

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

AUGUST 5, 2003

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:25 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- GEOFFREY H. GRIFFIS, Chairperson
- CURTIS L. ETHERLY, JR., Board Member
- RUTHANNE G. MILLER, Board Member
- DAVID A. ZAIDAIN, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

- CAROL J. MITTEN, Commissioner

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

APPEARANCES (Continued)

COMMISSION STAFF PRESENT:

CLIFFORD MOY, Office of Zoning
BEVERLEY BAILEY, Office of Zoning
JOHN K.A. NYARKU, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, Esq.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

<u>AGENDA ITEM</u>	<u>PAGE</u>
APPLICATION NO. 17012 OF JEMAL'S BENJO LLC	5
MOTION TO RECONSIDER APPEAL APPLICATION NO. 16990 OF AMERICAN TOWERS, INC.	10
MOTION TO LIFT BZA ORDER TO STAY - APPLICATION NO. 16370 OF GERALD CASSIDY ON BEHALF OF JACK MILTON FIELDS	19
APPLICATION NO. 17015 OF EVANGEL MISSIONARY BAPTIST CHURCH	21
MOTION FOR MINOR MODIFICATION OF CONDITIONS IN BZA ORDER NO. 5802 OF THE APPEAL OF GERTRUDE CHANLER	38
APPLICATION NO. 17026 OF WILLIAM SCHORTINGHOUSE	50
ELECTION OF VICE-CHAIRPERSON FOR BZA	53
APPLICATION NO. 16974 OF TUDOR PLACE FOUNDATION, INC.	58
APPROVAL OF THE JUNE 3, 2003, MINUTES	79
APPROVAL OF THE JUNE 10, 2003, MINUTES	81
APPROVAL OF THE JUNE 17, 2003, MINUTES	82
APPROVAL OF THE JUNE 24, 2003, MINUTES	84
APPROVAL OF THE JULY 1, 2003, MINUTES	84

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

APPROVAL OF THE JULY 8, 2003, MINUTES
85

APPROVAL OF THE JULY 15, 2003, MINUTES
86

APPROVAL OF THE JULY 22, 2003, MINUTES
87

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

(9:25 a.m.)

CHAIRPERSON GRIFFIS: Good morning.

Let me call to order the 5th of August 2003 public meeting of the District of Columbia Board of Zoning Adjustment. My name is Geoff Griffis, Chairperson.

Joining me today is Mr. Etherly; also Ms. Miller. Representing the Zoning Commission with us on numerous cases this morning is Ms. Mitten, and representing the National Capital Planning Commission is Mr. Zaidain.

Also from the Office of Zoning Staff with us is Ms. Bailey, Mr. Moy, and Mr. Nyarku is also attending to most of our needs, if not all and every need that we have. Ms. Monroe, of course, is representing the Corporation Counsel.

Clearly in the public meetings, this is a point at which we have completed the hearing on each case. We will call the cases attendant to our schedule today, which I will update in a moment. These are our deliberations; therefore, to be absolutely clear, we do not entertain additional information, testimony, or anything of the like, but rather render or conduct our deliberation and render decisions on each of the cases.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 There is one change in the order of
2 schedule I believe that would have been posted for
3 you close to the door where you entered into the
4 hearing room. We will be moving the Tudor Place
5 Foundation deliberation.

6 So our order will be first the Jemal's
7 Benjo; second will be the American Tower; third we
8 will have the Cassidy on behalf of Fields; fourth
9 would be the Evangel Missionary Baptist Church; and
10 fifth would be Tudor Place. This is solely for the
11 coordination with members on the Board and their
12 schedule so that we can do things while people are
13 here and on certain cases.

14 With that, then, I believe -- well, we
15 have a couple other issues, but that is the
16 changing of any of the schedule for us this
17 morning, so hopefully that's clear to everybody.

18 With that, Mr. Moy, I would ask for you
19 to announce the first case for our decisionmaking.

20 APPLICATION NO. 17012 OF

21 JEMAL'S BENJO LLC

22 MR. MOY: Yes. Good morning, Mr.
23 Chair, members of the Board.

24 The first case for the morning is
25 Application Number 17012 of Jemal's Benjo LLC,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 pursuant to 11 DCMR 3103.2, for a variance from the
2 building height provisions under Section 770, a
3 variance from the floor area ratio requirements
4 under Section 771, a variance from the residential
5 recreation space requirements under Section 773,
6 and a variance from the rear yard requirements
7 under Section 774, to permit the renovation of
8 historic buildings for mixed use -- that's retail,
9 office and residential -- in the C-2-A District at
10 premises 1301 through 1309 9th Street, Northwest,
11 and Square 399, Lots 62, 63, 800, 801, 803 and 804.

12 On May 20th, 2003, the Board completed
13 testimony on the case application and scheduled its
14 decision for June 3rd, 2003.

15 At the June 3rd meeting, the Board
16 discussed the case application and requested
17 additional information from the applicant and
18 scheduled its decision for August 5th, 2003.

19 On August 1st, 2003, the applicant
20 submitted a letter requesting that the Board not
21 act on the application until the September 9th,
22 2003, Board meeting, and that is in your case
23 folders as Exhibit 52.

24 That completes my briefing, Mr.
25 Chairman.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Thank you, Mr.
2 Moy.

3 As has been indicated, the applicant is
4 respectfully requesting we not act on this
5 application today, so I will hear comments on that.

6 I will begin just briefly indicating
7 that it would be difficult without having the
8 additional information that we required. I don't
9 see any difficulty or prejudicing anyone involved
10 in this application setting it off until September
11 9th.

12 Of course, I would not want to go
13 beyond that if the Board feels that September 9th
14 is adequate time to pull this together. If not,
15 let's set it for a later date. I don't want to
16 revisit this and continue it again. It's difficult
17 enough reviewing it to be prepared for
18 decisionmaking and having to then stall it.

19 Clearly we asked for several things
20 from the applicant which are listed and hopefully
21 clear to them. It was a reiteration of the
22 opportunity to reiterate the tests for the relief
23 requested for the variances; also to additionally
24 add to their case for economic feasibility; and
25 third, there was a provision that the Board had

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 left open the record to have submitted the
2 potential of revising the application with a
3 revised design which may well have, as I believe
4 the comments showed in our own hearing, may well
5 give the opportunity if the applicant is so moved
6 to actually present the original design, which may
7 have had less relief or certainly it would allow us
8 to have some sort of comparative point to look at
9 what was first envisioned and what had, through
10 other approvals, then been constructed for our
11 application.

12 So with that, let me hear from others.

13 MEMBER ZAIDAIN: Mr. Chairman, I do
14 want to say for the record that I have read the
15 entire case record of this and I will be
16 participating. I was absent on the May 20th
17 hearing and the subsequent decisionmaking meeting,
18 and as such, I have no objection to continuing this
19 to a later date.

20 CHAIRPERSON GRIFFIS: Good. Thank you.

21 Others? Anything else?

22 COMMISSIONER MITTEN: No objection.

23 CHAIRPERSON GRIFFIS: Okay. Very well,
24 then. I can take it as a consensus of the Board
25 that we will postpone our deliberation on this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 application, and I take it that no one has objected
2 to September 9th, which was proffered by the
3 applicant. If not, let's set it, then, for
4 decision on September 9th.

5 COMMISSIONER MITTEN: Could I just ask,
6 Mr. Chairman, --

7 CHAIRPERSON GRIFFIS: Yes.

8 COMMISSIONER MITTEN: -- since I
9 believe we had set a schedule for the date that the
10 submissions had to be provided and then an
11 opportunity for responses, that we need to
12 establish a schedule like that again.

13 CHAIRPERSON GRIFFIS: Excellent point.
14 Which means they are due today. No. Mr. Moy, do
15 you have a schedule? It actually isn't a lot of
16 time. I mean, we often ask for two weeks before,
17 but let's look at it.

18 COMMISSIONER MITTEN: Well, that might
19 be an argument for putting it off until October.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. MOY: Looking at a September 9th
22 decision date, Mr. Chairman, I would ask then that
23 submissions be due to the Board by August the 20th,
24 if that's doable. What's today? August the 5th.

25 CHAIRPERSON GRIFFIS: It's two weeks.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOY: Two weeks. Is two weeks
2 sufficient enough? If not, then we can go to, say,
3 August 27th, one of the two.

4 COMMISSIONER MITTEN: There has to be
5 an opportunity for parties to respond.

6 MR. MOY: Okay. In that case, then,
7 submissions August 20th and responses by the 27th.
8 October? I'm hearing October from the applicant.

9 CHAIRPERSON GRIFFIS: From the bird on
10 the window sill?

11 (Laughter.)

12 CHAIRPERSON GRIFFIS: I think that
13 makes a lot of sense. Let's set it for October
14 rather than revisit this September 9th and make
15 sure that those get in. Otherwise -- I mean, my
16 anticipation is on the meeting date in October,
17 we're a go with this whether we have information or
18 not. The record will suffice for our deliberation.

19 MR. MOY: Okay. Then if we're looking
20 at October the 7th, then submissions should be in
21 the office by let's say September 23rd; responses,
22 September 30th. Should I go over the dates again?

23 CHAIRPERSON GRIFFIS: Yes.

24 MR. MOY: Okay. Submissions due to the
25 Board September 23rd; any responses to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 submissions by September 30th; and a decision
2 meeting on October 7th.

3 CHAIRPERSON GRIFFIS: Good. Board
4 members clear? Very well. Let's continue.

5 MOTION TO RECONSIDER APPEAL APPLICATION

6 NO. 16990 OF AMERICAN TOWERS, INC.

7 MR. MOY: The next case is a motion to
8 reconsider the appeal of Application Number 16990
9 of American Towers, Incorporated, pursuant to 11
10 DCMR 3100 and 3101, from the administrative
11 decision of the Acting Director of the Department
12 of Consumer and Regulatory Affairs for rescinding
13 Building Permit Numbers B425271, 420358, 429362, et
14 al., relating to the construction of an antenna
15 tower.

16 Appellant alleges that DCRA erred in
17 ruling that a side yard did not meet the minimum
18 requirements under Section 775. The subject
19 property is located in the C-2-B District at
20 premises 4623 41st Street, Northwest, Square 1769,
21 Lots 20 and 30.

22 On April 29th, 2003, the Board heard
23 argument from DCRA and American Towers on DCRA's
24 motion for dismissal and American Towers' request
25 for a stay. At the conclusion of the argument, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Board voted 3-0-2 to grant the motion for a
2 dismissal. The final order was issued on June
3 25th, 2003.

4 On July 7th, 2003, the Board received a
5 motion for reconsideration from American Towers,
6 and that's in your case folders as Exhibit 34; and
7 on July 14th, 2003, the DCRA filed a motion of
8 opposition to reconsider, and that's in your case
9 folders under Exhibit 35.

10 Finally, on July 31st, 2003, the
11 appellant, American Towers, filed a reply of
12 appellant American Towers in support of its motion
13 to reconsider, and that's Exhibit 36 in your case
14 folders.

15 That completes my briefing, Mr.
16 Chairman.

17 CHAIRPERSON GRIFFIS: Thank you, Mr.
18 Moy.

19 MEMBER ETHERLY: Mr. Chair?

20 CHAIRPERSON GRIFFIS: Yes.

21 MEMBER ETHERLY: I would just like to
22 note for the record that I did not participate in
23 the April 29th hearing due to a prior commitment.
24 I have, however, read the transcript in its
25 entirety and will be able to participate fully in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the adjudication of this motion.

2 CHAIRPERSON GRIFFIS: Good.

3 MEMBER ETHERLY: Thank you, Mr. Chair.

4 CHAIRPERSON GRIFFIS: Thank you very
5 much.

6 Yes, Ms. Miller.

7 MEMBER MILLER: Mr. Chair, likewise, I
8 was not on the Board the time it considered the
9 issues that are the subject of this motion for
10 reconsideration, and I took no part in the
11 decisionmaking or vote, but I have read the entire
12 record in this case and I am prepared to
13 participate in the deliberations and to even begin
14 the analysis having gone through all the papers
15 extensively.

16 CHAIRPERSON GRIFFIS: Indeed. Go right
17 ahead.

18 MEMBER MILLER: Okay. Having reviewed
19 the record in its entirety and looking at the
20 appellant's motion for reconsideration, it seems
21 that the basis for the Board's order was
22 jurisdictional, which is a question of law and
23 which the Board found that it lacked the power to
24 consider the appeal because it was untimely.

