

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY,

FEBRUARY 17, 2009

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 11:30 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER Chairperson
MARC D. LOUD Vice Chairman
SHANE L. DETTMAN Board Member
(NCPC)
MARY OATES WALKER Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:
SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN
DAN EMERINE
STEPHEN RICE
STEPHEN VARGA

This transcript constitutes the
minutes from the Public Hearing held on
February 17, 2009.

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

2 11:28 a.m.

3 CHAIRPERSON MILLER: I'm now
4 opening the hearing. So this hearing will
5 please come to order. This is the February
6 17, 2009 Public Hearing of the Board of Zoning
7 Adjustment of the District of Columbia. My
8 name is Ruthanne Miller. I'm the Chair. To
9 my right is Mr. Marc Loud our Vice Chair. And
10 next to him is Mr. Anthony Hood, who is the
11 Chairman of the Zoning Commission. And next
12 to me on my left is Mary Oates Walker and
13 Shane Dettman, Board Members, Cliff Moy from
14 the Office of Zoning, Sherry Glazer from the
15 Office of Attorney General and Ms. Beverley
16 Bailey from the Office of Zoning.

17 Copies of today's hearing agenda
18 are available to you and are located to my
19 left in the wall bin near the door. Please,
20 be advised that this proceeding is being
21 recorded by a Court Reporter and is also
22 webcast live. Accordingly, we must ask you to

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1 refrain from any disruptive noises or actions
2 in the hearing room.

3 When presenting information to the
4 Board, please, turn on and speak into the
5 microphone, first, stating your name and home
6 address. When you are finished speaking,
7 please, turn your microphone off, so that your
8 microphone is no longer picking up sound or
9 background noise.

10 All persons planning to testify
11 either in favor or in opposition are to fill
12 out two witness cards. These cards are
13 located to my left on the table near the door
14 and on the witness tables. Upon coming
15 forward to speak to the Board, please, give
16 both cards to the reporter sitting to my
17 right.

18 The order of procedure for special
19 exceptions and variances is as follows: One,
20 statement and witnesses of the applicant.
21 Two, Government reports, including Office of
22 Planning, Department of Public Works, DDOT,

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1 etcetera. Three, report of the Advisory
2 Neighborhood Commission. Four, parties or
3 persons in support. Five, parties or persons
4 in opposition. Six, closing remarks by the
5 applicant.

6 Pursuant to Section 3117.4 and
7 3117.5, the following time constraints will be
8 maintained: The applicant, persons and
9 parties, except an ANC, in support, including
10 witnesses, 60 minutes collectively. Persons
11 and parties, except an ANC, in opposition,
12 including witnesses, 60 minutes collectively.
13 Individuals 3 minutes.

14 These time restraints do not
15 include cross examination and/or questions
16 from the Board. Cross examination of
17 witnesses is permitted by the applicant or
18 parties. The ANC within which the property is
19 located is automatically a party in a special
20 exception or variance case.

21 Nothing prohibits the Board from
22 placing reasonable restrictions on cross

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1 examination, including time limits and
2 limitations on the scope of cross examination.

3 The record will be closed at the
4 conclusion of each case, except for any
5 material specifically requested by the Board.

6 The Board and the staff will specify at the
7 end of the hearing exactly what is expected
8 and the date when the persons must submit the
9 evidence to the Office of Zoning. After the
10 record is closed, no other information will be
11 accepted by the Board.

12 The Sunshine Act requires that the
13 Public Hearing on each case be held in the
14 open before the public. The Board may,
15 consistent with it's Rules of Procedure and
16 the Sunshine Act, enter Executive Session
17 during or after the Public Hearing on a case
18 for purposes of reviewing the record or
19 deliberating on the case.

20 The decision of the Board in these
21 contested cases must be based exclusively on
22 the public record. To avoid any appearance to

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1 the contrary, the Board requests that persons
2 present not engage the Members of the Board in
3 conversation.

4 Please, turn off all beepers and
5 cell phones, at this time, so as not to
6 disrupt these proceedings.

7 The Board will now consider any
8 preliminary matters. Preliminary matters are
9 those which relate to whether a case will or
10 should be heard today, such as requests for
11 postponement, continuance or withdrawal or
12 whether proper and adequate notice of the
13 hearing has been given. If you are not
14 prepared to go forward with a case today or if
15 you believe that the Board should not proceed,
16 now is the time to raise such a matter.

17 Does the staff have any preliminary
18 matters?

19 MS. BAILEY: Madam Chair and
20 Members of the Board and to everyone, good
21 morning. Not at this time, Madam Chair.

22 CHAIRPERSON MILLER: Thank you.

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1 Okay. Let's proceed with the agenda then and
2 would all individuals wishing to testify
3 today, please, rise to take the oath? And Ms.
4 Bailey will administer it.

5 MS. BAILEY: Please, raise your
6 right hand.

7 (Whereupon, the witnesses were
8 sworn.)

9 MS. BAILEY: Thank you. Madam
10 Chair, are you ready for the first case?

11 CHAIRPERSON MILLER: Yes, Ms.
12 Bailey.

13 MS. BAILEY: That is the
14 Application of Kristen Degan and Frank
15 Schipani. The Application No. is 17881. It's
16 pursuant to 11 DCMR 3104.1 and 3103.2, for a
17 variance from the occupancy structure
18 provisions under subsection 2300.2, that's the
19 alley set-back requirement, subsection 2300.3,
20 the height requirement, and subsection 2500.4,
21 rear yard occupancy requirement, and a special
22 exception to allow the construction of a rear

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1 deck porch and accessory garage serving an
2 existing one-family row dwelling under section
3 223, not meeting the lot occupancy
4 requirements under section 403. The property
5 is Zoned R-4. It is located at premises 1367
6 Parkwood Place, N.W., Square 2827-S, Lot 135.

7 And I read all of that, Madam
8 Chair, however, going through the record there
9 is some discrepancy concerning the relief that
10 is required for this project. Perhaps the
11 applicant and the Office of Planning would
12 need to clarify that for the Board. And just
13 to note, in addition, that revised plans were
14 filed.

15 CHAIRPERSON MILLER: Okay. Thank
16 you very much. Would the parties in this case
17 come forward, please? Good morning. Do you
18 see how to turn your microphone on?

19 MR. BRIDGE: Yes, thank you.

20 CHAIRPERSON MILLER: Great. Okay.
21 So why don't you start by identifying
22 yourself for the record.

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1 MR. BRIDGE: My name is Adam
2 Bridge, 261 Roberts Street, Baltimore,
3 Maryland. I am here on behalf and with the
4 authority of the applicant, Kristen Degan and
5 Frank Schipani, owners of 1367 Parkwood Place.

6 CHAIRPERSON MILLER: And are you an
7 architect?

8 MR. BRIDGE: Yes.

9 CHAIRPERSON MILLER: Okay. Good.
10 Why don't we start with Ms. Bailey's
11 suggestion in clarifying the relief that is
12 being sought.

13 MR. BRIDGE: Okay. To clarify, in
14 discussions with the Office of Planning, two
15 things were adjusted. One, subsection 2300.3,
16 the height requirement, the structure that was
17 proposed that would necessitate that
18 requirement was removed from the scope.
19 Therefore, we're not pursuing a special
20 exception for that piece of the structure.

21 CHAIRPERSON MILLER: Okay. What do
22 you mean it was removed from the scope?

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1 MR. BRIDGE: It was a small garden
2 shed attached to the accessory structure whose
3 height would drive the need for that
4 exception. We're no longer constructing that
5 or proposing to construct that.

6 CHAIRPERSON MILLER: So there's no
7 garden shed at all?

8 MR. BRIDGE: No garden shed.

9 CHAIRPERSON MILLER: Okay. So
10 that's totally out. Okay.

11 MR. BRIDGE: Yes, and that's
12 reflected in the addendum drawings submitted
13 at the beginning. In addition, we are looking
14 for relief to section 223 to allow lot
15 occupancy in excess of 60 percent. We are
16 looking for approval of relief for 2300.2
17 allowing accessory building to be built less
18 than 12 feet from the center line of the
19 alley. And we are looking for relief on
20 2500.3 to allow a greater area than 30 percent
21 of the rear yard to be occupied by accessory
22 buildings.

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1 CHAIRPERSON MILLER: Okay. I
2 thought there was an issue with respect to
3 that, whether that relief is required. Are
4 you of the opinion it is or are you of the
5 opinion you want us to hear what Office of
6 Planning has to say first?

7 MR. BRIDGE: I would like to hear
8 what Office of Planning has to say.

9 CHAIRPERSON MILLER: All right.

10 MR. VARGA: Madam Chair, if I may?

11 CHAIRPERSON MILLER: Introduce
12 yourself for the record.

13 MR. VARGA: Yes, Stephen Varga,
14 Office of Planning. Yes, after having
15 discussed this with my supervisor and OP, we
16 took a closer look at this particular aspect
17 of the application. And just from looking at
18 it, it appears as though no more than 30
19 percent of the rear yard, required rear yard
20 shall be occupied by the accessory buildings.

21 At least that's OP's understanding of that
22 particular regulation.

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1 And it appears as though the
2 applicant would not need to seek that relief.

3 However, we thought that we would use
4 abounding caution and the applicant going
5 ahead and still applying for that, which we
6 believe they do satisfy.

7 CHAIRPERSON MILLER: Well, do you
8 have a percentage as to how much of the
9 required rear yard is going to be occupied by
10 accessory buildings?

11 MR. VARGA: It appears to be a very
12 small amount, if any, because their entire
13 required rear yard is fulfilled, it appears as
14 though, between the extent of the garage and
15 the rear of their property. So from that
16 basis, OP made its determination, but still
17 felt that the applicant should apply for that.

18 CHAIRPERSON MILLER: Out of an
19 abundance of caution?

20 MR. VARGA: I know --

21 CHAIRPERSON MILLER: Even though it
22 doesn't look like they are occupying hardly

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1 any percent of the area?

2 MR. VARGA: Exactly.

3 VICE CHAIR LOUD: Madam Chair, can
4 I ask a quick follow-up question just to make
5 sure I understand? So I think the rear yard
6 requirement here is 20 feet.

7 MR. VARGA: That's right.

8 VICE CHAIR LOUD: So the way I'm
9 understanding it is that as long as the
10 structure is not within that 20 foot rear yard
11 requirement, the 30 percent requirement does
12 not even kick in?

13 MR. VARGA: That's correct.

14 VICE CHAIR LOUD: Okay. Thank you.

15 CHAIRPERSON MILLER: And where is
16 it?

17 MR. BRIDGE: Madam Chair, the -- I
18 believe we made the mistake of not
19 understanding required. There is actually 34
20 feet between the back of the main structure
21 and the accessory building, so it does meet
22 the 20 feet required.

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1 CHAIRPERSON MILLER: Okay. Okay.

2 MR. BRIDGE: Sorry for the
3 confusion.

4 CHAIRPERSON MILLER: I would
5 suggest that it be taken out then of the
6 application. That's a confusing regulation.
7 A lot of people don't know how to measure the
8 required rear yard, where to measure from.
9 And the way the regs have been interpreted and
10 read it's from the end of the main house back.

11 And so you have more than 20 feet from the
12 end of the main house back, correct?

13 MR. BRIDGE: That's --

14 CHAIRPERSON MILLER: 30 something
15 feet. Okay. So we don't like to grant relief
16 that is clearly not necessary.

17 MR. BRIDGE: Okay.

18 CHAIRPERSON MILLER: Because then
19 other people might think it is necessary when
20 they, you know, pick up the order or
21 something. Okay. So we will take that one
22 out. Okay.

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1 MR. BRIDGE: Thank you.

2 CHAIRPERSON MILLER: So we are left
3 with one special exception relief with respect
4 to lot occupancy and then variance relief with
5 respect to the center line of the alley?

6 MR. BRIDGE: Correct.

7 CHAIRPERSON MILLER: Okay.

8 MR. VARGA: That's right.

9 CHAIRPERSON MILLER: Do you want to
10 highlight your grounds for relief on those
11 two?

12 MEMBER DETTMAN: Madam Chair,
13 before going forward can I --

14 CHAIRPERSON MILLER: Do you have a
15 question?

16 MEMBER DETTMAN: Yeah.

17 CHAIRPERSON MILLER: Yeah.

18 MEMBER DETTMAN: I just wondered if
19 I could ask a couple questions of OP. The
20 current lot occupancy, I believe, is about 61
21 percent?

22 MR. VARGA: That's right.

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1 MEMBER DETTMAN: And we're going to
2 62?

3 MR. VARGA: A very small increase
4 proposing lot occupancy.

5 MEMBER DETTMAN: My question, would
6 a special exception or 223 be necessary if the
7 lot occupancy is within the 2 percent
8 flexibility of the ZA?

9 MR. VARGA: That's an excellent
10 question. That's something that OP discussed
11 as well. And again, out of an abundance of
12 caution, we felt that the applicant should go
13 forward because technically the regulation
14 says 60 percent and the applicant is over
15 that, so we just wanted to make sure that they
16 satisfy all applicable regulations.

17 MEMBER DETTMAN: Okay.

18 CHAIRPERSON MILLER: My
19 understanding is that it doesn't meet the
20 matter-of-right requirement here, that it
21 doesn't make 60 percent. And that the
22 applicant could have gone to the ZA and the ZA

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1 would have discretion to sign off and you
2 wouldn't have to come before the BZA.

3 But I think that because you also
4 have a variance that it's within our authority
5 to sign off, too. This just makes it, you
6 know, easier. Sometimes people don't have to
7 come to BZA, but you are here and I think it
8 does fall under the regulations for relief. I
9 would suggest we keep that one in, otherwise,
10 it would be uncertain whether you go to the ZA
11 and ask them for relief from this. You know,
12 you might as well ask us.

13 MEMBER DETTMAN: And that's fine.
14 The applicant is here and you had mentioned,
15 you know, what we are seeking a variance as
16 well, but, you know, I even had a question of
17 whether or not a variance would be needed here
18 either, you know. 2001.3 allows an applicant
19 to do additions to a nonconforming structure
20 dedicated to conforming uses.

21 One of the nonconformities on this
22 property is the alley set-back. And the

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1 applicant is tearing down the building and
2 slightly expanding it, but if that
3 nonconformity is not being increased or
4 extended, I'm wondering if this whole project
5 could fall under 2001.3?

6 Again, the applicant is here and we
7 could go forward. I thought in going through
8 the record I may have seen an opportunity for
9 a matter-of-right project. We don't need to
10 dwell on the issue again, since the applicant
11 is here.

12 CHAIRPERSON MILLER: Okay. I don't
13 totally follow where you are and why we
14 wouldn't need a variance.

15 MEMBER DETTMAN: Well, if the Board
16 were -- we have two areas of relief before us
17 right now. If the Board were to decide that
18 the 62 percent lot occupancy falls within the
19 ZA's discretion, I guess the 223 would be
20 eliminated. And then the only area of relief
21 would be the variance from the 12 foot alley
22 set-back.

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1 As this is an addition to an
2 existing single-family dwelling, I first went
3 to 2001.3 to see if this could fall under
4 that, which would be allowed as a matter-of-
5 right. 2001.3 states -- 2001.3(a) says "The
6 structure shall conform to percent lot
7 occupancy requirements." If we find that it
8 falls within the 2 percent of the Zoning
9 Administrator's discretion, that may satisfy
10 2001.3(a).

11 That moves you on to 2001.3(b) "The
12 addition or enlargement itself," so the
13 garage, "shall conform to use and structure
14 requirements and either increase or extend any
15 existing nonconforming aspect." The garage
16 has -- the nonconforming aspect of the garage
17 is that it's not properly set-back from the
18 alley center line, the reconstruction of the
19 garage, if it does not exacerbate that
20 nonconforming set-back.

21 I would characterize that as not
22 extending or increasing an existing

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1 nonconforming structure and it's not creating
2 any new nonconformity. So again, I just saw
3 an opportunity that it could be a matter-of-
4 right project. It is a fairly straightforward
5 case, so I was just raising this as a question
6 to the Board to see if it was an opportunity
7 to make this a matter-of-right project.

8 CHAIRPERSON MILLER: Okay. That
9 was a really good explanation. I guess I
10 would agree with you, except that I don't
11 think it falls under (a), because even though
12 it falls within the deviation that the ZA has
13 authority over, I don't think it conforms to
14 the percentage of lot occupancy requirements.

15 Okay. But this is pretty -- yes?

16 VICE CHAIR LOUD: I have a quick
17 question for Mr. Dettman. I found his
18 analysis very interesting, but the quick
19 question is under your analysis, even with the
20 5 foot width increase of the garage, does that
21 have any impact on the nonconforming?

22 MEMBER DETTMAN: That would have

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1 been -- had we gone forward with this idea, it
2 would have been a question I would have asked
3 OP. Kind of because of the angled rear
4 property line, how do you measure the alley
5 set-back from the center line?

6 The only thing I could find in the
7 regs and in previous cases I have seen when it
8 comes to rear yard, at times the average rear
9 yard is taken, the mean horizontal distance.
10 And the definitions of the regs under depth of
11 rear yard it is characterized as the mean
12 horizontal distance.

13 So I think this garage when it is
14 reconstructed, it is actually slightly being
15 pulled back, just slightly. So if you
16 calculate the mean horizontal distance of the
17 alley set-back and there is no change in the
18 existing condition, I would say that it is not
19 an increase or an extension.

20 VICE CHAIR LOUD: Thank you.

21 CHAIRPERSON MILLER: Okay. So now
22 you have heard the Board's comments. If you

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1 just want -- if there is anything else you
2 want to say in addition to, you know, your
3 filings to highlight anything under either the
4 special exception test or the variance test,
5 now is a good time to do it.

6 MR. BRIDGE: Just two points that
7 once again just to restate that these are
8 replacement of existing structures. One of
9 the genesis of the project is to eliminate an
10 open court that faced the alley and it had
11 become a problematic loitering spot within the
12 alley and within the neighborhood.

13 And third that the garage being set
14 into the earth only protrudes about 4 feet
15 above grade and, therefore, has very little
16 impact to light, air or view from either of
17 the property owners or the neighbors.

18 We have spoken to neighbors, ANC
19 and Planning and all parties have voiced their
20 support for the project. That's all.

21 CHAIRPERSON MILLER: Okay. That
22 sounded really good for the special exception

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1 test. As far as the variance test goes, is
2 there anything else you want to say about an
3 exceptional condition here? It's already
4 nonconforming?

5 MR. BRIDGE: Yeah, it's currently
6 nonconforming. To Member Dettman's point, it
7 is slightly pushed back. We did not want to
8 push it back further to the full conforming
9 distance, because it would actually create a
10 larger area of -- that -- for potential
11 loitering that would be screened due to the
12 fact that either property on either side has a
13 garage and retaining wall that are built to
14 the current line.

15 So conforming with that 12 foot
16 set-back would create a larger open court
17 facing the alley.

18 CHAIRPERSON MILLER: So would your
19 garage align with the other structures or how
20 would it be?

21 MR. BRIDGE: It would be set-back
22 and that's basically to hold the property line

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1 at the one corner, due to the angle.

2 CHAIRPERSON MILLER: Oh, okay.

3 MR. BRIDGE: And the increased
4 width.

5 CHAIRPERSON MILLER: Board Members
6 have any other questions?

7 COMMISSIONER HOOD: Actually, I
8 just wanted to ask the applicant about the
9 trellis, since we are just refining existing
10 structures. Was there a trellis there
11 previously?

12 MR. BRIDGE: No. It should be --
13 the trellis was -- and garden shed was a
14 similar structure. A shed with a trellis top
15 and that has been removed from the scope per
16 the addendum drawings.

17 COMMISSIONER HOOD: Oh, the
18 addendum drawings. So I must have something
19 else. Okay. So the trellis has been removed?

20 MR. BRIDGE: Yes.

21 COMMISSIONER HOOD: Okay. I'll
22 withdraw my question. Thank you.

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1 VICE CHAIR LOUD: I have one quick
2 question driven more by curiosity than any
3 land use concerns, because my rear garage has
4 the same kind of set-up in terms of open
5 court. And pretty much the only thing I use
6 those stairs for are throughout the week to
7 empty the garbage pretty much. And I'm
8 curious as to how once you have finished and
9 you have added this additional 5 feet and the
10 stairs become, I guess, enclosed inside of the
11 garage, how will your client take garbage out
12 to the alley and those kinds of functions?

13 MR. BRIDGE: Within the garage
14 there are stairs constructed to lead from
15 grade of the rear yard to the level of the
16 garage and they will do it through the garage
17 door itself.

18 VICE CHAIR LOUD: So essentially,
19 you come through the back yard. You enter the
20 rooftop garden, go down the stairs there and
21 exit through the alley?

22 MR. BRIDGE: Yes.

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1 VICE CHAIR LOUD: Okay. Just
2 curious about how that would work. Thanks.

3 CHAIRPERSON MILLER: Okay. Anybody
4 else? All right. Why don't we go to Office
5 of Planning.

6 MR. VARGA: Yes. I would just like
7 to add that OP looks favorably upon the green
8 roof, which is being applied for by the --
9 proposed by the applicant in terms of storm
10 water management concerns and an improvement
11 over the tar that is currently on top of the
12 current garage. Other than that, OP stands on
13 the record.

14 CHAIRPERSON MILLER: Okay. It's a
15 very thorough report. Thank you. Other
16 questions from Board Members? Does the
17 applicant have a copy of the Office of
18 Planning report?

19 MR. BRIDGE: Yes.

20 CHAIRPERSON MILLER: And do you
21 have any questions for Office of Planning?

22 MR. BRIDGE: No.

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1 CHAIRPERSON MILLER: Okay. Is
2 anybody here from the ANC in this case? Not
3 hearing from anybody, I would like to just
4 draw our attention to Exhibit No. 21, which is
5 an ANC resolution from ANC-1A supporting -- it
6 says supporting the variance.

7 Let's see and then that's what the
8 cover letter says. And then the resolution
9 goes into more detail about what the applicant
10 is seeking. Okay. And that they support it.

11 Did you meet with the ANC?

12 MR. BRIDGE: Yes, November -- their
13 November meeting. I'm not sure of the exact
14 date.

15 CHAIRPERSON MILLER: Okay. Is
16 there anybody here who wishes to testify in
17 support of this application? Anybody who
18 wishes to testify in opposition to the
19 application? Not hearing from anyone, are
20 there final Board questions? Final remarks
21 from the applicant?

22 MR. BRIDGE: No, that's it.

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1 CHAIRPERSON MILLER: Okay. I think
2 this application is ready for deliberation.
3 Do we have a motion?

4 VICE CHAIR LOUD: Madam Chair, I
5 would like to move approval of Application No.
6 17881 for special exception relief, as regards
7 lot occupancy, and then for variance relief
8 from the alley set-back requirements of
9 2300.2, I believe that's where we ended up.

10 CHAIRPERSON MILLER: Second.

11 VICE CHAIR LOUD: I would be happy
12 to start us off. I think it is a fairly
13 straightforward case. Essentially, this is a
14 two-story basement row dwelling. It is in the
15 R-4 with deteriorating rear two-story porch
16 and garage. It also has some unsafe elements
17 to it and the applicant proposes replacing the
18 rear two-story porch and building a new garage
19 that will add 5 feet, make it 5 feet wider,
20 eliminating an existing open court.

21 The project as proposed does not
22 meet the requirements of lot occupancy. I

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1 think it's about 1.5 percent -- anywhere from
2 1 percent to 2 percent off, depending on which
3 part of the pleadings that you look at. I
4 think the testimony today was that it is about
5 1 percent off.

6 And at the same time, the alley
7 center line 12 foot requirement is also not
8 met, because the garage is angled and it runs
9 anywhere from 13.5 feet set-back to, I think,
10 6.5 feet or something like that, 7 feet set-
11 back. So it does not meet that requirement as
12 well.

13 We heard testimony from Mr. Bridge
14 regarding the elements of the special
15 exception test and the absence of light and
16 air impacts or loss of privacy, etcetera, and
17 so on. We also heard testimony from the
18 Office of Planning, which did an excellent job
19 in its Exhibit No. 23, walking through both
20 the special exception requirements of 223 as
21 well as 3104 and walking through the variance
22 test as well.

