

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY,

FEBRUARY 19, 2008

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:00 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
MARC D. LOUD Vice Chairman
MARY OATES WALKER Board Member

ZONING COMMISSION MEMBER PRESENT:

GREGORY JEFFRIES Vice Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

This transcript constitutes the minutes from the Special Public Meeting held on February 19, 2008.

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

2 9:51 a.m.

3 CHAIRPERSON MILLER: This meeting
4 will, please, come to order. Good morning,
5 ladies and gentlemen. This is the February
6 19th Public Meeting of the Board of Zoning
7 Adjustment of the District of Columbia. My
8 name is Ruthanne Miller. I'm the Chairperson.
9 Joining me today is the Vice Chair, Marc Loud,
10 to my right and next to him is Mr. Greg
11 Jeffries from the Zoning Commission. To my
12 left is Mary Oates Walker and also on the dias
13 right now is Ms. Beverley Bailey from the
14 Office of Zoning. Mr. Clifford Moy is also
15 joining us from the Office of Zoning.

16 Copies of today's meeting agenda
17 are available to you and are located to my
18 left in the wall bin near the door. We do not
19 take any public testimony at our meetings,
20 unless the Board asks someone to come forward.

21 Please, be advised that this
22 proceeding is being recorded by a Court

1 Reporter and is also webcast live.
2 Accordingly, we must ask you to refrain from
3 any disruptive noises or actions in the
4 hearing room. Please, turn off all beepers
5 and cell phones.

6 Does the staff have any
7 preliminary matters?

8 MR. MOY: Not for the Special
9 Public Meeting, Madam Chair.

10 CHAIRPERSON MILLER: Thank you,
11 Mr. Moy. I would also like to say for those
12 of you in the audience that we have a Public
13 Meeting first on the agenda dealing with one
14 case and then after that, the Board will take
15 a very quick break and then come back for its
16 Public Hearing, so that if anyone is here for
17 the Public Hearing, you can also take a short
18 break, at this time, if you want. We will be
19 a little bit on the first decision.

20 Okay. Then, Mr. Moy, we're ready
21 to proceed with the meeting agenda.

22 MR. MOY: Yes, good morning, Madam

1 Chair and Members of the Board. The first and
2 only case for decision in the Special Public
3 Meeting is Application No. 17652 of Emanuel
4 and Marcia Finn, pursuant to 11 DCMR 3104.1
5 and 1553.2, for a special exception to
6 establish a child development center, 30
7 children and 4 teachers, under section 205, in
8 the SSH/R-1-B District at premises 5707 14th
9 Street, N.W., Square 2796, Lot 833.

10 Staff notes the application has
11 been amended to change the number of children
12 from 30 to 20 children; add special exception
13 relief to 1553.2, which permits a proposed new
14 nonresidential use in the Sixteenth Street
15 Heights Overlay District.

16 The applicant had also withdrawn
17 its special exception relief to section
18 202.10.

19 On February 5th, the Board convened
20 the application for decision. After
21 discussion, the Board reopened the record to
22 allow additional filings. Those filings have

1 been submitted into the record and is in your
2 case folders this morning.

3 The first filing is the opposition
4 party to respond to the legal arguments
5 contained in the applicant's submission dated
6 February 4, 2008, that's identified as Exhibit
7 50. We also have a filing from the applicant,
8 which is dated January 29, 2008, identified as
9 Exhibit 47. The Board has to act on the
10 merits of the request for a special exception.

11 And with that, staff concludes its
12 briefing, Madam Chair.

13 CHAIRPERSON MILLER: Thank you,
14 Mr. Moy. I think before we get into the
15 merits of this decision, we have a preliminary
16 matter and Mr. Loud is going to address that.

17 VICE CHAIRMAN LOUD: Thank you,
18 Madam Chair, and again, good morning to
19 everyone. Upon careful reflection, Madam
20 Chair and colleagues, I have decided to recuse
21 myself from this case, a decision that was not
22 made or taken lightly, but nonetheless, I have

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1 decided to do it.