25 Looking at all the arguments that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 appellant has made, I don't find any that contain
2 any authority to find that the American Towers'
3 filing was timely as a matter of law, and this
4 court relied on Waste Management of Maryland v.
5 D.C. Board of Zoning Adjustment in its order.

6 Nothing that the appellant has said
7 changes the fact that it got notice of an appeal
8 from DCRA, the notice to rescind and cancel the
9 permits, and failed to file an appeal within 60
10 days before the BZA.

11 They float an argument regarding
12 judicial estoppel stating that the District in its
13 court proceedings made arguments that, in fact,
14 American Towers had filed an appeal with the BZA,
15 but those arguments were made beyond the time in
16 which an appeal would have been timely before this
17 Board, and, in fact, they don't affect the tolling
18 of the time -- they don't affect the time, in any
19 event.

20 Whatever argument DCRA may have made in
21 court had no effect on the time that they filed
22 their appeal before this Board. In fact, I think
23 that the first time that DCRA made remarks about
24 American Towers having filed an appeal was December
25 20th, 2000, and this Board found that the appeal to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 BZA was due December 1, 2000.

2 Also in the Board's order, they looked
3 at the argument that there may have been an
4 equitable reason to toll the time for filing of the
5 appeal based on the fact that there was an earlier
6 application to challenge the permits filed by the
7 ANC, and that was Appeal 16990, but that appeal was
8 withdrawn and American Towers failed to institute
9 an appeal in 60 days of that date.

10 Finally, they made an argument that the
11 Board never issued an order dismissing the case,
12 and therefore the time should not have run;
13 however, they cite no authority for the proposition
14 that in order for it to be chargeable with notice
15 or knowledge, the Board had to issue an order.
16 There was a withdrawal of that appeal.

17 So I find no authority in the motion
18 for reconsideration to reverse this Board's order
19 which was based on jurisdictional grounds and for
20 which we have very little discretion.

21 CHAIRPERSON GRIFFIS: Good. Thank you,
22 Ms. Miller.

23 If I understand you correctly, what you
24 have stated is a lot of the arguments in the
25 appellant's American Towers motion to reconsider

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 are actually redundant to those that were covered
2 in the original appeal and were discussed and
3 dispensed with. The additional new information, of
4 course, anything that was, in fact, deliberated on,
5 would not be the basis for reconsideration;
6 however, the new -- as I'm understanding my reading
7 and what you have just said, is the judicial
8 estoppel, and is it your understanding that we
9 could, in fact, be estopped from an action of DCRA?

10 MEMBER MILLER: No, especially not in
11 another court. What they said in another court,
12 time beyond the period for filing with our Board,
13 would not estop us at all.

14 CHAIRPERSON GRIFFIS: It seems to me it
15 gets us into almost a circular trap if we were to
16 say -- and we have heard and there was brief
17 discussion of it in this filing of reconsideration
18 -- that we're estopped because there was good faith
19 put on the issuance of permits when we are, in
20 fact, the body charged with the appeal process for
21 those administrative decisions. And so if we were
22 to get into the fact of -- on that issue, it would
23 do away with our own authority for hearing appeals.

24 I concur with your statement that I do
25 not see nor follow the -- I do not agree with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 reasoning in the motion for reconsideration that we
2 would be estopped from taking action based on
3 statements, whether they are misstatements or not,
4 from a DCRA representative in a different court in
5 a different body.

6 Others? Any other additional comments
7 on this?

8 Ms. Mitten.

9 COMMISSIONER MITTEN: I agree with
10 everything that has been said, and I also would
11 just add that the context in which this statement
12 was made by the Court of Appeals was whether there
13 were -- whether due process was -- whether there
14 was the opportunity for American Towers to pursue
15 due process, not whether -- there kind of was an
16 aside about whether, in fact, they were pursuing
17 it, but whether other remedies had been available
18 to them.

19 So, I mean, the whole thing that gives
20 rise to us isn't even -- it doesn't turn on whether
21 American Towers had made an appeal or not. So as
22 far as the court's concerned, that wasn't a
23 relevant issue, I don't think. And then everything
24 else that has been said about, you know, our
25 jurisdiction and the ability of DCRA attorneys to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 bind what this Board does I think is inconsistent
2 with this role that we play. So I don't believe
3 that there is any judicial estoppel that's binding
4 us here.

5 CHAIRPERSON GRIFFIS: Good. Very well.

6 Others?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Is there a
9 motion?

10 COMMISSIONER MITTEN: I would move that
11 we deny the motion to reconsider the appeal of
12 Application 16990 that has been filed by American
13 Towers, Incorporated.

14 CHAIRPERSON GRIFFIS: Is there a
15 second?

16 MEMBER MILLER: Second.

17 CHAIRPERSON GRIFFIS: Thank you.
18 Further deliberation? Comments?

19 (No response.)

20 CHAIRPERSON GRIFFIS: Not noting the
21 need for it, I would ask for all those in favor of
22 the motion signify by saying aye.

23 (Chorus of ayes.)

24 CHAIRPERSON GRIFFIS: And opposed?
25 Abstained?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 (No response.)

2 MR. MOY: The staff would record the
3 vote was five-zero-four, four-zero-one on the
4 motion of Ms. Mitten to deny the motion for
5 reconsideration, seconded by Ms. Miller also to
6 deny, Mr. Etherly and Mr. Zaidain, the Chairman,
7 Mr. Griffis, abstaining.

8 CHAIRPERSON GRIFFIS: No, it was -- I
9 called for abstention, Mr. Moy.

10 MR. MOY: Abstention?

11 CHAIRPERSON GRIFFIS: I did not
12 abstain. I voted for the motion.

13 MR. MOY: You voted for -- oh, I'm
14 sorry. My correction. So the vote, then, is
15 five-zero-zero.

16 CHAIRPERSON GRIFFIS: Thank you.

17 And when you are ready, Mr. Moy.

18 MR. MOY: Is it Case Number 5802; am I
19 correct? Or were we moving to --

20 CHAIRPERSON GRIFFIS: 16370.

21 MR. MOY: Okay. Good.

22 MOTION TO LIFT BZA ORDER TO STAY -

23 APPLICATION NO. 16370 OF GERALD CASSIDY

24 ON BEHALF OF JACK MILTON FIELDS

25 MR. MOY: The next case, then, is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 motion which is the motion to lift BZA order to
2 stay - Application Number 16370 of Gerald Cassidy
3 on behalf of Jack Milton Fields pursuant to 11 DCMR
4 3108.1, for a special exception under Section
5 203.10 for a home occupation permit to conduct a
6 consulting/strategic planning business in a CAP/R-4
7 District at premises 434 New Jersey Avenue,
8 Southeast, Square 694, Lot 811.

9 On July 1st, 2003, the Board took
10 action to grant the applicant's motion to lift the
11 stay, which was granted by the Board on November
12 4th, 1998. The recorded vote was four-zero-one.
13 Also the Board approved the issuance of a proposed
14 order for exceptions. Again, the recorded vote was
15 four-zero-one.

16 The parties were requested by the Board
17 to provide comments to the proposed order by July
18 14th, 2003. The Board has received no submissions
19 before the Board's action on the proposed order.

20 The staff also notes that, for the
21 record, on July 1st, Mr. Parsons had submitted in
22 the file a proxy vote which was not recorded and
23 his vote was to approve the lifting of the stay and
24 the issuance of the order for exceptions.

25 That completes my briefing, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Chairman.

2 CHAIRPERSON GRIFFIS: Good. Thank you
3 very much.

4 For absolute clarity, then, we have
5 followed our procedure, Board members, and reviewed
6 the draft order sent out for exceptions, and
7 frankly, for me, that means sent out for comments
8 of those that were parties, participants in the
9 case to see if there were any failings, lackings,
10 additions that were required.

11 As Mr. Moy has adequately addressed,
12 there were no filings of exceptions to this, so the
13 motion before us is to approve the order for
14 issuance of Application 16370, and I would ask for
15 a second.

16 MEMBER ETHERLY: Second, Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Thank you, Mr.
18 Etherly.

19 Are there any questions, comments,
20 deliberations on this and our procedures in regard
21 to this order?

22 (No response.)

23 CHAIRPERSON GRIFFIS: If there are no
24 clarifications, then I would ask for all those in
25 favor of the motion signify by saying aye.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 (Chorus of ayes.)

2 CHAIRPERSON GRIFFIS: Opposed?
3 Abstaining?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Thank you.

6 MR. MOY: Staff would record the vote
7 as four-zero-zero to approve the proposed order.
8 Mr. Parsons submitted a proxy vote to approve the
9 order, so that results in the vote as
10 five-zero-zero to approve the motion of the
11 Chairman, seconded by Mr. Etherly.

12 CHAIRPERSON GRIFFIS: Thank you, Mr.
13 Moy.

14 APPLICATION NO. 17015 OF
15 EVANGEL MISSIONARY BAPTIST CHURCH

16 MR. MOY: The next application is
17 Number 17015 of Evangel Missionary Baptist Church,
18 pursuant to 11 DCMR 3103.2, for a variance from the
19 rear yard requirements under Section 404, and a
20 variance from the off-street-parking requirements
21 under Subsection 2101.1, to allow the construction
22 of a new church, replacing a previous church on the
23 site that was destroyed by fire in the R-1-B
24 District at premises 2122 Jackson Street,
25 Northeast, Square 4220, Lot 802. On June

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 3rd, 2003, the Board heard testimony on the case
2 application and scheduled its decision to July 1st,
3 2003.

4 On July 1st, the Board granted the
5 applicant a continuance to August 5th, 2003. This
6 would allow the applicant time to provide a copy of
7 the signed binding agreement between the Evangel
8 Missionary Baptist Church and owners of the nearby
9 parking lot. The applicant submitted this document
10 on July 22nd, 2003, and that is in your case
11 folders as Exhibit Number 35.

12 That completes my briefing, Mr.
13 Chairman.

14 CHAIRPERSON GRIFFIS: Thank you, Mr.
15 Moy.

16 Very well. Board members, as Mr. Moy
17 has aptly described this, I am sure you recall the
18 hearing and the information. We have, as Mr. Moy
19 has indicated, received the additional information
20 that was requested. Let me just take any sort of
21 comments or discussion, deliberation on this, and I
22 would like to move this into a motion, if so
23 appropriate, by the Board.

24 Let's begin first of all, everyone
25 received Exhibit 33, which is the plans that were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 revised, and I know we have been through those.
2 Are there any questions or comments on the revised
3 plan which show the compliance with the rear and
4 side yard requirements? Exhibit 33, site plan, has
5 a hand-drafted dimension on the side yard which is
6 seven feet.

7 Okay. If there aren't any comments or
8 questions and that right now, let's move to the
9 next issue. Are there questions, discussion, on
10 the provision of a signed binding agreement with
11 the adjacent owners to provide parking?

12 Yes, Ms. Miller.

13 MEMBER MILLER: Mr. Chairman, we
14 requested that a copy of a signed binding agreement
15 between the Evangel Missionary Baptist Church and
16 owners of the nearby parking lot that 33 parking
17 spaces be provided.

18 Applicant submitted Exhibit Number 35,
19 which is a letter describing a contract agreement,
20 and then attached to that is what's called a
21 contract agreement for 34 spaces. However, when I
22 look at this agreement, it does not look to me like
23 a binding agreement as is required by 2116.3, which
24 says that for a church, "Up to 50 percent of the
25 number of parking spaces may be located elsewhere.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The spaces shall be located within 400 feet of the
2 church in a public or private parking lot or garage
3 where the required number of spaces are made
4 available for the use of the church through a
5 binding agreement with the owners of the parking
6 facility."

7 Okay. In OP's report, they said that
8 the applicant had provided them with copies of
9 signed lease agreements, and that would satisfy
10 this requirement; however -- and that's on page 3
11 of OP's report -- we didn't get any lease
12 agreement. What we have is, it's a paragraph that
13 says they agree to furnish 34 parking spaces to the
14 church for a set price for an indefinite time, and
15 then it lists the days and the hours.

