

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY,

SEPTEMBER 23, 2008

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 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
SHANE L. DETTMAN Board Member
(NCPC)

ZONING COMMISSION MEMBER PRESENT:

GREGORY N. JEFFRIES Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.

This transcript constitutes the minutes from the Special Public Meeting held on September 23, 2008.

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

2 10:23 a.m.

3 CHAIRPERSON MILLER: Good morning,
4 ladies and gentlemen. Sorry to keep you
5 waiting. We have on today's agenda a Special
6 Public Meeting and then a hearing to follow,
7 so we will be starting with the Special Public
8 Meeting.

9 This is the September 23rd Special
10 Public Meeting of the Board of Zoning
11 Adjustment of the District of Columbia. My
12 name is Ruthanne Miller. I'm the Chair of the
13 BZA. To my right is Mr. Marc Loud. He is our
14 Vice Chair. And next to him is Mr. Greg
15 Jeffries from the Zoning Commission. To my
16 left is Mary Oates Walker and Shane Dettman,
17 Board Members of the BZA.

18 Next to Mr. Dettman is Mr.
19 Clifford Moy from the Office of Zoning, Mary
20 Nagelhout from the Office of Attorney General
21 and Ms. Beverley Bailey from the Office of
22 Zoning.

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1 Copies of today's meeting agenda
2 are available to you and are located to my
3 left in the wall bin near the door. We do not
4 take any public testimony at our meetings
5 unless the Board asks someone to come forward.

6 Please, be advised that this
7 proceeding is being recorded by a Court
8 Reporter and is also webcast live.
9 Accordingly, we must ask you to refrain from
10 any disruptive noises or actions in the
11 hearing room.

12 Please, turn off all beepers and
13 cell phones. Thank you. Now, we are ready to
14 proceed with our Special Public Meeting.

15 MR. MOY: Good morning, Madam
16 Chair, Members of the Board. The first of the
17 two cases for decision this morning is
18 Application No. 17807 of The Big Chill,
19 pursuant to 11 DCMR 31 -- well, this
20 application was amended to request special
21 exception zoning relief from the location of
22 parking spaces under section 2116. And this

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1 is to establish a nightclub/public hall in the
2 C-M-2 District at premises 1369 New York
3 Avenue, N.E., Square 4038, Lot 800.

4 On September 23, 2008, the Board
5 completed public testimony, closed the record
6 and scheduled its decision on September 23rd.
7 The Board requested the applicant provide
8 additional information to supplement the
9 record. This filing was made by the applicant
10 dated the 18th of September and is your case
11 folders identified as Exhibit 44.

12 The Board is to act on the special
13 exception relief and that completes the
14 staff's briefing, Madam Chair.

15 CHAIRPERSON MILLER: Thank you.
16 Thank you, Mr. Moy. I think that we can
17 proceed through this decision fairly quickly.
18 This is an application for a special exception
19 pursuant to 2116 to locate accessory parking
20 on a different lot than the building or
21 structure there intended to serve.

22 And we had a full hearing on this

1 case involving a nightclub, which will be
2 known as The Big Chill, which is allowed to be
3 at its location as a matter-of-right, but did
4 not have adequate space to provide the
5 required parking.

6 Office of Planning has gone
7 through all the elements of 2116, as did the
8 Board at the hearing. I don't think there was
9 an issue with respect to the applicant being
10 able to meet the elements of 2116.

11 Mr. Jeffries, in particular, asked
12 the applicant to come back with a better site
13 plan reflecting improved landscaping for the
14 parking lot and they did so. And I guess I
15 would just ask, Mr. Jeffries, do you have any
16 comments on that site plan that was submitted?

17 COMMISSIONER JEFFRIES: Geez,
18 well, I was just here last night until like
19 10:30. Yeah, I'm very appreciative of the
20 effort. I was hoping, however, that we could
21 have gotten a little bit more detail. I mean,
22 page 2 of the response by Hunton and Williams,

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1 you know, talks about the existing chain link
2 fence and barbed wire will be repaired where
3 needed; existing lights will be replaced as
4 needed.

5 We don't have any sense of, you
6 know, just how extensive that will be. It
7 says that it will be amended, meaning
8 resodded, and covered with mulch and a variety
9 of trees and shrubs, as indicated.

10 I think I'm basically fine. I
11 just wish they could have got down a little
12 bit more, but, again, you know, I think the
13 real thrust of this application, they have
14 actually met that. So I think the concern,
15 which is that they could just do some
16 beautification around some of the edges of the
17 parking spaces, it seems that that's their
18 intent.

19 I wish there was a little bit more
20 detail, but beyond that, I'm comfortable.

21 CHAIRPERSON MILLER: Okay. Other
22 comments? They did also submit some very nice

1 pictures, I would say, at least of the grasses
2 and shrubbery and other greenery that they
3 intend to use at the parking lot.

4 COMMISSIONER JEFFRIES: Um-hum.

5 CHAIRPERSON MILLER: And it is an
6 improvement certainly of what's there. Okay.
7 The other issues, I think, just related to
8 this application were a term that might go
9 with it, because they have a lease of the
10 building that is limited and they have a lease
11 of the parking lot that is limited.

12 And since this -- I mean,
13 logically, I think that we could tie the term
14 to either the parking lot lease or the
15 building lease, but since they do deal with
16 specifically parking lot spaces, I think, it
17 makes sense to tie it to the parking lot
18 lease.

19 And they have a parking lot lease
20 that expires October 2018 and, however, within
21 that lease is an option to terminate. So I
22 would suggest that this -- a condition of this

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1 application be that it expire October 2018
2 with the termination of the lease, of the
3 parking lot lease, or earlier if the parking
4 lot lease terminates earlier. Something to
5 that effect.

6 COMMISSIONER JEFFRIES: Are you
7 saying the earlier of and then you're going to
8 do two options?

9 CHAIRPERSON MILLER: Well,
10 basically, it should run with the lease.

11 COMMISSIONER JEFFRIES: Right.

12 CHAIRPERSON MILLER: So the lease
13 goes to 2018, October 2018. However, it
14 provides for the option to terminate under
15 certain conditions, so if it terminated
16 earlier, then so would the special exception.
17 If that makes sense to everyone.

18 And then also, because, you know,
19 the parking lot spaces are tied to the, you
20 know, use of the nightclub, if something
21 happens with the parking lot, that affects the
22 use of the nightclub. So we could also put in

1 as a condition that the applicant notify the
2 Zoning Administrator if the parking lot lease
3 terminates.

4 Is that amenable to everyone?
5 Okay. And then I think we should put in as a
6 condition that it also be in accordance with
7 the site plan that was just submitted with
8 Exhibit 44. Anything else on this?

9 I'm sorry, before I go, I believe
10 that the ANC is in support of this and there
11 is no party in opposition. There was a letter
12 from, I guess, the owner of Love who was
13 concerned about the parking. Yes?

14 VICE CHAIRMAN LOUD: Madam Chair,
15 just by way of clarification, the DDOT, and I
16 don't think we had an exhibit number before,
17 but nonetheless, they submitted a report and
18 part of what they had recommended in their
19 report was that the cuing of the vehicles take
20 place on-site as much as possible, so that it
21 would not extend out onto New York Avenue.

22 Is that a condition that would

1 normally -- we would insert into our decision
2 or how would that work? If it needs to be
3 made a condition, then I would support it
4 being submitted as a condition for safety
5 purposes.

6 CHAIRPERSON MILLER: Right. I
7 don't have that in front of me. I'm not sure
8 if you do. Okay. Because if DDOT has a
9 specific recommendation about where cuing
10 should take place, I think it would be useful
11 to add as a condition. If it's something as
12 general as much as possible or something like
13 that, sometimes it's too vague to put in as a
14 condition.

15 VICE CHAIRMAN LOUD: Would you
16 like me to read it?

17 CHAIRPERSON MILLER: Sure.

18 VICE CHAIRMAN LOUD: I'm reading
19 again from the DDOT report. It's dated
20 September 9, 2008. My copy doesn't have an
21 exhibit number on it. But the second sentence
22 reads as follows: "DDOT has no objection to

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1 the proposal provided the applicant modifies
2 the parking entrance to allow for an adequate
3 number of cards to cue on-site to prevent
4 backups on New York Avenue, N.E."

5 Then it goes on to say and I'm not
6 recommending this for a condition, but the
7 sentence finishes "And the applicant or
8 nightclub provide staff to ensure that patrons
9 safely cross New York Avenue."

10 So the part that I would be
11 supportive of us being real clear on is that
12 the cars do not backup onto New York Avenue
13 for purposes of cuing. You're going to have
14 to sort of fill me in a little.

15 COMMISSIONER JEFFRIES: I mean,
16 Madam Chair --

17 CHAIRPERSON MILLER: Yes.

18 COMMISSIONER JEFFRIES: -- is that
19 part of, you know, our jurisdiction here, I
20 mean, based on the application before us? I
21 mean, will we be able to have that?

22 CHAIRPERSON MILLER: Well, you

1 know, you all can help me if I'm wrong, but I
2 think my recollection of the hearing is that
3 the applicant was working with DDOT and had
4 made modifications to provide, you know,
5 adequate cuing. Do you recall that?

6 VICE CHAIRMAN LOUD: I do recall
7 that.

8 COMMISSIONER JEFFRIES: Yes.

9 VICE CHAIRMAN LOUD: Okay.

10 COMMISSIONER JEFFRIES: But I
11 don't think that's really the point that Board
12 Member Loud is saying. He is saying should we
13 have in our order something that clearly
14 compels and assures that it is happening. I
15 mean, I'm certain that that's what they are
16 doing, but I just -- but I guess my question
17 is, I mean, is it really in our jurisdiction?
18 I mean, that's really not part of this
19 application.

20 Is that the argument? Because we
21 were looking at this very narrowly, you know,
22 about parking and should we start to veer off

1 into cuing and such.

2 CHAIRPERSON MILLER: Well, I think
3 it comes within our jurisdiction if there
4 were, for instance, spaces that could be
5 provided on the parking lot, so that there
6 wouldn't be cuing, you know --

7 COMMISSIONER JEFFRIES: On the
8 street.

9 CHAIRPERSON MILLER: -- on the
10 street. My recollection is I guess I don't
11 see it as necessary for a condition, because
12 I think that they have worked with DDOT and I
13 thought come up with a proposal.

14 COMMISSIONER JEFFRIES: Well, I
15 think, you know, last week, I mean, or was it
16 two weeks ago or whatever, that we discussed
17 this particular case and, you know, there was
18 a lot of commentary around, you know, New York
19 Avenue traffic and, you know, the resulting
20 impact and potential negative impact. And so
21 I thought you were trying to make certain that
22 we looked at this very narrowly.

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1 So I think for the record, I
2 think, several of us here are really concerned
3 about that, but, you know, it's out of our
4 purview, but --

5 CHAIRPERSON MILLER: Well, I think
6 we should probably -- you know, we didn't
7 discuss this case that much. We kind of just
8 kind of --

9 COMMISSIONER JEFFRIES: Yeah.

10 CHAIRPERSON MILLER: -- kind of
11 glossed over it somewhat. But my recollection
12 was that the parking lot was located, so that
13 it had entrances in certain places with lights
14 and so that the cuing wasn't going to be a
15 problem and that, cuing of cars, we also
16 discussed cuing of pedestrians, I thought.
17 And then I said, at that point, that was
18 really kind of beyond, yeah.

19 COMMISSIONER JEFFRIES: Yeah.

20 VICE CHAIRMAN LOUD: I think
21 that's why -- and I don't -- I didn't intend
22 to suggest it as a condition, but more so

1 reflecting on the safety components of it and
2 whether it should be one of our conditions.

3 I'm not adamant about making it a
4 condition, Commissioner Jeffries, and I think
5 you make some very good points in terms of us
6 sort of looking at the case narrowly. But
7 given the potential for some harm, I just
8 wanted to make sure that if it's the type of
9 condition that normally we would put in a case
10 like this, that we not overlook it.

11 On the other hand, if -- and I do
12 recall the testimony that the applicant was
13 going to work with not only DDOT, but MPD
14 around some safety issues of crossing that
15 street and cars backing out into New York
16 Avenue. And we are -- and it's consistent
17 with how we normally would handle that issue.

18 I'm fine with it not being a
19 specific condition.

20 COMMISSIONER JEFFRIES: Let me.
21 And then also, I mean, obviously, I mean, the
22 applicant and the owner, you know, has every

1 incentive to make certain that, you know,
2 there is, you know, ease of flow in terms of
3 traffic to, you know, the nightclub. I mean,
4 you can do that a couple of times and then
5 people are just going to stop coming.

6 So I feel somewhat comfortable
7 that, you know, they have every incentive to
8 sort of address this issue on vehicular
9 traffic. But again, just for the record, and
10 having some familiarity with that area, you
11 know, the cuing is extremely important and
12 that it should be noted that the Board here
13 expressed concern of that, even though to some
14 degree it's really out of the context of this
15 application and the hearing.

16 CHAIRPERSON MILLER: Right. I
17 agree. And we did talk about the safety of
18 pedestrians and the fact that The Big Chill
19 was going to be having extra staff to escort
20 people, etcetera. And what Mr. Jeffries was
21 referring to with my looking at this narrowly
22 was when I -- you know, a special exception

1 deals with adverse impacts in general, but
2 usually like upon neighboring properties or
3 whatever.

4 I mean, we are doing zoning. We
5 are not doing, you know, policing or whatever.
6 But so then I was looking at 2116.9 that ways
7 "The Board may impose conditions on any
8 accessory or non-accessory parking spaces as
9 to screening, coping, setbacks, fences, the
10 location of entrances and exits or any other
11 requirement it deems necessary to protect
12 adjacent or nearby property. They may also
13 impose other conditions it deems necessary to
14 assure the continued provision and maintenance
15 of the spaces."

16 So that's why, I guess, I would be
17 inclined to say no, we shouldn't be throwing
18 any conditions on those other areas, even
19 though they are, you know, important areas,
20 but not necessarily to this application, per
21 se. Others? Anything else?

22 Then I would move approval of

1 Application No. 17807 of The Big Chill,
2 pursuant to 11 DCMR 2116, to establish a
3 nightclub/public hall in a C-M-2 District at
4 premises 1369 New York Avenue, N.E.

5 Do I have a second? Why we don't
6 say as conditioned with the three conditions
7 I talked about: Tying the term to the parking
8 lot lease; notifying the Zoning Administrator
9 if the parking lot lease terminates and in
10 accordance with the site plans attached to
11 Exhibit 44.

12 MEMBER DETTMAN: Second, Madam
13 Chair.

14 CHAIRPERSON MILLER: Further
15 deliberation? Okay.

16 All those in favor say aye.

17 ALL: Aye.

18 CHAIRPERSON MILLER: All those
19 opposed? All those abstaining? And would you
20 call the vote, please?

21 MR. MOY: The staff would record
22 the vote as 5-0-0. This is on the motion of

1 the Chair, Ms. Miller, to approve the
2 application as conditioned, seconded by Mr.
3 Dettman. Also in support of the motion Ms.
4 Walker, Mr. Loud and Mr. Jeffries. And this
5 was approval as conditioned.

6 CHAIRPERSON MILLER: Thank you.
7 And this can be a summary order, as there are
8 no parties in opposition.

9 MR. MOY: The next and final case
10 for decision, Madam Chair, is Application No.
11 17726 of Wisconsin Avenue Baptist Church,
12 pursuant to 11 DCMR 3104.1, for a special
13 exception to allow both a child development
14 center under section 205, and a special
15 exception to allow private school under
16 section 206, in the R-1-B District at premises
17 3920 Alton Place, N.W. This property is in
18 Square 1779, Lot 824.

19 At its Public Meeting on September
20 9, 2008, the Board rescheduled its decision to
21 September 23rd. The Board is to act on: One,
22 the merits of the requested special exception

1 relief under section 205 and 206; and two,
2 address the preliminary matter of two filings,
3 one which is an August 8th letter, Exhibit --
4 identified as Exhibit 80 from the applicant.
5 The second filing is dated September 17th and
6 also from the applicant and is identified as
7 Exhibit 81 in your case folders.

8 That should -- that completes the
9 staff's briefing, Madam Chair.

10 CHAIRPERSON MILLER: Thank you,
11 Mr. Moy. Let's just address the question of
12 whether to admit into the record the two
13 documents that were filed after the record was
14 closed. And usually the rule is that they are
15 not allowed into the record after the record
16 is closed; however, we are allowed to waive
17 that rule. And the standard usually is good
18 cause in general and no prejudice to any
19 party.

20 I would suggest that having read
21 these documents that, you know, they are
22 attempts at clarifying and I don't see any

1 prejudice to a party by admitting them. And
2 you know, with respect to good cause, I can
3 appreciate, you know, Wisconsin Avenue Baptist
4 Church just wants to make sure that, you know,
5 there isn't a misunderstanding.

6 So I don't have an issue with
7 accepting them into the record. Does anybody
8 else? Okay. Then they can be admitted into
9 the record. That's the consensus of the
10 Board.

11 Now, for the easy part, the merits
12 of this case. This case has given this Board
13 great challenge. I must say, you know, it's
14 somewhat responsible for our coming out late
15 twice, because it raises a lot of new
16 questions for the Board and it's somewhat
17 complicated. So anyway, we are going to
18 deliberate fully out here how we approach this
19 case.

20 First of all, it is an application
21 under section 205 for a child development
22 center. This child development center though

1 is not presented to us as being operated by
2 one entity, but two separate entities: The
3 Caterpillar Co-Op and CommuniKids.

4 And then there is a special
5 exception application also to use the same
6 addition, which is being proposed to establish
7 a private school, which would be the
8 conservatory, the Music Conservatory.

9 Finally, there was the question
10 about special exception with respect to the
11 addition itself. I think as I stated at the
12 hearing, this addition meets all the Zoning
13 Regulations with respect to area requirements
14 as such, so I don't perceive the -- that the
15 application needs separate special exception
16 approval to build the addition.

17 I don't know if anybody else wants
18 to comment on that one right now or disagrees
19 with that, otherwise, we can go right into the
20 uses which are before us. Does anybody
21 disagree about the building per se? Okay.
22 Not hearing from anybody, I'll take that as a

1 consensus.

2 So I think the first issue really
3 that we have to deal with is under 205. And
4 I would also just like to say in context that
5 these special exception uses are being
6 considered in the context of a church which
7 there is a matter-of-right, and which has one
8 parking lot which serves all its own uses and
9 these special exception uses would also be
10 using the same parking lot.