2 And I have done that after
3 reviewing applicable provisions of the D.C.
4 Case Law and Code as pertains to conflicts of
5 interest, impartiality, judicial conduct and
6 the like.

7 In particular, the case of
8 Morrison vs District of Columbia Board of
9 Zoning Adjustment, which is cited at 422 A.2d
10 347 (1980), indicates that the same rules
11 governing the recusal of judicial officers
12 also applies to Agency decision makers acting
13 in a quasi-judicial or adjudicative capacity.

14 Now, in that light, section 3(e)
15 of the Code of Judicial Conduct, which has
16 been adopted by the D.C. Courts in 1995,
17 states as follows with respect to the
18 disqualification or recusal of a judge: "A
19 judge shall disqualify himself or herself in
20 a proceeding in which the judge's impartiality
21 might reasonably be questioned, including, but
22 not limited to," and then it goes on to list

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1 several different specific scenarios under
2 which disqualification would be appropriate.

3 In the case of the Finn matter, as
4 I indicated at the very beginning of these
5 proceedings, I do have a professional
6 relationship with the Finns, which stems from
7 the fact that our children go to the same
8 school. And as I indicated at the outset, I
9 sit as the Chair of a school committee, the
10 Grant Writing Committee, which -- whose
11 purpose was to raise funds for our kids.

12 And Mr. Emanuel Finn also sat on
13 that committee. It was a committee that was
14 active about 18 months or so ago. So when we
15 initially started this case, I believe, and I
16 have disclosed it on the record, that it was
17 all behind us and we could move forward
18 together.

19 However, as fate would have
20 things, a week ago Friday, the grant that we
21 had worked on together was awarded to our
22 team. It was something that I didn't even

1 realize was still in place, as we had not
2 heard from the grant funder in such a long
3 period of time, but nonetheless, a number of
4 us who served on that team, Emanuel Finn, Herb
5 Scott, Noreen Conway, myself, Mrs. Confer, all
6 these are names that are going to be familiar
7 to Marcia Finn.

8 All of us received notification
9 that the grant that we worked on together was
10 awarded. And in that context, I don't think
11 it would be appropriate for me to continue to
12 serve in this case, because I do think that my
13 impartiality could reasonably be questioned.
14 So for that reason, I'm going to be recusing
15 myself this morning. Thank you.

16 CHAIRPERSON MILLER: Thank you,
17 Mr. Loud. In light of that circumstance, in
18 order to have a quorum, we have had Ms. Oates
19 read the record and she can verify herself
20 that she has read the record in full and is
21 prepared to deliberate on the case.

22 MEMBER WALKER: Madam Chair, I did

1 take the time to read the very extensive
2 record in this case and have done so in full
3 and am prepared to deliberate.

4 CHAIRPERSON MILLER: Okay. Then
5 let's proceed. Just to recap a little bit, I
6 know Mr. Moy gave us a little bit of an
7 introduction of what this case is about, but
8 just to lay the foundation here. It is an
9 application for a child development center for
10 a number of children of 20, at this point. It
11 was originally proposed at 30, but the
12 application was revised to 20.

13 It is coming in under special
14 exception for a child development center under
15 205 and also though under the Sixteenth
16 Heights Overlay District Regulations,
17 specifically 1553.2, which requires special
18 exception approval for a new nonresidential
19 use in that district.

20 The application calls for
21 converting the first two floors and existing
22 one-family detached dwelling into a child

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1 development center. There is a proposal to
2 use a basement as a dwelling separate from the
3 center. The applicant has made an argument
4 that that is allowed as a matter-of-right. I
5 think we're going to leave that for later. I
6 think that's -- first of all, they are not
7 seeking relief for that. And second of all,
8 I think that that is really somewhat
9 contingent on how we rule on the child
10 development center.