16 I think that this is not adequate for
17 our purposes, that we need to have a copy of a
18 lease agreement that sets a specific time period,
19 and that time period could be renewed or it could
20 run with the time that the church is there, but
21 whatever, this indefinite time is too vague and I
22 think what we envisioned is a lease agreement,
23 which was represented to us in OP's report. So I
24 would suggest that we continue it to give the
25 applicant time to submit to us the lease agreement.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MEMBER ZAIDAIN: What do you see
2 happening in this document, I guess is my question.
3 You don't think that this represents any type of
4 agreement?

5 MEMBER MILLER: I have a question
6 whether it's a binding agreement. It is vague
7 under contract law, "for an indefinite time." I
8 don't know what that means. But moreover, I think
9 if we had this kind of agreement, it should be
10 accompanied by a lease agreement -- I think that's
11 what we have had in other cases -- which
12 specifically sets forth the terms, and usually
13 those terms are for a set period of time and then
14 they can be renewed. I think this is way too
15 vague.

16 CHAIRPERSON GRIFFIS: Others?

17 MEMBER ETHERLY: Mr. Chair, I
18 definitely understand the concerns that have been
19 raised by my colleague Mrs. Miller; however, I
20 don't share her worry with regard to the document
21 that was submitted as Exhibit 35.

22 I believe the document is satisfactory
23 for our purposes in terms of satisfying the
24 requirement of the relevant regulation as relates
25 to having a binding agreement that speaks to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 parking. Clearly the intent here, while it might
2 not necessarily be, shall we say, reflected in the
3 clearest and cleanest legal language, I think
4 clearly the intent here is to provide the requisite
5 number of parking under the regulation for the
6 church to access for their uses, and as such, Mr.
7 Chairman, I believe the document is sufficient.

8 CHAIRPERSON GRIFFIS: Okay.

9 I think the regulations and what Ms.
10 Miller is touching upon are very important, and one
11 thing I think that the Board needs to keep in mind
12 is that the variance, if approved, would run with
13 the land that the church is on, and I think that
14 the section as written in the regulations puts us
15 in an awkward position which we have been faced
16 with before, and that is regulating or reviewing an
17 adjacent property that's not directly under the
18 application.

19 My point being, Mr. Etherly, if I'm
20 understanding what you're saying, is that what is
21 required of the church is to provide that number of
22 parking, 33 or 34 -- it's not right in front of me
23 -- and it has to be off-site, and it has to be,
24 according to the regulations, within a certain
25 distance, that they have provided -- their first

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 contract would be sufficient, in your mind, for us
2 to approve the variance for the provision of
3 accessory. And I think it's an important point to
4 note, if I go even further with what I think you
5 were deliberating on, is the fact that if this
6 parking lot in this instance at 27 Rhode Island
7 Avenue was to go away, if it was to be developed or
8 for some reason was no longer accessible or useable
9 by the church, the church is still required to find
10 that accessory parking elsewhere.

11 So the intent of putting a binding
12 agreement in the regulation is fairly clear, that
13 we would need something that would have some force
14 to show us that the provision of parking was being
15 satisfied, and in your -- I'm understanding you
16 correctly to say that this shows to the level it
17 needs to for you to be secure in the fact that this
18 parking lot is useable and it is fairly dedicated
19 for those parking spaces to the Baptist Church.

20 MEMBER ETHERLY: Yes, Mr. Chairman, I
21 would agree with that.

22 CHAIRPERSON GRIFFIS: Okay.

23 Ms. Miller, follow-up?

24 MEMBER MILLER: Yes, Mr. Chairman. We
25 give OP great weight, and it looks to me as if OP

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 relied on a signed lease agreement in supporting
2 the applicant's proposal, and I'm just suggesting
3 that we get a copy of that lease agreement. It
4 seems -- they say they exist, so I think that would
5 make our record complete and would make me feel
6 secure that it's actually in place.

7 MEMBER ZAIDAIN: I guess my question
8 is, and this may seem odd, but are you sure they
9 weren't relying on this?

10 CHAIRPERSON GRIFFIS: Right.

11 MEMBER ZAIDAIN: I mean, planners are
12 not lawyers. I mean, I may say that this is a
13 lease agreement, you know? I would just hate to
14 give OP some deference on something that may not be
15 correct.

16 MEMBER MILLER: This agreement was
17 written after OP's report.

18 MEMBER ZAIDAIN: Okay.

19 CHAIRPERSON GRIFFIS: So OP must have
20 been looking at something else.

21 All right. So clearly what's before us
22 is that we continue this, set this for another time
23 to make decision on it, and that would -- for
24 additional information regarding the parking, and
25 perhaps what we might even do this week is draft

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the issues of how they should be addressed to
2 satisfy a binding agreement, and we could set that
3 to the application for signature or editing,
4 additions, subtractions, however they would do it,
5 not that we would give them something that they
6 would have to sign, but to give them a direct idea
7 of what it is that we're looking for, because the
8 other -- the lacking of this is although it states
9 the name and the address of the person, it's not
10 definitive, if we really want to get into the
11 nitty-gritty, definitive of where the parking is
12 actually being provided. So we might want to do
13 that.

14 Let me also clarify before we go too
15 much further, because I stopped my statements in
16 the beginning about the side yard and I said a
17 hand-drafted listed it at seven feet, which was the
18 existing condition, which was the older structure.

19 The requirement, of course, for the
20 R-1-B is eight feet for the side yard, and if you
21 look at the AS1, which is the new building site
22 plan, again, there's a hand-dimensioned side yard
23 of eight feet there, which would then bring it into
24 accordance with the regulation.

25 Mr. Zaidain.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MEMBER ZAIDAIN: Returning back to the
2 parking issue, I guess, you know, if you look at
3 what the intent of the regulations are, it's a
4 safeguard to make sure that when people are going
5 to share parking facilities, that there's something
6 in place to make sure that's going to happen, and I
7 absolutely agree with Ms. Miller's concern; I'm
8 just worrying now we're kind of setting the bar a
9 little too high for, you know, the average citizen
10 who wants a church, for example, who wants to
11 develop this type of operation. Now are we telling
12 them they have to go out and hire attorneys and
13 they have to draft a long legal document? I mean,
14 I guess I want some more clarification on what
15 exactly we're going for here.

16 MEMBER MILLER: I'm really looking at
17 OP's report, and they say that these lease
18 agreements exist, so all I'm saying is give them to
19 the Board. I don't think that's setting the bar
20 very high.

21 MEMBER ZAIDAIN: Okay. Well, I would
22 say if we're going to rely on that, then we should
23 give direction to OP to let us know exactly what
24 they're talking about if the Board decides to move
25 that way.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MEMBER MILLER: It may be as simple as
2 asking OP to submit the lease agreements that they
3 relied on.

4 CHAIRPERSON GRIFFIS: Okay. Let me
5 hear from Board members if they want to postpone
6 this until September 9th. Of course, you know that
7 this is a new development, so the other factor, of
8 course, which shouldn't overwhelm or influence us,
9 but certainly it's a reality that we need to factor
10 in, is how much time we delay things. One, it also
11 delays our schedule in processing applications, but
12 it also may well delay the beginning of the
13 construction of this. But that being said --

14 MEMBER ZAIDAIN: Well, I mean, in order
15 to keep that process moving, I mean, I'm
16 comfortable with the relief as submitted. I think
17 we just need some additional information. I mean,
18 is there any way we can keep this moving and have
19 that document submitted as a --

20 MEMBER MILLER: Could we grant and
21 condition the order based upon their submitting
22 their lease agreement?

23 CHAIRPERSON GRIFFIS: You mean we vote
24 on a motion of this application but say we'll keep
25 the record open for additional information, so we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 may be able to change our mind if we don't find the
2 submission --

3 MEMBER ZAIDAIN: No. Well --

4 CHAIRPERSON GRIFFIS: No, we can't,
5 actually.

6 MEMBER ZAIDAIN: I'm fairly confident
7 that there is -- I mean, I think there is an
8 agreement. I don't think there is an issue.
9 However, I know --

10 CHAIRPERSON GRIFFIS: So you are ready
11 to proceed today.

12 MEMBER ZAIDAIN: I would be comfortable
13 to proceed today, yes.

14 MEMBER ETHERLY: Mr. Chair, I would
15 echo Mr. Zaidain's concern. I think perhaps the
16 important aspect of Mrs. Miller's concern is to
17 illustrate that, as this Board continues to move
18 forward with these types of cases, the more
19 specificity, the more clarity we can get with
20 respect to parking agreements would be useful, but
21 once again I think in this particular instance the
22 spirit of the regulation has been met by the
23 applicant in this case, and I too would be
24 comfortable with moving forward today.

25 MEMBER ZAIDAIN: Mr. Chairman?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MEMBER MILLER: Mr. Chairman? Can I --

2 MEMBER ZAIDAIN: This may follow what
3 she is going to ask.

4 MEMBER MILLER: If we have reached an
5 impasse, I'm sorry. I was --

6 MEMBER ZAIDAIN: No. If we were to
7 move forward today, wouldn't the applicant be
8 required to satisfy DCRA that there is some sort of
9 arrangement between these two facilities?

10 CHAIRPERSON GRIFFIS: Well, they would
11 have to satisfy -- well, it would be a compliance
12 issue. Again, that's why I was stating that they
13 are required to provide the parking, if approved,
14 that we have set on an accessory site. So --

15 MEMBER MILLER: I think it would be
16 terribly unwise to vote one way or the other on
17 this today conditioned on whether or not they give
18 you the --

19 MEMBER ZAIDAIN: I agree.

20 MEMBER MILLER: I mean, last time,
21 before, we were going to get the agreement you
22 wanted, and we were going to vote today, and it
23 didn't happen. I mean, it's silly to vote on it
24 and then have to retract the vote if you don't get
25 the agreement you want.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I think what you should do is ask OP
2 what they were talking about and for copies, as
3 well as asking the applicant what are these lease
4 agreements, can we have them, and let them give it
5 to you, or vote on it today just on what you have,
6 one way or the other. I think you have to make a
7 decision.

8 MEMBER ZAIDAIN: I like the latter, so
9 I will move to approve Application 17015 pursuant
10 to 11 DCMR 3103.2 for a variance from the rear yard
11 requirements under Section 404 and a variance from
12 the off-street parking requirements under
13 Subsection 210.1, to allow the construction of a
14 new church, which was, oddly enough, destroyed by
15 an act of God, in the R-1-B District at premises
16 2122 Jackson Street, Northeast.

17 MEMBER ETHERLY: Seconded, Mr. Chair.

18 CHAIRPERSON GRIFFIS: That was a bolt
19 of lightning, was it not, as I recall? Yes.

20 Good. Further deliberation on the
21 motion, the text or anything, obviously, in the
22 entire hearing that you want to talk to in terms of
23 other variances? Clearly this was the most
24 substantial in terms of evidentiary information.
25 Anything further?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 (No response.)

2 CHAIRPERSON GRIFFIS: Okay. I think
3 Ms. Miller has brought up a very clear and very
4 important point, and I think that, as the Board
5 continues on, I think there is a lesson learned for
6 us here. We have faced this before, which is what
7 is so troubling on this one. Perhaps we aren't
8 absolutely clear what we're looking for; perhaps
9 the regulations aren't clear on exactly what is
10 required.

11 So in the future, I believe that we
12 will absolutely need to, as I indicated, maybe even
13 set up an outline of things, items that have to be
14 addressed in order for us to review something as a
15 binding contract, and we can work on that in our
16 few weeks off in August.

17 I will just end here. The last piece
18 of it is this will now become a compliance issue.
19 It is clear that the application, if this is
20 successful, is approved based on the provision of
21 off-site parking, and that provision has to be
22 maintained as long as this property and the
23 variance runs with this property, and therefore I
24 have some assurance in my own thought and
25 deliberation that the provision of parking is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 required and will be provided.

2 Mr. Zaidain.

3 MEMBER ZAIDAIN: Well, I was going to
4 touch on that same topic. I mean, as the Board is
5 aware, there is another proceeding that we're in
6 the middle of that the lease and the type of legal
7 document is at issue in terms of how a permit was
8 pulled, and I still struggle as to what level DCRA
9 needs -- or what standard DCRA needs in order to
10 verify that something is legal so that a permit can
11 be issued.