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1 And by incorporation, I'm going to
2 adopt the analysis in the report and the
3 conclusions in the report as support for my
4 vote to approve this application. I don't
5 know if other Board Members want to add?

6 CHAIRPERSON MILLER: Any other
7 comments? Okay. There is a motion to approve
8 the application, as amended, and it has been
9 seconded. Any further deliberation?

10 All those in favor say aye.

11 ALL: Aye.

12 CHAIRPERSON MILLER: All those
13 opposed? All those abstaining? And would you
14 call the vote, please?

15 MS. BAILEY: The vote is recorded
16 as 5-0-0 to grant the application. Mr. Loud
17 made the motion, Mrs. Miller seconded, Mr.
18 Dettman, Mrs. Walker and Mr. Hood support the
19 motion. And it is granted as amended.

20 CHAIRPERSON MILLER: And this will
21 be a summary order, as there are no parties in
22 opposition. Okay. Thank you very much.

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1 MR. BRIDGE: Thank you.

2 CHAIRPERSON MILLER: We are ready
3 for the next case when you are, Ms. Bailey.

4 MS. BAILEY: Madam Chair, it's
5 Application No. 17864 and it's Kuumba Learning
6 Center, Inc., pursuant to 11 DCMR 3104.1, for
7 a special exception for a private school,
8 grades K through 6, under section 206. The
9 property in question is located at 3330 and
10 3332 Martin Luther King, Jr. Avenue, S.E. It
11 is Square 5978, Lots 884 and 1037. And the
12 property is Zoned R-4.

13 CHAIRPERSON MILLER: And would the
14 parties come forward who are on this case,
15 please? Good morning still. How are you?
16 And do you see where to put your microphone
17 on? You press push and it becomes green.

18 MS. RASHEED: Yes.

19 CHAIRPERSON MILLER: Good. Okay.
20 Why don't you start with introducing yourself
21 for the record, please?

22 MS. RASHEED: Maja Rasheed, 3330

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1 Martin Luther King, Jr. Avenue, and I am the--
2 am here for special exception for Kuumba
3 Learning Center.

4 CHAIRPERSON MILLER: For a private
5 school?

6 MS. RASHEED: Yes.

7 CHAIRPERSON MILLER: Okay. There
8 is a little confusion, at least I see --

9 MS. RASHEED: Okay.

10 CHAIRPERSON MILLER: -- with
11 respect to what is going on here. I
12 understand and I was on the Board in 2006 --

13 MS. RASHEED: Okay.

14 CHAIRPERSON MILLER: -- when we
15 gave you special exception permission to
16 operate a child development center. So now,
17 is this same center -- are the kids getting
18 older and it is becoming a school now or are
19 you adding a school or what exactly is
20 happening?

21 MS. RASHEED: Let me try to clarify
22 that. When I came in 2006, my intention was

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1 to deal with the private school and child
2 development. When I applied for the child
3 development variance and dealing with the same
4 age group of children, I thought it was
5 automatic when I went to apply for my C of O.

6 So when I went to apply for the C
7 of O, I applied for a child development center
8 versus child development center/private
9 school. I wasn't made aware of that until
10 three years later after having numerous
11 inspectors come in and look at everything and
12 let me know that I was, you know, doing what I
13 was supposed to do.

14 Then I found out that I needed to
15 do that. So that means that I started
16 operation with the same age group of children,
17 okay? No difference in the building or
18 anything like that. So after making -- after
19 they let me know, in terms of the information,
20 that I needed to go down, I immediately went
21 down to start the process to add that to my C
22 of O.

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1 Okay. Why I find that is important
2 for me to have all these things now on my C of
3 O, because of the source of funding that some
4 of the children may have, it is important and
5 I didn't know that all of that be on there,
6 even though it's the same age group.

7 So I was contacted by the school
8 enforcement through the superintendent's
9 office. I also was contacted by the director
10 and zoning, also the CEOs of the organizations
11 that I had some of their children from. We
12 did a party line. The discussion was made
13 that they wanted to know when did school
14 start. I told them, you know, when school was
15 going to start in September.

16 And the issue was for me to come
17 down and start this process and to continue
18 serving their community. And that's why I'm
19 back here. Also, too, when I came in 2006, I
20 was under the impression that the information
21 that I turned in was for a private school and
22 residency.

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1 So I filled out everything for both
2 areas, but not realizing that I needed to
3 state /private school. So I have already gone
4 through the process in terms of the age group,
5 the parking issue, all of that was dealt with.

6 That was -- that's one aspect of my
7 application. So that's why I'm back.

8 Since then, I have purchased
9 another building right next to it, which I
10 think I said when I came last time that my
11 intention was to do that. So I have purchased
12 that building right next to it. So knowing
13 what I know now, I'm applying for a child
14 development/private school in the same manner
15 of the business that I'm conducting in the
16 other two to do the same thing. And that's
17 where I'm hoping I've clarified some of it.

18 Still confusing?

19 COMMISSIONER HOOD: Madam Chair?

20 CHAIRPERSON MILLER: Yeah. Yeah,
21 okay. Well, but are you going to have a child
22 development center in one building and school

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1 in the other or is it just going to be a
2 merged operation?

3 MS. RASHEED: Well, I have three
4 buildings.

5 CHAIRPERSON MILLER: Okay.

6 MS. RASHEED: I have three
7 buildings and two of them are now licensed for
8 child development center. And that's the
9 address at 3328 and 3330. I'm not certified
10 for a child development center and that's what
11 I came for my variance for in 2006. And
12 basically, that was for a load increase, not
13 to make any structural or any other changes.

14 With my knowledge of knowing I need
15 to change over and add that to my C of O,
16 that's why I'm back here, in addition to the
17 building that I purchased next to it to do the
18 same thing.

19 COMMISSIONER HOOD: Ms. Rasheed?
20 Can I ask a question, Madam Chair?

21 MS. RASHEED: Yeah.

22 COMMISSIONER HOOD: Were you here

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1 prior to 2006? Did you have to come in front
2 of the Board prior to that?

3 MS. RASHEED: It may have been in
4 2005. I don't think so. I think my hearing
5 was February 21, 2006.

6 COMMISSIONER HOOD: So that was
7 your first time coming down in front of the
8 Board of Zoning?

9 MS. RASHEED: Yes.

10 COMMISSIONER HOOD: Okay. I --

11 MS. RASHEED: That was for a load
12 change.

13 COMMISSIONER HOOD: I actually sat
14 on that case, I think.

15 MS. RASHEED: Yes.

16 COMMISSIONER HOOD: Anyway, I'll
17 wait until the appropriate time, Madam Chair,
18 once you get your answers, questions answered.

19 CHAIRPERSON MILLER: Maybe we can
20 get Office of Planning in on this just a
21 little bit? I don't think we have in the
22 record also our order. We do?

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1 COMMISSIONER HOOD: We have it, but
2 it doesn't show the participants. And I
3 remember this case.

4 CHAIRPERSON MILLER: You do?

5 COMMISSIONER HOOD: And I was just
6 trying to remember if I sat on it, too. I
7 think I did, that's why I know it's --

8 MS. RASHEED: Well, I have the
9 order if you don't.

10 COMMISSIONER HOOD: I just would
11 like to know who participated. I saw the
12 order, but it didn't have it, at least my copy
13 didn't. I thought this case was -- I'm going
14 to show you.

15 MS. GLAZER: It's also Exhibit 9, I
16 believe.

17 CHAIRPERSON MILLER: Okay. I found
18 in Exhibit 4, at least, a one page summary
19 order. I don't know if it's the whole order,
20 but in any event, yes, Mr. Cochran, could you
21 introduce yourself for the record? I want to
22 ask you a question. Could you introduce

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1 yourself?

2 MR. COCHRAN: For the record, my
3 name is Steven Cochran with the D.C. Office of
4 Planning.

5 CHAIRPERSON MILLER: Okay. Are we
6 adding another use? Are we being asked to
7 approve another use for the buildings that we
8 have already approved special exception use as
9 a child development center plus another
10 building or are we being asked to approve
11 another building for a private school use?

12 MR. COCHRAN: As far as I can tell,
13 Madam Chair, you're being asked to approve the
14 existing uses in the existing buildings. They
15 have just been reclassified by DCRA as a
16 private school as opposed to a child
17 development center. This is not the only
18 instance of the DCRA recently realizing that
19 certain operations should be classified as
20 schools, rather than child development
21 centers.

22 CHAIRPERSON MILLER: Okay. So it's

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1 not in addition to. It's not for both uses.
2 It's for school instead of child development
3 center?

4 MR. COCHRAN: It --

5 CHAIRPERSON MILLER: I'll go back
6 to you as well. Okay.

7 MR. COCHRAN: There is already
8 approval for the child development center. I
9 know that what is being asked for today is
10 private school. Some of the applicant's
11 documents indicate that there will be a
12 distinction in the types of services provided
13 from one building to the other.

14 But the order that you have given
15 on the special exception for the child
16 development center is good through, I believe,
17 2016. 10 years from the date of your last
18 approval.

19 CHAIRPERSON MILLER: Okay. Thank
20 you. Because I guess in my package I only
21 have the first page of the order, so I didn't
22 know that it was termed to 2016. Okay.

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1 MEMBER DETTMAN: Madam Chair?

2 CHAIRPERSON MILLER: Thank you.

3 I've got it.

4 MEMBER DETTMAN: Maybe this will
5 help our discussion. It seems to me it looks
6 like our previous order from 2006, the
7 properties were located at 3328 and 3330. The
8 application -- and the applicant can correct
9 me if I'm wrong, the application we have
10 before us today actually looks at 3330 and
11 3332.

12 So 3328 really isn't before us
13 today. Is that correct?

14 MS. RASHEED: When I think about it
15 and I think about not having to come back to
16 you in three more years, if that's something
17 that could be addressed and dealing with the
18 economics and what I may possibly have to do
19 in terms of moving children from a building to
20 the next, if at all possible, I would like to
21 just go across the board.

22 3328, 3330 and 3332 classified as

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1 child development center/private school. This
2 would give me the ability of the children as
3 they grow and the demand to be able to be
4 flexible in terms of delivery of my services.

5 CHAIRPERSON MILLER: Let us just
6 get a little more information, okay?

7 MS. RASHEED: Okay.

8 CHAIRPERSON MILLER: Because I
9 really think this is probably -- this is, I
10 think, the first instance that we have an
11 applicant coming before us and asking for both
12 special exception uses on one property. So I
13 just want to have a better understanding of
14 whether anything is changing or whether this
15 is just a response to DCRA's rules regarding
16 Certificate of Occupancy?

17 MS. RASHEED: Economics are
18 changing. In terms of the sources of funding
19 for the children, it's changing. The demand
20 of what they are asking for. What has changed
21 is, I guess, coming maybe from the Mayor's
22 Office to make a distinction on the C of O as

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1 to exactly what type of services that we
2 provide.

3 When you think about the child
4 development, you think about from infants
5 through pre-school. And they have like a
6 different source of funding and there are
7 different prices from kindergarten through 6th
8 grade and on. They can seek other
9 scholarships and different things like that in
10 terms of funding sources.

11 So that's why we were asked to make
12 that distinction. They are quite aware that
13 I'm already functioning in that manner, but it
14 has a lot to do with the population that I
15 serve, too, as well and what is being asked
16 now from the Mayor's Office.

17 CHAIRPERSON MILLER: How about with
18 respect to your operations, which is what we
19 look at, do they fall under both 205 and 206?

20 MS. RASHEED: Yes. And that's what
21 I did originally when I came in in '06, too,
22 as well. Because there is a blend and then

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1 you are able also to serve families, because
2 once you leave pre-school, you are going into
3 kindergarten. And then there is a before and
4 after population, too, as well that we serve.

5 It falls in that same age, up to 12 years
6 old.

7 CHAIRPERSON MILLER: If we look at
8 the order that you are operating under now
9 that we approved in 2006, that says "The
10 number of children shall not exceed 40" and
11 that it is defined as "4 years-old through 12,
12 the number of staff 10." Is that all the
13 same?

14 MS. RASHEED: That's the same.

15 CHAIRPERSON MILLER: Even though
16 you are extending into another building?

17 MS. RASHEED: Yes. In that -- and
18 those -- what I asked for before, that's the
19 same.

20 CHAIRPERSON MILLER: It's all the
21 same.

22 MS. RASHEED: Yeah. Anything else

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1 is new that I'm asking for, but to be
2 conducted in the same manner.

3 CHAIRPERSON MILLER: Okay. Are
4 there other questions?

5 MEMBER WALKER: So in which of the
6 three buildings does the private school
7 function occur presently?

8 MS. RASHEED: Presently in 3330.

9 MEMBER WALKER: Okay. So you are
10 running the child development center in 3328?

11 MS. RASHEED: And in 3330. I have
12 one classroom with private school children in
13 3330.

14 MEMBER WALKER: Okay. So you do
15 both.

16 MS. RASHEED: And that's where the
17 question came in when the inspector said --

18 MEMBER WALKER: I see.

19 MS. RASHEED: -- I need to see this
20 on -- it's the same age group, not exceeding
21 the age 12.

22 MEMBER WALKER: I see. And then

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1 what is currently happening in 3332?

2 MS. RASHEED: That's vacant.
3 That's the one that I want to get the C of O
4 for.

5 MEMBER WALKER: Okay.

6 MS. RASHEED: And learning from my
7 past experiences, I want to cover everything--

8 MEMBER WALKER: I see.

9 MS. RASHEED: -- this time.

10 MEMBER WALKER: All right.

11 MS. RASHEED: Yeah.

12 MEMBER WALKER: So essentially, you
13 are looking to have the flexibility to run
14 both types of operations in all three
15 buildings?

16 MS. RASHEED: Yes.

17 MEMBER WALKER: Okay.

18 COMMISSIONER HOOD: Ms. Rasheed,
19 could you help me?

20 MS. RASHEED: Yes.

21 COMMISSIONER HOOD: The last case,
22 if I remember correctly, you had, I'm not

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1 going to say opposition, but, concerns. You
2 had neighbors that came down with concerns.
3 Am I correct?

4 MS. RASHEED: Um-hum, that's right.

5 COMMISSIONER HOOD: Okay. But I
6 notice this time I don't see anybody, so,
7 obviously, you're improving yourself.

8 MS. RASHEED: Yeah, I believe so.

9 COMMISSIONER HOOD: Okay.

10 MS. RASHEED: And I have reached
11 out to them as well and I learned from the
12 last time that everything that I try to do, I
13 try to involve them whether -- you know, and
14 just inform them and reach out to them. So
15 I'm finding that has been most helpful,
16 because I don't see anybody here today.

17 COMMISSIONER HOOD: Okay. Thank
18 you.

19 CHAIRPERSON MILLER: So this case
20 was only advertised with respect to two of the
21 buildings and not the third. Is that correct?

22 MS. RASHEED: Yes.

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1 CHAIRPERSON MILLER: Which one
2 wasn't it advertised for?

3 MS. RASHEED: 3328.

4 CHAIRPERSON MILLER: 3328, okay.

5 MS. RASHEED: But I -- currently,
6 my C of O is -- I have two C of Os, but I have
7 one license, because they combine -- I
8 combined the buildings. So technically, it
9 depends on how you look at it.

10 C of O, 2, license, 1, because I'm
11 on the same lot operating the same thing. So
12 when they -- my permit has 3328 and 3330 on it
13 for the child development center.

14 CHAIRPERSON MILLER: Okay.

15 MS. RASHEED: I also want to
16 mention, too, since '06 we are a nationally
17 accredited program as well. And we are
18 accredited for all age groups from infancy all
19 the way up through school age children.

20 MEMBER DETTMAN: And in total
21 spread across the three buildings, you are
22 looking for 60 students?

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1 MS. RASHEED: Yes.

2 MEMBER DETTMAN: And how many
3 staff, 15?

4 MS. RASHEED: Possibly, yes.

5 MEMBER DETTMAN: 15.

6 MS. RASHEED: Yes, about 15.

7 MEMBER WALKER: Okay. And so in
8 the prior order the condition that limited the
9 age of your children to 4 years-old doesn't
10 apply now?

11 MS. RASHEED: Where is that?

12 MEMBER WALKER: No, you said that
13 now you are nationally accredited and you can
14 serve infants.

15 MS. RASHEED: No, I have always --

16 MEMBER WALKER: Is the definition
17 still the same?

18 MS. RASHEED: No, I have a C of O
19 for infants. I have a permit for infants,
20 that's in Building 3328.

21 MEMBER WALKER: What ages
22 specifically?

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1 MS. RASHEED: Um, 8 weeks-old.

2 MEMBER WALKER: Okay.

3 CHAIRPERSON MILLER: I think Ms.
4 Walker might be getting at we're looking at
5 the conditions of the last order. Oh, no,
6 never mind. It says infants to 12 years-old.
7 Okay.

8 MS. RASHEED: Um-hum.

9 CHAIRPERSON MILLER: Okay. What
10 the Board was looking at is the past order to
11 see where that fits in, because you are
12 operating under those conditions right now.

13 MS. RASHEED: Yes.

14 CHAIRPERSON MILLER: Okay. So, you
15 know, I was asking for a copy of the order and
16 before I didn't have both pages, but then Ms.
17 Bailey gave me both pages. There is a
18 discrepancy in that order and what Office of
19 Planning characterizes as the conditions. Mr.
20 Cochran, so I don't know if you want to shed
21 any light on that now or not.

22 The order says, and this is what I

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1 was alluding to before, that "The number of
2 children shall not exceed 40, infants through
3 12 years-old." And the Office of Planning
4 report characterizes the condition as "The
5 number of children shall not exceed 40, infant
6 (defined as 4 year-olds) through 12 year-
7 olds."

8 MR. COCHRAN: Madam Chair, I think
9 that the -- in analyzing this case, I also --
10 I may have erred, in that I did not understand
11 that there were three buildings, because
12 different parts of the application refer at
13 one time to 3328 and 3330 and there is only
14 one part of an application that refers to
15 3332.

16 From what the applicant has said
17 today, it appears that there will be existing
18 40 children, plus another 20, for a total of
19 60. It looks like there would be 10 existing
20 staff, plus another 2, since the application
21 says that there would be one per classroom and
22 3332 would have two classrooms.

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1 You know, Mr. Dettman calculated
2 15. I see only 12 based on the materials that
3 were submitted. If there were 12, then it
4 would probably be important to look at the
5 difference in parking requirements between
6 private schools and child development centers.

7 Private schools require, I believe,
8 2 spaces for every three teachers or other
9 employees. Now, again, looking at the
10 applicant's materials, I saw 4 spaces behind
11 two buildings. I don't know whether the
12 applicant is proposing that there be another 2
13 spaces behind 3332 or not. If so, then the
14 applicant would meet the parking requirements.

15 MEMBER WALKER: Well, with respect
16 to the specific question about the age of the
17 children referenced in your report?

18 MR. COCHRAN: I have seen nothing
19 that indicates anything other than an upper
20 limit being 12 years-old.

21 CHAIRPERSON MILLER: Okay. Sorry,
22 this is just a little -- we just want to get

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1 this straight.

2 MS. RASHEED: Okay.

3 CHAIRPERSON MILLER: It's a little
4 more confusing than normal. You've got three
5 properties. You've got two different special
6 exception uses. You have an earlier order.
7 So I just want to make sure we, you know, know
8 exactly what we need to rule on.

9 MS. RASHEED: Okay.

10 CHAIRPERSON MILLER: So the
11 application, as I see it, and I'm not looking
12 at Office of Planning's report which
13 characterizes it as an application for a
14 private school for 3330 through 3332. But
15 from what I hear you saying, you want it to be
16 a little bit more than that to include 3328.
17 Is that right?

18 MS. RASHEED: If possible, yes, so
19 I won't have to come back.

20 CHAIRPERSON MILLER: 3328 for
21 school use?

22 MS. RASHEED: Yes.

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1 CHAIRPERSON MILLER: Okay. What
2 you are now approved for, let me just get that
3 straight, is child development use for 3328
4 and 3330.

5 MS. RASHEED: Yes.

6 CHAIRPERSON MILLER: Yeah, 3328
7 through 3330. Are you seeking an expansion on
8 that at all?

9 MS. RASHEED: No, no changes.

10 CHAIRPERSON MILLER: Okay. Okay.
11 So we are just looking at private school use?

12 MS. RASHEED: Yes.

13 CHAIRPERSON MILLER: Okay.

14 COMMISSIONER HOOD: Madam Chair,
15 let me just ask --

16 CHAIRPERSON MILLER: No? Okay.
17 Well, let me get it straight.

18 COMMISSIONER HOOD: Was all that--
19 let me just ask this question though before we
20 move forward with what she is asking now,
21 because she doesn't want to come back, which I
22 applaud her. But let me just ask her, do we

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1 have -- and maybe this is for Ms. Glazer.

2 Do we have an advertised issue
3 here, what was advertised or would we
4 potentially have one?

5 MS. GLAZER: Oh, I'm sorry, I
6 thought it was on. Mr. Moy and I were looking
7 at the application and see that the applicant,
8 apparently, did include all three buildings or
9 the addresses for all three buildings. I'm
10 not sure it made it to the application. I'm
11 not sure it made it to the advertisement.

12 CHAIRPERSON MILLER: It was in the
13 application. It's not her fault if it didn't
14 make it to the advertisement. Is that
15 correct? But as of now, the building that
16 wasn't advertised, you are operating as a
17 child development center?

18 MS. RASHEED: Yes.

19 CHAIRPERSON MILLER: Okay. And all
20 the buildings are close together and they are
21 like one operation?

22 MS. RASHEED: They are very close.

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1 Because on my license, it has both of the
2 addresses on one license. So the license is
3 printed with 40 children for those two
4 addresses. On my license, now not the C of O.

5 So a lot of times when you make reference to
6 3330, you're still looking at 3328, from my
7 standpoint.

8 CHAIRPERSON MILLER: Okay. And so
9 for advertising purposes, we're just exploring
10 for due process the public notice, 3328 has
11 been operating as a child development center.

12 You want to get authorization to operate it
13 as a private school as well. Is that correct?

14 MS. RASHEED: Yes.

15 CHAIRPERSON MILLER: And are the
16 operations changing or do you just want to get
17 this for licensing purposes?

18 MS. RASHEED: The same operation,
19 nothing is changing.

20 CHAIRPERSON MILLER: Hang on.

21 MS. RASHEED: No load changes or
22 anything.

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1 CHAIRPERSON MILLER: Okay.

2 COMMISSIONER HOOD: I actually was
3 not talking in terms of the address. I'm
4 talking about this as far as the use. As far
5 as what we're now doing, she is asking to come
6 across the board and I applaud her, because I
7 don't see anybody here in opposition. But I
8 just wanted to make sure due process was
9 given, notice was given and hopefully it will
10 be the same result, if we have to go that
11 route.

12 I just think that if we approve
13 something and the community was not aware of
14 it, even though I know you have changed the
15 way you do business now, I'm not saying what
16 you did prior was a problem, but those few
17 people who came in, I think they talked about
18 parking and they had some other issues they
19 were bringing up, if I remember correctly.

20 But I just wanted to make sure
21 before this Board, Madam Chair, before we move
22 forward, we need to make sure that if what she

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1 is asking for is permissible without
2 advertisement.

3 CHAIRPERSON MILLER: Did you do
4 before the ANC?

5 MS. RASHEED: Yes, I did.

6 CHAIRPERSON MILLER: And do we have
7 an ANC report in the record? No, I don't
8 think so. When you went before the ANC, did
9 you talk about your application for private
10 school use for that building?

11 MS. RASHEED: Yes.

12 CHAIRPERSON MILLER: Okay. And you
13 talked about it for all the buildings?

14 MS. RASHEED: Yes, I talked about
15 everything.

16 CHAIRPERSON MILLER: Okay. Do you
17 know whether they were planning on submitting
18 a report?

19 MS. RASHEED: Well, I found out,
20 that's why I stepped out, that Ms. Cuthbert,
21 one of the ANC Members, she has been
22 hospitalized and she made a call today stating

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1 why she didn't get her documentation in or why
2 she couldn't come. I don't know what her
3 response was.