11 With respect to documents in the
12 record, I briefly want to say that the ANC
13 came in in support of this application. It is
14 report -- Exhibit 36 and 44. They don't
15 address the issues or suggest any conditions,
16 however, but the first one is in support. The
17 second one is just a clarifying letter.

18 The Department of Health came in
19 in approval citing the need for child care in
20 the District. And then we have reports from
21 DDOT where they raise certain concerns about
22 drop-off and pick-up and number of children

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1 being driven to the school.

2 And then the Office of Planning
3 has three reports and I think we're really
4 going to be getting into those reports
5 somewhat when we do our evaluation of the
6 regulations. But, in essence, Office of
7 Planning originally recommended denial and
8 then they switched to recommending approval.

9 We have a party in opposition, the
10 16th Street Heights Civic Association, and
11 then we had neighbors also in opposition. As
12 of now, there is a child care -- not a
13 development center, just a child care
14 operation operating out of the home with five
15 children and that has been operating for two
16 years. And again, there are some questions as
17 to whether that is operating legally or not,
18 but that's not before us either, because that
19 would be an enforcement issue.

20 So what I suggest we do, at this
21 point, is look at the two regulations that set
22 forth the special exception approval that need

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1 to be met and we could systematically address
2 the evidence in the record with respect to
3 those regulations.

4 So I think that we could start at
5 205, which is the child development center in
6 an R-1 District. 205.1 says "Use as a
7 child/elderly development center or adult day
8 treatment facility shall be permitted as a
9 special exception in an R-1 District if
10 approved by the Board of Zoning Adjustment
11 under section 3104, subject to the provisions
12 of this section."

13 And 3104 is our general Special
14 Exception Regulation, which allows special
15 exceptions where they are in harmony with the
16 character of the neighborhood and the Zone
17 Plan and don't adversely impact neighboring
18 properties.

19 205.2 says "A center or facility
20 shall be capable of meeting all applicable
21 code and licensing requirements."

22 I think that, first of all, we

1 have at least two documents that address that.
2 One is the Office of Planning has
3 systematically gone through 205 and certainly
4 we can look to them and then see if there is
5 any disagreement.

6 But in their latest report, which
7 was November 28, 2007, they find that it is
8 capable. And we also do have a letter from
9 Department of Health in support, so I don't
10 think this one is at issue really.

11 And I do want to say as we go
12 along, we will see that, you know, basically
13 what we will be weighing, I think, in this
14 case, as in a lot of child development center
15 cases, you know, there is a great need in this
16 city for child developmental centers. And,
17 you know, that's something that we consider
18 with respect to impacts and everything.

19 And then we also, but definitely
20 in these Special Exception Regulations, need
21 to address adverse impacts. But in addition
22 to adverse impacts, there are these other

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1 specific regulations.

2 So that is 205.2. I don't hear
3 any concern with that one. 205.3 says that
4 "The center shall be located and designed to
5 create no objectionable traffic condition and
6 no unsafe condition for picking up and
7 dropping off children or elderly persons."

8 I think that this one is at issue.
9 Do other Board Members want to address this
10 question? Okay.

11 MEMBER WALKER: Madam Chair, I saw
12 in the record that there have been several
13 iterations of the applicant's pick-up and
14 drop-off plan involving pick-up and drop-off
15 at 14th Street, in the alley behind the
16 property and finally DDOT recommended pick-up
17 and drop-off from Montague Street, which is
18 right around the corner.

19 There is an enforcement problem
20 with this particular requirement that only 12
21 children be driven to the facility and that
22 parents or caregivers stop only on Montague

1 Street. The applicant can incorporate this
2 requirement into their plan, but, ultimately,
3 there is a difficulty with them controlling
4 the actions of the parents, who are dropping
5 off and picking up. And I think that it is
6 unrealistic for the Board to impose such a
7 condition.

