.
25 There's been a lot of paper flying around.

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1 MS. GIORDANO: I believe our
2 representatives were at the ANC meeting and I thought
3 it was submitted, but maybe they could testify to the
4 ANC action.

5 CHAIRMAN GRIFFIS: Is staff aware of
6 whether it was? I may be totally mistaken.

7 VICE CHAIRPERSON RENSHAW: OP states that
8 the Applicant has informed the Office of Planning that
9 ANC-1-C voted 6 to 0 to approve the applications, but
10 no mention of dates and quorums, etcetera.

11 Do you have anything?

12 CHAIRMAN GRIFFIS: I have, 26 November
13 Advisory Neighborhood Commission 1-C. Exhibit 34.
14 Yes.

15 MS. EGAS: This morning one of the ANC
16 members, Josh Gibson told me that the letter was filed
17 by Andrew Miscook.

18 CHAIRMAN GRIFFIS: Indeed. It was filed
19 on November 26 at 4:05 by Andrew Miscook and ANC 1-C
20 recommends that the above mentioned special exception
21 variances be granted and it is a lengthy letter,
22 actually, talking about the zoning issues.

23 I'm wondering why I'm the only one who has
24 it.

25 MEMBER ZAIDAIN: I don't have it in my

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1 files. Does it mention anything about the parking?

2 CHAIRMAN GRIFFIS: Yes.

3 (Pause.)

4 It came in late. It does need to be
5 waived. But is there a consensus on waiving the
6 report to accept it? Waiving our rules, I should say,
7 to accept the report? Any opposition to doing that?

8 COMMISSIONER MAY: No.

9 CHAIRMAN GRIFFIS: Very well. I'm going
10 to give a minute just for people to review real
11 quickly and look at the parking issues.

12 Mr. May, do you have it?

13 (Pause.)

14 MEMBER ZAIDAIN: I want to ask -- there's
15 a recommendation here that we just touched on about
16 DDOT recommending that the private school park within
17 the commercial parking lot located on the east side of
18 18th Street. How feasible is that?

19 MR. GONZALEZ: It depends on the weather,
20 basically. It's about a 5-block walk from 18th
21 Street. It's a paid lot. Most of our students are
22 low income. We don't charge them anything for the
23 classes when they are very low income, when they prove
24 to us they are very low income. So to be able to tell
25 them okay now, you have to pay for your parking, it

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1 would cost them more to park their car, especially as
2 everybody is aware of in Adams-Morgan it's not cheap
3 to park and to park there five days a week is a
4 hardship in itself and it would cost them more than
5 the actual classes.

6 VICE CHAIRPERSON RENSHAW: So where do
7 they park now?

8 MR. GONZALEZ: As I mentioned before, the
9 majority of our students are in the area, are
10 Adams-Morgan, Columbia Heights, Mount Pleasant area.
11 We have a number of buses in the area, the 42, the 90,
12 the 92, the H buses all go through the area, so it's
13 not a hardship to get there using public
14 transportation and I would say 90 percent of our
15 students do that. They walk or they use public
16 transportation. Very few use cars, at least I haven't
17 done a complete survey, but just on site, it's obvious
18 to see that a majority come in and some are just
19 dropped off and picked up later after classes.

20 MEMBER ZAIDAIN: What's the nearest metro?

21 MR. GONZALEZ: Well, we're actually one
22 mile away from three Metros, the Columbia Heights, the
23 Woodley Park and Dupont Circle. We're in the middle
24 of all three Metro stations.

25 MEMBER ZAIDAIN: So what you're saying is

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1 only 10 percent of your students drive?

2 MR. GONZALEZ: I would say yes. We're
3 only talking about maybe between four and six people
4 drive.

5 VICE CHAIRPERSON RENSHAW: But those four
6 and six, between four and six people can be -- are
7 urged to take public transportation or are they wedded
8 to the car?

