

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

JULY 28, 2009

+ + + + +

The Special Public Meeting was held in Room 220 South, 441 4<sup>th</sup> 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  
(NCPC)  
MERIDITH MOLDENHAUER, Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

MARY NAGELHOUT, ESQ.

The transcript constitutes the

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minutes from the Public Meeting held on July 28, 2009.

I N D E X

Preliminary Matters ..... 5

17582, Motion to Extend the Time Authority  
to Order No. 17582 ..... 6

17837, Motion for Reconsideration ..... 13, 30

17942, Application of Asian American  
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P R O C E E D I N G S

(9:44 a.m.)

CHAIRPERSON LOUD: Good morning.

This meeting will please come to order.

Ladies and gentlemen, this is the July 28th public meeting of the Board of zoning Adjustment of the District of Columbia.

My name is Marc Loud, Chairperson, and joining me today are Vice Chair Shane Dettman, representing the National Capital Planning Commission; Mike Turnbull, representing the Zoning Commission; Meridith Moldenhauer, representing the BZA and appointed officially as of last week. Welcome again to you this week. To her left is Mr. Clifford Moy, Secretary of the BZA; Ms. Lori Monroe, Office of the Attorney General; Ms. Mary Nagelhout, Office of the Attorney General; Mr. John Nyarku, OZ; and Zoning Specialist Beverly Bailey all the way on the end to my far left.

Copies of today's meeting agenda

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1 are available to you and are located to my  
2 left in the wall bin near the door.

3 We do not take any public testimony  
4 at our meetings unless the Board specifically  
5 asks someone to come forward.

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

12 Please turn off all beepers and  
13 cell phones.

14 Does the staff have any preliminary  
15 matters?

16 MR. MOY: No, sir, although if we  
17 do, I would suggest taking those up on a case-  
18 by-case basis.

19 However, I would like to make an  
20 announcement on one case, Mr. Chairman.

21 CHAIRPERSON LOUD: Yes, sir.

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1 MR. MOY: Which is Application No.  
2 17941 of 1332 Vermont Avenue Partnership, and  
3 as the Board will recall, that case was before  
4 the Board at its special public meeting on  
5 July 14th, where this application was convened  
6 and deliberated on. The Board set a public  
7 hearing on the limited issues on today, July  
8 28th, and that would begin at 1:00 p.m.

9 CHAIRPERSON LOUD: Thank you, Mr.  
10 Moy.

11 Then let's proceed with this  
12 morning's calendar. I think what I would like  
13 to do is go a little bit out of order and take  
14 the 17582 case first because that will be  
15 very, very quick and then proceed with the two  
16 Hillcrest cases, 17837 and 17837(a), the  
17 reconsideration motion of the party status  
18 applicant Fleischman, and then the  
19 reconsideration motion of the ANC.

20 MR. MOY: Yes, sir. Very good.

21 Good morning, Mr. Chairman, members

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1 of the Board. To that end the first  
2 application for a decision is the motion to  
3 extend the time authority to Order No. 17582.

4 This is to 656 Pennsylvania Avenue, LLC, 666  
5 Pennsylvania Avenue Associates, and 327 7th  
6 Street, S.E., LLC.

7 The Board will recall this  
8 application was originally pursuant to 11 DCMR  
9 3103.2 for a variance from the building height  
10 requirements under Section 770, a variance  
11 from the floor area ratio requirements under  
12 Subsection 1572.3 and a variance from the off-  
13 street parking requirements under Subsection  
14 2101.1, which was to construct an office  
15 addition to several contiguous buildings in  
16 the CHC/C-2-A district at premises 656  
17 Pennsylvania Avenue, S.E., 660 Pennsylvania  
18 Avenue, S.E., and 325 7th Street, S.E., and  
19 327 7th Street -- well, I just said that --  
20 327 7th Street, S.E. Anyway, this property is  
21 in Square 873, Lots 115, 116 and 117.

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1                   As the Board will recall, on July  
2 14th of this year, the Board convened this  
3 application, deliberated and rescheduled its  
4 decision on July 28th. The reasons were  
5 twofold.

6                   First, it was to allow responses  
7 within the 30-day period as permitted pursuant  
8 to Section 3130.6 of A and to also allow the  
9 Applicant additional time to supplement the  
10 record with respect to the standards under  
11 Section 3130.6, Sub B and Sub C.

12                   That filing has been received into  
13 the record, Mr. Chairman. That's in your case  
14 folders identified as Exhibit 43, dated July  
15 23rd, 2009.

16                   The Board is to act on the merits  
17 of the request to extend the validity of this  
18 order pursuant to the time, pursuant to  
19 Section 3130, and that completes the staff's  
20 briefing, Mr. Chairman.

21                   CHAIRPERSON LOUD: Thank you, Mr.

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1 Moy.

2 It is my understanding having  
3 allowed the 30 days for all parties to respond  
4 that we did not get any additional responses  
5 from any of the parties.

6 MR. MOY: That's correct.

7 CHAIRPERSON LOUD: Okay.  
8 Excellent. So then, colleagues, I'm going to  
9 recommend that we approve this request for a  
10 two-year extension. As Mr. Moy said, it came  
11 before us on July 14. At that time the 30  
12 days statutory period for parties to respond  
13 had not passed.

14 It has now passed, and as Mr. Moy  
15 said, there have been no responses from any of  
16 the parties.

17 There are two criteria relevant to  
18 a two-year extension that this case draws  
19 upon, and very briefly those are that there  
20 needs to be -- and only one of them is  
21 required under Rule 3130.6. The two would be

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1 -- the two applicable provisions would be that  
2 there is an inability to obtain financing due  
3 to economic market conditions beyond the  
4 control of the Applicant and/or a second  
5 criteria would be inability to secure  
6 government approvals that are necessary for  
7 full completion of the project.

8 In this case, the Applicant has  
9 submitted into our record evidence bearing  
10 upon both of those criteria. The first are a  
11 series of denial letters from banks, both of  
12 which are dated July 17. One is from United  
13 Bank and a second is from Washington First  
14 Bank, and these are denial letters indicating  
15 that the Applicant could not get financing in  
16 place for the project.

17 The second set of submissions that  
18 the Applicant put into our record has to do  
19 with the sort of torturous approval route that  
20 it has had to go through because of the nature  
21 of the project. Apparently there are four

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1 different structures as a part of this  
2 project. Each has a different approval need  
3 based on its construction type and its fire  
4 resistance and so on and so forth, and so in  
5 light of the delays that they are experiencing  
6 due to financing and needed government  
7 approvals, I think they meet the test for a  
8 two-year extension on the 3130 and would  
9 recommend that we approve it.

10 All right. Is there any further  
11 deliberation on that?

12 (No response.)

13 CHAIRPERSON LOUD: Then what I  
14 would like to do is move approval of the  
15 request for time extension in 17582 of BZA  
16 Order at 656 and 666 Pennsylvania Avenue,  
17 S.E., and 325 and 327 7th Street, S.E.

18 VICE CHAIRPERSON DETTMAN: Second.

19 CHAIRPERSON LOUD: The motion has  
20 been made and seconded. Is there further  
21 deliberation?

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1 (No response.)

2 CHAIRPERSON LOUD: Hearing none,  
3 all those in favor say aye.

4 (Chorus of ayes.)

5 CHAIRPERSON LOUD: All those  
6 opposed?

7 (No response.)

8 CHAIRPERSON LOUD: Are there any  
9 abstentions?

10 (No response.)

11 CHAIRPERSON LOUD: Mr. Moy can you  
12 read back the vote?

13 MR. MOY: Yes, sir. Staff would  
14 record the vote as three to zero to two. This  
15 is on the motion of the Chair, Mr. Loud, to  
16 approve the motion, seconded by Mr. Dettman;  
17 also in support of the motion, Mr. Turnbull.  
18 No other Board members participated. Again,  
19 the vote is three to zero to two.

20 CHAIRPERSON LOUD: Thank you, Mr.  
21 Moy.

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1                   Is there anything further on this  
2 case?

3                   MR. MOY: No, sir.

4                   CHAIRPERSON LOUD: Okay. Why don't  
5 we call the next case?

6                   MR. MOY: The next case is a motion  
7 for reconsideration from two parties, one, the  
8 ANC-7B, B as in "bravo," and a party  
9 opposition. This is to Application 17837 of  
10 Hillcrest Homes, LP, pursuant to Section 3126  
11 of the Zoning Regulations.

12                   The original application was  
13 pursuant to 11 DCMR 3103.2 and 3104.1 for a  
14 variance from the maximum number of building  
15 stories under Section 400; a variance from the  
16 lot area and lot width requirements under  
17 Section 401; a variance from the rear yard  
18 requirements under Section 404; a variance  
19 from the side yard requirements under Section  
20 405; a special exception to permit two or more  
21 principal buildings or structures on a single

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1 subdivided lot under Section 2516; and a  
2 variance from the requirement of Section  
3 2516.5, that theoretical lots allowed pursuant  
4 to Section 2516 provides open space in front  
5 of building entrances to construct a new  
6 residential development consisting of 54 one-  
7 family detached dwellings in the R-1-B  
8 District. This is at premises the north side  
9 of Southern Avenue, S.E., just west of Branch  
10 Avenue, S.E., Parcels 208/4, 208/61, 208/64,  
11 208/65, and 215/27.

12 Again, the request for  
13 reconsiderations were filed by the party  
14 opponent, Mr. Julius Fleischman, and ANC-7B.  
15 Mr. Fleischman's motion is in your case  
16 folders, Mr. Chairman, identified as Exhibit  
17 57. It was received at the Zoning Office on  
18 July 2nd, 2009.

19 ANC-7B's filing is identified as  
20 Exhibit 58, and that filing was received on  
21 July 6th, 2009.

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1           There were two other subsequent  
2 filings from the property owner, Holland &  
3 Knight on behalf of the Applicant. Both  
4 filings are dated July 9th, 2009, and are  
5 identified as Exhibit 59 and 60.