11 So we do look at the special
12 exception uses in evaluating whether there are
13 any adverse impacts in the context in which it
14 will be located. So I think the first
15 question which has given the Board much pause
16 really is are we looking at, under 205, a
17 special exception use for one child
18 development center consisting of two entities:
19 The Caterpillar Co-Op and CommuniKids, which
20 is the way it has been packaged and presented
21 to us and it is the way that it was sent to
22 the Department of Health for their comment or

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1 are we looking at a child development center
2 in which we evaluate the two entities under
3 section 205?

4 And I would say that's really our
5 hardest question to begin with. 205.1 says
6 "Use as a child development center or adult
7 day treatment facility shall be permitted as
8 a special exception in an R-1 District if
9 approved by the Board of Zoning Adjustment
10 under section 3104, subject to the provisions
11 of this section."

12 The neighbors and the ANC have
13 challenged whether CommuniKids is a child
14 development center. Let me just throw out the
15 definition of a child development center,
16 which we can consider.

17 It's in 199.1 and it says "A
18 child/elderly development center is a building
19 or part of a building, other than a child
20 development home or elderly day care home,
21 used for the non-residential licensed care,
22 education, counseling or training of

1 individuals 2 years-old or older, but under
2 the age of 15 years of age and/or the non-
3 residential care of individuals age 65 or
4 older, totalling six or more persons who are
5 not related by blood or marriage to the
6 caregiver and who are present for less than 24
7 hours per day. This definition encompasses
8 facilities generally known as child care
9 centers, preschools, nursery schools, before
10 and after school programs and similar programs
11 and facilities."

12 I have to say that this is the
13 first time I think the Board -- well, and
14 other Members can correct me if I'm wrong, I
15 cannot recall a situation where we were
16 considering a facility that had two entirely--
17 well, I don't know if they are entirely
18 separate, but two separate programs. We
19 usually look at one facility, one operation
20 and that's what makes this one challenging.

21 The ANC and the opposition have
22 said that CommuniKids is not a child

1 development center under this definition, that
2 it's a language school offering one hour
3 language classes and no child care.

4 They don't challenge the co-op as
5 being qualified as a child development center,
6 as it is a preschool, which is actually
7 listed, I think. Yeah, preschools are listed
8 as an example of what falls under a child
9 development center in the definition.

10 So I guess I'm make just a couple
11 more comments and then open this up for
12 discussion. 205.1 reads -- is how the -- I
13 think a center is used, you know. "The center
14 shall be used as a child development center."
15 The question on the table then is do we look
16 at how the center is going to be used as a
17 whole looking at the co-op and CommuniKids as
18 presented as a package to us by the applicant
19 or do we look at each one individually to
20 determine pursuant to the special exception
21 regulation?

22 Let me see, I think it's 205.2. I

1 have to pull it up, but I believe it reads
2 something like capable of being licensed.

3 COMMISSIONER JEFFRIES: Yes, it
4 says applicable. Well, this is what you --

5 CHAIRPERSON MILLER: Right.

6 COMMISSIONER JEFFRIES: "Evidence
7 that the center or facility should be capable
8 of meeting all applicable code and licensing
9 requirements."

10 CHAIRPERSON MILLER: Okay. So I
11 guess the question is, you know, are we
12 looking at the two entities separately? Are
13 they capable of being licensed, meeting the
14 applicability for licensing or are we looking
15 at the center as a whole consisting of the two
16 entities as presented to us? So I think I
17 want to open that up for discussion.

18 VICE CHAIRMAN LOUD: Madam Chair,
19 let me just jump in with some brief
20 observations on your question. I come out on
21 the side of looking, in this particular case,
22 I don't know if this is an across the board

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1 universal rule, but in this particular case,
2 at the entities separately, that is the co-op
3 as an entity unto itself, the CommuniKids as
4 an entity unto itself. For several reasons
5 they have operated over the years as entities
6 unto themselves.

7 The co-op having started as a
8 group, I think, of parents who evolved along
9 with their children and subsequently teachers
10 into a more formalized enrichment program.
11 The CommuniKids as an entity that started as
12 a business proposition, I believe, by three
13 persons who were sort of mid-career and wanted
14 to shift gears and do something different.

15 So I'm looking at the record
16 presented by the applicant for us to review.
17 The applicant having some burden and some
18 responsibility to put forth the evidence that
19 would have suggested this is a single
20 application, a center, for example, as opposed
21 to separate entities on-site advancing or
22 seeking to expand their use.

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1 Secondly, I'm concerned, and we
2 have had some conversation about this as well,
3 about us taking a look at this application as
4 a single entity, a single center, thereby
5 allowing applicants in the future to back door
6 section 205 into an R-1 use that would not be
7 appropriate were we to look at these entities
8 separately.

9 So again, I would be or I am
10 looking at these entities, co-op, CommuniKids,
11 Conservatory separately and not as a single
12 center.

13 CHAIRPERSON MILLER: Others?

14 COMMISSIONER JEFFRIES: Well, the
15 directions when I first looked at this case
16 from the Office of Planning, it talked about,
17 you know, what was actually part of the
18 special exception approval. It really broke
19 down all the various uses here.

20 So, obviously, I think that was
21 the blueprint in terms of how we should
22 proceed. But you know, practically, you know,

1 this, to me, is one center and there is -- and
2 I have to look at all these various uses in
3 totality and the impact that they have on the
4 Residential Zone and the impact they have on
5 parking and so forth.

6 So it is very difficult for me
7 simply to look at CommuniKids and then not
8 look at the co-op and then not look at the
9 Washington Conservatory and figure out what
10 the overall impact that has on this particular
11 area. And so I am departing from my colleague
12 here that, you know, I'm really seeing this as
13 -- I just think in terms of how we live our
14 lives and how we enter into a particular
15 situation, I mean, it's -- you just can't look
16 at these things separately. It's really the
17 impact of all the uses on one actual building.
18 And so, I mean, that's where I fall.

19 MEMBER WALKER: Madam Chair, I am
20 more in agreement with Mr. Loud on this
21 particular point. Not only do we have two
22 completely different legal entities here, but

1 we don't see a lot of overlap in their
2 functions. You know, there was some testimony
3 about sharing classrooms and teachers, but we
4 didn't hear evidence that the co-op children
5 actually take advantage of the CommuniKids
6 language program.

7 The programs seem to function very
8 separately. They have different times,
9 different involvement, different
10 administration and so for that reason, when we
11 are looking at 205 and then the definition of
12 child development center under 199, I think we
13 need to look at the two entities separately.

14 MEMBER DETTMAN: I think I'm in
15 favor of looking at them separately for all
16 the reasons that Mr. Loud and Ms. Walker bring
17 up in terms of their legal organization, their
18 programming, their schedule, how they have
19 evolved. But I think Mr. Jeffries raises a
20 very, very good point in terms of looking at
21 the totality of the impacts on the
22 neighborhood.

1 I don't think that's lost if we
2 look at them separately, especially looking at
3 205 and looking specifically 205.8 when it
4 says that "The Board may approve a child
5 development center or adult day treatment
6 facility in a square within 1,000 feet of
7 another one."

8 It kind of reads like we would be
9 approving looking at one and then looking to
10 see what exists around it. We are essentially
11 looking at approving two at one time. And so
12 that allows us to look at the impacts, the
13 total impacts collectively of child
14 development centers on the area.

15 CHAIRPERSON MILLER: Okay. I
16 would concur, at this point, also that we look
17 at them separately, because there isn't even
18 an umbrella organization that I can see that
19 encompasses the two of them under -- you know,
20 as one center. So you could call the building
21 a center, but, basically, we are talking about
22 the uses.

1 So why don't we --

2 COMMISSIONER JEFFRIES: Well,
3 excuse me. Let me just be clear. So the
4 issue is that because these are separate legal
5 entities, then we should, you know, really
6 sort of treat them as such, but in terms of
7 how we experience them or how the community
8 experiences them, you know, they are all in
9 the same facility. They are using a joint
10 parking lot.

11 I guess I'm just trying to -- I
12 mean, clearly, I understand from a legal
13 perspective, yeah, you know, they have
14 operated and they just happen to be in the
15 same place. But I'm really dealing with the
16 overall impacts. So I guess I just want to be
17 clear that in terms of how we go through this,
18 the thought is that we just look at one at a
19 time.

20 And then I think what Board Member
21 Dettman is saying is that he thinks we will
22 still get to the same place, but that we

1 should just really try to break this down one
2 at a time in terms of how we overall review
3 this application.

4 CHAIRPERSON MILLER: I think that
5 in the end we're going to be looking at the
6 adverse impacts, you know, if any or what are
7 they from the uses. But I think the child
8 development special exception application
9 raise the issue if we are going to now treat,
10 I think it's the consensus, the co-op and
11 CommuniKids separately.

12 COMMISSIONER JEFFRIES: Um-hum.

13 CHAIRPERSON MILLER: Okay. So if
14 we look at co-op, I brushed over this, but I
15 don't think that there is a concern that that
16 is not a legitimate child development center
17 under our regulations. So we can -- okay, is
18 that a consensus? All right, that's a
19 consensus. Okay.

20 So then we get to CommuniKids.
21 And that's where I think we then have to look
22 at the issue of do we make a judgment whether

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1 or not to even -- that it is even a child
2 development center, which is usually the type
3 of question we get on appeal when we have the
4 input of the Zoning Administrator.

5 However, it is very integral to
6 the special exception. It says "use as a
7 child development center," we have a
8 regulation that defines child development
9 center. We have evidence in the record. I
10 don't know that there is -- I don't believe
11 that there is any regulation that requires us
12 to wait and get the ZA's input.

13 We could determine that question
14 should we so choose and that would impact this
15 case. For instance, if we were to decide that
16 it is not a child developmental center and
17 therefore it couldn't -- we wouldn't grant it
18 a special exception. We would take out of the
19 equation large impacts on the neighboring
20 properties.

21 The other route that we could go
22 is that it is self-certified, the application,

1 and then we would consider the impacts,
2 assuming that or treating it as a child
3 development center.

4 So I think that's where we are at
5 now. So that's why I think it's important
6 now. Okay. So now we get to that issue
7 which, I think, is a very key issue. Do we
8 look at the regulations and the evidence
9 ourselves and make an assessment whether this
10 is a child development center or do we look at
11 205.2 and make an assessment based on the
12 regulations and evidence in the record whether
13 it is capable of meeting all applicable code
14 and licensing requirements?

15 I think that the applicant was
16 proposing that it is self-certified and we
17 look at the impacts and if they don't get
18 their licensing later down the road, that's in
19 the expertise of the Department of Health.

20 The flip side is we interpret the
21 Zoning Regulations, you know, and should we
22 interpret it now to either decide whether we

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1 think it is a type of question we would often
2 get on appeal. You know, do we think it's a
3 child development center?

4 Okay. So I'm going to stop
5 talking and see if anyone has any comments on
6 that.

7 VICE CHAIRMAN LOUD: Madam Chair,
8 the question you posed is one that, at least
9 for me, could have me twisted and tied up in
10 knots analytically, you know, for hours on
11 end. And I don't want to go there. I don't
12 want to just go around and around and around
13 and be very verbose.

14 But here is what I think, that if
15 an applicant comes to us and the applicant is
16 invoking a section 205 privilege to be in the
17 R-1 without section 205 could not be in the R-
18 1, then we have the authority and
19 responsibility to make a determination as to
20 whether they are a 205 before we proceed
21 further in the analysis.

22 If we do that because we leap back

1 to the definitions, section 199, and say you
2 just don't seem to meet the definition of a
3 community -- I'm sorry, of a child development
4 center or we leap forward to section 205.2 and
5 say you sell pizza, there is simply no way
6 that you are going to be able to meet
7 applicable code and licensing for a section
8 199, we have consulted the definition period
9 either way.

10 So I don't want to get tied up,
11 you know, analytically in which way is the
12 appropriate way. I want to make sure that my
13 deliberations are legally sufficient and meet
14 the legal test. But I think either way that
15 you go, you have to refer back to the
16 definition, section 199, and it seems to me
17 that that's the prudent thing for us to do to
18 make sure that we don't have these uses slip
19 into the R-1 that our regulations do not
20 permit to go into the R-1.

21 And I think it's clear here that
22 if it is not a child development center, then

1 it cannot use 205 to get into the R-1. And I
2 think it's perfectly legitimate for us to have
3 a discussion around whether the CommuniKids is
4 a child development center or for that matter
5 whether the co-op is a child development
6 center.

7 I think by consensus we have said
8 the co-op is. I think the record is much more
9 cloudy with respect to the CommuniKids status
10 as a child development center. So that's
11 where I come up on the issue. I think we have
12 a responsibility in interpreting our
13 regulations to take a look at that. And I am
14 prepared to, after I hear what others say, do
15 just that.

16 CHAIRPERSON MILLER: You know, I
17 would agree. I think it's so basic to this
18 assessment of the adverse impacts and stuff.
19 And I think that there may be cases down the
20 road where it looks like somebody is trying to
21 present an appeal question to us and it's not
22 appropriate in an application and we want to

1 or need the input of the Zoning Administrator,
2 but I don't think that's the case here.

3 I think it's fully briefed and
4 central to our assessment. What do you guys
5 think? Because again, I think we need to make
6 this kind of decision here in order to proceed
7 down a certain path.

8 MEMBER DETTMAN: I would agree
9 with Mr. Loud. I think we do have a
10 responsibility to at least look at it. But in
11 reading 205.2, looking at the relationship
12 between the definition and 205.2 where the
13 definition mentions the licensing issue, 205.2
14 sort of holds that licensing out there. It
15 doesn't require them to come to the Board with
16 proof that they are licensed. It says that
17 they just need to be capable of meeting all
18 applicable codes and licensing requirements.

19 And as you say, Madam Chair, I
20 think it's Department of Health that sort of
21 makes that determination and we have evidence
22 in the record from them. So I think it's

1 worth looking at.

2 CHAIRPERSON MILLER: You think
3 it's worth looking at deciding whether they
4 fit the definition under 205.1?

5 MEMBER DETTMAN: Yeah, I think
6 it's worth --

7 CHAIRPERSON MILLER: A child
8 development center.

9 MEMBER DETTMAN: -- considering
10 whether or not the Board should consider them
11 as a child development center, as they have
12 come to us under 205, which I think would --
13 once we make that determination, if we should
14 consider them that way, that will allow us to
15 go forward with our analysis.

16 CHAIRPERSON MILLER: Okay. Any
17 other thoughts on that? It sounds like at
18 least there is a consensus to see if we can
19 determine whether or not they are a child
20 development center under 205. Okay. We do
21 have evidence in the record from the applicant
22 that it is a program that deals with the

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1 development of language skills for children.

2 I'm kind of summarizing. They are
3 developmentally appropriate to the students,
4 they say. I think in fall they are going to
5 have it fall within the age range that is
6 encompassed by the regulations.

7 MEMBER WALKER: Madam Chair, on
8 that point, I think, it is important to note
9 that initially there was a representation that
10 the age range of the students would be --
11 would start at age 1. And then in a later
12 submission, the organization said that they
13 would serve students no younger than age 2, so
14 as to comply with the limitation in the
15 regulation on age 4 child development centers.

16 CHAIRPERSON MILLER: Okay. And I
17 think that the issue here and I know it was
18 raised by the neighbors and the applicant is
19 that it's this -- this program really consists
20 of one hour language classes and that's not
21 what was intended to be encompassed in the
22 Zoning Regulation that covers preschools and

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1 child care.

2 Well, I read the definition and I
3 think that the applicant believes that it is
4 coming in under education and it is
5 developmental. Just a second, bear with me.
6 I did look at the Zoning Commission
7 legislative history and I'm going to see if I
8 can put my hands on it.

9 I know that the neighbors referred
10 us to that also. Okay. Zoning Commission
11 Order 907, September 13, 1999, referred to BZA
12 approving special exceptions for "various
13 types of daycare for children under 15 years
14 of age." I think all of these programs have
15 to be licensing and I think the -- usually
16 language programs are not licensed by the
17 Department of Health.

18 I don't know. I guess my overall
19 impression of this is that these are one hour
20 programs where the children go in and out on
21 an hourly basis. And they may be enrichment
22 programs, but the way it is run by CommuniKids

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1 seems to not fall, in my view, with what is --
2 was contemplated by the Zoning Commission.

3 I think that they contemplate
4 perhaps, you know, maybe after school and
5 before school programs, but they are a part of
6 a larger program, like a preschool or a
7 program that's, you know, there for the full
8 afternoon or the full morning and, therefore,
9 wouldn't have the type of adverse impact on
10 neighboring properties that we did hear in the
11 hearing with respect to the traffic coming in
12 and out and in and out of the parking lot.

13 Even though the parking lot
14 itself, especially, they have proposed some
15 new design as well, could perhaps handle the
16 parking per se. What the neighbors were
17 complaining about was the impact of traffic
18 disrupting their peace and quiet going in and
19 out and in and out.

20 And I guess I don't -- and I would
21 like others to, you know, comment and I'll see
22 if I can pin down more in the history, but it

1 seems to me that this definition of child
2 development center really doesn't entail a
3 series of one hour classes throughout the day.

4 VICE CHAIRMAN LOUD: Madam Chair,
5 are you looking right now just at section
6 205.1 or we're sort of going back and forth
7 between .1 and .2?

8 CHAIRPERSON MILLER: I was --

9 VICE CHAIRMAN LOUD: Just for
10 purposes of clarity.

11 CHAIRPERSON MILLER: -- actually
12 going to -- I was thinking of the definition
13 199.1.

14 VICE CHAIRMAN LOUD: Oh.

15 CHAIRPERSON MILLER: As what it
16 encompasses. And I think, see, I mean, this
17 sentence in the definition says "This
18 definition encompasses facilities generally
19 known as child care centers, preschools,
20 nursery schools, before and after school
21 programs and similar programs and facilities."

22 And I don't think that

1 CommuniKids, as the program was presented to
2 us in this case, falls within that definition.
3 I mean, at most, it could be considered an
4 after school program, but it's not an after
5 school program to any particular program that
6 is there. It's its own program.

7 So I don't think it falls within
8 the definition. So I'm actually looking at
9 205.1, "use as a child development center,"
10 and then looking to the definition and
11 interpreting that.

12 VICE CHAIRMAN LOUD: And let me
13 follow-up, Madam Chair, on the discussion
14 regarding 205.1, which is where I am and I
15 struggled a lot with whether CommuniKids would
16 meet the definition of child development
17 center as well.

18 And for me, there is no single
19 point of evidence in the record, which is a
20 voluminous record, a lot of exhibits, a lot of
21 charts going back and forth, a lot of
22 reconciling of the information by myself and

1 I think my colleagues here on the Board in
2 terms of picking pieces out from everywhere
3 and then reordering the universe, so that it
4 made sense.

