

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

OCTOBER 20, 2009

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD, Chairman
MERIDITH MOLDENHAUER, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.
MARY NAGELHOUT, ESQ.

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The transcript constitutes the minutes from the Special Public Meeting held on October 20, 2009.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

WELCOME:

Marc D. Loud.4

SELF-HELP VENTURES FUND
APPLICATION 17403-B

Motion to Extend the Validity of the Order. . .7

VOTE TO APPROVE MOTION (4-0-1).9

THE PRESIDING BISHOP OF THE CHURCH OF JESUS
CHRIST OF LATTER-DAY SAINTS
APPLICATION 17889-A - ANC 4C

Motion for Reconsideration from ANC 4C and
Carter Barron East Neighborhood Association . 11

VOTE TO DENY MOTION OF ANC 4C (3-0-2) 34

VOTE TO DENY MOTION OF CBENA (3-0-2). 35

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

10:01 a.m.

CHAIRPERSON LOUD: Good morning.

This meeting will please come to order.

Good morning, ladies and gentlemen. This is the October 20th public meeting of the Board of Zoning Adjustment of the District of Columbia. My name is Marc Loud, chairperson. Joining me today from the Zoning Commission is its chairman, Mr. Anthony Hood. To my left, Board Member Meridith Moldenhauer, Mr. Clifford Moy, secretary of BZA, Ms. Lori Monroe and Ms. Mary Nagelhout, both from the Office of the Attorney General. And then to the far left Ms. Beverley Bailey, zoning specialist here in the Office of Zoning.

First let me apologize for our being and starting late this morning. It's normally our desire to get out there promptly at 9:30 a.m. We were not able to this morning because one of the members of the Board is not

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1 present with us this morning and ran into some
2 complications. And so we were awaiting the
3 quorum this morning. So, that is the reason
4 for our coming out late. We do apologize that
5 we're getting started late this morning.

6 Copies of today's meeting agenda
7 are available to you and are located to my
8 left in the wall bin near the door.

9 We do not take any public
10 testimony at our meetings unless the Board
11 asks someone to come forward.

12 Please be advised that this
13 proceeding is being recorded by a court
14 reporter and is also Web cast live.
15 Accordingly, we must ask you to refrain from
16 any disruptive noises or actions in the
17 hearing room. Please turn off all beeper and
18 cell phones.

19 Does the staff have any
20 preliminary matter?

21 MR. MOY: Not at this time, Mr.
22 Chairman.

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1 CHAIRPERSON LOUD: Thank you, Mr.
2 Moy. If not then, let's proceed with the
3 agenda.

4 MR. MOY: Yes, sir. Good morning,
5 Mr. Chairman and members of the Board.

6 The first application for a
7 decision, I believe, is a motion to extend the
8 validity of an order to application No. 17403-
9 B of Self-Help Ventures Fund pursuant to
10 Section 3130 of the Zoning Regulations. The
11 original application was approved on December
12 20th, 2005. And at that time it was formerly
13 known as Walnut Street, LLC on behalf of 917
14 M Street, LP in care of Philip Abraham.

15 If the Board will recall, at its
16 public meeting on October 6th, 2009, the Board
17 on its own motion continued its decision to
18 October 20th. The purpose was to allow
19 additional time for the applicant to file
20 documents attendant to the specific criteria
21 under Section 3130.

22 That filing is identified in your

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1 case folders as Exhibit 38, dated October
2 14th, 2009.

3 The Board is to act on the merits
4 of the request to extend the validity of the
5 order pursuant to the time limits on Board
6 action under Section 3130.

7 And that completes the staff's
8 briefing, Mr. Chairman.

9 CHAIRPERSON LOUD: Thank you, Mr.
10 Moy. I believe that the filings that we were
11 looking for were subsequently submitted into
12 the file.

13 I think we're ready to make a
14 decision this morning. And I'd like to ask
15 Board Member Moldenhauer if she would lead us.

16 MEMBER MOLDENHAUER: Thank you,
17 Chairman. What we have is we received the
18 additional documentation, which is marked as
19 our Exhibit 38, which provided the DCRA
20 printout of the building permit filed on
21 6/20/07. And in addition to that, additional
22 evidence and documentation of email

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1 correspondence back and forth with the
2 applicant and DHCD.

3 Based on that, I would recommend
4 approval of the extension of time under
5 3130.6, stating that good cause has been
6 shown, that under 3130.6(a) that adequate
7 notice has been given, and that under the new
8 terminology that there has been substantial
9 evidence based on these additional submissions
10 to show that there's been a need for an
11 extension based on project finance, and also
12 the need for an extension based on inability
13 to secure all required government agency
14 approval based on the permit issue.

15 So based on the above, I would
16 make a motion to approve the time extension.

17 CHAIRPERSON LOUD: Thank you. I
18 agree with you. I think the original
19 affidavit from the project manager, which has
20 now been buttressed by the emails from Mr.
21 Wiley, I think that are in the record that go
22 to the financing issue, and the copy of the

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1 original permit application filed I think just
2 help to further strengthen the substantial
3 evidence test. So, I fully support it.