6           The Board is to act on the merits  
7 of the motion of these two requests for  
8 reconsideration, pursuant to Section 3126.6,  
9 and that completes the staff's briefing, Mr.  
10 Chairman.

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

13           I think as I indicated, we will  
14 start with the motion for reconsideration of  
15 the party status, Mr. Fleischman. But in  
16 doing so, much of what I'm going to say with  
17 respect to that motion, I think, has  
18 applicability to the ANC-7B motion, which  
19 we'll take up separately, but to avoid having  
20 to repeat myself in both cases I think I  
21 wanted to share that.

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1 I'll start us off with respect to  
2 the deliberation. I think you laid out the  
3 case, Mr. Moy, in terms of what the variance  
4 relief and special exception relief that we  
5 granted to the applicant. The decision was  
6 issued June 23rd.

7 The motion for reconsideration  
8 asserts nine different arguments in favor of  
9 reconsideration, eight specifically addressing  
10 the variance test and one asserting an  
11 argument pertaining to whether or not this was  
12 a sort of back door or de facto rezoning.

13 The Applicant in the case responded  
14 with its own motion. I'm sorry. Not its own  
15 motion, but its own opposition to the motion  
16 for reconsideration, in both cases, the ANC  
17 and Mr. Fleischman's motion, and included in  
18 the Applicant's opposition was a cite from a  
19 D.C. Court of Appeals case. That's United  
20 Union, Inc. v. BZA.

21 The language quote from the cite

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1 was that an agency may credit evidence on  
2 which it relies and need not explain why it  
3 favored one side, and there is a bit more to  
4 the citation, but I think in pertinent part  
5 that's the key language from the citation.

6           Upon my review of the motion for  
7 reconsideration, the arguments advanced in the  
8 motion for reconsideration, the arguments  
9 going to the variance test and the one going  
10 to rezoning, I do not think that the BZA made  
11 an error. I think we were very clear with  
12 respect to our specific findings of fact on  
13 each element of the variance test, as well as  
14 the rezoning argument, and as such, we alluded  
15 to it in the June 23rd decision, the evidence  
16 that supported our findings of fact.

17           So I don't think that there has  
18 been error in our deliberation. I think that  
19 we have considered all of the evidence and  
20 credited the evidence that we found the most  
21 compelling with respect to each of the key

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1 points.

2 That having been said, I think it  
3 is important for us to just repeat that,  
4 what's already in the record, so that the  
5 movant has a clear understanding of the basis  
6 of our decision. And so I want to very  
7 briefly go through each argument raised by the  
8 movant as well as the findings where we  
9 address that particular argument.

10 First, the movant argues that the  
11 triangular shape does not cause a practical  
12 difficulty and does not restrict the  
13 Applicant's buildability. We address this.  
14 This is sort of the exceptional situation part  
15 of our analysis, and we address that in  
16 Findings 56 through 61, and point it to the  
17 evidence that supported that finding that the  
18 shape of the property did cause some practical  
19 difficulties.

20 It is a confluence of factors, the  
21 shape of the property, the steep topography,

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1 the need to push the development into the  
2 southern quadrant of the property because of  
3 the shape, because of the topography, and  
4 having pushed it to the south where the site  
5 already has some diminish buildability because  
6 of the parking lot on the southern part of the  
7 development, the contribution of square  
8 footage for the extension of Southern Avenue,  
9 that it does restrict buildability.

10 And, again, that is in Findings 56  
11 through 61 of our June 23rd decision.

12 With respect to there being limited  
13 access, it is not an exceptional situation.  
14 This is what the movant raises. That is  
15 addressed in Finding 57 of our decision, and  
16 again, the evidence is also described in our  
17 finding.

18 I don't want to go through each of  
19 these in great detail, but I think the movant  
20 did a very good job of raising these concerns,  
21 and so I just want to respond to each of them.

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1           The third is that the topography  
2 changes are not unique. The movant suggests  
3 that these topography changes are typical in  
4 Hillcrest. We address that in Finding No. 56,  
5 along with the evidence that would support our  
6 making a conclusion that, in fact, this  
7 topography is unique, particularly with  
8 respect to the practical difficulties of  
9 building out on the entire property.

10           The fourth argument is that the  
11 Southern Avenue right-of-way is not an  
12 exceptional situation, but again, it's  
13 addressed in our decision. It's finding No.  
14 59, and we talk about it being what makes it  
15 exceptional, and it flows, again, from the  
16 general need to push development south on the  
17 property because of the topography and other  
18 conditions of the property and having to lose  
19 some of the development potential in the  
20 south, once that decision has been made to  
21 develop there because of the right-of-way.

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1 Fifth, that the parking lot on the  
2 site for the adjacent building is not an  
3 exceptional situation, and I think that there  
4 are also some sort of self-created hardship  
5 arguments made with respect to that, but self-  
6 created hardship relates to a use variance,  
7 not an area variance, and we address this in  
8 our Finding of Fact No. 60, as well as the  
9 evidence that supports that finding.

10 Sixth, the movant argues that the  
11 Applicant did not meet its burden of proof  
12 with respect to there being a topographical  
13 challenge to the property or there being a  
14 practical difficulty, and again, we address  
15 that in Finding of Fact No. 64.

16 And then finally, the Applicant  
17 argues that the movant -- I'm sorry -- the  
18 movant argues that the Applicant did not meet  
19 its burden with respect to substantial  
20 detriment to the public good, and the essence  
21 of the argument there is that this development

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1 is out of place with the architectural style  
2 of neighboring Hillcrest, which is beautiful.

3 I've been to Hillcrest, but the gravamen of  
4 the argument is that it's out of place with  
5 that, and clustering of these small lots  
6 versus the Hillcrest lots just does not fit,  
7 and we address that in our Findings No. 73  
8 through 78, and again, identify the evidence  
9 that supports our findings.

10 So I think with respect to each of  
11 the arguments raised by the movant, we make  
12 specific findings of fact. The evidence to  
13 support those findings is in the record, and  
14 it would be tantamount to just rehearing the  
15 case to go over each one in great detail.

16 Finally, there is an argument made  
17 by the movant that the relief granted is, in  
18 effect, back door rezoning, and I think the  
19 responsive argument that we had both at the  
20 hearing and then in the findings that we  
21 developed and issued is that if an applicant

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1 goes through the variance test successfully  
2 and meets the variance test, then the relief  
3 is granted because the applicant met the  
4 variance test, not because the property is  
5 rezoned.

6 I guess by corollary, if an  
7 applicant is able to increase density and not  
8 have to go through a variance process, then  
9 that amounts to a rezoning.

10 But in our case, this Applicant had  
11 a variance test to meet, provided evidence  
12 that met that variance test, and I think there  
13 is some language from one of our Zoning  
14 Commission decisions that talks about the  
15 correlation between the degree of relief that  
16 is granted an applicant with respect to  
17 increased density on the property and whether  
18 or not it amounts to a rezoning.

19 And I think in this case -- and I  
20 don't have the exact numbers before me -- but  
21 I think the difference between the allowable

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1 units per acre and what is made available  
2 through this project is pretty slight. I  
3 think the difference is pretty slight. I  
4 don't have the exact numbers. You may have  
5 it, Mr. Turnbull or Mr. Dettman.

6 But for those reasons, I'm  
7 recommending that we deny the motion for  
8 reconsideration, and I will open it up to  
9 others.

10 VICE CHAIRPERSON DETTMAN: Mr.  
11 Chairman, I'm together with you in everything  
12 that you said. I only had a couple of points  
13 that pertain to a couple of your last  
14 statements with respect to the argument that  
15 this equated to a de facto rezoning of the  
16 property.

17 And you had alluded to two Zoning  
18 Commission cases where this was kind of  
19 addressed, this idea of granting variance  
20 relief that essentially rezoned the property.

21 Those two cases were the Zoning Commission's

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1 review of the BZA's decision in the King's  
2 Creek case, and that is Zoning Commission  
3 Order 02-37, and the other one is the BZA's  
4 decision in the Segovia case, which is Zoning  
5 Commission Order 07-06.

6 And just to take a couple quotes  
7 from those two orders and then apply them to  
8 this case, in the King's Creek case, the  
9 Zoning Commission makes the statement that if  
10 the relief granted is too great and out of all  
11 proportion to the practical difficulties  
12 claimed, it can amount to a de facto amendment  
13 of the zoning regulations.

14 And so having sat on this Hillcrest  
15 case, I can say that the Board did weigh the  
16 amount of relief that was being sought and the  
17 practical difficulties that were demonstrated  
18 and found that they were not out of  
19 proportion.

20 Secondly, with the other Zoning  
21 Commission case, the Segovia case, the

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1 Commission says in the review of that  
2 particular decision that they concluded the  
3 approval of the requested variances which were  
4 of a magnitude such that the proposed building  
5 would significantly exceed the maximum height  
6 and number of stories permitted in the R-4 and  
7 even exceed the height and floor area ratio  
8 permitted in the R-5-B map nearby and would,  
9 in effect, rezone the subject property.

10 Again, the Board even in their  
11 order on page 15 under the great weight  
12 language in addressing directly this argument  
13 that this was a rezoning, the order goes on to  
14 state that "we understand that the density of  
15 the proposed one-family dwellings in relation  
16 to each other is greater than the matter of  
17 right because of the yard space around each  
18 dwelling is less than required but does not  
19 agree that this amounts to a too great density  
20 for the site, nor to a back door rezoning.

21 The overall density of the entire

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1 property is actually less than what would be  
2 permitted as a matter of right, and so we did  
3 consider, you know, the density of what was  
4 being proposed in relation to what was mapped  
5 around it and found that this was not  
6 inappropriate.