5 But three pieces sort of jumped
6 out for me. No. 1 is that the definition that
7 you referenced in section 199 speaks to, as
8 you indicated, daycare, nursery school or
9 something of that sort. And here we have an
10 Exhibit 27, a letter by presumably a supporter
11 of CommuniKids which begins "My daughter and
12 I take classes at CommuniKids in the
13 Tenleytown/AU neighborhood."

14 I'm assuming that the mother is
15 older than 15 and I'm assuming that she
16 participated in the language class. And it
17 just -- I'm not looking for a gotcha moment
18 or, you know, an ah-ha, but if the program is
19 offering these classes to adults, it just
20 strikes me as a program that doesn't view
21 itself as a nursery program or a child care
22 program.

1 And if that were the only thing
2 that would be sort of an isolation and not --
3 it could easily be misconstrued, but then you
4 have that with the self-description of the
5 applicant that it is not a child care program.
6 It's not a nursery program.

7 I know subsequently they altered
8 that position, but, I mean, they had every
9 incentive to alter it subsequently. But at
10 the time that the application was submitted,
11 they self-described as not being a 205 type
12 organization. The information on their
13 website also again just evidences an
14 organization and entity that has not proceeded
15 as if it were a child development center or a
16 child care or daycare, nursery and so on and
17 so forth.

18 And so when you add those pieces
19 together, at least for me, I'm left with the
20 conclusion that I can't escape from and even
21 wanting to escape from it, but can't escape
22 from that this program is not a child care,

1 child development type program.

2 And so for that reason under 205.1
3 in our analysis, I just can't reach that
4 conclusion that they are a child development
5 center type program.

6 MEMBER WALKER: Madam Chair, I
7 agree. The critical issue for me is the
8 licensure requirement that we see in 205.2 and
9 in the definition itself of child development
10 center in 199. This facility is not one that
11 provides the type of general child care for
12 which licensure is required.

13 Indeed, the application states
14 that they are exempt from the licensure
15 requirement of child development centers. So
16 for that reason, it's difficult to kind of
17 conclude that somehow they fit within this
18 definition.

19 I also want to point out that
20 Exhibit 19, the correspondence from the
21 Department of Health, on this point speaks to
22 the city's increasing demand for licensed

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1 child care facilities and the need for
2 additional licensed child care slots.

3 This particular facility is not,
4 you know, contributing to the pool of licensed
5 child care slots. That -- they are providing
6 a different function, language enrichment as
7 opposed to child care.

8 CHAIRPERSON MILLER: Okay. I
9 mean, I think that the applicant was
10 attempting to well interpret the regulation
11 that this CommuniKids fit under "used for the
12 non-residential education of individuals 2
13 years or older." However, I think that when
14 we look at the definition and the regulations
15 and context just so as it's said, I mean, it
16 really contemplates licensing and child care,
17 I believe, not this one hourly language
18 classes.

19 And this is not -- and I want to
20 see if we do have consensus on this. But
21 before then, I want to comment that it's not
22 to say that the Board doesn't think that

1 that's a really important or good program.
2 Our job is to determine whether the
3 regulations allow as a special exception use
4 that type of program under this regulation.

5 Are there more comments on that
6 subject?

7 MEMBER DETTMAN: I think, Madam
8 Chair, based on my reading of the definition
9 and 199 and the information that we have on
10 the record that could be applied to 205.1 and
11 205.2, you know, I'm comfortable viewing as a
12 child development center. It doesn't sound
13 like the Board is leaning that way, but I
14 would be comfortable going forward.

15 I think if you read further into
16 the definition, it says "and similar programs
17 and facilities." While I agree with your
18 comment that it might not fall squarely under
19 preschools, nursery schools, before and after
20 school programs, that window that is opened up
21 by saying similar program and facilities, I
22 think it could fall under there.

1 I think Mr. Loud makes a good
2 point about the fact that it looks like an
3 adult may have been taking a class there. And
4 originally they had said that they would like
5 to provide education to 1 year-olds, but I
6 guess I just kept in mind that this is a
7 proposal.

8 In the past -- I agree with Mr.
9 Loud they haven't operated, you know, in a way
10 that would fall under this definition, based
11 on the age constraints or in the Zoning Regs
12 in general. They have been operating out of
13 conformance with the regs. But this is a
14 proposal and so going forward, they have
15 indicated that they intend on getting
16 licensing.

17 They have changed their age
18 ranges. Hopefully, they would not educate
19 adults any more. So I guess there is enough
20 there for me that allows me to get past the
21 definition.

22 COMMISSIONER JEFFRIES: Well, I'm

1 going to fall within the majority here. I
2 don't feel that it is, in fact, a daycare
3 center. And I'm really looking at 199, and I
4 clearly understand Board Member Dettman's feel
5 that, you know, that the definition is broad
6 enough looking at similar programs and
7 facilities, but I don't think that's the real
8 spirit of what has been contemplated here in
9 199.1.

10 You know, one hour language
11 programs just -- the use just seems to be
12 terribly dedicated to just one thing. And it
13 seems to me that the daycare centers, you
14 know, have a menu of options that they provide
15 around, you know, child care or elderly care.
16 And I just feel that CommuniKids just really
17 falls just outside of that definition.

18 So when I look at the -- what I
19 consider to be the true spirit of what is
20 trying to be captured here, it just seems as
21 if CommuniKids falls outside of that. So I'm
22 going to go with the majority here and say

1 that CommuniKids really is not a child
2 development center.

3 CHAIRPERSON MILLER: I just want
4 to make another comment based on both Mr.
5 Dettman's points and Mr. Jeffries. Normally,
6 when an application is self-certified, we just
7 proceed under the assumption of their
8 certification. But I think in this case it's
9 not a good idea to do that, because it affects
10 so directly our analysis of adverse impacts
11 and how, you know, all the uses or whatever
12 uses we would be considering can operate in
13 the facility.

14 So and again, I said, also because
15 I think that the record is full on this. So
16 are there other comments on this point? Okay.
17 I think then the consensus here is that
18 CommuniKids, as a separate entity as the
19 program has been presented to us in this
20 application, would be denied special exception
21 use on the grounds that they don't fit within
22 the definition of child development center

1 that 205 encompasses. Is that correct?

2 So okay, that's the consensus.
3 We're not taking a vote, but I mean, is it --
4 I don't know if that's like 4-1, but I want --
5 I just need to know, so we would then proceed
6 down the route, down the road of assessing the
7 child development center of just consisting of
8 the co-op and evaluating any adverse impacts
9 on the community and in conjunction with the
10 school, which we will get to.

11 Okay. We are just commenting that
12 that's the type of issue that we would take a
13 vote on, but I think that we can hold that in
14 abeyance and take our votes at the end. But
15 I just wanted to determine that that was the
16 consensus for purposes of us proceeding in our
17 evaluation of the rest of the application.

18 Okay. Okay. I'm just looking at
19 the regulations. I think that what is
20 complicated about this case a little bit is
21 the numbers and the fact that we are
22 considering it in conjunction with the private

1 school under 206.

2 205.2 says "The center or facility
3 shall be capable of meeting all applicable
4 code and licensing requirements." I don't
5 believe that this Board has any concern that
6 The Caterpillar Co-Op is capable of meeting
7 that. Okay.

8 205.3 says "The center or facility
9 shall be located and designed to create no
10 objectionable traffic condition and no unsafe
11 condition for picking up and dropping off
12 persons in attendance." Okay. That gets us
13 to the parking lot plan that has been
14 submitted to us.

15 You now, let me say this, if I
16 understand correctly, even before we get to
17 the school use, that I don't believe there is
18 a great overlap with the co-op and the school,
19 so that we could make an assessment whether
20 the parking -- well, we need to look at their
21 drop-off and stuff for the school. I mean,
22 for the co-op.

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1 Let's jump to the parking lot
2 question. There are two parking lot plans in
3 our record. The applicant's preferred parking
4 lot plan entails 36 parking spaces. Okay.
5 What happened was DDOT wanted fewer spaces and
6 the applicant also prepared an alternative,
7 which had 28 spaces.

8 This Board has always proceeded
9 with considering the proposal that has been
10 submitted by the applicant. We don't normally
11 pick among alternatives, which one do we like
12 better. Usually the course is that if the
13 applicant submits a proposal to us and there
14 are issues with it with respect to adverse
15 impacts or things like that, then we would
16 proceed to an alternative.

17 So I would suggest that we
18 consider applicant's preferred parking lot
19 proposal which increase the parking spaces to
20 36. I would say again that this parking lot
21 proposal is support by the ANC and the
22 neighbors. Testimony at the hearing showed

1 that it created safer drop-off areas and it
2 reduced overflow of parking onto residential
3 streets, which was also a concern about use of
4 this facility.

5 DDOT's concern was that it might
6 result in over-parking, bringing more cars to
7 the area. And then I believe they also said
8 they prefer green space over additional
9 paving. This lot is also going to be used by
10 other users of the church for which special
11 exception relief is not before us.

12 There are a lot of uses on this
13 parking lot, churchgoers, Washington Girls
14 Chorus, The Bulgarian School, ESL programs, a
15 lot of other different programs.

16 Anyway, with respect to 205.3, I
17 think that the proposed parking lot certainly
18 meets the criteria.

19 VICE CHAIRMAN LOUD: I just wanted
20 to add briefly I agree, in terms of 205.3,
21 that the location or design does not create an
22 objectionable traffic condition nor unsafe

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1 pick-up and drop-off. I believe you mentioned
2 this, but I'm not certain, the plan for the
3 parking lot includes a curb cut on Yuma
4 Street.

5 CHAIRPERSON MILLER: I didn't
6 mention it, but I wanted to.

7 VICE CHAIRMAN LOUD: Yeah, okay.

8 CHAIRPERSON MILLER: So we can
9 discuss that.

10 VICE CHAIRMAN LOUD: Which would
11 both increase the safety of the pick-up and
12 drop-off by increasing circulation better from
13 Alton, basically throughout the site. And as
14 I understand it, there would be two-way
15 traffic allowed on the Yuma curb cut, so that
16 you wouldn't have this over-concentration of
17 access right at Alton, which could be
18 dangerous for the young people.

19 I believe also that the church
20 agreed to follow recommendations of its expert
21 that all of the drop-off, the cuing and the
22 pick-up would occur in the parking lot or the

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1 driveway. And so I think the way they
2 designed the parking lot is that there is an
3 area sort of midway in the parking lot where
4 cars would be able to cue up. I think about
5 five cars can cue at a time and they will drop
6 the kids off. It is well off of both Alton
7 and Yuma, so it's a lot safer.

8 Let me see in terms of -- so
9 again, I just wanted to add that. There was
10 also, again, a lot in the record and a lot of
11 it sort of contradictory and conflicting, but
12 even with CommuniKids in the picture, the peak
13 parking demand, I think, was 23 spaces and
14 this is at our Exhibit 53, Attachment No. 13.

15 But the parking, the number of
16 parking spaces was sufficient to address that.
17 So now with CommuniKids out of the picture,
18 even more so, the available number of parking
19 spaces, particularly at the 36 option would be
20 such that traffic conditions will not be
21 objectionable for that reason.

22 And I think as we go through some

1 of the other 205 considerations, we can sort
2 of look back to the report a little.

3 CHAIRPERSON MILLER: I just want
4 to comment on the curb cut on Yuma. Curb cuts
5 are within DDOT's jurisdiction, but, as I
6 recall, the DDOT representative said at the
7 hearing that DDOT would go along if the Board
8 made the determination that it would reduce
9 adverse impact on neighboring property.

10 So let me repeat that. I think
11 this is an important point, because whether we
12 want to send this message to DDOT or not, I
13 would agree with Mr. Loud that the parking
14 plan also has an additional curb cut on Yuma.
15 So there would be a flow of traffic between
16 Alton and Yuma and you wouldn't have to come
17 in on Alton Place and turn around and go back
18 that way. You could go out on Yuma. It would
19 be a better flow, better circulation.

20 And as I was saying that I noted
21 at the hearing, that the DDOT representative
22 said that even though this is DDOT's call,

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1 it's their jurisdiction, that they would go
2 along if the Board made a determination that
3 that would reduce adverse impacts on
4 neighboring property.

5 So I'm wondering if the Board is
6 in agreement that the curb cut would be a good
7 idea? And something that we would want DDOT
8 to do, based on the evidence in the record.

9 COMMISSIONER JEFFRIES: Okay.
10 Well, let me deal with the curb cut later. I
11 think, I mean, obviously, everyone knows that,
12 you know, currently the Zoning Commission is
13 dealing with this sticky subject of parking
14 and so forth. And we are seeing so many
15 instances where, you know, a number of
16 developments are absolutely over-parking the
17 sites to really appease a lot of the neighbors
18 who are concerned about overflow and parking
19 and so forth.

20 But at the end of the day, it
21 really does bring about more vehicles into the
22 neighborhood, particularly, you know, centers

1 that are very close to Metro Stations and
2 their are alternative forms of transportation.
3 So I'm not really in favor of the 36. You
4 know, I really think that we really need to
5 hold this and I know that we are only looking
6 at what has been presented to us.

7 And so what has been presented to
8 me is the 36. And so I'm responding to that.
9 I do think that it would create objectionable
10 traffic conditions in that it is bringing more
11 vehicles to the area.

12 Now, as relates to the curb cut,
13 I'm not such a big fan of lots of curb cuts
14 either, you know, but I do think that it would
15 really would assist in terms of bottlenecking
16 at Alton Place and so forth in terms of cars
17 coming in. So I think that that would be
18 helpful.

19 Also, the other issue that I have
20 with, you know, parking is, I mean, you are
21 taking more green space and, you know, we are
22 dealing with issues of storm water management.

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1 I just, you know, think it has other, you
2 know, issues as we go forward. So and given
3 that now that we are looking at CommuniKids as
4 not being part of this development, then I
5 certainly don't see the need, you know, for
6 increased parking spaces. Now, she is just
7 looking at me. It's a complete stare.

8 CHAIRPERSON MILLER: Okay. No,
9 no, I'm just trying to assess, you know, how
10 to address your concerns in the manner of not
11 necessarily a direct comparison. But and
12 perhaps others can see what they remember in
13 the record.

14 One of what impressed me about the
15 36 space design was that it created safer
16 areas for drop-off and pick-up and that this
17 parking lot is being used, you know, for
18 preschoolers. And so I think that that's a
19 concern.

20 With respect to green space, I
21 think the green space that would be
22 transformed into pavement would be minimal in

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1 context, in that this church has enormous
2 green space in the front. So it's not like
3 it's the last little bit of green space that
4 it is using.

5 And again, I guess my other
6 comment is -- well, two others. One is that
7 I think it's hard to assess the need without
8 CommuniKids being in the picture. I really
9 don't know, you know, but as far as adverse
10 impact goes from it, if we're talking about 8
11 spaces and because they are near a Metro, to
12 me, that's not such a big deal.

13 I mean, it's not like we're saying
14 a supermarket is over-planning or a store and
15 having like 100 more spaces than they need and
16 they are really near a Metro and they
17 shouldn't encourage people to drive there.

18 COMMISSIONER JEFFRIES: But, Madam
19 Chair, I understand that. And I think if we
20 were able to look at this particular
21 development in a bubble and just look at it in
22 isolation, I would agree with you. But, you

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1 know, at some point, I think the District, and
2 particularly as we look at, you know, our
3 traffic condition, I mean, this is going --
4 this is already -- we're in bad shape. And
5 it's not getting better.

6 And at some point, the District,
7 the Zoning Commission and the Board of Zoning
8 Adjustment is going to have to really start to
9 discipline, you know, its citizens in terms of
10 being less reliant on vehicular traffic and,
11 you know, really trying to encourage walking
12 and different things such as that.

13 And so I'm really dealing with the
14 cumulative impact on this. So it's not just--
15 I mean, you say okay, yeah, this is minimal in
16 terms of the green space, but then, you know,
17 two weeks from now we will get another case
18 saying well, this is de minimis and then the
19 next thing you know, you've lost a lot of
20 canopy and so forth.

21 So I understand what you are
22 saying, but, you know again, I just think

1 that, you know, we are getting to a place
2 where I think, you know, in terms of our
3 regulatory position, we're just going to have
4 to be a little firmer on these things.

5 And so listen, I'm one vote. But
6 I just, you know, wanted to wait to, you know,
7 put my hand up that, you know, I do find, you
8 know, more parking spaces, you know, to be
9 objectionable. And so for 2205.3, you know,
10 I don't think that the burden has been met.

11 CHAIRPERSON MILLER: You know
12 what, I think that, you know, we just need to
13 take a careful look, because it wasn't really
14 just the question of more spaces, because I'm
15 not sure they need more spaces per se now that
16 -- if we take CommuniKids out of the equation.

17 But I think that the parking lot
18 design with the 36 spaces was a better one
19 with better circulation, wider aisles, better
20 places for drop-off. I mean, I got the
21 impression at the hearing they could live with
22 either one, so either one is going to satisfy,

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1 it's just the question of how we approach it,
2 because, you know, we don't normally pick
3 which one we like better.

4 COMMISSIONER JEFFRIES: Right.

5 CHAIRPERSON MILLER: We normally--

6 COMMISSIONER JEFFRIES: I'm going
7 on your directions at the start of this. And
8 your directions were we really need to look at
9 what has been presented by the applicant. It
10 was 36 and I'm responding to that.

11 CHAIRPERSON MILLER: Okay. And
12 you are responding that that's objectionable
13 because it's more than they need.

14 COMMISSIONER JEFFRIES: I think
15 it's over-parking.

16 CHAIRPERSON MILLER: Okay.

17 COMMISSIONER JEFFRIES: I think
18 it's bringing more vehicles into the area that
19 are close to a Metro. You are taking up more
20 green space. You know, I just object to it.

21 VICE CHAIRMAN LOUD: Madam Chair,
22 to sort of follow Commissioner Jeffries line

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1 of thinking on this and this is a point of
2 clarification for me. Are we -- the plans
3 before us are for a 36 space or 28 space. So
4 we would be voting on a plan that is in
5 existence already, right?

6 CHAIRPERSON MILLER: And what I
7 was saying was how we usually approach it is
8 that the plan before us first is the one they
9 prefer. And then if we reject it for certain
10 reasons, then we would get to the second plan.

11 VICE CHAIRMAN LOUD: And that
12 would be the extent of our -- of what we could
13 do. In other words, we couldn't propose an
14 alternative different from the 28 or the 36?
15 Is that correct? Not that I'm trying to do
16 that. I just want to understand the
17 boundaries a little.

