

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 28, 2009

+ + + + +

The Regular Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice, at 9:30 a.m., Marc D. Loud, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairperson
SHANE L. DETTMAN, Vice Chairperson

ZONING COMMISSION MEMBER PRESENT:

GREGORY N. JEFFRIES, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

ARTHUR JACKSON
STEPHEN MORDFIN
MATT JESICK

The transcript constitutes the minutes from the Public Hearing held on April 28, 2009.

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

2 (10:32 a.m.)

3 CHAIRPERSON LOUD: Good morning.

4 This hearing will please come to order.

5 First, let me thank each of you for
6 your patience this morning as we try to get
7 this morning's calendar off. We are going to
8 adjust the schedule a little bit. We are
9 going to go into the 10:00 a.m hearing session
10 instead of the public meeting that was
11 originally scheduled for 9:30.

12 Having reviewed our rules, we have
13 come to the conclusion that we can call a
14 hearing with two members present. However, we
15 cannot make a decision. So what we are going
16 to do is call the hearing part of this
17 morning's calendar, because we have a quorum
18 to do that. And then, with respect to the
19 cases that we call this morning for the
20 hearing, we will not be able to make a
21 decision on those until a third member has
22 read the transcript.

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1 So, and that we are doing under
2 Section 3101.2. So what I will do now is go
3 through the introductory remarks for the
4 hearing. However, our plan is to hear one
5 case, and this is all in the interest of time
6 and keeping the calendar moving forward this
7 morning.

8 And then, we will recess from the
9 hearing and go back to the decision. We hope
10 at that time to be joined by Mr. Jeffries, so
11 that we can go into the Latter-Day Saints
12 decision.

13 That being said, this hearing will
14 please come to order. Good morning. This is
15 the April 28th public hearing of the Board of
16 Zoning Adjustment of the District of Columbia.

17 My name is Marc Loud, Chairperson. Joining
18 me today is Vice Chair Shane Dettman,
19 representing the National Capital Planning
20 Commission.

21 To my left is Mr. Clifford Moy,
22 Secretary of the Board of Zoning Adjustment;

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1 Ms. Lori Monroe from the Office of Attorney
2 General; and Ms. Beverley Bailey, Zoning
3 Specialist here in the Office of Zoning.

4 Copies of today's hearing agenda
5 are available to you and are located to my
6 left in the wall bin near the door. Please be
7 advised that this proceeding is being recorded
8 by a Court Reporter and is also webcast live.

9 Accordingly, we must ask you to refrain from
10 any disruptive noises or actions in the
11 hearing room.

12 When presenting information to the
13 Board, please turn on and speak into the
14 microphone, first stating your name and home
15 address. When you are finished speaking,
16 please turn your microphone off, so that your
17 microphone is no longer picking up sound or
18 background noise.

19 All persons planning to testify
20 either in favor or in opposition are to fill
21 out two witness cards. These cards are
22 located to my left on the table near the door

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1 and on the witness tables. Upon coming
2 forward to speak to the Board, please give
3 both cards to the Reporter sitting to my
4 right.

5 The order of procedure for special
6 exceptions and variances is: statement and
7 witnesses of the applicant; the government
8 reports, including Office of Planning,
9 Department of Public Works, etcetera; report
10 of the ANC; parties or persons in support;
11 parties or persons in opposition; and then
12 closing remarks by the applicant.

13 Pursuant to Sections 3117.4 and
14 3117.5, the following time constraints will be
15 maintained: the applicant, appellant,
16 persons, and parties, except an ANC in
17 support, including witnesses, 60 minutes
18 collectively; appellees, persons, and parties,
19 except an ANC in opposition, including
20 witnesses, 60 minutes collectively;
21 individuals, three minutes.

22 These time restraints do not

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1 include cross examination and/or questions
2 from the Board. Cross examination of
3 witnesses is permitted by the applicant or
4 parties. The ANC within which the property is
5 located is automatically a party in a special
6 exception or variance case.

7 Nothing prohibits the Board from
8 placing reasonable restrictions on cross
9 examination, including time limits and
10 limitations on the scope of cross examination.

11 The record will be closed at the
12 conclusion of each case except for any
13 material specifically requested by the Board.

14 The Board and the staff will specify at the
15 end of the hearing exactly what is expected
16 and the date when the persons must submit the
17 evidence to the Office of Zoning. After the
18 record is closed, no other information will be
19 accepted by the Board.

20 The Sunshine Act requires that the
21 public hearing on each case be held in the
22 open before the public. The Board may,

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1 consistent with its rules of procedure and the
2 Sunshine Act, enter executive session during
3 or after the public hearing on a case for
4 purposes of reviewing the record or
5 deliberating on the case.

6 The decision of the Board in
7 contested cases must be based exclusively on
8 the public record. To avoid any appearance to
9 the contrary, the Board requests that persons
10 present not engage the members of the Board in
11 conversation.

12 Please turn off all beepers and
13 cell phones at this time, so as not to disrupt
14 these proceedings.

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

22 If you are not prepared to go

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1 forward with a case today, or if you believe
2 that the Board should not proceed, now is the
3 time to raise such a matter. But let me just
4 add to that, because it would require a
5 decision to postpone a case -- and, again, we
6 are going to work a little bit out of order
7 this morning, and have already decided which
8 case we want to hear first, you may still come
9 forward, but we will not hear the case at this
10 time.

11 Does the staff have any preliminary
12 matters?

13 MS. BAILEY: Mr. Chairman, Mr. Vice
14 Chairman, to everyone, good morning. Not at
15 this time, sir.

16 CHAIRPERSON LOUD: Thank you. If
17 not, then let us proceed with the agenda. And
18 let us call the Sherman Arms case first.

19 MS. BAILEY: Mr. Chairman, should I
20 take a moment and swear the witnesses in at
21 this time?

22 CHAIRPERSON LOUD: That would be

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1 appropriate.

2 MS. BAILEY: Thank you. Please
3 stand, all those who will be testifying on the
4 Sherman Arms or any other case for this
5 morning. Please stand to take the oath.

6 (Whereupon, an oath was administered to those
7 persons planning to testify.)

8 Thank you.

9 Application 17914, Sherman Arms LLC
10 on behalf of Vesta Chesapeake LLC, pursuant to
11 11 DCMR Section 3104.1, for a special
12 exception to establish a community service
13 center in an existing apartment building under
14 Section 334. The property is zoned R-5-A. It
15 is located at 820 Southern Avenue, S.E.,
16 Square 6210, Lot 834.

17 CHAIRPERSON LOUD: Thank you, Ms.
18 Bailey.

19 Good morning.

20 MR. PATRICK BROWN: Good morning.
21 Let me suggest this. The record is very full
22 in this case. We reviewed all of the

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1 pleadings from the parties, from OP, from the
2 ANC, etcetera. And our thought is -- and
3 there are some very specific questions around
4 parking issues. There was a representation
5 that although the applicant is a for-profit,
6 there would be negotiations with a non-profit
7 regarding satisfying one of the elements of
8 the law.

9 So all of that being said, to
10 suggest that it may be very helpful for all of
11 us this morning, if you could just go very
12 immediately to the bare bones, just basic
13 information that you need to present. I don't
14 necessarily think it will illuminate the
15 record for PowerPoint necessarily, and I know
16 that Mr. Dettman may have some very specific
17 questions, and I may as well.

18 So with that being said, again, the
19 record is very, very full on this case.

20 MR. PATRICK BROWN: Thank you, Mr.
21 Chairman, and Mr. Dettman. We will certainly
22 hit the high points and move quickly through,

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1 and then open it up I think to your questions.

2 I would introduce myself. Patrick
3 Brown, from Greenstein, DeLorme & Luchs.
4 Assisting me is Kate Olson from the firm. To
5 my left is Mr. Lewis Brown from the Vesta
6 Corporation. He is the Project Manager. And
7 to my right, also here on behalf of the local
8 representative from the Vesta Corporation, Mr.
9 Dave Willmarth. And certainly both these
10 gentlemen, while prepared to give remarks, I
11 think are well suited to answer your questions
12 specifically.

13 As you can see from the record,
14 this is a continuation of an earlier BZA case
15 where the Board approved a community service
16 center in a free-standing building almost
17 immediately adjacent to the buildings and the
18 apartment buildings, and specifically very
19 close to the building where we propose to put
20 the new community service center in the lower
21 level.

22 And that center -- and I think the

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1 record goes through its operations and the
2 purpose and who it will serve. I think the
3 critical elements of the test, which certainly
4 the Office of Planning has covered in their
5 support, and our documents, and also the
6 support of the ANC, that the whole purpose --
7 and the video which we were prepared to show
8 from Vesta, to indicate that this is not
9 something they do just at this location.

10 They do it in numerous sites,
11 starting first in a very successful project in
12 Cleveland. That the whole purpose of the
13 community service center as part of this
14 housing development is to improve the social
15 and economic well being of the residents. It
16 is part of, more than just bricks and mortar
17 and housing, providing services and facilities
18 to help the well being and education and
19 success of the residents.

20 The location of this center, as it
21 is now proposed, within the lower level of a
22 building, it is self-contained. It serves as

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1 both the management office and also the
2 learning center. It is configured in such a
3 way that there will really be no external
4 effects.

5 The residents who will be served
6 will walk from -- and you can see -- it is in
7 the record, but also on the board there, that
8 this is a fairly central part of a compact
9 community where all of the residents can walk
10 across the parking lot or from a next-door
11 building and gain access immediately to the
12 learning center.

13 As a result, there are no car trips
14 involved. It is all pedestrian-resident foot
15 traffic. So that nobody will know, from an
16 external standpoint, that this exists. And it
17 is not the kind of place that there will be
18 noises or other activities that are likely to
19 be objectionable. It is located to serve the
20 residents and be convenient for the residents.

21 And the question, Mr. Loud, you
22 raised about the operator, Vesta Corporation

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1 is a for-profit corporation. The operator of
2 the community service center will be a non-
3 profit. As in their other centers, they have
4 selected specific non-profit operators. That
5 selection has not been made at this moment,
6 but certainly the absolute objective is to
7 retain a non-profit operator for the community
8 service center, and that is part of the
9 overall program that Vesta has enacted, not
10 just here but in I believe eight other
11 locations, seven other locations.

12 So there is a pattern that they are
13 repeating here that will be completed. And
14 certainly their obligation under the law is to
15 have a non-profit operator, and that allows
16 them to bring local resources to bear in a
17 local facility.

18 Having said that, Mr. Loud, you
19 indicated that question, but also a question
20 about parking. And there are approximately
21 178 parking spaces here. You can see from the
22 photo some of the parking. I think there are

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1 other photos in the record. The parking is
2 very underutilized. Most of the residents
3 here don't have vehicles. You have parking
4 basically at a little more than one-to-one for
5 the number of units in the facility.

6 People won't be coming, other than
7 some staff members, won't be coming to the
8 site to use the learning center in vehicles,
9 because they will be onsite residents. So I
10 think by any measure the anticipation is that
11 the parking will remain rather dramatically
12 underutilized, so that there will be no
13 deficit of parking, and certainly there will
14 be an overabundance for the handful of people
15 who may be working at the learning center to
16 come in and park in the 170-plus spaces that
17 are available.

18 With that, you have heard more than
19 enough from me. Perhaps, Dave, you can add
20 some additional comments, and then your
21 questions.

22 CHAIRPERSON LOUD: Good morning.

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1 Before you add some comments, let me also
2 suggest that you can take advantage of this
3 time simply to introduce yourselves for the
4 record, so that we can acknowledge that you
5 were here this morning. And if you want to go
6 further into testimony, you are more than
7 welcome to do it.

8 But, again, your counsel has done a
9 very good job of briefing the record this
10 morning, so that it would not take away from
11 your case at all if you didn't do that.

12 A quick question on the non-profit
13 issue. What is the timeline that you think
14 will be needed in order to bring that to a
15 close?

16 MR. WILLMARTH: I will address
17 that. And, again, my name is Dave Willmarth.

18 I am here on behalf of Vesta Corp. We --
19 assuming quick zoning approval, we will start
20 on the renovation of the learning center
21 immediately. We figure it will take us about
22 60 days to complete the renovations, get the

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1 CO, and we plan to put it into service within
2 another 30. That gives us time to purchase
3 the computer equipment, get the internet
4 service hooked up, that kind of thing.

5 We are currently negotiating with
6 several non-profit entities here in D.C. as to
7 who will run the center, whether it is a
8 single entity or a combination of different
9 entities for adult and children. So we will
10 have those agreements executed before we
11 finish renovation.

12 CHAIRPERSON LOUD: Okay. And can
13 you put on the record who you are negotiating
14 with, or is that confidential information?

15 MR. WILLMARTH: I would prefer not
16 to, because I didn't clear that with them
17 ahead of time.

18 CHAIRPERSON LOUD: And let me just
19 ask your counsel a quick question. Is it your
20 opinion, Mr. Brown, that we could issue an
21 order and condition it upon compliance with
22 that section of the regs regarding a non-

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1 profit operating, or that the piece would need
2 to be in place before?

3 MR. PATRICK BROWN: Well, you could
4 certainly issue the order with that condition
5 in place. It is somewhat redundant because
6 the law states that that is an absolute
7 requirement, but I would have no objection
8 should that give the Board comfort. There is
9 every intention to comply with that and all of
10 the other restrictions.

11 CHAIRPERSON LOUD: Okay. Let me
12 check in with Mr. Dettman this morning and see
13 if he has some questions.

14 VICE CHAIRPERSON DETTMAN: Good
15 morning. Just specifically to the parking, I
16 know that there is no specific parking
17 requirement for a community service center in
18 Chapter 21, which probably means you would
19 fall under kind of the catch-all in Chapter
20 21, which is all other uses.