12 I mean, I think we're going to be
13 seeing a lot more of these, so I, for one, share
14 the Chair's concern and would like to get some more
15 information from DCRA on what they need to see when
16 they issue permits for matter-of-right shared
17 parking facilities or any other type of use that
18 requires a legal document.

19 I think one of the reasons why we have
20 a Zoning Commissioner participate in these
21 proceedings is that if there is an error in the
22 zoning regulations that causes a lot of problems,
23 it can be rectified, and maybe that's one of the
24 things that needs to be addressed by the Zoning
25 Commission.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: We will take that
2 as so noted.

3 MEMBER ZAIDAIN: Is she paying
4 attention down there?

5 CHAIRPERSON GRIFFIS: Yes.

6 (Laughter.)

7 COMMISSIONER MITTEN: I'm not on this
8 case, but I'm listening to everything that you're
9 saying.

10 CHAIRPERSON GRIFFIS: Exactly. Very
11 well. Good point, Mr. Zaidain.

12 Others?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Then there is a
15 motion before us and it has been seconded for
16 approval of the application. I would ask for all
17 those in favor signify by saying aye.

18 (Chorus of ayes.)

19 CHAIRPERSON GRIFFIS: Opposed?

20 MEMBER MILLER: Opposed.

21 CHAIRPERSON GRIFFIS: Abstained?

22 (No response.)

23 MR. MOY: Staff would record the vote
24 as three-one-one on the motion of Mr. Zaidain to
25 approve, Mr. Etherly second, Mr. Griffis, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Chair, in favor of approving, Ms. Miller voting not
2 in favor, and a Zoning Commission member not
3 representing, not voting on the case.

4 Mr. Chair, the staff would like clarity
5 on the next case for discussion at your pleasure,
6 whether Order Number 5802 --

7 CHAIRPERSON GRIFFIS: Ah, that's where
8 the 5802 comes in.

9 MR. MOY: Yes. Shall we?

10 CHAIRPERSON GRIFFIS: That sounds like
11 an old one, doesn't it? Yes, we can do that now.

12 Is that correct? In fact, we need to do that now.

13 Let's go ahead with that. What I would like to do
14 is proceed with that, then 17026.

15 MR. MOY: Yes.

16 CHAIRPERSON GRIFFIS: And then I would
17 like to go to our other agenda item for the
18 meeting, which would be the election, and then go
19 to 16974.

20 MR. MOY: Yes.

21 CHAIRPERSON GRIFFIS: I think that
22 covers it all. Very well.

23 MOTION FOR MINOR MODIFICATION OF CONDITIONS

24 IN BZA ORDER NO. 5802

25 OF THE APPEAL OF GERTRUDE CHANLER

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 MR. MOY: All right. This, then, is a
2 motion for minor modification of conditions in BZA
3 Order Number 5802 of the Appeal of Gertrude
4 Chanler, pursuant to 11 DCMR 3129.7, to make minor
5 modifications to Conditions (e) and (f) in the
6 above referenced order for the location of off-site
7 accessory parking spaces across 17th Street in an
8 R-5-B District, Square 2567, Lots 811, 834, 838 and
9 839, for the Washington International Center in a
10 At/R-5-B District at premises 1630 Crescent Place,
11 Northwest, and Square 2568, Lot 809, formally Lot
12 807.

13 At the June 3rd, 2003, public meeting,
14 the Board requested additional information and
15 scheduling a decision for July 15th.

16 On July 15th, 2003, the Board granted
17 the require of ANC-1C and the applicant to continue
18 the case to August 5th, 2003.

19 In your case folders are Exhibit 58 and
20 57 from the applicant and ANC-1C respectively, and
21 it is their request to continue the case to
22 September 16, 2003.

23 That completes my briefing, Mr.
24 Chairman.

25 CHAIRPERSON GRIFFIS: Thank you, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Moy.

2 It looks like we're faced again with
3 this application -- or this request for minor
4 modification, as you have stated, to give
5 additional time for the applicant and the community
6 to work together.

7 Before we get into that and see whether
8 we actually grant that, move this on, or actually
9 change the configuration of how we look at this, I
10 want to address a perhaps minor but I think fairly
11 important point, which hopefully will lead us to
12 our bigger item, that being of all these letters,
13 of which we now have stacks in here, I was struck,
14 and perhaps it was the lateness of the evening and
15 reading every single one of these, but I was struck
16 with great frustration that there is an awful lot
17 of misinformation out there.

18 Granted, 50 or so of these 10,000
19 letters are form letters that are signed, the
20 information that is repeated over and over again
21 seems to assert that somehow, the BZA is acting in
22 private session to decide or make decisions on this
23 issue, and I want to clarify exactly that there are
24 numerous letters that ask us to hold a public
25 meeting. Of course, that's exactly what we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 doing and have on every action ever taken regarding
2 this, although there's only been slight.
3 Everything is done in the public and in the open.

4 It's clear to me, obviously, that
5 people are requesting a public hearing on this, but
6 that's a -- I think it's a fairly important point
7 because to be accused, frankly, in a lot of these
8 letters of somehow doing these secret deals and
9 somehow acting behind closed doors is fairly
10 infuriating, especially with the amount of time
11 that we spend in public and the importance that
12 this Board feels with doing just that.

13 Now, it goes to another issue of
14 obviously the community wants to weigh in on this
15 situation, and the first letters and the last when
16 we continued and now they are continuing on are
17 raising a large amount of issues that I also want
18 to limitedly address, that if we took this up as a
19 motion for minor modification and deliberation, we
20 would have no jurisdiction to go into issues that
21 were attendant to the proposed development. In
22 fact, I can say with 100 percent assuery that none
23 of us, none of the Board members in BZA, have ever
24 even seen any information regarding the development
25 that is being proposed. I don't even know what it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 was except for a slight description in one of the
2 letters that were put in saying what type of
3 residential piece this would be and in the
4 submission from the applicant saying that they were
5 going to develop this site.

6 What was of issue and what was before
7 us is a minor modification. It's a fact that we
8 have a surface parking lot that provides a certain
9 amount of spaces -- 38, if I recall -- and what is
10 asking to be modified because of the language in
11 the writing of the order of the condition is the
12 condition that says it's not required that the
13 parking be provided on the surface but could, in
14 fact, be provided elsewhere on the site, meaning,
15 as proposed in the application, below grade, so
16 that the parking provision would be maintained,
17 that condition would be maintained, but the siting
18 of those spaces would be different.

19 That was what was before us first when
20 we continued further discussion. Through our
21 discussion and, frankly, from Ms. Mitten's comments
22 and concerns of this, there has been an additional
23 issue that has come up, and I'm going to set that
24 aside a little bit, because the other important
25 point that I want to talk about is -- well, it's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 attendant to this -- the issue of the fact that
2 there would be a period of time where parking would
3 not be provided actually comes to us as an
4 additional modification, which seems to be starting
5 to mount or test the "minor" classification of this
6 minor modification. We now have two issues.

7 But as I say, to digress briefly --
8 well, perhaps I won't.

9 So with that, I think what we have
10 facing us is we can continue this and give another
11 two months, six months or whatever for folks to get
12 around this and see if everyone can come in as a
13 consensus. Still it should be said that even if
14 everyone is happy and in consensus doesn't mean
15 that something would be approved. We would have
16 our own criterium to assess.

17 But my feeling at this point is that
18 this has gotten almost to a level of public hearing
19 on its own with the addition of two modifications
20 to this; also the concern about the large amount of
21 time. I have also had some concern, and I believe
22 that it could be waivable, but there is some
23 concern that none of us, I'm assuming -- I can be
24 corrected if anyone else on this Board sat on this
25 original case in 1960, but I'm assuming not -- that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 we weren't involved in that case and saw all of the
2 information.

3 When this first came in, there was an
4 indication that it could somehow get through our
5 thresholds of being minor modification with waiving
6 some of the rules, which we have done partial on.
7 But with that, I think the Board ought to strongly
8 think about setting this as a public hearing or
9 requesting that it be a public hearing not be heard
10 as a minor modification.

11 For absolute clarity, of course, that
12 would mean an application would have to be
13 submitted, and I think that if an application was
14 submitted, and this is just an assumption or even a
15 hypothetical, but one scenario is an application
16 would be submitted very quickly that could then be
17 put on the schedule, and that application would be
18 attendant to the conditions, the two modifications
19 that we have established.

20 If that was the case, that this would
21 go to public hearing, that that would, in fact,
22 limit the scope of the hearing, and the scope of
23 the hearing would be towards those conditions,
24 meaning I wouldn't see -- of course, I haven't seen
25 the application or we haven't decided to go that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 direction, but I haven't seen anything that would
2 allow us, allow this Board, give us the
3 jurisdiction to go beyond those issues, meaning if
4 neighbors, and they may rightly be so, are
5 concerned about the height of a development, if
6 it's a matter of right, if it fits within the
7 zoning regulations, I don't see at this point how
8 we could have any input, whether we wanted to or
9 not, any input on issues of that.

10 So that being said, let me hear from
11 others if there are other comments on this.

12 Ms. Mitten.

13 COMMISSIONER MITTEN: Mr. Chairman, I
14 share your concern about the issues that are being
15 raised in some of the correspondence that we have
16 received that are not relevant to the modification
17 requests before us, and I think if we pare away the
18 issues that are not relevant, what we do find is
19 that there's nothing -- there's never anything
20 minor about a request to modify a condition that
21 relates to parking. I mean, parking is like one of
22 the hot issues. And we do have as part of the
23 ANC's resolution that they do not believe that the
24 requested modification is minor.

25 I would be comfortable proceeding as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 you suggested, which is that we not hear this as a
2 minor modification and that we urge the applicant,
3 if they want to pursue this, to come to us with a
4 new narrow special exception request, that we could
5 hear it the earliest opportunity, giving notice to
6 all the relevant people.

7 CHAIRPERSON GRIFFIS: Good. I think in
8 terms of timeline -- I mean, I looked at this, and
9 who was to predict that we would be in this kind of
10 situation? But if it was at the beginning when
11 this came in, we would be set for hearing with no
12 time lost. Even if we continue this and, you know,
13 if we look at October or so, I think still the
14 timeline may be fairly close. So I would tend to
15 agree.

16 Others? Any other comments? Anything
17 else?

18 MEMBER MILLER: I do.

19 CHAIRPERSON GRIFFIS: Yes.

20 MEMBER MILLER: Because I'm not clear
21 about the process. I understand what you're
22 suggesting, but I also understand that the parties
23 are out there trying to come up with a resolution
24 and a recommendation, and I'm wondering where they
25 fit together, I mean, if we want to wait for their

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 recommendation as to how to proceed or whether
2 we're going to be establishing a process that they
3 submit a new application. I'm not clear.

4 CHAIRPERSON GRIFFIS: No, exactly. I
5 think we way we could be -- I think what we can do
6 is be clear that we are not looking to review this
7 motion as a minor modification, which may mean that
8 -- and actually maybe Ms. Monroe can assist, but it
9 may mean that we do set a date to take that up
10 noting our concern on this public forum, and
11 obviously we're urging -- we can't require somebody
12 to put in an application, but urging the
13 application, and, you know, there's the balance of
14 what one would pursue to do with a forced
15 deliberation on the minor modifications or not, or
16 would they pursue an application.

17 Ms. Monroe, do you see other formal --

18 MS. MONROE: You know, I just want to
19 say that I think in the ANC's earlier
20 documentation, they said they don't even think this
21 is a minor modification because they don't think it
22 even falls within the regulation, and I think that
23 has some validity, so I don't know if you can hear
24 it as a minor modification.

25 CHAIRPERSON GRIFFIS: Right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. MONROE: And I think what you
2 should do is recommend to the applicant that they
3 change their approach, as you were saying, and come
4 in with a limited special exception request and you
5 can hear it as a public hearing, because if you
6 heard this as a minor modification, it would cause
7 all kinds of other due process issues. There's a
8 lot of other --

9 CHAIRPERSON GRIFFIS: So we hear the
10 modification of the order as a public hearing and
11 we set that -- can we set that for a date?

12 MS. MONROE: You could do it if you
13 want. I think it makes more sense to have them
14 come in with an application.

15 CHAIRPERSON GRIFFIS: Okay.

16 MEMBER ZAIDAIN: I mean, the way I see
17 the way we're going is somebody has submitted an
18 application for a minor modification and we're in
19 effect denying that, saying we don't think that
20 this fits as a minor modification.