18 CHAIRPERSON MILLER: Okay.
19 Boundaries are --

20 VICE CHAIRMAN LOUD: Okay. That's
21 fine.

22 CHAIRPERSON MILLER: -- we could

1 slightly modify something or perhaps, you
2 know, make that a condition or we could --

3 VICE CHAIRMAN LOUD: Well, I'm
4 not --

5 COMMISSIONER JEFFRIES: How could
6 we do that?

7 VICE CHAIRMAN LOUD: -- advocating
8 for that.

9 COMMISSIONER JEFFRIES: I mean --

10 CHAIRPERSON MILLER: No, I don't
11 really -- if we really slice.

12 COMMISSIONER JEFFRIES: I mean,
13 yeah. I mean, I don't think that's our job
14 here.

15 CHAIRPERSON MILLER: It's the
16 plans before us.

17 COMMISSIONER JEFFRIES: Yeah,
18 yeah.

19 CHAIRPERSON MILLER: Unless there
20 is something very wrong, yeah.

21 COMMISSIONER JEFFRIES: The
22 professionals have put forward, I mean, you

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1 know, their transportation have.

2 VICE CHAIRMAN LOUD: Well, okay.
3 In a nutshell, let me agree with Commissioner
4 Jeffries that I think the 28 would satisfy
5 section 205, I guess we are looking at, 205.3
6 and 205.4. And it does get a little
7 complicated if -- depending on whether or not
8 CKids remains in or not in the picture.

9 But with the parking study that
10 was performed, the conclusion was that four of
11 these spaces would be dedicated to
12 CommuniKids, 8 would be for the co-op, 12
13 would be for the Conservatory and I'm looking
14 at our Exhibit 53, Attachment D. Presumably,
15 this information will be in there.

16 Now, if CommuniKids is out of the
17 picture, those four parking spaces would not
18 be needed for that reason. There may be some
19 other reason for their being needed on that
20 site. But it just seems to me that even at
21 the 28 option, even with CommuniKids in the
22 picture, the study concluded that the 28 space

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1 lot was sufficient to meet the parking demand
2 for the various programs on-site. So it does
3 appear to me that the 36 option over-parks.

4 COMMISSIONER JEFFRIES: And take
5 my word for it, you know, if people continue
6 coming there and they don't have parking
7 spaces and if the District can really enforce
8 it's, you know, parking, residential parking,
9 people will start taking the Metro. I mean,
10 you know, I'm just saying we have to draw the
11 line at some point here and I just, you know,
12 so --

13 CHAIRPERSON MILLER: Okay. So I
14 assume that Mr. Loud would be rejecting the 36
15 space parking lot plan based on over-parking,
16 correct?

17 MEMBER DETTMAN: Madam Chair, I
18 just want to ask a question, because it's
19 going to impact the way I see this. I think
20 36 is over-parking. I think the flow of the
21 36 space lot is much better and much, much
22 safer for the children. And I guess I have an

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1 observation and a question.

2 Looking at the flow of the 36
3 space lot, keeping in mind I think it's over-
4 parking, I think there is a big opportunity
5 here, a lost opportunity to achieve some of
6 the parking objectives that OP and the city is
7 trying to accomplish to prevent over-parking
8 and the sustainability issue.

9 If you look at these middle eight
10 spaces, that's a little over 1,300 square feet
11 that could be a landscaped buffer, that could
12 achieve your flow for the safety of the
13 children and it could be a really great storm
14 water collector.

15 COMMISSIONER JEFFRIES: You're
16 looking at 28?

17 MEMBER DETTMAN: I'm looking at
18 36.

19 COMMISSIONER JEFFRIES: 36.

20 MEMBER DETTMAN: The one with the
21 dedicated drop-off lane. Now, I know that it
22 is late in the process and I know that we

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1 typically aren't crazy about changing, but if
2 you consider sort of a hybrid of these two
3 plans to take out those eight spaces, so you
4 have your 28 spaces, and you have a landscape
5 buffer that with technology these days can be
6 engineered to really capture all of the storm
7 water that is on this new parking lot.

8 So if there is an opportunity, if
9 there is a window to do a hybrid, I would be
10 for 28 spaces and then changing those eight
11 spaces to landscaping. If not, I would go for
12 the 36 spaces, simply for the safety of these
13 kids.

14 COMMISSIONER JEFFRIES: So are you
15 actually -- I mean, obviously, the applicant
16 is in earshot, so are you hoping that they
17 will come back and present such a hybrid
18 configuration? And also, I would add that
19 there might be another plan for the 28 that is
20 not in front of us, as well, or might not be
21 28, it might be 30 that might be -- that's not
22 in front of us.

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1 I guess what I'm saying is there
2 is another parking configuration here
3 potentially as well that is not 28. It might
4 be something else, too, so I mean, we can take
5 a second to -- I mean, there is other
6 configurations that could occur here for the
7 parking that is -- could get us well into 36.

8 But I mean, I like Board Member
9 Dettman's suggestion, it's just that it's not
10 before us today.

11 MS. GLAZER: Madam Chair, this is
12 really tangential, but I believe the smaller
13 parking lot number was changed. It was
14 revised from 28 to 27. I'm not positive.

15 MEMBER DETTMAN: I think the plan
16 that we have before us shows it was noted in
17 the hearing, I think, by the ANC that there
18 are only 27 spaces on this. But I thought
19 that the architect who drew up the plan had
20 mentioned that that was a mistake and that
21 there really was 28.

22 COMMISSIONER JEFFRIES: Also, can

1 we go back? Let's talk about the safety of
2 kids. Can someone walk me through what are
3 the safety issues with the kids with 28 versus
4 36? Is it the cars don't -- I mean, cars
5 pulling out is that the issue, you know,
6 rather than a continual flow?

7 CHAIRPERSON MILLER: Do you have a
8 picture? You have a diagram of both parking
9 schemes?

10 COMMISSIONER JEFFRIES: Yes.

11 CHAIRPERSON MILLER: Parking lot
12 schemes, okay.

13 COMMISSIONER JEFFRIES: I mean, I
14 guess I'm trying to determine the differential
15 between these two in terms of the safety of
16 the kids, you know. I think I'm talking to
17 Board Member Dettman, but I think he is on to
18 something else.

19 MEMBER DETTMAN: I'm sorry, did
20 you ask me a question?

21 COMMISSIONER JEFFRIES: Oh, I was
22 just asking a question in terms of if you

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1 could walk me through, if you recall, sort of
2 the argument about, you know, the 28 or 27
3 parking space lot is a little more hazardous
4 to children as opposed to the 36. Is it just
5 because in 36 the traffic is continually
6 flowing or what's the reason?

7 CHAIRPERSON MILLER: Can I? Well,
8 go ahead.

9 MEMBER DETTMAN: Well, I'm just
10 trying to visually drive through this plan
11 here.

12 COMMISSIONER JEFFRIES: Um-hum.

13 MEMBER DETTMAN: Knowing that the
14 curb cut on Alton is one way in --

15 COMMISSIONER JEFFRIES: Right.

16 MEMBER DETTMAN: -- and the curb
17 cut on Yuma is two way, if I was a parent
18 dropping off a child coming in from Yuma
19 Street --

20 COMMISSIONER JEFFRIES: Um-hum.

21 MEMBER DETTMAN: -- you have a 20
22 foot drive aisle where I'm going to have to

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1 stop somewhere in there --

2 COMMISSIONER JEFFRIES: Um-hum.

3 MEMBER DETTMAN: -- to let my
4 child out. And then if I want to go back to
5 Yuma, I need to do a 3-point turn and then go
6 back out. I think it's just a lot of
7 jockeying of cars.

8 COMMISSIONER JEFFRIES: And so the
9 3-point turn could be in those situations that
10 that could cause more harm to children as
11 opposed to --

12 MEMBER DETTMAN: I think it could
13 be more harmful for children. I also think it
14 could cause more bottlenecks and backups.

15 COMMISSIONER JEFFRIES: Oh, no,
16 no, no. I -- no. You know, when we talk
17 about children, you know, our sensibilities
18 just heighten right away. So that's what I'm
19 responding to. I mean, bottlenecking is
20 another thing. I agree with you there, but
21 I'm just -- I just wanted to just put a pin on
22 this whole notion of child safety, because, I

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1 mean, you know, parking lots and children, I
2 mean, I see in both instances where there
3 could be potential, you know, hazards, I mean,
4 as relates to children.

5 So I just wanted to put that out
6 there. But the bottlenecking piece I got you.

7 CHAIRPERSON MILLER: As I see it
8 with the bigger parking lot as drawn right
9 now, there is a real separate drop-off lane
10 and then there is, you know, on the other side
11 of park spaces another lane for parking and
12 driving through. I don't think it's beyond
13 our authority to, after we decide this case
14 and determine what uses are there to leave the
15 record open for a modification to the parking
16 lot scheme as we determine, you know, may be
17 more appropriate now. We have done that.

18 We haven't talked about, you know,
19 the school yet, the 206, but I think that the
20 safety concerns, you know, go primarily to
21 preschool. But then, I mean, it should be
22 safe for everybody. So I think what I'm

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1 getting at is that when we finish discussing
2 the uses and the number of parking spaces,
3 that maybe we think is adequate, then we can
4 see if we want to request a modified parking
5 lot plan.

6 And certainly what Mr. Dettman was
7 talking about was not so different from what
8 they have submitted. I would consider that a
9 pretty minor modification. That actually --

10 COMMISSIONER JEFFRIES: Well,
11 there might be some slight cost there.

12 CHAIRPERSON MILLER: Cost?

13 COMMISSIONER JEFFRIES: But --
14 yeah, yeah.

15 CHAIRPERSON MILLER: Okay. All
16 right. Well, let's just see if we can go
17 beyond 205.3. Let's see if at least we think
18 that the center, certainly The Caterpillar Co-
19 Op facility can be located and designed to
20 create no objectionable traffic condition and
21 no unsafe conditions for picking up and
22 dropping off.

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1 I think we can based on either,
2 you know, their preferred plan or a modified
3 version of the parking plan. Okay. Do you
4 all think so? All right. Good.

5 205.4, "The center or facility
6 shall provide sufficient off-street parking
7 spaces to meet the reasonable needs of
8 teachers, other employees and visitors."
9 Okay. I think this is where we need to look
10 at what are their numbers going to be.

11 COMMISSIONER JEFFRIES: Good luck.

12 CHAIRPERSON MILLER: Well, we do
13 it somewhere down the road. I personally
14 think in what we heard of the evidence that
15 there was not an issue that they didn't have
16 enough parking spaces as is to meet the
17 teachers, employers and visitors. If I
18 recall, and we can check our records, that
19 they fall certainly within what is required by
20 the regulations. And then the issue is do
21 they need more than what is required by the
22 regulations?

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1 Does anybody want to comment on
2 what we are talking about? I think we should
3 look at certainly what numbers they are
4 proposing. Now, we have two different sets of
5 numbers here. One is the application asked
6 for 80 children and 17 staff, but I think that
7 included CommuniKids, so I think we should
8 take a look at what the co-op specifically
9 asked for to begin with.

10 I think my understanding is that
11 they are looking for an enrollment of 56
12 students and 7 full-time and 7 part-time
13 staff.

14 VICE CHAIRMAN LOUD: And this may
15 not be inconsistent with what you are saying.
16 I think the 7 staff -- one of the 7 numbers
17 refers to the staff and I believe the other 7
18 refers to parents.

19 CHAIRPERSON MILLER: Okay.

20 VICE CHAIRMAN LOUD: Is that --
21 okay. Nonetheless, I mean, it would still be
22 counted.

1 COMMISSIONER JEFFRIES: They are
2 breathing.

3 CHAIRPERSON MILLER: Okay. I
4 believe that their hours of operation are
5 Monday through Friday, 9:00 to 12:45, which
6 would include Lunch Brunch Program and which
7 would not include early drop-off.

8 COMMISSIONER JEFFRIES: Madam
9 Chair, okay, we're at 205.4, right? Is that
10 where we are?

11 CHAIRPERSON MILLER: Yes, yes.

12 COMMISSIONER JEFFRIES: And let me
13 be clear. What do you -- what are we trying
14 to reconcile here?

15 CHAIRPERSON MILLER: Do we have
16 adequate number of spaces for the number of
17 students, employees, visitors? I'm sure we
18 do. But I think we just need to look at what
19 numbers are we talking about now, because the
20 child development center, as originally
21 presented to us, contained two uses. And now
22 it only contains one for our purposes, at this

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1 point, which is a way less intense impact than
2 what we were considering.

3 COMMISSIONER JEFFRIES: So we can
4 -- we're in agreement?

5 CHAIRPERSON MILLER: Well, I think
6 that it does, but I think it's important that
7 we know -- we usually identify the number of
8 students, for instance, that the child
9 development center is going to have and then
10 we would -- and faculty and then we would look
11 at the number of parking spaces provided under
12 the regs.

13 I mean, I know we may not have to
14 do that specifically, because this is so much
15 less than the intensity of use we were
16 considering.

17 COMMISSIONER JEFFRIES: Right,
18 right.

19 CHAIRPERSON MILLER: However, I
20 think we always, and it makes sense for
21 predictability for analysis to, identify a
22 number now, I think, of students who are going

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1 to be at this -- or children who are going to
2 be in this child development center. You
3 know, is it 56 or is it 80 or is it somewhere
4 in between?

5 I think that the program calls for
6 56. Huh?

7 COMMISSIONER JEFFRIES: We don't
8 know?

9 CHAIRPERSON MILLER: Well, the
10 program, I believe, calls for 56. We can put
11 in 56 or we can round it up to 60, you know,
12 if we want to give them a little space there
13 or we can just do 56, what they proposed.
14 Okay. You want to do 56, that's what is
15 before us.

16 COMMISSIONER JEFFRIES: That's
17 what is before us.

18 CHAIRPERSON MILLER: Okay. 56
19 children and 7 teachers and 7 parent
20 assistants. According to the Office of
21 Planning, the co-op would require a minimum of
22 four parking spaces to serve 7 parents and 7

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1 teachers. So there will be enough, so the
2 parking does meet that. Okay.

3 Are we ready to move to 205.5?
4 Okay. "The center or facility including any
5 outdoor space provided shall be located and
6 designed, so that there will be no
7 objectionable impacts on adjacent or nearby
8 properties due to noise, activity, visual or
9 other objectionable conditions."

10 I don't believe that there was any
11 concern in the hearing about that, so the co-
12 op can meet that.

13 205.6 "The Board may require
14 special treatment in the way of design,
15 screening of buildings, planting and parking
16 area, signs or other requirements as it deems
17 necessary to protect adjacent and nearby
18 properties."

19 I would suggest maybe we hold that
20 one just for if we want to recommend any
21 changes, like in the landscaping or the
22 screening that would go to include, you know,

1 the parking lot because of its use by both the
2 school and the parking lot -- and the school,
3 unless somebody wants to address that right
4 now? We can address that in a condition.

5 Okay.

6 205.7 "Any off-site play area
7 shall be located so as not to result in
8 endangerment to the individuals in attendance
9 at the center and traveling between the play
10 area and the center or facility itself."

11 Again, that wasn't an issue in our
12 hearing.

13 205.8 "The Board may approve more
14 than one child/elderly development center or
15 adult day treatment facility in a square
16 within 1,000 feet of another."

17 Okay. That's not before us. I
18 think that there is no other one that was
19 identified, is there another child care center
20 within 1,000 feet? It wasn't an issue anyway.

21 COMMISSIONER JEFFRIES: Within
22 1,000 feet, I don't think there was within

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1 1,000 feet, no.

2 CHAIRPERSON MILLER: Office of
3 Planning would have addressed it. Office of
4 Planning said they are not aware of any other
5 child development centers within the 1,000
6 foot radius, so the property and that really
7 wasn't an issue.

8 COMMISSIONER JEFFRIES: And I'm
9 certain the community would --

10 CHAIRPERSON MILLER: Yes, right.

11 COMMISSIONER JEFFRIES: -- have
12 found it if it was there.

13 CHAIRPERSON MILLER: 205.9 "Before
14 taking final action on an application for use
15 as a child/elderly development center or adult
16 day treatment facility, the Board shall submit
17 the application to the D.C. Department of
18 Transportation and Human Services, the D.C.
19 Office on Aging and the D.C. Office of
20 Planning for review and written reports."

21 That was done and Ms. Walker
22 already commented on the Department of

1 Health's response.

2 205.10 "The referral to the D.C.
3 Department of Human Services shall request
4 advice as to whether the proposed center can
5 meet all licensing requirements set forth in
6 the applicable laws of the District of
7 Columbia."

8 I think that was Exhibit 19, which
9 Ms. Walker also addressed earlier.

10 All right. I think where we are
11 at this point is that I think that the special
12 exception for child development center, for
13 Caterpillar Co-Op consisting of an enrollment
14 of 56 children operating from 9:00 to 12:45,
15 I think we have to just take -- there is some
16 earlier drop-off, I think, that could be
17 allowed, Monday through Friday.

18 Okay. We pretty much evaluated
19 this. Okay. Not having a great adverse
20 impact on the community, I think that the
21 adverse impacts were really pretty much
22 identified with CommuniKids.

1 I think we should look at now 206,
2 the application for private school under 206,
3 the Music School of the Washington
4 Conservatory of Music. Okay. This was not
5 challenged certainly by anyone with respect to
6 the definition whether or not this was a
7 school. And, in fact, we don't have a
8 definition of a school even in our regulations
9 or a legislative history similar to that of a
10 child development center.

11 So I think that we accept the
12 premise that this is a school. It's main
13 campus is in Maryland, but it wants to have
14 classes at this facility. And I think the
15 majority of classes are private instruction.
16 And the applicant is intending to build rooms
17 which are specifically geared towards music
18 rooms, so that they provide some soundproofing
19 and things of that sort.

20 Okay. Now, this one is presented
21 again as 30 students and 10 faculty at one
22 time and I think that's kind of a difficult

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1 concept with respect to, you know, what's the
2 impact of the turnover? I think it's much
3 smaller in this case than with the
4 CommuniKids, because the size of classes, most
5 of these are individual as compared to the
6 CommuniKids, which were like classes of 8
7 children at once.

8 They are proposing 30 students at
9 a time.

10 VICE CHAIRMAN LOUD: Madam Chair,
11 as I understand --

12 CHAIRPERSON MILLER: Yeah, go
13 ahead.

14 VICE CHAIRMAN LOUD: I'm sorry.

15 CHAIRPERSON MILLER: No, please,
16 do.

17 VICE CHAIRMAN LOUD: Just to chime
18 in. As I understand the applicant's
19 presentation of the conservatory, they are
20 proposing to go from, basically, I think what
21 it is now, 9 students, 9 teachers to 10
22 students, 10 teachers, most of the time. And

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1 there are going to be certain occasions where
2 there are 30 young people as part of, I
3 believe, a choir or something like that.