9 MR. GONZALEZ: I haven't made a specific
10 survey. I'm sure we can definite encourage them to
11 use public transportation. I'm sure some of our
12 students who have vehicles have preferred not to
13 because of the parking issues, and so they prefer to
14 walk or to use public transportation, yes, but we can
15 definitely encourage our students to --

16 MEMBER ZAIDAIN: Adams-Morgan itself kind
17 of disencourages people to drive.

18 MR. GONZALEZ: I know, I know. But we
19 have encouraged our students, because what I mentioned
20 before, our classes start at 7 p.m., so I wait until
21 6:31 to open to -- if everybody is familiar with the
22 area, Columbia Road opens up and the park between 19th
23 and Kalorama, it opens up space there after 6:30, so
24 there are a number of spaces there available that I
25 encourage our students to use and our staff actually

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1 do, our one staff person to use when it's available.

2 MEMBER ZAIDAIN: They open up in terms of
3 their --

4 MR. GONZALEZ: The parking restriction
5 closes at 6:30. So it opens up at --

6 MS. GIORDANO: And it's a commercial
7 street so they're not competing with residents.

8 MEMBER ZAIDAIN: That's all I have.

9 MR. GONZALEZ: Just one more comment. As
10 I mentioned before, we are really not extending any
11 number of people that are coming into the program by
12 public participation or by any other means. This
13 program has been going on for a number of years and so
14 we're not increasing one person at all in the program,
15 be it staff or be it students.

16 MS. GIORDANO: I think the point there is
17 that as you can see from the record, there's a lot of
18 support for this case and the community view is that
19 there's no adverse impact as a result of the center,
20 that it can continue as it is without any adverse
21 impact on the community.

22 CHAIRMAN GRIFFIS: Very well. Let me
23 interrupt our great momentum here. Is Denis James
24 here?

25 Mr. James, and absolutely forgive me,

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1 because a preliminary matter is to set party status
2 and you have an application in for party status. If I
3 might, if you could sit down, are you -- can you
4 illuminate us on your position on the application?

5 MR. JAMES: Surely. My name is Denis
6 James. I live at 1819 Kalorama Road, N.W. which is
7 just across the street and down about eight houses.
8 I've been there since 1971 as a home owner. I'm very
9 much in support of the application. I'm very familiar
10 with the center. Do you want me to go into more
11 support?

12 CHAIRMAN GRIFFIS: I'll give you an
13 opportunity in just a couple of minutes, but I just
14 wanted to make clarification. In my fact, my reading
15 of your application was just that which is why it
16 didn't jump out at me at the beginning to establish
17 party status in opposition.

18 In terms of party status in support. I
19 think it may be advantageous to give testimony in
20 support. Party status obviously is a higher level of
21 status within a hearing and you're actually a
22 participant within the public hearing and then there
23 are cross examination responsibilities with that of
24 all the witnesses. Any submittals we ask of the
25 Applicant we will submit to you and you will then be

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1 asked to respond to those submittals. At the end, in
2 closing of the hearing, we would ask for you to
3 establish and submit findings of facts and conclusions
4 of law.

5 I'm not sure that -- perhaps you can tell
6 me whether it's your understanding you would like to
7 pursue party status at this time?

8 MR. JAMES: I don't believe that was my
9 intent. I just wanted to be able to speak in support
10 of the center, not knowing whether there would be
11 those who are --

12 CHAIRMAN GRIFFIS: In opposition.

13 MR. JAMES: In opposition. At least a balance
14 would be --

15 CHAIRMAN GRIFFIS: I appreciate and let me
16 also restate there are two levels of participation,
17 well, there are many levels, but two levels that are
18 pertinent to you. One could be a party status and one
19 is a person in giving testimony and I will call you
20 back in about two minutes and allow you to give your
21 testimony at that time.

22 MR. JAMES: Thank you.

23 CHAIRMAN GRIFFIS: Excellent. Okay, then
24 have we exhausted that? Any other questions on that?

25 The Applicant doesn't have any other points to

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1 address with the ANC in which case that is all the
2 submissions I have --

3 MEMBER ZAIDAIN: Mr. Chair, we have a
4 report from Department of Health, just to note that on
5 the record. That was part of the special exception
6 process for them to review it and they approved it.