21 So it looks like using that, all
22 other use requirement, you would be required

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1 to provide three parking spaces. We don't
2 have anything in the record that indicates
3 where those three spaces will be. Is there
4 any problem with submitting something into the
5 record between now and when the Board makes
6 the decision, indicating that, you know, these
7 three spaces in this location would be
8 reserved for the community service center?

9 MR. PATRICK BROWN: No. No. And
10 certainly what we would do is -- and you have
11 it in the record already -- I believe that
12 shows the parking there, and we could just
13 designate those three spaces for those
14 purposes.

15 VICE CHAIRPERSON DETTMAN: Okay.
16 It would be helpful. I think the Board has a
17 couple of options. One would be to have some
18 kind of parking plan that says these are the
19 three sites that would be reserved. In the
20 alternative, we could condition the order
21 based on three reserved spots. But if we have
22 the time, I think submitting something would

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1 be helpful.

2 MR. PATRICK BROWN: Yes.

3 CHAIRPERSON LOUD: Did you have
4 anything further, Mr. Dettman? Mr. Brown, is
5 there anything further you would like to add?

6 MR. PATRICK BROWN: No. Subject to
7 any further questions.

8 CHAIRPERSON LOUD: Okay. Why don't
9 we, then, turn to the Office of Planning.
10 Good morning.

11 MR. JACKSON: Good morning. My
12 name is Arthur Jackson. I am with D.C. Office
13 of Planning, and I am here to review the
14 Office of Planning's report. We essentially
15 will stand on the record, however. And if you
16 have any questions for -- about the
17 particulars, we are available to answer them.

18 And that concludes my brief introduction.

19 CHAIRPERSON LOUD: Mr. Dettman, do
20 you have any questions for OP?

21 VICE CHAIRPERSON DETTMAN: I have
22 no questions, no.

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1 CHAIRPERSON LOUD: Okay. Thank
2 you, Mr. Jackson. It was an excellent report.

3 What we will do now is take note of
4 the fact that the ANC did submit a report for
5 our records. It was submitted late, and it is
6 our Exhibit Number -- sorry, Exhibit Number
7 27. Did you get a copy of it, Mr. Brown?

8 MR. PATRICK BROWN: Yes, I did.

9 CHAIRPERSON LOUD: Okay. And in
10 the report there is an indication that the
11 meeting was properly noticed, that there was a
12 quorum present, and that the ANC-8D voted to
13 recommend that the project go forward. The
14 vote was four for and zero against.

15 And so this Exhibit 27 was
16 submitted for the record. I think that it was
17 submitted late, but under Section 3100.5 we
18 are authorized to waive our rules. And I
19 think that waiver is appropriate in this case,
20 and we will waive rules to allow this to enter
21 into the record, and it will be given great
22 weight.

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1 At this time, if there are parties
2 or persons in support of the application that
3 are in the audience, this would be a time for
4 you to come forward. Seeing none, if there
5 are parties or persons in opposition, this
6 would be the time to come forward.

7 I'm sorry? Please come forward.
8 Good morning. Yes. Have you been sworn in?

9 MS. RUFFIN: Yes, I did.

10 CHAIRPERSON LOUD: Okay.
11 Excellent, all right. Why don't you state
12 your name and address for the record. You are
13 going to have to cut your -- press that button
14 on the -- yes. Now speak in --

15 MS. RUFFIN: You can hear me?

16 CHAIRPERSON LOUD: Yes.

17 MS. RUFFIN: Okay. My name is
18 Beverly Ruffin. I am a resident there of the
19 said property here at 820 Southern Avenue.
20 Technically, I am at 814. It is a
21 consolidation of various properties and units.

22 Too, I am a board member of the

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1 TRAP Tenant Association. And even though the
2 ANC had submitted on behalf of the community
3 center being developed there, or renovated
4 there, there is not enough space for this
5 community center to accommodate all of the
6 occupancy of the tenants there.

7 It is not just those four units or
8 those red brick buildings that you see, but it
9 is an accumulation of practically 16 to 18
10 buildings, each housing four units per floor,
11 so 16 units per building, which is a total of
12 256 to 288 units that this one-level, four-
13 unit community center is supposed to service,
14 as well as house the rental office, which will
15 not be available space-wise on a 24-hour or
16 "community service" basis, because information
17 that is kept in the rental office has to be
18 confidential and secured. So that space will
19 not be available as a learning center space
20 for the tenants of those properties.

21 It is not just to accommodate the
22 Avalon properties, 814, 816, 818, and 820, but

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1 not -- my understanding, it is inclusive of
2 all of those units that goes around Southern
3 Avenue, as well as part of H Street and
4 Chesapeake Street.

5 CHAIRPERSON LOUD: Thank you, Ms.
6 Ruffin.

7 Mr. Brown, would you like to -- I'm
8 sorry. Let's go to Mr. Dettman first. Do you
9 have any questions?

10 VICE CHAIRPERSON DETTMAN: No.

11 CHAIRPERSON LOUD: Okay. Mr.
12 Brown, would you like to cross?

13 MR. PATRICK BROWN: No. No cross.

14 CHAIRPERSON LOUD: Okay. Thank
15 you, Ms. Ruffin. Is there something further
16 you would like to add?

17 MS. RUFFIN: Oh, yes. And in
18 agreement with the CEO situation, for a non-
19 profit to take over, that has -- was in a
20 previous agreement with the TRAP Tenant
21 Association, that we do have to review, as
22 well as interview, the non-profit association

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1 that is supposed to be taking over for the
2 community center. That was part of our
3 agreement, and we haven't been notified who
4 the non-profit entity is as of yet.

5 CHAIRPERSON LOUD: Okay. So would
6 it be fair to summarize your concerns as,
7 first, that the proposed community center
8 would be too small for the number of buildings
9 adjacent thereto? And, secondly, that you
10 have not had an opportunity to review and/or
11 -- I guess just review the proposed non-profit
12 operator?

13 MS. RUFFIN: Correct on both
14 counts.

15 CHAIRPERSON LOUD: Okay. All
16 right. Thank you very much. We really
17 appreciate your testimony this morning.

18 We are not going to make a decision
19 this morning. We will review the record and
20 deliberate and set it for decisionmaking in
21 the next several weeks or so.

22 Mr. Brown, did you want to rebut

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1 or --

2 MR. PATRICK BROWN: Yes, I would, I
3 think in the context of just closing the
4 record and --

5 CHAIRPERSON LOUD: Okay.

6 MR. PATRICK BROWN: -- wrapping up.

7 CHAIRPERSON LOUD: Okay.

8 MR. PATRICK BROWN: I mean, I think
9 the record is complete, with the exception I
10 would like to perhaps ask Mr. Willmarth to
11 respond to the comments that Ms. Muffin made,
12 and establish I think a better context for
13 what is being proposed in the context of the
14 community.

15 MR. WILLMARTH: Sure. Just very
16 quickly, in response to Ms. Ruffin's comments,
17 her mention of I think it was 256 apartments
18 is not correct. There are in fact 178
19 apartments on the property. That information
20 is in your submission there.

21 As to the space, the overall space
22 combined between the learning center and the

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1 leasing office is approximately 2,000 square
2 feet. You have a copy of the plan in your
3 submission package. Part of that will be used
4 as the management/leasing office. The balance
5 will be used for community space. There is a
6 large room for between 12 and 15 computer
7 stations for internet access, and then a
8 couple of small spaces for meetings and/or
9 one-on-one sessions.

10 We entertain the possibility that
11 there will be 30 to 40 kids max in the
12 learning center at any given time. Based on
13 Vesta's previous experience with learning
14 centers on other properties, the space is more
15 than sufficient.

16 I believe that would be it.

17 CHAIRPERSON LOUD: Okay.

18 MR. PATRICK BROWN: And the final
19 point, while there may be contractual
20 obligations to coordinate the selection of the
21 -- and I am not privy to those details -- but
22 the regulations only require that the operator

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1 be a not-for-profit organization. It doesn't
2 impose what may be other requirements outside
3 the scope of zoning and how that party is
4 selected.

5 So the critical element is in fact
6 that it will be -- and in the Board's view
7 they want to make it a condition that the
8 operator will be a not-for-profit, it would be
9 going beyond the scope of the zoning
10 regulations, and I think your jurisdiction or
11 authority or desire to impose a method for --
12 or a process for selecting that operator.

13 CHAIRPERSON LOUD: Just on that
14 point, Mr. Brown and Mr. Willmarth, is there
15 an agreement, a written agreement, that
16 authorizes this third party entity to either
17 approve or simply review and give feedback
18 regarding the selection of a non-profit? And
19 that is kind of a yes or no question.

20 MR. WILLMARTH: Yes, there is an
21 agreement with the association. Whether it
22 includes that provision, I don't know. That

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1 is news to me. But we will certainly check
2 that. If it is in there, we have no problem
3 complying with it.

4 CHAIRPERSON LOUD: Okay. And the
5 name of the association again for our records
6 is the --

7 MS. RUFFIN: It is TRAP, Tenants
8 Rebellling Against Persecution, Association.

9 CHAIRPERSON LOUD: Ms. Ruffin, are
10 you an officer of the TRAP organization?

11 MS. RUFFIN: Yes, I am a board
12 member.

13 CHAIRPERSON LOUD: Board member.
14 Okay. And you are familiar with the written
15 agreement between, obviously, TRAP and Vesta?

16 MS. RUFFIN: Yes.

17 CHAIRPERSON LOUD: And does the
18 written agreement have this provision in it
19 regarding --

20 MS. RUFFIN: Yes, it does.

21 CHAIRPERSON LOUD: Okay. Thank
22 you, Ms. Ruffin. You may actually be excused

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1 now, if you would like to.

2 Mr. Brown, had you sort of
3 incorporated that into your closing, or you
4 would like a formal closing?

5 MR. PATRICK BROWN: No, I think we
6 wrapped it all together.

7 CHAIRPERSON LOUD: Okay.

8 MR. PATRICK BROWN: Assuming that
9 the Board is satisfied that they have the
10 information they need.

11 CHAIRPERSON LOUD: I think what we
12 will do now is talk about setting it for
13 decision and see if there is any additional
14 information that we need.

15 MR. PATRICK BROWN: Okay.

16 VICE CHAIRPERSON DETTMAN: Mr.
17 Chairman, just one very quick question.

18 Mr. Brown, is the proposed center
19 meant to replace what has already been
20 approved by the BZA previously?

21 MR. PATRICK BROWN: Yes.

22 VICE CHAIRPERSON DETTMAN: It is.

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1 Okay. It will replace it.

2 MR. PATRICK BROWN: And, in fact,
3 the approval that was issued for the other
4 free-standing facility has expired.

5 VICE CHAIRPERSON DETTMAN: Oh, it
6 has.

7 MR. PATRICK BROWN: It no longer
8 exists as a --

9 VICE CHAIRPERSON DETTMAN: Was the
10 size of that facility comparable to what is
11 being proposed?

12 MR. PATRICK BROWN: The free-
13 standing building was larger.

14 VICE CHAIRPERSON DETTMAN: Okay.

15 MR. PATRICK BROWN: It was also
16 intended to serve or was available to serve as
17 -- correct me if I am wrong -- individuals who
18 did not live in the community.

19 VICE CHAIRPERSON DETTMAN: Okay.

20 CHAIRPERSON LOUD: Anything
21 further, Mr. Dettman?

22 VICE CHAIRPERSON DETTMAN: No.

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1 CHAIRPERSON LOUD: Okay. I think
2 what we will do is try to set this for
3 decision on May 19. Ms. Bailey, does that
4 look like an open date for us?

5 MS. BAILEY: Mr. Chairman, I am
6 looking at the schedule right now. Yes, sir.

7 CHAIRPERSON LOUD: Okay. Then,
8 let's do that. Mr. Dettman, is there anything
9 that you would like to have in addition to
10 what is before us, in terms of closing out the
11 record?

12 VICE CHAIRPERSON DETTMAN: I think
13 the applicant had stated that they were open
14 to submitting something that indicated the
15 three spots that would be reserved for the
16 community service center. I think that is it.

17 MR. PATRICK BROWN: And I am not so
18 sure it is relevant. We can certainly provide
19 the parking information. That would be easy
20 enough to do.

21 If the Board has any interest, I am
22 not so sure that you want to go beyond just

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1 the designation of the operator as not-for-
2 profit. But if it is on the Board's mind, we
3 could certainly provide some clarification on
4 the issue of how that operator is selected.

5 To be honest, I have not seen the
6 document, so I don't know what is there, and I
7 can't comment one way or another. I don't
8 really think it is relevant, because that is,
9 you know, an outside contractual relationship
10 that doesn't go to the zoning issue, which
11 just -- it has to be a not-for-profit
12 operator.

13 CHAIRPERSON LOUD: I think for me,
14 if you have the information, it will be
15 helpful. I know that the regs require, under
16 334.5, that the status be not-for-profit. And
17 I am sort of interpreting that as us making a
18 decision, and there being enough evidence in
19 the record to support a finding under 334.5
20 that that would be the case, that it would be
21 operated by a non-profit.

22 I know there is testimony here to

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1 that effect, and, beyond that, testimony that
2 there is a strong pattern of this applicant to
3 engage non-profits in that regard. But,
4 nonetheless, there is no actual evidence of
5 there being a non-profit in play to do this,
6 and we have had those in some cases.