4 And did you make your motion?

5 MEMBER MOLDENHAUER: Yes, I
6 believe I did, but I can make my motion again.

7 I make a motion that we approve
8 the request for extension of time under
9 3130.6, and is there a second?

10 CHAIRPERSON LOUD: Motion
11 seconded.

12 Motion's been made and seconded.
13 Is there further discussion?

14 (No audible response.)

15 CHAIRPERSON LOUD: Hearing none,
16 all those in favor of the motion, say aye.

17 Aye.

18 VICE-CHAIRPERSON DETTMAN: Aye.

19 CHAIRPERSON LOUD: All those who
20 oppose?

21 (No audible response.)

22 CHAIRPERSON LOUD: Are there any

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1 abstentions? I'm sorry, are there any
2 absentees?

3 MR. MOY: Yes, sir. Before a give
4 a final vote, we have two absentee ballots
5 from two members who participated on the
6 application and the motion.

7 The first absentee vote is from
8 Mr. Michael Turnbull. And his absentee vote
9 is to approve with such conditions as the
10 Board may impose.

11 The second absentee vote is from
12 Shane Dettman and his absentee vote is to
13 approve with such conditions as the Board may
14 impose.

15 So that would give a total vote of
16 4 to 0 to 1 to approve the request to extend
17 validity of the order on the motion of Ms.
18 Moldenhauer, seconded by Mr. Loud, in support
19 of course, Mr. Dettman and Mr. Turnbull, and
20 no other board member participating. So
21 again, the total vote, final vote, 4-0-1.

22 CHAIRPERSON LOUD: Thank you, Mr.

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1 Moy. Is there anything further in this case?

2 MR. MOY: No, sir.

3 CHAIRPERSON LOUD: Okay. Why
4 don't you call the next case? And I believe
5 you're going to call those cases together?

6 MR. MOY: Yes, sir.

7 CHAIRPERSON LOUD: Okay.

8 MR. MOY: What's before the Board
9 are two separate motions for reconsideration
10 on the same application. These are motions
11 from ANC 4C and from Carter Barron East
12 Neighborhood Association, or CBENA. And this
13 is to application No. 17889-A of the Presiding
14 Bishop of the Church of Jesus Christ of
15 Latter-Day Saints, pursuant to Section 3126.

16 The approved application is
17 pursuant to 11 DCMR 3104.1 for a special
18 exception under 1553 to construct a new non-
19 residential use consisting of a two-story
20 church on a vacant lot in the Sixteenth Street
21 Heights Overlay and a variance pursuant to
22 3103.2 from the off-street parking

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1 requirements under Section 1553.2 in the
2 SSH/R-1-B District at premises 4901 16th
3 Street, N.W., Square 2710, Lot 15.

4 The two motions that are in your
5 case folders this morning, Mr. Chairman, the
6 first from ANC 4C. This document is date
7 stamped September 9th, 2009, Exhibit 61. The
8 second motion is from the Carter Barron East
9 Neighborhood Association, dated stamped
10 September 10th, 2009, identified as Exhibit
11 62.

12 The third and final filing in your
13 case folders, Mr. Chairman, is a response from
14 the property owner, the applicant, dated
15 September 16th, 2009, identified as Exhibit
16 63, and is timely filed.

17 In conclusion, the Board is to act
18 on the merits of the motions for
19 reconsideration and rehearing from both ANC 4C
20 and CBENA pursuant to 3126.

21 And that completes the staff's
22 briefing, Mr. Chairman.

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

3 So what we have before us in our
4 Exhibits 61, 62 and 63, the first two being
5 motions for reconsideration, and the final one
6 being in opposition from the applicant.

7 I think since you've called both
8 cases together, what I'd like to do is go
9 through the points that are raised in the
10 respective motions, and I'll do that
11 separately. In other words, I'll go over the
12 points that are raised in Exhibit 61
13 separately, the issues that are raised in
14 Exhibit 62. And then what I'd like to do,
15 because I think there's a tremendous of
16 overlap, is walk through my thoughts on how
17 our original decision addressed each of those
18 points. And for purpose of that discussion
19 I'm not going to go separately through each
20 movant's position, just combine their bottom
21 line issue.

22 So, first let me start with the

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1 ANC. This is our Exhibit 61. And they raise
2 a number of issues, at least two of which are
3 not land use issues, zoning issues, so I'll
4 mention those first to get those out of the
5 way. They talk about infrastructure, and
6 water run-off issues, and sewer availability,
7 and who's going to pay for that and so on.
8 And that's not a zoning issue for our
9 consideration, so we won't go into that.

10 Secondly, they raise an issue
11 about excavation, construction and structural
12 damage to existing residential homes. Again,
13 this is not a BZA issue, so we won't go into
14 that.

15 But these are the issues that they
16 raise that are land use-related zoning issues.
17 First, the decision and order did not note or
18 take into consideration the other issues and
19 concerns verbally testified at the hearing by
20 the ANC 4C.