7 CHAIRMAN GRIFFIS: Yes, indeed.

8 MEMBER ZAIDAIN: They recommended
9 approval.

10 CHAIRMAN GRIFFIS: In that that's the
11 first -- I forgot to reiterate that fact. It is a
12 requirement under the special exception. And it is a
13 letter of approval, as I've taken note.

14 MEMBER ZAIDAIN: It's up to 100 children.

15 CHAIRMAN GRIFFIS: Excellent. Okay.
16 Anything else I'm missing?

17 (Pause.)

18 Then why don't we call all those giving
19 testimony in support of the application forward at
20 this time.

21 Mr. James, as you approach, I also would
22 note, if I'm correct, you've submitted a written
23 letter, is that correct?

24 MR. JAMES: Yes, I did.

25 CHAIRMAN GRIFFIS: Very well, we can take

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1 note, Board Members, it is Exhibit 36.

2 MR. JAMES: Do I need to introduce myself
3 again?

4 CHAIRMAN GRIFFIS: No, I think the record
5 is clear.

6 MR. JAMES: Very good, thank you. I
7 appreciate the opportunity to speak before you today.
8 I'm not going to get real fancy or anything. The
9 said center has been a good neighbor for many years.
10 I say there's no appreciable negative outward effect
11 from their operations. I welcome the presence of
12 children on the street. This is a street -- I raised
13 two kids on this block and they're grown and they're
14 gone from the area. There's very, very children in
15 the neighborhood, at least the immediate neighborhood
16 and it's a welcome thing to me to have children
17 around.

18 Also, the work, the much needed work of
19 helping those in need of English as a second language
20 skills, it's very important in our community to have
21 folks brought into the system as opposed to just not
22 treating the problem and just letting that barrier to
23 participating in the great American dream.

24 And then I'm not going to keep you here
25 longer than you need to be, I'd like to comment on the

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1 parking a little bit. I'm acting in ABC licensing
2 issues in the neighborhood. We have approximately 90
3 restaurants within a very small radius of a few blocks
4 and I happen to know that there are 7,000 seats of
5 occupancy for those restaurants and I would say that
6 the tiny little fraction that the said center needs
7 doesn't even register in comparison to the burdens
8 that those restaurants bring to the community. So I
9 think it would be an unfair sort of trade off --
10 create a comparative hardship say for them to have to
11 provide any sort of parking in this case where I think
12 they've shown a fairly strong case that a lot of their
13 students/clients come by public transportation which
14 is both -- both buslines run at either end of the
15 street. Columbia is on one end, 18th is on the other.
16 Whereas restaurants have a free ride on having to
17 provide parking and they're all clustered very closely
18 together.

19 So I think those are the main points I
20 wanted to say, to comment on. And I am actually very
21 involved in trying to solve some of these problems in
22 the community. I've taken part in a partnership of
23 problem solving. It's the Police Department's program
24 to deal with the parking and traffic study.
25 Lieutenant Fulton of the Third District and an ad hoc

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1 group of residents and business owners are addressing
2 some of these issues. So I do have a little bit of
3 knowledge, not professional knowledge, but you know,
4 on the street kind of knowledge.

5 I very much appreciate their presence in
6 our community.

7 CHAIRMAN GRIFFIS: And I think that's
8 excellent and very well said and we do appreciate your
9 participation today.

10 Have you seen any impact in the
11 neighborhood with the parking garage that was
12 constructed on 18th Street?

13 MR. JAMES: Well, it's busy on the busy
14 nights. It's filled on Friday and Saturday and
15 sometimes Thursdays, but other nights, just moderate
16 usage. It definitely helps.