7 So just any additional information
8 that you can provide that would be directly
9 related to that issue would be helpful.

10 MR. WILLMARTH: Yes, sir. If we do
11 not have an agreement in place by then, I will
12 at least have approval to share with you the
13 names of the folks that we are negotiating
14 with, so that you can see who we are choosing
15 from.

16 CHAIRPERSON LOUD: I think that
17 would be helpful. So we are talking about
18 information that identifies the three parking
19 spots, and information about the non-profit
20 third party that would operate the center.
21 And we are talking about a May 19 decision
22 date. So working backwards from there, Ms.

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1 Bailey, what would be a good time to impose as
2 the deadline for receipt of those two
3 outstanding items?

4 MS. BAILEY: Mr. Chairman, I would
5 suggest a week prior, and that Monday, which
6 would be May 11 -- Mr. Brown, would you have
7 the information by then, May 11?

8 MR. PATRICK BROWN: Yes, that is
9 fine.

10 CHAIRPERSON LOUD: Okay. We look
11 forward to getting that information on May 11.
12 And, as I said, we will set it for decision
13 on May 19. Anything further?

14 MR. PATRICK BROWN: That is it.
15 Thank you very much.

16 CHAIRPERSON LOUD: Again, thank you
17 for your patience, and we look forward to
18 seeing you perhaps on May 19.

19 Okay. I think what we are going to
20 do now is recess for five minutes. Our third
21 member has joined us, and so when we come back
22 we are going to go into the morning's decision

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1 meeting, the Latter-Day Saints case. And we
2 will go through that case, which will be the
3 public meeting, and then we will reconvene as
4 the hearing when that concludes.

5 So, again, thank everyone for your
6 patience. We will take a five-minute break.
7 We will be right back.

8 (Whereupon, the proceedings in the foregoing
9 matter went off the record at 11:05
10 a.m. and went back on the record at
11 11:30 a.m.)

12 CHAIRPERSON LOUD: Good mid-
13 morning. The public hearing for April 28 is
14 now back in session.

15 Good morning again, Ms. Bailey,
16 looking a little bit surprised.

17 But what we are going to do --
18 again, we are sort of bouncing around the
19 schedule this morning, making adjustments in
20 the best interest of time and conserving
21 everyone's time this morning. And, again,
22 appreciate everyone's patience.

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1 We are still in the public hearing
2 this morning, because on the calendar this
3 morning is 17916, which we -- the American
4 Hellenic Institute, which we believe is a
5 continuance/postponement request that could be
6 heard very, very quickly.

7 And if the parties for that case
8 are here, we would like -- once Ms. Bailey is
9 going to call the case, if we can dispose of
10 that within a few minutes, we would like to,
11 so that we don't keep you any longer than
12 necessary. And then, we will resume the
13 scheduled calendar, which would have us going
14 out of the public hearing and into the public
15 meeting for the purpose of the Latter-Day
16 Saints case.

17 MS. BAILEY: Is the party for the
18 Hellenic Institute Foundation -- oh, okay.
19 Please have a seat at the table.

20 This is Application Number 17916,
21 an application American Hellenic Institute
22 Foundation, Inc., pursuant to 11 DCMR 3104.1,

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1 for a special exception to allow office use
2 under Section 508. The property is zoned SP-
3 2. It is located at 1220 16th Street, N.W.,
4 Square 182, Lot 55.

5 And as you indicated, Mr. Chairman,
6 there is a request here for this application
7 to be postponed.

8 CHAIRPERSON LOUD: Thank you, Ms.
9 Bailey.

10 Can you please state your name and
11 address for the record?

12 MR. MARKETOS: Good morning. James
13 Marketos for the applicant.

14 CHAIRPERSON LOUD: Good morning,
15 Mr. Marketos. We have reviewed the record,
16 particularly your Exhibit Number 21, which
17 sort of underlines the reasons why you are
18 seeking a postponement this morning, and we
19 agree with you as well. But is there anything
20 wanted to just very briefly and specifically
21 add to that, or illuminate perhaps?

22 MR. MARKETOS: I don't have an

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1 exhibit number reference. Is that my letter
2 to Mr. Moy of April 20?

3 CHAIRPERSON LOUD: That is correct.

4 MR. MARKETOS: Yes. No, I don't
5 have anything more to add, sir.

6 CHAIRPERSON LOUD: Okay. Why don't
7 we do this, then. Can we look at some dates
8 for the postponement? I think perhaps July 21
9 in the afternoon, Ms. Bailey, might be a good
10 place to place it, if that works for Mr.
11 Marketos as well. I think that should give
12 you enough time to --

13 MR. MARKETOS: That is fine with
14 me.

15 CHAIRPERSON LOUD: -- resolve this.
16 Okay.

17 MS. BAILEY: Mr. Chairman, do you
18 anticipate that the Zoning Administrator will
19 have made a decision by then? July 21st?

20 CHAIRPERSON LOUD: Well, let me ask
21 Mr. Marketos in terms of your working with him
22 closely.

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1 MR. MARKETOS: I am working with
2 him somewhat closely, and he has indicated
3 that as soon as I let him know that the
4 application is on file, and that will be done
5 soon, I am to bring it to his attention, so
6 that he can make sure that the staff will
7 expedite it.

8 CHAIRPERSON LOUD: Okay. In that
9 case, then, why don't we go with July 19,
10 given that you have been working with him
11 fairly closely, do you think that that would
12 be --

13 MR. MARKETOS: You had said July
14 21.

15 CHAIRPERSON LOUD: July 21, I'm
16 sorry. July 21. And if for some reason it
17 does not happen by then, we can make
18 adjustments.

19 MR. MARKETOS: Thank you.

20 CHAIRPERSON LOUD: Okay.

21 MS. BAILEY: July 29? I'm sorry.
22 July 21, 2009, afternoon session it is, Mr.

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1 Chairman.

2 CHAIRPERSON LOUD: Thank you, Ms.
3 Bailey. Is there anything further in this
4 case?

5 MS. BAILEY: Not for this case,
6 sir.

7 CHAIRPERSON LOUD: Thank you, Mr.
8 Marketos.

9 MR. MARKETOS: Thank you very much.

10 CHAIRPERSON LOUD: Appreciate your
11 patience.

12 MR. MARKETOS: Thank you.

13 CHAIRPERSON LOUD: Ms. Bailey, we
14 would now like to adjourn from the hearing
15 calendar, so that we can go into the decision
16 calendar. And we will resume the hearing
17 calendar after we do this one decision.

18 MS. BAILEY: Thank you, sir.

19 (Whereupon, the proceedings in the foregoing
20 matter went off the record at 11:35
21 a.m. and went back on the record at
22 12:15 p.m.)

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1 CHAIRPERSON LOUD: And I believe
2 what we wanted to do from our end is to work
3 through the lunch hour. We would normally
4 break at 12:00 noon, but I think we were
5 prepared to work through the lunch hour, but
6 we wanted to see if the applicants were
7 willing to do so as well. And I believe the
8 case that we would be calling would be the
9 Gonzaga case. Is that the sole remaining case
10 from this morning?

11 SECRETARY MOY: Yes, sir.

12 CHAIRPERSON LOUD: Okay. So we
13 would be calling the Gonzaga case. And if the
14 Gonzaga is prepared to go forward, we would
15 like to make that opportunity available to
16 you.

17 Let me just check with the
18 gentlemen that does the transcripts, the Court
19 Reporter, in terms of our working straight
20 through the lunch hour. No objections from
21 him. All right.

22 So shall we call that case? I'm

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1 sorry. Shall we call that case?

2 MS. BAILEY: Yes, Mr. Chairman.

3 CHAIRPERSON LOUD: Thank you.

4 MS. BAILEY: Application 17913.

5 This is the application of Gonzaga College
6 High School, pursuant to 11 DCMR Section
7 3104.1 and 3103.2, for a special exception to
8 construct new facilities for academic and
9 athletic uses, to construct a below-grade
10 parking garage, and to make other related
11 modifications to the campus under Section 206,
12 and for a variance from the court requirements
13 under Section 406 as well. The property is
14 zoned R-4, C-2-A, and C-3-A. It is located at
15 19 I Street, N.W., Square 622, Lots 90 and
16 840.

17 CHAIRPERSON LOUD: Thank you, Ms.
18 Bailey.

19 Could the parties please come
20 forward? And I do believe everyone has been
21 sworn in already. Is that correct?

22 MS. BAILEY: Mr. Chairman, it looks

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1 as if we have some new materials here. So if
2 you will just give me a second to hand that
3 out. That was just handed out.

4 CHAIRPERSON LOUD: Thank you.

5 MR. UTZ: Those are the
6 presentation materials. Everything that we
7 will be showing on the overheads we just
8 submitted as well.

9 CHAIRPERSON LOUD: Okay. Why don't
10 you introduce yourselves for the record.
11 These are being organized. We can get that
12 out of the way.

13 MR. UTZ: Sure.

14 CHAIRPERSON LOUD: Okay.

15 MR. UTZ: Good afternoon, members
16 of the Board of Zoning Adjustment. My name is
17 Jeff Utz. I am with Pillsbury Winthrop Shaw
18 Pittman.

19 With me today is, starting from
20 your right, is Phil Feola, also with Pillsbury
21 Winthrop; Iain Banks of OR George &
22 Associates; Father Allen Novotny of Gonzaga

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1 College High School, the applicant in this
2 case; Chris Graae of Cox, Graae & Spack
3 Architects; and Lindsay Hellender, also of CGS
4 Architects.

5 CHAIRPERSON LOUD: Thank you.

6 MR. UTZ: Sure.

7 CHAIRPERSON LOUD: And good morning
8 again. We appreciate your patience this
9 morning as well, and flexibility.

10 We have reviewed the file. And,
11 again, it is a very well put together
12 application. There are some submissions that
13 sort of speak for themselves, and if you
14 choose to not repeat that as part of the
15 hearing, really basic stuff like the school
16 and what it does and the number of students,
17 and all that kind of stuff.

18 MR. UTZ: Okay.

19 CHAIRPERSON LOUD: You are
20 certainly free, in the interest of time, to
21 just really target the specific things that
22 you want to lift up during your presentation.

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1 I am sure Board members have some very
2 targeted questions as well.

3 So I think what I am trying to
4 suggest is that the very elaborate, full
5 briefing that you might have done, say, if we
6 had started right on time, you don't have to
7 feel obligated to do that --

8 MR. UTZ: Okay. Great.

9 CHAIRPERSON LOUD: -- to make your
10 case. But I still think I want to leave to
11 your judgment making the points that you want
12 to make with that understanding.

13 MR. UTZ: Okay. That is great.
14 Thanks a lot.

15 Okay. Well, I will give a brief
16 overview of why we are here, and the
17 application, and then let us get right to it.

18 We are here for special exception and
19 variance relief. The special exception relief
20 is due to Section 206 of the zoning
21 regulations, which requires special exception
22 approval for private school to be in an R-4

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1 District. And we are also here for an area
2 variance for a closed court that doesn't
3 comply under Section 406.1 of the zoning regs.

4 It is an adjacent wall, basically
5 66 feet, in an R-4 zoned district that would
6 be required to be a closed court of 22 feet,
7 and there it is 15 feet.

8 I think we will probably detail
9 that more on other slides. The architect I
10 think will dive into that a bit. But those
11 are the two areas of relief that we are
12 requesting today. This project will conform
13 to the zoning regs in all other manners, and
14 we are not requesting an increase to the cap.

15 It is 980 students, 120 faculty, staff, and
16 employees.

17 So I think I will skip the
18 standards of the special exception relief and
19 the variance relief, unless you want me to get
20 into that. We can circle back on that later,
21 and I can just go ahead and introduce Father
22 Allen Novotny, who is just going to give a

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1 brief overview of kind of the school and kind
2 of a quick history, and things like this.

3 MR. NOVOTNY: Good afternoon.

4 CHAIRPERSON LOUD: Good afternoon.

5 MR. NOVOTNY: I am Father Allen
6 Novotny, and it has been my privilege to be
7 Gonzaga's Chief Executive Officer for the past
8 15 years. Gonzaga, as you probably know, goes
9 far beyond that and has an 85 year-old
10 history, which I am sure everyone would be
11 relieved to know I am not going to recount for
12 you today.

13 It was founded in 1821 by the
14 Society of Jesus, a Catholic religious order
15 of which I confess to being a member. And its
16 history has really been interwoven with the
17 District of Columbia. It moved to its present
18 location in 1871 from what was then downtown
19 Washington to a few blocks just north of here,
20 which I can attest is within walking distance
21 at North Capitol and I Streets.

22 It stayed there through thick and

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1 thin, and it has been an anchor to the
2 community. But, more importantly, it is not
3 just a school that happened to be in the city,
4 but is really of the city and is engaged with
5 it. That begins, first of all, with our
6 student body which is diverse geographically.

7 They come from all over the
8 metropolitan area and beyond. Ethnically, we
9 are about 20 to 25 percent minority students,
10 and socioeconomically, thanks to a generous
11 financial aid program, which next year will
12 provide \$1.8 million to one out of every three
13 of our families, which is virtually all need-
14 based.

15 Our second level of engagement
16 touches on our community service programs that
17 our students participate in, everything from
18 the McKenna Center right on campus to the
19 Perry School Center a couple of blocks away,
20 J.B. Johnson Nursing Home next store,
21 McKenna's Wagon and Food and Friends taking
22 food out to the needy, and the Campus Kitchen

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1 Program. We are the first and currently the
2 only site -- high school site for that
3 program, which takes surplus food and prepares
4 meals for the homeless. We consider that to
5 be part of our education as well.