8 CHAIRPERSON MILLER: I would
9 concur. I think this was a topic of
10 discussion with Office of Planning at the
11 hearing. I mean, sometimes that may -- that
12 factor alone may not be a big issue, but, in
13 this case, I think it is. DDOT, basically,
14 came in saying they didn't object, provided
15 that the drop-off and pick-up occurred at
16 Montague Street and no more than 12 children
17 were driven to the school.

18 And we talked about well, how is
19 that going to be enforced with respect to the
20 number of children being driven to the school?
21 Does that mean that the neighbors are going to
22 be in a position where they would have to be

1 counting the number of children in a car,
2 which is really undoable in an untenable
3 situation.

4 And I think this kind of issue
5 becomes of greater importance when it is on a
6 quiet residential street. And so I think
7 there is a problem with that one as well. We
8 can continue and see how this goes.

9 "The center shall provide
10 sufficient off-street parking spaces to meet
11 the reasonable needs of teachers, other
12 employees and visitors."

13 I didn't really see too big a
14 problem with this one. They only have four
15 employees and they had a detached garage at
16 the rear of the property and Office of
17 Planning found them in compliance here. Do
18 you have concerns about this provision?
19 Anyone? Okay. Okay.

20 I think we're going to get to then
21 the meat of 205 and the next provision which
22 says, 205.5, "The center, including any

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1 outdoor play space provided, shall be located
2 and designed so that there will be no
3 objectionable impacts on adjacent or nearby
4 properties due to noise, activity, visual or
5 other objectionable conditions."

6 Now, I would say, I think,
7 originally Office of Planning found that the
8 application did not meet this provision, in
9 part, because of the number of children. And
10 then I believe that they found that applicant
11 met a lot of the concerns with respect to
12 noise and then the decrease in the number of
13 children. They found that they met the number
14 -- that they met the noise concern, because of
15 the new fence and soundproofing that the
16 applicant has proposed and landscaping with,
17 you know, buffering.

18 What do other Board Members think?

19 MEMBER WALKER: Madam Chair, I
20 think that it is problematic that both of the
21 off-site play areas that were initially
22 identified, the Carter-Baron Playground and

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1 then the Hamilton Street Recreation Center,
2 were both rejected by the Office of Planning,
3 which means that the children will necessarily
4 have to play on-site.

5 And while there is a
6 recommendation that the number of children
7 playing in the backyard be limited to five at
8 any one time, and that the hours that the
9 children are allowed to play be limited to
10 9:00 to 5:00, there is still a potential
11 adverse impact in terms of the noise, because
12 they don't have another option.

13 They will have to be on-site
14 playing and if you have five children in the
15 backyard, even on a staggered schedule, in
16 order to meet the Department of Health's
17 requirements that children have ample time
18 outside, two hours a day, I believe, was the
19 recommendation, then, essentially, there will
20 be a continuous group of children playing in
21 the rear of the property.

22 So I think even with the rotation

1 that they are proposing, there could
2 potentially be a significant impact in terms
3 of the noise.

4 ZC VICE CHAIRMAN JEFFRIES: And,
5 Madam Chair, you know, quite frankly and I
6 appreciate the orderly wind which you are sort
7 of addressing this, but I think so much of
8 this falls on this whole notion of
9 unenforceable conditions. And I think that
10 Sixteenth Street Heights has made a very
11 convincing and compelling argument that, you
12 know, no matter how much we try to dress up
13 this pig, it is just a pig.

14 And that's not to refer to the
15 development child centers as a pig, but you
16 can try to address this as many ways as you
17 possibly can, but it's still problematic,
18 because human beings, you know, operate in
19 very erratic ways and they just -- you know,
20 five children in the backyard, you know, no
21 more than five, you know, well, it's just a
22 matter of time before there is six or seven.

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1 A situation happens with a kid. It's just all
2 very -- it's just hard to hold down.

3 So I appreciate the comments from
4 both of you, but I think so much of this falls
5 back to this whole notion of these conditions
6 just being terribly unenforceable.