7 So I think that with the guidance  
8 that's provided in the two Zoning Commission  
9 orders and how we applied the variance test, I  
10 don't think that this equates to a rezoning of  
11 the property.

12 CHAIRPERSON LOUD: Thank you, Mr.  
13 Dettman. That was an excellent walk-through  
14 of those Zoning Commission cases.

15 Mr. Turnbull.

16 COMMISSIONER TURNBULL: Thank you,  
17 Mr. Chair.

18 I need to point out for the record  
19 that I did not originally sit on this case,  
20 but I have read the record, and I concur with  
21 both you and the Vice Chair on your readings

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1 on this case.

2 I would again just point out your  
3 Finding of Fact No. 77. The overall current  
4 building density to the north of the subject  
5 property, including roads is about 3.9 units  
6 per acre, and the Applicant was proposing 4.3  
7 units per acre, and the R-1-B zone permits as  
8 many as 8.7 units per acre. So they are well  
9 under it, and they are only about .4 more than  
10 the property to the north. So I think the  
11 Applicant is well within reasonable  
12 development of the property.

13 CHAIRPERSON LOUD: Thank you, Mr.  
14 Turnbull.

15 I think we, barring further  
16 deliberation which we can have if you guys  
17 would like to, I think that we're at the point  
18 where we can call the vote, and I would like  
19 to move for denial of the request for  
20 reconsideration in 17837A of party status, Mr.  
21 Fleischman, party in opposition. Is there a

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1 second?

2 VICE CHAIRPERSON DETTMAN: Second.

3 CHAIRPERSON LOUD: Okay. The  
4 motion has been made and seconded. Is there  
5 further deliberation?

6 (No response.)

7 CHAIRPERSON LOUD: Hearing none,  
8 all those in favor say aye.

9 (Chorus of ayes.)

10 CHAIRPERSON LOUD: All those  
11 opposed?

12 (No response.)

13 CHAIRPERSON LOUD: Are there any  
14 abstentions?

15 (No response.)

16 CHAIRPERSON LOUD: Could you call  
17 back the vote?

18 MR. MOY: Yes, sir. Staff would  
19 record the vote as three to zero to two. This  
20 is on the motion of the Chair, Mr. Loud, to  
21 deny the motion on the part of Mr. Fleischman,

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1 seconded by Mr. Dettman, also in support of  
2 the motion, Mr. Turnbull. Again, the vote is  
3 three to zero to two. The two are no other  
4 Board members participating, and this is on  
5 the Fleischman request to reconsider.

6 CHAIRPERSON LOUD: Thank you, Mr.  
7 Moy.

8 Is there anything further with this  
9 case?

10 MR. MOY: No, sir.

11 CHAIRPERSON LOUD: Okay. Ms.  
12 Monroe.

13 MS. MONROE: Are you going to  
14 discuss the ANC motion?

15 CHAIRPERSON LOUD: We are going to  
16 do that separately.

17 MS. MONROE: Oh, okay.

18 CHAIRPERSON LOUD: We're going to  
19 call that case.

20 MS. MONROE: You said "case."

21 CHAIRPERSON LOUD: For this motion

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1 I should have said.

2 MS. MONROE: Okay.

3 CHAIRPERSON LOUD: Because it is  
4 the same case number and everything. Thank  
5 you, Ms. Monroe.

6 Anything further on this particular  
7 motion for reconsideration?

8 MR. MOY: No, sir.

9 CHAIRPERSON LOUD: All right.

10 MR. MOY: You're doing fine.

11 CHAIRPERSON LOUD: So we can move  
12 directly then into the second motion for  
13 reconsideration; is that correct?

14 MR. MOY: That's fine.

15 CHAIRPERSON LOUD: Okay. Then why  
16 don't we do that? The second motion for  
17 reconsideration, the same case, is a motion of  
18 the ANC, ANC-7B, I believe, in this case, and  
19 similar to the first motion, the ANC  
20 challenges the decision.

21 The ANC, however, raised six

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1 arguments on reconsideration. As to each  
2 argument the Applicant's law firm responds and  
3 posits an over arching objection that the  
4 person bringing the reconsideration motion on  
5 behalf of the ANC is not a party and,  
6 therefore, has no standing to bring the  
7 reconsideration motion.

8 So I think that's a threshold  
9 consideration for us. In my review of the  
10 record, and there's an Exhibit 33 where Ms.  
11 Marlin is authorized and designated by the ANC  
12 to represent the ANC, and so I think based on  
13 that alone Ms. Marlin would be qualified to  
14 bring this reconsideration motion.

15 In addition to that though, the  
16 motion is on ANC letterhead and it's proffered  
17 as being on behalf of the ANC, and I do note  
18 that Ms. Marlin led the ANC's cross-  
19 examination in the underlying case. So I  
20 think it's very reasonable to conclude that  
21 she had the authority of the ANC and continues

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1 to have the authority of the ANC to represent  
2 it in this case.

3 So I don't think that the Applicant  
4 has established that Ms. Marlin is not  
5 qualified to bring this motion and think that  
6 we should proceed along those lines.

7 And seeing head nods of approval,  
8 why don't we do that?

9 The ANC raises, as I indicated, I  
10 think, five different arguments, actually six  
11 different arguments in its motion for  
12 reconsideration. The first is that there was  
13 bias by then Commissioner Greg Jeffries, and  
14 there are some specific instances of that  
15 referenced in the motion.

16 The second is that all lots need  
17 lot occupancy relief from the 40 percent  
18 maximum lot occupancy requirement in the R-1-  
19 B.

20 The third is that the extension of  
21 Southern Avenue to Branch Avenue was not based

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1 on evidence at the hearing, in fact, that it  
2 wasn't even discussed at the hearing.

3 The fourth is that the Applicant  
4 knew of the steep topography changes with  
5 respect to the project, and so in effect  
6 created its own hardship.

7 The fifth is that the Office of  
8 Planning assigned inexperienced personnel that  
9 were not able to answer cross examination  
10 questions effectively.

11 And then the sixth is that the ANC  
12 did not have ten days to respond.

13 With respect to each of the  
14 arguments advanced by the ANC, I don't see  
15 where looking in the record the BZA in any way  
16 made any errors in our findings and our  
17 conclusions of law regarding the relief for  
18 the Applicant.

19 With respect to the allegation  
20 regarding Mr. Jeffries, they were allegations  
21 in the ANC motion, but I didn't see anything

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1 in the record to suggest that Commissioner  
2 Jeffries was not doing what we all do up  
3 here, which is, I think, we analyze, we ask  
4 questions of each other, and we remain true to  
5 our understanding of each case.

6 There was nothing specific apart  
7 from the allegation that suggested that  
8 Commissioner Jeffries did anything different  
9 than that.

10 Secondly, with respect to the issue  
11 that all lots need lot occupancy relief from  
12 the 40 percent requirement in the R-1-B, that  
13 is just not true. There was no need for 40  
14 percent relief even with the smaller lots that  
15 were part of what we approve. So I think the  
16 movant misunderstood the law with respect to  
17 that issue.

18 On the issue of the extension of  
19 Southern Avenue to Branch, that was discussed  
20 extensively in the record, and again, I think  
21 the movant either overlooked that evidence or

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1 otherwise it's inexplicable to me, but it was  
2 discussed extensively in the Applicant's  
3 prehearing statement and the Applicant's  
4 transportation impact study and by the Office  
5 of Planning, and it is also referenced in the  
6 transcript, page 209 to 211.

7 So it was definitely a part of what  
8 became the record for our deliberation from  
9 which we drew to make specific findings  
10 regarding the conclusions.

11 With respect to whether the  
12 Applicant knew of the topography, the steep  
13 topography changes on the property, again,  
14 that's sort of a self-created hardship test,  
15 and that does not apply to area variances. It  
16 applies to use variances. The Applicant in  
17 this case who opposed this motion did a good  
18 job of citing some cases that substantiate  
19 that point, including Russell v. D.C. BZA and  
20 Washington Canoe v. D.C. Zoning Commission.

21 The fifth argument was that the OP

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1 assigned inexperienced staff to handle this.  
2 Our challenge here, our standard is to make  
3 sure that each finding we make is supported by  
4 substantial evidence. We credited the Office  
5 of Planning report in a number of respects,  
6 and in doing so we did not find, at least I  
7 did not find the Office of Planning to be  
8 inexperienced or unprepared. They had a very  
9 well thought out and developed report that  
10 went to each of the elements of the variance  
11 test.

12 Finally, that the ANC didn't have  
13 ten days to respond, I'm not sure what drives  
14 that consideration, but the order was mailed  
15 on June 24th, I believe, and under Rule  
16 3110.3, the three days are added to that in  
17 terms of measuring the time that the ANC has  
18 to respond.

19 The deadline thus became July 6th  
20 and the ANC submitted its motion for  
21 reconsideration on July 6th, and we're taking

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1 it up fully today. So I don't find colleagues  
2 that the motion for reconsideration points to  
3 any specific errors that we made in the record  
4 for the reasons I just stated, as well as some  
5 of the ones I stated earlier with respect to  
6 Mr. Fleischman's motion.

7 And we'll open it up to colleagues.

8 VICE CHAIRPERSON DETTMAN: Mr.  
9 Chair, I concur with your analysis.

10 COMMISSIONER TURNBULL: Mr. Chair,  
11 so do I.

12 CHAIRPERSON LOUD: Okay. So why  
13 don't we then vote on the matter? I'd like to  
14 move for denial of the motion for  
15 reconsideration of ANC-7B in 17837A, Hillcrest  
16 Homes Associates.

17 Is there a second?

18 VICE CHAIRPERSON DETTMAN: Second.

19 CHAIRPERSON LOUD: Motion has been  
20 made and seconded. Is there any further  
21 deliberation?

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1 (No response.)

2 CHAIRPERSON LOUD: Hearing none,  
3 all those in favor say aye.

4 (Chorus of ayes.)