21 CHAIRPERSON GRIFFIS: But to be very
22 clear, they submitted a motion.

23 MEMBER ZAIDAIN: Or a motion. Exactly.
24 Well, we're denying the motion. And so upon doing
25 that, they then have the option to file as a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 straight application for full new hearing. I mean,
2 in terms of Ms. Miller's concern with the
3 community, that dialogue is still going to
4 continue, and hopefully when they come in for the
5 hearing, everybody will be on the same page, and so
6 we will have less issues to deal with. I think the
7 question here is more of a process --

8 CHAIRPERSON GRIFFIS: Right.

9 MEMBER ZAIDAIN: -- and making sure
10 that we adhere to the integrity of the regulations.
11 So I am in support of how the Chair wants to
12 proceed.

13 COMMISSIONER MITTEN: Following along
14 with what Mr. Zaidain said, I will make a motion,
15 and I want to make it very clear, that we deny the
16 request to hear this under Section 3029 and the
17 denial would be based on the nature of the request
18 for modification, not on the merits of the request
19 for the modification.

20 CHAIRPERSON GRIFFIS: Okay. 3129.

21 COMMISSIONER MITTEN: 3129 is the --

22 CHAIRPERSON GRIFFIS: Right. Okay.

23 COMMISSIONER MITTEN: Well, maybe it's
24 3129.7, which is the minor --

25 CHAIRPERSON GRIFFIS: I just wanted to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 clarify. You said 3029.

2 COMMISSIONER MITTEN: Oh, I did? I'm
3 sorry. I meant to say -- I was reading it right
4 off the page -- 3129.

5 MEMBER ZAIDAIN: Well, I appreciate the
6 clarification that we're not ruling on the merits.
7 Like I said, this is more of a process type of
8 standpoint. I would second that motion.

9 CHAIRPERSON GRIFFIS: Good. The motion
10 is before us and seconded. Further discussion,
11 deliberation? Questions? Clarifications?

12 (No response.)

13 CHAIRPERSON GRIFFIS: I think that's
14 very definitive in terms of not the merits of, but
15 the forum for hearing this. Then I would ask for
16 all those in favor signify by saying aye.

17 (Chorus of ayes.)

18 CHAIRPERSON GRIFFIS: And opposed? Any
19 abstentions?

20 (No response.)

21 CHAIRPERSON GRIFFIS: Very well.

22 Before he calls -- well, go ahead, Mr.
23 Moy.

24 MR. MOY: Staff would record the vote
25 as five-zero-zero on the motion of Ms. Mitten,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 seconded by David Zaidain, to deny the request to
2 hear the minor modification.

3 CHAIRPERSON GRIFFIS: Good. Thank you.

4 And before we dispense with this case,
5 let me also make one more comment, and perhaps it's
6 only my, one might say, pet peeve, but we have had
7 this before. I haven't seen it in a long time.
8 We've got one of the letters -- I won't identify
9 the signature on it; it is one of the form letters
10 -- it happens to be on Georgetown University's
11 Medical Center heading, and I was interested, and
12 perhaps maybe I'll contact the chief of the
13 Department of Medicine to see if this is the
14 Georgetown University Medical Center's official
15 position of what they are asking the Board to take
16 on this case. I'm assuming it is not. My point
17 being, if someone wants to be represented, they
18 don't need to try and look so authoritative and put
19 this on some sort of heading, which it's not the
20 heading which is taking the stand or asking or
21 making a request; we obviously look to all
22 individuals. I, for one, and I know the rest of
23 the Board reads everything that we get. So that
24 didn't help.

25 There it is. What are we doing next,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Mr. Moy?

2 APPLICATION NO. 17026

3 OF WILLIAM SCHORTINGHOUSE

4 MR. MOY: Before the Tudor Place, we do
5 have the matter of an action on the Schortinghouse
6 case, Number 17026, Mr. Chairman.

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

9 I believe the Board is aware of the
10 application and what we did previously, and I would
11 like to -- I will make a motion to deny Application
12 17026 of Schortinghouse and would ask for a second.

13 MEMBER MILLER: Second.

14 CHAIRPERSON GRIFFIS: Thank you, Ms.
15 Miller.

16 Are there any questions,
17 clarifications?

18 MEMBER ZAIDAIN: We're just simply
19 clarifying what our action is, and that's denying
20 the application, correct?

21 CHAIRPERSON GRIFFIS: That's correct.

22 MEMBER ZAIDAIN: Why were there
23 additional submittals?

24 CHAIRPERSON GRIFFIS: There were none.
25 It was additional information that was provided

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 the Board for recollection from the case. It was
2 within the record itself. It was just additional
3 copies, I should say.

4 MEMBER ZAIDAIN: Right. I appreciate
5 the refresher.

6 CHAIRPERSON GRIFFIS: For
7 clarification, now that we're out a little bit here
8 on this one, for total clarification, there was a
9 motion in this application to approve. That motion
10 for application was not successful and failed for
11 lack of a majority.

12 The motion now before us is to deny the
13 application, which is an affirmative motion, and if
14 we need additional or Board members need additional
15 refreshing or recollection on substance of the case
16 or further deliberation, that would be fine and
17 appropriate at this time.

18 MEMBER ZAIDAIN: No, I don't. I just
19 wanted to make sure I was clear on what we were
20 doing.

21 CHAIRPERSON GRIFFIS: Very well.

22 MEMBER ZAIDAIN: Now I am clear and I
23 appreciate the Chair making the motion.

24 CHAIRPERSON GRIFFIS: Okay.

25 Now, to be absolutely clear, the motion

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 is to deny the application; therefore, if one votes
2 in the affirmative of the motion, you are voting to
3 deny the application. A vote in opposition to the
4 motion, of course, would be one that may have well
5 supported the application.

6 That being said, I would ask for all
7 those in favor of the motion to deny 17026 signify
8 by saying aye.

9 (Chorus of ayes.)

10 CHAIRPERSON GRIFFIS: And opposed?

11 (Chorus of opposed.)

12 CHAIRPERSON GRIFFIS: Very well. Mr.
13 Moy, if you wouldn't mind recording the vote.

14 MR. MOY: Staff would record the vote
15 as two-two-zero on the motion to deny the
16 application, the motion of Mr. Griffis, the Chair,
17 seconded by Ms. Miller. We do have a proxy vote
18 from Mr. May to deny the application, which would
19 give a final vote as three-two-zero to deny.

20 CHAIRPERSON GRIFFIS: Thank you very
21 much.

22 MEMBER ZAIDAIN: Just to be clear,
23 that's to approve the motion to deny.

24 MR. MOY: Yes. Thank you, Mr. Zaidain.

25 MEMBER ZAIDAIN: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: Not to prolong
2 this too long, let's move on, then, Mr. Moy.

3 ELECTION OF VICE-CHAIRPERSON FOR BZA

4 CHAIRPERSON GRIFFIS: I believe, if I'm
5 not mistaken, we have an opportunity now while we
6 have the full Board here before we lose members to
7 entertain, as has been announced on our schedule,
8 an election of a vice-chairman for the BZA; am I
9 correct?

10 MR. MOY: That's correct, sir.

11 CHAIRPERSON GRIFFIS: Excellent.

12 Well, having gone somewhat rudderless
13 without a vice-chair on this Board, it is with my
14 great pleasure that we hold these elections today,
15 and I am quite excited that we have the full Board,
16 all of the appointees are on, and I think we're
17 getting into great rhythm, so to speak, in terms of
18 operation, and I would, without taking a great
19 amount of time, like to make a nomination for the
20 vice-chair person of the BZA, and that would be,
21 with my absolute pleasure, Mr. Etherly.

22 I think Mr. Etherly has been -- was one
23 of our senior members now, being such a fresh new
24 Board, and has come to be a participant on the
25 Board, a very important one, as we all are;

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 however, Mr. Etherly I know has shown great
2 interest and I think will be very capable and able,
3 and I look forward to working with him as
4 Chairperson.

5 I would absolutely open the forum at
6 this point if there are any other nominations, and
7 what I would like to do is then hear those
8 nominations, we can then have seconds to
9 nominations, and then we can give the opportunity
10 for those nominated to give a brief moment of
11 comment and perhaps have a little battle if there
12 are several -- four, six, five -- however many
13 other nominations. But let me let others have an
14 opportunity to make nominations if so moved.

15 (No response.)

16 CHAIRPERSON GRIFFIS: If not, I would
17 ask for anyone who would support and second the
18 nomination of Mr. Etherly for the
19 vice-chairperson's position.

20 COMMISSIONER MITTEN: Mr. Chairman?

21 CHAIRPERSON GRIFFIS: Yes.

22 COMMISSIONER MITTEN: It would be my
23 pleasure to second your motion or your nomination
24 of Mr. Etherly for vice-chairman. As has been the
25 practice since I have been on the Zoning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Commission, we poll the Zoning Commission members
2 when there are votes of this type to be taken, and
3 Mr. Etherly has the support of the Zoning
4 Commission for the vice-chair position.

5 The Commission has confidence certainly
6 in all the members of the BZA, but there are two
7 things I think that are particularly compelling for
8 Mr. Etherly in addition to just, you know, his
9 all-around helpful demeanor and substantive
10 contributions and deliberation, are the fact that
11 it's important to the members of the Zoning
12 Commission that the chair and the vice-chair be
13 selected from among those members when possible
14 that are appointed by the Mayor, and that there is
15 much to be said for the experience that is gained
16 in serving, and I think that there will be an
17 opportunity for other appointees to serve as has
18 been the practice from time to time to rotate the
19 positions.

20 So we look forward to supporting other
21 members, but since, as you said, Mr. Etherly is one
22 of the senior members at this point in time, happy
23 to support him and look forward to the
24 opportunities that he has to be the presiding
25 officer from time to time.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Thank you, Ms.
2 Mitten.

3 Mr. Etherly, let me allow you to speak.

4 MEMBER ETHERLY: Thank you very much,
5 Mr. Chair.

6 Just very briefly, I appreciate the
7 confidence of both the Chair and Ms. Mitten, and
8 hopefully that of my colleagues in terms of taking
9 on this very important responsibility.

10 As the Chairman said, being rudderless
11 for ye these many months, I'm very happy to stand
12 in and be a heartbeat away, and look forward to
13 moving to an undisclosed location sometime in the
14 near future.

15 (Laughter.)

16 MEMBER ETHERLY: But in all
17 seriousness, Mr. Chair, thank you very much for
18 your confidence. I look forward to continuing my
19 service to the residents of the District of
20 Columbia in what has fast become a very fascinating
21 endeavor for me every Tuesday.

22 But that being said, thank you again,
23 Mr. Chairman, for your confidence.

24 CHAIRPERSON GRIFFIS: Good. Thank you.

25 Any other comments? Additions? Any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 discussion?

2 (No response.)

3 CHAIRPERSON GRIFFIS: If not, I would
4 then ask for people to signify their support of the
5 nomination by indicating and saying aye.

6 (Chorus of ayes.)

7 CHAIRPERSON GRIFFIS: Any opposed? Any
8 folks abstaining?

9 (No response.)

10 CHAIRPERSON GRIFFIS: Very well.

11 Mr. Moy?

12 MR. MOY: Staff would record the vote
13 for the new vice-chair of the BZA as
14 five-zero-zero.

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

17 Mr. Etherly, congratulations.

18 MEMBER ETHERLY: Thank you.

19 CHAIRPERSON GRIFFIS: We expect only
20 the continuing participation and involvement that
21 you have provided to date.

22 With that, then, let us move on to our
23 other agenda items for today. Mr. Moy, if you
24 wouldn't mind indicating the next case for
25 consideration.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 APPLICATION NO. 16974 OF TUDOR FOUNDATION, INC.

2 MR. MOY: The next case, then, would be
3 Application Number 16974 of Tudor Place Foundation,
4 Incorporated, pursuant to 11 DCMR 3104.1, for a
5 special exception to continue the operation of a
6 museum by a non-profit organization, last approved
7 by BZA Order Number 16477, dated January 14, 2000,
8 under Section 217, in the R-1-B District at
9 premises 1644 31st Street, Northwest, and 1670 31st
10 Street, Northwest, and Square 1281, Lots 827 and
11 830.

12 On April 29th, 2003, the Board
13 completed hearing the testimony on the case
14 application and scheduled a decision for June 3rd,
15 2003.