4 But during the time of the meeting,
5 there was favorable in my favor when I met
6 with them.

7 COMMISSIONER HOOD: Madam Chair, I
8 will tell you that from hearing from her, I do
9 know Ms. Cuthbert has been hospitalized. But
10 hearing the testimony from the applicant, I
11 will -- unless my colleagues -- I will
12 withdraw my concern, especially now that you
13 have put on record that you went to the ANC.
14 And I do know that Ms. Cuthbert is -- that's
15 sufficient enough for me. I don't know what
16 the legal ramifications are, but that's
17 sufficient enough for me to move forward.

18 CHAIRPERSON MILLER: I don't have
19 any concerns myself, at this point, because at
20 least from what I understand her to be saying,
21 is that the uses aren't changing in the
22 building. And it's just almost the name for

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1 licensing purposes. And the operations seem
2 to be tied together, so that if there were
3 adverse impacts from one of the buildings, we
4 would see somebody here, I think.

5 Do others have concerns?

6 VICE CHAIR LOUD: Not a concern,
7 Madam Chair, but just a follow-up question on,
8 I think it is, 3328. Just to make sure I
9 understand, because it changed a little bit
10 since the filing, there is a desire to have
11 BZA approval for a private school in 3328?

12 MS. RASHEED: Yes.

13 VICE CHAIR LOUD: And you
14 characterize it as no load changes. And does
15 that mean you basically just want the
16 infrastructure in place so that as the kids
17 get older, they can go directly into a private
18 school or you will be recruiting or a little
19 of both?

20 MS. RASHEED: Um, yes. I want the
21 infrastructure to be so that I have the
22 flexibility of serving the whole family. As

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1 the children grow older, if there is a need
2 for me to make any changes in terms of just
3 maybe moving 12 year-olds in one building or
4 4s or depending on how the enrollments are at
5 the time, not exceeding what I normally have.

6 I want to have that flexibility. And I don't
7 want the population to have restrictions on
8 them in terms of they need funding sources
9 that require that I have this on my C of O.

10 VICE CHAIR LOUD: Okay. But the
11 way I'm understanding it, the way that there
12 wouldn't be a load change is if --

13 MS. RASHEED: No load change.

14 VICE CHAIR LOUD: -- the same --
15 either you are not adding any private school
16 kids --

17 MS. RASHEED: No.

18 VICE CHAIR LOUD: -- right now --
19 okay. And when you do add them, they will be
20 coming directly from the child development
21 center?

22 MS. RASHEED: Possibly.

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1 VICE CHAIR LOUD: That's already
2 there.

3 MS. RASHEED: Just being able to
4 make a smooth transition right into
5 kindergarten from the child development aspect
6 of it without having to leave and possibly
7 remaining as long as the families desire for
8 them to stay.

9 VICE CHAIR LOUD: That makes sense
10 to me. Again, I'm just trying to make sure I
11 understand it. Away from land use, zoning,
12 da, da, da, just trying to understand the--

13 MS. RASHEED: Okay.

14 VICE CHAIR LOUD: -- logic of the
15 operation. And so then when you get to the
16 private school, if you lose a body at the
17 child development center, you're not adding a
18 new body?

19 MS. RASHEED: No.

20 VICE CHAIR LOUD: The population
21 count stays the same?

22 MS. RASHEED: Yes.

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1 VICE CHAIR LOUD: Okay. All right.
2 I think I'm getting the picture.

3 MS. RASHEED: Okay.

4 VICE CHAIR LOUD: Thank you.

5 CHAIRPERSON MILLER: I just want to
6 follow-up, because I thought I understood Mr.
7 Cochran to say that the number of children is
8 increasing from 40 to 60.

9 MS. RASHEED: That's because we are
10 looking at 3332, which I would like to develop
11 that in the same manner as the other two.

12 CHAIRPERSON MILLER: But you are
13 only seeking private school exception relief.

14 MS. RASHEED: No, child development
15 and private school across the board.

16 CHAIRPERSON MILLER: Both? Oh,
17 okay.

18 MS. RASHEED: For 20. By me being
19 in the R-4 Zone, they only allow you to have a
20 certain number, so I want to do all of it at
21 the same time.

22 CHAIRPERSON MILLER: Okay. So when

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1 we look at how it was advertised, we shouldn't
2 be, because it was only advertised for private
3 school. Also, it wasn't advertised both for
4 child development center and private school.

5 MS. RASHEED: It should have been.

6 CHAIRPERSON MILLER: So it's not
7 only that it wasn't advertised --

8 MS. RASHEED: I already have child
9 development, so --

10 CHAIRPERSON MILLER: But you don't
11 for the other building.

12 MS. RASHEED: No.

13 CHAIRPERSON MILLER: So for the
14 third building, you want that as well?

15 MS. RASHEED: Same thing.

16 CHAIRPERSON MILLER: Right?

17 MS. RASHEED: Um-hum.

18 CHAIRPERSON MILLER: Okay. So if
19 you want the same thing for all three
20 buildings, wouldn't it make sense for us to
21 look at this whole application then together,
22 a child development center and private school,

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1 all three buildings?

2 MS. RASHEED: I would appreciate
3 it.

4 CHAIRPERSON MILLER: Okay. Even
5 though you already have an order in effect,
6 there is no reason why we can't have a new
7 order that supersedes it. I'm just opening
8 that up. Yeah, Mr. Cochran?

9 MR. COCHRAN: We would need to have
10 some idea of how the employees will be
11 allocated, because you need 1 parking space
12 for four for a child development center and 2
13 for each three for a private school.

14 The applicant hasn't shown the
15 numbers of parking spaces in the rear of 3332,
16 but 3328 and 3330 each can accommodate 2
17 parking spaces. So it looks like we would be
18 at a minimum of 6 parking spaces. For the
19 plat 3332, it looks to be a bit wider.

20 I don't know whether you could --
21 it can accommodate 3 parking spaces there or
22 not. But we are looking at a minimum of 6

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1 parking spaces, which would be more than
2 enough for child -- way more than enough for
3 child development centers, but if the whole
4 facility were devoted to private school, then
5 it wouldn't be enough spaces.

6 So I think the applicant would need
7 to clarify the allocation of the staff.

8 CHAIRPERSON MILLER: Okay. How
9 many spaces would they need for a private
10 school for all three buildings?

11 MR. COCHRAN: They would need 8 if
12 it were all private school.

13 MS. RASHEED: Can I --

14 MEMBER DETTMAN: I think the
15 question for the applicant would be I had said
16 15 staff, but I just kind of guessed, because
17 you --

18 MS. RASHEED: Threw it out there.

19 MEMBER DETTMAN: -- had 5 in each
20 of the other two buildings. So --

21 MS. RASHEED: And I'm not looking
22 at the whole building as being private school.

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1 MEMBER DETTMAN: Right. So I think
2 what the Board will need is how many staff you
3 have total and then how many are going to be
4 allocated to the private school versus how
5 many are going to be allocated to the child
6 development center, so that we can do an
7 accurate calculation on how much parking you
8 need.

9 MS. RASHEED: Okay. And I would
10 have to really get broad on that, because
11 different ratios dictate different amount of
12 staff. So I would -- you see what I'm saying?

13 And it would be based on my enrollment. So
14 if I have 5 year-olds and I have four classes
15 of 5 year-olds, the ratio for staff would
16 change versus for pre-schoolers that's being
17 funded by private source that is considered as
18 a school age child.

19 So it varies and that's why I tried
20 to deal with the variable in terms of where I
21 am. There is additional parking, because I
22 have purchased another building, so I do have

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1 the same amount of parking there. I'm also
2 neighboring the National Children's Center,
3 which I also stated beforehand, any overflow,
4 I have street parking as well and also on
5 their lot as well.

6 But we haven't run into that
7 problem, because my staff changes. Everybody
8 that comes to work does not necessarily drive.

9 So based on the two buildings that I have
10 had, it has been a workable situation. And
11 it's based on enrollment, so that's why I
12 don't want to be limited. And it's based on
13 ratios.

14 CHAIRPERSON MILLER: Okay. I think
15 I --

16 MS. RASHEED: I hope I'm not
17 complicating it.

18 CHAIRPERSON MILLER: Well, I think
19 what is going on here, from what I hear Mr.
20 Cochran saying, is the private school use
21 kicks in requirements for a certain number of
22 parking spaces.

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1 MS. RASHEED: Um-hum.

2 CHAIRPERSON MILLER: And in order
3 for us to grant you the relief under private
4 school, you have to meet those parking
5 requirements and they are tied to your staff.

6 So you would have to like limit your staff to
7 have the amount of parking spaces that go
8 along with the required staff or you would
9 have to ask us for a variance, you know, and
10 show us why you can't do that.

11 MS. RASHEED: Is that for all of
12 them or are we talking about 32? Because for
13 32 I had 2 staff people in my application.

14 CHAIRPERSON MILLER: If I
15 understand this right, okay, and it's been a
16 little bit confusing --

17 MS. RASHEED: I know.

18 CHAIRPERSON MILLER: -- we can look
19 at it as one, you know, and say you need 6
20 spaces for all your operations.

21 MS. RASHEED: Okay.

22 CHAIRPERSON MILLER: Or we can look

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1 at it as separate buildings and if you meet
2 the parking requirements for what happens in
3 that building, that's fine. But then if you
4 wanted to use the next building for private
5 school, you couldn't, unless you met the
6 parking or got a variance from us, because you
7 couldn't meet the parking.

8 MS. RASHEED: Okay.

9 CHAIRPERSON MILLER: Okay. So
10 okay.

11 MS. RASHEED: So I understand that
12 he mentioned that he looked at the space in
13 the back of 32. So in your opinion, I guess--

14 MR. COCHRAN: I'm sorry. I've
15 looked at the plat.

16 MS. RASHEED: Oh, okay.

17 MR. COCHRAN: And it indicates --

18 MS. RASHEED: And it's wider.

19 MR. COCHRAN: -- that it is clearly
20 as wide if not wider than the other two. So
21 it appears that at least 2 spaces would be
22 able to be fit in the back of 32.

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1 MS. RASHEED: Okay.

2 CHAIRPERSON MILLER: So, Mr.
3 Cochran, is she short for her ultimate goal
4 with respect to parking spaces or not
5 necessarily and we just need to see her
6 staffing.

7 MR. COCHRAN: Not necessarily.

8 CHAIRPERSON MILLER: Okay. So how
9 many spaces do the properties have?

10 MR. COCHRAN: I can confidently say
11 4 from what the applicant submitted. It
12 appears as though it would be possible to gain
13 at least an additional 2 spaces from the
14 additional property, but I wouldn't feel
15 comfortable saying more than 6, unless I
16 actually saw measured drawings.

17 CHAIRPERSON MILLER: Would you
18 concur with Office of Planning that you have 4
19 and you could add 2 parking spaces?

20 MS. RASHEED: Yes.

21 CHAIRPERSON MILLER: Is that
22 realistic?

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1 MS. RASHEED: Possibly maybe about
2 3, because that space is wider if you look at
3 the plat.

4 CHAIRPERSON MILLER: So with 6 or 7
5 parking spaces, how many faculty and staff
6 could she have for a private school? This is
7 where our math comes in.

8 MR. COCHRAN: If the whole place
9 were devoted to a private school, it would
10 require 8 parking spaces. I mean, we can do
11 the math and see how many.

12 CHAIRPERSON MILLER: How do you get
13 to 8?

14 MR. COCHRAN: Well, there are --
15 there would then be 12 employees, because we
16 know that 2 -- that it now has 10. 2 more,
17 according to the application, would be added
18 for 12. 3 goes into 12 four times, times 2 is
19 8.

20 CHAIRPERSON MILLER: So as a whole
21 is that what you wanted to have 12 employees?

22 MS. RASHEED: That's reasonable,

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1 yes.

2 CHAIRPERSON MILLER: Well, that's
3 the number he is using. But she doesn't have
4 8 parking spaces.

5 MS. RASHEED: Does off-street
6 parking count at all?

7 CHAIRPERSON MILLER: It can count
8 if you ask for a variance from the parking
9 requirements.

10 MS. RASHEED: Oh, okay.

11 CHAIRPERSON MILLER: It would go to
12 the fact that there wouldn't be any adverse
13 impact on neighboring properties from a spill
14 over of parking, because there is plenty of
15 parking say on the street.

16 MS. RASHEED: So there is
17 consideration to be taken that I'm the last
18 house on that corner of like three and there's
19 nobody beside me going towards the end?

20 CHAIRPERSON MILLER: Yeah, that
21 would be taken into consideration.

22 MS. RASHEED: Okay.

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1 CHAIRPERSON MILLER: Again for the
2 same reason that --

3 MS. RASHEED: Okay.

4 CHAIRPERSON MILLER: -- it wouldn't
5 have an impact.

6 MS. RASHEED: Because that is the
7 situation.

8 MEMBER DETTMAN: Okay. So we're
9 throwing around this number of 12 staff. And
10 if the Board was to go forward, that's
11 probably the number that is going to show up
12 in the order.

13 MS. RASHEED: Okay.

14 MEMBER DETTMAN: So is 12 staff
15 good? Is that going to meet your needs going
16 forward?

17 MS. RASHEED: I think so, yes.

18 MEMBER DETTMAN: Okay. So, Madam
19 Chair, just as a suggestion, so that we can
20 move along, I would -- the most conservative
21 approach is the one that Mr. Cochran is
22 suggesting is that we do our parking

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1 calculation based on the most restrictive
2 calculation, which is private school, 8
3 spaces.

4 We can comfortably say that across
5 the three properties we can do 6 spaces. We
6 heard maybe three at the additional property
7 at 3332, but conservatively, we say 6. And so
8 I think that in order to go forward, we could
9 just look at a reduction in the number of
10 parking required, whatever provision that is
11 and grant -- and analyze a reduction of 2
12 spaces.

13 We heard from the applicant that
14 the National Children's Center --

15 MS. RASHEED: Children's Center.

16 MEMBER DETTMAN: -- is in close
17 proximity and they have parking. There is
18 adequate on-street parking. So I think with
19 respect to the parking, we could just look at
20 a potential reduction. Now, there might be an
21 advertising issue associated with that.

22 MEMBER WALKER: Has the National

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1 Children's Center limited in any way the
2 number of spaces that you may use?

3 MS. RASHEED: No. In addition to
4 that, we share the playground. We legally
5 have possession of the playground, which is on
6 both of our properties. It's right behind me
7 and on their side. So population has to enter
8 the playground from both of our spaces. But
9 I'm not limited, because we are partners.

10 CHAIRPERSON MILLER: Oh, sorry.

11 MR. COCHRAN: That's okay. You had
12 asked, Madam Chair, about what number of staff
13 would be -- would work out in terms of parking
14 spaces. It appears that if you assume that
15 there are 12 staff and 8 of the staff are
16 devoted to a child development center and 4 of
17 the staff are devoted to a school, then that
18 would require 6 spaces, which the applicant
19 could certainly accommodate.

20 But what we don't know is whether
21 the applicant -- whether that ratio of
22 development center to school employees is

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1 accurate or would accommodate her needs.

2 CHAIRPERSON MILLER: Do you have a
3 response to what Mr. Cochran said, because --

4 MS. RASHEED: Yeah.

5 CHAIRPERSON MILLER: -- you might
6 not need a parking --

7 MS. RASHEED: I have one concern.
8 My whole purpose today is to not limit the
9 services that I can give to the children. If
10 parking is an issue and we're doing specialty
11 teachers and I have two other teachers that
12 may want to come in that day and they are not
13 necessarily driving, the number of teachers
14 that you are limiting versus the parking is
15 going to limit me in terms of the type of
16 services that I give to the children.

17 So it's like two separate issues.
18 And that's why I'm trying to cover everything
19 today. We're teaching French and Spanish and
20 they are coming in for a few hours and they
21 are leaving. If you would limit that number
22 versus parking, I'm just trying to cover

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1 everything today and deliver the most
2 appropriate services for the population that
3 I'm dealing with.

4 And your Department of
5 Transportation did a real serious survey last
6 time in terms of sitting out front and
7 watching the flow of children that comes in
8 and out, in terms of the type of service that
9 we provide, so I don't really see -- I just
10 want to cover everything without limiting the
11 services for the children while I'm here.

12 CHAIRPERSON MILLER: Okay. You
13 know what, I think we're going to take a quick
14 break and, you know, just take another look at
15 our regulations --

16 MS. RASHEED: Okay.

17 CHAIRPERSON MILLER: -- off the
18 dias, because --

19 MS. RASHEED: I know.

20 CHAIRPERSON MILLER: -- we would
21 like to accommodate, you know, your situation.

22 At the same time, we have to accommodate it

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1 within our regulations. So I just want to --

2 MS. RASHEED: Okay.

3 CHAIRPERSON MILLER: -- double
4 check. So okay, so we will take a short break
5 and we will come back. Thank you.

6 MS. RASHEED: Okay. Thank you.

7 (Whereupon, at 12:41 p.m. a recess
8 until 1:23 p.m.)

9 CHAIRPERSON MILLER: Okay. We're
10 back on the record. And I just want to make a
11 few scheduling comments before we get back
12 into this case. It's now 1:20 and we have one
13 more case in the morning to hear, which we
14 will do after this case.

15 And then the Board will be taking a
16 break. So this afternoon we have one case, I
17 believe, in the afternoon, so that case will
18 not begin before 3:00, in any event, so I just
19 wanted the parties in that case to know that
20 they have more time. They don't have to rush
21 down here if they're not here yet.

22 Okay. Now, back to this case. We

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1 had a lot of time to -- we took some time to
2 give this a careful thinking. And where we
3 are at is that it appears that this case
4 really should be looked at in the context of
5 three buildings and two uses, because that is
6 what I understand and the Board understands
7 the applicant to really be seeking.

8 It appears to us that the applicant
9 has not worked through fully how the parking
10 and the enrollment, not the enrollment, and
11 the faculty and staff figures will mesh
12 together in order to comply with the
13 regulations. But we believe that it can work
14 and we want to bring your attention to two
15 provisions in our regulations that affect
16 parking.

17 And one is 2108, which gives the
18 Board authorization to reduce parking for non-
19 residential uses by 25 percent. That may
20 solve the problem. It may not. But we
21 believe that it is a provision in the
22 regulations that the applicant should look at

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1 in conjunction with the Office of Planning to
2 show how your child development center/private
3 school can meet the parking regulations.

4 That one requires a referral also
5 to DDOT, which we would ask Office of Planning
6 to do after you have done your analysis
7 perhaps with this.

8 Also, the other provision in our
9 regulation which allows for you to have
10 parking off-site when you can't meet your
11 parking requirements on site is 2116 and
12 that's also by special exception. And I think
13 you have it in the record some arrangements
14 where you have parking off-site.

15 But what I want to bring to your
16 attention is that where we allow parking off-
17 site, pursuant to another arrangement with
18 another entity, that there be an authorization
19 or a lease of some sort from that entity as
20 proof that you have authorization to park in
21 that location.

22 So depending on how you actually

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1 identify your maximum number of employees
2 which will then affect, especially with the
3 private school, the number of parking spaces
4 you need, you may or may not need both
5 provisions. But we want to bring them to your
6 attention.

7 And the only other comment I would
8 make is that the way we have interpreted
9 parking requirements for teachers and staff.
10 It's pretty much on-site at one time and
11 Office of Planning can help you with this, so
12 that if you have like periodic specialty
13 teachers coming in, as long as you have enough
14 spaces under the regs for the number of
15 teachers you have on-site at one time, you are
16 not limited, you know, as one of 12 staff
17 altogether.

18 But we think, you know, we
19 struggled with this application a little bit
20 and now we have a better understanding of what
21 you want to do. We just need you to package
22 that more accurately, you know, given what we

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1 have all analyzed. We would like you to post
2 again, so that the community also knows
3 exactly what you are seeking.

4 And as we understand it, it would
5 be for the three buildings, both uses, child
6 development center use and private school use.

7 So before you leave here today, you could get
8 placards and post them on each building, so
9 that the community knows that each building is
10 involved.

11 We're not going to require you to
12 do a whole let's start all over again and
13 readvertise everything, because we are of the
14 view that the advertising that you have done
15 and your communication with the ANC has put
16 the community pretty much on notice as to what
17 you want to do.

18 But we want this to be clearer, so
19 we want you to post it, identify, do the
20 analysis with Office of Planning of your staff
21 and parking and then serve that on the ANC and
22 the Board. And then we will get a copy of

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1 Office of Planning's assessment then, based on
2 that whole picture.

3 MS. RASHEED: Okay, okay.

4 CHAIRPERSON MILLER: Yes, please,
5 feel free to ask questions on that.

6 MS. RASHEED: I guess based on --
7 can you hear me? Okay. Based on the
8 conversation that we had before you went out,
9 it seems like I'm looking at one parking
10 space. So I'm wondering, do I have to --
11 after sitting down and looking at everything
12 and apply again, if you're narrowing it down
13 to 12 staff members, if you're looking at it
14 from the private school perspective, I have
15 possibly, in terms of space available, 7
16 parking spaces instead of 8.

17 So is that, I mean, enough that I
18 have to go through the whole process again?
19 Just looking at maybe one parking space less
20 to find additional parking for one space?

21 CHAIRPERSON MILLER: Well, let me
22 ask you, because --

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1 MS. RASHEED: Because looking at
2 the --

3 CHAIRPERSON MILLER: -- when we
4 went out, we weren't clear about your number
5 of employees.

6 MS. RASHEED: Okay.

7 CHAIRPERSON MILLER: And your
8 number of parking spaces. So I hear what you
9 are saying to a certain extent and I was
10 wondering just, you know, 2108 let's us do a
11 25 percent reduction.

12 MS. RASHEED: Right.

13 CHAIRPERSON MILLER: So you might
14 be there, but --

15 MS. RASHEED: Looking at my
16 original application, I have 2 staff members.

17 So are you talking about 10 plus 2 is 12. So
18 I took the opportunity to try to see if I
19 could do -- you know, just putting it out
20 there and if that's not the case, I would
21 prefer to stick to what I originally put in,
22 which was 12.

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1 Looking at that, we have them
2 sitting here right now, what is the
3 possibility we're looking at one extra space,
4 because I have 7 spaces in the back. Seeing
5 as that's something that I wouldn't have to
6 come back here for, if that's possible.
7 Because he can do the figures sitting right
8 there and tell me -- tell us yes or no it's
9 something that could work. And if you work
10 out the percentages, see if that's something
11 that is feasible.

12 CHAIRPERSON MILLER: I hear you
13 saying 7 spaces. I don't hear the faculty and
14 staff that you have.

15 MS. RASHEED: Well, if you look at
16 the plat --

17 CHAIRPERSON MILLER: 12?

18 MS. RASHEED: -- for 32, which I
19 originally advertised for, is wider than the
20 spaces that I have for the other two
21 properties, so that would give me an
22 additional -- instead of 2, 3 spaces. So

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1 you're looking at 7 spaces versus 8. And
2 you're dealing with the maximum of 12 staff
3 people and 60 children and I'm only looking
4 for 1 parking space short.

5 VICE CHAIR LOUD: So the 12
6 captures your teachers as well as other
7 employees? I think our rules speak to
8 employees. Let me double check. I just want
9 to make sure --

10 MS. RASHEED: I think --

11 VICE CHAIR LOUD: -- we have all of
12 the --

13 MS. RASHEED: -- we may have a
14 clear understanding that --

15 VICE CHAIR LOUD: -- information
16 correct.

17 MS. RASHEED: -- as long as I have
18 that number at any given time, that that is
19 workable for me, because that's originally
20 what I applied for. I would like to stick
21 with that, because if it's possible for me to
22 proceed forward, I would like to stay with

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1 that.