6 And, finally, I think you have a
7 list of our good neighbor policy in terms of
8 letting other organizations share our
9 facilities in front of you. Our need, as Jeff
10 mentioned, is not to expand our enrollment.
11 It is at 940 right now. While under our 980
12 cap, despite the great demand for increase --
13 we have 750 applicants this year for 245
14 spaces -- but the Board is committed to
15 keeping it at 940 for the time being.

16 What we do need is to accommodate
17 our current program and maintain its
18 excellent, especially in athletics, we now
19 have 17 different sports, and of course the
20 perennial problem of parking.

21 MR. UTZ: Okay. Thank you. I
22 would like to turn it over now to Chris Graae,

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1 who is going to give a quick overview of the
2 project on the projector.

3 CHAIRPERSON LOUD: Before you do
4 that, let me just ask, Board members, do you
5 want to ask questions of each witness, or ask
6 as you have an interest? Or just let them go
7 through? Okay. Okay.

8 MR. UTZ: Thanks.

9 MR. GRAAE: Good afternoon, Board
10 members. My name is Chris Graae, Cox, Graae &
11 Spack Architects. I will be abbreviated here,
12 as abbreviated as I can, just give you an
13 overview.

14 I have to leave at about 10 of 1:00
15 for another engagement. And if there are
16 followup questions, Lindsay Hellender, my
17 colleague, is probably better at the details
18 than I am.

19 CHAIRPERSON LOUD: Why don't you --
20 very briefly, if you can, because I know you
21 have an application before us to be qualified
22 as an expert, correct?

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1 MR. GRAAE: Yes.

2 CHAIRPERSON LOUD: So just state
3 your -- and we will look at that exhibit as
4 well, but just state your qualifications on
5 the record, and we can admit you as an expert.

6 MR. GRAAE: Sure. I am a principal
7 with Cox, Graae & Spack Architects. I am a
8 registered architect in the District, LEAD
9 certified professional, and I have been -- I
10 have practiced for -- since 1975.

11 CHAIRPERSON LOUD: Okay. Board
12 members, any objections to him qualifying as
13 an expert?

14 COMMISSIONER JEFFRIES: Have you
15 been qualified before before the Zoning
16 Commission or BZA?

17 MR. GRAAE: Yes, I have.

18 COMMISSIONER JEFFRIES: Oh, okay.

19 CHAIRPERSON LOUD: Okay.

20 MR. GRAAE: So, just briefly, you
21 are all pretty familiar with the site, but it
22 is composed of -- it is one large lot that has

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1 several zones. It is split up into several
2 zones. And the main body of the school is
3 here, and it is an accretion of buildings over
4 the years.

5 The signature building is Saint
6 Aloysius Church, of course, which is the
7 landmark building, the rectory. The Duley
8 Hall is one of its finer buildings, and then
9 there are some buildings that over time they
10 have acquired, for example, Fort Hall.

11 Carmody Gym is a circa '70s pre-
12 engineered -- more or less pre-engineered
13 building that has served their purposes for
14 the athletic functions. Buchanan Field is --
15 was resurfaced to be synthetic I guess about
16 six or seven years ago. And this is the
17 parcel that they own on H Street, which is
18 currently housing -- is providing parking for
19 about 100 car spaces.

20 And so the parcel is split up among
21 these different zones between commercial and
22 residential.

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1 Sorry for the delay here. It is a
2 little slow.

3 We are removing some buildings in
4 order to improve Carmody Center. We went
5 through a lot of iterations, and it ended up
6 that we felt we could adaptively reuse the
7 original gym box of Carmody. But we felt that
8 the two-story addition in the front was a poor
9 use of that valuable parcel.

10 So we are removing, again, a circa
11 '70s that has had some improvements and a
12 piece along the back here. And then, of
13 course, we will be excavating to install the
14 parking garages below the Buchanan Field, and
15 then restoring the field, and we will be
16 improving I Street significantly. And I will
17 show you that a little later.

18 Gonzaga, as I said, is a real
19 eclectic group of buildings from many
20 different periods. It is a wonderful campus.
21 It is very -- it is a very compact urban
22 campus. We have been very sensitive to the

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1 different history and architecture that is
2 there in terms of the new building that we are
3 conceiving and weaving into the fabric of the
4 existing campus.

5 Basically, that is Buchanan Field.

6 This is the long-term ground lease that
7 Gonzaga has on North Capitol, and this is that
8 H Street parcel that they would like to
9 potentially develop. And it is part of the
10 resources that will be made available to them
11 to improve the project, to build the stadium.

12 I guess we will go ahead and do --
13 you can leave the slide if you want. We are
14 going too fast for them. Okay.

15 And that is the new addition. It
16 is a four-story building with one level below.

17 It is less -- it a lower height than the rest
18 of the buildings adjoining. It will weave
19 into the existing Carmody, and at the other
20 end we will book-end a small auxiliary gym
21 addition to the back of Carmody.

22 We will be improving the whole

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1 aesthetic look of the current gym box, which
2 the neighbors will enjoy more, I am assuming.

3 And we will be adding a theater support
4 building right here. That needed to be tied
5 into the stage, and they have a very robust
6 drama program there.

7 And that was really the only place
8 that we could provide the necessary support
9 for the theater, for shop, and for other
10 functions that support the theater program.
11 And that really is the generator, which I will
12 get to later, quickly, is the one variance in
13 terms of a courtyard that we create, which is
14 very much internal to the campus.

15 And then, Buchanan Field, we will
16 be building a garage underneath that. The
17 other improvements to Buchanan are we are
18 widening it somewhat, so we can get regulation
19 soccer and lacrosse, which don't currently
20 layout there. And they will still -- we will
21 rebuild the track and rebuild the football
22 field on top of the new garage underneath, and

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1 that will be a synthetic surface there as
2 well.

3 Let's go to the next slide.

4 Underneath that will be a one-story
5 garage in the base proposal that we asked your
6 consideration of, and that is the 250 spaces,
7 roughly, that Gonzaga would like to build
8 below grade, supplemented by additional spaces
9 above ground that will be left after the H
10 Street parcel is developed. And they will
11 lose those -- they will not have those 100
12 spaces available, and this garage will make up
13 for that, and then some.

14 And this base proposal shows the
15 garage being accessed from I Street for
16 Gonzaga's use. And we also have an
17 alternative that we would like your agreement
18 to potentially consider, which is an alternate
19 to getting to the garage from H Street, in
20 lieu of the I Street.

21 And that would be potentially a co-
22 development of the H Street parcel, and

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1 potentially sharing the new garage and
2 expanding it to potentially pick up the
3 development of the H Street parcel, and, as I
4 say, come into our garage and their shared
5 garage with us potentially, from H Street.
6 And we would not have an entrance from I. And
7 that is an alternate that has been described
8 in your --

9 COMMISSIONER JEFFRIES: Excuse me.

10 I'm sorry, Mr. Chair. Can you just take that
11 red dot and take me -- and just show me
12 exactly where you want to enter from H Street
13 onto the --

14 MR. GRAAE: We would be proposing
15 to enter, as an alternate, to entering up on I
16 Street on the earlier slide.

17 COMMISSIONER JEFFRIES: Right.

18 MR. GRAAE: This slide shows us
19 coming into a ramp off of H Street, across the
20 H Street parcel, and into our garage, with a
21 ramp down.

22 COMMISSIONER JEFFRIES: Oh, okay.

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1 I am set now.

2 MR. GRAAE: All right.

3 COMMISSIONER JEFFRIES: Okay.

4 MR. GRAAE: And this -- one thing I
5 should point out is this improvement of
6 Buchanan does do away with a current alley
7 road that goes north-south that connects I
8 Street owned by Gonzaga, but connects the I
9 Street section to H Street. There is an alley
10 that comes down here that used to support the
11 parking lot that is there.

12 We need to capture that space to
13 get the expanded regulation-size soccer and
14 lacrosse. So that goes away, and that then
15 obviates -- that then presents the need for
16 these two alternatives on how to get to the
17 garage. And this is that alternative where
18 the garage is expanded.

19 In the context of the alternate
20 where they co-develop the H Street parcel, we
21 would have actually two decks of parking to
22 pick up another roughly 120 spaces or so,

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1 whatever the zoned requirement for that -- for
2 the development of that parcel would require.

3 This is the existing parking
4 additions that are on the site, the 100 that
5 are here, the ones that are along the alley
6 that will go away. We will be moving many of
7 the parking spots on I Street into the garage
8 and cleaning up I Street. As you know, I
9 Street is, unfortunately, not very pedestrian-
10 friendly on the campus, it being a parallel or
11 a parked along that whole length there. And
12 that is a thoroughfare for the kids.

13 So we -- one of the proposals that
14 we are proposing here with the garage is to
15 dramatically improve I Street aesthetically.
16 And I will show you a quick plan of that.

17 We are a losing a lot of parking to
18 do that, to green it and make new paving
19 surfaces and make a lovely campus entrance.
20 And we will make up for that loss of parking
21 in the garage.

22 And that is the diagram of the

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1 improvements. A lot more green space. We
2 will get trees on both sides. There will be
3 11 spaces or so that will be along -- parallel
4 parking along that side, just so that visitors
5 can easily get to the building. But they will
6 also have that option of going down that ramp
7 -- in the base proposal going down that ramp
8 into the garage.

9 So that will be a wonderfully
10 improved pedestrian and calmed vehicle --
11 vehicular access, still going one way from --
12 you know, from this direction it will still be
13 coming in one way. And in this context, with
14 the garage access off of I, there will be a
15 short stretch here that is two-way to allow,
16 obviously, people to come in and out of the
17 garage.

18 And while we are building the
19 stadium, we will be improving the stadium
20 seating and bleachers. And part of that
21 proposal is a new press box and a concession,
22 and better access in stairs and orientation to

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1 the stadium.

2 And as I said, there is one --
3 there are several courtyards and they all
4 comply, except for this little guy right here.

5 Because we needed a certain very restrictive
6 footprint of size for the drama program's uses
7 there, we do create a somewhat less courtyard
8 condition right here by the addition of the
9 theater support building, but of course it is
10 internal to the site. You wouldn't perceive
11 it anywhere else from the surrounding
12 neighborhood.

13 As is really this whole addition,
14 certainly it will be -- you will be conscious
15 of it along this stretch. But the addition is
16 really oriented to the quad, which is that
17 sort of internal orientation of the campus.
18 And, as I said, we will be improving Carmody's
19 aesthetics quite a bit.

20 And just a couple of snapshots of
21 how we are really dramatically improving the
22 aesthetics of the stadium. This will be the

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1 -- this is the suggestion of the new bleachers
2 and new press box and concessions. We have
3 actually adjusted this design somewhat,
4 because this was early schematic design, and
5 we would have some updated plans to submit
6 later. But, basically, this is I Street, and
7 this is the back of the press box and the
8 concession.

9 Right now, they use the third floor
10 in Duley Hall, which is not a good venue to do
11 their press box functions for important games.

12 And they would really like to get closer to
13 the field and have a facility that is set up
14 specifically for that.

15 I don't know as we need to spend a
16 lot of time on elevations. I think that
17 actually tells it all. I think we have --
18 what have we got left?

19 We will show you a few pictures of
20 -- basically, closing up here we will show you
21 a few snapshots. This is the new athletic --
22 academic and athletic center. This is a

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1 combination of athletic and academic
2 functions. There will be weight training up
3 in here. There will be a library/media center
4 there. There will be a conference center
5 here, various support functions.

6 There will be a wonderful Hall of
7 Fame space there that can perform a lot of
8 wonderful functions for the school. And it
9 takes its cue somewhat from the circular
10 generation of the quad itself.

11 And then, we are improving, as I
12 said, if you go down this alley, you are
13 looking at the existing Carmody gym box, which
14 we will be upgrading and cleaning up a bit.
15 And we will be adding our new auxiliary gym to
16 the end, and sort of trying to tie these all
17 together.

18 Let's see what the next slide is.
19 Is that it?

20 Okay. I think that -- well, this
21 is an elevation of the theater support
22 building that is contained within that tight

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1 little courtyard that creates that little
2 slightly non-complying closed court there.
3 And that is the addition that joins up with
4 the theater that is beyond there that provides
5 the ability to have seen construction built in
6 the new building and then slid right off right
7 through the large doors onto the stage floor
8 itself.

9 Thank you.

10 CHAIRPERSON LOUD: Thank you, Mr.
11 Graae.

12 Do you have further witnesses?

13 MR. UTZ: We do have one more
14 witness, Iain Banks from OR George about --

15 COMMISSIONER JEFFRIES: You can
16 pull back from that mic a little bit.

17 MR. UTZ: Okay. It is Iain Banks
18 from OR George and --

19 COMMISSIONER JEFFRIES: Everywhere
20 I go I have

21 (Laughter.)

22 -- over my head.

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1 MR. UTZ: Iain, if you would like
2 to give a few quick words, running through the
3 traffic and parking issues.

4 CHAIRPERSON LOUD: Is Mr. Banks
5 going to be qualified as an expert?

6 MR. UTZ: Yes. We submitted his
7 resume, yes.

8 CHAIRPERSON LOUD: Okay. So,
9 again, just very briefly, your qualifications
10 to serve as an expert, and if Board members
11 have questions.

12 MR. BANKS: Just for the record, my
13 name is Iain Banks with the transportation
14 engineering and planning firm of OR George &
15 Associates. I am the senior transportation
16 planner, and as such I serve as a professional
17 transportation planner with ITE. I have been
18 working with the company for the last five
19 years and have been an expert witness before
20 the Zoning Commission and the BZA previously.