7 CHAIRPERSON MILLER: I agree. I
8 think this is really where the crux of this
9 case needs to be evaluated, because not only
10 are the unenforceable conditions, but we
11 already have a situation here where there is
12 a child care center in place between two
13 residential homes.

14 And they already have -- it has
15 been there for two years with a total of five
16 children and/or infants. And there is already
17 a history that it is so noisy for these two
18 residences that I believe one of them had to
19 relocate the nursery in order to find some
20 quiet away from the play area, which I think
21 is unreasonable.

22 So we have a history of noise here

1 already and so now, what's at issue now is
2 asking us to increase this number up to 20.
3 So I don't believe that that is supportable
4 here either, and I think that I don't
5 understand exactly why Office of Planning
6 changed their position.

7 I noticed that in their original
8 report they say 30 children is significantly
9 more than would otherwise be expected to play
10 in the rear yard of a one-family dwelling on
11 a regular basis with the potential to result
12 in objectionable amount of noise throughout
13 the day. Now, then we switch that to 20, I
14 don't see how that really changes.

15 They also say in their first
16 report "As the subject property is located
17 mid-block and surrounded on all sides by other
18 one-family detached residential structures
19 with narrow side yards, it does not lend
20 itself to provide for a discrete location of
21 an outdoor play area away from the surrounding
22 residential uses."

1 I think the only thing else that
2 has changed though is, you know, the offer of
3 the applicant to put soundproof and padding
4 all around this yard. And the applicant, you
5 know, submitted some materials on that after
6 the hearing and then we had, you know, expert
7 qualifications of the person that wrote it.
8 But I didn't find it convincing, based on
9 that, that that would solve the problems.

10 If I recall, we certainly didn't
11 have a chance to cross examine this person.
12 We're talking about an outside area. It
13 looked to me that the information that was
14 provided did go to indoor areas, like arenas
15 and things like that. So it just seems kind
16 of crazy like you are saying also, you know,
17 when it gets to the point where we're trying
18 to totally soundproof this area, it doesn't
19 really seem realistic for a residential
20 neighborhood anyway.

21 Any other comments on that one? I
22 mean, I think that's the crux of it. Ms.

1 Oates Walker also talked about the fact that
2 the Office of Planning thought that it would
3 be -- or the Department of Health had concerns
4 about walking the children to another play
5 area. And so that's in 205.7 that talks about
6 "Any outside play area shall be located, so as
7 not to result in any endangerment to the
8 individuals in attendance at the center in
9 traveling between the play area and the center
10 itself."

11 And to not only did they say that
12 that wasn't safe, and therefore they said they
13 should just talk a walk during the day or
14 something, which doesn't sound very good for
15 the children, anyway, which increases the
16 intensity of use of the backyard.

17 So we also remember talked about
18 whether we could even have a condition that
19 says oh, they can't walk to a certain area.
20 I mean, I don't think we have ever done
21 something like that. It sounds like an
22 infringement on somebody's Constitutional

1 right to walk somewhere.

2 But anyway, so in any event, that
3 just shows they can't really make up for the
4 difficulty of playing in the backyard and
5 being noisy for the neighbors. And it's not
6 like -- I think we also heard during the
7 hearing, and we hear this, you know, in a lot
8 of them. It's not like we think that the
9 neighbors don't like children or they don't
10 like the sound of children's voices or it's,
11 you know, the neighbors versus children.

12 I think it's like, you know,
13 what's reasonable in a residential
14 neighborhood? How much quiet is reasonable?

15 There was an issue about 205.8
16 whether there was another child development
17 center within 1,000 feet of the subject
18 property within the subject square. And the
19 parties both addressed this. And I think the
20 applicant -- I would agree with the applicant
21 that the child development, the child care
22 facilities or whatever, there were other

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1 facilities in the area that were either part
2 of a school or child care facility, but not a
3 child development center.

4 So I don't think that 205.8 is an
5 issue. But I think it comes up similarly when
6 we look at the Sixteenth Street Overlay.
7 We'll be looking at other institutions in the
8 area which are nonresidential uses. Maybe not
9 child development centers.