5 CHAIRPERSON LOUD: All those  
6 opposed.

7 (No response.)

8 CHAIRPERSON LOUD: Are there any  
9 abstentions?

10 (No response.)

11

12 CHAIRPERSON LOUD: Can you call the  
13 vote?

14 MR. MOY: Mr. Chair, staff would  
15 record the vote as three to zero to two, on  
16 the motion of the Chair, Mr. Loud, to deny the  
17 motion for reconsideration on the part of ANC-  
18 7B, seconding the motion Mr. Dettman, the Vice  
19 Chair, also in support of the motion, Mr.  
20 Turnbull, and two other Board members not  
21 participating.

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1                   So, again, the vote is three to  
2 zero to two.

3                   CHAIRPERSON LOUD: Thank you, Mr.  
4 Moy.

5                   I think we're ready to call the  
6 next case.

7                   MR. MOY: Yes. I believe that case  
8 is 17942 of Asian American LEAD, pursuant to  
9 11 DCMR, 3104.1 for a special exception to  
10 allow the continued operation of a community  
11 center under Section 209. This is in the R-4  
12 district at premises 1323 Girard Street, N.W.,  
13 Square 2855, Lot 828.

14                   As the Board will recall, on July  
15 14th, 2009, the Board completed public  
16 testimony, closed the record and scheduled its  
17 decision on July 28th. In the judgment of the  
18 Board, the record was full. So no additional  
19 information was requested from the Applicant  
20 or any of the parties.

21                   So in this regard the Board is to

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1 act on the merits of the special exception  
2 pursuant to the requirements of Section 209.  
3 That completes the staff's briefing, Mr.  
4 Chairman.

5 CHAIRPERSON LOUD: Thank you, Mr.  
6 Moy.

7 I think we're ready to deliberate  
8 this case. As you indicated the record is  
9 full, and both parties did a great job of  
10 briefing us a couple of weeks ago when we had  
11 the hearing.

12 I think Mr. Dettman is going to  
13 lead us off in deliberations.

14 VICE CHAIRPERSON DETTMAN: Thank  
15 you, Mr. Chair. If I could just have a moment  
16 to pull my record together here.

17 Mr. Chairman, as Mr. Moy already  
18 stated, this is an application for a special  
19 exception to allow the continued operation of  
20 a community center under Section 209 at 1323  
21 Girard Street, N.W..

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1 I think I can be fairly brief here.

2 If you recall, the hearing in this case was  
3 quite lengthy and revolved around -- we had  
4 one party to the case, Ms. Donna Brazile and  
5 her husband. I believe his name was Mr.  
6 Imhoff, and most of their concerns, and they  
7 expressed concerns about the recent upkeep of  
8 the property, some issues related to the use  
9 of the parking area in the back, and the use  
10 of her yard to have cars turn around so they  
11 could access the driveway, not too much about  
12 noise, but maybe a little bit.

13 There was some mention about some  
14 activities that were occurring off of the  
15 subject property. There was mention about a  
16 motorcycle driving up and down the street.

17 And so most of those concerns go to  
18 the one provision, 209.4. "A community center  
19 shall not likely become objectionable in a  
20 residence district because of noise and  
21 traffic."

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1                   With respect to the other  
2 provisions of Section 209, I think I would be  
3 comfortable relying upon D.C. OP's report.  
4 OP submitted a report. That's our Exhibit No.  
5 39, in support of the application with two  
6 conditions which we can address at the end of  
7 our analysis, I guess.

8                   I also state that the ANC is in  
9 support, and that's our Exhibit 42.

10                  And so with respect to the 209.1,  
11 which just says that we have special exception  
12 authority to approve these uses within the R-4  
13 District, 209.2 says that it needs to be a  
14 nonprofit organization that exclusively  
15 promotes the social welfare of a neighborhood.

16                  AA LEAD is a 501(c)(3), and its  
17 states purpose is to develop leadership among  
18 low income Asian American youth and families  
19 and to strengthen the sense of community among  
20 those families in the Columbia Heights, Mount  
21 Pleasant, and Chinatown neighborhoods.

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1                   And the type of services they  
2 provide are after school academic enrichment,  
3 tutoring, mentoring, family strengthening, ESL  
4 classes, SAT and college prep classes.

5                   So I think that those types of  
6 activities fall squarely in 209.2.

7                   The Applicants stated in their oral  
8 testimony as well as their pleadings that they  
9 do comply with 209.3. They will not be  
10 offering any articles of commerce at the  
11 community center.

12                   I'll skip 209.4 because that's kind  
13 of where my analysis resolves around and  
14 that's where the testimony at the hearing kind  
15 of revolved around, and so just finishing out  
16 with 209.5, the use of the community center  
17 shall be reasonable and necessary or  
18 convenient to the neighborhood in which it is  
19 located.

20                   I agree with OP's report that the  
21 community center is conveniently located to

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1 serve the Applicant's target clientele which  
2 reside primarily in the Mount Pleasant and  
3 Columbia Heights neighborhood. They also draw  
4 a little bit from the Chinatown neighborhood,  
5 and so I think that they are consistent with  
6 209.5.

7           Going back to 209.4, that deals  
8 directly with issues related to noise and  
9 traffic. In terms of noise, looking at the  
10 map in OP's report, listening to the testimony  
11 and how the activities that take place on this  
12 property and how that property is situated in  
13 relation to other properties in the  
14 neighborhood, you know, the subject property,  
15 it abuts a parking lot to the east and a one  
16 family detached dwelling on the west.

17           Also, to the north there is the  
18 rear parking area. There's an alley and then  
19 there's the rear yards to the other single  
20 family dwellings to the north, and then there  
21 are some dwellings across the street, across

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1 Girard Street along the south side.

2           Aside from the one family detached  
3 dwelling to the west, which is Ms. Brazile's  
4 house, I think that given the magnitude of the  
5 activities that take place on this property,  
6 the fact that they take place primarily, if  
7 not solely indoors, I think that any noise  
8 that's generated by the Applicant in carrying  
9 out the types of classes that they do, I think  
10 that there's enough buffering with the parking  
11 lot on the east and the alley to the north  
12 that any noise generated should not become  
13 objectionable.

14           I have already stated that most of  
15 the activities take place indoors. They cater  
16 to a small population. The Applicant  
17 indicated that the community center serves  
18 approximately 160 residents, but that at not  
19 time is there more than 50 to 60 people on  
20 site at any given time.

21           The Applicant indicates that their

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1 hours of operation are Monday through Friday,  
2 10:00 a.m. to 7:00 p.m., with the exception of  
3 an occasional evening meeting or special  
4 events such as an awards ceremony, a  
5 graduation.

6 So, again, given the small number  
7 of people that are on site at any given time  
8 and, again, the types of activities that take  
9 place during the Monday through Friday, ten to  
10 seven, it doesn't seem like noise should be a  
11 particular issue.

12 Noise created by traffic, I didn't  
13 see anything in the record or I didn't hear  
14 anything during the hearing that would lead me  
15 to believe that this particular use in this  
16 location is going to create objectionable  
17 traffic or noise generated by traffic. The  
18 Applicant indicated during the testimony that  
19 most of the visitors either walk or use public  
20 transportation to get to the subject property.

21 It's within an easy walking distance to

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1 Metrorail, as pointed out in OP's report.  
2 It's well served by bus as well as the  
3 circulator. And, again, a lot of people walk  
4 to the subject property as well.

5 The Applicant did indicate that  
6 they recently improved their rear yard as a  
7 parking area, and that it has enough space to  
8 accommodate at least five parking spaces, and  
9 we also do have a letter in the record which  
10 was submitted during the hearing. So I don't  
11 have an exhibit number, but it was a letter  
12 from Easter Seals, which is the neighbor to  
13 the east saying that they have agreed to lease  
14 two spaces in their parking lot for use by the  
15 Applicant.

16 So I would say that the Applicant  
17 does comply with the provisions of 209, as  
18 well as the general special exception criteria  
19 of 3104. I think that the continued operation  
20 of the community center at the subject  
21 location is in harmony with the general

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1 purpose and intent of the zoning regulation,  
2 and based on the evidence in the record, it  
3 doesn't appear as if what's going to take  
4 place or continue to take place on this  
5 property would lead me to believe that it's  
6 going to adversely affect neighboring  
7 properties.

8 But I say that with a little bit of  
9 caution, and I think that Ms. Brazile did  
10 raise some very, very good points during her  
11 testimony and the cross of the Applicant with  
12 respect to the upkeep of the property, a  
13 little bit of noise generated on the property  
14 that I think that potentially could be handled  
15 through some well thought out conditions on  
16 this, but I think that the Applicant has met  
17 their burden, and I'm supportive of the  
18 application.

19 CHAIRPERSON LOUD: Thank you, Mr.  
20 Dettman. That was excellent.

21 I don't have much to add to it. I

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1 think you mentioned the ANC report. They were  
2 in favor of it. Commissioner Akinmboni, I  
3 think, came before us, and so that report is  
4 entitled to great weight.

5 They also brought forward a support  
6 letter. It is our Exhibit 12 through 21 of  
7 different neighbors that were in support, and  
8 then I think they brought forward Petitioner  
9 Exhibit 22.

10 So they've been there five years,  
11 as you know. It was the subject of a previous  
12 special exception or one would expect to hear  
13 a lot more opposition from neighbors from that  
14 five-year period if things were not working  
15 out.

16 That being said, I think you're  
17 right. Ms. Brazile raised some very serious  
18 questions, and when we get to the conditions  
19 part we can address how to mitigate those.  
20 But I think what can't be overlooked is the  
21 fact that there really was not hard any

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1 opposition apart from, of course, Ms. Brazile  
2 and the concerns that I think we're going to  
3 address.