2 CHAIRPERSON MILLER: Does the
3 Office of Planning have a comment or opinion?

4 MR. COCHRAN: Madam Chair, the
5 applicant is correct in that they could fit 7
6 easily, 7 legal sized spaces in the back. The
7 lot they are adding is 37 and oh, probably 4
8 inches wide, 37 feet 4 inches, which easily
9 accommodates three 10 foot wide parking
10 spaces.

11 If the applicant were to combine
12 all three lots, the applicant could certainly
13 fit 8 spaces in there. But right now, OP is
14 looking at it as three separate lots and how
15 many can you park legally within each lot.
16 The aggregate would be 7, but you would have
17 enough space -- you have the fractional
18 requirements where if you have one space for
19 every say 4 employees, if you go then to 5, it
20 requires not 1.4, it's 2.

21 So all I'm saying is if we combine,
22 she could easily meet it. But if not, then it

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1 would fit under the 25 percent reduction of
2 2108.

3 CHAIRPERSON MILLER: This case was
4 reviewed, I mean, was referred to DDOT in any
5 event, was it not?

6 MR. COCHRAN: DDOT had --

7 CHAIRPERSON MILLER: In the normal
8 course? Okay. So we don't have a report from
9 DDOT. Is that right?

10 MR. COCHRAN: No, we don't.

11 CHAIRPERSON MILLER: Did you talk
12 to DDOT about the case or no?

13 MR. COCHRAN: I did talk to DDOT
14 about the case. They were comfortable with
15 the -- we didn't -- okay. They were
16 comfortable with the drop-off in the front,
17 which is one of the reasons that that
18 condition is there, because the last time
19 around DDOT wanted that.

20 I did not talk with DDOT about the
21 need for 8 spaces rather than 6.

22 VICE CHAIR LOUD: Ms. Rasheed, I

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1 just wanted to clarify again and ask my
2 question. I'm not sure I got an answer to it.

3 And the only reason I'm asking is because
4 when we were talking earlier, you had
5 indicated that 12, limiting it to 12 teachers
6 would really be fairly restrictive in terms of
7 what you want to offer the young people, which
8 I understand.

9 And so my question went to whether
10 we are talking 12 employees total, which would
11 really reduce the number of teachers that you
12 may have or whether you are talking about in
13 the scenario you just gave us, 12 teachers.

14 MS. RASHEED: You are confusing the
15 --

16 VICE CHAIR LOUD: I'm sorry.

17 MS. RASHEED: -- employees and
18 teachers, it's like you're separating them.

19 VICE CHAIR LOUD: Yeah, exactly.
20 And I think it's an important distinction. We
21 are separating them, because our rules speak
22 to just employees. So, for example, there

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1 might be staff that you have, I don't -- maybe
2 maintenance staff or counselors or other staff
3 that are not instructional staff.

4 MS. RASHEED: Um-hum.

5 VICE CHAIR LOUD: That we would
6 count for the 12. And we wouldn't just count
7 the 12 teaching positions, which I think is
8 important, because of what I heard you say
9 earlier about being overly restrictive in what
10 you can offer the young people.

11 MS. RASHEED: Okay. In terms of
12 what our immediate need is and the size of the
13 classrooms, I only added on two additional
14 staff for that building. So in terms of what
15 the future might look like, you know, it's
16 hard for me to say. But you know, in terms of
17 the immediate need, that's what I'm going to
18 need for those classrooms.

19 And I guess if a decision is not
20 made today, I guess I would need to know what
21 do you deem as being reasonable in terms of
22 additional parking or whatever I need to do.

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1 But right now, that's the application that I
2 filed in terms of what the need is. And I
3 kind of threw it out there, because I didn't
4 want to come back three more years and ask you
5 for something different.

6 VICE CHAIR LOUD: I think we are
7 all sort of trying to get to that same spot
8 with you. I guess my question was only
9 whether you are talking specifically 12
10 teachers in the scenario where you did the
11 calculations and you came out with 8. Is that
12 based on 12 teachers?

13 MS. RASHEED: Yes.

14 VICE CHAIR LOUD: Okay. That was
15 my only question.

16 MS. RASHEED: Oh, okay. I'm sorry.

17 VICE CHAIR LOUD: And then you do
18 not have employees apart from the teachers?

19 MS. RASHEED: We have dual roles,
20 so we have administrators that are teachers as
21 well.

22 VICE CHAIR LOUD: Okay.

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1 MS. RASHEED: Yes.

2 VICE CHAIR LOUD: And you don't
3 have employees who are not in dual roles and
4 are just administrators?

5 MS. RASHEED: They are counted in
6 the number.

7 VICE CHAIR LOUD: Okay. I don't
8 have any further questions, Madam Chair, on
9 that particular issue.

10 CHAIRPERSON MILLER: Okay. I mean,
11 in answer to your question, I think you would
12 want to look at the maximum number of parking
13 spaces you could get perhaps.

14 MS. RASHEED: Okay.

15 CHAIRPERSON MILLER: Depending on
16 what efforts you want to make. The reduction
17 is automatic. You know, we can do 25 percent
18 based on the factors that are set forth in
19 2108 and they are pretty much common sense.
20 It looks like you wouldn't have any problem
21 with that, though we're not ruling on that, at
22 this time.

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1 MS. RASHEED: Okay.

2 CHAIRPERSON MILLER: But it's
3 similar kind of concerns that you are raising.
4 Then the other one is, you know, if you have
5 parking spaces in another location, if you
6 want to go that extra step, if you don't need
7 to, you don't need to, you know, try to get
8 authorization for that.

9 What you want to do is, I think,
10 have your program, have the number of staff
11 that you really think you need and then
12 compare it to the parking requirements.

13 MS. RASHEED: Okay.

14 CHAIRPERSON MILLER: And just make
15 that work. And so that's what we have to do.

16 MS. RASHEED: Okay.

17 CHAIRPERSON MILLER: In giving an
18 okay on this, we've got to say okay, if
19 they've got 12 staff, they've got 7 parking
20 spaces, they have got a 25 percent reduction,
21 you know, fine. But we're not talking about
22 your coming back with a full application. We

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1 were just suggesting a few weeks actually to
2 look at the numbers, talk to Office of
3 Planning.

4 MS. RASHEED: Okay.

5 CHAIRPERSON MILLER: And then we
6 know exactly, okay, this is what we are
7 approving, three buildings, you know, child
8 development center, private school. This is
9 what the use is going to be. This is the
10 parking demand, they meet it, because this is
11 the faculty. And then you could be like, you
12 know, golden.

13 MS. RASHEED: Okay.

14 CHAIRPERSON MILLER: So you know,
15 I think it's almost there. I just think it
16 wouldn't hurt to have that additional time.

17 MS. RASHEED: Yeah. I heard you
18 say I needed to post the public notice again,
19 so at what point? After I made the changes or
20 when would I come and pick that up or how is
21 that done?

22 CHAIRPERSON MILLER: Okay.

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1 MS. RASHEED: At what point in
2 time?

3 CHAIRPERSON MILLER: You just go
4 right next door, right here.

5 MS. RASHEED: Okay.

6 CHAIRPERSON MILLER: Right here and
7 they will help you with the signs. They will
8 give them to you.

9 MS. RASHEED: Okay.

10 CHAIRPERSON MILLER: And you will
11 put on it, you know, in general like special
12 exception relief under 205 and 206.

13 MS. RASHEED: Um-hum.

14 CHAIRPERSON MILLER: And for each
15 building.

16 MS. RASHEED: Okay.

17 CHAIRPERSON MILLER: And then I
18 guess I want to, you know, make an assessment
19 whether we will need to have a short hearing.

20 We were thinking of doing this on the 17th.
21 We have an opening on the 17th of March --

22 MS. RASHEED: Okay.

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1 CHAIRPERSON MILLER: -- to finish
2 this up. We could have a short hearing based
3 on the updated information and then hopefully
4 be able to make a decision on that date.

5 MS. RASHEED: Okay.

6 CHAIRPERSON MILLER: Any comments
7 from Office of Planning on that plan?

8 MR. COCHRAN: OP can certainly work
9 with it. I think I may have to be somewhere
10 else that day, but we can certainly work it
11 out in advance and submit a supplemental
12 report.

13 CHAIRPERSON MILLER: Okay. So I
14 think if we have your report, we should be
15 fine. I guess then I --

16 MR. COCHRAN: I'll try to get
17 something in writing from DDOT also.

18 CHAIRPERSON MILLER: And from DDOT,
19 thank you. And then also, I don't know if
20 there is anything else you wanted to add today
21 while you are here on this application?

22 MR. COCHRAN: No, ma'am.

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1 CHAIRPERSON MILLER: Okay. So in
2 all other respects, Office of Planning, we
3 have your report, you don't have any other
4 issues separate from what's in your report and
5 the parking?

6 MR. COCHRAN: Correct.

7 CHAIRPERSON MILLER: Okay. Okay.
8 Can you be here on the 17th?

9 MS. RASHEED: Yes.

10 CHAIRPERSON MILLER: Okay.

11 MS. RASHEED: Thank you.

12 CHAIRPERSON MILLER: Well, hold on
13 one second. We're just going to set a date
14 for -- we would like you to, you know, file
15 one more paper.

16 MS. RASHEED: Okay.

17 CHAIRPERSON MILLER: As I was
18 saying, which would, you know, just fully
19 characterize what this operation is going to
20 be.

21 MS. RASHEED: Okay.

22 CHAIRPERSON MILLER: You know, both

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1 uses, three buildings, number of children,
2 okay, number of parking spaces, number of
3 employees. Okay.

4 MS. RASHEED: Okay.

5 CHAIRPERSON MILLER: So when would
6 that filing be due, Mr. Moy, in order to make
7 the March 17th date?

8 MR. MOY: Well, I want to ask, I
9 guess, we have -- it's four weeks, although, I
10 think it's a little bit less than four weeks,
11 probably more like three in actual work time,
12 but if OP is going to be filing a
13 supplemental, they will need time to evaluate
14 the additional information, right?

15 So how much time would OP need to
16 do their supplemental analysis?

17 MR. COCHRAN: This amount of time
18 would be fine. We could certainly get
19 something in to you by the 3rd of February.

20 MS. RASHEED: March?

21 MR. COCHRAN: I'm sorry, March,
22 yeah, exactly.

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1 CHAIRPERSON MILLER: I don't know
2 if the applicant can do her filing by then.
3 When do you think you can -- can you do that
4 by then?

5 MS. RASHEED: Um-hum. I originally
6 put for 32 anyway, so it won't be a problem.

7 CHAIRPERSON MILLER: Okay. And you
8 will figure out just the enrollment and
9 parking.

10 MS. RASHEED: Um-hum.

11 CHAIRPERSON MILLER: Okay. And
12 then look at 2108 if you want to use that, to
13 see if you need to address those factors.

14 MS. RASHEED: Okay.

15 MR. MOY: Well, I mean, the
16 applicant can file within a week, would you
17 need a week and a half?

18 MS. RASHEED: A week.

19 MR. MOY: A week? That would be
20 February the 24th, next Tuesday is February the
21 24th.

22 MS. RASHEED: Okay.

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1 MR. MOY: That would help Office of
2 Planning with ample time, right?

3 MR. COCHRAN: Absolutely.

4 MR. MOY: For OP to file March 3rd
5 or do you want that Friday?

6 MR. COCHRAN: We will certainly get
7 it in the 7 days in advance that is required.
8 We'll try to do better than that.

9 MR. MOY: It would be more than the
10 7 days, because we're talking about March 17th,
11 correct?

12 CHAIRPERSON MILLER: Correct.
13 Yeah, we're doing March 17th. We have an
14 opening there.

15 MR. COCHRAN: Great.

16 CHAIRPERSON MILLER: Okay. And
17 again, if you want to look at 2116, that's
18 another area in case you are looking to park
19 your -- any of the vehicles on another place.
20 Okay.

21 MS. RASHEED: Okay.

22 CHAIRPERSON MILLER: And you will

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1 be conferring with Office of Planning, I would
2 assume also.

3 MS. RASHEED: Um-hum, okay.

4 CHAIRPERSON MILLER: Okay. Good.
5 All right.

6 MS. RASHEED: Thank you.

7 CHAIRPERSON MILLER: Thank you very
8 much. Oh, let me say, also, the filing that
9 you serve on us, also serve on the ANC.

10 MS. RASHEED: I have to go back to
11 the ANC?

12 CHAIRPERSON MILLER: You don't have
13 to go back to them, but you have to give them
14 the submission.

15 MS. RASHEED: Okay.

16 CHAIRPERSON MILLER: Okay.

17 MS. RASHEED: All right.

18 MS. BAILEY: Mrs. Miller, did you
19 say this was a decision meeting coming up for
20 this case?

21 CHAIRPERSON MILLER: I said we're
22 going to have a short hearing and I would --

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1 MS. BAILEY: A short hearing.

2 CHAIRPERSON MILLER: -- expect that
3 we would be able to decide it that day as well
4 possibly.

5 MS. BAILEY: Okay, okay.

6 CHAIRPERSON MILLER: Okay. Thank
7 you very much. Okay. Ms. Bailey, I think we
8 are ready for the last case of the morning
9 when you are.

10 MS. BAILEY: Madam Chair, that's
11 Application 17869 of the Greater Calvary Holy
12 Church, pursuant to 11 DCMR 3104.1, for a
13 special exception from the parking space
14 location requirements under section 2116,
15 serving a child development center and private
16 school in the C-M-2 District at premises 806
17 Rhode Island Avenue, N.E., Square 3846, Lot
18 84.

19 CHAIRPERSON MILLER: Good
20 afternoon. Do you see where you push to speak
21 into the microphone?

22 MS. WALSH: Yes. Is it on? Okay.

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1 I think it is on.

2 CHAIRPERSON MILLER: Okay. Now I
3 hear it, yeah. Okay. And would you identify
4 yourself for the record, please?

5 MS. WALSH: Yes. I'm Meghan Walsh.
6 I'm the architect working with Greater Mount
7 Calvary Holy Church.

8 CHAIRPERSON MILLER: Okay. I think
9 it is a pretty full record. Do you have any
10 brief words you want to say about the
11 application?

12 MS. WALSH: I think, well, we were
13 applying for two special exceptions. One is
14 to reduce the number of parking spaces under
15 2108.2 and the other is to provide the off-
16 street parking under 2116. Essentially,
17 that's the contents of the case and what we
18 are applying for.

19 CHAIRPERSON MILLER: And we will
20 get to this with Office of Planning, but did
21 you confer with DDOT at all?

22 MS. WALSH: No, we did not.

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1 CHAIRPERSON MILLER: Okay. Do
2 Board Members have any questions?

3 COMMISSIONER HOOD: I do have a
4 question. Did you make a presentation to ANC-
5 5C?

6 MS. WALSH: We did.

7 COMMISSIONER HOOD: What about 5B?

8 MS. WALSH: We did not. We were
9 confused and I guess everybody was confused,
10 because 5C wrote us a letter of support.

11 COMMISSIONER HOOD: Okay.

12 MS. WALSH: And they held a special
13 meeting to write that letter. But we did
14 contact 5B.

15 COMMISSIONER HOOD: Okay.

16 MS. WALSH: And I spoke to a person
17 named William Shelton on Friday.

18 COMMISSIONER HOOD: Chairman,
19 right.

20 MS. WALSH: And he said that he
21 didn't have any problems with it and that he
22 could fax us a letter. I haven't received a

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1 letter, but if you would like, I can certainly
2 submit that to you.

3 COMMISSIONER HOOD: No, no, you
4 have already made contact with 5B. But part
5 of the church is in 5C. I guess the main --
6 the larger sanctuary part.

7 MS. WALSH: That was part of our
8 confusion.

9 COMMISSIONER HOOD: Okay.

10 MS. WALSH: You will see me again
11 in a few weeks for one that was -- that is in
12 5C.

13 COMMISSIONER HOOD: Okay. Good.
14 All right. Thank you.

15 CHAIRPERSON MILLER: So is 5C more
16 impacted by this than 5B or no?

17 MS. WALSH: No, not really. The
18 properties that the church owns are split
19 between these two ANCs, so, you know, I guess
20 it's 6 of 1 or a half dozen of the other.

21 CHAIRPERSON MILLER: Do you have
22 any concerns? We will get to Office of

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1 Planning, but I noticed that they recommend
2 with conditions. And do you have any concerns
3 with respect to their conditions?

4 MS. WALSH: I guess I would like to
5 hear the conditions.

6 CHAIRPERSON MILLER: Okay. Do you
7 have a copy of Office of Planning's report?

8 MS. WALSH: No.

9 CHAIRPERSON MILLER: Have you seen
10 it?

11 MS. WALSH: No, I haven't seen the
12 report.

13 CHAIRPERSON MILLER: Okay. Why
14 don't we get you a report. Anybody have a
15 copy?

16 MS. WALSH: I have been in touch
17 with the Office of Planning quite a bit, but I
18 guess, for some reason, I didn't get that
19 report.

20 CHAIRPERSON MILLER: Okay. Well, I
21 think it is important specifically because
22 they recommend five conditions. So I think

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1 you should look at them in addition to just
2 hear them. So we're getting you a report.

3 MS. WALSH: Okay. Thank you.
4 Would you like me to look in a specific area,
5 so I don't take too much of your time reading?

6 CHAIRPERSON MILLER: Well, you know
7 what, we can wait. We will hear from Office
8 of Planning. I just wanted you to have their
9 report --

10 MS. WALSH: Okay.

11 CHAIRPERSON MILLER: -- before we
12 started with it. You have it?

13 MS. WALSH: I do. I have a copy
14 now.

15 CHAIRPERSON MILLER: Okay. I would
16 just bring your attention to they recommend
17 conditions and they are set forth on page 7.

18 MS. WALSH: Okay.

19 CHAIRPERSON MILLER: So if we don't
20 have any questions for the applicant, we can
21 go to Office of Planning. All right. I'm not
22 hearing any, so?

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1 MR. EMERINE: Okay. Thank you,
2 Madam Chair and Members of the Board. For the
3 record, my name is Dan Emerine and I am a
4 Development Review Specialist with the Office
5 of Planning.

6 The Office of Planning supports the
7 relief requested under sections 2108 to reduce
8 the number of parking spaces by 25 percent and
9 the special exception relief under 2116 to
10 meet the parking requirements off-site. I'll
11 just quickly go into a brief bit of
12 background, so you know how we got to the
13 place that we are today.

14 The applicant originally submitted
15 a relief request for relief under 2116 to meet
16 the requirements off-site. In our initial
17 review of the application, OP determined that
18 we needed additional information to ensure
19 where exactly the parking spaces would be
20 located.

21 We communicated with the
22 applicant's agent, Ms. Walsh, to determine

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1 where those spaces would be and at the end of
2 the day we found that the applicant did have
3 access to parking that was not otherwise
4 occupied, but not nearly enough to meet the
5 full 25 spaces required. So at that point, we
6 brought the applicant's attention to 2108 and
7 determined that it was -- that they met all
8 the requirements of that section.

9 We did -- the Office of Planning
10 did consult with DDOT staff to determine
11 whether they had any concerns. DDOT said that
12 they had no concerns related to the reduction
13 in parking spaces. And the only concern that
14 DDOT raised with respect to the provision of
15 parking at the parking lot at the address 649
16 Rhode Island Avenue on the other side of the
17 railroad tracks was the possibility, however
18 remote, that some drivers may upon exiting
19 that parking lot might make an illegal left
20 turn onto Rhode Island Avenue.

21 We don't have any information to
22 suggest that that is happening. But DDOT did

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1 want to flag it as an area of potential
2 concern and they thought that could be very
3 easily addressed by simply posting a sign at
4 the exit of the parking lot. So that was one
5 of the conditions that we suggested in
6 response to DDOT's concerns.

7 The other conditions simply go to
8 maintaining the landscaping and vegetation at
9 the parking lot, which the applicant is
10 already doing and maintaining the masonry wall
11 and fencing that helps to screen the parking,
12 visually screen the parking lot. Again, the
13 applicant is already doing this.

14 The final conditions that OP is
15 recommending is that the applicant simply
16 state what the hours of operation are, so that
17 we have a clear understanding of when the
18 parking lot is in use by the school and child
19 development center and that they manage the
20 parking accordingly.

21 In other words, that the applicant
22 ensure that there are no other uses that are

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1 preventing the school and the child
2 development center from access to those
3 required spaces.

4 So again, these all appear to the
5 conditions that the applicant is already
6 meeting with the exception of simply knowing
7 when the hours of operation are and having the
8 sign posted. So we, Office of Planning, would
9 recommend those as fairly hopefully easy to
10 meet conditions to ensure proper continued use
11 of the parking lot.

12 There -- I believe the only other
13 point I'll address is just a couple of errors
14 in my report that I wanted to clear up for the
15 record. One is the confusion over 5B versus
16 5C. We had originally also thought that the
17 applicant had communicated with 5B and it was
18 5C. And now we understand that the applicant
19 has communicated with 5B.

20 And we had said in our report that
21 the applicant has been operating this school
22 and child development center at this location

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1 for more than a decade and it should have said
2 nearly a decade, because it's been in
3 operation since the year 2000.

4 That concludes my summary of my
5 report, but I'm available to answer any
6 questions that the Board has.

7 CHAIRPERSON MILLER: I have a
8 couple questions. Was it meeting the parking
9 requirements as a child development center?

10 For three. One space for every 4
11 employee?

12 MR. EMERINE: Right, right.

13 CHAIRPERSON MILLER: Yes. So it's
14 a much lower demand.

15 MR. EMERINE: Right. So the child
16 development center would require 5 spaces.
17 The question of whether they are meeting the
18 requirement now, is that the question?

19 CHAIRPERSON MILLER: No. I might
20 go to applicant, but I just was wondering
21 whether they were in compliance with the
22 parking before they were seeking the special

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1 exception as a school. They have been
2 operating for almost a decade as a child
3 development center.

4 MR. EMERINE: Um-hum.

5 CHAIRPERSON MILLER: And so it's
6 just a background question. You know, we're
7 not going to issue any fines. I mean, I'm
8 just wondering was it and that's what caused
9 the need for parking relief or was it just the
10 parking relief became apparent because of the
11 need for a special exception for a school
12 became apparent?

13 MR. EMERINE: I think the applicant
14 can probably address the history better than I
15 can.

16 CHAIRPERSON MILLER: Okay.

17 MS. WALSH: The latter is correct.
18 They were -- the District of Columbia, as you
19 saw with the previous case, has been going
20 around to schools and defining better what
21 their Certificates of Occupancy should be.
22 And this is one of those cases.

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1 And in this case, once that came up
2 and they were seeking that, it was clear that
3 the parking was not met. In the existing
4 condition, the building was a warehouse at one
5 point, which had no parking requirements, so
6 on the physical property there are no actual
7 parking spaces.

8 But it's sort of the way that it is
9 laid out, there are some spaces that appear to
10 be on the property. They are public spaces.
11 So I think that prior to this, those public
12 spaces probably would have accommodated it,
13 but it still would have needed some kind of a
14 special exception.

15 So this new parking lot will
16 accommodate all of the staff.

17 CHAIRPERSON MILLER: Thank you very
18 much. And I appreciate that little history,
19 because, you know, we haven't seen this and
20 all of a sudden now we are seeing child
21 development centers coming in for private
22 school relief, so that explains it.

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1 COMMISSIONER HOOD: Can I just ask
2 a question?

3 CHAIRPERSON MILLER: Um-hum.

4 COMMISSIONER HOOD: The parking
5 lot, is that the one right behind the tire
6 place?

7 MS. WALSH: No, that's actually
8 public parking along the tire place, but it is
9 over where the silos are, you know, the blue
10 silos. Before you come under the bridge
11 heading away from the District, there is a
12 triangular-shaped parking lot there.

13 COMMISSIONER HOOD: So if I'm
14 coming -- if I'm going out towards Maryland, I
15 need to --

16 MS. WALSH: It's on your right.

17 COMMISSIONER HOOD: -- make a --
18 it's on my right?

19 MS. WALSH: Yes. It's across the
20 street before the Metro overpass.

21 COMMISSIONER HOOD: Oh, okay.

22 MS. WALSH: Yeah.

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1 COMMISSIONER HOOD: I know what
2 you're talking about.