21 CHAIRPERSON LOUD: Board members,
22 any questions?

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1 COMMISSIONER JEFFRIES: No. I
2 remember Mr. Banks many times, so --

3 CHAIRPERSON LOUD: Okay. Then, we
4 accept his qualifications as an expert. You
5 can proceed.

6 MR. BANKS: And just to be brief,
7 hopefully our traffic impact assessment has
8 been included within the record and was
9 submitted to both Office of Planning and the
10 District Department of Transportation.

11 And we essentially did a traffic
12 impact assessment of the surrounding
13 intersections of the school, as well as to
14 take into account the actual trip generation
15 and circulation pattern of how people actually
16 access the school. Obviously, the school is
17 very close to a number of alternative modes of
18 transportation, such as Union Station. A lot
19 of bus routes through the city use North
20 Capitol and H Street. So, I mean, as such
21 there is a lot of non-vehicular trips coming
22 to the school.

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1 And, obviously, one of the key
2 points tonight was the school is not actually
3 asking for any increase in cap. So the demand
4 is going to stay the same now as it will be
5 when the project is developed. And there is
6 not going to be any increase in parking
7 demand, there is not going to be any increase
8 in drop-off or pick-up trips from students.

9 And, as such, we essentially
10 concluded that the buildout of the project,
11 including the slight change in circulation
12 plan, and the slight increase in parking on
13 the campus, would have no adverse impacts on
14 the surrounding intersections.

15 We liaised with DDOT in regard to
16 their requirements for transportation
17 management plans and transportation demand
18 management, and the school already has an
19 extensive TMP plan, which is borne out by the
20 amount of students using transit to come to
21 the school, as well as staff and faculty.

22 And we have -- the school has

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1 actually added to its TMP based upon
2 discussions with DDOT, and they were included
3 within the traffic impact assessment. I
4 believe that DDOT has actually submitted a
5 referral into the record, which concurs with
6 the study's findings as well as concurring
7 with the TMP that was submitted to them.

8 So that is just a brief overview of
9 our traffic impact assessment, and I will be
10 happy to answer any questions.

11 CHAIRPERSON LOUD: Thank you, Mr.
12 Banks.

13 Board members, are there any
14 questions for Mr. Banks?

15 (No response.)

16 Counsel, did you have additional
17 witnesses?

18 MR. UTZ: That is it for our
19 witnesses. I just want to mention that we
20 went to ANC-6C and the ANC-6C Planning,
21 Zoning, and the Environment Committee, and got
22 unanimous support from the ANC, as shows up in

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1 their letter in the record.

2 And other than that, that concludes
3 our presentation. So thank you for the
4 opportunity to present.

5 CHAIRPERSON LOUD: Thank you. If
6 there are no questions for the applicant and
7 its team, we will move to the Office of
8 Planning.

9 VICE CHAIRPERSON DETTMAN: Mr.
10 Chairman, I just have one question.

11 Mr. Utz, during the presentation I
12 think it was stated that an existing alley is
13 going to need to be -- is going to be closed.

14 Has that been closed already?

15 MR. UTZ: It is currently -- it is
16 not a public alley. It is just basically a
17 driveway.

18 VICE CHAIRPERSON DETTMAN: Okay.

19 MR. UTZ: It is just part of the
20 campus.

21 COMMISSIONER JEFFRIES: You can't
22 say things like "alleys" to us.

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1 (Laughter.)

2 We get crazy.

3 (Laughter.)

4 CHAIRPERSON LOUD: All right. So
5 why don't we go to the Office of Planning.
6 Good afternoon.

7 MR. MORDFIN: Hi. Good afternoon.

8 I am Stephen Mordfin with the Office of
9 Planning. And the Office of Planning is going
10 to stand on the record on this case.

11 CHAIRPERSON LOUD: I think Board
12 members are thumbing through your report,
13 which was a very good report. Are there any
14 questions for the Office of Planning?

15 (No response.)

16 Okay. Seeing none, do you have a
17 copy of the Office of Planning's report?

18 MR. UTZ: We do.

19 CHAIRPERSON LOUD: Do you have any
20 questions?

21 MR. UTZ: No, sir.

22 CHAIRPERSON LOUD: Okay. Is the

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1 Department of Transportation here? They are
2 not. I am trying to see if they -- if we have
3 a report as one of our exhibits.

4 Okay. Then, seeing as they are not
5 here, is anyone here from the ANC? And there
6 isn't. I don't see an ANC exhibit. Exhibit
7 26 is from the ANC. Thank you, Mr. Dettman
8 and Mr. Jeffries.

9 The ANC has submitted an exhibit,
10 however, showing that they met on April 7. It
11 was a duly-noticed meeting with a quorum
12 present, and eight of the nine Commissioners.

13 They voted unanimously eight to zero to
14 approve the application, and so that is a part
15 of our record, and it will be given great
16 weight.

17 COMMISSIONER JEFFRIES: And, Mr.
18 Chair, I will note that this is ANC-6C. So
19 that is a big deal.

20 (Laughter.)

21 CHAIRPERSON LOUD: Okay. Duly
22 noted. It is a great project.

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1 And moving right along, are there
2 parties or persons in support of the
3 application in the audience?

4 (No response.)

5 Seeing none, are there parties or
6 persons in opposition to the application?

7 (No response.)

8 And seeing none as well, does the
9 applicant have any closing remarks?

10 MR. UTZ: No. We would just like
11 to thank you for the opportunity to come in
12 today, and appreciate the opportunity.
13 Thanks.

14 CHAIRPERSON LOUD: Okay. Thank
15 you.

16 I think right now we have got a
17 couple of different options. We could
18 deliberate the case right now, if we feel like
19 the record is full, and we could make a
20 decision. We could have further questions of
21 the applicant and/or its witnesses. Or we
22 could schedule it for a decision in the next

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1 couple of weeks or so, next two or three
2 weeks. So let me open it up to Board members
3 and Mr. Jeffries.

4 COMMISSIONER JEFFRIES: Let's just
5 deliberate now.

6 CHAIRPERSON LOUD: You are ready?

7 COMMISSIONER JEFFRIES: Yes.

8 CHAIRPERSON LOUD: Okay. Why don't
9 we do that. Mr. Dettman, can you lead us
10 through the deliberation? Okay. We will turn
11 to Mr. Dettman, and we will deliberate this
12 right now.

13 COMMISSIONER JEFFRIES: While we
14 are waiting, if I can ask the Father, is the
15 -- are there a number of Gonzaga students
16 still going to Notre Dame on a yearly basis,
17 or what is going on there?

18 MR. NOVOTNY: Yes. We do have a --
19 I would say about five or six.

20 COMMISSIONER JEFFRIES: Is that a
21 typical number annually?

22 MR. NOVOTNY: It has been running

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1 about that. I would like to see more go to
2 Fordham, my alma mater, but we picked up
3 there, too.

4 COMMISSIONER JEFFRIES: Okay.
5 Well --

6 MR. NOVOTNY: Two out of our last
7 three valedictorians.

8 COMMISSIONER JEFFRIES: Oh, okay.
9 Great, great. Yes. Well, my alma mater --
10 Notre Dame -- we had a few Gonzaga I think
11 when I was there. I forget who the students
12 were, but we had -- this is -- I want to go
13 back, this is a few years, but I think it was
14 1979, if I can remember. You probably weren't
15 there, were you?

16 MR. NOVOTNY: No. I have been
17 since 1994.

18 COMMISSIONER JEFFRIES: Oh, okay.
19 Okay.

20 MR. NOVOTNY: But a good amount of
21 my work is with alumni.

22 COMMISSIONER JEFFRIES: Right,

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1 right. Great. Anyway, just checking.

2 MR. FEOLA: Must have been in the
3 Tom Sluby days.

4 COMMISSIONER JEFFRIES: Oh,
5 absolutely. Yep, yep, yep.

6 MR. FEOLA: We share alma maters,
7 by the way. I didn't know that until just
8 now.

9 COMMISSIONER JEFFRIES: Okay. But
10 that will have no impact on --

11 (Laughter.)

12 MR. FEOLA: For the record, I will
13 note that you are a lot younger than I am.

14 VICE CHAIRPERSON DETTMAN: Mr.
15 Chairman, I think given that there is no
16 opposition in this case, and OP is very
17 supportive, the ANC is very supportive, I
18 think I can lead the Board through this under
19 motion, if you feel that is appropriate. And
20 I can make that motion.

21 CHAIRPERSON LOUD: Yes, that would
22 be very helpful and move things along briskly.

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1 VICE CHAIRPERSON DETTMAN: Mr.
2 Chair, I would move for approval of
3 Application Number 17913 of Gonzaga College
4 High School, pursuant to 11 DCMR 3104.1 and
5 3103.2, for a special exception, to construct
6 new facilities for academic and athletic uses,
7 to construct a new -- to construct a below-
8 grade parking garage, and to make other
9 related modifications to the campus, under
10 Section 206, and also for a variance from the
11 court requirements under Section 406, at
12 premises 19 I Street, N.W.

13 CHAIRPERSON LOUD: Motion seconded.

14 VICE CHAIRPERSON DETTMAN: I think
15 the Board -- again, given how straightforward
16 this case is, and there is no opposition, I
17 think the Board can rely upon the Office of
18 Planning's report and maybe just highlight a
19 couple notes from that report. With respect
20 to the special exception under 206, really,
21 there is no -- the applicant is not seeking
22 any increase in the number of staff and

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1 students.

2 So the parking requirements all
3 remain the same. The intensity of use will
4 remain the same. The surface parking is
5 actually going to be located -- relocated
6 below ground, which potentially could reduce
7 the noise. So it looks like the requirements
8 under 206.2 are met.

9 In addition, OP notes under 206.2
10 that implementation of an existing TMP would
11 help to ensure that the school would not
12 become objectionable because of traffic.
13 206.3 stipulates ample parking space, but not
14 less than that required in Chapter 21 of this
15 title, shall be provided.

16 The applicant is required to
17 provide 194, and, as proposed, they will be
18 providing 250, so they are actually providing
19 in excess of what is required. So it looks
20 like the provisions of Section 206 are met.

21 For the variance request under 406
22 from the closed court requirements, I will

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1 just quickly go through the three prongs of
2 the test. The first prong, whether there is
3 an exceptional or extraordinary situation or
4 condition, the applicant had stated in their
5 filings that the lot is oddly shaped, but,
6 really, it is really how this campus evolved
7 over its history. The existing campus
8 buildings create a set of physical constraints
9 within which the applicant must operate.

10 And especially Fort Hall -- I think
11 I am pronouncing that right -- presents a
12 unique set of structural constraints that
13 can't be altered, since the building -- the
14 school intends to retain the building, and it
15 is critical to their mission.

16 So whether those extraordinary
17 situations give rise to a practical
18 difficulty, that takes us into the second
19 prong, and the applicant has stated in their
20 testimony that compliance would require either
21 the reduction of the footprint of the theater
22 support building, which is causing the

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1 creation of this closed court, which in a
2 sense that would compromise the intended
3 function of the building, or some partial or
4 complete demolition of buildings, existing
5 buildings, would be required. And so that is
6 not feasible, given that these buildings are
7 viable buildings that the school intends to
8 retain.

9 And, finally, the third prong of
10 the variance test. It doesn't appear as if
11 there is going to be any kind of detriment to
12 the public good or substantial harm to the
13 zone plan.

14 By the looks of it, the court is
15 practically there already. You know, there is
16 this little -- this teeny little section that
17 is not closed, and it is going to be
18 imperceptible to the surrounding neighborhood,
19 since it is going to be interior to the
20 campus.

21 And I think that is it with respect
22 to -- there will be no impacts to light and

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1 air on neighboring properties, again because
2 it is interior to the campus. So similar to
3 the provisions under 206 it looks like that
4 the three-prong variance test for relief under
5 406 are met.

6 CHAIRPERSON LOUD: Thank you, Mr.
7 Dettman. That was an excellent summary.

8 Mr. Jeffries?

9 COMMISSIONER JEFFRIES: Yes. I was
10 just going to add that this case is very
11 straightforward. And the only thing that I
12 wanted to point out is that, and particularly
13 related to the special exception, and then the
14 third prong of the variance test, I mean, you
15 know, this whole notion of the I Street
16 improvement I think is a very good thing.

17 And it -- obviously, it does not
18 have any kind of adverse impact on the
19 neighboring communities. And because this is
20 a closed court, it is sort of a closed campus
21 of sorts, you know, I just think it has no
22 general impact in terms of what is being

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1 presented today to the surrounding
2 communities.

3 But, again, I just wanted to note
4 that I think the addition of the E Street
5 improvements are a very good sort of
6 connective element to this overall campus. I
7 think it really sort of -- it is a nice spine,
8 and it really serves to really sort of tie in
9 Buchanan Field with all of the other buildings
10 that are in play here that make up the Gonzaga
11 campus.

12 So I think this is a
13 straightforward case, and I am definitely
14 willing to go forward and vote in favor of it
15 this afternoon.

16 CHAIRPERSON LOUD: Thank you, Mr.
17 Jeffries.

18 I do believe that the applicant's
19 transportation study included a transportation
20 management plan. The Office of Planning
21 recommended approval subject to implementation
22 of the plan. I recall counsel for applicant

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1 didn't have any concerns or questions for OP.

2 In fact, it is applicant's transportation
3 management plan. Is that something that we
4 wanted to include as a condition?