4 Also, Ms. Lai testified that this  
5 organization really was started to address  
6 some of the needs of our young people here in  
7 the city who were becoming vulnerable to  
8 gangs, and so I think you walked through 209,  
9 and I think every opportunity that we can get  
10 to to review an organization that's addressing  
11 that issue, assuming the organization meets  
12 the criteria, it moves the city forward.

13 So with that, I'll turn it back to  
14 you for the condition discussion.

15 VICE CHAIRPERSON DETTMAN: Thank  
16 you, Mr. Chairman.

17 Just a couple points about kind of  
18 a hearing and what evolved at the hearing.  
19 Again, I think Ms. Brazile raised some very  
20 good points. Unfortunately, when I was  
21 reviewing the record I didn't see much in

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1 terms of documentation of the problems that  
2 she's had, and as I understand it, I think she  
3 ever stated that.

4 She's had a very good relationship  
5 with the Applicant up until recently. It  
6 would have been helpful had she had something  
7 that documented these problems. If she was  
8 having problems during the last five years I  
9 think that this Applicant has been in  
10 existence, she should have documented. She  
11 would have raised this at the ANC.

12 She mentioned that she had a couple  
13 conversations with a police officer, but you  
14 know, when informal conversations with the  
15 authorities don't work, it's time to kind of  
16 go through the actual process that exists so  
17 that the Board can use that information to  
18 really make a determination whether or not  
19 this thing belongs there or not.

20 So there really wasn't anything  
21 there, which led me to believe that these were

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1 not issues that could not be resolved through  
2 a condition in the BZA order.

3 Ms. Brazile had raise some concerns  
4 about egress in a recent survey that was done  
5 which showed that the Applicant may be using a  
6 piece of property that wasn't there on the  
7 east side. Those really are not the  
8 jurisdiction of the Board.

9 And she had also made some  
10 references to the enforcement of Board orders  
11 and saying that, you know, the previous order  
12 stated that they were going to construct this  
13 egress, this rear stair, and that they didn't,  
14 and so they should be somehow penalized for  
15 that.

16 But as we stated at the hearing,  
17 the previous order was not conditioned  
18 whatsoever. There were no conditions, and in  
19 fact, placing conditions in the order was  
20 directly addressed in the previous hearing.

21 The Applicant, you know, quoted

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1 from the transcript. So I think this time  
2 it's going to be very, very clear to the  
3 Applicant as well as Ms. Brazile and everyone  
4 in the community that when we get to a time to  
5 vote, and I'm in support and it sounds like  
6 you are as well, if we're inclined to grant  
7 this, that it's going to be clear that we've  
8 granting this with these conditions that need  
9 to be abided by.

10 So with that being said, Mr.  
11 Chairman, I have a listing of some conditions  
12 that I think might be appropriate, and we can  
13 discuss them as you wish. One is an approval  
14 period. I think an approval period of five  
15 years would be appropriate. Oftentimes the  
16 Board with these types of uses will condition  
17 a use on hours of operation as well as staff  
18 and people on site at any one time.

19 The Applicant had stated that their  
20 hours are Monday through Friday, ten to seven.

21 I think that could be a good condition, as

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1 well as they have 11 staff and 60 people on  
2 site at any one time.

3 A condition that says that the  
4 programs and activities associated with the  
5 community center shall take place primarily  
6 indoors.

7 The Office of Planning suggested  
8 that the rear yard, the rear parking area be  
9 improved with the appropriate striping to  
10 indicate the number of spaces that are there.

11 So I would be in agreement with that.

12 So I think a provision that says or  
13 a condition that says that the Applicant is  
14 going to provide five parking spaces at the  
15 rear of the subject property at all times and  
16 that these parking spaces shall be established  
17 and maintained in accordance with Chapter 21  
18 of the zoning regulations, and that includes  
19 the size of the spaces, the maintenance of  
20 them, the access of them.

21 And finally, Ms. Brazile raised

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1 some issues with respect to trash or debris in  
2 the front yard. I think that it would be  
3 appropriate that the Applicant place a trash  
4 receptacle on the front porch of the subject  
5 property, and that it should be emptied daily.

6 And it would be helpful, I think  
7 for the Applicant to designate a member of the  
8 staff to be responsible for addressing  
9 complaints and concerns raised by the public  
10 and the ANC, and that the Applicant report to  
11 the ANC annually to provide an opportunity for  
12 the public to express concerns related to the  
13 operation of the community center.

14 CHAIRPERSON LOUD: Thank you, Mr.  
15 Dettman.

16 I concur with all of the conditions  
17 that you have raised, particularly the  
18 designation of a staff person to work with the  
19 ANC and members of the community, which in  
20 this case really seems like it boils down to  
21 Ms. Brazile, but I think just having that

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1 person designated will carry these neighbors a  
2 long way toward bridging whatever tensions may  
3 have developed over the last five years.

4 That being said, I absolutely agree  
5 with the conditions that you have proposed.  
6 The ANC report, just for my clarification,  
7 this would be the Applicant going back to the  
8 ANC once per year and just sort of giving them  
9 a -- getting on the agenda and giving them an  
10 update as to complaints from neighbors and how  
11 they address those complaints in the preceding  
12 12 months. Okay.

13 VICE CHAIRPERSON DETTMAN: That's  
14 correct, and I think that's an important  
15 condition for two reasons. One is to make  
16 sure that the Applicant, you know, continues  
17 to be a good neighbor, but it also puts in  
18 place kind of a mechanism for the community;  
19 Ms. Brazile to on an annual basis go to the  
20 ANC and voice their concerns.

21 And what that's going to do is help

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1 the Board in five years analyze this to say if  
2 someone else in the community -- if Ms.  
3 Brazile does come back to the BZA after five  
4 years and has this laundry list of issues that  
5 she's going to express in terms of concerns on  
6 the operation, we can turn to the ANC annual  
7 reporting and say, "Well, this is the first  
8 anyone is hearing about this." You know, we  
9 put in place, you know, a program, a condition  
10 that gave you the opportunity resolve these  
11 types of issues annually, and it wasn't taken  
12 advantage of.

13 CHAIRPERSON LOUD: I think, as I  
14 said, that's a good condition, and I think  
15 supported by your other conditions for a staff  
16 member to be designated to address these  
17 concerns, it's the best of all possible worlds  
18 for the neighbors in terms of not letting it  
19 get to that point.

20 And, again, I think we've clarified  
21 that this is not a report going to the ANC

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1 talking about the work that's being done with  
2 the young people, although that's important,  
3 but it specifically includes the complaints  
4 that have been that this designated staff  
5 person has been working on and how they've  
6 addressed those complaints.

7 So unless there's further  
8 deliberation on it, I think we may be ripe in  
9 time for a motion.

10 VICE CHAIRPERSON DETTMAN: I would  
11 move for approval of Application No. 17942 of  
12 Asian American LEAD, pursuant to 11 DCMR  
13 3104.1 for a special exception to allow the  
14 continued operation of a community center  
15 under Section 209 in the R-4 District, located  
16 at 1323 Girard Street, N.W.

17 CHAIRPERSON LOUD: Second the  
18 motion.

19 Further deliberation?

20 (No response.)

21 CHAIRPERSON LOUD: And hearing

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1 none, all those in favor of the motion as  
2 conditioned, please indicate by saying aye.

3 (Chorus of ayes.)

4 CHAIRPERSON LOUD: All those  
5 opposed?

6 (No response.)

7 CHAIRPERSON LOUD: Are there any  
8 abstentions or absentees?

9 MR. MOY: Yes, sir, Mr. Chairman.  
10 Before I give a final vote, we do have an  
11 absentee vote from a participating member on  
12 this application, and his absentee vote is to  
13 approve the application with such conditions  
14 as the Board may impose.

15 So that would give a resulting vote  
16 of three to zero to two in this case on the  
17 motion of the Vice Chair, Mr. Dettman, to  
18 approve the application as conditioned,  
19 seconded by Mr. Loud, the Chair, no other two  
20 Board members participating. Again, the vote  
21 is three to zero to two.

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

3 I think there's nothing further  
4 with this case, correct?

5 MR. MOY: That's correct.

6 CHAIRPERSON LOUD: Okay. Thank  
7 you. Thank you, Mr. Dettman.

8 I believe we can call the next age

9 MR. MOY: That case is Application  
10 No. 17945 of M. Sikder, pursuant to 11 DCMR  
11 3104.1, for a special exception to allow the  
12 construction of an eight-unit apartment house  
13 under Section 353 in the R-5-A District. This  
14 is at premises 932, 932 Bellevue Street, S.E.,  
15 Square 5924, Lots 141, 142, and 143.

16 As the Board will recall, on July  
17 21st, 2009, the Board completed public  
18 testimony, closed the record, and scheduled  
19 its decision on July 28th. The Board  
20 requested additional information from the  
21 Applicant to supplement the record with

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1 regards to a revised site plan, and a more  
2 current ANC-8E letter.

3 Those filings are in your case  
4 folders, Mr. Chairman from the Applicant.  
5 That pleading is identified as Exhibit 27.  
6 The other filing from the Applicant is  
7 identified as Exhibit 28.

8 The Board is acting on the merits  
9 of the special exception request under 353,  
10 and that completes the staff's briefing, Mr.  
11 Chairman.

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

14 I'm just gathering the final  
15 documents that came in on this. I know we're  
16 ready to deliberate, and I think, again, Mr.  
17 Dettman is going to lead us off in  
18 deliberations.

19 VICE CHAIRPERSON DETTMAN: Thank  
20 you, Mr. Chairman.

21 The two documents that were

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1 received following the hearing is our Exhibit  
2 No. 28, which appears to be an updated letter  
3 from the single member district. Ms. Sandra  
4 Seegars, and I'm quickly reviewing it here.

5 She goes on to say that she's fully  
6 aware that Mr. Sikder is proposing  
7 condominiums, is requesting a special  
8 exception to construct a new eight-unit multi-  
9 family building. Thus far Mr. Sikder's  
10 projects have improved the community. So it  
11 appears that she continues to in support.