3 MS. WALSH: It's hard to tell it's
4 a parking lot from the road.

5 COMMISSIONER HOOD: It's before you
6 get up under the underpass?

7 MS. WALSH: Exactly. And it's just
8 fenced in, so if you didn't know it was a
9 parking lot, you know, you wouldn't have any
10 reason to know it was a parking lot.

11 COMMISSIONER HOOD: So it's before
12 I go up on -- so that is 5C.

13 MS. WALSH: That is 5C.

14 COMMISSIONER HOOD: That part of it
15 is 5C.

16 MS. WALSH: But the actual --

17 COMMISSIONER HOOD: So but the
18 building is --

19 MS. WALSH: -- yeah.

20 COMMISSIONER HOOD: -- in 5B.

21 MS. WALSH: Yes.

22 COMMISSIONER HOOD: Okay. I

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1 understand now.

2 MS. WALSH: It's confusing, yeah.

3 COMMISSIONER HOOD: So that's
4 public parking there?

5 MS. WALSH: That's not public
6 parking. That is property owned by the
7 church.

8 COMMISSIONER HOOD: Property owned,
9 okay.

10 MS. WALSH: And they currently use
11 that parking lot, but not for any specific
12 designated use. There is 22 spaces.

13 COMMISSIONER HOOD: Okay.

14 MS. WALSH: So what they will do
15 now is they will allocate the required spaces
16 for the school and post signs, you know,
17 reflecting that. Is that what you also meant
18 by stipulate the hours? I wasn't sure if that
19 meant you wanted the hours posted somewhere?

20 MR. EMERINE: Simply that you
21 inform the Board of what the hours are, so
22 that they have an understanding of when the

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1 parking is needed.

2 MS. WALSH: Okay. The hours of
3 operation for the school are from 6:30 in the
4 morning until 6:00 p.m. in the evening. And
5 the church's hours, they have some things in
6 the evening that begin at 6:30 in the evening.

7 And the church will also use that parking
8 lot, but not in the same hours that the school
9 will use them. And that's Monday through
10 Friday.

11 CHAIRPERSON MILLER: Okay. Yeah, I
12 thought I heard Office of Planning talk about
13 posting of hours, too, so that those spaces
14 wouldn't be taken. I mean, do you think it
15 would be a good idea to post a sign saying
16 parking for this child development center and
17 private school only, Monday through Friday,
18 6:30 a.m. to 6:00 p.m., something like that or
19 not?

20 MR. EMERINE: I don't think we
21 would have any objection to that. I guess I
22 would want to know from the applicant if that

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1 would be -- I don't see any reason that would
2 be burdensome, but if the applicant has any
3 concerns about that, I would want to know.

4 CHAIRPERSON MILLER: I would, too.

5 And, you know, I'm just picking up on what
6 you said and what you said. How do we know
7 that those spaces will be there exclusively
8 for the school and child development center or
9 do we need that kind of a posting?

10 MS. WALSH: I did ask my client
11 about that. I said would you be willing to
12 dedicate this lot entire to the school and
13 they said that they would. So, you know, if
14 it was required to have a sign, I'm sure that
15 they would have that sign. It's not a lot
16 that I think anybody just driving down Rhode
17 Island Avenue would necessarily pull into,
18 because there is really no other amenities in
19 the area, except church-related things.

20 I mean, there is a community life
21 center that is around the corner, but they
22 have some parking of their own. The church is

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1 across the street. So unless there is
2 actually functions going on at those places
3 that are, you know, more demanding than what
4 those places already have for parking, I don't
5 see those -- that being a problem.

6 It also has -- I believe it has a
7 gate that can be locked off, so -- not that
8 that would be necessary for any reason,
9 because pretty much every day of the week it
10 is going to be used for something.

11 CHAIRPERSON MILLER: Okay. This is
12 the one that you have a lease agreement for?

13 MS. WALSH: That's a different one.

14 CHAIRPERSON MILLER: That's a
15 different one.

16 MS. WALSH: This is -- 649 is owned
17 by the church.

18 CHAIRPERSON MILLER: It's owned by
19 the church.

20 MS. WALSH: The lot is owned, yes.

21 CHAIRPERSON MILLER: So --

22 MS. WALSH: The lease agreement was

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1 for another lot that the church leases parking
2 spaces from, but we took that out of this
3 application, because we realize that the lease
4 didn't include hours that the school could use
5 it. So we just took that out.

6 CHAIRPERSON MILLER: Okay. Well, I
7 mean, it sounds like we might not need to post
8 something like that, because if the school and
9 the center needed it, if they found that other
10 people were parking there, it would be in
11 their interest to post such a sign. So we
12 don't need, I don't think, to. Okay.

13 My other question for Office of
14 Planning is No. 5 with respect to the sign,
15 posting a sign. I'm not -- I'm under the
16 impression that -- I may be wrong. Is that
17 kind of a sign, like right turn only,
18 something that DDOT would need to post as
19 opposed to an applicant? You know, it's like
20 a traffic sign.

21 MR. EMERINE: Well, it would be a
22 sign to give traffic information. I think if

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1 the sign were on private property, I think the
2 applicant could post that. If the Board wants
3 to be certain of that, then I can confer with
4 DDOT.

5 CHAIRPERSON MILLER: Okay. I don't
6 know that I want to push it that far, but I
7 just was curious, you know, whose
8 responsibility it really is, but I'm sure that
9 if there is a condition like this that if DDOT
10 needs to do it, the applicant would just ask
11 DDOT to do it. Is that correct?

12 MS. WALSH: Sure. I'm not sure how
13 this would work either. And thinking about
14 the way the lot is set-up, Dan, I was thinking
15 that the wall comes before the curb, so I
16 guess you would have to have read the wall
17 before you get out to the curb to make sure
18 that you turn right.

19 So I'm not sure if that is what
20 DDOT had in mind or if it might be better for
21 DDOT to assess the situation themselves and if
22 they want to place a sign, figure out the best

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1 place to do that. I don't exactly know where
2 the island is, but there is an island in the
3 middle of that road and it splits the two
4 sides.

5 MR. EMERINE: Right.

6 MS. WALSH: So at some points it is
7 impossible to take a left there.

8 MR. EMERINE: Right.

9 MS. WALSH: And I don't think that
10 that's the case right in front of it, but it
11 may be that it's even almost impossible to
12 make a left there.

13 MR. EMERINE: It's the concrete
14 median on Rhode Island Avenue extends about,
15 I did a quick measurement, 110 feet beyond the
16 entrance to the parking lot. So again, that's
17 why I -- my earlier caveat was that there may
18 be the remote possibility of someone trying to
19 make a very unsafe and -- you would have to be
20 in quite a hurry to go west on Rhode Island
21 Avenue in order to do that.

22 So perhaps what I would recommend

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1 is that the applicant confer with DDOT and get
2 a better understanding of exactly what their--
3 DDOT thinks this sign ought to be posted and
4 where the most logical and safe place is to
5 post it and whether it is DDOT's
6 responsibility or the applicant's.

7 CHAIRPERSON MILLER: Okay. DDOT
8 recommended this, correct?

9 MR. EMERINE: Yes.

10 CHAIRPERSON MILLER: Okay. How
11 about if it was something like the applicant
12 shall coordinate with DDOT in posting a sign
13 at the exit? Would that meet your concern?

14 MR. EMERINE: Yes.

15 CHAIRPERSON MILLER: Okay. Other
16 questions?

17 MS. WALSH: I would want to follow-
18 up on that just to make sure that I have a
19 person to talk to there. I haven't always had
20 a lot of success getting in touch with people
21 at DDOT. So I just want to make sure that I
22 can get the answer for my client.

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1 COMMISSIONER HOOD: You might want
2 to follow with Karina Ricks. She is very
3 responsible.

4 MS. WALSH: Okay.

5 COMMISSIONER HOOD: Hopefully I'm
6 not putting her on the spot.

7 MR. EMERINE: I can also help the
8 applicant in getting in touch with the --
9 there is a Ward 5 Transportation Planner now
10 after a long hiatus.

11 MS. WALSH: Okay. Great.

12 COMMISSIONER HOOD: Could you tell
13 me who that is?

14 MR. EMERINE: Yes, it's --

15 COMMISSIONER HOOD: Oh, I was told
16 that wasn't concerning the case. Thank you.
17 I'll ask you off-line.

18 CHAIRPERSON MILLER: No, actually,
19 that's a good name to have on the records. Do
20 you have a name?

21 MR. EMERINE: The Ward 5
22 Transportation Planner is Allan, A-L-L-A-N,

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1 Fye, F-Y-E.

2 CHAIRPERSON MILLER: Thank you.
3 All right. Are there other questions for
4 Office of Planning? Okay. Thank you. Does
5 the applicant have any questions for Office of
6 Planning, other than that?

7 MS. WALSH: No, thank you.

8 CHAIRPERSON MILLER: Okay. I don't
9 see anybody else in the audience, but I will
10 go through with the motions of asking if there
11 is anybody here from ANC-5B? Not seeing
12 anybody, anybody here from ANC-5C? Not seeing
13 anybody, we do have a letter from ANC-5C
14 approving the application.

15 My letter has a blank with respect
16 to the number of Commissioners that voted to
17 approve the application. But I don't know
18 about everybody else. Okay. It does, you
19 know, reflect that Ms. Walsh was there and
20 presented the case to them and submitted
21 documents to them.

22 Okay. So I don't know, Ms. Walsh,

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1 if you have a different letter, but that's
2 what our letter says. They approve it, but
3 they didn't say how many of the 12
4 Commissioners voted to approve it.

5 MS. WALSH: I saw the letter. I
6 didn't notice that they had left that out.
7 The night that I was there, I think there were
8 10 Commissioners there. And it was either 100
9 percent approved or there was one abstention.

10 But I didn't have any -- I know that there
11 weren't any other people that didn't approve
12 it. That's what I recall.

13 CHAIRPERSON MILLER: Okay. Is
14 there anybody here who wishes to testify in
15 support of this application? Not seeing
16 anyone, anyone in opposition? Not seeing
17 anyone, do we have any other questions, Board
18 Members? Okay. Any final remarks?

19 MS. WALSH: Thank you very much.

20 CHAIRPERSON MILLER: Okay. I think
21 we will be able to deliberate on this case as
22 the record is full.

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1 Do we have a motion?

2 VICE CHAIR LOUD: Madam Chair, I
3 would like to move approval of Application No.
4 17869 for special exception relief under
5 section 2108 to reduce by 25 percent the
6 minimum parking requirements for a private
7 school and child development center and for
8 special exception relief under 2116.5 to meet
9 the minimum parking requirements off-site.

10 I think the record is very full.
11 The testimony has been full. Office of
12 Planning's report, our Exhibit 26, walks us
13 through in very careful detail the elements of
14 section 2108 as well as 2116 and references
15 specific facts where the applicant meets those
16 requirements.

17 So without going through each of
18 those, I would like to voice my support for
19 the application and ask that we move forward.

20 COMMISSIONER HOOD: And I'll second
21 the motion.

22 CHAIRPERSON MILLER: Further

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1 deliberation? I would like to, I don't know
2 if we formally say this as a friendly
3 amendment, but, support the motion with the
4 conditions that are set forth in Office of
5 Planning's report at page 7 of the report with
6 a minor amendment to No. 5, which would read
7 "The applicant shall coordinate with DDOT to
8 post a sign at the exit of the accessory
9 parking lot at 649 Rhode Island Avenue
10 directing drivers leaving the lot to right
11 turn only."

12 VICE CHAIR LOUD: Accepting.

13 CHAIRPERSON MILLER: Okay, okay,
14 Mr. Loud is accepting the addition. 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 MS. BAILEY: Madam Chair, the vote
22 is recorded as 5-0-0 to grant the application

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1 as amended and with the conditions identified.

2 Mr. Loud made the motion, Mr. Hood seconded,
3 Mrs. Walker, Mr. Dettman and Mrs. Miller
4 support the motion.

5 CHAIRPERSON MILLER: Okay. And
6 this will be a summary order as there is no
7 party in opposition.

8 MS. WALSH: Okay. Thank you.

9 CHAIRPERSON MILLER: Okay. Thank
10 you. Ms. Bailey, does that conclude our
11 agenda for this morning?

12 MS. BAILEY: Yes, Madam Chair.

13 CHAIRPERSON MILLER: Okay. Then we
14 will just make a quick determination as to
15 when we will come back for the afternoon
16 session. Then we will come back at 3:00. I
17 think I indicated before that we would not be
18 taking up another case or the case in the
19 afternoon until 3:00, so that's when it will
20 be.

21 (Whereupon, the Public Hearing was
22 recessed at 2:13 p.m. to reconvene at 3:07

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1 p.m. this same day.)

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1 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

2 3:07 p.m.

3 CHAIRPERSON MILLER: Good
4 afternoon, ladies and gentlemen, this hearing
5 will, please, come to order. This is the
6 February 17, 2009 afternoon Public Hearing of
7 the Board of Zoning Adjustment of the District
8 of Columbia.

9 My name is Ruthanne Miller. I'm
10 the Chair. To my right is Mr. Marc Loud. He
11 is our Vice Chair. And next to Mr. Loud is
12 Mr. Anthony Hood, who is the Chair of the
13 Zoning Commission. To the left of me is Mary
14 Oates Walker and Shane Dettman, Board Members,
15 Sherry Glazer from the Office of Attorney
16 General and Ms. Beverley Bailey from the
17 Office of Zoning. And also Mr. Cliff Moy from
18 the Office of Zoning will be joining us
19 shortly.

20 Copies of today's hearing agenda
21 are available to you and are located to my
22 left in the wall bin near the door. Please,

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1 be aware that this proceeding is being
2 recorded by a Court Reporter and is also
3 webcast live. Accordingly, we must ask you to
4 refrain from any disruptive noises or actions
5 in the hearing room.

6 When presenting information to the
7 Board, please, turn on and speak into the
8 microphone, first, stating your name and home
9 address. When you are finished speaking,
10 please, turn your microphone off, so that your
11 microphone is no longer picking up sound or
12 background noise.

13 All persons planning to testify
14 either in favor or in opposition are to fill
15 out two witness cards. These cards are
16 located to my left on the table near the door
17 and on the witness tables. Upon coming
18 forward to speak to the Board, please, give
19 both cards to the reporter sitting to my
20 right.

21 The order of procedure for special
22 exceptions and variances is as follows: One,

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1 statement and witnesses of the applicant.
2 Two, Government reports, including Office of
3 Planning, Department of Public Works, DDOT,
4 etcetera. Three, report of the Advisory
5 Neighborhood Commission. Four, parties or
6 persons in support. Five, parties or persons
7 in opposition. Six, closing remarks by the
8 applicant.

9 Pursuant to Section 3117.4 and
10 3117.5, the following time constraints will be
11 maintained: The applicant, persons and
12 parties, except an ANC, in support, including
13 witnesses, 60 minutes collectively. Persons
14 and parties, except an ANC, in opposition,
15 including witnesses, 60 minutes collectively.
16 Individuals 3 minutes.

17 These time restraints do not
18 include cross examination and/or questions
19 from the Board. Cross examination of
20 witnesses is permitted by the applicant or
21 parties. The ANC within which the property is
22 located is automatically a party in a special

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1 exception or variance case.

2 Nothing prohibits the Board from
3 placing reasonable restrictions on cross
4 examination, including time limits and
5 limitations on the scope of cross examination.

6 The record will be closed at the
7 conclusion of each case, except for any
8 material specifically requested by the Board.

9 The Board and the staff will specify at the
10 end of the hearing exactly what is expected
11 and the date when the persons must submit the
12 evidence to the Office of Zoning. After the
13 record is closed, no other information will be
14 accepted by the Board.

15 The Sunshine Act requires that the
16 Public Hearing on each case be held in the
17 open before the public. The Board may,
18 consistent with it's Rules of Procedure and
19 the Sunshine Act, enter Executive Session
20 during or after the Public Hearing on a case
21 for purposes of reviewing the record or
22 deliberating on the case.

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1 The decision of the Board in these
2 contested cases must be based exclusively on
3 the public record. To avoid any appearance to
4 the contrary, the Board requests that persons
5 present not engage the Members of the Board in
6 conversation.

7 Please, turn off all beepers and
8 cell phones, at this time, so as not to
9 disrupt these proceedings.

10 The Board will make every effort to
11 conclude the Public Hearing as near as
12 possible to 6:00 p.m. If the afternoon cases
13 are not completed at 6:00, the Board will
14 assess whether it can complete the pending
15 case or cases remaining on the agenda.

16 At this time, the Board will
17 consider any preliminary matters. Preliminary
18 matters are those that relate to whether a
19 case will or should be heard today, such as
20 requests for postponement, continuance or
21 withdrawal or whether proper and adequate
22 notice of the hearing has been given. If you

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1 are not prepared to go forward with a case
2 today or if you believe that the Board should
3 not proceed, now is the time to raise such a
4 matter.

5 Does the staff have any preliminary
6 matters?

7 MS. BAILEY: No, Madam Chair.

8 CHAIRPERSON MILLER: Okay. Then
9 let's proceed with the agenda. Would all
10 individuals wishing to testify today, please,
11 rise to take the oath? And Ms. Bailey will
12 administer it.

13 MS. BAILEY: Please, raise your
14 right hand.

15 (Whereupon, the witnesses were
16 sworn.)

17 MS. BAILEY: Thank you. Madam
18 Chair, ready for the case to be called?

19 CHAIRPERSON MILLER: Yes.

20 MS. BAILEY: Application No. 17861
21 of The Bishop John T. Walker School for Boys
22 and it's pursuant to 11 DCMR 3104.1, for a

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1 special exception to establish a private
2 school under section 206, and accessory
3 parking spaces under section 214 and section
4 2303.3 at premises 3624 and 3640 Martin Luther
5 King, Jr. Avenue, S.E., Square 6090, Lots 32,
6 810 and 813. The property is Zoned R-2.

7 And, Madam Chair, we did receive a
8 Department of Transportation report today and
9 I'll be handing that out, at this time.

10 CHAIRPERSON MILLER: Thank you. So
11 while Ms. Bailey is doing that, why don't the
12 parties introduce themselves for the record?

13 MR. AVITABILE: My name is David
14 Avitabile with Pillsbury for the applicant,
15 Bishop Walker School for Boys.

16 MS. PRINCE: Allison Prince with
17 Pillsbury.

18 MR. AVITABILE: And we have with us
19 today James Woody from the Diocese of
20 Washington Episcopal Church. And we also have
21 Maria Lashinger and Seth Fisher from Wells and
22 Associates, our traffic consultants.

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1 CHAIRPERSON MILLER: Do you have a
2 copy of this Department of Transportation
3 report?

4 MR. AVITABILE: We just received it
5 this morning as well.

6 CHAIRPERSON MILLER: Okay. This is
7 really the first the Board is seeing it, so I
8 think we just might take a moment to read it.

9 MR. AVITABILE: Okay.

10 CHAIRPERSON MILLER: I just want to
11 ask Mr. Rice from the Office of Planning two
12 questions. One, I guess you should introduce
13 yourself for the record though.

14 MR. RICE: Stephen Rice with the
15 D.C. Office of Planning.

16 CHAIRPERSON MILLER: Do you have a
17 copy of the DDOT report?

18 MR. RICE: Yes, I also received it
19 this morning.

20 CHAIRPERSON MILLER: Okay. And is
21 DDOT planning to testify today?

22 MR. RICE: Um, I did speak with the

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1 transportation planner and he told me that he
2 would not be able to show up today, so, no, I
3 don't think so.

4 CHAIRPERSON MILLER: Okay. Okay.
5 So I think we will deal with this when we get
6 to that part of the hearing, unless the
7 applicant has anything they want to say as a
8 preliminary matter. Okay. Then at this point
9 then, I will turn this over to the applicant.

10 It's a fairly full record, but if you want to
11 highlight the relief you are seeking and any
12 other aspects of your case, go right ahead.

13 MR. AVITABILE: Certainly. Again
14 for the record, David Avitabile with
15 Pillsbury. We are here primarily to seek
16 special exception relief to locate a private
17 school in the R-2 Zone District. As the
18 record details, the private school will not
19 have objectionable impacts due to noise,
20 traffic, number of students or other possible
21 objectionable concerns.

22 It is a school that will have, upon

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1 reaching its maximum enrollment,
2 approximately, 80 students and no more than, I
3 think, 18 faculty and staff. There are 13
4 parking spaces that are provided, which is one
5 more than is required under the Zoning
6 Regulations, so we meet the requirement under
7 the Zoning Regulations for parking.

8 However, due to the unique nature
9 of the property ownership, which is that our
10 school is located on one lot and then there
11 are two separate lots that are separately
12 owned and subdivided, the parking lot will be
13 located technically on other lots and so we
14 needed relief to locate parking on adjacent
15 lots, which is the second area of relief
16 before you today.

17 Again, we meet the standards for
18 approval for that. I will make one note in
19 the Office of Planning it noted that the
20 parking lot will be impervious surface, but
21 they would like us to explore the use of some
22 other materials. We are exploring that and

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1 really it's just going to be a trade-off as to
2 whether it makes more sense to do an
3 impervious surface with a storm water
4 management system that's more complex or just
5 a pervious paving that meets the updated
6 regulations. So that's what we are looking at
7 right now.

8 And then the last area of relief is
9 again for that parking lot. One of the
10 requirements when you are in a lower
11 residential zone is that you have a masonry
12 wall. We don't think that a masonry wall is
13 necessary in this case. We propose a stockade
14 fence with planting.

15 We have spoken to the adjacent
16 owner who fully agrees that this is
17 sufficient. He has provided a letter in
18 support for the record. We included it in our
19 package as well.

20 And then the last thing I'll note
21 is that the ANC did vote to support the
22 project. I don't believe a letter was

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1 received, but it was actually at the same
2 meeting that the case that you had earlier
3 today Kuumba Learning Center, they -- both
4 cases were presented on the same day. And I
5 think the ANC just didn't get a chance to
6 submit a letter indicating that it had
7 supported it.

8 With that, I think if you would
9 like, we have James Woody who would be happy
10 to talk a little bit about the school. We
11 also have Maria Lashinger from Wells and
12 Associates who would be happy to talk briefly
13 about traffic.

14 I don't know whether it is more
15 appropriate for her to speak now or once we
16 get to the DDOT report and responding to those
17 concerns. So we are happy to rest on the
18 record, which we think is complete, or indulge
19 the Board as you would like.

20 CHAIRPERSON MILLER: Okay. I mean,
21 I will have a few questions, but as far as the
22 process goes, I don't think, from what I have

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1 heard and Office of Planning will correct me
2 if I'm wrong, that there is going to be
3 anybody here to do the report. So I think the
4 report is going to speak for itself. And so
5 we might use it, at this time, to address
6 DDOT's concerns.

7 MR. AVITABILE: Okay. Well, then I
8 would like Maria to come up, please, and just
9 briefly address some of the issues raised in
10 the DDOT report and why they are not really
11 going to create objectionable traffic impacts.

12 Thank you.

13 CHAIRPERSON MILLER: Well, first of
14 all, if you want to introduce yourself for the
15 record, your name and address.

16 MS. LASHINGER: Good afternoon. My
17 name is Maria Lashinger. I'm with Wells and
18 Associates. And we did prepare the Traffic
19 Impact Study that is before you today.

20 MR. AVITABILE: Oh, sorry, very
21 quickly before Maria continues, we did submit
22 Maria's resume and we would like her to be

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1 qualified as an expert witness in the field of
2 traffic engineering. I believe her resume is
3 located in Tab E after Mary Wells' resume.
4 Maria has appeared before this Board.

5 CHAIRPERSON MILLER: Oh, we have
6 qualified you as an expert before?

7 MS. LASHINGER: Yes, you have.

8 CHAIRPERSON MILLER: Okay. Then
9 there shouldn't be any issue. Is there any
10 issue? No. I do have a basic question which
11 is not necessarily a traffic expert question.
12 I think that DDOT raised the question about
13 FTEs. Yes, DDOT is unclear about the number
14 of full-time equivalent, FTE, employees inside
15 of the school at one time.