16 Subsequently, the applicant has
17 requested continuances on June 3rd for June 3rd,
18 2003, and the July 1st, 2003, meeting to prepare
19 and submit information requested by the Board and
20 set its decision for August 5th, 2003. This was
21 done primarily to allow the applicant time to
22 prepare and submit a traffic and parking management
23 plan.

24 Essentially, in summary, Mr. Chairman,
25 what is before the Board now are basically two

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 motions, the motion to reconsider evidentiary
2 ruling which is -- the first one being submitted on
3 June 3rd, 2003, which is the motion for
4 reconsideration of refusal to enter Exhibit Number
5 98 and tape into record, which is in your case
6 folders as Exhibit 105, and that was submitted by
7 the party opponent, the 31st Street Parties.

8 The second motion is the motion to
9 reopen the record, and that was submitted on July
10 14, 2003, which is the motion to reopen the record
11 for submission of additional statements concerning
12 use of Dower House, and that's in your case folders
13 as Exhibit 108, and that was submitted by the
14 applicant.

15 In your case folders, there are
16 numerous exhibits on oppositions, filed replies,
17 and opposition to replies, and staff would also
18 finally note that the submission that was requested
19 by the BZA was submitted by the applicant on July
20 14th, 2003, which is the applicant's document
21 dealing with their vehicle management plan that was
22 prepared by O.R. George & Associates, and that is
23 in your case folders as Exhibit 109, and here
24 again, there are numerous responses and replies to
25 that document.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 So that completes the staff's
2 briefings, Mr. Chairman.

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

5 Actually, attendant to the July 14,
6 2003, is Exhibit 109, as you have indicated, and
7 then there was a subsequent exhibit that was
8 submitted, which is Exhibit 2 in their traffic
9 management and Exhibit 110 for our records.

10 Let's bring up the -- first of all,
11 there is a motion to reconsider evidentiary ruling.

12 It's attendant, as Mr. Moy has laid out, to the
13 tape, the tape that was described but not accepted
14 into the Board. There seems to be in this motion
15 for reconsideration that that -- the tape was not
16 accepted into -- well -- yes, the tape was not
17 accepted into the record because the procedure
18 hadn't been followed and duplications of the tape
19 hadn't been provided. I thought we had clarified
20 that initially.

21 But let me address this directly, and
22 that is we don't have any procedure or rule that
23 allow us to entertain motions for reconsideration
24 on evidentiary rulings or, you know, accepting
25 evidence, and therefore this motion cannot

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 essentially be before that. That it is, we have no
2 way to deal with it, and so I think we can move on
3 with that being stated.

4 However, I do want to address what was
5 taken up in our first ruling of not accepting the
6 tape, and I think fundamentally, when we are
7 offered on any case, and specifically with this
8 case, tapes, whether it be video, whether it be
9 audio, they raise more questions within the hearing
10 than I find that they can answer.

11 Specifically with this case, I think
12 all the information attendant to the noise and the
13 impacts and such were part of the record, that the
14 tape may well have just been redundant to some of
15 that information. But the other important piece,
16 and when I say it raises more questions, I'm not --
17 first of all, none of us are acousticians or sound
18 experts up here. If we were to be given a tape
19 and listened to this tape, and we heard, you know,
20 crickets chirping, we may find that offensive and
21 -- my point being, I'm not sure we have a base
22 comparative level, and this is what I said before,
23 for our understanding of what that information
24 would show us. Again, it just begins to raise more
25 questions than it can conceivably answer. That's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 why I -- I know this Board has been very reluctant
2 in taking submissions as evidence of tapes and
3 recordings.

4 So that being said, I will have others
5 add if need be.

6 Yes, Mr. Zaidain.

7 MEMBER ZAIDAIN: Well, it's my
8 understanding that the intent of providing
9 something like that is to illustrate, and you're
10 using the sound as an example, to illustrate some
11 kind of negative impact from an acoustics
12 standpoint.

13 I have found that in proceedings where
14 either parties in opposition or the applicants have
15 brought in acoustic experts with studies and come
16 in and testified and they can be cross-examined,
17 that's a much more -- that's a much better way to
18 elaborate that issue in terms of acoustics, and I
19 would urge people who want to make points in
20 regards to noise impact to follow that route,
21 because I agree with your concern with submitting
22 tapes like that. There's just not enough for us --
23 there's not enough substantial evidence in that for
24 us to be able to deliberate on. Cross-examination
25 is almost impossible. So that's my concern.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Absolutely an
2 excellent point, and the point is, as we have seen,
3 the acousticians that do reports have defined and
4 definitive levels of noise. I mean, it's decibel
5 ratings. In fact, I know you will recall -- I
6 mean, there's a lot of education that happens of
7 the Board in reviewing a lot of those things, and
8 that comes in our questions and in the
9 cross-examination.

10 If someone purports that there's 63
11 decibels being created, well, that means nothing to
12 me unless you can give me the idea of what is a jet
13 plane or is that a child screaming --

14 MEMBER ZAIDAIN: Right.

15 CHAIRPERSON GRIFFIS: -- or is that my
16 dog barking kind of thing.

17 MEMBER ZAIDAIN: We need to hear
18 substantial evidence. You know, I think we have
19 had testimony of somebody standing in the middle of
20 the road and can't hear their wife calling them for
21 dinner or whatever.

22 CHAIRPERSON GRIFFIS: Lunch, I think it
23 was.

24 MEMBER ZAIDAIN: Lunch. Whatever.

25 CHAIRPERSON GRIFFIS: Yes. Indeed.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 Indeed.

2 MEMBER ZAIDAIN: But that really makes
3 it hard for us to be able to evaluate whether or
4 not there is an impact or not.

5 CHAIRPERSON GRIFFIS: Excellent point.

6 Others? Yes.

7 COMMISSIONER MITTEN: I would just add
8 that there has been -- there was any contention
9 that on, I believe, on the occasion that the tape
10 was made, that there was an excessive amount of
11 noise being generated, and that's why there's a
12 condition in place, and no one is suggesting that
13 that condition will not produce, you know, an
14 amicable result.

15 So I think that the purpose of the tape
16 is -- it's not helpful to us because that
17 particular day was one when there was no disputed
18 fact that there was an excessive amount of noise.
19 So I don't find it particularly helpful in that
20 regard.

21 CHAIRPERSON GRIFFIS: Good. And those
22 are excellent points also. I mean, you can see we
23 could keep going.

24 COMMISSIONER MITTEN: Right.

25 CHAIRPERSON GRIFFIS: I mean, would we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 want to see exactly what kind of recording device
2 was made, what level and height off the ground,
3 where it was there was a person moving, were they
4 orchestrating people in front of them that we
5 wouldn't be able to -- again, it raises so many
6 more questions than it could conceivably answer in
7 this situation, and, bottom line, we're not even
8 supposed to be reconsidering it, which we are not
9 as we don't have the ability to do that.

10 There is the motion to reopen the
11 record, and that was to have submitted some of the
12 statements concerning the use of the Dower House.
13 Of course, there were items in the file also
14 addressing that, I believe, in oppositions or
15 responses.

16 What I would like to do is take up the
17 other item that Mr. Moy has spoken about, and
18 that's the vehicle management plan. The issue is
19 this: I feel fairly strongly that we would not
20 accept, first of all, the statements concerning the
21 use of the Dower House. To be absolutely clear, we
22 had requested and kept the record open for the
23 provision of certain materials. We had started to
24 deliberate. In our deliberation, we then opened
25 the record again to accept these things. So we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 were in the middle of deliberation. I do not see
2 how we could conceivably open the record to say,
3 well, you know, and there's some additional
4 testimony that is being asked to be put in.

5 As I go to -- and that's why I take
6 both of these together -- as I go to the vehicle
7 management plan, again, we did ask and Ms. Mitten
8 rightly so and well spoken asked for this to be
9 done, which stopped our deliberation, and we
10 continued it.

11 I now have concern, looking at the
12 management plan, that there are several items or
13 issues, I should say. I'm not so certain that the
14 Board may not have specific questions to go over
15 and to be answered on that.

16 Clearly we have responses from the
17 participants in it addressing some concerns, and
18 with that, I wonder if we aren't also running into
19 the difficulty of not having allowed
20 cross-examination of the traffic expert. So I
21 think we need to think strongly on how we deal with
22 this at this point in terms of our deliberating
23 today.

24 Let me digress on a specific issue, and
25 then I would like to have folks address that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 There was some concern raised on some of the
2 submissions in that items weren't sworn or
3 affidavits weren't provided or things weren't
4 notarized, and I looked extensively last night in
5 my regulations and couldn't find where it was
6 required and I have never known us to require
7 submissions, whether it be testimony that's given
8 and it's written or submitted in written form or
9 not, that they are to be somehow notarized or sworn
10 to. So to clear that up, that's not a requirement
11 that I've found, and I can be corrected, but I am
12 not aware of in our zoning regulations and in our
13 proceedings.

14 So, again, let's focus on the larger
15 issue, that is the motion to reopen the record, and
16 then the vehicle management plan.

17 Ms. Mitten.

18 COMMISSIONER MITTEN: I think I would
19 like to take the items in the reverse order as you
20 were attempting to, which is the issue about the
21 vehicle management plan and the concerns that have
22 been raised by the parties in opposition about
23 their, at least up to this point, their lack of an
24 opportunity to cross-examine the expert testimony
25 of the traffic expert who prepared the plan.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I think those are legitimate concerns,
2 and one of the reasons why I had suggested and the
3 Board concurred with the need to have the vehicle
4 management plan submitted is because when it comes
5 down to it, the two biggest issues in this case are
6 noise and concerns related to vehicles, whether
7 it's parking, traffic, delivery trucks and so
8 forth. So it really -- this does -- even though I
9 think it took a while for the case to evolve to
10 this point, because I'm not sure that the applicant
11 was fully prepared in the beginning to, you know,
12 address in this level of detail, but I think now
13 that we're to this point, it would be very
14 appropriate for, as you stated, give the Board
15 members an opportunity to ask questions and give
16 the parties in opposition a chance to ask questions
17 about this because it does go to the heart of the
18 adverse impact.

19 Then to the other issue that you
20 raised, and I agree with you completely about the
21 Dower House, the statement regarding Dower House,
22 which it's always this funny situation when someone
23 does submit a statement attached to their motion
24 and then you start to read it, and I read maybe the
25 first paragraph, and it is argument, it's argument

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 for reconsideration in advance of the conclusion of
2 our deliberation and the publishing of the order.

3 But I think if we do choose to
4 reconvene the hearing for the narrow purpose of
5 discussing the vehicle management plan, that we
6 might in the interest of just making sure the
7 record is as complete as possible allow, you know,
8 an additional opportunity to have submissions and
9 cross-examination on the Dower House, and I would
10 never suggest that for the Dower House alone, but
11 if we are going to -- if that's the direction we go
12 in, that we take that opportunity and make sure
13 that the record is complete, as complete as we can
14 make it.

15 MS. MONROE: Mr. Chairman, may I just
16 say a word on that?

17 CHAIRPERSON GRIFFIS: Yes.

18 MS. MONROE: I want to agree with Ms.
19 Mitten, because if you're going to condition the
20 use of the Dower House, the conditions need to be
21 related to the evidence, and I don't recall that
22 much coming in on the use of Dower House at this
23 point, and that's exactly what even the applicant
24 says. The conditions on the use of Dower House
25 were not discussed at the hearings or in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 written submissions, and they would know whether or
2 not they had discussed it or not. So I think
3 hearing more on that would be wise.

4 MEMBER ZAIDAIN: I agree, but I think a
5 lot of the -- and I think specifically on the Dower
6 House, that's something that we need to -- we can
7 focus on if we do go down this path. But if I
8 recall from the hearing, you know, a lot of the
9 testimony we heard, particularly on the parties in
10 opposition, related to transportation impacts, and
11 there are events that happened in the Dower House,
12 albeit they may be small in size, but that is part
13 and parcel to how this whole site functions.

14 So I'm not entirely in agreement that
15 at this point, we couldn't put some conditions on
16 the Dower House because I think it's a relation to
17 the overall site. The overall site generates some
18 sort of transportation demand and impacts, and we
19 heard testimony on that.