4 And they have actually outlined it
5 at their Exhibit 70, the chart that's attached
6 to Exhibit 70. But it's also in their
7 pleadings and I don't have the exactly
8 pleading number previous to Exhibit 70. And
9 it was also part of their actual testimony.

10 So I think there has been some
11 sort of confusion, again as all of us have
12 struggled with all of these different cells
13 and numbers, but I think that what they are
14 trying to say is that there will not be 30
15 students every time a class is taught by the
16 conservatory.

17 COMMISSIONER JEFFRIES: So there
18 would be less wear and tear on the parking
19 lot, I mean, with the exception of perhaps
20 that one period where you might have the choir
21 or the orchestra or whatever trying to perform
22 or rehearse.

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1 VICE CHAIRMAN LOUD: That's
2 correct, Commissioner Jeffries.

3 COMMISSIONER JEFFRIES: Okay.

4 CHAIRPERSON MILLER: Okay. I
5 mean, jumping right to the crux of this case,
6 I think is we will go through the specific
7 elements, but I guess, you know, my big
8 question is as presented to us and based on
9 the evidence that we heard in the record, do
10 we think that that would create an adverse
11 impact on neighboring properties from so much
12 -- from too much in and out traffic or, you
13 know, do we think that the traffic evidence
14 that we heard related to the school did not
15 rise to that level of an adverse impact?

16 And I mean, if it did -- if we
17 think that, you know, neighbors really didn't
18 complain too much about the music students
19 compared to the CommuniKids, I do recall that
20 they complained maybe -- you know, we might
21 want to look at the hours. Like are they
22 talking in the parking lot too late at night?

1 That was something I remember.

2 I guess my question that I would
3 ask the Board to consider is do you feel
4 comfortable with their proposal, you know, of
5 30 students and 10 teachers at a time, even
6 though we don't think this translates into a
7 turnover of 30 every hour based on what we
8 heard or do we want to contain it in any other
9 way, like limit the enrollment or any other
10 way?

11 COMMISSIONER JEFFRIES: Well, I'm
12 -- based on Board Member Loud's indication
13 here that really during the course of the
14 week, there is only two times that was
15 reported by the applicant that you might, you
16 know, see a few students and one is at 5:00,
17 so that will be a hot spot on Wednesdays and
18 then Monday at 6:00. But all other times --
19 okay, wait a minute. No, there is two 20s,
20 too.

21 There is 20s as well. But these
22 other times -- see, this -- and, you know,

1 just station break here, this is one of the
2 problems. It's very hard to read this. You
3 know, you want to come to a conclusion and,
4 you know, you think you have it and then you
5 look again and you don't have it.

6 So you know, the burden is on the
7 applicant to make certain that this stuff is
8 clear, so that, you know, we understand what
9 is happening. It's not all clear. However,
10 the people using the conservatory are
11 teenagers, they are adults, some of them will
12 be able to bring their instruments on the
13 Metro. They will not have to drive. Perhaps
14 some of them are walking in the neighborhood.

15 And I'm probably a little biased,
16 because I'm a musician myself, but it's just,
17 you know, I tend to think that, you know --
18 and they have been there for how many years?
19 I mean, how long have they been in this -- I
20 didn't get any testimony that it was a
21 problem, the community around conservatory and
22 so forth.

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1 So I'm not certain whether there
2 is a lot to do here. I mean, again, there's
3 just two times during the course of the week
4 that there seems to be, you know, a build-up,
5 you know, of students coming in and out and,
6 you know, maybe at 2:00, but that's in the
7 afternoon and there's not a lot of, you know,
8 traffic in terms of the residents coming home
9 from work or whatever, you know. So I'm
10 probably more focused on two times during the
11 course of the week that, you know, you might
12 see some traffic.

13 But I don't know. I tend to think
14 that the neighborhood could somehow manage
15 that. That's not sort of an ongoing sort of
16 a source of aggravation for the Residential
17 Zone. I mean, it's just my call from what I
18 can understand from what has been presented in
19 front of me.

20 VICE CHAIRMAN LOUD: I would tend
21 to agree with Commissioner Jeffries as well,
22 Madam Chair. I don't think it's, again, as I

1 understand what they are presenting, a
2 dramatic increase in intensity of use at the
3 site. I think they are currently at 9
4 students, 9 teachers. They are talking about
5 going up to 10 students, 10 teachers, except
6 on the occasions where one of those 10
7 teachers will have a group class that
8 involves, I guess, 30 young people or 30
9 members of a choir or something along those
10 lines.

11 So yes, it is a change and it is a
12 net change that merits our consideration, but
13 I don't think it's of such a magnitude that I
14 would be voting against it or not willing to
15 support it, particularly when they have
16 thought through some of the parking
17 implications of it and their parking study
18 makes some specific recommendations about the
19 number of spaces that are going to be required
20 and their willingness to provide those spaces
21 and also their willingness to follow some of
22 the other recommendations of their parking

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1 study around assigning staff to monitor, plan
2 and making sure that all the persons that come
3 to the building know what the Metro routes are
4 etcetera, etcetera.

5 So it's not something that I'm
6 opposed to.

7 MEMBER DETTMAN: I would agree
8 with Mr. Loud and Mr. Jeffries on that. I
9 think the intensity of the use, like Mr. Loud
10 says, it's a change, but it's not
11 overwhelming. The only reservation I have and
12 it's not something I feel really strongly
13 about is that the hour in which the school
14 goes to.

15 I could entertain the idea of
16 maybe backing it up to the last class might
17 start at 8:00 or the last class might start at
18 7:00. I don't know what time that would be,
19 but it's something that I could certainly
20 entertain.

21 COMMISSIONER JEFFRIES: Yeah, see,
22 I hear what you're saying. Given sort of work

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1 schedules and so forth, there's probably a
2 reason they have it at 8:00. And then if you
3 don't have it at 8:00, they are going to push
4 more people earlier in the evening. I don't
5 know. I hear what you're saying. I --

6 CHAIRPERSON MILLER: Why don't we
7 just discuss that at conditions?

8 COMMISSIONER JEFFRIES: Yeah.

9 VICE CHAIRMAN LOUD: Yeah.

10 CHAIRPERSON MILLER: Okay. We can
11 think about that. So I just want to make sure
12 everyone is comfortable with allowing the
13 school to have 30 students, a maximum of 30
14 students and 10 teachers at one time. Okay.
15 I would agree that I really don't recall much
16 testimony regarding an objection to the amount
17 of turnover with respect to this program.

18 COMMISSIONER JEFFRIES: So you
19 just said at any one time?

20 CHAIRPERSON MILLER: Well, what do
21 you -- that's what they -- do you disagree
22 with that?

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1 COMMISSIONER JEFFRIES: No, no,
2 no, I just --

3 CHAIRPERSON MILLER: That's the
4 way it is presented.

5 COMMISSIONER JEFFRIES: -- wanted
6 -- no, no. I just wanted to be clear on that,
7 that at any one time there will be no more
8 than say that again.

9 CHAIRPERSON MILLER: 30 students
10 and 10 teachers.

11 COMMISSIONER JEFFRIES: Part of
12 the conservatory at any one time at the
13 church.

14 CHAIRPERSON MILLER: I think, you
15 know, that's what I'm saying, we don't
16 normally -- this is why it's difficult for us,
17 because we don't normally deal with this at
18 one time every hour, you know. It's usually
19 an enrollment number. But this program is
20 again an hourly program.

21 VICE CHAIRMAN LOUD: Again, it is
22 confusing the way it is presented. What I

1 support in terms of what I thought their
2 proposal was was their increasing the number
3 of total classes from 9 to 10. And it appears
4 from this Exhibit 70, the chart on Exhibit 70
5 that during the week two of those 10 classes,
6 I think, can have up to 30 students.

7 You know, not to wordsmith it too
8 much, but I don't want to support a proposal
9 that would allow them to have 30 --

10 COMMISSIONER JEFFRIES: 30 every
11 evening.

12 VICE CHAIRMAN LOUD: Exactly. And
13 they are not -- they haven't presented that to
14 us.

15 CHAIRPERSON MILLER: Okay. Let's
16 back up, because, you know, again, that's what
17 I'm saying. That's why this was a difficult
18 thing to get our arms around. The
19 application, you know, asks for a special
20 exception under 206 to establish a private
21 school, 30 students and 10 teachers. And as
22 I read through, I think, the filings, again,

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1 applicant was asking us, I thought, to buy
2 into the concept of that at one time, which
3 meant every hour, just like the buying into
4 the 80 CommuniKids at one time.

5 COMMISSIONER JEFFRIES: But you
6 can have 30 students, but you just limit, you
7 know, in terms of on an hourly basis. I mean,
8 there is a limit in terms -- well, that gets
9 to be very -- I mean, the enforcement of that
10 is going to be tough. I'm sorry, I'm just
11 talking out loud here.

12 VICE CHAIRMAN LOUD: I was just
13 wanting to say that I am -- as I understood
14 the proposal all along, it was for having
15 these classes with the population of 30 just
16 sporadically, not consistently. But to add to
17 that, I'm for holding the applicant to its
18 Exhibit No. 70, which is dated June 27, 2008,
19 where they specify the classes that they think
20 will end up having 30 students in it.

21 And it's in direct response to an
22 earlier submission where, I believe, the

1 neighbors had thought that a lot more of those
2 classes would have 30. And so the applicant
3 went through their chart and just drew a line
4 through where the neighbors had presented 30
5 and the applicant came back and said no, these
6 are the times where we want 30.

7 And specifically, they mentioned
8 6:00 p.m on Mondays and I think, I guess, what
9 5:00 p.m. on Wednesdays. But the point being
10 they have represented to us now that there are
11 a reduced number of classes that will have
12 this 30 population.

13 COMMISSIONER JEFFRIES: Right.

14 VICE CHAIRMAN LOUD: And so I'm
15 supporting them holding them to that
16 representation.

17 COMMISSIONER JEFFRIES: And I
18 think it's tied right to this whole notion,
19 Madam Chair, of rollover and just really being
20 able to manager turnover of kids coming in and
21 out or individuals coming in and out of the
22 church. And so I think if you said 30, I

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1 think in terms of what you said, I mean, it's
2 possible that you could have, you know, a
3 different set of 30 kids, you know, every two
4 hours going in and out of this thing.

5 CHAIRPERSON MILLER: Right.

6 COMMISSIONER JEFFRIES: And I
7 don't think that's what we intend on doing.
8 And I don't think that would happen anyway,
9 but I just -- you know, I think we should just
10 be careful in terms of how we memorialize
11 this.

12 CHAIRPERSON MILLER: Okay.

13 MEMBER WALKER: Madam Chair, I
14 agree that I think we should hold the
15 applicant to the numbers that they proposed.
16 At the same time though, I think we should
17 give them a little bit of flexibility. While
18 they have said they want to have as many as 30
19 children at one time on Mondays and
20 Wednesdays, you know, it really doesn't matter
21 whether it is Monday or Tuesday.

22 So I think as we craft our

1 conditions, we should be mindful of giving
2 them a little bit of flexibility.

3 COMMISSIONER JEFFRIES: Is it
4 possible that we can also get them to submit--
5 I mean, I hate to go down this road again, but
6 -- oh, no, no, let's not do that. Let's just
7 go with what we have here. I won't open up
8 that Pandora's Box.

9 It's just that there still could
10 be a little confusion as to what we are
11 looking at here, but I think we can agree that
12 we're looking at a turnover on an hourly basis
13 of 10 students with the exception of two other
14 cases on Mondays and Wednesdays where there is
15 30 and that's that. That's our understanding.
16 We just need to be clear about our
17 understanding of Exhibit, what 73?

18 VICE CHAIRMAN LOUD: I think it's
19 70.

20 COMMISSIONER JEFFRIES: 70.

21 CHAIRPERSON MILLER: Well, the
22 chart also has a written explanation. It says

1 "The maximum occupancy at one time would
2 normally be 20; 10 teachers providing 10
3 individual lessons, with the exception for no
4 more than twice weekly of the 30 students for
5 that ensemble.

6 So that's in explanatory notes by
7 Wisconsin Avenue Baptist Church to accompany
8 its edited and revised version of Neighbor's
9 Summary of Future Daily Occupancy Chart, No.
10 3.

11 COMMISSIONER JEFFRIES: Okay.

12 CHAIRPERSON MILLER: So we'll just
13 be careful how we write this. So it would be
14 with a maximum of 30 students and 10 teachers
15 at one time, but no more than, okay, two times
16 a week, otherwise, I think we can write this
17 better later, but otherwise, 10 -- no more
18 than 20 at one time, 10 teachers, 10 students.

19 Again, this doesn't necessarily
20 capture the turnover. But I didn't hear in
21 the hearing a real concern about this
22 turnover. Okay. So maybe we don't have to

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1 worry about that. Okay. So that would be,
2 you know, a condition that goes to the music
3 school. Is everyone all right with that?
4 Okay.

5 COMMISSIONER JEFFRIES: Are we
6 getting there? How are we doing? 206.2?

7 CHAIRPERSON MILLER: I think that
8 we were addressing the issues in 206.2.

9 COMMISSIONER JEFFRIES: Okay,
10 good.

11 CHAIRPERSON MILLER: And that's
12 really the crux of this. "The private school
13 should be located so that it is not likely to
14 become objectionable to adjoining and nearby
15 property, because of noise, traffic, number of
16 students or otherwise objectionable
17 conditions.

18 So I think that we have determined
19 that either -- both the parking lot scheme
20 that we looked at even before we modified, if
21 at all, can accommodate these students. So
22 parking is not a problem. Traffic is not a

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1 problem. Noise -- well, why don't we just
2 bite that bullet now about the hours, because
3 I think that the only real noise problem that
4 came up here was with respect to voices
5 carrying in the evening. It goes until 9:00
6 at night.

7 COMMISSIONER JEFFRIES: I mean, I
8 could definitely concur with Board Member
9 Dettman that, you know, we should, you know,
10 think about the later hour, because it starts
11 at 8:00, so it ends at 9:00, right? Okay.
12 Did we get lots of testimony around noise in
13 the evening or did we get just a couple of
14 people?

15 CHAIRPERSON MILLER: My
16 recollection is no, we probably just got a
17 couple of people and it's probably the couple
18 of people that live next to the parking lot.

19 COMMISSIONER JEFFRIES: Okay.

20 CHAIRPERSON MILLER: Because
21 nobody else cares, right? It's just the
22 direct neighbors, I would think, maybe

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1 somebody that was across the street from the
2 driveway or something like that.

3 COMMISSIONER JEFFRIES: You know,
4 I just, you know, sing in a number of, you
5 know, choirs and so forth and we always start
6 our rehearsals around 6:30, 7:00 and we go to
7 9:00, 9:30, you know. I just -- you know, I
8 mean it's just rare that, you know, you would
9 have to leave a facility, you know, at 8:00.
10 It just -- you know, just given the amount of
11 rehearsal time that is needed.

12 And it seems as if they are really
13 trying to accommodate a lot of different
14 people and their schedules and so forth. So
15 and particularly, we are just talking about 10
16 individuals at that last hour. It just
17 doesn't seem to create such a problem.

18 CHAIRPERSON MILLER: I would
19 agree. And it's not necessarily even 10. I
20 mean, it could be 4. I mean, they are kind of
21 like individuals taking lessons. There were
22 some other proposals and we can get to the

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1 proposed conditions such as, you know, putting
2 up a sign that says, you know, quiet or
3 whatever in the parking lot to mitigate
4 anything like that.

5 So is it the consensus that we can
6 leave their hours as is? Yeah? Okay.

7 Okay. 206.3 go to ample parking
8 spaces and I think we have already addressed
9 that there is ample parking spaces for this
10 use. I mean, they already identified them in
11 the parking plan. There are 10 spaces or
12 something. It's more than enough. Okay.

13 So I think where we are, at this
14 point, is we have gone through the elements
15 finding that each of these uses fits the
16 special exception, but we just also need to
17 see whether any other conditions should be
18 implemented to mitigate any adverse impacts.

19 So, you know, some conditions we
20 may have already talked about. Sometimes, you
21 know, a condition of a number of students, the
22 number of faculty, but why don't we take a

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1 look at their proposed conditions and see
2 whether we have covered things and then finish
3 up with the landscaping of the parking lot or
4 the whole layout issue?

5 COMMISSIONER JEFFRIES: And in
6 terms of -- was there a lot of commentary
7 around the existing stockade fence that -- I
8 mean, in terms of a buffer there? I mean, do
9 you want to have that discussion around
10 parking configuration or should we look at
11 some language that further sort of, you know,
12 deals with any, you know, adverse impact from
13 just noise from the church on those particular
14 homes?

15 Was there a lot of commentary? I
16 don't remember a lot of commentary. I mean,
17 around noise from those, you know, people
18 living in those homes, I mean.

19 CHAIRPERSON MILLER: A little bit
20 of noise at night like we were saying people
21 talking in the parking lot.

22 COMMISSIONER JEFFRIES: Yeah.

1 CHAIRPERSON MILLER: But --

2 COMMISSIONER JEFFRIES: But I'm
3 just trying to figure ways --

4 CHAIRPERSON MILLER: -- yeah.

5 COMMISSIONER JEFFRIES: -- you
6 know, something that the church could do to
7 mitigate that noise, some sort of treatment.
8 But I just don't recall a lot of issue around
9 that. If there is, if someone here remembers
10 that, you know, perhaps we can look at some
11 soundproofing on that fence.

12 CHAIRPERSON MILLER: Some
13 buffering?

14 COMMISSIONER JEFFRIES: Yeah.

15 CHAIRPERSON MILLER: I got the
16 impression also that the fence or whatever was
17 important just as a division between, you
18 know, families, yards, you know, when kids
19 play and where trucks are coming in perhaps in
20 the driveway for that immediate neighbor.

21 COMMISSIONER JEFFRIES: Um-hum.

22 CHAIRPERSON MILLER: But I think

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1 we have to see where we left off, because
2 applicant submitted a new landscape parking
3 lot plan and where -- did they address it or
4 not? I'm not sure. But you want to look at
5 that now or go. I guess we might as well,
6 since you brought it up.

7 COMMISSIONER JEFFRIES: Well, I
8 mean, if you have traffic in the morning, you
9 know, people are making that turn off of Alton
10 Place going into the existing drive, I mean,
11 is there an opportunity to put some level of
12 buffer there just to deaden some of the noise?