5 I'm sorry. Was any of that on the
6 record?

7 Okay. Is that something that we
8 wanted to consider as a condition of approval?

9 COMMISSIONER JEFFRIES: You do have
10 a plan in place. You currently have a plan.

11 MR. NOVOTNY: Yes, we do.

12 CHAIRPERSON LOUD: So, OP, your
13 concern was that the existing plan continue?
14 Just continue as part of this approval? This
15 question is for OP.

16 COMMISSIONER JEFFRIES: This
17 location currently has a TMP, right? So are
18 you -- excuse me, Mr. Chair, are you asking,
19 should we make that a condition?

20 CHAIRPERSON LOUD: Well, the Office
21 of Planning had recommended approval subject
22 to implementation of the TMP. I guess just

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1 for clarification purposes you were -- you
2 were really suggesting continuation of the
3 existing TMP.

4 MR. MORDFIN: Yes.

5 CHAIRPERSON LOUD: Okay.
6 Clarification, because we are sort of adopting
7 the OP recommendation on this.

8 VICE CHAIRPERSON DETTMAN: Mr. Utz,
9 would you happen to know if -- is the
10 applicant bound by this TMP in a previous
11 order that is still valid?

12 MR. UTZ: It is part of the
13 previous order. I think it is BZA Order
14 17409. It increased the cap a few years back.

15 VICE CHAIRPERSON DETTMAN: And what
16 is shown on page 20 of the transportation
17 study, is that the same exact TMP, or has
18 something changed?

19 MR. BANKS: There have been some
20 enhancements to that TMP to be more in line
21 with DDOT's guidelines.

22 CHAIRPERSON LOUD: So in light of

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1 what was just added recently, that there have
2 been some enhancements, do we want to include
3 that as the enhanced plan, what is on page 20,
4 as a condition of the approval? Okay.

5 So do we need to restate the motion
6 formally, Ms. Monroe? Okay. All right.

7 Is there any objection to calling
8 for a vote right now? All right. The motion
9 has been made for approval of the application.

10 It has been seconded, as conditioned. All
11 those in favor say aye.

12 (Chorus of ayes.)

13 All those opposed?

14 (No response.)

15 All those who abstain?

16 (No response.)

17 Ms. Bailey, can you call the vote?

18 MS. BAILEY: Mr. Chairman, the vote
19 is recorded as three-zero-two to grant the
20 application. Mr. Dettman made the motion, Mr.
21 Loud seconded, Mr. Jeffries supported the
22 motion. The vote is three-zero-two. And is

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1 that a summary order, sir?

2 CHAIRPERSON LOUD: I do believe.
3 There is no opposition from the ANC, so we can
4 do this as a summary decision.

5 MS. BAILEY: And that condition is
6 as it was identified in the OP report, Mr.
7 Chairman?

8 CHAIRPERSON LOUD: That is correct.

9 MS. BAILEY: Thank you.

10 CHAIRPERSON LOUD: Implementation
11 of the TMP.

12 MS. BAILEY: Thank you.

13 CHAIRPERSON LOUD: Thank you, Ms.
14 Bailey.

15 Is there anything further on this
16 case?

17 (No response.)

18 Thank you for your time this
19 morning. We appreciate it. And good luck to
20 you.

21 MR. NOVOTNY: Thank you.

22 CHAIRPERSON LOUD: Yes. We are

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1 going to take a -- let's take a five-minute
2 break, and then let's see if we can move
3 directly into the one, or if anybody needs a
4 break. But let's take a five-minute break.

5 (Whereupon, at 12:57 p.m., the proceedings in
6 the foregoing matter went off the
7 record for a lunch break.)

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1 Reporter and is also webcast live.
2 Accordingly, we must ask you to refrain from
3 any disruptive noises or actions in the
4 hearing room.

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

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

20 The order of procedure for special
21 exceptions and variances is: statement and
22 witnesses of the applicant; government

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1 reports, including Office of Planning,
2 Department of Transportation, etcetera; report
3 of the Advisory Neighborhood Commission;
4 parties or persons in support; parties or
5 persons in opposition; closing remarks by the
6 applicant.

7 Pursuant to Sections 3117.4 and
8 3117.5, the following time constraints will be
9 maintained: the applicant, appellant,
10 persons, and parties, except an ANC in
11 support, including witnesses, 60 minutes
12 collectively; the appellees, the persons, and
13 parties, except an ANC in opposition,
14 including witnesses, 60 minutes collectively;
15 individuals, three minutes.

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

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

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

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

14 The Sunshine Act requires that the
15 public hearing on each case be held in the
16 open before the public. The Board may,
17 consistent with its rules of procedure and the
18 Sunshine Act, enter executive session during
19 or after the public hearing on a case for
20 purposes of reviewing the record or
21 deliberating on the case.

22 The decision of the Board in these

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

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

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

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

5 Does the staff have any preliminary
6 matters?

7 MS. BAILEY: Mr. Chairman, yes. It
8 has to do with both cases that are scheduled
9 for this afternoon. Both of them are
10 requesting postponement. The first one that
11 is listed on the docket is 17870 of Koo Yuen
12 that, as I indicated, is requesting a
13 postponement. And that is a continuation from
14 three previous hearing dates.

15 CHAIRPERSON LOUD: Thank you, Ms.
16 Bailey. And the second case is also
17 requesting a postponement and/or continuance?

18 MS. BAILEY: Yes, it is, Mr.
19 Chairman. It is Application 17337, N Street
20 Follies, Limited.

21 CHAIRPERSON LOUD: Okay. Why don't
22 we, then, proceed in the order that they were

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1 posted, and call the Koo Yuen case.

2 MS. BAILEY: Application 17870 of
3 Koo Yuen, pursuant to 11 DCMR 3104.1, for a
4 special exception to establish a gasoline
5 service station under Sections 726 and 707, at
6 premises 3710 Minnesota Avenue, N.E. The
7 property is zoned C-2-A. It is located in
8 Square 5046 on Lot 810.

9 CHAIRPERSON LOUD: Thank you, Ms.
10 Bailey.

11 Why don't you state your name for
12 the record. We did receive your request for
13 postponement. I think you have got to clarify
14 the caption. It was a little off, but then
15 you can --

16 MR. DeCARO: Oh, I'm sorry.

17 CHAIRPERSON LOUD: I think it
18 mentioned the Yuclid case, Virginia.

19 MR. DeCARO: Right. Yuclid and
20 Yuen are the same. But I will go into that.

21 CHAIRPERSON LOUD: Okay.

22 MR. DeCARO: My name is Thomas

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1 DeCaro. I am the attorney for the
2 application. There were two cases here
3 originally, an appeal of an adverse zoning
4 determination -- that matter was resolved and
5 shall we say rolled into the special exception
6 application, which is what is presently
7 pending before the Board.

8 We had been requested to obtain a
9 traffic study. The traffic study was
10 delivered to us only seven days ago on --
11 actually, I didn't even get it on the date it
12 is dated. But April -- it is dated April
13 20th. I guess it was filed by the Board right
14 about that time.

15 We will need some time to respond
16 to that traffic study and to talk to the DDOT
17 and try to resolve the issues that they have
18 raised in that traffic study. And I think
19 that that would be the most efficient use of
20 the -- instead of bringing the matter into the
21 hearing without having an opportunity to do
22 that, we would request a postponement for that

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1 reason.

2 CHAIRPERSON LOUD: How much time do
3 you think you need?

4 MR. DeCARO: Well, I would look --
5 I would be looking for I guess until the next
6 month's -- maybe towards the end of May or
7 beginning of June, if that is available.

8 CHAIRPERSON LOUD: Okay. Ms.
9 Bailey, taking a look at the calendar. Board
10 members, as she does that, are there any
11 questions for counsel regarding the
12 continuance/postponement?

13 (No response.)

14 Okay.

15 MS. BAILEY: Mr. Chairman, I bring
16 to your attention the afternoon on May 19th to
17 see if that is an appropriate time. There was
18 a case there that has been withdrawn.

19 MR. DeCARO: The afternoon of the
20 19th is fine with me.

21 CHAIRPERSON LOUD: Okay.

22 MR. DeCARO: I just want to check

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1 with my architect. Is that okay with you?
2 Give me one second if you don't mind.

3 Okay. We are good for the 19th of
4 May. I appreciate your consideration, and I
5 hope to have the matter resolved by then. We
6 are working -- I mean, that is our number one
7 priority, in our office at least, and so --
8 and I appreciate your -- just let me take this
9 opportunity to say how much I appreciate your
10 willing to work with us as we try to put this
11 application together in a manner that is
12 appropriate to submit.

13 CHAIRPERSON LOUD: Thank you. We
14 appreciate your patience today, and also wish
15 you well in working out those issues. When
16 May 19 rolls around, we will be prepared to go
17 forward on this case. I think we have
18 continued it a couple of times, so we are
19 looking forward to having these issues come to
20 resolution on May 19.

21 MR. DeCARO: Yes, indeed. Thank
22 you very much.

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1 VICE CHAIRPERSON DETTMAN: Mr.
2 Chairman, I just have a couple reminders for
3 the applicant. One, there is an issue that
4 needs -- still needs to be resolved with
5 respect to the height of the canopy. The
6 Board had asked for amended plans previously.
7 So just to make sure that we have everything
8 we need so we can go forward May 19th, we are
9 going to need to see that issue resolved.

10 MR. DeCARO: Okay.

11 VICE CHAIRPERSON DETTMAN: Okay?
12 And the traffic study, the truck turning
13 diagram shows the existing width of the curb
14 cut.

15 MR. DeCARO: Right.

16 VICE CHAIRPERSON DETTMAN: But you
17 are proposing to narrow it, so just make sure
18 that that is addressed as well.

19 MR. DeCARO: Thank you. Thank you.

20 As I am told by my architect, the canopy
21 height has been -- revised plans have been
22 submitted for that purpose. So we will follow

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1 up on those two matters.

2 And thank you very much.

3 CHAIRPERSON LOUD: Anything further
4 from the Board?

5 (No response.)

6 All right. So we will see you
7 again on May 19, and, again, thank you for
8 your patience this afternoon.

9 MR. DeCARO: Thank you very much.

10 CHAIRPERSON LOUD: Ms. Bailey, is
11 there a second case?

12 MS. BAILEY: It is, Mr. Chairman.
13 And as I indicated previously, this is
14 Application 17337 of N Street Follies,
15 Limited. Mr. Chairman, should I call that
16 case now?

17 CHAIRPERSON LOUD: Yes, please.

18 MS. BAILEY: The application is
19 pursuant to 11 DCMR Section 3104.1 and 3103.2,
20 for special exceptions to allow a hotel under
21 Section 512, for a principal waiver of the
22 rear yard requirements under Subsection 534.6,

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1 and to allow multiple roof structures and roof
2 structures not meeting the normal setback
3 requirements of Subsection 530.4, under
4 Section 411, and for variances from the height
5 requirements under Section 530, the floor area
6 ratio requirements under Section 531, and the
7 court requirements under Section 537, to allow
8 the construction of an addition to an existing
9 -- to existing buildings to be used as a
10 hotel. The zoning is DC/SP-1. It is 1743
11 through 1755 N Street, N.W., Square 158, Lots
12 69, 835, and 836.

13 This is a remand case, Board
14 members, from the D.C. Court of Appeals, as
15 you know. In addition to the request for a
16 postponement, there are multiple preliminary
17 matters associated with the application.

18 The applicant for this case is Mr.
19 George Keys, and he is seated at the table.

20 CHAIRPERSON LOUD: Thank you, Ms.
21 Bailey.

22 Good morning, Mr. Keys.

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1 Why don't we start with the
2 question of the postponement. That, for us, I
3 think is a threshold question, and we can get
4 into whatever other issues that we need to get
5 into, if at all, after that. And presumably
6 we will be setting a postponement date to get
7 into some of those issues.

8 But why don't you introduce
9 yourself for the record. And since others are
10 at the table this morning, just introduce
11 yourselves for the record, so we will know who
12 you are, and then we can go back to you, Mr.
13 Keys.

14 MR. KEYS: George Keys, Jordan &
15 Keys, on behalf of the applicant, N Street
16 Follies, Limited Partnership.

17 MS. DUMAS-BRAY: Kinley Dumas-Bray
18 with the law firm of Arent Fox, on behalf of
19 party intervenor in opposition, Tabard Inn.

20 MR. SILVERSTEIN: Mike Silverstein,
21 Chairman, ANC-2B.

22 CHAIRPERSON LOUD: Thank you. Why

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1 don't we start with you, Mr. Keys.

2 MR. KEYS: Good afternoon, Mr.
3 Chairman, members of the Board. I would like
4 to set the posture of this case just a bit.

5 This case was decided by the Court
6 of Appeals in June 2008. And what the court
7 ruled was that the Board of Zoning Adjustment
8 had aborted the process on the grounds of
9 mootness after the close of the applicant's
10 case in chief, and that is where the record
11 stands. Essentially, the hearing of
12 January 24, 2006, constitutes the applicant's
13 case at that point.

14 We waited several months after the
15 court's decision. We had no notification. We
16 began calling the Office of Zoning to
17 encourage getting back on the calendar to get
18 this matter back before the Board.

19 I spoke with the Office of Zoning
20 staff, and we agreed on April 28th as the date
21 for the resumed hearing. At that time, in
22 talking with the staff, we realized that none

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1 of the members of the Board would have had any
2 participation in the case at all.

3 It was a complex record. We
4 thought that we could try to find a way to,
5 without recapitulating the entire record, at
6 least restating the basic proposition that the
7 applicant was advancing for its case in the
8 resumption of the case.