17 CHAIRMAN GRIFFIS: But is it your
18 perception it alleviates the on-street parking or not?

19 MR. JAMES: Well, restaurants and their
20 usage tend to grow, places expand, so and we also have
21 many other businesses, non-ABC type businesses, so
22 when we're busy, we're busy and there's more need than
23 there is parking and there's also quite a bit of
24 development east of 18th Street, housing development
25 which is actually taking away some of the surface lots

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1 which used to provide some additional parking to the
2 neighborhood. So it's a hard balancing act. I'm sure
3 those cases are in front of you --

4 CHAIRMAN GRIFFIS: Yes, indeed, so we
5 won't go too far into that.

6 MR. JAMES: Don't worry.

7 CHAIRMAN GRIFFIS: What I want to do and I
8 think you were very articulate in talking about the
9 comparison and the impact and what burden it might be
10 if parking was required on this facility and yet we
11 look at so many others with so many demands that are
12 not required and so I think that does put a good
13 perspective for myself and hopefully for the rest of
14 the Board.

15 Any questions from the Board on the
16 testimony?

17 COMMISSIONER MAY: You came here to
18 testify in favor, anticipating that there may actually
19 be some people not in favor, is that what -- the sense
20 I got, that there may be some people who oppose this
21 application?

22 MR. JAMES: It's always in the realm of
23 possibility. You hear rumors around the neighborhood.

24 COMMISSIONER MAY: Are you unusual for the
25 people on that block or is it -- do most people have

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1 the same mindset that you do?

2 MR. JAMES: I hesitate to speak for
3 others, but I will say I collected approximately 40
4 signatures in a two-day period on a petition which I
5 believe has been submitted to the Board.

6 CHAIRMAN GRIFFIS: Yes, it's in the record.

7 MR. JAMES: I didn't spend a great deal of
8 time doing that, so I was able to get numerous
9 signatures in a short period. Most people said yeah,
10 that's fine, we like that. We think this is a good
11 thing. Educating folks to help essentially join the
12 system and taking care of children. If there were
13 folks against it I wonder where they would be, if this
14 is their forum.

15 CHAIRMAN GRIFFIS: Okay. It brings up a
16 pertinent point of areas of support for the
17 application, the petition and I know we've all taken
18 notice and it is fairly extensive for the addresses on
19 Kalorama, 1800 block of Kalorama Road and then it goes
20 around the corner also on 18th Street. So I think it
21 is substantiated, your statement of fairly widespread
22 support of this.

23 Okay, anything else? Very well, thank you
24 very much.

25 MR. JAMES: Thank you. I appreciate it.

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1 CHAIRMAN GRIFFIS: Anybody else that is
2 here, attendant to this application to give testimony
3 today either in support or in opposition or neutral?

4 Very well, then Ms. Giordano, we'll turn
5 to you for any closing remarks you might have.

6 MS. GIORDANO: I would just ask that the
7 Board approve the special exception and the full
8 parking variance. We believe the parking variance can
9 be granted without any adverse impact on the
10 neighborhood and that the practical difficulty is
11 obvious in that there's just nowhere on this lot where
12 parking can be provided without taking away play space
13 for children.

14 We would ask that the Board issue a
15 summary order in this case so that we can facilitate
16 the process of getting the necessary C of O.

17 CHAIRMAN GRIFFIS: Good. We can certainly
18 take that under consideration. Board Members' last
19 minute questions? If not, I would move approval of
20 application 16955 for the special exception to permit
21 the continuation of the existing child development
22 center. You indicated 100 children, ages 2 to 10
23 years of age and 12 total teachers. Also, a special
24 exception to permit the private school with 75 adult
25 education students and from a variance to reduce the

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1 parking requirement for the private school. I think
2 that's enough said on that.

3 I'd ask for a second.

4 VICE CHAIRPERSON RENSHAW: Second, but I
5 have a question, Mr. Chair. Is it 12 faculty and
6 staff to cover both, just in case?

7 CHAIRMAN GRIFFIS: Yes. I believe that's
8 the indication. In fact, it's 12 total in faculty and
9 staff, yes. That was my hesitation for trying to
10 figure out the total amount.