12 And if you remember, this is an  
13 application that we saw some time ago, and  
14 then it was withdrawn., and it is almost  
15 identical in terms of the number of units. It  
16 is identical to the number of units, the specs  
17 of the building.

18 The other filing we received was  
19 the Exhibit No. 27, which was a revised plan,  
20 and the reason we set off decision for this  
21 filing was that the Office of Planning

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1 recommended that the site plan be modified to  
2 relocate the trash enclosure and also narrow  
3 the width of the drive aisle in an effort to  
4 preserve some of the mature trees that are on  
5 the site.

6 And one final alteration of the  
7 site plan was the use of permeable pavers  
8 along the drive aisle and not on the actual  
9 parking spaces.

10 So that's our Exhibit 27 showing  
11 those changes, and I see attached to this  
12 filing is an E-mail from the OP project review  
13 specialist, Michael Giulioni to the Applicant  
14 stating that the revised drawings are  
15 consistent with the goals of OP and the  
16 changes that they were recommending.

17 And so we received the two filings  
18 that we requested, and I can basically --  
19 instead of going through the provisions of  
20 Section 353, I can just incorporate by  
21 reference OP's supportive report, and that's

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1 our Exhibit No. 25 and say that the special  
2 exception provisions of 353, as well as 3104  
3 have been met by the Applicant.

4 The Application obviously has the  
5 support of OP. It has the support of the  
6 single member district, Sandra Seegars. We  
7 have a new filing from her just reconfirming  
8 that support.

9 We also have a letter in support  
10 from DHCD. That's our Exhibit 22, and the one  
11 little glitch with that letter is that it  
12 references the original proposal which was, I  
13 think, three row dwellings, and I think that  
14 following their letter of support, the  
15 Applicant decided to change their plans.

16 I will note, however, though that  
17 DHCD in the previous case, when we first saw  
18 this, they were supportive of an eight-unit  
19 condominium building at this property, and  
20 that was Exhibit No. 21 from the previous  
21 case.

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1 I think it's a little different  
2 than how we typically handle things, but I  
3 think in this case it's appropriate to kind of  
4 reference that letter and basically come to  
5 the conclusion that they are in support.  
6 They've been in support of an eight-unit  
7 condominium building on this property. It's  
8 not like they have never shown an indication  
9 of that number of units on the property.

10 So I think that with the letter in  
11 support from the previous case as well as the  
12 one that we have in our record today we can  
13 come to the conclusion that DHCD is in support  
14 of this project.

15 And so I'm in support of the  
16 project, Mr. Chairman, and that's all I have.

17 CHAIRPERSON LOUD: Thank you, Mr.  
18 Dettman.

19 I believe, Ms. Moldenhauer, you  
20 were in on this case, correct?

21 MEMBER MOLDENHAUER: Yes.

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1 CHAIRPERSON LOUD: So did you want  
2 to weigh in?

3 MEMBER MOLDENHAUER: I believe Mr.  
4 Dettman has provided a full summary of our  
5 prior hearing and I concur with his findings.

6 CHAIRPERSON LOUD: Then that makes  
7 three. I concur. I'm 99.99 percent with you,  
8 Mr. Dettman, except for on one thing I'm just  
9 a little queasy in the stomach about, and that  
10 would be incorporating into this record the  
11 letter from the previous case of DHCD simply  
12 because we did kind of close the file -- I  
13 mean close the record, and they didn't really  
14 put that in our record.

15 I'm very comfortable drawing the  
16 inference from this letter that is in the  
17 record that DHCD has made a mistake and  
18 drawing a further inference that they intended  
19 to support it in the manner that they did, the  
20 previous case, but actually having that letter  
21 from DHCD made a part of this record, you

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1 know, there's no opposition, and I think this  
2 Applicant can prevail even without that  
3 letter, to be honest with you, but I'm just a  
4 little queasy about that.

5 VICE CHAIRPERSON DETTMAN:  
6 Certainly, and I apologize if I led you to  
7 believe that I was suggesting that we pull the  
8 letter in. No, I was just kind of making that  
9 inference as you suggested.

10 CHAIRPERSON LOUD: Well, with that  
11 said, is there a motion?

12 VICE CHAIRPERSON DETTMAN: I move  
13 for approval of Application No. 17945 of M.  
14 Sikder, pursuant to 11 DCMR 3104.1 for a  
15 special exception to allow the construction of  
16 an eight-unit apartment house under Section  
17 353 at 932 Bellevue Street, S.E.

18 CHAIRPERSON LOUD: And is the  
19 motion as conditioned? Were there any  
20 conditions here?

21 VICE CHAIRPERSON DETTMAN: No, no

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1 conditions, Mr. Chairman.

2 CHAIRPERSON LOUD: Okay.

3 VICE CHAIRPERSON DETTMAN: The  
4 revisions to the site plan as suggested have  
5 been done.

6 CHAIRPERSON LOUD: Okay. So then  
7 the motion has been made. Is there a second?

8 MEMBER MOLDENHAUER: Second.

9 CHAIRPERSON LOUD: The motion has  
10 been made and seconded. Is there further  
11 deliberation?

12 (No response.)

13 CHAIRPERSON LOUD: Hearing none,  
14 all those in favor say aye.

15 (Chorus of ayes.)

16 CHAIRPERSON LOUD: All those  
17 opposed?

18 (No response.)

19 CHAIRPERSON LOUD: Are there any  
20 abstentions?

21 (No response.)

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1 CHAIRPERSON LOUD: Mr. Moy, can you  
2 read back the vote for us, please?

3 MR. MOY: Yes, sir. Before I read  
4 the vote, Mr. Chairman, we do have a fourth  
5 member who participated on this application.

6 CHAIRPERSON LOUD: Thank you for  
7 the correction.

8 MR. MOY: And that is Mr. Hood, and  
9 his absentee vote is to approve the  
10 application with such conditions as the Board  
11 may impose.

12 So with his vote, that would give a  
13 resulting vote of four to zero to one. This  
14 is on the motion of the Vice Chair, Mr.  
15 Dettman to approve the application for the  
16 special exception relief, 353, seconded by Ms.  
17 Moldenhauer, also in support of the motion Mr.  
18 Loud and Mr. Hood. So, again, the final vote  
19 is four to zero to one.

20 CHAIRPERSON LOUD: Thank you, Mr.  
21 Moy, and is there further -- I'm sorry?

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1 MR. MOY: Does the Board care to  
2 waive the regulations for summary order?

3 CHAIRPERSON LOUD: Yes.

4 MR. MOY: Since there's no  
5 opposition.

6 CHAIRPERSON LOUD: There's no  
7 opposition.

8 MR. MOY: And ANC support.

9 CHAIRPERSON LOUD: We should  
10 definitely do that.

11 MR. MOY: Very good.

12 CHAIRPERSON LOUD: I believe we can  
13 call the next and final decision case for this  
14 morning when you're ready.

15 MR. MOY: Yes, sir. That would be  
16 Application 17944 of the Lab School of  
17 Washington. This is pursuant to 11 DCMR  
18 3104.1, for a special exception to allow the  
19 continued use of an existing private school.  
20 This is 200 pre-kindergarten to fifth grade  
21 children and 40 staff, under Section 206.

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1 This property is in the R-1-B District at  
2 premises 4470 Q Street, N.W., Square 1363, Lot  
3 980.

4 On July 21st, 2009, the Board  
5 completed public testimony, closed the record,  
6 and scheduled its decision on July 28th. The  
7 Board requested additional information to  
8 supplement the record from both the Applicant  
9 and ANC-3D.

10 The Applicant submitted its filing  
11 and is identified in your case folders as  
12 Exhibit 37, dated July 24th, and ANC-3D --  
13 well, let's suffice to say that the major  
14 filing is from the Applicant Exhibit 37.

15 The Board is acting on the merits  
16 of the request for the special exception under  
17 206, and that completes the staff's briefing,  
18 Mr. Chairman.

19 CHAIRPERSON LOUD: Thank you, Mr.  
20 Moy.

21 I believe we're ready to deliberate

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1 on this one as well, and I'll start us off. I  
2 think from the hearing what we requested was,  
3 as you indicated, the letter authorizing the  
4 applicant to act on behalf of the owner.  
5 They've submitted that as well as a response  
6 where the Commissioner who joined us for the  
7 hearing was not allowed to cross-examine one  
8 witness, and I think that that response has  
9 been submitted as well.

10 So that being said, this is a  
11 Section 206 request for a private school, and  
12 the Applicant currently operates such a school  
13 at the former Hardy Schools, the Foxhall  
14 campus, as you noticed in the R-1-B and the  
15 current operation of the school is under  
16 previous BZA Order 16424.

17 The current operation serves 72  
18 students with 31 faculty and staff, expires  
19 September 30th this year. The Applicant took  
20 over the private school operation from a  
21 previous operator, and the Applicant took it

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1 over in 2007. The previous operator did have  
2 approval for a cap of 200 students, 40  
3 faculty, and had a 197 actual student  
4 population during the period 2000 to 2007.

5 The Rock Creek School filed  
6 bankruptcy in that year '07 and this Applicant  
7 took it over, and as noted, the site is  
8 currently approved for 200 students and 40  
9 faculty, and the Applicant is seeking a ten-  
10 year renewal.

11 There are 31 paid staff, as I  
12 noted, on site in addition to which there's  
13 testimony from the Applicant that there are 11  
14 student trainees on the Foxhall campus, and  
15 these trainees are present daily a half a day  
16 each and arrive through a shuttle service from  
17 American University.

18 With respect to our deliberations,  
19 I think I can take us straight to the  
20 requirements of 206. The first requirement is  
21 that the property is in harmony with the

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1 general purpose and intent of the zoning  
2 regulations and with respect to the evidence.

3 The OP report indicated as such, noting that  
4 the property had been used historically as a  
5 school first by Hardy and then by the Rock  
6 Creek International School.