20 But be that as it may, I found that,
21 you know, as I was reading through the information
22 last night, it was almost as if I was preparing for
23 a hearing as opposed to a decisionmaking meeting,
24 you know. I had questions in regards to the TMP
25 that we received.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 I don't know. I think we're in kind of
2 an unfortunate situation. I mean, a lot of this
3 dialogue that we're having and a lot of the
4 questions that we're coming up with should have
5 been handled in the public hearing, and I don't
6 know who exactly is at fault -- it may be the
7 Board, it may be the applicant, I'm not sure -- but
8 I think we're in a position where we're going to
9 need some additional testimony, it seems, and when
10 you go down that route, especially when you have
11 parties in opposition, you have to allow for
12 cross-examination.

13 So I find myself to be in an odd
14 situation in the sense that we have information
15 that we requested; however, we have kind of
16 realized that we have questions on it and, you
17 know, we need to allow the parties in opposition to
18 fully cross-examine it. So I guess my position is
19 I'm kind of deferring to the rest of the Board on
20 how to handle it, and I would be happy to hear how
21 that may be.

22 CHAIRPERSON GRIFFIS: Very well.

23 I think Ms. Mitten said it very well.
24 We have an option of reconvening the hearing on a
25 very limited scope, and her point, which I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 absolutely agree with, is the pertinent aspect to
2 do that is to answer Board questions on the traffic
3 management plan.

4 If we anticipate and decide to go that
5 route, then we should, in fact, or could, in fact,
6 include very limited testimony on the use of the
7 Dower House, which may clear up some questions or
8 issues or may clear up, as was being asserted in
9 the motion, may clear up why we would or would not
10 or how we would condition the Dower House use.

11 I think it makes an awful lot of logic
12 to, as much as I hate to do it, and it's clear
13 that, you know, I don't -- I know all Board members
14 -- I certainly don't look forward to not being able
15 to decide things when we've scheduled to decide
16 them. I mean, I'm staring at six inches of papers
17 which I have now prepared and reread and organized
18 three times. To open up the hearing again is not
19 something that I absolutely look forward to.

20 But with the, I think, the undue
21 caution, as Ms. Mitten has said, to make sure that
22 the entire record is complete and to make sure that
23 the opportunity for the cross-examination and
24 questions of the Board is there, I believe that we
25 should reopen the hearing on a limited scope, and I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 would propose that we do that on September 16th at
2 1:00 in the afternoon.

3 Now, the issue for that date, Board
4 members, if you look at your schedule, which may or
5 may not be in front of you, is we have a single
6 case for that entire day. What this will enable us
7 to do is to call the application of Tudor Place
8 Foundation right after our lunch break. We will
9 obviously have a short lunch break and the other
10 case will have a long lunch break. But it means
11 that we will be very, very focused and definitive
12 on the limited testimony, and in cross-examination
13 of that testimony, I know that we will all be very
14 prepared and will not entertain cross-examination
15 questions that are already within the record,
16 questions or information that has been asked and
17 answered in submissions, so that we will be very
18 cognizant of time and most importantly cognizant of
19 getting direct questions asked and direct answers
20 answered and not wasting anybody's time, because I
21 also know that this is disruptive to everyone's
22 schedule and to have to come back down here again
23 is not something that we want to do.

24 MEMBER ZAIDAIN: ON that note, do we
25 have the option to decide it that day?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: No. No. I think
2 that would be unfair, to then turn around and try
3 and deliberate on that. I was anticipating
4 deliberation on this would take upwards of an hour
5 and with the questions -- I think that would be too
6 much to try and accomplish.

7 If you look at your schedule on the
8 application that we have that day, you may know
9 that it will be a very active and a very --

10 MEMBER ZAIDAIN: Did you say this was
11 -- I don't have my schedule in front of me. Is
12 this the only one in the afternoon?

13 CHAIRPERSON GRIFFIS: Very long day. I
14 think we're going to need time to digest and to
15 reorganize. It would mean we would have a fairly
16 quick turnaround; we would set this for
17 decisionmaking on the first meeting in October,
18 which would be the 7th. We're looking at the 16th
19 to set that schedule.

20 Of course, this doesn't impact the
21 continuing operation of the foundation. I mean,
22 they are working under -- right -- they are working
23 under their previous order and their application is
24 before us. So in that sense, I think that it is
25 fairly wise to continue in this realm. But let me

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 hear from others if that doesn't suffice

2 COMMISSIONER MITTEN: I completely
3 endorse your proposal, and I would suggest that you
4 give further guidance to the parties in that rather
5 than taking direct testimony that day, that all of
6 the direct testimony be submitted in advance and
7 that the applicant be encouraged to address those
8 issues that have already been raised by the parties
9 in opposition so that we can get only those -- so
10 that those issues would be addressed as part of an
11 additional submission and we can just deal with any
12 follow-up questions that come to mind and also, of
13 course, the Board's questions, because, as you say,
14 you know, this is going to be -- there is going to
15 be an attempt to make this as efficient as
16 possible, but this is an important opportunity, and
17 I think that with everyone's cooperation, it can be
18 done efficiently.

19 CHAIRPERSON GRIFFIS: Good. I think
20 it's an excellent point. So if I understand,
21 there's a consensus of the Board to set this to
22 reopen the record and conduct a limited hearing on
23 September 16th -- that would be at 1:00 --

24 MS. MONROE: Mr. Chairman, may I ask a
25 question? Does that motion to -- your proposal to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 reopen the record, would that respond to the motion
2 to reopen the record for the small submission on
3 Dower House?

4 CHAIRPERSON GRIFFIS: No. It's our own
5 motion.

6 MS. MONROE: Okay. So you don't want
7 to include that in it at all. I mean, that's not
8 your intent.

9 CHAIRPERSON GRIFFIS: No.

10 MS. MONROE: Okay.

11 CHAIRPERSON GRIFFIS: So on the 16th at
12 1:00, what we would anticipate is, first of all,
13 the traffic engineer would be called as a witness,
14 and then there would be one other witness that
15 could speak to the use of the Dower House.

16 As Ms. Mitten has said, I think it is
17 very important we would anticipate that there would
18 be submissions and service to all participants, if
19 not the full testimony that was about to be given,
20 a very, very articulated outline or summary so that
21 the issues could be understood and prepared for.
22 We would hear those witnesses, then we would have
23 Board questions, then we would have
24 cross-examination of participants in the case. Is
25 that correct?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 Now, and Ms. Monroe brings up an
2 interesting point. I mean, I wanted to make some
3 separation between the motion to reopen the record
4 that we had. Are we going to then accept as part
5 of the opening of the record all these submissions
6 that were attendant to the motion to reopen?

7 COMMISSIONER MITTEN: Well, I mean,
8 what I would suggest, you know, I mean, this is
9 just what occurs to me from a legal perspective --
10 you know, Ms. Monroe can say what we need to do to
11 deal with these. I think that the action that we
12 have just discussed taking, and I don't know that
13 we need to take a vote on it, but if we do, then
14 presumably if we pursue this course, then it makes
15 the motion to reopen the record that has been made
16 by the applicant moot.

17 CHAIRPERSON GRIFFIS: That's correct.

18 COMMISSIONER MITTEN: Because they can
19 make whatever submission they want.

20 CHAIRPERSON GRIFFIS: Indeed.

21 COMMISSIONER MITTEN: So I don't know
22 that we need to take a formal vote on it because I
23 don't think it's relevant anymore.

24 CHAIRPERSON GRIFFIS: Right. I agree.

25 MS. MONROE: My only question is, then,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 are you accepting what they have already submitted
2 or do they need to --

3 CHAIRPERSON GRIFFIS: No. We're
4 looking for that on the 16th, what they would
5 submit.

6 MS. MONROE: Okay. All right.

7 CHAIRPERSON GRIFFIS: That would be my
8 feeling.

9 Any other comments? Do we have
10 consensus on that? Very well. Then we will -- was
11 there a breath?

12 MS. BAILEY: Mr. Chairman?

13 CHAIRPERSON GRIFFIS: Yes.

14 MS. BAILEY: Do we need to set dates
15 for the submission of the materials?

16 CHAIRPERSON GRIFFIS: Yes. Excellent
17 point. I just wanted to clarify there's a
18 consensus to reopen the record for a limited
19 hearing, continuance of the hearing on September
20 16th at 1:00. Ms. Bailey, if you wouldn't mind, we
21 can run through the schedule on that, or, Cliff, do
22 you have the schedule, please?

23 MR. MOY: Okay. We're looking at
24 September 16th and submissions could be submitted
25 on August the 26th, and any responses to those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 submissions on September the 9th. That would give
2 one week apart for any replies. Would that be
3 sufficient?

4 CHAIRPERSON GRIFFIS: Okay. That
5 sounds fine from my perspective. Does anyone have
6 concern about that schedule?

7 (No response.)

8 CHAIRPERSON GRIFFIS: Very well. Then
9 that somewhat deals with that application, then,
10 16974; am I correct? Is there anything else
11 attendant to this that we need to address? I'm not
12 showing anything in my notes.

13 (No response.)

14 CHAIRPERSON GRIFFIS: Very well, Mr.
15 Moy. Is there anything else left for us to do in
16 this time?

17 MR. MOY: No. I think that's all I
18 have, Mr. Chairman. We do have minutes for the
19 month of June and July which we could take up today
20 or at your next convenience.

21 CHAIRPERSON GRIFFIS: Okay. Why don't
22 we take a ten-minute recess and we will come back
23 and take up the minutes at that time.

24 (Recess.)

25 CHAIRPERSON GRIFFIS: Very well. Let's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 reconvene.

2 We will take up the issue of approval
3 of minutes at this point. Mr. Moy, we have June
4 and July to go through; is that correct?

5 MR. MOY: Yes, that's correct, sir,
6 beginning with June 3rd.

7 APPROVAL OF THE JUNE 3, 2003, MINUTES

8 CHAIRPERSON GRIFFIS: Very well. What
9 I would like to do is go through and ask for any
10 comments, additions or deletions on the June 3rd,
11 2003 minutes.

12 COMMISSIONER MITTEN: Mr. Chairman?

13 CHAIRPERSON GRIFFIS: Yes?

14 COMMISSIONER MITTEN: It shows me as
15 being present, but none of the cases that are
16 included are cases that I'm shown as being -- as
17 participating on the Chinatown East case, which is
18 17017. I did not participate in that case. And
19 the application of the Ellises, which is 17006, I
20 -- while I may have been involved in that, and I
21 don't even recall definitively, but inasmuch as it
22 was being rescheduled, I don't believe I was
23 actually present and it's showing me as present.
24 So I think that's an error. I definitely am not on
25 the Chinatown East case.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Right. Who was
2 the ZC member?

3 MEMBER ZAIDAIN: Mr. May.

4 CHAIRPERSON GRIFFIS: Yes, it was Mr.
5 May. Very well. We will have that correction
6 made.

7 Other corrections, additions,
8 deletions, on June 3rd minutes?

9 MEMBER MILLER: On page 3, I think that
10 should read "Would not be economically feasible" as
11 opposed to "economically unfeasible."

12 CHAIRPERSON GRIFFIS: Okay. In the
13 last paragraph?

14 MEMBER MILLER: The paragraph above
15 17006.

16 CHAIRPERSON GRIFFIS: Okay. Others?
17 Any additions?

18 MEMBER MILLER: On page 2, I think the
19 first sentence, I think the requirement was a total
20 of 36 on-site parking spaces as opposed to 35.
21 Evangel Missionary Baptist Church.

22 CHAIRPERSON GRIFFIS: That's right, it
23 was ten -- it was one per ten seating, and it was
24 in the application 359 fixed seats, which would
25 calculate out to 36. Very well. We can make those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 clarifications also.

2 Anything else?

3 (No response.)

4 CHAIRPERSON GRIFFIS: I would then move
5 approval of the minutes of June 3rd, 2003. Second?

6 MEMBER ETHERLY: I will second, Mr.
7 Chair.

8 CHAIRPERSON GRIFFIS: Thank you very
9 much. All in favor?

10 (Chorus of ayes.)

11 CHAIRPERSON GRIFFIS: Opposed?
12 Abstaining?

13 (No response.)