13 CHAIRPERSON MILLER: I think we
14 will have to get that in front of us. What
15 are you looking at though?

16 COMMISSIONER JEFFRIES: Well, no,
17 I'm just looking at the drawing here. I'm
18 looking at SK-01 or from Lux Burlock, is it?
19 Is that how you pronounce that? But if
20 someone -- can someone recall was there lots
21 of commentary? I mean, if there wasn't, then
22 it's no need to do this.

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1 I mean, but I remember a couple of
2 people had comments, I mean, in terms of these
3 homes. I mean, these homes are right up on
4 this development that is about to expand.
5 There will be a few more vehicles coming
6 through and so forth. So again, I mean, if we
7 think that the fence, the stockade fence is
8 still sufficient to deal with that, then, you
9 know, we can be silent.

10 But if there's something that can
11 be done, some soundproofing, some use of
12 vegetation or something that -- well, you
13 probably need more than that, just to help
14 mitigate some of the noise that might be
15 coming through. I mean, I just -- do you
16 recall? Do you?

17 CHAIRPERSON MILLER: Well, I'm
18 looking at the Exhibit 77, which is the
19 neighbors finding of facts and conclusions of
20 law and they do address the screening issue.

21 VICE CHAIRMAN LOUD: Exhibit 77,
22 Madam Chairman?

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1 CHAIRPERSON MILLER: Well, it's
2 Exhibit 77.

3 VICE CHAIRMAN LOUD: Thank you.

4 CHAIRPERSON MILLER: They are
5 saying that, on page 34, the wooden fence
6 doesn't satisfy the screening requirement in
7 the Zoning Regulations, citing section 2303.2
8 which specifies "a solid brick or stone wall
9 or evergreen hedge or evergreen trees that are
10 thickly planted." And then they say "With a
11 barrier of 42 inches in height, it would help
12 prevent accidental vehicular intrusion from
13 the parking lot onto their residential
14 property."

15 They don't think it will diminish
16 the noise. So I believe what they are seeking
17 is a wall or mature plantings which would be
18 allowed to grow at least 6 feet high and I'm
19 reading that from page 34.

20 COMMISSIONER JEFFRIES: A brick
21 wall or -- I mean, I thought I heard you say
22 that, but that's --

1 CHAIRPERSON MILLER: It's up to
2 us, I think. I mean, I don't think that
3 that's necessary.

4 COMMISSIONER JEFFRIES: No.

5 CHAIRPERSON MILLER: I think they
6 may have said that. I think that the reg they
7 are citing talks about a solid brick or stone
8 wall or evergreen hedges.

9 COMMISSIONER JEFFRIES: Oh, okay.

10 CHAIRPERSON MILLER: If that reg
11 applies. I've got to check that.

12 COMMISSIONER JEFFRIES: I don't
13 know how much space is here. I mean, looking
14 at this drawing, I don't know how much
15 vegetation that they could get here. Yes, but
16 if you have got vines and things of that sort
17 to grow there, I mean, it's not going to do
18 much for noise.

19 CHAIRPERSON MILLER: I mean,
20 basically, they are just asking for more
21 screening. All right. Actually, the
22 neighbors have a proposed condition that goes

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1 to it, so I think we ought to look at that
2 condition. It will be easier and then see how
3 we want to deal with it.

4 It says "Landscaping of the site
5 shall be in accordance with landscaping plans
6 attached to applicant's prehearing submission,
7 except that the applicant shall landscape the
8 east side of the parking lot in such a manner
9 as to diminish its impact on the neighboring
10 properties, including maintaining a natural
11 and constructed border along the entire
12 eastern property line of sufficient height,
13 over 5 feet, to provide appropriate
14 screening."

15 I guess my question is, I mean,
16 I'm always in favor of screening parking lots,
17 you know, especially with green. I'm just not
18 sure how this works with the existing fence,
19 you know, that's all. That's my question.

20 MEMBER DETTMAN: A chain link?

21 CHAIRPERSON MILLER: No.

22 COMMISSIONER JEFFRIES: No, it's a

1 stockade.

2 CHAIRPERSON MILLER: Yeah.

3 COMMISSIONER JEFFRIES: Okay.

4 Well, it seems, you know, if we are going to--
5 if the hope is that the applicant is going to
6 come back with a reconfigured parking space,
7 that they will sort of deal with that. And
8 perhaps, I think, the drawing that I have in
9 front of me isn't really accurate in terms of
10 the amount of green space between the existing
11 drive to the east and the property lines.

12 So to the extent that, you know,
13 they might want to, you know, during the
14 revisit of this, just sort of also take a
15 second to, you know, perhaps look at more
16 vegetation there or some treatment on the
17 fence that could, you know, address some
18 soundproofing. I think that -- I mean, we can
19 sort of -- I don't want to punt, so to speak,
20 but I think, you know, we might just get it
21 all squared away. You tell me I don't talk
22 into this thing enough.

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1 CHAIRPERSON MILLER: Okay. I
2 don't think it's just sound. I think it's
3 screening, too.

4 COMMISSIONER JEFFRIES: Screening,
5 right, right.

6 CHAIRPERSON MILLER: And I don't
7 know --

8 COMMISSIONER JEFFRIES: I mean, I
9 just -- I mean, let the applicant submit
10 something that deals with screening.

11 CHAIRPERSON MILLER: Right.

12 COMMISSIONER JEFFRIES: Yeah,
13 yeah.

14 CHAIRPERSON MILLER: But we just
15 need to be a little assertive as to what we
16 are asking of them, you know, additional
17 screening, additional evergreens, additional--
18 or are we going to leave it wide open or do
19 you -- can you see what might work on this
20 border?

21 COMMISSIONER JEFFRIES: Oh, wow.

22 CHAIRPERSON MILLER: We are just

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1 looking at some of the pictures now at the
2 border.

3 COMMISSIONER JEFFRIES: Yeah.

4 CHAIRPERSON MILLER: Do you want
5 to pass those around?

6 MEMBER DETTMAN: Madam Chair,
7 that's Exhibit 67.

8 CHAIRPERSON MILLER: Thank you.

9 MEMBER DETTMAN: Those photos are
10 from.

11 COMMISSIONER JEFFRIES: Yeah, they
12 don't have much. I mean, what's the existing
13 height of the fence? Is it 42 inches? But
14 you know, look at this, they can put -- they
15 can do -- it seems like they can do some
16 hedging or, you know, to --

17 CHAIRPERSON MILLER: I mean,
18 basically, I agree. I think they should do
19 some additional screening. I'm not exactly
20 sure how --

21 COMMISSIONER JEFFRIES: Much they
22 can do.

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1 CHAIRPERSON MILLER: -- specific I
2 can make that, at this point. So I think, I
3 gather what you are thinking is when they come
4 back with a little modified parking lot plan,
5 that that plan also improve the screening on
6 the eastern border?

7 COMMISSIONER JEFFRIES: Yeah, and
8 I'm not necessarily trying to be overtly
9 punitive about this either, just, you know,
10 provide some additional screening along there
11 to the extent that you can. I mean, I think
12 that's -- I mean, I don't know how much more--

13 CHAIRPERSON MILLER: Okay.

14 COMMISSIONER JEFFRIES: -- given
15 the situation there they can do.

16 CHAIRPERSON MILLER: Any other
17 thoughts on that? Okay. I think what I want
18 to do is quickly pull all of the parties
19 proposed conditions and just take a look and
20 see and address them quickly.

21 Okay. I think we may already have
22 addressed many of them. Many of them may not

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1 apply, since we took out CommuniKids, but I
2 think that's the last step here. Are you
3 ready? No? Okay. All right.

4 Okay. Why don't we just start
5 with applicant's. No. 1, "The addition shall
6 be constructed in accordance with the
7 schematic plans that depict an addition to the
8 existing building of no more than two floors
9 above the basement level submitted as exhibit
10 blank in the record."

11 VICE CHAIRMAN LOUD: Madam Chair,
12 which page are you on?

13 CHAIRPERSON MILLER: Oh, okay. I
14 am at Exhibit 76, page 11.

15 VICE CHAIRMAN LOUD: Page 11,
16 okay. Thank you.

17 CHAIRPERSON MILLER: Actually, I
18 think two things. One is we don't normally
19 have to say that it's going to be built in
20 accordance with plans, because that's a given.
21 It has to be in accordance with the plans that
22 we approve.

1 So we either should not include
2 this or the only reason to include it would be
3 if there were such a controversy over the
4 number of floors that this makes it clear that
5 it is only as what -- that's how it is limited
6 here. I would be in favor, I think, of not
7 including it. That the plans speak for
8 themselves. What do others think? Anybody
9 mind that? Sometimes less is more in these
10 conditions. Okay.

11 There is a cap, okay, that is
12 proposed. No, no, no, that's not it. Next is
13 the parking lot. I think that we are going to
14 just hold on the parking lot and have them
15 submit parking lot -- one more revised parking
16 plan.

17 3 goes to -- 3 and 4 go to caps.
18 And it's my view that without CommuniKids,
19 that a cap would not be necessary in this
20 case, that it's not going to create the kind
21 of problems and I think that the cap raises a
22 lot of enforcement problems in and of itself

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1 making the church subject to bean counting and
2 all these kind of difficult enforcement
3 things. All right. So that's not applicable.

4 5, "The applicant shall provide a
5 waiting room inside the building for parents
6 and caregivers during the operation of the
7 child development center or the private school
8 and shall take other reasonable action to
9 discourage such persons from remaining in
10 their cars with the motors idling during drop-
11 off and pick-up activities."

12 Okay. I would propose stopping at
13 "that they shall provide the waiting room
14 inside the building for the parents and
15 caregivers during the operation of the child
16 development center or the private school." I
17 think the rest of it is difficult to measure
18 and enforce.

19 We're going to get to -- No. 7 is
20 a Transportation Management Plan that the
21 applicant already presented, which goes to
22 measures, I believe, which would discourage

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1 idling and things like that. So I don't think
2 the rest is necessary, but what do you all
3 think?

4 VICE CHAIRMAN LOUD: I would
5 agree, Madam Chair. I think some of the
6 discussion, what you said, the Traffic
7 Management Plan has a staff person that is on
8 point to provide certain kinds of information.
9 And that will address the latter part of that
10 sentence.

11 CHAIRPERSON MILLER: Okay. Okay.
12 We can move on. "The studios and classrooms
13 intended for use by the private school will be
14 designed, engineered and constructed in order
15 to limit sound transfer, so that nearby
16 residents are not adversely affected by
17 noise." I think that's fine. That goes to
18 the, you know, potential adverse impact from
19 the music.

20 7 is the Transportation Management
21 Plan. "Applicant shall implement the
22 Transport Management Plan proposed by

1 Gorove/Slade and include it as exhibit number
2 blank in the record." That seems fine. Okay.

3 Construction Management Plans, we
4 don't include in our orders, that's No. 8, so
5 we wouldn't do that.

6 No. 9 says "If and at such time as
7 a curb cut is approved by Public Space
8 officials on Yuma Street, motor vehicles will
9 be permitted to enter and exit the property on
10 Yuma Street, but all traffic from Alton Place
11 will be permitted one-way entry only."

12 I don't know. Yeah, go ahead. Do
13 you have a comment?

14 VICE CHAIRMAN LOUD: Well, I was
15 just going to say I think that's consistent
16 with where the testimony was. I think all the
17 parties agreed to that, that there would only
18 be one-way at Alton and Yuma would be both
19 ways. Whether or not it should be a
20 condition, I think it's in the parking plan,
21 and I guess we would need to specify which
22 way, I think, if we're going to make it a

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1 condition at all, we would need to specify
2 whether it is entrance or exit. That would be
3 my thinking, but I know it is --

4 CHAIRPERSON MILLER: Exactly.

5 VICE CHAIRMAN LOUD: -- fairly
6 consistent.

7 CHAIRPERSON MILLER: Excellent.

8 VICE CHAIRMAN LOUD: Does it say
9 one-way entry, okay.

10 CHAIRPERSON MILLER: Yeah.

11 VICE CHAIRMAN LOUD: I take it
12 back.

13 CHAIRPERSON MILLER: Okay. I
14 think --

15 VICE CHAIRMAN LOUD: It was part
16 of the discussion though.

17 CHAIRPERSON MILLER: Yes. Do you
18 have a problem with that? Yeah, do they? I
19 think Mr. Dettman was just -- is going to see
20 if this is in the Transportation Management
21 Plan. Did you find it?

22 VICE CHAIRMAN LOUD: You -- sorry.

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1 I'm just going to say, you can get it, Mr.
2 Chairman -- not Chairman, Commissioner Dettman
3 from Exhibit 53. It has an attachment to it.
4 It's probably in other places in the record,
5 but it's an attachment to Exhibit 53.

6 CHAIRPERSON MILLER: Okay. We
7 will come back to that one, because if it's in
8 the plan, it may not need to be pulled out by
9 itself. And then 10, "The applicant shall" --
10 I mean, their No. 10, "The application shall
11 certify its compliance with these conditions
12 to ANC-3F on an annual basis."

13 It's fine with me. Fine? Okay.
14 That's the Applicant's proposed conditions.
15 Okay. Why don't we turn to the neighbor's?
16 They are set forth in Exhibit No. 77, page 34.
17 Okay.

18 Well, proceeding, the first is the
19 neighbor's seek a term of 5 years from the
20 final date of the order. I'm not sure whether
21 a term is necessary. I think we need to
22 discuss it. I think that these uses have been

1 going on for several years and we have a feel
2 of the impact.

3 I think the intensity of the use
4 is much less than was contemplated by this
5 proposed condition without CommuniKids.
6 However, it's not certain. I mean, we weren't
7 sure about the music school, for instance. So
8 and, you know, it could be greater than 5
9 years. It could be 7 years if we wanted to
10 revisit this. Any thoughts?

11 VICE CHAIRMAN LOUD: Madam Chair,
12 I would not be in support of a 5 year term.
13 I don't see the basis in the record,
14 particularly since we have sort of, you know,
15 made some decisions affecting intensity of use
16 that would justify them having to come back
17 before us in 5 years.

18 In addition to which, they are
19 presenting the information to the ANC on an
20 annual basis as sort of a measure of good
21 faith and accountability. And so I definitely
22 don't see 5 years. Maybe 10 years and am open

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1 to your suggestion about no term at all.

2 CHAIRPERSON MILLER: Well, I mean,
3 I think I'm pretty convinced that the co-op is
4 not going to have any adverse impacts at all.
5 And my only question is about the school, the
6 turnover in traffic though, I don't really
7 think so, because that's why, you know, I'm in
8 favor of granting the special exception.

9 So I think 5 is too soon. I think
10 that, you know, it stretches the church's
11 resources to have to prepare another
12 application, etcetera. So I guess I would
13 perhaps go, you know, either 10 or not at all.
14 What do others think about that? It's really
15 not one that screams out for a term.

16 I mean, we could do 10 since we
17 have just a -- you know, we're not 100 percent
18 sure of how the turnover is going to work.
19 That seems awfully far down the road.

20 VICE CHAIRMAN LOUD: And when you
21 say turnover, you are referring to which
22 aspects of the proposal?

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1 CHAIRPERSON MILLER: Oh, I was
2 just thinking about, you know, the turnover of
3 hourly classes for the music students. But I
4 think when we went through the whole process
5 of thinking this through, that we decided that
6 it was pretty low intensity in making our
7 decisions.

8 Mr. Jeffries, we were just
9 considering the neighbor's proposal that there
10 be a term of 5 years. And we were saying that
11 5 years was clearly too, in our opinion, soon
12 to make the church turn around and present
13 another application. We're not sure a term
14 really is needed in this case.

15 I think that, you know, perhaps it
16 was contemplated because of CommuniKids, which
17 did have an impact. So all right, shall we
18 skip that then? I mean, no term? If there is
19 a big problem, the neighbors can address it
20 some other way. Okay.

21 The child development center, we
22 already talked about their hours as being 9:00

1 to, I believe, 12:45, but allowing early drop-
2 off.

3 COMMISSIONER JEFFRIES: Um-hum.

4 CHAIRPERSON MILLER: If I recall,
5 maybe we should say no earlier than 7:30 p.m.
6 I think that was the hour that was referenced.

7 MEMBER WALKER: A.m.?

8 CHAIRPERSON MILLER: A.m., a.m.
9 Let's keep moving. Do we need to put an hour
10 of operation for the music school? Oh, to
11 9:00. Oh, the operation of the building it
12 could just be from 9:00 to 9:00?

13 COMMISSIONER JEFFRIES: Meaning
14 the building closes at 9:00? The building
15 closes at 9:00.

16 CHAIRPERSON MILLER: Yeah, use of
17 the center would be from 9:00 to 9:00, except
18 that there would be allowed early drop-offs
19 for preschool. Okay. From 7:30 a.m. on or no
20 earlier than 7:30. Okay.

21 Did you find it? Okay. Okay.

22 Ms. Oates Walker was just noting that in the

1 ANC's submission of June 17, 2008, they
2 reference hours of operation not commencing
3 before 7:00 a.m. Okay.

4 COMMISSIONER JEFFRIES: 7:30?

5 VICE CHAIRMAN LOUD: That's
6 correct, Commissioner Jeffries. So that would
7 be the ANC's position on that, I think, would
8 be consistent with the applicant's in that if
9 they start at 7:30 a.m., which is what the
10 WABC proposes, that would be after 7:00
11 proposed by the ANC. So they would harmonious
12 on that point.

13 I'm going to go back for a quick
14 second to the hours.

15 CHAIRPERSON MILLER: Um-hum.

16 VICE CHAIRMAN LOUD: There appear
17 to be some agreement in the record that on
18 Saturdays the hours would be 9:00 a.m. to 5:00
19 p.m. with both the church and the ANC agreeing
20 to those Saturday hours. So when we covered
21 it a few moments ago, I think we had 9:00 a.m.
22 to 9:00 p.m. for the -- and I would -- don't

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1 think we distinguished Saturday at all. I'm
2 not certain.

3 CHAIRPERSON MILLER: Okay.

4 VICE CHAIRMAN LOUD: We might want
5 to go back and just make that correction to
6 the record.

7 COMMISSIONER JEFFRIES: Good.
8 5:00 on a Saturday, isn't that pretty early?
9 I mean, is that what they requested?

10 VICE CHAIRMAN LOUD: I think they
11 had proposed --

12 COMMISSIONER JEFFRIES: They
13 requested 5:00?

14 VICE CHAIRMAN LOUD: Well, I don't
15 know about the neighbors, the party status
16 neighbors, but I think the -- in their
17 exhibit, it looks like Exhibit 53, I'll check
18 it right now, they had consented to a 9:00
19 a.m. to 5:00 p.m. Saturday time period.