10 ZC VICE CHAIRMAN JEFFRIES: Yeah,
11 Madam Chair, you know, I was looking at Office
12 of Planning's January 29th supplemental memo.

13 CHAIRPERSON MILLER: Um-hum.

14 ZC VICE CHAIRMAN JEFFRIES: And I
15 agree with Sixteenth Street Heights'
16 contention that, you know, Office of Planning
17 really did not make the case for why they feel
18 that, you know, having this additional
19 facility would not have an adverse impact on
20 the neighborhood.

21 I mean, they just simply state
22 here that "The Office of Planning does not

1 find the accumulative effect of the proposed
2 center and existing ones will have an adverse
3 effect." Well, I don't think that has been
4 adequately proven. I don't think that the
5 applicant has really met that burden. And I
6 mean, I think that they have made cases here
7 and there, but I just don't see that the case
8 has been made.

9 It's not enough just to say that.
10 I mean, we really have to spell that out as to
11 exactly why, you know, having this additional
12 child or elderly development center in the
13 square does not have a cumulative impact.

14 So again, I sort of felt that the
15 applicant's case sort of failed on that
16 premise as well. That I don't think they were
17 really assisted by the Office of Planning.

18 CHAIRPERSON MILLER: I guess I
19 wasn't convinced that they actually were child
20 developmental centers. But I think that where
21 we have gone so far is just that if they can't
22 meet the adverse impact test, they fail

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1 basically in any event. So I think that's
2 probably where we are at right now with
3 respect to 205.

4 I mean, I can go to 205.9, I think
5 that, you know, we did get the comments from
6 the various departments. 205.10 is the
7 licensing. So, you know, I think it's hard,
8 because I know that, you know, this is a need
9 in the community, but not at the expense of
10 neighbors this close.

11 But I would be prepared to look at
12 the Overlay Regulations.

13 ZC VICE CHAIRMAN JEFFRIES: Yes.

14 CHAIRPERSON MILLER: Unless you
15 have more to say on it?

16 ZC VICE CHAIRMAN JEFFRIES: That's
17 actually where I wanted to go.

18 CHAIRPERSON MILLER: Okay. That
19 said, 1553.2 and I think that, you know, this
20 is a case where there are two layers of
21 protection on the community. And, you know,
22 I understand even if it fails on one hand, we

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1 should still address this overlay to a certain
2 extent.

3 All right. 1553.2 says that "A
4 proposed new nonresidential use or an
5 expansion of an existing nonresidential use,"
6 okay, this is a new one, "shall be permitted
7 as a special exception if approved by the
8 Board of Zoning Adjustment after public
9 hearing in accordance with 3104 and subject to
10 the following requirements."

11 And I think the very first one is
12 really the main issue again here, and that is
13 (A) "The nonresidential use is cable of being
14 established and operated without adversely
15 affecting the use and enjoyment of neighboring
16 and nearby properties due to traffic, noise,
17 design or other objectionable conditions."

18 Comments? I mean, I think some of
19 the -- first of all, some of the same findings
20 that we found under 205 would go to this one
21 that it's a new nonresidential use and I think
22 that we have already addressed that we have

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1 concerns that this would affect nearby
2 properties due to certainly noise of the
3 children playing and traffic, because they
4 weren't really enforceable conditions to meet
5 DDOT's concerns.

6 ZC VICE CHAIRMAN JEFFRIES: And if
7 this center was located, I mean, somewhere in
8 the middle of the block, I mean, it's
9 surrounded by, you know, single-family
10 residential. 20 kids, I just think where it
11 sits in the context of this block, which
12 appears to have other nonresidential uses on
13 the block, I just think it's burdensome.

14 And I think if it were at the end
15 of the block, I mean, you know, I might have
16 a different view. But I think it's in the mix
17 and I'm just -- I just find that it will have
18 some external, you know, negative impacts on
19 what is sort of the private quiet enjoyment of
20 the residential neighborhood.