16 So do you have an answer to that?
17 You have us 18 faculty and staff. Is that at
18 one time fully?

19 MR. AVITABILE: Yes, that would be
20 18 at any one time.

21 CHAIRPERSON MILLER: Okay.

22 MR. AVITABILE: That's --

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1 essentially, all 18 staff are full-time staff.

2 There may be one or two, but for purposes of
3 our analysis and everything else, we have
4 assumed that it is 18 people, because that's
5 the current projected staffing in total for
6 the school.

7 CHAIRPERSON MILLER: Okay. So that
8 is definitely their full-time employees?

9 MR. AVITABILE: Yes, that's
10 correct.

11 CHAIRPERSON MILLER: Okay, okay.
12 Thank you.

13 MS. LASHINGER: All right. I'll
14 just go through, I guess, essentially what we
15 found in the traffic study and then DDOT's
16 recommendations, what their questions were.
17 Is that what you would like to hear today?

18 CHAIRPERSON MILLER: I mean, we
19 don't -- if you can highlight it with respect
20 to, you know, why there are no adverse impacts
21 on neighboring properties.

22 MS. LASHINGER: Absolutely.

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1 CHAIRPERSON MILLER: We have read
2 your traffic report. It's usually longer than
3 testimony. But if you just want to highlight
4 the most important points that we need and
5 then addressing DDOT's points would be most
6 important.

7 MS. LASHINGER: Okay. Absolutely.
8 The Traffic Impact Study, obviously, was
9 prepared and submitted this January. It
10 included trip generation analysis, trip
11 distribution analysis, parking as well as
12 levels of service analysis. It did highlight
13 the Transportation Demand Management Program
14 that the school is proposing, as well as
15 providing a description of the drop-off and
16 pick-up procedures at the school.

17 Full build out was assumed for
18 purposes of the traffic study in 2009 as a
19 conservative estimate. The number one thing
20 is the trip generation. There is actually, on
21 page 13, a typographical error that I know
22 David brought copies of the updated table.

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1 It originally had stated that 80
2 percent of the students were taking public
3 transportation when in actuality 80 percent
4 will be auto passengers, assuming a zero
5 percent public transit for the students. So
6 again, that's page 13.

7 The study also assumed that 80
8 percent of the faculty and staff would be
9 arriving as auto drivers, again a conservative
10 estimate for the 18 faculty and staff. All in
11 all, the school will be generating 84 peak
12 hour trips over the course of the day.

13 The level of service analysis
14 concluded that the all studied intersections
15 will operate at a level of service C or
16 better, consistent with the background
17 conditions in the area. Speaking to the
18 parking, again, 12 parking spaces are
19 required. They will be providing 13 directly
20 adjacent to the school, because there isn't
21 room on the existing site to provide those
22 spaces on-site.

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1 This will not be objectionable,
2 because the parking will all be provided off-
3 street, though there is all unrestricted
4 parking in the area with that one additional
5 space over the code. Again, it will
6 accommodate the visitors, anybody coming onto
7 the campus.

8 As far as drop-off and pick-up
9 procedures are going to go, drop-off and pick-
10 up will occur on the north side of Upsal
11 Street directly in front of the school. And
12 drop-off and pick-up will not be permitted on
13 Martin Luther King, Jr. Avenue. Parents will
14 be required to approach the school from
15 westbound Upsal Street and drop-off and pick-
16 up their students again on the north side
17 right in front of the school.

18 Parents will then continue on
19 westbound up Upsal to MLK Avenue to exit as
20 they please. These procedures should not and
21 will not disturb the neighborhood, because
22 again all the parking in the area is

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1 unrestricted in the proposed drop-off and
2 pick-up area.

3 The homes directly adjacent to the
4 school all have off-street parking, so the
5 pick-up and drop-off will not interfere with
6 their parking. And again, Upsal Street is a
7 very low volume road, so pick-up and drop-off
8 won't be interfering with lots and lots of
9 traffic, because it's a very low volume road.

10 As far as school signage goes, the
11 school has been working with us to prepare a
12 sign plan and we're going to work with DDOT to
13 ensure that all these signs are in place prior
14 to the start of school.

15 So for these reasons, it's not
16 objectionable to the school and the
17 neighborhood. Again, all the parking will be
18 off-street.

19 CHAIRPERSON MILLER: What do you
20 mean by -- what kind of signs are you going to
21 have?

22 MS. LASHINGER: Um, as far as

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1 putting up -- one, there is a stop sign on the
2 public alley where today there isn't currently
3 a stop sign exiting from the church, as well
4 as slow school children speed limit sign
5 restricting it to 15 miles per hour when
6 children are present on both Upsal Street as
7 well as Martin Luther King, Jr. Avenue.

8 CHAIRPERSON MILLER: Was that
9 information before the ANC?

10 MS. LASHINGER: I do not -- the
11 signage information?

12 MR. WOODY: That didn't come up at
13 all.

14 CHAIRPERSON MILLER: Yes, actually,
15 it might be good to have you at the table,
16 because we keep asking questions that are
17 appropriate for you. If you wouldn't mind
18 introducing yourself?

19 MR. WOODY: Oops, James Woody from
20 the Episcopal Diocese of Washington. The
21 issue of signage did not come up at the ANC
22 meeting.

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1 CHAIRPERSON MILLER: So is that
2 something that came up with DDOT afterwards or
3 that's something --

4 MR. WOODY: No, something that we
5 had discussed with Maria as part of their
6 work.

7 CHAIRPERSON MILLER: Okay.

8 MR. AVITABILE: One quick point, I
9 think, on discussions with DDOT. We filed the
10 application -- we filed our traffic study with
11 them on actually January 21st, which was 28
12 days prior to the hearing. We couldn't file
13 it two days earlier, because it was Martin
14 Luther King Day and then the inauguration.

15 We reached out to them repeatedly
16 through email and phone contact, offered to
17 meet and discuss the project and we didn't
18 hear back on at least four or five separate
19 instances. So without going too much into it,
20 I think we were a little thrown by the report.

21 These are fairly simple things that
22 can be easily addressed. As Maria said, the

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1 big discrepancy was over the -- DDOT thought
2 there was a discrepancy in how we generated
3 traffic. It was really a typographical error.

4 It is clear in the report that we generated
5 assuming that 80 percent of the students were
6 coming to the school by car being dropped off.

7 And the other issue seemed to
8 revolve around DDOT wanting to, I think, push
9 for less parking or providing what is required
10 under the regulations and I think it's
11 appropriate given the facts and circumstances
12 here.

13 So I don't think that the DDOT
14 report actually should be much of an obstacle,
15 but I just wanted to address those on point.

16 CHAIRPERSON MILLER: Okay. So for
17 instance, I mean, I did find it confusing,
18 too, because there was a mistake. So they
19 addressed table -- you have just addressed
20 Table 3-2 that they had an issue with.

21 MR. AVITABILE: Right.

22 CHAIRPERSON MILLER: Where did I

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1 see that? And 3-3, what's the problem with
2 that one?

3 MS. LASHINGER: Honestly, I don't
4 believe anything.

5 CHAIRPERSON MILLER: Okay.

6 MR. AVITABILE: I think the problem
7 with 3-3 was that it conflicted with the old
8 3-2.

9 MS. LASHINGER: The information is
10 separate enough that they were not related.

11 CHAIRPERSON MILLER: All right.
12 Let me just ask you this very basic question,
13 based on DDOT's statement. They said they
14 need clarification in order to assess the
15 impacts of the school on the neighborhood.
16 Okay. So you corrected 3-2.

17 MS. LASHINGER: Yes.

18 CHAIRPERSON MILLER: So when we
19 look at that, how do we assess the impacts of
20 the school on the neighborhood from those two
21 tables?

22 MS. LASHINGER: From those two

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1 tables, the trip generation is low enough that
2 it does not have a negative impact on the
3 neighborhood. I think that's clear in the
4 levels of service tables. You can -- we can
5 see that it's a very minimal increase in delay
6 when these trips are added to the network.
7 Again, it's a level of service C at these
8 studied intersections. It's a very minimal
9 impact that the trips will have.

10 CHAIRPERSON MILLER: So we need to
11 look at 3-1 as well to make a conclusion. Is
12 that right?

13 MS. LASHINGER: Yes, that's
14 correct. On page 11, Table 3-1, shows the
15 levels of service impact, the delay per
16 intersection.

17 MR. AVITABILE: 9.

18 MS. LASHINGER: Page 9. I
19 apologize. It's page 9. I'm looking at it as
20 a 9.

21 CHAIRPERSON MILLER: Okay. So that
22 addresses that aspect of the DDOT report.

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1 Does anybody have any questions about that
2 one?

3 MEMBER DETTMAN: Just a quick
4 question. Looking at 3-2 and 3-3, just trying
5 to find some place in these two tables where
6 the data would be conflicting. You are
7 proposing a student population of 80, right?

8 MS. LASHINGER: Yes, that's
9 correct.

10 MEMBER DETTMAN: If you look at 3-3
11 for students who are driven, you have 38. But
12 3-2 says 80 percent of your population is
13 going to take a car. So I can't get the
14 numbers to add up and it could be that I'm not
15 a transportation person.

16 MS. LASHINGER: Oh, no. The way
17 that those are calculated, we take the number
18 of students, which is going to be 80, times
19 the percent driven, again 80 percent, and
20 that's actually divided by the average vehicle
21 occupancy, I believe those were similar
22 points, times the percent of students that are

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1 present on any given day and we had assumed a
2 5 percent absenteeism.

3 MEMBER DETTMAN: Okay.

4 MS. LASHINGER: And that's where
5 those numbers come from.

6 CHAIRPERSON MILLER: Okay. I'm
7 looking at the DDOT report and it says on page
8 2 "There will need to be further traffic
9 analysis based on the number of students and
10 faculty that the proposed development will
11 facilitate in order for DDOT to make clear and
12 concise transportation safety
13 recommendations."

14 Don't we know the number? Isn't it
15 18 faculty and staff and 80 students?

16 MR. AVITABILE: Yes, that's
17 correct.

18 CHAIRPERSON MILLER: Okay. And was
19 that provided to DDOT?

20 MR. AVITABILE: Yes, it was. We
21 provided in addition to the transportation
22 report, which I believe has that information,

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1 we had a copy of this hand-delivered to DDOT
2 on the day that we filed it with the Board and
3 we received confirmation that it was, indeed,
4 delivered and signed for. So they had the
5 entire package available to them.

6 CHAIRPERSON MILLER: Okay.

7 COMMISSIONER HOOD: Madam Chair,
8 may I ask? That 1.6, is that a trade industry
9 number or is that just for this case?

10 MS. LASHINGER: That was the goal
11 for this case. It was to encourage carpooling
12 and get students to ride together, yes.

13 COMMISSIONER HOOD: Okay. So that
14 figure, that 1.6, was just designated for this
15 case once you did the math and everything?

16 MS. LASHINGER: Correct.

17 COMMISSIONER HOOD: Okay. I
18 thought that was some kind of industry
19 standard. Okay. Great.

20 CHAIRPERSON MILLER: Where is your
21 TMP Plan? I know you have a full one in here.

22 MS. LASHINGER: It's on page 10,

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1 where it starts.

2 CHAIRPERSON MILLER: Okay. On page
3 2 of DDOT's report, they, DDOT, state that you
4 don't have sufficient bike racks and traffic
5 monitors. Do you want to address that?

6 MS. LASHINGER: As far as I know, a
7 bike rack is proposed on campus, which
8 satisfies that requirement. As far as the
9 coordinator, the school has designated someone
10 will be responsible for coordinating pick-up
11 and drop-off. Someone will be out on the
12 sidewalk to facilitate students coming in and
13 leaving at the end of the day.

14 CHAIRPERSON MILLER: When I look at
15 your TMP, that's why I was asking where it is.

16 MS. LASHINGER: Oh, it's --

17 CHAIRPERSON MILLER: No. 4,
18 correct? Walk/Bike Initiative?

19 MS. LASHINGER: As well as No. 1,
20 school transportation coordinator who will
21 serve to facilitate the TMP at the school.

22 CHAIRPERSON MILLER: Okay. So it

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1 doesn't say how many bike racks. It says "The
2 school also proposes to furnish and install
3 bike racks on school property for the use of
4 its faculty, staff, student and visitors." Do
5 you have any idea of a quantifiable amount of
6 number of bike racks?

7 MS. LASHINGER: I know at least
8 one.

9 CHAIRPERSON MILLER: I mean, DDOT
10 is saying it's insufficient, so I'm saying
11 well, how many are you going to have?

12 MR. AVITABILE: You know, it
13 doesn't say here. I think we would provide
14 one and, obviously, if there was demand for
15 another bike rack, I'm sure the school would
16 look forward to exploring it. I think it's a
17 simple supply and demand. If the students
18 start coming by bicycle, the school, of
19 course, will, you know, do its best to
20 accommodate them. We just won't know until
21 then.

22 It's interesting --

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1 MEMBER DETTMAN: Actually, I'm not
2 sure that they are saying that the provision
3 of a bike rack is insufficient. In fact, they
4 commend the applicant for providing bike racks
5 and traffic monitors. They say they are the
6 most tangible aspects of the program.

7 But it seems to me that DDOT might
8 be saying that exploring the idea of providing
9 pre-tax transit benefits would be something
10 that would be worth looking into. So I think
11 what they are saying is that your TMP doesn't
12 go far enough and that you should look into
13 providing pre-tax transit benefits.

14 And so is that something that was
15 looked at and just decided that it wasn't
16 feasible economically?

17 MR. WOODY: Well, it's not
18 something that we have looked at, but we
19 certainly are open to doing whatever would
20 encourage appropriate transportation.

21 MR. AVITABILE: I think the caveat
22 would be that the school, and this is a new

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1 school use and it's still trying to -- it's
2 going to establish itself. I don't think it
3 wants to be burdened with too many
4 restrictions, you know, in terms of how it is
5 tied to its employment or, you know, benefits
6 or anything of that nature.

7 Obviously, if we had had a chance
8 to discuss this with DDOT and do a little leg
9 work, we could have had a better response. I
10 think we're certainly happy to explore it.
11 Beyond that, you know, I just don't know.

12 CHAIRPERSON MILLER: Thank you, Mr.
13 Dettman, for correcting the record here with
14 respect to the point they were making about
15 bike racks. I was misreading it.

16 MEMBER DETTMAN: Well, I was
17 wondering --

18 CHAIRPERSON MILLER: Yes?

19 MEMBER DETTMAN: -- a fairly high
20 percentage of your staff will be driving, 80
21 percent. And do you have a general idea of
22 where they are located? I mean, if they are

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1 located pretty far out, the provision of a
2 Metrochek or transit subsidy may not be
3 applicable or even, you know, an efficient way
4 to get your staff to work.

5 MR. WOODY: Yeah, that's part of
6 the challenge. We haven't hired these people
7 yet, so we don't know where they will be
8 coming from. Our focus will certainly be to
9 try and hire as many people as possible from
10 the surrounding community.

11 MEMBER DETTMAN: Right.

12 MR. WOODY: But to the degree we
13 are successful or not successful with that
14 will determine where we go from there.

15 CHAIRPERSON MILLER: Okay. We can
16 maybe come back to this when we get to Office
17 of Planning. I know what we have seen this
18 before at other schools that there are
19 incentives for the staff and faculty and even
20 students to use Metro, but I don't have the
21 specific language at my fingertips.

22 I think there are certain programs

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1 Metro has to help match it or something. But
2 anyway, we can keep that one in abeyance.
3 That is too bad you didn't have the
4 opportunity to talk to them about something
5 like this.

6 MR. RICE: Madam Chair, can I say
7 something before we go to my report?

8 CHAIRPERSON MILLER: Sure.

9 MR. RICE: Just from DDOT's report,
10 the last sentence of the last page says that
11 "The applicant should share its modal split
12 data with DDOT and the ANC every year for the
13 public to remain aware of its impacts." Is
14 that something we want to sort of speak about,
15 a yearly report to the community and DDOT?

16 MR. WOODY: I think that's
17 something that we would certainly be open to.
18 We would have that data available and would
19 certainly be happy to share it.

20 MR. AVITABILE: That shouldn't be
21 too difficult for the school. As long as it's
22 something that the school can track and put

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1 the information together, I think that
2 shouldn't be a problem.

3 CHAIRPERSON MILLER: Are you
4 talking about such as in the traffic reports,
5 such as what percentage come by car, what
6 percentage come by bike, what percentage come
7 by Metro, that kind of thing?

8 MR. RICE: I think that is what is
9 meant by that statement.

10 CHAIRPERSON MILLER: I know that--

11 MR. RICE: I'm not advocating
12 either side. I'm just asking you if that's
13 something we should ask the applicant to
14 provide on an annual basis.

15 CHAIRPERSON MILLER: It's something
16 that many schools provide and often the ANC
17 asks for it. In this case, we don't have an
18 ANC report. We don't know if the community
19 even wants this information. DDOT is saying
20 they want the information.

21 Whenever we do a condition, it's
22 for the purpose of mitigating an adverse

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1 impact. So I would say number one, do we
2 think whatever they are proposing to do will
3 have an adverse impact on the neighboring
4 property and do we need to monitor this in
5 order to avoid any future adverse impacts? So
6 we can look at that in the record here.

7 I know that DDOT wants to certainly
8 encourage mass transportation and non-
9 vehicular transportation for the benefit of
10 improving the environment. That's not
11 necessarily our focus. Our focus is really
12 like, you know, preventing adverse impacts on
13 neighboring properties.

14 So often they coincide, so I guess
15 we have to determine whether it is necessary
16 in this case and is it burdensome? So anyway,
17 it's certainly a point that needed to be
18 vetted out here. So what we are trying to do,
19 DDOT is not here, we're trying to address
20 DDOT's concerns.

21 So do you have a further statement
22 on that issue?

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1 MR. AVITABILE: No. I mean, other
2 than agreeing that we would be happy to, as a
3 condition of approval, even if it's not
4 strictly required, provide that information on
5 a yearly basis. We will just compile it and
6 send it to DDOT. It shouldn't be too
7 difficult, too burdensome on the school.

8 MR. RICE: Can I add one more
9 thing? Because in the conversation I had this
10 morning with the transportation planner, I
11 explicitly asked if these are conditions or
12 suggestions. And he did say that these are
13 more so suggestions than conditions. So that
14 may perhaps ease a little.

15 CHAIRPERSON MILLER: So well, let
16 me ask you, we don't have an ANC report and we
17 don't have the ANC here, but you were at the
18 ANC. So from your perspective, was this one
19 of the concerns that the ANC had? Is this
20 something that you think the ANC would be
21 interested in getting information on on a
22 yearly basis?

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1 MR. WOODY: That's not the sense
2 that I have from the meeting. I met with the
3 ANC on two different occasions. The second
4 time they voted unanimously to support the
5 project. And the only hint of a concern was
6 not wanting to block traffic on Martin Luther
7 King Avenue. And that's something that we,
8 you know, clearly don't want to do either.

9 And so that was the only issue that
10 was raised at all. There was enthusiastic
11 support other than some question about that.

12 CHAIRPERSON MILLER: Okay. If
13 there is nothing more to be said on that, I
14 think we will just come back to that when we
15 look at conditions. Okay. We want to address
16 DDOT's statement about -- I think Mr. Rice
17 brought up the point about the mode split, but
18 there is also a question about enhancing your
19 TDM program to determine if the 13 spaces are
20 needed.

21 MS. LASHINGER: The 13 spaces,
22 obviously, more than accommodates the 18

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1 faculty and staff and any visitors. And
2 obviously, the point of the TDM is to decrease
3 the number of people who will be driving.
4 Therefore, 13 spaces is adequate absolutely.
5 I don't believe that it is more than adequate.
6 I don't believe that it is less than
7 adequate. I think 13 spaces is a non-
8 objectionable number.

9 CHAIRPERSON MILLER: And what is
10 required by the regulations, 12?

11 MS. LASHINGER: 12.

12 MR. AVITABILE: 12.

13 CHAIRPERSON MILLER: Okay.

14 MR. AVITABILE: And it should be
15 noted that one of our 13 spaces is a
16 handicapped space, so, I mean, there are 12
17 effective spaces in circulation.

18 CHAIRPERSON MILLER: Okay. I don't
19 have any other questions on the DDOT report.
20 Do other Board Members have questions on that
21 or other areas?

22 MEMBER DETTMAN: Just one question

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1 I have for clarification. On page 2 of your
2 prehearing, it states that the school opened
3 in September of '08 and is currently under the
4 auspices of Saint Phillips Child Development
5 Center. Is the private school going to be the
6 only use that takes place on this property?

7 MR. WOODY: There will still be a
8 worshipping congregation that meets there on
9 Sundays.

10 MEMBER DETTMAN: Okay.

11 CHAIRPERSON MILLER: Can you
12 elaborate what that means with respect to just
13 for background, operating under the auspices
14 of the child development center?

15 MR. WOODY: Of the current -- yeah,
16 we opened our program in September of '08.
17 Saint Phillips Child Development Center is
18 another Episcopal center that is located on
19 14th Street, 2001 14th Street, S.E. and so they
20 had space in their building. And so until we
21 could work out the arrangements at the Church
22 of the Holy Communion on Martin Luther King,

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1 we decided to open a program there that they
2 are actually managing for us.

3 So we are going to help them to
4 recruit the students and providing the program
5 that they are using as part of their child
6 development center program. So there is a
7 class of 13 boys who are operating -- they are
8 showing up there every day under their
9 program. And so they, you know, share their
10 meal service, all of their programming, field
11 trips, that kind of thing. They do in
12 conjunction with Saint Phillips.

13 MEMBER DETTMAN: So the only two
14 uses going on inside this building are going
15 to be the church and the private school?

16 MR. WOODY: That's correct.

17 MEMBER DETTMAN: At any time do
18 those operations overlap where they will be
19 sharing parking?

20 MR. WOODY: Not that I can think
21 of, no, because the church only operates out
22 of the building on Sundays and then maybe some

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1 evening meetings that the church has, but that
2 wouldn't pose any overlap at all.

3 CHAIRPERSON MILLER: This is
4 somewhat of a speculative question, but when
5 you make an assessment that Evergreens are
6 sufficient as a buffer as opposed to a masonry
7 wall, can you elaborate on that judgment, how
8 you know that that's sufficient versus a wall?

9 MR. AVITABILE: Well, I think the
10 best thing might be, James, if you could talk
11 just about your discussions with the neighbor
12 to the north.

13 MR. WOODY: Yeah.

14 MR. AVITABILE: Yeah.

15 MR. WOODY: I met with Mr. Cogdale,
16 the gentleman whose property abuts where the
17 parking lot would be. And we talked about
18 masonry walls versus, you know, Evergreen
19 plantings and stockade fences and that kind of
20 thing. And he was of the mindset that he was
21 looking for something that would be
22 attractive.

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1 And so from his perspective, it
2 was, you know, whatever we thought would be
3 the most attractive option would be fine, you
4 know. by him. And his main thought that he
5 emphasized was how he thought it was a good
6 thing that we would be doing something to help
7 beautify the property as opposed to any other
8 concern that he might have. So he was very,
9 very excited that we were looking to do
10 something to beautify the place.

11 CHAIRPERSON MILLER: So he was the
12 abutting neighbor?

13 MR. WOODY: Yes.

14 CHAIRPERSON MILLER: Okay. Was he
15 concerned about noise at all?

16 MR. WOODY: Not at all, no.

17 CHAIRPERSON MILLER: And we will
18 get to Office of Planning in a minute. But
19 they do have a recommendation that the grass
20 near the neighboring property be restricted
21 from recreational use after 6:00 p.m. Are you
22 familiar with that?

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1 MR. WOODY: Yes, I just heard that.