9 Then, the applicant learned that
10 the architectural firm that represented the
11 applicant had disbanded. And suddenly -- and
12 this is early February -- and suddenly the
13 April 28th date began to seem very unrealistic
14 from the applicant's point of view, because we
15 knew we wanted to revisit and rethink some of
16 the plans that had been prepared.

17 I contacted the Office of Zoning,
18 and my letter in the record reflects on
19 February 12th -- and this is 65 days in
20 advance of the hearing -- only to learn that
21 the advertising had already commenced. And so
22 at that stage, I was informed by the Office of

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1 Zoning staff that I would only be able to
2 request a continuance at the hearing. It was
3 too late to shift the hearing date, because
4 advertising had started.

5 At that point we considered, well,
6 the Board may well continue the case on those
7 grounds. But then again, the Board, at its
8 discretion, may decide that it is not going to
9 continue the case, and wants us to go forward.

10 So we decided that in addition to
11 finding a new architect we had to hurry and
12 accelerate any rethinking or reconsideration
13 of what we wanted to present to the Board.
14 Our goal was to try to streamline and simplify
15 this case as much as possible.

16 To that end, we filed on April 14th
17 supplemental materials that reflects the kind
18 of rethinking that we have done. In essence,
19 if we go further, you will hear that what we
20 have done is basically reduce the relief
21 required to the special exception for hotel
22 use in the SP zone.

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1 I am prepared to go either way at
2 the Board's pleasure. I have my experts here,
3 my architect, my transportation planner, the
4 principal of the applicant is here. If the
5 Board wants us to go forward, we will go
6 forward.

7 CHAIRPERSON LOUD: Thank you, Mr.
8 Keys. We did review in the file that we were
9 giving -- given, rather, much of what you just
10 shared with us and saw the February request
11 for the postponement, the disbandment of the
12 architectural firm, and so on and so forth.

13 Our thinking coming into the
14 hearing, having reviewed the pleadings, is
15 that you were supportive of a continuance, the
16 ANC, at least by its written submission,
17 sought a continuance for its own separate set
18 of reasons, additional time to review the
19 plan, so on and so forth. The DuPont
20 Conservancy -- and I am not certain if they
21 are here -- also sought a continuance.

22 And I believe from the -- which we

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1 just got -- I just got this morning, Exhibit
2 74, the Arent Fox correspondence that Arent
3 Fox, which represents the Tabard party, also
4 supports postponement. Obviously, there are
5 some wrinkles and nuances to your support of
6 the postponement, but, I mean, our thinking is
7 that if all of the parties, all of the
8 interested stakeholders up to this point are
9 looking for postponement, it might be wise to
10 postpone this case.

11 Now, since reaching that
12 conclusion, we have obviously received this
13 Exhibit 74, which raises some additional
14 issues. But just on the issue of the
15 postponement, I think it makes all of the
16 sense in the world to not go forward today.
17 Notwithstanding the fact that some of your
18 witnesses are here, I think in addition to the
19 issues that you raise, we ourselves are more
20 accustomed to going forward on a hearing
21 matter when we have been fully fully briefed
22 on it, and this has a very long history. None

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1 of us were here at the time, and would require
2 some additional time ourselves to be fully
3 briefed.

4 I think the ANC raises some good
5 questions regarding going forward today as
6 well, so that even if we were to resolve some
7 issues just between you and the Arent Fox
8 party, we still have the ANC out there.

9 So I think our inclination -- and,
10 Board members, correct me if I am wrong -- is
11 that this is a case that should be postponed
12 into the future, so that we have a real
13 resolution of the dispute on the merits. And
14 I don't think we could further that if we went
15 forward with it today.

16 MR. KEYS: Mr. Chairman, if that is
17 the Board's determination, we are certainly in
18 agreement.

19 CHAIRPERSON LOUD: Then, I think
20 what I will do is open it up to counsel for
21 Arent Fox and the ANC, with respect to some of
22 the other issues that are on the table. And

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1 then, we can loop back and try to get a date
2 that will work for everyone's schedule.

3 MS. DUMAS-BRAY: Just to clarify
4 the record, it is Kinley Bray with the law
5 firm of Arent Fox, but on behalf of the Tabard
6 Inn, which is the interested party in this
7 case.

8 The Tabard is in a difficult
9 position here. First of all, we were informed
10 in February when diligently checking the file
11 in this case for additional filings that the
12 applicant was seeking postponement. So we
13 were not prepared -- we were originally not
14 prepared to go forward on this date.

15 However, having received
16 supplemental materials on April 14th, which we
17 have moved to strike for reasons enumerated in
18 Exhibit 74, we realize that the applicant
19 seems to be in a posture to move forward.

20 But, frankly, I would like to state
21 for the record that this is the same behavior
22 this applicant has engaged in for the entire

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1 five years this case has been pending before
2 this Board. This is a regular occurrence --
3 to show up at a hearing, request a
4 postponement, and to submit new plans.

5 So it is impossible for anybody,
6 including the Office of Planning, the ANC, and
7 any parties in opposition, to meaningfully
8 respond to what is before the Board, because
9 it is never clear exactly what is before the
10 Board.

11 So, first of all, you know, before
12 the Board sets a date, we would respectfully
13 request that you rule on our motion to strike
14 the extra record materials submitted on April
15 14th, which were apparently in the nature of a
16 prehearing statement. However, the applicant
17 had finished its case in chief on this matter
18 prior to dismissal by the Board.

19 So we maintain that the Board has
20 before it a closed-out case by the applicant,
21 an opportunity for parties in opposition to
22 present their case. We have not had that

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1 opportunity just yet. We are prepared to go
2 forward today in doing so.

3 But in the event that the Board --
4 and what it sounds like is that it is the
5 Board's pleasure to postpone -- we would
6 respectfully request that there be an order
7 scheduling how this case is to be handled on
8 remand, the date by which any further
9 amendment in this case will be accepted, whom
10 it must be filed upon, served upon, and to
11 allow adequate time for all of the parties to
12 take a look at it and really digest what is
13 being presented, because we have not had that
14 opportunity in this latest filing.

15 CHAIRPERSON LOUD: Just a couple of
16 quick thoughts and in the spirit of saving
17 everybody some time. We are more than likely
18 going to postpone the hearing, so there is no
19 value to rehash some of the pros and cons
20 about whether or not to postpone. We are
21 probably going to do that.

22 With respect to the order -- well,

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1 let me back up. With respect to the motion to
2 strike, Ms. Bray, wouldn't the applicant be
3 given -- I don't want to get into the merits
4 of it one way or the other. But would not
5 fairness require that the applicant have an
6 opportunity to respond to it? It was -- it is
7 dated April 24.

8 I know we just got it this morning.

9 Whether they agree with it, they want to take
10 issue with it, wouldn't fairness dictate that
11 they at least have an opportunity to respond
12 in writing?

13 We don't want this issue briefed
14 today when they have not filed a written
15 response to it.

16 MS. DUMAS-BRAY: That suggests -- I
17 don't object to having -- or giving the
18 applicant an opportunity to respond. I would
19 object to having an opportunity to respond in
20 writing and further delay this case, because,
21 again, it puts into question what exactly we
22 would be considering upon returning to this

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1 Board.

2 It has been impossible to determine
3 exactly what the applicant's plans are,
4 because they have changed so many times. And
5 so our -- whether you choose to strike their
6 actual record materials or not, we would --
7 and we have requested in the alternative that
8 you file -- or that you establish a schedule
9 on remand which says, "This is the date by
10 which further amendments may come in. Here is
11 who they must be served on." And you would be
12 well within your discretion under the Rules of
13 Procedure to do so.

14 MR. KEYS: Mr. Chairman, I think we
15 can agree that the merits of this motion to
16 strike don't have to be addressed here. I
17 that what counsel is asking for is simply an
18 instruction from the Board that all parties
19 are aware of of what subsequent actions in
20 this case would be.

21 And you can establish a date by
22 which, you know, based on the hearing date

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1 that you find appropriate, give us a time
2 period to make any adjustments to the record.

3 That way we don't have to deal with this
4 motion to strike.

5 And, counsel, perhaps in view of
6 getting the second half of the request -- that
7 is, an order scheduling the case -- that you
8 might withdraw that motion.

9 CHAIRPERSON LOUD: I think it makes
10 sense for us to do that. I know they do that
11 at Superior Court and Trial Court as a routine
12 matter anyway. And the BZA has authority to
13 do that on its own. In other words, we don't
14 need a motion, a hearing, etcetera, for the
15 schedule to be issued by BZA for a particular
16 case.

17 So I think we can move forward with
18 doing that. It makes sense to do that without
19 necessarily setting up some type of hearing to
20 do that, or responding to it today. I think
21 what we can do today is set the postponement
22 date, and it looks like something may be

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1 available on October 13.

2 And then, when we respond
3 officially to the parties in this case,
4 indicate what those scheduling dates may be.
5 In the meantime, though, since the applicant
6 may choose to respond to this motion to
7 strike, if the two of you were to work
8 together on some of these scheduling dates,
9 that may, you know, sort of alleviate the need
10 for us to try to pick dates out of the air.

11 MS. DUMAS-BRAY: I don't have any
12 objection to working with the applicant in
13 terms of coming up with a schedule. But it is
14 our request that the schedule come from the
15 Board.

16 I am happy to take a few minutes
17 and, with the leave of the Board, to discuss
18 how much time the applicant thinks that they
19 will need. But it is certainly our preference
20 to have the Board issue an order explaining
21 exactly what must be filed and when and upon
22 whom, so that in the event that further

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1 filings are not made, or are not made in
2 accordance with that order, the Board can take
3 appropriate action.

4 CHAIRPERSON LOUD: Okay. Let me
5 open it up to other Board members, and also,
6 following that, to the ANC. Okay. There are
7 no questions from the Board members.

8 Good morning -- or I should say
9 good afternoon.

10 MR. SILVERSTEIN: Good afternoon,
11 Mr. Chairman. And thank you for your
12 kindness.

13 This has been pretty much a 20
14 Years' War that has been going on in our
15 neighborhood between the N Street Follies
16 folks and the neighbors. And long delays do
17 no one any good.

18 This is a block that is of
19 priceless architectural value. It is one of
20 the gems of our city. I have had no end of
21 problems with HPRB personally, but on this --
22 nor has our ANC -- as has our ANC. But on

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1 this one, we are absolutely in lock-step with
2 them.

3 The problem that we had this month
4 was in many ways indicative of what has been
5 going on here. Our meeting was April 7th. It
6 is published. Everyone knows it. We were not
7 served with any of these changes, any of the
8 plans.

9 CHAIRPERSON LOUD: Not to interrupt
10 you, but let me say this. We have reviewed
11 your submission. We accepted the logic of it.
12 We have agreed that this should be postponed.

13 So, again, the value of rehashing it, we are
14 -- you are absolutely on point with all of the
15 points that you made in arguments, and we are
16 agreeing that the case should be postponed,
17 and you shouldn't be forced --

18 MR. SILVERSTEIN: Take yes for an
19 answer.

20 CHAIRPERSON LOUD: Okay.

21 MR. SILVERSTEIN: I would only say
22 that the Dupont Circle Conservancy and the ANC

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1 both want to play an active role in moving
2 this process forward. And if you will bring
3 order to this chaos, if you can set a date as
4 early as possible and move this forward and
5 help us to play this role, we are greatly
6 appreciative.

7 CHAIRPERSON LOUD: Thank you. We
8 are going to try our level best to do that.
9 This is what -- I'm sorry, Ms. Bailey.

10 MS. BAILEY: I'm sorry, Mr.
11 Chairman. There initially were two parties in
12 opposition, and the Tabard Corporation was
13 one. There was also William Greene. Does Mr.
14 Greene continue to be an opposition party? I
15 just need clarification, Mr. Chairman, for the
16 record exactly who the parties are. And is
17 Mr. Greene -- okay.

18 Do you know, Mr. Keys, if Mr.
19 Greene is still in opposition to --

20 MR. KEYS: Mr. Greene was provided
21 a copy of the supplemental materials. I
22 assumed that he was. But if he is not present

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1 in the hearing, he may forfeit that status.

2 MR. BAILEY: Okay. I'm sorry, Mr.
3 Chairman.

4 CHAIRPERSON LOUD: I'm sorry. Just
5 for one second -- I don't want to draw any
6 inferences from him not being here or him
7 being here. I think that whomever the record
8 reflects as being a party will continue to be
9 the party for the purposes of our postponing
10 today's hearing and getting a new continuance
11 date, and then we can resolve that issue
12 separately.

13 MR. SILVERSTEIN: I believe he is
14 no longer with Science Services.

15 CHAIRPERSON LOUD: Okay. So let us
16 do this, then. Let's proceed to reschedule
17 this for October 13, in the fall. Let's make
18 sure that everybody who is a party is served
19 by everyone. I think there was some question
20 about whether or not the ANC got service of
21 this or that, or they were included on the
22 Certificate of Service.

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1 Now, having continued it to
2 October 13, let's settle on a date for the
3 applicant to reply to this motion to strike
4 that is before us, our Exhibit 74. There is a
5 motion to strike your supplemental materials.

6 MR. KEYS: Mr. Chairman, I was
7 hoping that counsel would withdraw that
8 motion, in view of the fact that we are going
9 to be setting an order specifying what
10 materials can be added to the record. It
11 seems an unnecessary step.

12 MS. DUMAS-BRAY: We would withdraw
13 that motion if the applicant will withdraw
14 those plans from the record, if it intends to
15 file anything further. I think it behooves us
16 all to actually know what is before the Board.

17 And if anything else is going to be filed,
18 and the April 14 plans are to be disregarded,
19 then I would like to see them withdrawn.