14 APPROVAL OF THE JUNE 10, 2003, MINUTES

15 CHAIRPERSON GRIFFIS: June 10, 2003.
16 Same. Comments? Additions?

17 COMMISSIONER MITTEN: I'm only going to
18 make a comment because it comes up later. It
19 doesn't have to do with the June 10th meeting
20 minutes themselves, but on the East Bank case, we
21 had the hearing and then it mentions that we would
22 make a decision at our July 1 public meeting, which
23 I believe that we did, but when we get to July 1,
24 there is no mention of that case or my
25 participation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MS. BAILEY: July -- the minutes are
2 primarily for the hearing and not the meetings, so
3 the meeting would not be reflected in these minutes
4 at all.

5 COMMISSIONER MITTEN: Okay. Are there
6 separate minutes from special public meetings?

7 MS. BAILEY: The transcripts we use as
8 the vehicle for maintaining the minutes of the
9 meetings.

10 COMMISSIONER MITTEN: Okay. Thank you.

11 CHAIRPERSON GRIFFIS: Other comments?
12 Clarifications? Additions?

13 (No response.)

14 CHAIRPERSON GRIFFIS: Very well. I
15 would move approval of the June 10, 2003, minutes.
16 Is there a second?

17 MEMBER ETHERLY: Second, Mr. Chair.

18 CHAIRPERSON GRIFFIS: Thank you.

19 All those in favor.

20 (Chorus of ayes.)

21 CHAIRPERSON GRIFFIS: Opposed?

22 (No response.)

23 APPROVAL OF THE JUNE 17, 2003, MINUTES

24 CHAIRPERSON GRIFFIS: July 1st, 2003.
25 I'm sorry. June 17th. Clarifications? Additions?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MEMBER ETHERLY: Mr. Chair, my
2 colleagues will recall June 17th was one of our
3 marathon hearings on the Advisory Neighborhood
4 Commission 5B case, the appeal. I think the staff
5 did an excellent job, at page number 4 of the June
6 17th minutes, in discussing the preliminary matter
7 as it related to the issue of the recusal of one of
8 our colleagues. I am, however, wondering whether
9 or not there might be a need for greater
10 specificity.

11 That was a rather unusual situation and
12 while I'm comfortable with what I think is a very
13 tactful and just straightforward assessment of how
14 we dealt with that recusal, I'm wondering whether
15 or not for my colleagues who were participants on
16 that case, there might be a need for greater detail
17 just given the, shall we say unusual circumstances
18 that surrounded that particular recusal issue.

19 CHAIRPERSON GRIFFIS: Well, I don't
20 have any difficulty with that. Detail in what
21 manner? Of what Mr. Hood indicated or what the
22 Board indicated?

23 MEMBER ETHERLY: I'm perhaps more
24 interested in -- actually, I think it's sufficient
25 as it stands. I noted that Mr. Hood did submit a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 letter of recusal for the record, but I don't think
2 we need to get into that level of detail. So I'm
3 actually fine with the summary as it is currently
4 presented, Mr. Chair.

5 CHAIRPERSON GRIFFIS: Okay. I mean, I
6 have no difficulty including more. I thought it
7 was very concise, which minutes, of course, should
8 be.

9 MEMBER ETHERLY: Yes.

10 CHAIRPERSON GRIFFIS: I was
11 particularly concerned that Mr. Hood's indications
12 on the record were reflected briefly in the
13 minutes, and I find that to be so on page 5, but,
14 as I say, I'm open.

15 Any others?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Seventeen June,
18 then, I would move approval.

19 MEMBER ZAIDAIN: Second.

20 CHAIRPERSON GRIFFIS: All in favor?

21 (Chorus of ayes.)

22 CHAIRPERSON GRIFFIS: Opposed?

23 (No response.)

24 CHAIRPERSON GRIFFIS: Thank you.

25 APPROVAL OF THE JUNE 24, 2003, MINUTES

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Let's go to the
2 24th. Any additions? Subtractions?
3 Clarifications?

4 (No response.)

5 CHAIRPERSON GRIFFIS: Very well. I
6 would move approval of 24 June '03 minutes.

7 MEMBER ZAIDAIN: Second.

8 CHAIRPERSON GRIFFIS: All in favor?

9 (Chorus of ayes.)

10 CHAIRPERSON GRIFFIS: Opposed?

11 (No response.)

12 CHAIRPERSON GRIFFIS: Thank you.

13 APPROVAL OF THE JULY 1, 2003, MINUTES

14 CHAIRPERSON GRIFFIS: Let's go to 1
15 July 2003. Comments? Clarifications?

16 MEMBER MILLER: I thought that the
17 Cassidy case was also on July 1st, and it's not
18 reflected here.

19 MS. BAILEY: What was the case, Ms.
20 Miller?

21 MEMBER MILLER: The Cassidy case?

22 MS. BAILEY: Now, remember, we're just
23 dealing with hearings, not meetings.

24 MEMBER MILLER: Oh, okay. Okay.
25 That's probably it, then.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Okay. Any other
2 questions, clarifications, comments?

3 (No response.)

4 CHAIRPERSON GRIFFIS: I would move
5 approval of 1 July 2003 minutes.

6 MEMBER ZAIDAIN: Second.

7 CHAIRPERSON GRIFFIS: All in favor.

8 (Chorus of ayes.)

9 CHAIRPERSON GRIFFIS: Opposed?

10 (No response.)

11 APPROVAL OF THE JULY 8, 2003, MINUTES

12 CHAIRPERSON GRIFFIS: Eight July 2003,
13 also corrections, additions, subtractions,
14 clarifications?

15 MEMBER ETHERLY: I'll just note, Mr.
16 Chairman, just a small, small typographical
17 addition. Under Application Number 17033,
18 Application of Washington Drama Society, with
19 respect to the condition, third line, "areas" with
20 an "s" of relief, "The applicant may modify the
21 design of the building provided that those changes
22 do not increase any of the areas of relief granted
23 by the Board of Zoning Adjustment."

24 CHAIRPERSON GRIFFIS: Very well.

25 Others? Additions?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 (No response.)

2 CHAIRPERSON GRIFFIS: Not noting any, I
3 would move approval, then, of 8 July 2003.

4 MEMBER ZAIDAIN: Second.

5 CHAIRPERSON GRIFFIS: All in favor?

6 (Chorus of ayes.)

7 CHAIRPERSON GRIFFIS: Opposed?

8 (No response.)

9 APPROVAL OF THE JULY 15, 2003, MINUTES

10 CHAIRPERSON GRIFFIS: Twenty-second
11 July 2003. Oh, I'm sorry. Fifteen.

12 Mr. Hood was the Zoning Commissioner.
13 We heard the application from the Burke School on
14 that day, and Ms. Bailey, I believe this correctly
15 reflects that was all day that we had for that
16 application; is that correct?

17 MS. BAILEY: Sure, Mr. Chairman.
18 Absolutely.

19 CHAIRPERSON GRIFFIS: Indeed.

20 Very well. Any other comments,
21 clarifications on that?

22 (No response.)

23 CHAIRPERSON GRIFFIS: If not, I would
24 move approval of the 15 July '03.

25 MEMBER ZAIDAIN: Second.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 CHAIRPERSON GRIFFIS: All in favor?

2 (Chorus of ayes.)

3 CHAIRPERSON GRIFFIS: Opposed?

4 (No response.)

5 APPROVAL OF THE JULY 22, 2003, MINUTES

6 CHAIRPERSON GRIFFIS: Going to the
7 22nd, then. Yes, clarifications.

8 MEMBER MILLER: On page 2, this is in
9 the application of JBG/JER E Street, LLC. There's
10 a paragraph at the top about expert testimony, and
11 it doesn't reflect that the Board decided to hear
12 the testimony from Mr. Miller without qualifying
13 him as an expert. There was discussion about
14 whether he should be qualified as an expert or not.

15 MEMBER ZAIDAIN: Because he was the
16 applicant?

17 MEMBER MILLER: Yes. Right.

18 MEMBER ZAIDAIN: And we decided not to
19 qualify him?

20 MEMBER MILLER: Right. But we heard
21 testimony.

22 CHAIRPERSON GRIFFIS: No, we qualified
23 him, didn't we?

24 MEMBER MILLER: No, I don't believe we
25 did.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 MEMBER ZAIDAIN: I thought we did.

2 CHAIRPERSON GRIFFIS: I think we did.

3 MEMBER MILLER: We did?

4 MEMBER ZAIDAIN: I think we did, too.

5 MEMBER MILLER: Sorry. Okay.

6 Next -- okay. You don't reflect that
7 here, either. I think we just don't reflect it.

8 CHAIRPERSON GRIFFIS: Why don't we
9 check into that? Also, Mr. Dove was qualified as
10 an expert --

11 MEMBER MILLER: He was. Right.

12 CHAIRPERSON GRIFFIS: -- in
13 architecture, as an architect, which was listed
14 there. We will just correct that spelling, not
15 export, but expert. My recollection is that we
16 did, in fact, qualify him as an expert, so we
17 should have that duly noted.

18 Anything else?

19 MEMBER MILLER: Yes. Page 4 on the
20 McAdams' case. It's my recollection that this came
21 in the form of a variance, but also it came in a
22 companion appeal of DCR enforcement action
23 regarding the top story of the residence, and
24 that's not reflected here and that is germane to
25 the argument of laches and estoppel, and I think it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 needs to be reflected if that -- I believe it was
2 in our writeup as to the form of this case. Do you
3 understand what I'm saying?

4 CHAIRPERSON GRIFFIS: Yes. But there
5 wasn't a companion appeal attendant to the variance
6 application.

7 MEMBER MILLER: I am saying that I -- I
8 am not imaging it. I mean, I think I read that in
9 the writeup.

10 CHAIRPERSON GRIFFIS: No, I know. I
11 understand what you're saying, but there was some
12 clarification brought to that that we couldn't, if
13 we entertained the variance -- or decided not to
14 entertain the variance, then take it up as an
15 appeal. I think they were saying if it didn't go
16 that way, that it should be entertained as an
17 appeal, but that would be a whole separate
18 application.

19 Ms. Bailey, do you have recollection on
20 the specifics of that?

21 MS. BAILEY: I was of the same
22 understanding, Mr. Chairman, that the appeal is a
23 separate action and the Board did not get into that
24 discussion on the 22nd when the application was
25 being considered.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 CHAIRPERSON GRIFFIS: Okay. Perhaps
2 why don't we -- the Board and staff can take some
3 time just to look into that so that we have
4 clarification, because Ms. Miller brings up an
5 important point that probably ought to just be
6 quickly noted with the fact that this was involved
7 in an appeal and how that had bearing on the
8 application, the substance of it, because there was
9 some discussion.

10 Yes, Mr. Moy.

11 MR. MOY: Yes. Her memory is correct.
12 We can note that for the record in the minutes for
13 you to look at next time we meet.

14 CHAIRPERSON GRIFFIS: Okay. Great.

15 Additional?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Very well. Then
18 I would move approval of 22nd July 2003 --

19 MEMBER ZAIDAIN: Well, as amended? Are
20 we amending it?

21 CHAIRPERSON GRIFFIS: Yes, as amended.

22 MEMBER ZAIDAIN: As amended. Okay.
23 Second the motion.

24 CHAIRPERSON GRIFFIS: Excellent point.

25 MEMBER ZAIDAIN: Just trying to keep it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

1 on the up and up, Mr. Chair.

2 CHAIRPERSON GRIFFIS: All those in
3 favor.

4 (Chorus of ayes.)

5 CHAIRPERSON GRIFFIS: Opposed?

6 (No response.)

7 CHAIRPERSON GRIFFIS: What else? Do we
8 have any others? Any more, Ms. Bailey?

9 MS. BAILEY: One is missing, and that
10 is the 29th, and we will have that under separate
11 cover.

12 CHAIRPERSON GRIFFIS: Oh, okay. Very
13 well.

14 Then is there anything else for the
15 Board in the morning meeting?

16 (No response.)

17 CHAIRPERSON GRIFFIS: Is staff aware of
18 anything?

19 MR. MOY: No, I think that's it.

20 CHAIRPERSON GRIFFIS: Okay. The Board
21 aware of any other issues?

22 (No response.)

23 CHAIRPERSON GRIFFIS: Very well. Then
24 I can conclude our 5th of August, 2003, public
25 meeting.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com

1 (Whereupon, at 12:27 p.m., the meeting
2 adjourned.)
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701