2 CHAIRPERSON MILLER: Oh, okay.

3 MR. WOODY: Well, not just now, but
4 a couple days ago.

5 CHAIRPERSON MILLER: Oh, okay. And
6 was that shared with the neighboring property
7 owner as well or no?

8 MR. WOODY: No.

9 CHAIRPERSON MILLER: Okay. Do you
10 have an opinion about that condition?

11 MR. WOODY: Well, I think that
12 that's something that we won't be using it for
13 play space after 6:00. The only other issue
14 may be other neighbors that want to use the
15 property, I mean, the play space and we would
16 be open to that. But at the same time, if
17 that poses an issue, we would, you know, be
18 willing to work, you know, around that or with
19 that.

20 CHAIRPERSON MILLER: So the grounds
21 would be open otherwise to neighbors and the
22 public after school hours?

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1 MR. WOODY: Part of our vision was
2 that we want the Walker School to be a place
3 that is community-friendly. We don't want to
4 have a playground that is, you know, fenced in
5 that nobody else could use, because we want it
6 to be an asset that everybody can share. And
7 we would have primary use of it, of course,
8 during the school day, but we certainly would
9 be open to having the neighborhood kids enjoy
10 it.

11 CHAIRPERSON MILLER: Thank you.
12 Okay. Do you have anything else before we go
13 to Office of Planning?

14 MR. AVITABILE: I don't think so,
15 no.

16 CHAIRPERSON MILLER: Okay. Any
17 other Board questions before we go to Office
18 of Planning? Okay. Let's go.

19 MR. RICE: Thank you, Madam Chair.
20 Again, my name is Stephen Rice with OP. The
21 Office of Planning does recommend approval for
22 the special exception pursuant to section 606

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1 -- 206, I'm sorry, 214 and 2303.

2 And I think our report is pretty
3 straightforward, but I do want to go over a
4 few points, because we do have a few
5 conditions or restrictions that we are asking
6 for.

7 One is that -- well, it was sort of
8 explained, but the school plans to add
9 students to its enrollment every year up from,
10 I think, the current grade, if you will, is
11 pre-K. And this would go all the way up to
12 the third grade. And it would eventually
13 reach 80 students as a max number.

14 So OP did use that as a condition
15 to say that whenever you reach the third
16 grade, the max number of students should not
17 exceed 80 students. The students would arrive
18 around 7:30 in the morning. School would end
19 at around 3:30 or so. But after school
20 programming would go through 6:00 p.m.

21 There is a small play area proposed
22 sort of in between the proposed parking lot

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1 and the actual building itself toward the rear
2 of the structure, but as we sort of hinted
3 earlier, the open space that is between the
4 front of the parking lot and the sidewalk on
5 MLK will perhaps, at some point, be used for
6 recreational space.

7 So OP out of the interest of the
8 neighbor to the north and perhaps surrounding
9 residential properties, we ask that that space
10 be restricted to recreational use. It
11 shouldn't be used after 6:00 p.m.

12 And with that same point in mind,
13 we also recommended that a fence be provided
14 along the front of that green -- that grass
15 space parallel to MLK. We didn't think that
16 that fence should necessarily be as high as
17 the perpendicular fence that, I think, is
18 proposed at 6 feet. But it should be at most
19 4 feet high.

20 And the way we thought of it is
21 that it was strictly from a safety standpoint.

22 I wasn't aware that this would be sort of

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1 open for community recreation. But either
2 way, it just seems that since it is on MLK, we
3 certainly wouldn't want, you know, a kid
4 throwing a football and, you know, having to
5 run out in the street to get it or anything
6 like that, because it's a fairly, at times,
7 busy road.

8 So we wanted that fence there for a
9 safety reason. And also, it would sort of
10 avert the view from MLK to the parking lot
11 that is proposed. So that was the thinking
12 behind that condition.

13 We have already sort of addressed
14 the traffic study issues, so I won't go into
15 that, unless you have questions about it.

16 As far as accessory parking, 13
17 spaces would be provided where 12 is required
18 and that is by the Zoning Code, because there
19 is 2 spaces per 3 staff members. And the
20 parking could not be provided on the same lot
21 as the primary structure, because it is an
22 existing building and I'm not quite sure

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1 exactly what the lot occupancy is, but it --
2 certainly the lot is too small with the
3 structure to provide the 12 spaces that is
4 required by zoning. So those two north
5 abutting lots would provide that parking.

6 The proposal would also meet the
7 provisions of section 2303. As noted, the
8 applicant has asked for a waiver from the
9 required 42 inch high brick wall. And section
10 2303.3 enables the Board or waive or modify
11 this requirement.

12 OP does support this request. And
13 we believe that the proposed fence would
14 effectively reduce the noise and visibility
15 concerns that could arise from the student
16 activity or the kids playing in this open
17 space. And it also, I think, would be more in
18 keeping with the surrounding neighborhood as
19 opposed to a wall.

20 And we also recommended in the
21 report, I think, that if a fence is provided
22 along MLK, parallel to MLK, it should also

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1 have those aesthetic features, such as some
2 shrubbery or something like that. We didn't
3 go too much into detail, but it should look
4 nice.

5 And as far as community comments,
6 we understand that ANC-8C did vote in favor.
7 We don't have that report, I don't think, but
8 we have heard communication from the applicant
9 that they had voted for it.

10 The neighbor to the north, which
11 was probably -- we had the most concern with,
12 he provided a letter of support for the
13 application. So as far as the conditions and
14 the restrictions, OP recommends that, if
15 approved, this application be approved for a 5
16 year period, which is pretty standard for
17 these sort of applications, some sort of time
18 restriction.

19 The time does range. I don't think
20 5 years -- I have seen 10 and I have seen 2,
21 so we sort of felt that 5 would be
22 appropriate. And we spoke with the applicant

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1 about it and feel a lot of prospect about
2 that, but --

3 MR. AVITABILE: I'm sorry.

4 MR. RICE: I just have a few more
5 point. And the second recommendation -- I'm
6 sorry, the condition would be that the
7 enrollment should not exceed 80 students, as I
8 mentioned earlier. And also, that the grass
9 space fronting MLK should not -- should be
10 restricted from any recreational usage after
11 6:00. And that the 4 foot high fence should
12 be provided parallel to MLK.

13 And as noted in the traffic study
14 that the appropriate school signs and pavement
15 markings should be furnished prior to the
16 first day of school. Otherwise, the
17 application did meet the requirements of all
18 of those three sections that it applied for.

19 So I'm open for questions.

20 CHAIRPERSON MILLER: Thank you.
21 I'm not exactly clear on the green space
22 issue.

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1 MR. RICE: Okay.

2 CHAIRPERSON MILLER: It sounds like
3 when I was asking the applicant about it, I
4 thought it was in an area that abutted the
5 neighbor and that that was the concern. And
6 then when I was listening to you, it sounded
7 like it abuts Martin Luther King, Jr. Avenue.

8 MR. RICE: Right.

9 CHAIRPERSON MILLER: And that's the
10 concern.

11 MR. RICE: Well, okay, so there is
12 a proposed play area. If you look on -- I
13 don't know if you have it, but E-1, I guess
14 that's a good drawing.

15 CHAIRPERSON MILLER: You are
16 referring to the applicant's Exhibit E?

17 MR. RICE: Yes, ma'am, I'm sorry.

18 CHAIRPERSON MILLER: Okay.

19 MR. AVITABILE: It's actually
20 Exhibit C in the tab. It's the drawing marked
21 E-1.

22 MR. RICE: Oh, yeah.

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1 MR. AVITABILE: But it's Exhibit C.
2 It's the lighting plan.

3 CHAIRPERSON MILLER: Okay.

4 MR. RICE: There is a play area
5 that is toward the rear of the building,
6 between the parking lot and the building.
7 That is the play area, but we spoke with the
8 applicant and the space, the green space, the
9 grass space that is in between the sidewalk
10 and the parking lot at some point could be
11 used by the students as play space.

12 So that's the play space we are
13 asking for the fence to go along MLK.

14 CHAIRPERSON MILLER: Maybe somebody
15 could hold it up and point to the exact area.
16 Oh, my colleagues. Okay. Okay.

17 MR. RICE: And one thing I did
18 forget to mention is that if the fence is
19 provided, it should be set-back to align with
20 sort of the depth of the front porches of the
21 neighboring properties to the north. You
22 can't see it on this map, but there is a set-

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1 back from the sidewalk. And we certainly
2 wouldn't want the fence to go -- and I don't
3 think that's even their property, but we
4 certainly wouldn't want the fence to go up to
5 the sidewalk if the other properties don't go
6 up that close.

7 You can probably see it a little
8 better in our report, because I have a --
9 well, it's not too much better, but if you
10 look at page 8, you can sort of see how the
11 north properties are set-back from the
12 sidewalk. You can't really see the porches
13 though.

14 And also, the residential structure
15 that is on one of the two lots, that's
16 proposed for parking will be removed in this
17 application. I don't think we mentioned that.

18 So as far as -- that's my understanding.
19 Okay.

20 CHAIRPERSON MILLER: Other
21 questions for Office of Planning? Does the
22 applicant have questions for Office of

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1 Planning? Do you have the report? Let me
2 back up.

3 MR. AVITABILE: We do.

4 CHAIRPERSON MILLER: You have the
5 report, okay.

6 MR. AVITABILE: We reviewed it. I
7 think we would just like to address a couple
8 of the questions.

9 CHAIRPERSON MILLER: Okay.

10 MR. AVITABILE: A couple
11 conditions, but whenever the Board is
12 inclined.

13 CHAIRPERSON MILLER: I think we
14 might as well do it now, because I don't think
15 there is anybody here, though I will check
16 again, to testify.

17 MR. AVITABILE: Okay. Going with
18 the conditions, no objection to the school
19 signs. We will continue to work with DDOT on
20 getting the right signs out there as we
21 discussed. I think there is no objection to
22 putting, you know, a fence along Martin Luther

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1 King Avenue as well. It is certainly for
2 safety reasons and we're happy to do that and
3 work with OP to put it in the location they
4 think is best.

5 I suspect that the houses are set-
6 back along Martin Luther King because of where
7 the right-of-way is and we will probably build
8 to the appropriate line.

9 Regarding the restriction on using
10 the grass space beyond 6:00 p.m., the only
11 comment we have is perhaps after sundown might
12 be more appropriate. I don't know if we would
13 want to restrict the ability to use that
14 during the summer when it is still light out
15 and people are still active. That might be a
16 little more appropriate. I think particularly
17 with the fact that we pushed to a later
18 daylight savings time, I think 6:00 p.m. could
19 potentially be more restrictive. That's just
20 our thought as we have talked about it.

21 I don't think we have any problem
22 with the enrollment limit of 80 students.

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1 Though the lawyer in me would want to insert
2 approximately 80 students in case we happen to
3 be over by one through some admissions yield.

4 If, you know, one year we happen to get one
5 more person in than otherwise, but if it's 80
6 students flat, it's 80 students flat.

7 And then as far as the approval for
8 5 years, you know, this is something we have
9 been talking about in broader picture through
10 the zoning rewrite process, the idea of term
11 limits and enrollment caps. You know, we have
12 talked about it. I think what I would like is
13 James to just briefly talk about the nature of
14 this school, which is different than some of
15 the other schools in the District that have --
16 that do have these time limits on approval.

17 As you see, there is no opposition
18 here for this school. Just to kind of give
19 some context, I think, if the Board is
20 inclined to adopt a time limit, we certainly
21 understand. We just think maybe a little bit
22 longer than 5 years. And, James, if you could

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1 just talk a little bit about the school.

2 MR. WOODY: Thank you. I think it
3 is important to talk just very briefly about
4 the unique nature of the Bishop Walker School.

5 The Episcopal Diocese of Washington has been
6 running schools in the city for over 100 years
7 and some of the, I would like to think, best
8 schools in the city are Episcopal schools.

9 What makes this one unique,
10 however, is it's a tuition-free Episcopal
11 school, that is specifically targeted at low
12 income boys or boys from low income families,
13 families that would not otherwise have the
14 opportunity to take advantage of this kind of
15 quality education.

16 And so as a tuition-free school,
17 part of our largest challenge, of course, is
18 raising the money to cover the costs of a
19 program like this. And that involves going
20 out to individuals, big donors and small
21 donors, and asking them to invest in this
22 project. And that investment is something

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1 that we take very seriously and so we want to
2 make sure that as they are investing in The
3 Bishop Walker School that there is some
4 certainty to the degree that we can provide
5 certainty that will be there.

6 And so the idea of a 5 year limit,
7 though I understand, the fundraiser in me is
8 wanting to be able to present to people that
9 want to get involved in supporting the program
10 a sense that we are going to be there for the
11 long haul and will certainly do whatever we
12 can to make sure that we are abiding by any
13 restrictions, conditions that are placed on us
14 and we will do it as good citizens and good
15 neighbors.

16 But the only concern that I have is
17 that of the investment. We are asking people
18 who are investing in a couple million dollars
19 in the renovation of this property that we are
20 raising penny by penny, dollar by dollar, and
21 so I just want to be able to say to folks it's
22 a wise investment and we're going to be there

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1 to serve these young men for the foreseeable
2 future and for as long as is necessary.

3 MR. AVITABILE: And the one last
4 part of that is, you know, every time you
5 prepare an application to come before the
6 Board, there is a cost. Pillsbury is
7 representing the Diocese pro bono, so they
8 don't have that cost, but there are other
9 costs associated with getting materials
10 together, getting plans prepared by
11 architects, so on and so forth.

12 And so I think that's the other
13 issue. And the one last thing I would point
14 out is that if there was a significant change,
15 the school would have to come before you if
16 they wanted to expand beyond 80 students or
17 make other change, they would have to come
18 back anyway. So that would -- you would see
19 us at that point. But that's all we have to
20 say on that.

21 We didn't have a chance to -- we
22 thought we would have a chance to discuss this

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1 with OP, so I just also wanted to say -- you
2 know, apologize that we haven't had a chance
3 to talk to Stephen about this yet. That's all
4 I have to say.

5 CHAIRPERSON MILLER: Okay. I think
6 the rationale for Office of Planning's
7 recommendation is that when we have a new
8 entity, we don't have a track record
9 necessarily to look at to make sure that it is
10 going to work out okay.

11 So I guess I just want to ask you,
12 your relationship with other schools, can we
13 look at any of those other schools that are
14 under the same auspices that we might have a
15 greater comfort level knowing about?

16 MR. WOODY: The Bishop Walker
17 School is unique amongst the other schools in
18 the Diocese in that we are the only true
19 Diocesan School, in that we are not run by an
20 independent entity, but we are a part of the
21 Episcopal Diocese. And that offers, I think,
22 some particular strength to us, in that the

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1 heads of many of the other existing schools
2 and some of their key leaders serve on our
3 board.

4 Our programs were all designed in
5 conjunction with those folks. So for example,
6 the head of Washington Episcopal School is on
7 our board or the head of Saint Patricks is on
8 our board. So those people are a part of our
9 group. So we -- while we are a start-up, if
10 you will, we are not out on an island by
11 ourselves. We have the backing and support of
12 all of these folks from Saint Albans and
13 National Cathedral School and so on.

14 So they are -- they have a vested
15 interest in our success and so we are looking
16 at this as being a long-term project.

17 CHAIRPERSON MILLER: So you are
18 being monitored also by that board?

19 MR. WOODY: Oh, absolutely,
20 absolutely.

21 CHAIRPERSON MILLER: Okay.

22 MR. RICE: Can I make a comment?

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1 MR. WOODY: Oh, sure.

2 CHAIRPERSON MILLER: Sure.

3 MR. RICE: Well, I think OP's angle
4 for putting a time term on it is from a
5 neighborhood impact standpoint. And we are
6 totally not insensitive to the situation with
7 the school. In fact, I think that played into
8 deciding on 5 as opposed to 2.

9 But we certainly wanted to make
10 sure that some measure is built into it,
11 because you are, you know, introducing a new
12 use to this neighborhood. And you know, it
13 wasn't because we suspected that there would
14 be issues, but we wanted to just make sure in
15 the future that there is some sort of step
16 provided, so that if there are, the neighbors
17 or whoever could come forward with a voice of
18 those issues.

19 So that was sort of the -- it
20 wasn't -- so we didn't think the school would
21 fail or anything. Let's just make that clear.

22 CHAIRPERSON MILLER: Do we have any

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1 evidence in the record that would give us
2 concern about adverse impacts?

3 MR. RICE: Based on what is
4 proposed?

5 CHAIRPERSON MILLER: Based on, yes,
6 the application.

7 MR. RICE: No. I didn't find
8 anything that would raise a red flag per se
9 and that's -- I think that's what I'm trying
10 to say. There was no specific issue.

11 CHAIRPERSON MILLER: Right. Your
12 point is just in general when something is new
13 in a neighborhood.

14 MR. RICE: Exactly.

15 CHAIRPERSON MILLER: Is that right?
16 Okay. Okay. I just want to also address the
17 point about the number of students. The
18 applicant presents 80. We need a number to
19 use to look at the parking and adverse
20 impacts, etcetera. So you said 80. If 80 is
21 not the number, I don't think we can do an
22 approximately, because that makes enforcement

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1 difficult and things like that.

2 MR. AVITABILE: Then 80 it is.

3 CHAIRPERSON MILLER: Okay.

4 MR. AVITABILE: Yes, it's just I--

5 CHAIRPERSON MILLER: If you are
6 concerned like oh, my God, you really want 82
7 or something, you know, let us know.

8 MR. AVITABILE: No, it was my -- I
9 was scarred by GW early on and so, you know,
10 substantial compliance and all that, but 80 it
11 is.

12 CHAIRPERSON MILLER: Okay. Any
13 other questions? Okay. Is there anybody here
14 from the ANC? Not seeing anyone, we also
15 don't have a report from the ANC, though we
16 have heard from the applicant and the Office
17 of Planning that the ANC did vote to support
18 the application, but we don't have a record of
19 that.

20 Anybody here in support of the
21 application? Anybody here who wishes to
22 testify in opposition to the application? Any

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1 final questions from Board Members? Any final
2 remarks from the applicant?

3 MR. AVITABILE: None. Thank you.

4 CHAIRPERSON MILLER: All right.
5 That concludes the hearing on this
6 application. I think if you give us a moment,
7 that the Board will be prepared to deliberate
8 on it. Okay.

9 I think I'm going to do this under
10 a motion and that would be to approve
11 Application No. 17861 of The Bishop John T.
12 Walker School for Boys, pursuant to 11 DCMR
13 3104.1, for a special exception to establish a
14 private school under section 206, and
15 accessory parking spaces under sections 214
16 and 2303.3, at premises 3624 and 3640 Martin
17 Luther King, Jr. Avenue, S.E., with conditions
18 to be agreed upon by the Board.

19 Do I have a second?

20 VICE CHAIR LOUD: Second, Madam
21 Chair.

22 CHAIRPERSON MILLER: Okay. So now

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1 we can discuss whether the relief is met and
2 what conditions we would impose. So first of
3 all starting with 206 to locate the private
4 school, we look at, in particular, 206.2 that
5 it be located so that it is not likely to
6 become objectionable to adjoining and nearby
7 property because of noise, traffic, number of
8 students or otherwise objectionable conditions
9 and that there be ample parking space, but not
10 less than that required in Chapter 21 of this
11 title, to be provided to accommodate the
12 students, teachers and visitors likely to come
13 to the site by automobile.

14 Okay. I think this is pretty
15 straightforward. The school has committed to
16 an enrollment of 80 students and 18 staff.

17 With respect to parking, the number
18 of parking spaces that would be required under
19 the Zoning Regulations would be 12 and the
20 applicant will have 13 spaces. So I think
21 they meet that.

22 And just to clarify, when we talk

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1 about 18 staff, that means includes teachers
2 and any other staff and it means on-site at
3 one time, so that there is a possibility under
4 that number to have, for instance, 2 part-time
5 positions within one position, just for
6 explanation purposes, but that during any
7 particular hour that they are instructing or
8 whatever, there are only 18 on-site at one
9 time to comply with the parking requirements.

10 Okay. So we have that. And then
11 we are looking to make sure that there aren't
12 objectionable conditions or that there are not
13 likely to become objectionable, because of
14 noise, traffic, number of students, okay.

15 There is no opposition to this
16 application. Let's see, this is going to be a
17 gradual introduction of the students also into
18 the neighborhood, that it's going to go from K
19 to grade 3, as I understand it, adding a grade
20 each year. So that that, I think, will be
21 good for the neighborhood. It can be a
22 gradual absorption. Pre-K, thank you.

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1 Some of this overlaps with the
2 parking requirements, I think, too, so I think
3 that we won't strictly go from 206 to the
4 others. I think we can maybe skip around a
5 little bit. There is not enough space for the
6 parking on-site, so they have applied for a
7 special exception under 214 to locate the
8 parking spaces on a separate lot.

9 And Office of Planning and the
10 applicant have addressed how they comply with
11 it. It is going to be on an open area.
12 Office of Planning suggested that the
13 applicant consider other than an impervious
14 surface, which is not required, but might be
15 preferable and the applicant has agreed to do
16 that, in any event, they meet the regulation.

17 214.3 says that "They have to be
18 within 200 feet of the area to which they are
19 accessory and they would be a maximum of 60
20 feet from the school," so they meet that
21 regulation.

22 And they meet the 214.4, which

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1 talks about the spaces being contiguous to or
2 separated only by an alley from the use to
3 which they are accessory. Okay.

4 Then it talks about meeting the --
5 214 talks about meeting the regulations of
6 2303, so we need to look at that as well and
7 that's where we got into the issue about the
8 wall versus the Evergreens. And we heard
9 testimony from the applicant that the neighbor
10 actually preferred the Evergreens, that it was
11 an aesthetic improvement and was not concerned
12 about the noise. And that was also acceptable
13 to the Office of Planning.

14 Under 2303.3, we can waive certain
15 requirements or modify them and that's one of
16 them that we would be modifying.

17 They meet the landscaping
18 requirements. We can get into special
19 treatment. 2303.5 says that we can require a
20 special treatment and Office of Planning is
21 suggesting some special treatment that we
22 heard testimony about with respect to having

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1 that 4 foot high fence along Martin Luther
2 King Avenue. And the applicant has agreed to
3 that. So I think we should put that in the
4 condition.

5 I'm kind of skipping. Actually, I
6 think that we should discuss the conditions
7 probably as a group, so let me see if there is
8 anything else I want to add and that others
9 want to add with respect to the relief that is
10 being sought in general.

11 We went through the DDOT report, I
12 think, pretty carefully requesting that the
13 applicant and Office of Planning comment on
14 some of their recommendations. And I think
15 some of that will come up in the conditions.
16 So does anybody have anything they want to add
17 with respect to applicant meeting the relief
18 that they are seeking?

19 Okay. Why don't we go to the
20 conditions for now and we can come back if
21 anybody wants to come back.

22 The first is Office of Planning

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1 recommended a term for 5 years on the grounds
2 that when a new use like this, usually a
3 school or sometimes a community development
4 center, is introduced into a neighborhood,
5 that we put a term on it, so that we can see
6 how it is working some years down the line.

7 And the applicant would prefer not
8 to have a term, because it's nonprofit. It's
9 a school for low income boys and they are also
10 being monitored by a board consisting of
11 representatives from other Episcopal schools
12 in the city.

13 So are there some thoughts on that?

14 We have a choice of 5 years, no term or a
15 longer period of time. We could do a shorter
16 period of time, too, but, basically, that's
17 the way I see the options.

18 MEMBER DETTMAN: Madam Chair, I
19 would be in favor of no term. And if that
20 turns out not the consensus of the Board, at
21 least something that is longer than 5 years.
22 And I would be in favor of that for two

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1 reasons.

2 One is that it's a special
3 exception and so this use is -- has already
4 been determined to be compatible with this
5 District. But secondly, as the applicant
6 states, on page 3 of their prehearing, that it
7 is basically going to take 4 years before they
8 get to the maximum capacity of students.

9 And so for them to operate at
10 maximum capacity for a year and then come back
11 to the Board, it may even be a disservice to
12 the Board, because we may not get a clear
13 picture of how this thing, you know, looks and
14 feels and operates inside this neighborhood.
15 And so to at least give the applicant a few
16 years to operate at full capacity, could be a
17 good thing.