20 Of course, the applicant would have
21 the opportunity to refile under this
22 scheduling order.

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1 MR. KEYS: Mr. Chairman, that makes
2 no sense to me. It is in the record. You
3 know, you are asking to withdraw them from the
4 record and then refile something similar
5 again. I think that what counsel is asking
6 for is clarity for what the applicant's
7 responsibility is to have a record before the
8 Board and the parties by a date certain. And
9 that is what we intend to do.

10 MS. MONROE: Mr. Chair, can I
11 interject here for a second?

12 CHAIRPERSON LOUD: Yes, Ms. Monroe,
13 please.

14 MS. MONROE: Just to add something
15 else in the mix. This case is on remand, and
16 I did not sit on the first case, so I don't
17 know, I don't have the file. But I am
18 assuming from what I am hearing from the
19 attorneys for both parties here is that the
20 applicant had presented its entire case. Is
21 that correct?

22 MS. DUMAS-BRAY: That is correct.

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1 MR. KEYS: That is correct.

2 MS. MONROE: Okay. I just wanted
3 to know, because part of this plan issue and
4 the whole motion to strike issue I think
5 arises from that, because let's assume that
6 the applicant had finished its case, it was
7 done.

8 The Board then decided it was moot
9 before the opposition had a chance to do
10 anything further, essentially -- and I am not
11 taking a side here, but essentially applicant
12 has already done -- presented his case. He is
13 done. Just because it went up on remand it
14 doesn't automatically open up the opportunity
15 for him to represent.

16 That doesn't mean that you cannot
17 allow him to modify his plans and refile
18 further plans, but that is up to you, which is
19 I think the reason this motion to strike was
20 put in at all. Essentially, the applicant is
21 done. Right now, he has nothing further to
22 say unless you allow him to, which is -- this

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1 is the impression I get.

2 So you are welcome to allow him to
3 amend his plans, put further plans and change
4 -- the relief may be changed, which it is
5 probably a good idea to see new plans, so you
6 know what you are dealing with. But we are at
7 the point now where it is as if half the
8 hearing has already taken place. And so you
9 need to make a decision how much more you want
10 to allow the applicant to do, and then you
11 continue on with the opposition.

12 CHAIRPERSON LOUD: Thank you. That
13 is very, very helpful. Nonetheless, I still
14 think -- and we can still rule on this motion
15 to strike. I think out of fairness, though,
16 the applicant ought to be given an opportunity
17 to at least respond to it, we make a ruling on
18 it, and then I do think that it would be
19 helpful to everybody in this case to have a
20 scheduling order of some sort in play. But,
21 again, I don't want to go to the merits of it.

22 MS. MONROE: I agree. I don't know

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1 whether the applicant wants to. He may be
2 able to respond to the motion to strike now.
3 That is for you to -- whether he wants to
4 respond in writing. I don't know. You might
5 be able to do that now.

6 CHAIRPERSON LOUD: Well, you know,
7 I wouldn't want to put the applicant -- I
8 wouldn't want to be put in that situation.
9 But if the applicant wants to respond to it
10 now, and it will -- and it will be a response
11 that will genuinely move us forward in terms
12 of resolving the motion, I think that is fine.

13 But I think where I am trying to
14 get the parties is to -- is let's resolve this
15 issue, so that we can go into the remand and
16 the case and not have a churning back and
17 forth about what who did that wasn't correct,
18 etcetera, etcetera. So --

19 MR. KEYS: Mr. Chairman, I am of
20 the same mind. And I am not prepared to
21 respond to the motion to strike at this time.

22 But it seems to me that the further action

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1 that you are considering in scheduling the
2 case and deciding what people can file or
3 can't file, that seems to be subsumed in the
4 question of the motion to strike.

5 I mean, if the applicant -- if the
6 motion to strike is upheld, and the applicant
7 can file nothing else, then there is no need
8 for any further order except to establish a
9 hearing date.

10 But if what we were discussing was
11 you are going to establish a timeframe so that
12 everyone knows what their responsibilities are
13 to get this case ready, and, as counsel
14 indicated, she wants to make sure that she
15 understands what the plans are going forward,
16 then let's proceed with that schedule. The
17 motion to strike is, then, irrelevant.

18 CHAIRPERSON LOUD: Ms. Bray?

19 MS. DUMAS-BRAY: If I may respond,
20 the motion to strike does not become
21 irrelevant if we are going to postpone and
22 there is an actual schedule upon remand. It

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1 is not irrelevant, because the -- as the
2 Assistant Attorney General aptly pointed out,
3 this case has been completed from the
4 perspective of the applicant.

5 And if -- the purpose of a schedule
6 going forward is to express the Board's will
7 as to whether any further amendment will be
8 allowed. And these materials -- in the event
9 that the Board allows further amendment, any
10 new materials that come in will simply be
11 confused by those that were filed on April
12 14th.

13 And it will force all parties to
14 have to do a comparison between not only the
15 plans that were submitted on January 10, 2006,
16 but the plans that were then submitted into
17 the record on February 22, 2006, February 21,
18 2006, and the plans submitted on April 14,
19 2006, and any future plans submitted into the
20 record, as opposed to an analysis of the plans
21 either before the Board now or whatever the
22 applicant wants to do.

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1 This is precisely why we made a
2 motion to discuss in the first place, frankly,
3 is that the applicant continued to file a
4 request for postponement and new plans. And
5 it was impossible to determine what it was the
6 applicant wanted the Board to rule on.

7 And so -- and HPRB not having
8 approved the concept plan that was before
9 them, which was identical to the January 10th
10 plans filed by the applicant with this Board,
11 the question became moot.

12 Now, the Court of Appeals reversed,
13 remanded, and we are here for the specific
14 purpose of giving the applicant the
15 opportunity to have his case decided, not
16 necessarily for the applicant to present new
17 plans ad infinitum, because, clearly, if the
18 applicant is not willing to withdraw its April
19 14th plans, and would like the opportunity to
20 submit new plans, it is just looking to
21 confuse the record even further.

22 And I think any reasonable review

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1 of this record will show that it is extremely
2 confused.

3 CHAIRPERSON LOUD: I tend to agree
4 with Ms. Bray. The schedule will speak to the
5 deadlines that different things are going to
6 be due, and sort of orchestrating the
7 calendar. But it won't get rid of the issue
8 of what plans that we are going to be looking
9 at.

10 So, again, I don't want to keep
11 going -- churning around and around and around
12 on this. I think we are giving you the
13 opportunity to reply to the motion to strike.

14 You certainly don't have to avail yourself of
15 that opportunity. We can -- whatever deadline
16 we set on the time to reply, if something is
17 not in, we can go ahead and move forward on
18 her motion to strike.

19 But I just thought that since it
20 was filed April 24 we ought to have given you
21 the opportunity file. I think once we are --
22 everybody is clear on whether or not we are

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1 talking about the plans that were part of the
2 initial case that was remanded, or if for some
3 reason we are talking about the supplemental
4 plans and the Board rules in that regard,
5 everybody will then know what plans are under
6 consideration with respect to the schedule
7 that BZA then issues.

8 So, you know, again, it is at your
9 discretion to take advantage of it or to not
10 take advantage of it. I just think it is an
11 opportunity that is fair to give you.

12 MR. KEYS: Mr. Chairman, we will
13 take the opportunity to respond. And for the
14 record, I would like to indicate that we
15 received the April 24th letter by first class
16 mail yesterday afternoon.

17 CHAIRPERSON LOUD: Okay. And just
18 how long do you think it will take you to
19 respond to that?

20 MR. KEYS: Within 10 days, Mr.
21 Chairman.

22 CHAIRPERSON LOUD: So that would

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1 take us to -- Ms. Bailey, do you have a date?

2 MS. BAILEY: Yes, Mr. Chairman.
3 Let me see. Ten days from -- when did you say
4 you received it, Mr. Keys? Yesterday? May
5 7th. May 7th or May 8th, Mr. Chairman,
6 preferably May 8th.

7 CHAIRPERSON LOUD: Okay. Then, why
8 don't we give the applicant until May 8th to
9 respond to this motion to strike supplemental
10 materials. Okay?

11 And the BZA understands the
12 importance of having a scheduling order here,
13 and sees that it has the authority to issue a
14 scheduling order.

15 MS. DUMAS-BRAY: May I suggest, Mr.
16 Chairman, that upon hearing the applicant's
17 response to the motion to strike that the
18 Board set in a brief hearing and decision on
19 that matter, so that when we appear back
20 before the Board we don't have to bring all of
21 our experts, you know, architectural,
22 historians, architects, traffic engineers,

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1 have them sit in the room yet again and not be
2 needed?

3 So that we would know whether those
4 materials are going to be stricken, they
5 wouldn't need to be there, and we would
6 proceed -- the Board could proceed to issue a
7 scheduling order upon ruling on the motion to
8 strike.

9 MR. KEYS: Mr. Chairman, she is
10 going to have those same people there
11 regardless. The historical record is
12 established. Traffic engineers, the expert
13 testimony, the planning testimony, regardless
14 of how the motion to strike is decided, she is
15 going to need to bring in those very same
16 experts.

17 CHAIRPERSON LOUD: But wouldn't it
18 be helpful to have clarified before October 13
19 which plans we are talking about? So that we
20 go into that October 13 hearing, everybody
21 hitting the ground running, everybody being
22 able to prepare over the summer with respect

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1 to the plans, so that they get -- so that they
2 will know how to strategize and prepare their
3 case. Wouldn't that be helpful?

4 MR. KEYS: I suppose.

5 CHAIRPERSON LOUD: Okay. So I
6 think it is a good suggestion. I think it
7 makes sense. I think we sort of talked about
8 it a little bit ourselves. And if you then
9 reply May 7 -- we don't need additional rounds
10 of replies to the replies -- I think that we
11 can take the motion to strike, we can take the
12 opposition to the motion to strike, and set
13 decision for about a week or so after that,
14 give us a little chance to review it.

15 Ms. Bailey?

16 MS. BAILEY: Mr. Chairman, did you
17 want me to just repeat where we are at this
18 point? Is that why you are calling me? Or
19 you want --

20 CHAIRPERSON LOUD: No. I am just
21 looking for a date to set a decision for the
22 motion to strike. That would be some time

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1 about a week or so after May 7th, or, I'm
2 sorry, May 8th I think.

3 MS. BAILEY: May 18th, Mr.
4 Chairman?

5 CHAIRPERSON LOUD: I am getting
6 feedback that that is a Monday.

7 MS. BAILEY: I'm sorry, Mr.
8 Chairman. We are going around here, and I am
9 just kind of --

10 CHAIRPERSON LOUD: After May 8th.
11 If you could just give us a few minutes. We
12 are trying to sort out some scheduling issues.

13 (Pause.)

14 Excuse me. We are going to take a
15 break for about five minutes and try to sort
16 out some calendar scheduling issues, and then
17 come right back and close this out.

18 Thank you.

19 (Whereupon, the proceedings in the foregoing
20 matter went off the record at 2:20
21 p.m. and went back on the record at
22 2:42 p.m.)

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1 CHAIRPERSON LOUD: Good afternoon.

2 We would like to resume the afternoon hearing
3 session. We were in the Case Number 17337,
4 N Street Follies.

5 Having reviewed our calendar
6 thoroughly, and just worked out whatever
7 little kinks we had to work out, here is the
8 direction that we would like to proceed in.
9 We would like to, again, set June 2nd for a
10 decision date on the motion to strike the
11 supplemental pleadings. The hearing will be
12 October 13th.

13 The deadline for the opposition to
14 the motion, Mr. Keys, is going to be May 8th,
15 and the ANC, which was here earlier -- I don't
16 know if they left for good --

17 MS. DUMAS-BRAY: They have had to
18 leave for the afternoon.

19 CHAIRPERSON LOUD: They did leave
20 for good. We are going to give them an
21 opportunity to reply as well to the motion to
22 strike, since they are a party, and they will

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1 have the same deadline of May 8.

2 And I do believe there was another
3 party at least carried on the records up to
4 this point in the case, and that party will
5 have the same May 8th deadline. There will be
6 no responses after May 8th, and, again, on
7 June 2nd we will, having reviewed everything,
8 make a decision on the motion to strike.

9 It appears to us that this is the
10 proper course of action to take,
11 notwithstanding concerns that the plans that
12 went up on remand and came down on remand, it
13 -- there would be a very strong suggestion
14 that those are the plans that we would be
15 proceeding with with respect to moving forward
16 in this case.

17 But, nonetheless, we are offering
18 an opportunity for briefing on the issue to
19 make a final decision June 2nd.

20 Mr. Dettman, did you have any
21 thoughts you wanted to add?

22 (No response.)

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1 Okay. Any parting shots from
2 counsel? Brief parting shots from counsel?

3 (No response.)

4 Okay. So, Ms. Bailey, would you
5 like to read the record back?

6 MS. BAILEY: Mr. Chairman, the
7 applicant's response on Ms. Kennedy's motion
8 to strike is due May 8th. The opposition is
9 also given that same date to respond. The ANC
10 may also respond by May 8th.

11 The Board is to consider decision
12 on the motion on June 2nd, and the hearing is
13 to be continued on October 13, 2009.

14 CHAIRPERSON LOUD: Thank you, Ms.
15 Bailey. Are there any further cases this
16 afternoon?

17 MS. BAILEY: No, sir.

18 CHAIRPERSON LOUD: Okay. This
19 meeting is adjourned. Thank everyone.

20 (Whereupon, at 2:44 p.m., the proceedings in
21 the foregoing matter were
22 adjourned.)

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