7 So I think that they met that  
8 element of the test without any challenges.  
9 The second element is that the property is  
10 located so as not to be objectionable to  
11 neighboring properties, and the evidence in  
12 the record is that the property is set back  
13 from Q Street, which has the less dense  
14 residential neighbors and so that it's not  
15 objectionable from that standpoint.

16 Also, a Ms. or Mrs. Banerjee  
17 appeared before us, and she lives directly  
18 across from the school, has lived there since  
19 1997, lived there during the period when the  
20 school had 197 students, and she testified  
21 favorably regarding both the application, but

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1 specifically there not being any noise or  
2 traffic or other objectionable conditions with  
3 respect to the operation of the property.

4           There isn't evidence from the ANC  
5 of there being a specific objectionable  
6 condition, measured by the behavior of the  
7 last ten years at the property, although  
8 clearly the ANC was very, very much concerned  
9 about the potential for objectionable  
10 conditions, but specifically going back to  
11 what has happened over the last ten years, I  
12 think there was testimony regarding an E-mail  
13 in 2005 of an objection or concern regarding  
14 operation of the school with close to 200, but  
15 nothing specific and certainly no neighbors or  
16 witnesses stepping forward from that community  
17 that offered testimony in opposition to the  
18 Applicant.

19           Again, the ANC does not support,  
20 and I'm assuming the ANC speaks for a part of  
21 the community, does not support a cap of 200,

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1 but the point I'm making, I guess, is that  
2 apart from the ANC there were no witnesses  
3 that came forward to testify about a track  
4 record of noisy conditions or traffic and the  
5 like.

6 I'm scouring the record again with  
7 respect to this criteria here. An aspect of  
8 the test for whether or not the property is  
9 located so as not to be objectionable would  
10 include traffic conditions, and the Applicant  
11 in my mind came perilously close to fatally  
12 harming its case by not having an updated  
13 traffic study that would speak to current  
14 traffic conditions and projected traffic  
15 conditions for a population of 200. As noted  
16 they only have 72 students at the site right  
17 now and 31 faculty and are seeking to go up to  
18 200 with a cap of 40 faculty.

19 I came into the hearing very, very  
20 concerned about that element and whether they  
21 could meet the burden on that element, and as

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1 noted, I think they came very, very close to  
2 that being a fatal deficiency in their case,  
3 but what turned me around was two things.  
4 First, testimony by the Office of Planning  
5 that there had been no objectionable impacts  
6 given the historic use of the site at nearly  
7 equal numbers, specifically 197 for the Rock  
8 Creek International School and then 230 for  
9 Hardy prior to that, the International School  
10 having operated from 2000 to 2007.

11 And then that was corroborated, in  
12 a sense, by the testimony of Ms. Banerjee who  
13 lived directly across the street, who was,  
14 again, sort of an independent witness from OP,  
15 OP itself being an independent witness from  
16 the Applicant.

17 But taking the evidence in  
18 isolation and adding to each other, I was  
19 persuaded based on that that the Applicant  
20 establish that there would not be any  
21 objectionable traffic impacts. But, again,

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1 the Applicant came mighty close to not meeting  
2 that threshold by not having an updated  
3 traffic study with traffic counts and levels  
4 of service and the like.

5 With respect to other objectionable  
6 conditions, there was no evidence of any  
7 additional objectionable conditions. The  
8 requirement that the Applicant provide ample  
9 parking, the evidence is that there are 26 on-  
10 site spaces provided and that there are a  
11 number of folks, and I mentioned the student  
12 tutors, who arrive to the site by shuttle from  
13 American University. I think there's a two  
14 for three requirement here. So with a cap of  
15 40 they would be required to provide 26  
16 parking spaces, and I think we can talk about  
17 the 11 half-time trainees when we get to  
18 conditions.

19 Fifth requirement is that the  
20 relief can be granted without adversely  
21 affecting the use of neighboring properties

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1 in accommodation with the zoning regs. and  
2 zoning maps. This criteria was addressed in  
3 the Office of Planning report, and I don't  
4 want to repeat the entire report, but I think  
5 that the Applicant helped make its case both  
6 through its own testimony, but especially the  
7 Office of Planning report.

8 With that, why don't I stop and  
9 allow colleagues to weigh in with respect to  
10 the prima facie case, if you want to weigh in?

11 VICE CHAIRPERSON DETTMAN: Mr.  
12 Chairman, I have really nothing to add to your  
13 very thorough analysis of this case. I'm in  
14 support of the application, and I share you  
15 observation with respect to the Applicant  
16 coming very, very close to not meeting the  
17 burden with respect to the traffic information  
18 and the parking information.

19 But nonetheless, I think the  
20 Applicant has met their burden, and I think  
21 you did a great job of pulling together the

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1 testimony and what was in the record with  
2 respect to parking and traffic to get me to a  
3 level of comfort with respect to especially  
4 206.3.

5 I was just looking at this last  
6 filing that we received, number 37, Tab B, and  
7 it was the cross-examination question for  
8 Carrie Ritter from ANC Commission Haas. I  
9 thought it was interesting that it says the  
10 task force came up with eight recommendations,  
11 and just going through these recommendations,  
12 the school is actually doing just about all of  
13 them, you know.

14 So I think that just looking at the  
15 conditions that are carried over from the  
16 previous order and then looking at these  
17 recommendations, which the school is already  
18 doing, I think that they're dedicated to  
19 continuing to be a good neighbor.

20 So once again, I'm in support of  
21 the application.

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1                   CHAIRPERSON LOUD:    Thank you, Mr.  
2   Dettman, and I share in that opinion that you  
3   stated at the end, which is that the over  
4   arching impression that I got from the hearing  
5   and from the witnesses, even from the ANC, was  
6   that this is a school that's committed to  
7   being a good neighbor and is trying its best.

8                   With that said though, I think the  
9   ANC did submit a report, and the report was  
10  favorable to the application, except they did  
11  want the numbers capped at 100.

12                  I think that the rationale for  
13  capping it at 100 stated in the ANC report,  
14  that's our Exhibit 30, is that it would give  
15  the community some predictability and control  
16  over the matter.

17                  And I think while that's a laudable  
18  objective to have in mind, I think what we  
19  tend to look at is if there's some adverse  
20  impacts for having more than the 100.    I  
21  didn't see where there would be any.    I didn't

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1 see any evidence that there would be some  
2 genuine adverse impacts, particularly given  
3 the history of operating the site with numbers  
4 that approached that 200.

5 That notwithstanding, I think there  
6 are some conditions that we can talk about  
7 that hopefully will address some of the  
8 concerns that the neighborhood and the ANC  
9 have.

10 MEMBER MOLDENHAUER: Mr. Chairman  
11 and Mr. Dettman, I agree with your statements,  
12 and I just wanted to add one point. I think  
13 that some of the concerns over the ANC's  
14 limitation to 100 also should be pointed out  
15 by one of the testimonies from Representative  
16 Haas when she stated that her main concern was  
17 not if it was a public school where they would  
18 have had a 200 count. I think that the  
19 limitation of 40 faculty will also provide  
20 some, I guess, precautionary time frames for  
21 them, as you were saying, is the main concern.

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1                   And so I think that that also  
2 mirrors your comments on the concern of the  
3 traffic or the lack of evidence supporting any  
4 traffic concerns from the neighbors.

5                   CHAIRPERSON LOUD: Mr. Dettman, did  
6 you have further?

7                   VICE CHAIRPERSON DETTMAN: No. I  
8 just wanted to say one last comment, that I am  
9 in favor of the 200 students, and I know that  
10 the ANC is not, but you know, the ANC wanting  
11 some level of predictability, it's there. If  
12 you recall at the hearing, the real concern  
13 that at least I picked up on was that with 200  
14 students it was going to create, you know, 80  
15 or 90 staff people and kind of having a  
16 dialogue with the ANC Commissioner, I think we  
17 reached a point where it was understood that  
18 really if you're going to project out, you can  
19 only project out to 40 staff, and once they  
20 reach that, they'll need to come back to the  
21 BZA to provide, you know, another public forum

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1 for the community to express their concerns.

2 So, again, I am in favor of the 200  
3 students, but I think that the ANC does have  
4 that predictability. It's going to be there.

5 MEMBER MOLDENHAUER: Just to  
6 piggyback, I agree with you, and I believe  
7 that Mr. Tennis actually testified to that  
8 exact question saying that they would be  
9 capped at the 40 even if they were not able to  
10 modify their teaching methods, and I think  
11 they do have the predictability with the 200  
12 and the 40 faculty. So I would approve based  
13 on those numbers.

14 VICE CHAIRPERSON DETTMAN: And  
15 there was also one other comment from the ANC  
16 Commissioner where she would have preferred or  
17 she would prefer, you know, a graduated  
18 enrollment up to 200, and there's no way for  
19 us to, you know, require that, but through the  
20 testimony of Mr. Tennis, I think growing to  
21 200 students is really going to require them

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1 to look at their model and their student-to-  
2 teacher ratio. So I think just as the  
3 application evolves down the line and the  
4 school grows, I think that it's going to be a  
5 graduated enrollment over time.

6 CHAIRPERSON LOUD: Thank you both.

7 I think you made an excellent point regarding  
8 predictability that hopefully the ANC can  
9 carry away from our deliberations, you know,  
10 the point being as Mr. Tennis indicated if  
11 they have to adjust their model of educational  
12 delivery so that the teacher-student ratio  
13 changes, then that's what they're going to do  
14 because the 40 will not grow. It's capped;  
15 it's max. It can't exceed it without coming  
16 back to us and back through a community  
17 process as well.

18 That being said, then what I'd like  
19 to do is propose conditions that were a part  
20 of our record as well as one that was not  
21 specifically a part of the record, and there

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1 are kind conditions that I'd like to toss out  
2 for your consideration.