20 COMMISSIONER JEFFRIES: Okay.

21 VICE CHAIRMAN LOUD: I'll double
22 check that though.

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1 CHAIRPERSON MILLER: I see it. I
2 see it. The thing with Saturday was though
3 that these facilities are used every day,
4 seven days a week, and I do remember the
5 testimony about, you know, when they moved in
6 there, they thought that, you know, Sundays
7 would be busy, but they didn't think that
8 every day would be busy. So I think it's
9 reasonable if it stops at 5:00 on Saturday.

10 Right. And the ANC hours were
11 recommending 9:00 to 9:00 on weekdays and 9:00
12 to 5:00 on Saturdays. Okay, neighbors. Okay.
13 Okay. I think that we can pin these hours
14 down. It was the applicant that said that no
15 drop-off would occur prior to 7:30 a.m., so I
16 think we ought to keep that time and do 9:00
17 to 9:00 Monday through Friday and 9:00 to 5:00
18 on Saturday. Okay.

19 Okay. We are not going to get
20 into maximum number of people using the
21 buildings. Okay. I think because we took the
22 CommuniKids out of the equation, we don't

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1 really need to get into micromanaging how far
2 apart lessons need to be and things like that
3 which are addressed in the neighbors'
4 conditions. Okay.

5 Now, I don't think we have to go
6 through every single condition, because the
7 law requires that, you know, we give great
8 weight to the ANC and we maybe need to address
9 all of their conditions. So I am looking over
10 the neighbors' conditions and I'm finding that
11 certainly a lot of them are not as necessary
12 in light of the lesser intensity of use here.

13 There is a condition that asks for
14 no recitals or outdoor performances. I don't
15 think I want to go there. We're talking about
16 the intensity of the use of the building and,
17 yeah, I don't think there was evidence to give
18 rise to an adverse impact there.

19 Mr. Dettman, did you put your
20 fingers on the Traffic Management Plan? Okay.
21 There is -- because the neighbors have a
22 paragraph that goes to institutionalizing a

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1 Parking and Traffic Management Plan, what
2 exhibit was that? And does it contain in
3 their guidelines for the families adult
4 supervision of drop-off and pick-up, anything
5 like that?

6 MEMBER DETTMAN: It's an
7 attachment to Exhibit No. 53, Madam Chair, and
8 let me just give another quick look, because
9 I was specifically looking for any mention to
10 one-way traffic from Alton. I don't believe
11 I saw anything specific to the families. Oh,
12 here is the recommendation.

13 CHAIRPERSON MILLER: Is that
14 Exhibit 53?

15 MEMBER DETTMAN: Yeah. It's the
16 recommendations and the TMP.

17 CHAIRPERSON MILLER: Oh, so that's
18 good. Okay. I think this is probably worth
19 reading some of it, so that we can skip over
20 proposed conditions, because they are in the
21 Traffic Management Plan. They are agreeing to
22 take the following measures:

1 Designate a Wisconsin Avenue
2 Baptist Church staff member as the TMP
3 coordinator responsible for coordinating all
4 of the TMP measures associated with the
5 church; designate an area on the south side of
6 the church building as a staffed area for
7 CommuniKids and co-op program drop-offs during
8 the morning and afternoon periods to reduce
9 the need to provide parking for those parents;
10 provide staff with literature and information
11 regarding bus routes in the area as well as
12 the Metrorail schedules for the AU/Tenleytown
13 Metro Station; provide areas for bicycle racks
14 to promote bicycle use to the church; provide
15 Metro Check benefits for employees to purchase
16 Metro cards with a pre-tax benefit; institute
17 Donor Day, where teachers donate one day a
18 month to select certain days not to drive to
19 the church; provide information to church
20 program uses that identify other families that
21 live in the same area to promote car-pooling
22 opportunities; and they are going to compile

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1 mode share information to share with the uses
2 on a quarterly basis and to monitor the
3 effectiveness of the TMP measures.

4 Okay. I'm just looking at the
5 neighbors' conditions to see if there is
6 anything more that needs to be added. I think
7 the whole issue with buses, we don't need to
8 get into.

9 Okay. If you look at No. 14 on
10 page 36, I'm just wondering whether we need to
11 add a condition at all about uniformed adults
12 supervising arrival and dismissal periods. We
13 often have that for child development centers.
14 Oh, not necessarily uniformed, right, right.
15 That there should be an adult supervising
16 arrival and dismissal to make sure that the
17 kids are being taken to the parking lot.

18 MEMBER WALKER: I really think
19 that depends on whether the policy requires
20 parents to bring their children inside. And
21 I don't know, it seems to me to be --

22 COMMISSIONER JEFFRIES:

1 Overreaching.

2 MEMBER WALKER: -- micromanaging
3 just a little bit.

4 COMMISSIONER JEFFRIES: Yeah.

5 MEMBER WALKER: I think the
6 organization has to make that decision.

7 COMMISSIONER JEFFRIES: The church
8 has -- absolutely. They have every incentive
9 to make certain that this is all operating
10 perfectly fine. I just don't think we need to
11 go there.

12 CHAIRPERSON MILLER: You know
13 what, I think so as well. I agree with you.
14 I agree with you. And actually, the co-op
15 program is very parent-oriented, I mean,
16 involved, you know, so that's not something we
17 need to do. Okay.

18 Okay. 20 deals with trash. I
19 think that the trash receptacles have been
20 addressed, if I'm not mistaken. "The
21 applicant will move all trash receptacles at
22 least 50 feet from neighboring homes and

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1 receptacles will be of standard commercial
2 capacity."

3 Do you recall this being
4 addressed?

5 COMMISSIONER JEFFRIES: I don't
6 recall.

7 CHAIRPERSON MILLER: Maybe not.
8 Let's just give that pause for a minute. I
9 don't recall trash being a subject of the
10 evidence, at this point. It's a basic that
11 trash -- you know, we're offering that trash
12 be kept, you know, away from neighboring
13 properties. I don't know.

14 MEMBER WALKER: I don't think the
15 trash issue, to the extent there is one, is
16 closely related enough to the application to
17 merit it being added as a condition here.

18 CHAIRPERSON MILLER: And does it
19 show up at all on the parking lot plan?

20 MEMBER WALKER: Yes.

21 CHAIRPERSON MILLER: Yes. Okay.
22 All right. I think it will just be in

1 accordance with our regulations. Do we have
2 regulations on it? Okay. Basic regulations?

3 MEMBER WALKER: I think we do.

4 CHAIRPERSON MILLER: Okay.

5 MEMBER WALKER: In certain
6 situations.

7 CHAIRPERSON MILLER: Okay. It
8 does show up on the parking lot plan and it
9 should show up on the revised one that will be
10 submitted. As far as I can tell, it doesn't
11 appear to be an issue. I don't remember
12 hearing about it. Maybe it was already
13 resolved since they wrote that condition. But
14 perhaps the applicant can indicate why it is
15 sufficient where it is and not creating a
16 problem when it files the modified plan.

17 All right. I think, we're all
18 exhausted. I think the final thing is just to
19 look at the ANC and OP. OP only had a few
20 conditions and I don't think they are really
21 that significant, at this point. I think they
22 went to the numbers like for number of

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1 students like at 80, which was proposed
2 earlier.

3 COMMISSIONER JEFFRIES: I think we
4 have them pretty much covered, Office of
5 Planning.

6 CHAIRPERSON MILLER: Right. They
7 addressed the parking lot.

8 COMMISSIONER JEFFRIES: Yeah. And
9 then private school --

10 CHAIRPERSON MILLER: Right, okay.

11 COMMISSIONER JEFFRIES: -- for 30
12 students.

13 CHAIRPERSON MILLER: Music school.

14 COMMISSIONER JEFFRIES: Yeah.

15 CHAIRPERSON MILLER: That's it.

16 So we have addressed that.

17 COMMISSIONER JEFFRIES: Yeah.

18 CHAIRPERSON MILLER: So that
19 leaves us last, but not least, I guess, the
20 ANC conditions. And that is I'm looking at
21 their resolution, to which we give great
22 weight, Exhibit No. 55, which was done earlier

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1 in the process.

2 The first one deals with the
3 National Park Service getting notice, which
4 that was resolved earlier in the hearing, and
5 they did get notice. Build according to
6 plans, we did that.

7 No. 3 asks to "Determine the use
8 of the building by any groups engaged in
9 commercial activity organized for profit." I
10 don't think we need to do that. It's moot,
11 yeah, and it wasn't germane to our decision.

12 No. 4, "Ensure that Washington
13 Conservatory Music is in compliance with all
14 laws and regulations of the District of
15 Columbia and has a current Certificate of
16 Understanding." I don't think that is
17 something we need to do to determine the
18 special exception.

19 5 "Ascertain that the child
20 development center can meet the physical
21 requirements for a child development facility
22 as set forth in 29 DCMR section 327 through

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1 329 and cap the number of all persons in the
2 building accordingly, during the times that
3 the child development center is in operation."

4 I don't think we need to -- I
5 don't think it's in our jurisdiction to
6 interpret the DCMR section, 29 DCMR sections
7 and we have determined that a cap is not
8 necessary, at this point, given the lower
9 intensity of use.

10 6 "Limit the hours of operation."
11 we did that. Set from 9:00 to 9:00 on
12 weekdays and 9:00 to 5:00 on Saturdays, that's
13 what we did, except for the earlier drop-off
14 allowance.

15 7 they said "No increase in the
16 numbers of participants and staff in the
17 programs beyond current levels until the
18 addition and the parking lot are built."

19 I don't think so. We are
20 considering the application as presented to
21 us. No, that's a good question, here it is.
22 No. 7, "Allow no increase in the number of

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1 participants and staff in the programs beyond
2 current levels until the addition and the
3 parking lot are built."

4 Yeah, I don't think I want to go
5 there, because we are in a total -- it's in a
6 totally different posture, because, you know,
7 the current levels include the CommuniKids,
8 which we have found don't even qualify. So if
9 you took the CommuniKids out, even -- I don't
10 think there is a problem with increasing to
11 the level where it's even allowed under the
12 special exception.

13 COMMISSIONER JEFFRIES: So we have
14 effectively addressed it, right.

15 CHAIRPERSON MILLER: So I wouldn't
16 want to do this.

17 No. 8 goes to a cap, which we have
18 decided which is not necessary.

19 The same with 9.

20 10 goes to requiring the waiting
21 room inside the building for parents and
22 caregivers, which we have already included.

1 11 "Require all classrooms and
2 studios used by WCM be soundproofed." Okay.
3 Applicants have already basically agreed to do
4 that. They are building this to do that.

5 12 ask for us to "Approve the 36
6 space parking lot." Which reminds me, before
7 we end this, we were going to come up with,
8 were we not, like a number or something for
9 the revision?

10 COMMISSIONER JEFFRIES: Do we have
11 to?

12 CHAIRPERSON MILLER: Well, let's
13 just revisit. That will be the last thing
14 that we do. Let me just finish going through
15 their conditions.

16 "Require that the new parking lot
17 be landscaped per 11 DCMR section 2303.1."

18 (F) "The parking lot shall be kept
19 free of refuse and debris and shall be
20 landscaped. Landscape shall be maintained in
21 a healthy growing condition and in a neat and
22 orderly appearance. Landscaping with trees

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1 and shrubs shall cover a minimum of 5 percent
2 of the total area of the parking lot or in
3 areas determined by the Board of Zoning
4 Adjustment for parking lot otherwise requiring
5 Board approval."

6 Well, yeah, I mean, I don't think
7 we have to put this in a condition. Does it
8 not go without saying that the parking lot has
9 to be in accordance with our regulation?
10 Unless, you know -- huh? I don't think so.
11 I mean, unless we have had -- I don't remember
12 evidence that this parking lot was, you know,
13 full of refuse and debris and it needed to be
14 put in an order that the church needs to do
15 this. So I would just assume not.

16 Screening, this is the same
17 screening issue. They cite 2303.2 that "It
18 shall be screened from all contiguous
19 residential property located in the R-1
20 District by a solid brick or stone wall at
21 least 12 inches thick and 42 inches high or by
22 evergreens that are thickly planted and

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1 maintained at least 42 inches in height when
2 planted.

3 The parking lot shall be screened
4 from all contiguous residential property
5 located in the R-1, R-2, R-3 District by solid
6 masonry wall at least 12 inches thick and 42
7 inches high. And parts of the lot not devoted
8 to marking areas, driveways, access lands,
9 attendant shelters or required screening shall
10 be kept free of refuse and debris and shall be
11 paved or landscaped.

12 Landscaping shall be maintained in
13 a healthy growing condition and in a neat and
14 orderly appearance."

15 Well, okay, I think we need to
16 just double check on that regulation, if it
17 applies. And that goes to the whole screening
18 issue is that stockade fence sufficient or do
19 they really have to do evergreens or a wall?

20 VICE CHAIRMAN LOUD: Madam Chair,
21 is the question whether the screening has to
22 be stone or brick?

1 CHAIRPERSON MILLER: I thought it
2 also said or evergreens.

3 VICE CHAIRMAN LOUD: Well, I was
4 just going to say it can be evergreens. I'm
5 not sure of what -- where we paused?

6 CHAIRPERSON MILLER: Well, I
7 wanted to check and see whether we thought
8 those regulations were applicable. And if I
9 recall, the applicant's argument that they
10 weren't go to that they might be grandfathered
11 as existing church facilities. However, they
12 are making changes in this parking lot. And
13 I think, in any event, it's up to us under the
14 special exception to determine whether that
15 would be necessary to mitigate an adverse
16 impact on the neighboring property.

17 What I'm looking at though, you
18 know, as we consider this issue is Exhibit 70
19 submitted by the applicant, page 2,
20 landscaping and screening of reconfigured
21 parking lot. I think we kind of touched upon
22 some of the issues that they mentioned before

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1 that there is a stockade fence there now and
2 that if they did landscaping, it would be
3 hidden from the view of the neighbors by that
4 fence.

5 And the church has said that they
6 would install landscaping in lieu of fencing
7 if the fence were removed. Okay. I think the
8 issue here is that there is a fence there
9 already that screens the view. And I think
10 the applicants' have a good point that
11 additional screening would not be seen by the
12 neighbors, because it would be on the other
13 side of the fence.

14 So I'm not sure, I don't believe
15 the regs require them to put it there, at this
16 point, but we could if we found we needed to
17 mitigate an adverse impact. I don't totally
18 see that though.

19 COMMISSIONER JEFFRIES: And it was
20 less -- it was just more around screening and
21 it wasn't an issue around noise.

22 CHAIRPERSON MILLER: Right.

1 COMMISSIONER JEFFRIES: Yeah.

2 CHAIRPERSON MILLER: Okay. But I
3 think before we finish this, once we get
4 through this, we are going to take one more
5 look at that parking lot landscaping plan and
6 determine what is necessary. Okay.

7 They have another proposed
8 condition about "WABC discontinue renting
9 spaces in the parking lot to outside parties."
10 If I recall, that WABC already said they were
11 not doing that. They discontinued that. So
12 I don't think we need to include that.

13 15 "Require that WABC direct all
14 participants in the program who drive to the
15 facility to park in the parking lot and not on
16 surrounding streets." I think that somebody
17 should -- I think it's often -- I mean, in the
18 literature that goes out to the participants
19 and program, there is usually information
20 provided as to where they should park.

21 So that's not in the Traffic
22 Management Plan. I don't see a problem with

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1 that. Do you all? Okay. So there would be
2 an additional condition. I don't know if it's
3 up to WABC. I guess they are the applicant,
4 but at least the information be provided to
5 all participants and programs, you know, where
6 the parking is. Okay.

7 They want the Transportation
8 Management Plan proposed implemented, that
9 will be a condition. And certifying its
10 compliance with WAB -- with ANC-3F on a yearly
11 basis. Okay. That's already a condition. So
12 that finishes the conditions.

13 The last step is what we are going
14 to do with the parking lot. Okay. It has
15 been said by some Board Members that the plan
16 presented by the applicant that has 36 spaces
17 in it is over-parking, particularly with
18 respect to the lower intensity of use without
19 CommuniKids.

20 And the alternative that was
21 submitted in this hearing has -- is of a
22 lesser quality, we think, because it does not

1 have as good circulation drop-off area safety.
2 So what we just need to articulate at this
3 point is that we want to leave the record open
4 for the applicant to submit a revised parking
5 plan with how many spaces.

6 Do we want to set the number of
7 spaces or do we want to leave it more general
8 with fewer spaces than 36? With 28 spaces?
9 28 spaces, because that's a good number that
10 OP -- that DDOT thought was a good number?

11 COMMISSIONER JEFFRIES:
12 Particularly given with the CommuniKids. I
13 mean, they're not going to be part of this.
14 I think 28 is fine. I mean, I'm hesitating
15 because, you know, obviously, they are going
16 to start looking for circulation and it might
17 be a little less than 28. So, you know, maybe
18 we say no more than 28 spaces or no more than
19 30. I don't know if we want to give them --

20 CHAIRPERSON MILLER: Um-hum. I
21 think what we want to get is fewer parking
22 spaces, more landscaping maybe in line with

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1 what Mr. Dettman was suggesting. I'm not sure
2 how this, the parking plan complies with 2302.
3 Whether it has sufficient landscaping and it
4 may, because of all these trees, but I'm not
5 sure. I don't see why it shouldn't comply
6 with that regulation, do you?

7 MEMBER DETTMAN: With Chapter 23?

8 CHAIRPERSON MILLER: Yeah.

9 MEMBER DETTMAN: Well, 23 sort of
10 governs parking lots. And this really isn't
11 a parking lot. It's not an accessory parking
12 area, because it's on-site. It's just sort of
13 required parking. And so I would think that
14 under Chapter 21, I think it's 2117, one
15 moment, 21 begins out by saying -- 2117.1 "The
16 parking spaces required by this chapter." If
17 you look at the church use and the special
18 exceptions that we are looking at and sort of
19 look at what would be required for all those
20 uses, all 36 spaces or all 28 spaces would be
21 required.

22 So they would fall under Chapter

1 2117 -- section 2117, I'm sorry. And then
2 2117.11 and 12 deal with the screening from
3 residential neighborhoods and 5 or 10 percent
4 landscaping, 5 percent landscaping. So I
5 would think that the applicant is required to
6 comply with 2117.