11 Any other questions to speak to the
12 motion? Mr. May?

13 COMMISSIONER MAY: Just to clarify, we're
14 approving on the parking a reduction to zero?

15 CHAIRMAN GRIFFIS: That's correct. There
16 was indication in the application advertising how many
17 were required and I left it open clearly, it's a
18 variance from the requirements on the parking and I
19 think the special exception case, well, the variance
20 was clearly made in terms of the existing lot.
21 Actually, it was illustrated that the unique shape in
22 terms of its size, it had a large dimension, but that
23 as it went to the rear where parking might be
24 accommodated where none was previously could have been
25 utilized, that slot had been utilized for a current

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1 use for outdoor requirements for the child development
2 center and it would, in fact, become very difficult,
3 if not detrimental to the use of the facility if
4 parking was, in fact, required.

5 In terms of speaking to DDOT and also
6 Office of Planning's indication of requiring off-site
7 parking and the number of spaces be at 2 or be it 10
8 for that matter, I think it is persuasive to the Board
9 that that does become very burdensome and based on the
10 limited requirements, the actual and practical limited
11 requirements of the parking by the Applicant, it seems
12 like the area, although it is known to this Board the
13 difficulty of parking in that area and we would not
14 diminish that aspect, clearly, I think that this Board
15 feels that the amount of impact and requiring parking
16 by the facility does not overwhelm the neighborhood
17 and specifically the block itself.

18 We would, of course, without saying,
19 assume that the facility and anyone that does come to
20 visit or is faculty, clearly obeys the residential
21 permit parking on the residential streets and I can
22 only imagine that one would get ticketed quite
23 frequently if they didn't which becomes out of
24 jurisdiction anyway, but that being said, I think
25 that's all I need to say to the motion, unless there

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1 are others that would like to speak to any aspects of
2 it, in which case I could ask those all those in favor
3 to signify by saying aye.

4 (Ayes.)

5 Opposed?

6 (No response.)

7 MS. BAILEY: Mr. Chairman, the vote is
8 recorded as 4-0-1, motion by yourself, Mr. Griffis;
9 Ms. Renshaw seconded; Mr. May, Mr. Zaidain are in
10 support. Mr. Etherly is not here today and this is a
11 summary order, Mr. Chairman.

12 CHAIRMAN GRIFFIS: I have no objection to
13 summary order unless anyone else has any objection. I
14 think it fits well into the realm of summary order.
15 So we can pursue in that vein.

16 Good. Thank you all.

17 MS. GIORDANO: Thank you very much.

18 CHAIRMAN GRIFFIS: Yes, indeed. Enjoy the
19 afternoon. We appreciate your patience again. Enjoy
20 the cold weather.

21 Okay, lest you think we can adjourn,
22 folks, let's get to the minutes. And I will take this
23 down very quickly so we don't need to belabor a lot.

24 If I'm not mistaken -- are we okay?

25 MS. BAILEY: No sir. We need Ms. Giordano

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1 to provide witness cards for the people who spoke
2 today. Okay.

3 CHAIRMAN GRIFFIS: Yes, anyone that
4 addressed the Board please submit two witness cards.

5 Okay, and if I'm not mistaken, we have
6 November bench minutes for approval. If it is
7 approved by Staff, I would just run through them
8 chronologically starting first with the 5th of
9 November 2002. Does anyone see any problem with that?

10 Very well, if we could put that in front of us then
11 Members present were myself, Ms. Renshaw, Mr. Etherly,
12 Mr. Zaidain and Mr. Hannaham. I believe we did have
13 proxies for some of these where Board Members are not
14 present and so the Staff can indicate that when it's
15 appropriate.

16 Any comments, corrections, changes on
17 November 5, 2002, in which case I would move approval?

18 MEMBER ZAIDAIN: Second.

19 CHAIRMAN GRIFFIS: Thank you. All in
20 favor?

21 (Ayes.)

22 We had a proxy for Mr. Hannaham, is that
23 right?

24 MS. BAILEY: Yes, a proxy for Mr. Hannaham
25 in the affirmative, so that would be 5-0-0.

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1 CHAIRMAN GRIFFIS: Excellent. November
2 12, 2002. Mr. Hood, Mr. Zaidain, Mr. Etherly, Ms.
3 Renshaw and myself. Actually, Mr. May, are you on any
4 of these?