3 The first is that the approval be  
4 for a period of ten years.

5 The second is that the number of  
6 students shall not exceed 200 pre-K through  
7 five.

8 The third is that the number of  
9 staff shall not exceed 40.

10 Fourth is that the hours and days  
11 of operation shall be Monday through Friday  
12 from 8:00 a.m. to 6:00 p.m., and shall be for  
13 academic purposes.

14 The fifth is that there should be  
15 26 on-site parking spaces provided by the  
16 Applicant.

17 The sixth is that the Applicant  
18 shall maintain an ongoing liaison committee  
19 with the Foxhall Community Citizens  
20 Association and ANC-3D, and shall meet four  
21 times yearly to discuss and resolve community

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1 and school related issues. The referenced  
2 four meetings shall be open to members of the  
3 public.

4 The seventh condition is that the  
5 landscaping consisting of evergreen trees  
6 shall be maintained on the north parking lot,  
7 which is the Q street side of the property.

8 The eighth condition, which I think  
9 was presented to us by the ANC, is that an  
10 exception to the fourth condition is that the  
11 school may make the facility available to  
12 community organizations, including the  
13 Palisades Village and school-related  
14 activities, such as back-to-school night.

15 And then the final condition was  
16 not part of any of the record submissions by  
17 the parties, but derives from some testimony  
18 that I think perhaps Mr. Tennis and maybe Mr.  
19 Braun gave at the hearing regarding these 11  
20 student tutors that come from American  
21 University, and the testimony was that they

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1 currently use shuttle service from American  
2 University; that they're there every day, but  
3 they're only there a half day each.

4 So the condition with respect to  
5 that would be that the American University  
6 trainees that are a part of the program at  
7 Washington Lab continue to use shuttle service  
8 from and to the Foxhall campus.

9 VICE CHAIRPERSON DETTMAN: Mr.  
10 Chairman, I'm looking at the Office of  
11 Planning report, Exhibit 31, and they have a  
12 condition in here stating that -- I won't read  
13 the whole thins -- the Applicant shall  
14 implement a TMP which shall regulate vehicle  
15 access parking on the property.

16 And I know that the Applicant did  
17 submit a TMP as an attachment to Exhibit 27.  
18 So is that a condition that you wanted to  
19 include in the order?

20 CHAIRPERSON LOUD: Definitely.  
21 Thank you, Mr. Dettman. I think that the TMP

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1 OP referenced and Mr. Wells testified to would  
2 be very important to include in this  
3 application, first, because the applicant has  
4 agreed to do it, but then there's also some  
5 discussion in the TMP about what happens when  
6 the number reaches 125 and how additional  
7 measures have to be taken that don't  
8 necessarily have to be taken getting up to  
9 125.

10 So definitely, and thanks for  
11 bringing that up.

12 Is there any further discussion on  
13 the proposed conditions?

14 MEMBER MOLDENHAUER: I would just  
15 recommend for the, I guess, proposed condition  
16 number ten we include the TMP as number nine,  
17 that it would indicate any student tutors from  
18 American University or any other local  
19 universities just in case they decide to  
20 provide resources from other local  
21 universities at the same time.

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1 CHAIRPERSON LOUD: So the condition  
2 would be that all of the student tutors  
3 shuttle to and from the campus?

4 MEMBER MOLDENHAUER: All student  
5 tutors coming from local Washington  
6 universities obtain some sort of shuttle or  
7 community transit to and from campus.

8 CHAIRPERSON LOUD: Read that last  
9 part to me again. I got the part about the  
10 shuttle, but were there some other options  
11 like public transportation?

12 MEMBER MOLDENHAUER: I would say  
13 shuttle or community transit. That way you're  
14 not demanding that The Lab School actually  
15 provide a service, but if there's other  
16 recommended means of transportation from  
17 universities, they can take advantage of that.

18 CHAIRPERSON LOUD: Okay. A thought  
19 on your thought. Now, one of the distinctive  
20 features about the American University student  
21 tutors is that they come every day, and

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1 they're half a day.

2           So I guess I'm trying to avoid a  
3 situation where if they just have an  
4 occasional tutor come, you know, like once a  
5 week or something, are we trying to include  
6 that person in this universe of people that  
7 get there and leave by public transportation  
8 and community transit or shuttle?

9           MEMBER MOLDENHAUER: Mr. Chair, you  
10 make a good point, and I would not want to  
11 impose that on every single student tutor.  
12 Now, I wouldn't want to be over burdensome in  
13 identifying exactly how many hours the  
14 students -- do you have any other  
15 recommendations on how to modify that?

16           CHAIRPERSON LOUD: Of course, I  
17 don't have the language in my head, but I  
18 think conceptually it would be tutors that are  
19 going to be there every single day because I  
20 think if you're going to be there every single  
21 day, you're going to potentially create more

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1 of a parking impact, and that was the  
2 distinctive features, I think, about these,  
3 these 11.

4 So off the top of my head, that  
5 would be a qualifier, again, if there are just  
6 occasional tutors or if it slips into a gray  
7 area where they're connected to some kind of  
8 art program that may just be once a week or  
9 something.

10 I still think the issue about, you  
11 know, where's the threshold in terms of number  
12 of days or number of hours per week is still  
13 there. The volunteers, as I understand it,  
14 the American University people, they're not  
15 full time. They're kind of part time, and I  
16 think your last comment you alluded to people  
17 who are going to be there every single day.  
18 So that would kind of factor out the American  
19 University people because they're not full  
20 time.

21 So I'm just wondering do we have a

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1 threshold issue that we're not going to be  
2 able to nail down.

3 CHAIRPERSON LOUD: Well, it's my  
4 recollection from the testimony that the  
5 american University students are there every  
6 day.

7 VICE CHAIRPERSON DETTMAN: Oh,  
8 okay.

9 CHAIRPERSON LOUD: But they're only  
10 there half a day. That's the way I understood  
11 it. There are 11 of them there every day, but  
12 they're only there half a day. It almost  
13 translates into having six more FTEs or like  
14 five and a half more FTEs.

15 And so that would be different, I  
16 think than someone that's just going to be  
17 there sporadically. That's how I understood  
18 the testimony, and we can word it such that  
19 even as to those if they're not there every  
20 day, then this requirement wouldn't apply, but  
21 the testimony was that they currently get

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1 there by shuttle, and so I think that they  
2 should continue certainly to get there by  
3 shuttle since they've already made provisions  
4 for that.

5 VICE CHAIRPERSON DETTMAN: And the  
6 condition we're contemplating is to have the  
7 Applicant encourage them to continue using it  
8 or to require them to use it. I'm not  
9 certain.

10 CHAIRPERSON LOUD: I think it would  
11 be to require.

12 VICE CHAIRPERSON DETTMAN: Okay.  
13 I'm comfortable with that.

14 CHAIRPERSON LOUD: That would be my  
15 suggestion.

16 Ms. Moldenhauer, any final  
17 thoughts? None? Okay.

18 All right. So I think we've  
19 discussed the 206 criteria. We've discussed  
20 the conditions. I don't want to go back over  
21 all of that. I think it's there on the record

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1 to be made part of the written decision that  
2 we do execute.

3 I think what I'd like to do at this  
4 time if there's any uncertainty about any of  
5 what we've discussed or any clarity that we  
6 need to make, perhaps we can discuss it now,  
7 and then if not, we can just move to a motion.

8 (No response.)

9 CHAIRPERSON LOUD: Okay. then what  
10 I'd like to do is move approval of  
11 Application 17944 of The Lab School for  
12 special exception relief under Section 206 in  
13 the R-1-B as conditioned. Is there a second?

14 MEMBER MOLDENHAUER: Second.

15 CHAIRPERSON LOUD: The motion has  
16 been made and seconded. Is there further  
17 deliberation?

18 (No response.)

19 CHAIRPERSON LOUD: And hearing no  
20 further deliberation, all those in favor say  
21 aye.

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1 (Chorus of ayes.)

2 CHAIRPERSON LOUD: All those  
3 opposed?

4 (No response.)

5 CHAIRPERSON LOUD: Are there any  
6 abstentions or absentee ballots?

7 MR. MOY: Yes, sir, Mr. Chairman.  
8 We do have an absentee ballot from another  
9 participant in this application, and that is  
10 Mr. Hood, Mr. Anthony Hood, and his absentee  
11 vote is to approve the application with such  
12 conditions as the Board may impose.

13 So that would give a final vote of  
14 four to zero to one, on the motion of the  
15 Chair, Mr. Loud, to approve as conditioned,  
16 and there are ten conditions now, seconded by  
17 Ms. Moldenhauer, also in support of the  
18 motion, Mr. Dettman, the Vice Chair. So  
19 again, that would give a vote of four to zero  
20 to one.

21 CHAIRPERSON LOUD: Thank you, Mr.

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1 Moy.

2 I believe that this application had  
3 opposition. So I believe that this is not a  
4 summary decision; is that correct?

5 MS. NAGELHOUT: We can do what's  
6 known as a hybrid summary order where it's  
7 basically a summary order with a discussion of  
8 the enrollment issue, which I think was the  
9 only area of opposition.

10 MR. MOY: But that was from the  
11 ANC.

12 CHAIRPERSON LOUD: Okay. So then  
13 let's remain consistent. Sorry. This will be  
14 a hybrid decision as well, and is there  
15 anything further on this case?

16 MR. MOY: No, that would complete  
17 this case, Mr. Chairman.

18 CHAIRPERSON LOUD: Okay. Then if  
19 Board members are willing to, what I'd like to  
20 do is go straight into the hearing calendar  
21 for this morning. If you need a break, we can

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1 take a break.

2 Okay. So why don't we go straight  
3 into the hearing calendar?

4 Okay. I'm going to take a few  
5 seconds here to get my reading materials as  
6 well.

7 (Whereupon, at 11:13 p.m., the  
8 special public meeting was adjourned.)

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