18 VICE CHAIR LOUD: Madam Chair, I am
19 in total agreement with Board Member Dettman,
20 in addition to which a couple of other things
21 jumped out at me. One of which is, and you
22 point this out all the time, that the point of

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1 a condition is to mitigate against a potential
2 or actual adverse impact.

3 Here it's kind of the exact
4 opposite. I mean, there is no opposition.
5 There is no opposition from the ANC. As in
6 all of our cases, the zone of 200 feet, in
7 this case, includes about 58 addresses, none
8 of them responded, except for Mr. Cogdale and
9 he was supportive of it. I think that's our
10 Exhibit 21.

11 The applicant has agreed, sort of
12 going above and beyond what has been required
13 with the DDOT recommendation, to forward
14 annually one of the elements of the split
15 modal report that DDOT had recommended, which
16 speaks to some potential transportation
17 impacts.

18 The applicant also talked about an
19 independent board of Episcopal school leaders
20 that are currently involved in other schools
21 and for all of the reasons why they would
22 bring strong management to the table. I think

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1 they would also bring, in many cases, stronger
2 awareness of potential adverse impacts,
3 because many of them are located in
4 residential areas. So that would be an
5 additional benefit to this applicant.

6 And additionally, the whole piece
7 about fundraising and organizing campaigns,
8 often a campaign might last five years, a real
9 meaningful campaign, and to have them come
10 back before they are able to pull together a
11 meaningful campaign, which is going to be so
12 key to the school survival, because it's
13 tuition-free, would not make sense.

14 So for all the reasons Mr. Dettman
15 indicated, I would be for no term as well or
16 certainly if we do term it, nothing less than
17 10 years. Thank you.

18 COMMISSIONER HOOD: Madam Chair, I
19 would also concur with both of my colleagues.

20 I was thinking about the term. Where Mr.
21 Dettman and I may disagree, I was thinking
22 more like 99 years, but I'm sure we're not far

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1 apart. For all the reasons that both of my
2 colleagues have already expounded on, I don't
3 need to re-echo or reiterate what they have
4 already iterated.

5 But I, too, would agree with both
6 of my colleagues and I think this can serve as
7 no term.

8 CHAIRPERSON MILLER: Okay. Anybody
9 else? Okay. I would agree, too. I certainly
10 respect Office of Planning's concern and I
11 think it's one that we always need to think
12 about when there is a new use, but I think
13 there is evidence in this record of or a lack
14 of evidence of any adverse impacts that are
15 anticipated. And we do have this board that
16 will be monitoring the school as well.

17 So okay, we can move on.
18 "Enrollment should not exceed 80 students."
19 We talked about this. This is the applicant's
20 figure. They have agreed to stick to it. We
21 talked about how we need just to have a number
22 for certainty in order to -- it's a number

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1 that we use to evaluate whether there would be
2 adverse impacts. It's the number we use to
3 evaluate, you know, traffic and things like
4 that.

5 So I think we should leave this
6 condition in. Do others have an opinion on
7 that? Any disagreement? Okay.

8 The next condition that I'm reading
9 from Office of Planning's report is "The grass
10 space fronting Martin Luther King, Jr. Avenue
11 should be restricted from any recreational
12 usage beyond 6:00 p.m." We talked about
13 changing that language to beyond sundown, as
14 it seemed that the concern was safety in the
15 dark. Comments on that?

16 MEMBER WALKER: I think the Board
17 needs to think carefully about that particular
18 condition. I am concerned about the neighbor
19 to the north whose property is right next to
20 this grassy area that fronts Martin Luther
21 King Avenue. And so I want us to think
22 carefully about whether having children

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1 playing in that grassy space after 6:00 could
2 negatively impact that neighbor.

3 CHAIRPERSON MILLER: Okay. We
4 don't have any evidence in the record other
5 than that neighbor was not concerned about
6 noise, according to the applicant.

7 MEMBER WALKER: Well, I think,
8 Madam Chair, you made reference to that though
9 when you were going through your analysis,
10 but, indeed, Mr. Rice spoke about their not
11 only being Evergreens there, but also being a
12 stockade fence there to help with the noise.
13 I don't think it's the case that noise is not
14 an issue. We heard from Mr. Rice that the
15 fence would help with noise.

16 CHAIRPERSON MILLER: Okay. Then
17 it's your interpretation of the evidence that
18 there is evidence both of a concern of noise
19 as well as that that was articulated by the
20 Office of Planning and applicant articulated
21 that the neighbor wasn't concerned. So there
22 is evidence on both sides. Is that your

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1 position? Is that your correction?

2 MEMBER WALKER: My correction was
3 to the characterization of testimony from Mr.
4 Rice. When you were talking about the
5 fencing, you mentioned the Evergreens, but you
6 did not mention the stockade fence.

7 CHAIRPERSON MILLER: Oh, sorry,
8 there is also a stockade fence. Okay. I'm
9 merely going to the question of do we need --
10 are we concerned that we need a condition.
11 Wait. Are you concerned about the -- what's
12 wrong with this condition? What are we
13 talking about?

14 MEMBER WALKER: You said that there
15 was something wrong with the condition. That
16 the time should be changed to sundown, rather
17 than 6:00. And I suggested that the Board
18 think critically about whether children should
19 be playing in the grassy area that is right
20 next to the neighbor's property after 6:00
21 p.m. in summer.

22 COMMISSIONER HOOD: So Board Member

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1 Walker, you are saying 6:00 may be a good time
2 for the cutoff as mentioned by --

3 MEMBER WALKER: Mr. Rice.

4 COMMISSIONER HOOD: -- Mr. Rice?
5 Mr. Rice, is that basically what you were
6 saying?

7 MR. RICE: Yeah, well --

8 COMMISSIONER HOOD: If you wouldn't
9 mind indulging me in the matters.

10 MR. RICE: Okay. Well, I think to
11 clear it up, I think there are two issues.
12 The noise and -- the noise concerns were
13 regarding the fence. As far as the timing and
14 I didn't get a chance, I didn't explain this,
15 the reason we put 6:00 was for the same
16 reasons you sort of referring to.

17 Normally, people get home from work
18 around 5:30 or 6:00. And even in the summer
19 when the daylight is longer, we certainly
20 wouldn't want, particularly the neighbor to
21 the north, to have to worry about kids playing
22 in that space.

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1 So the noise specifically wasn't
2 exclusively the issue for the time. It was
3 more so looking out for the timing in which
4 the neighbors perhaps get home from work, if
5 that helps clear up the concerns.

6 CHAIRPERSON MILLER: Okay. Let's
7 talk about that. We need to evaluate whether
8 we should restrict it to 6:00 or to sundown.
9 There is no neighbor here who has given us his
10 view as to what his preference is or she, do
11 they have a concern about noise. We're
12 talking about noise now.

13 So in my view, we don't have
14 evidence of -- real strong evidence that there
15 is a concern about noise. So there is a
16 trade-off. There is a who would use that
17 green space after 6:00 p.m.? It would be not
18 the school. It would be, I assume,
19 neighboring children.

20 So we are making a judgment here
21 whether to close that off when the applicant
22 would leave that open on grounds that we want

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1 to mitigate any adverse impacts from noise for
2 the abutting neighbor. I think that's what
3 the issue is. And do we have evidence in the
4 record that would give us reason to do that?

5 VICE CHAIR LOUD: Madam Chair and
6 colleagues, I could go honestly either way. I
7 mean, the record before us is that the school
8 ends at 6:00 p.m., unless we change something
9 here at the hearing with the testimony. I
10 think the after school goes from 3:30 p.m.
11 until 6:00 p.m.

12 So that being said, I don't see why
13 we should remain on this issue that long,
14 since the essence of why we are here is the
15 application and the school and the school ends
16 at 6:00. Now, we can -- you know,
17 neighborhood kids can go there after 6:00 or
18 not go there after 6:00. I don't think that--
19 I could go for it either one way or the other.
20 It doesn't really matter to me.

21 I certainly understand the point
22 though about both the noise, but also the

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1 safety issue as well. But it seems to me
2 that's a management discretion decision for
3 the applicant whether when the school is out,
4 the applicant wants neighborhood kids, you
5 know, recreating on the front lawn. I just
6 don't think it's something we ought to spend a
7 whole, whole, whole, whole lot of time on.

8 COMMISSIONER HOOD: And I think
9 also with the testimony of Mr. Woody and the
10 Board, they want to be successful. And I'm
11 sure, I have every bit of confidence that they
12 are going to make sure they are successful.
13 And if they need to deal with whatever the
14 issue is, I believe they will do that. I see
15 him nodding his head. So that's for the
16 record.

17 CHAIRPERSON MILLER: Other
18 comments?

19 MEMBER DETTMAN: Well, I'm with Mr.
20 Loud in this instance. I could go either way.
21 But I do understand Ms. Walker's points.
22 While we don't have any information or not

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1 much information in this record as it pertains
2 to noise, because the thing really doesn't
3 operate yet, it is common in many of these
4 cases for private schools in close proximity
5 to residential uses is that noise is an issue
6 and we try to put together well-crafted
7 conditions to help mitigate that.

8 So I could see the time sliding
9 maybe another hour, but I think sundown is too
10 late. And you know, we have 6:00 before us
11 right now, so I would be in favor of going
12 forward with the 6:00 time limit.

13 COMMISSIONER HOOD: Madam Chair,
14 may I just ask Ms. Walker? 6:00, that's where
15 we are 6:00?

16 MEMBER WALKER: My concern is that
17 sundown in the summer is almost 9:00.

18 COMMISSIONER HOOD: 9:00, right.

19 MEMBER WALKER: And I think that's
20 too late to have children playing in the
21 grassy area that abuts the neighbor's
22 property. It's right next to his front porch.

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1 COMMISSIONER HOOD: So you wouldn't
2 have a problem with adding an hour or an hour
3 and a half, but it's just the fact of going to
4 sundown?

5 MEMBER WALKER: Correct.

6 COMMISSIONER HOOD: Okay. Thank
7 you.

8 CHAIRPERSON MILLER: I want to pick
9 up on Mr. Loud's point, because I think the
10 Board is going in an inappropriate direction.

11 I agree with Mr. Loud that we were looking at
12 the operations of the private school and we're
13 not talking now about operation of the private
14 school at all, except for what the property
15 owner is going to do with his property after
16 school hours, whether they are going to lock a
17 gate and disallow others to use the property.

18 And I just don't know why we need
19 to go there to mitigate adverse impacts or
20 potential adverse impacts from giving special
21 exception use for the operation of a school.
22 I think that we have heard that there is a

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1 very prestigious board that is monitoring the
2 school. And if there is any concerns about
3 what would happen safety-wise or whatever, the
4 school is really liable. And if seems to me
5 that they don't need this Board to tell them
6 when they can't allow others on their
7 property, that they can make that judgment
8 themselves.

9 I just want to say also that, you
10 know, there is a shortage of green space in
11 the city for other children to use. And I
12 just would be very careful about precluding
13 that unnecessarily.

14 MEMBER DETTMAN: Well, I guess, at
15 this point, I mean, I agree with you that
16 there is a shortage of public open space.
17 This is private property and it's what is
18 before us right now. So I guess in order for
19 us to move forward, where are we as a Board in
20 terms of the 6:00 or no time limit?

21 COMMISSIONER HOOD: From my
22 standpoint --

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1 MEMBER DETTMAN: I'm in favor of
2 leaving it.

3 COMMISSIONER HOOD: -- I was just
4 trying to be amenable. I understand Mrs.
5 Walker's concerns and all the rest of it. And
6 I agree maybe sundown. I, too, at one time
7 liked to play. So it may be sundown may be
8 too long, 6:00 may be too early. I was more
9 in tune for where you were, Mr. Dettman.

10 VICE CHAIR LOUD: I just want us to
11 resolve this issue and move forward. I think
12 the longer we hover around this issue, you
13 know, the more complicated it can get and the
14 more personal opinions can sort of weigh in
15 beyond the importance of this issue to
16 resolution of the case.

17 I'm one of those who thinks kids
18 needs to have their butt at home by a certain
19 hour. But I don't want to bring that into the
20 case, because I don't think it's relevant. I
21 see all of these young people, and I'm out on
22 Georgia Avenue a lot of evenings, who at a

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1 certain point they should be home. They
2 should not be under the stewardship of some
3 church or some community center. They need to
4 be -- they need to have their 13 year-old
5 behinds at home.

6 But to Mr. Hood's point, I think
7 6:00 is too early. I think sundown is too
8 late. I'm prepared to go with 7:00 if it will
9 move us forward in terms of getting to a
10 resolution.

11 CHAIRPERSON MILLER: Well, if the
12 concern is, okay, so we're going to go beyond
13 the issue of should we be actually restricting
14 the applicant's use of his property after the
15 school hours and we are into that area, is it
16 not the concern is safety and noise? Is that
17 the concern?

18 Because if it's safety, then the
19 logical time would be sundown, because that's
20 dark. That's going to be different from the
21 previous times. You know, I mean, I'm not
22 going to go here.

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1 COMMISSIONER HOOD: But for me,
2 it's about building a consensus among the
3 Board Members. I mean, that's just where I
4 am. I didn't want to just do away with Ms.
5 Walker's point. I didn't want to just
6 disregard the other end. So I'm trying to
7 find a happy medium. So maybe we will be out
8 of here by 6:00.

9 CHAIRPERSON MILLER: Or sundown.

10 COMMISSIONER HOOD: Or sundown,
11 yeah.

12 CHAIRPERSON MILLER: Sundown,
13 sundown. I thought that Office of Planning
14 had gone along with sundown, but I could be
15 wrong. I mean, I'm in favor of the least
16 restrictive, that's where I'm at, because I'm
17 not even sure we should be going here because
18 of the lack of evidence in the record.

19 MEMBER DETTMAN: Well, at the --
20 when sundown in the summer is 9:00 and in the
21 wintertime it's 4:00 or 4:30, so I think there
22 was a suggestion that we go to 7:00 and I'm in

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1 favor of that.

2 MEMBER WALKER: 7:00 is fine with
3 me.

4 VICE CHAIR LOUD: 7:00 is fine with
5 me.

6 COMMISSIONER HOOD: 7:00 is fine
7 with me.

8 CHAIRPERSON MILLER: All right.
9 Well, we have a consensus or a majority, so
10 let's move on.

11 So that would read "The grass space
12 fronting Martin Luther King, Jr. Avenue should
13 be restricted from any recreational usage
14 beyond 7:00 p.m."

15 Next is "A 4 foot high fence to be
16 provided parallel to the Martin Luther King,
17 Jr. Avenue street frontage." And the purpose
18 of that condition, as recommended by the
19 Office of Planning, was for safety. Any
20 comments on that one? Are we in consensus
21 that it's a good condition? Do we want to
22 include it? Okay. So we will include that

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1 one.

2 "Appropriate school signs and
3 pavement markings should be furnished and
4 installed in accordance with the manual on
5 Uniform Traffic Control Devices and other
6 applicable DDOT standards prior to the first
7 day of school in order to promote safe and
8 efficient school traffic conditions."

9 I think the applicant agreed to
10 that. Again, that's a safety issue. Anybody
11 have any concerns with that? Okay. So that
12 one is in.

13 I want to then cover a couple of
14 other conditions that aren't listed on this
15 page of the Office of Planning's proposed
16 conditions, but I think they are considered as
17 conditions or not.

18 One is where we were waiving the
19 requirement under 2303.2 for a masonry wall
20 and allowing the applicant to provide a fence
21 and Evergreen trees instead to screen
22 residential property. So I think we can put

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1 that as a condition, unless people, Board
2 Members, think that we should characterize it
3 any other way. Okay. So we will add that as
4 a condition.

5 And then finally, I have in my
6 notes the condition that was discussed with
7 respect to providing the ANC and DDOT
8 information on an annual basis regarding the,
9 if I can characterize this correctly, traffic
10 modal split. The applicant did agree to do
11 that. It was, I think, represented by Office
12 of Planning as DDOT's suggestion.

13 Are Board Members in favor of
14 including that?

15 COMMISSIONER HOOD: So, Madam
16 Chair?

17 CHAIRPERSON MILLER: Uh-huh.

18 COMMISSIONER HOOD: The ANC did not
19 ask for that, right?

20 CHAIRPERSON MILLER: The ANC did
21 not ask for that. It was just a suggestion by
22 DDOT.

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1 COMMISSIONER HOOD: Do we have a
2 sign or is there something that sparked -- I
3 know DDOT made the suggestions. I also looked
4 at the letter and I appreciate them sending a
5 letter. And I also weighed that with the
6 appearance. And I know sometimes it's hard to
7 make it, but if DDOT really felt really
8 strongly, I'm sure even if the -- whoever the
9 person was for this particular ward could make
10 it, I'm sure somebody from that office would
11 have been here.

12 So I just -- my concern is the
13 applicant doing this and submitting to the ANC
14 and they may not even be interested. I don't
15 want to speak for them. There's just nothing
16 here to tell me which way to do it. We can
17 leave it in there. And it's in there and the
18 ANC never asked for it and the applicant does
19 it or the applicant never does it and nobody
20 never does anything.

21 CHAIRPERSON MILLER: Yeah, I mean,
22 I think that part of the problem here is that

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1 the ANC didn't ask for it. We don't have them
2 here. DDOT is not here, though they did ask
3 for it in their report. It's often a
4 beneficial tool, I think, for encouraging
5 sustainability issues, perhaps for keeping the
6 applicant focused on how they can, you know,
7 improve in that sense.

8 I don't know if it's actually
9 directed at a potential adverse impact in this
10 case, unless we are concerned about the
11 traffic that has been represented to us as
12 having an adverse impact.

13 So this is kind of an iffy one.
14 What do other Board Members want to do with
15 respect to this proposed condition?

16 VICE CHAIR LOUD: Madam Chair, I
17 note that the applicant was not opposed to it.

18 I think they didn't want to have to create
19 spreadsheets and columns that they don't
20 already capture the data on. But as long as
21 it fits within what they currently are going
22 to be capturing anyway, they weren't opposed

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1 to it.

2 And frankly, I think it's a good
3 gesture. The ANC voted to support this, I
4 think at its October meeting. I don't know if
5 the ANC knew that we were not going to have a
6 term at all. Well, this report, our Exhibit
7 25, says the ANC voted to support the
8 proposal.

9 And I don't know if the proposal
10 they agreed to vote was completely untermed,
11 but I think it's a good gesture on the part of
12 the applicant, who is now receiving no term,
13 to check in annually with the ANC on something
14 like this. This is a small matter. They
15 don't appear to be opposed to it.

16 So that's sort of my take on it.
17 But again, I don't want to hold up the
18 reaching of a conclusion on this issue here.

19 CHAIRPERSON MILLER: Maybe they
20 should do it every other year. It doesn't
21 have to be every year and then they could keep
22 their eye on, you know, improving their modal

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1 split. But since they are a nonprofit, maybe
2 they wouldn't have to worry about doing it
3 every year, since we don't feel strongly that
4 there is a real traffic problem.

5 Comments? Do you agree with that?

6 Okay. That's the condition? All right.
7 That they will do their -- share their traffic
8 modal split, however it is property
9 characterized, every other year. They will do
10 a study and share it with the ANC and DDOT.
11 Okay.

12 MR. MOY: Madam Chair?

13 CHAIRPERSON MILLER: Yes?

14 MR. MOY: Just quick on that, would
15 the Board be interested in having that at the
16 beginning of the school year or at the end of
17 the school year or does that not matter?

18 VICE CHAIR LOUD: When does the
19 applicant normally collect -- I don't think we
20 should add a layer of anything extra on that
21 one, because whenever they collect it,
22 that's --

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1 CHAIRPERSON MILLER: Okay. I think
2 we should go outside of our deliberation then
3 and ask them, because I'm sure there is a time
4 that is easier for them to do it. So we're
5 going to do that. We're going to ask you all.

6 MS. LASHINGER: Generally, we would
7 suggest 30 days, within 30 days of the start
8 of the school year.

9 CHAIRPERSON MILLER: Okay.

10 MS. LASHINGER: So to let
11 operations get up and running for the year,
12 that will give you a typical day.

13 CHAIRPERSON MILLER: Okay. That's
14 good. Because there needs to be a
15 predictability built into the conditions. And
16 we want it to work right for you all. Okay.
17 Good.

18 Are there any other conditions that
19 Board Members are aware of that we would like
20 to consider in our deliberation?

21 MEMBER DETTMAN: Madam Chair, do we
22 need a condition that deals with the number of

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1 staff at any one time on-site?

2 CHAIRPERSON MILLER: We could. We
3 do that normally and tie it to the parking
4 requirement. We made a finding that 13 spaces
5 were adequate because they had 18 faculty and
6 staff on-site at one time maximum.

7 So I think this is going to be a
8 summary order. There is no party in
9 opposition. We can add it as a condition with
10 the students.

11 MEMBER DETTMAN: I was --

12 CHAIRPERSON MILLER: I don't have
13 an objection to that.

14 MEMBER DETTMAN: -- really raising
15 it because we typically have a condition that
16 deals with students and then faculty. I mean,
17 I think, I'm confident that the applicant
18 intends on having 18 on-site at any one time.
19 It may not warrant a condition.

20 CHAIRPERSON MILLER: Any comments
21 on that one now?

22 VICE CHAIR LOUD: I think we

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1 usually do have it, don't we? And in this
2 case, we have a Condition No. 2 regarding the
3 enrollment not to exceed 80 students. We
4 could just put a semicolon and then nor shall
5 faculty and staff exceed 18 faculty and staff.

6 CHAIRPERSON MILLER: At one time?

7 VICE CHAIR LOUD: At one time. FTE
8 at one time, I think is the way they capture
9 it.

10 CHAIRPERSON MILLER: Okay. Yeah, I
11 think we have used language, I don't have it
12 in front of me, if we might want to use that
13 or not, that's a little bit more specific that
14 parallels the regulation that talks about
15 during the hour that they are employed to
16 teach or something.

17 So what I want to do is just give
18 us that flexibility to take one more look at
19 that regulation and characterize it to be
20 consistent with that. But it basically comes
21 down to 18 at one time.

22 Okay. So I think that is that. A

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1 good point. We might as well have that in.
2 We can have that in for predictability anyway,
3 because we do use that number in determining
4 compliance with the parking.

5 I just want to leave as little up
6 in the air with respect to the conditions. I
7 think we have gone through the conditions and
8 I think it is pretty clear what they are, but
9 with respect to the sharing of data, I think I
10 can pick up the language that is in the DDOT
11 report, so that that isn't left to drafting,
12 if the Board agrees, and that would be that
13 the applicant will share its modal split data
14 with DDOT policy and planning staff and ANC-8C
15 every other year within 30 days of the start
16 of the school year.

17 Okay. So the only language I think
18 that might be up in the air is just the
19 language that talks about the number of
20 faculty and staff on-site as it is tied to
21 parking. But in general, that would mean here
22 18 at one time, in general, but we will just

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1 craft that language a little bit more
2 carefully when we put it in the order.

3 Okay. Anything else? Okay. Not
4 hearing anything, we have a motion that has
5 been seconded to approve the relief sought in
6 this case under 206, 214 and 2303.3, as
7 conditioned.

8 All those in favor say aye.

9 ALL: Aye.

10 CHAIRPERSON MILLER: All those
11 opposed? All those abstaining? And would you
12 call the vote, please?

13 MS. BAILEY: Madam Chair, I have
14 approval of the application with six
15 conditions that the Board identified. The
16 vote is 5-0-0. Mrs. Miller made the motion,
17 Mr. Loud seconded, Mr. Dettman, Mrs. Walker
18 and Mr. Hood support the motion.

19 CHAIRPERSON MILLER: Okay. And as
20 I stated, there is no party in opposition, so
21 this will be a summary order. Okay. Thank
22 you very much.

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1 Ms. Bailey, do we have anything
2 else on the agenda for this afternoon?

3 MS. BAILEY: No, Madam Chair,
4 that's it.

5 CHAIRPERSON MILLER: Okay. Then
6 this hearing is adjourned.

7 (Whereupon, the Public Hearing was
8 concluded at 4:54 p.m.)

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