5 COMMISSIONER MAY: I don't think so.

6 CHAIRMAN GRIFFIS: Then there's no reason
7 for you to hang around except to be social, but we
8 welcome your presence.

9 12th of November. Are there any changes,
10 corrections?

11 VICE CHAIRPERSON RENSHAW: Move approval.

12 MEMBER ZAIDAIN: Second.

13 CHAIRMAN GRIFFIS: If I could actually
14 belabor a point for a second, under Thomas Brown, it's
15 16943. It's on page 4, the last paragraph of the page
16 before the statement, there's a statement here which I
17 didn't understand it reads "it was indicated that the
18 purpose of the hearing is to determine if the
19 Applicant is in compliance with the recorded easement
20 which closed the public alley that provides access to
21 the rear of the property." I'm not sure that's what
22 the purpose of the hearing was.

23 SECRETARY PRUITT: I'm sorry, Mr.
24 Chairman, could you go --

25 CHAIRMAN GRIFFIS: 16943, page 4 of the

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1 last full paragraph.

2 MS. BAILEY: Mr. Chairman, we can look at
3 the record and clarify that.

4 CHAIRMAN GRIFFIS: Okay. I think it was
5 just mixing some words. There was the easement and
6 all that, but it clearly wasn't the purpose of the
7 hearing, so we may even just strike all that. So if
8 we will, I would move approval with the edits as
9 noted.

10 Okay, it's seconded.

11 MEMBER ZAIDAIN: Second.

12 CHAIRMAN GRIFFIS: All in favor?

13 (Ayes.)

14 Opposed?

15 (No response.)

16 Very well.

17 SECRETARY PRUITT: Staff would record the
18 vote as 4-0-1.

19 CHAIRMAN GRIFFIS: And on the 19th,
20 present, myself, Ms. Renshaw, Mr. Etherly, Mr.
21 Zaidain, Mr. Parsons, comments or corrections on
22 these?

23 MEMBER ZAIDAIN: I move approval.

24 VICE CHAIRPERSON RENSHAW: Second.

25 CHAIRMAN GRIFFIS: All in favor?

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1 (Ayes.)

2 We have a proxy for Mr. Parsons.

3 SECRETARY PRUITT: Staff would record the
4 vote 5-0-0, proxy for Mr. Parsons in the affirmative.

5 CHAIRMAN GRIFFIS: Okay. Mr. Etherly is
6 proxied also?

7 SECRETARY PRUITT: On that particular one,
8 yes.

9 CHAIRMAN GRIFFIS: Excellent, 26 November
10 2002, questions?

11 VICE CHAIRPERSON RENSHAW: Yes. On page 2
12 of November 26, bottom, there is a note that states
13 Commissioner Mitten attended the public hearing, but
14 did not participate in deciding the case. And was not
15 present when the Board reopened the record.

16 CHAIRMAN GRIFFIS: That's good.

17 VICE CHAIRPERSON RENSHAW: I pointed this
18 out to Commissioner Mitten this morning and she is
19 aware of it.

20 CHAIRMAN GRIFFIS: Excellent. Any other
21 comments? Noted. So moved.

22 MEMBER ZAIDAIN: Second.

23 CHAIRMAN GRIFFIS: All in favor?

24 (Ayes.)

25 Thank you all very much. Is that it? Did

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1 I hit all of them?

2 MS. BAILEY: Yes, Mr. Chairman.

3 SECRETARY PRUITT: Last, November 26th was
4 5-0-0 including corrections. Motion made by Mr.
5 Zaidan, seconded by Mr. Griffis. That's it then.

6 CHAIRMAN GRIFFIS: Is that it?

7 SECRETARY PRUITT: Proxy, of course, for
8 Mr. Parsons and Mr. Etherly in the affirmative.

9 CHAIRMAN GRIFFIS: Okay. Perfect.
10 Anything else we need to take care of while we're
11 here? In which case, we can conclude the afternoon
12 session and wish you all a great afternoon.

13 (Whereupon, at 3:55 p.m., the public
14 hearing was concluded.)

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