7 CHAIRPERSON MILLER: Okay. I
8 think what we did say earlier though was --
9 no, wait. All right.

10 COMMISSIONER JEFFRIES: Is this
11 the last thing?

12 CHAIRPERSON MILLER: Yeah, yeah.
13 This one is necessary, but do we want to make
14 -- put more agreement in here? Okay. Do you
15 have the other, the 28 space one? Okay.
16 Okay. That's terrible, why do they do that?
17 Okay. All right. I think where the Board is
18 at is that we would request that the applicant
19 revise the parking plan to reduce the number
20 of spaces to no more than 30 in order to
21 address concerns of Board Members and DDOT and
22 the Office of Planning that the parking lot

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1 not be over-parked.

2 And in light of the reduction in
3 the intensity of use, due to CommuniKids no
4 longer being a part of this use, we would
5 request that the parking plan incorporate the
6 positive aspects of the 36 space plan, that
7 included the greater circulation between Yuma
8 and Alton Place and the safer drop-off lane.

9 And we would also request that
10 more landscaping be incorporated into the
11 parking lot plan as a result of the removal of
12 at least six spaces. One configuration could
13 be as Mr. Dettman represented, you know,
14 putting a landscaping in where there are
15 certain parking spaces that no longer are
16 necessary, but we would leave it up to the
17 applicant to, you know, do its own design in
18 accordance with that guidance.

19 So I think we have covered
20 everything. It's only 1:37. Okay. Are there
21 further comments on this? Does anyone have a
22 motion? Otherwise I will pull my papers.

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1 VICE CHAIRMAN LOUD: Madam Chair,
2 let me venture a motion on this, given where
3 we have come out today. And that motion would
4 be for approval of special exception relief in
5 BZA Case No. 17726 of Wisconsin Avenue Baptist
6 Church with respect to the child development
7 center that includes The Caterpillar Co-Op,
8 but not the CommuniKids facility, as well as
9 section 206 special exception relief for the
10 Conservatory Music School.

11 CHAIRPERSON MILLER: I agree with
12 the sentiment. I know this is difficult. Can
13 I try to phrase it?

14 VICE CHAIRMAN LOUD: Please, do.

15 CHAIRPERSON MILLER: Okay. Let's
16 see if we can put it in one vote. But approve
17 Application No. 17726 of Wisconsin Avenue
18 Baptist Church, pursuant to 11 DCMR section
19 3104, for a special exception to operate a
20 child development center for Caterpillar Co-Op
21 under section 205, to deny special exception
22 relief for CommuniKids under section 205 as a

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1 child development center, to grant special
2 exception relief under 206, for the Washington
3 Conservatory of Music to operate as a private
4 school.

5 Okay. I want to pause here for
6 one second. The last one is whether we need
7 to grant special exception relief for the
8 addition and the realignment of the parking
9 lot in connection with the -- I guess we could
10 do that, in connection with the approval of
11 the special exception uses.

12 VICE CHAIRMAN LOUD: Well, for
13 clarification, I thought we had said earlier
14 that the addition meets all of the bulk and
15 height, etcetera, requirements and that it
16 would not need to be the subject of the
17 special exception relief.

18 CHAIRPERSON MILLER: I know we did
19 say that. Okay. The only thing is that
20 sometimes when we have a private school, often
21 they come in for an addition, even though the
22 addition doesn't require any variances or

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1 anything of that sort. They do come in for
2 special exception to expand their facilities.
3 So for that reason, I would include it.

4 And I would say that as I said at
5 the hearing to the applicant and to the
6 parties that, you know, if the only thing they
7 wanted to do was do an addition, then they
8 wouldn't have to come before the Board. But
9 because it is in connection with these uses,
10 they should get special exception approval for
11 it.

12 You know, if they just wanted to
13 do the parking lot for the church uses, they
14 wouldn't need it. But because it is tied in
15 with these other uses, I think they do. Any
16 other comments?

17 COMMISSIONER JEFFRIES: Is that a
18 motion or did you --

19 CHAIRPERSON MILLER: It's a
20 motion. And let me just say also as
21 conditioned in the Board's deliberation. Yes,
22 do I have a second?

1 VICE CHAIRMAN LOUD: Second, Madam
2 Chair.

3 CHAIRPERSON MILLER: Further
4 deliberation? Okay.

5 All those in favor say aye.

6 ALL: Aye.

7 CHAIRPERSON MILLER: Opposed?
8 Abstaining? And would you call the vote,
9 please?

10 MR. MOY: Yes, Madam Chair. The
11 staff would record the vote as 5-0-0. This is
12 on the motion of the Chair, Ms. Miller, to
13 approve the special exception relief as stated
14 and as conditioned. I'll leave it at that.
15 Seconded by Mr. Loud. Also in support of the
16 motion Mr. Jeffries, Mr. Loud -- oh, Mr. Loud
17 seconded the motion. Yeah, so I'll say Mr.
18 Dettman, Ms. Walker and Mr. Jeffries.

19 CHAIRPERSON MILLER: Thank you.
20 Okay.

21 MS. BAILEY: Madam Chair?

22 CHAIRPERSON MILLER: Yes?

1 MS. BAILEY: Excuse me. When did
2 you want the site plan to come in prior to --

3 MR. MOY: That was my next point,
4 because the order won't be written until
5 that's received by the staff or issued.

6 CHAIRPERSON MILLER: Okay, issued,
7 yeah. I don't know how long the applicant
8 would like for that. That is something we
9 could ask them, if they want. It's kind of up
10 to the applicant. There won't be an order
11 issued until we receive --

12 COMMISSIONER JEFFRIES: Do you
13 need a month? You need --

14 CHAIRPERSON MILLER: -- the
15 revised plan.

16 COMMISSIONER JEFFRIES: -- a
17 month?

18 CHAIRPERSON MILLER: Are you sure?

19 MR. MOY: Well, the order is going
20 to take more than a month to write, at any
21 rate, Madam Chair.

22 CHAIRPERSON MILLER: I think what

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1 I see though is that this landscaping plan
2 would come in and the Board would take a look
3 at it and make sure that that's what it has in
4 mind and approve it. And then the order would
5 be written.

6 So you know, it's up to the
7 applicant how quickly the applicant wants to
8 proceed. Sometimes we like to just -- we
9 should at least set a target, so that it, you
10 know, comes in. One month is sufficient?
11 Okay. So --

12 MS. GLAZER: Madam Chair?

13 CHAIRPERSON MILLER: Yes.

14 MS. GLAZER: I believe that
15 representatives from the ANC and the
16 opposition want to make a statement.

17 CHAIRPERSON MILLER: Okay. Um, I
18 guess we're not in deliberation, at this
19 point, so that's okay. Is it that the ANC and
20 neighbors want to comment on the plan? Okay.
21 So let's do that. Let's just set that
22 schedule. Okay. That makes sense.

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1 It's -- you know, if the ANC wants
2 to comment on it, then when is the ANC meeting
3 or does that matter? October? Okay. Okay.
4 The ANC is just saying that their meeting is
5 October 20th and they just need a little time
6 after that to submit something in writing.

7 So it's great weight that would be
8 for your resolution, but anyway -- I know,
9 yeah, you need some time. Okay. So when
10 would the applicant like to submit the updated
11 parking plan, revised parking plan? In a
12 month? In a month. So that would be what?
13 Today is the 23rd, October 23rd? And that
14 would be after -- and your meeting would be
15 October 20th. And the ANC would submit a
16 response. What?

17 We would just say that we would
18 expect, you know, very limited comments with
19 respect to this plan, because the Board has
20 already indicated what it wants. And this
21 really would be applicants, you know, trying
22 to craft something in response to what the

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1 Board wants.

2 However, you know, for due
3 process, you never know. So we would love to
4 hear if you are happy with it. If you think
5 it's a great plan, yeah, exactly. So 10 days
6 enough for you? How much time do you -- after
7 your meeting? You're not on the microphone.

8 They want to submit it October
9 23rd? When is your meeting, October?

10 MS. PERRY: Our meeting is October
11 20th. If we get the plan before that, just
12 give us about less than five days to get it to
13 you after our resolution that night.

14 CHAIRPERSON MILLER: So for him,
15 for the applicant to get it to you before your
16 -- five days before your meeting with be
17 October 15th, correct?

18 MS. PERRY: If we can, so we can
19 circulate it to the other members and write
20 something.

21 CHAIRPERSON MILLER: Okay.

22 MS. PERRY: If that's doable,

1 because if not, our next meeting is not until
2 November. Come up here.

3 CHAIRPERSON MILLER: We may be
4 here late tonight. Are you okay? We're
5 almost done.

6 MS. BALDWIN: One of the concerns
7 the applicant has is that the architect is not
8 here to be consulted on --

9 CHAIRPERSON MILLER: Right.

10 MS. BALDWIN: -- his time frame.
11 So I --

12 CHAIRPERSON MILLER: Okay. Let me
13 say this. In all reality, it takes several
14 months for the Office of Attorney General to
15 generate a decision. And the Board has
16 basically decided this case, regardless of how
17 the parking lot is finally determined.

18 So if you need the time, you
19 should take the time you need to develop the
20 best landscaping plan and that's it, because
21 that's going to be it. We're going to look at
22 that and hopefully that is going to address

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1 our concerns. So we don't have to put
2 pressure on you to have it in by October 15th
3 say.

4 Okay. We don't know your
5 architect's schedule, etcetera. So why don't
6 we just -- I mean, you can have it prepared
7 when you are ready and then submit it to the
8 ANC for their next ANC meeting and then they
9 will respond, yeah, okay, 10 days after you --
10 five days after the meeting?

11 MS. PERRY: I think we can do it
12 within five days after the meeting.

13 CHAIRPERSON MILLER: Okay. So --

14 MS. PERRY: But I'm going to defer
15 to Commissioner Wiss and she is going to --

16 MS. WISS: Basically, yes. I
17 think this is a case where if we work
18 collaboratively, we will all come up with
19 something that satisfies everyone.

20 CHAIRPERSON MILLER: Right. That
21 would be great.

22 MS. WISS: And I think that that's

1 the important part to make sure that we are
2 actually working together and that, you know,
3 where there is something that we perceive, you
4 know, that we can -- that needs adjustment or
5 the church perceives that needs adjustment, we
6 can work on it.

7 CHAIRPERSON MILLER: Yes. Why
8 don't you identify yourself for the record.
9 I don't know if everybody else did.

10 MS. CHESER: Judy Cheser. I'm
11 with the neighbors, families neighboring
12 Wisconsin Avenue Baptist Church. We, too,
13 would like to be part of the process for the
14 parking lot.

15 CHAIRPERSON MILLER: Sure.

16 MS. CHESER: Obviously,
17 particularly, those neighbors that back right
18 against the parking lot.

19 CHAIRPERSON MILLER: Right, okay.
20 So I'm wondering if we should, you know, give
21 you more time and then if things happen more
22 quickly, the Board can put it on its agenda

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1 earlier if need be. I mean, what do you --
2 actually, it doesn't really make that much
3 difference, as I said, because the order is
4 going to take a while to be written.

5 So do you want to aim for a
6 November date instead, so that we have a date
7 on the calendar? You weren't sure. They need
8 it before their ANC meeting and the next one
9 is October 15th, which is putting pressure on
10 you. The 20th. Oh, and you wanted it five
11 days earlier.

12 MS. PERRY: We wanted to get it,
13 yes, earlier.

14 MS. BALDWIN: Yes, it helps.

15 CHAIRPERSON MILLER: Right. I
16 understand that. So the next meeting would be
17 November what, 20th?

18 MS. PERRY: The third Monday,
19 whatever that is. I don't have my calendar.

20 CHAIRPERSON MILLER: The third
21 Monday.

22 MR. MOY: The third Monday?

1 CHAIRPERSON MILLER: That's right
2 before our third Tuesday.

3 MR. MOY: November 17th, Monday.

4 CHAIRPERSON MILLER: Do you think
5 it's realistic to set a date of November 12th
6 that you would submit it to the ANC?

7 MS. BALDWIN: Submit the plan.

8 CHAIRPERSON MILLER: Yeah, and the
9 neighbors.

10 MS. BALDWIN: Of course, yes.

11 CHAIRPERSON MILLER: Okay.

12 COMMISSIONER JEFFRIES: You know,
13 I just want to say, I mean, I think, Madam
14 Chair has said it, I mean, there is not a lot
15 that is being done here. Okay. To the
16 community as well as to the applicant. I
17 mean, we have given broad brush in terms of
18 what we want to see and, I mean, you know,
19 obviously mean the ANC needs to see what you
20 are doing, but there is not a lot that you
21 really necessarily need to be doing.

22 So I just wanted to -- you know,

1 in terms of your own time table, I mean, it's
2 your call, but I just want to make certain
3 that this -- there's like a lot of movement
4 for a very, very, very simple thing. I mean,
5 we are going to get this thing and look at it
6 and go this looks great and move on probably.

7 CHAIRPERSON MILLER: Well, they
8 are all going to have to live with it for a
9 long time, so --

10 COMMISSIONER JEFFRIES: I mean --

11 CHAIRPERSON MILLER: And I think
12 that we're in agreement on the previous plan
13 as well, so I think that they might be worried
14 that oh, there won't be on the new plan. I
15 mean, I don't see any harm on the time,
16 because of the time it takes for the decision
17 to be written. And this is kind of a
18 complicated one anyway.

19 But I understand your point.
20 We're not expecting a whole new litigation
21 here, you know, at all.

22 COMMISSIONER JEFFRIES: I just

1 don't want you to get geared up for anything.
2 It's not that kind of show. We have done the
3 show already. Okay.

4 CHAIRPERSON MILLER: Okay. So
5 November -- I have November 12th date as the
6 date that the applicant would submit the
7 revised parking plan, parking/landscaping
8 plan. Did you say that your meeting is
9 November 17th?

10 MS. PERRY: Yes.

11 CHAIRPERSON MILLER: November 17^h.

12 MS. PERRY: The third Monday,
13 November 17th.

14 CHAIRPERSON MILLER: Okay. The
15 ANC meeting. So by what date -- I think -- I
16 don't think we need to see -- I don't think we
17 should necessarily see the applicant's plan
18 before he shows -- they show it to you,
19 because you may work out things together.

20 MS. PERRY: I think that's a good
21 way.

22 CHAIRPERSON MILLER: Okay.

1 MS. PERRY: To have them submit it
2 to us by November 12th. Then we review it.
3 And if there are any things that we want to
4 work on after that, then come up with a final
5 -- I don't know, because Thanksgiving
6 intervenes in there, it may take a little bit
7 of time.

8 CHAIRPERSON MILLER: Okay.

9 MS. PERRY: I mean, we could
10 certainly get resolution in, but if it needs
11 to be redrawn, I don't know.

12 CHAIRPERSON MILLER: Okay. I
13 don't have my calendar, but I think we're
14 almost finished here. It would be somewhere
15 like perhaps after Thanksgiving.

16 MR. MOY: What day is
17 Thanksgiving?

18 MS. PERRY: The fourth Thursday.

19 MR. MOY: The fourth Thursday,
20 27th. That would be November 27th.

21 COMMISSIONER JEFFRIES: You don't
22 have your mike on.

1 MR. MOY: I'm sorry. If
2 Thanksgiving is Thursday, November 27th, which
3 is the fourth Thursday in November, if the ANC
4 can file this in a weeks time or do you need
5 more than that?

6 MS. PERRY: No, that's fine.

7 MR. MOY: We will say -- let's say
8 Friday, I'll give you an extra day.

9 CHAIRPERSON MILLER: I think that
10 we -- can we not just then give one date for
11 filings, either separate or together? That's
12 it, because you will have shared the -- they
13 will have shared the plan with you.

14 MS. PERRY: You mean file on the
15 18th?

16 CHAIRPERSON MILLER: If you have
17 any comments.

18 MS. PERRY: Our meeting is the
19 night of the 17th.

20 CHAIRPERSON MILLER: Oh, no, no.

21 MS. PERRY: And we don't usually--

22 CHAIRPERSON MILLER: Oh, no, no.

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1 I don't mean the 18th. I mean, I thought that
2 Mr. Moy might be going in the direction of
3 like different filing dates and stuff and I
4 don't think it's necessary for this. You just
5 share it and then they will submit it and if
6 you have a comment that you want us to know
7 about, you'll share it with both of us and
8 that's it.

9 COMMISSIONER JEFFRIES: We will
10 make a decision.

11 CHAIRPERSON MILLER: We will make
12 a decision then.

13 COMMISSIONER JEFFRIES: Okay.

14 CHAIRPERSON MILLER: Yeah.

15 Hopefully this will be --

16 COMMISSIONER JEFFRIES: This show
17 is coming to an end.

18 CHAIRPERSON MILLER: So do you
19 want to file, my question is, filings before
20 Thanksgiving or after Thanksgiving and we'll
21 just set a date.

22 MS. PERRY: Before Thanksgiving.

1 CHAIRPERSON MILLER: The ANC
2 meeting is November 17th.

3 MS. WISS: Before, before.

4 MS. PERRY: Fine.

5 CHAIRPERSON MILLER: Before
6 Thanksgiving.

7 MS. WISS: It will give us a
8 little time to get things typed and signed.

9 CHAIRPERSON MILLER: Okay.

10 MS. WISS: Thanks.

11 CHAIRPERSON MILLER: Just give us
12 a date, I think.

13 MS. WISS: Well, the Tuesday
14 before Thanksgiving.

15 CHAIRPERSON MILLER: Okay.

16 MS. PERRY: 25.

17 MS. WISS: 25.

18 CHAIRPERSON MILLER: What's the
19 date, the 25th?

20 MS. PERRY: 25th.

21 MR. MOY: The 25th.

22 CHAIRPERSON MILLER: Okay. So on

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1 the 25th then we would get the plan and any
2 comments from the ANC and the neighbors.
3 Okay. That's it. Okay.

4 MS. PERRY: Just so you know
5 though, we do like what Mr. Dettman said.

6 CHAIRPERSON MILLER: I'm assuming
7 he is writing that down right now. We'll have
8 to check with you, now what was that?

9 COMMISSIONER JEFFRIES: But there
10 is cost associated with that, too, so let's
11 just all manage expectations here and let's
12 not --

13 MS. PERRY: No, I know. I
14 understand that.

15 CHAIRPERSON MILLER: Okay.

16 MS. PERRY: It's just our ANC has
17 always pushed for rain gardens and green
18 roofs.

19 CHAIRPERSON MILLER: Right. Okay.

20 COMMISSIONER JEFFRIES: Thank you,
21 Mr. Dettman.

22 CHAIRPERSON MILLER: Thank you.

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1 That concludes the Special Public Meeting.

2 (Whereupon, the Special Public
3 Meeting was concluded at 1:59 p.m.)

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