21 CHAIRPERSON MILLER: To me this
22 also falls pretty squarely within the intent

1 of the overlay. I mean, it seems to me that
2 the overlay was intended, in particular, to
3 protect these types of one-family dwellings
4 from being converted to nonresidential uses.
5 And this -- because this particular area has
6 been overwhelmed with that.

7 And we saw some pictures that this
8 was a very beautiful block and a beautiful
9 home and I just don't see that they have made
10 the case really for adding this. It's really
11 adding a commercialization here. I think that
12 the intent of the Act is to allow, you know,
13 some nonresidential uses where it's not
14 adversely impacting the neighborhood or
15 whatever, but clearly, we found that here.

16 ZC VICE CHAIRMAN JEFFRIES: From
17 what I'm reading on page 2, February 14th, 16th
18 Street Heights Civic Association, letter it --
19 the second from the bottom paragraph says "The
20 evidence shows that the applicants propose
21 nonresidential use would not only become the
22 10th nonresidential use home within a 1,000

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1 foot radius, but would also result in the 5700
2 Block of 14th Street having 30 percent
3 nonresidential uses."

4 Now, I don't know how they get to
5 those particular percentages, but, you know,
6 when you consider that, you know, the intent
7 of that overlay was that there really should
8 not be nonresidential concentration over 10
9 percent, you know, I mean, that's just a
10 fairly significant delta between 10 or even a
11 little less than 30.

12 It just really seems to fly in the
13 face of the real intent of the overlay. As a
14 Zoning Commissioner, I just really feel that,
15 you know, I have to be somewhat protective,
16 you know, of this Residential Zone. You know,
17 simply because of obviously adverse impacts
18 and so forth. And I have to be thoughtful
19 about this overlay and what the intent is.

20 CHAIRPERSON MILLER: Thank you.
21 Yes, and I would agree with you about the
22 intent. It just seems to -- this case seems

1 to fall pretty squarely within that. Any
2 other comments?

3 I don't believe that we need to
4 address any proposed conditions or anything,
5 because I think we have basically said that
6 they just don't make it, even with the
7 conditions. So and I don't think we need to
8 really address the basement, at this point,
9 because there is no relief sought for that.

10 And it's not to say that we would
11 necessarily agree that it's a matter-of-right
12 use, but I would say that it is really not
13 necessarily before us now. So anything else?

14 Okay. Then I would move to deny
15 the revised Application No. 17652 of Emanuel
16 and Marcia Finn, for a special exception to
17 establish a child development center under
18 section 205, and a special exception under
19 1553.2, for a new nonresidential use in
20 Sixteenth Street Heights Overlay District at
21 premises 5707 14th Street, N.W.

22 ZC VICE CHAIRMAN JEFFRIES:

1 Second.

2 CHAIRPERSON MILLER: Okay.

3 Further deliberation?

4 All those in favor say aye.

5 ALL: Aye.

6 CHAIRPERSON MILLER: All those
7 opposed? All those abstaining? And would you
8 call the vote, please?

9 MR. MOY: Yes, Madam Chair. Staff
10 would record the vote as 3-0-2. This is on
11 the motion of the Chair, Ms. Miller, to deny
12 Application No. 17652, seconded by Mr.
13 Jeffries, also in support of the motion Ms.
14 Mary Oates Walker. And we have two other
15 Board Members not participating. Again, the
16 vote is 3-0-2.

17 CHAIRPERSON MILLER: Thank you.
18 Do we have anything else on the meeting
19 agenda, Mr. Moy or Ms. Bailey?

20 MR. MOY: No, Madam Chair, that
21 completes the Special Public Meeting.

22 CHAIRPERSON MILLER: Okay. Then

1 the meeting is adjourned and the Board will
2 return shortly to pick up with the Public
3 Hearing.

4 (Whereupon, the Special Public
5 Meeting was concluded at 10:25 a.m.)
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