21 Secondly, that the BZA did not
22 give great weight to the ANC's report.

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1 Third, that there is an issue of
2 pedestrian safety for Piney Branch Road
3 residents. There are no sidewalks for
4 pedestrians on either side. Somewhat
5 unrelated, but no date from DDoT on sidewalk
6 construction.

7 Next, that the 16th Street Sunday
8 traffic impact is we erred in not
9 appropriately taking that into consideration
10 under the adverse impact standard that we
11 applied to the case. There are 14 existing
12 churches on 16th Street, according to the ANC,
13 with the same worship service as the Latter-
14 Day Saints, and two worship services and 246
15 congregants creates a traffic back up on
16 Sunday morning.

17 And then the final concern from a
18 zoning standpoint of the ANC is similar to the
19 16th Street Sunday traffic where they're
20 alleging that it also creates a neighborhood
21 parking displacement and pedestrian safety in
22 the neighborhood.

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1 With respect to Exhibit 62, which
2 is the Motion for Reconsideration of the CBENA
3 group, they raise the following arguments:

4 First, that the decision is
5 erroneous because the BZA did not provide an
6 analysis of why it adopted the applicant's
7 statements.

8 Secondly, that the decision is
9 erroneous because the BZA provided no analysis
10 of how the findings of fact met the legal
11 standards set out by the Board.

12 Thirdly, that the BZA stated the
13 law correctly to determine the amount of
14 required off-street parking; that is, that we
15 articulated the proper legal standard, the
16 maximum number who can use the facility at any
17 one time, etcetera, etcetera. But we turned
18 around and applied the law incorrectly by
19 allowing the applicant to meet a parking
20 standard based on what the CBENA movant calls
21 the maximum attendance rate. And here the
22 movant goes into a discussion regarding the

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1 capacity being determined by the number of
2 people that could use the facility at one
3 time. In this case, the maximum number that
4 could use the facility, per the movant's
5 argument, at one time is both congregations
6 simultaneously, one in the sanctuary, the
7 other either being in the classrooms or during
8 the transition from one service to another.
9 There would be some overlap.

10 Fourthly, that the BZA erred in
11 basing the parking requirement of 72 solely on
12 the applicant's testimony that only 70 people
13 would drive and that the BZA does not explain
14 why 72 is an acceptable number.

15 Fifth, the BZA erred in relying on
16 the applicant's evidence as to the number of
17 cars driving to the facility.

18 Sixth, that the findings were
19 unclear as to the use of the facility during
20 the week and erroneously characterized use as
21 limited, where the findings are confusing.

22 Seventh, that the BZA did not

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1 address the DDoT's concern about proposed
2 parking access points at Piney Branch and
3 Emerson.

4 Eighth, that the BZA erred in
5 using the substantial detriment standard for
6 traffic impact on neighboring properties when
7 the proper standard would have been the
8 adverse impact standard.

9 Ninth, that the decision does not
10 reflect the scope of participation of the ANC
11 and the CBENA group.

12 And finally, that the decision did
13 not identify the persons in support that
14 testified at the hearing and neither did it
15 identify the persons in opposition.

16 And on these grounds, both the ANC
17 and the CBENA group contend that the decision
18 of the BZA was erroneous. They would like to
19 see it reconsidered and presumably by
20 reconsidered, ultimately reversed.

21 With respect to both movants'
22 arguments, I have divided their arguments into

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1 several sub-headings. And based on my review
2 of the decision that we issued August 28th, I
3 believe, as well as the deliberation that we
4 had in the case, which was a very, very fully
5 fleshed out deliberation, I'm of the opinion
6 that the decision that we supported is
7 supported by substantial evidence in the
8 record and that there is no reason to
9 reconsider our decision.

10 I think that the issues raised by
11 the movants fall into several categories.
12 First is parking spaces, second would be
13 pedestrian safety, third would be the adverse
14 traffic impact, fourth would be the issue of
15 the adverse impact standard versus the
16 substantial detriment standard, and fifth
17 would be the ANC great weight issue.

18 Along the way they raise some
19 other issues about why the BZA chose to adopt
20 the testimony, you know, of one party over
21 another party. I think the courts are very
22 clear that the BZA is empowered to ultimately

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1 credit testimony and credit evidence without
2 articulating in the written record or written
3 decision why we've that. Courts have gone on
4 to say that you would have decisions that
5 stretch into the hundreds and hundreds of
6 pages if a body were required to do that. So,
7 I'm not going to go into that in very great
8 detail. I just wanted to respond to it.

9 Also, I'm not going to go into
10 very great detail the issue of the BZA not
11 addressing the DDoT's concern about the
12 proposed parking access point. During the
13 course of the hearing and very clearly at the
14 deliberation we were cognizant of the fact
15 that the DDoT had indicated that there was a
16 concern about a proposed parking access point
17 on Piney Branch near the Piney Branch and
18 Emerson intersection. But the evidence showed
19 that the applicant modified what was
20 originally proposed and located the access
21 point about 60 feet away from the intersection
22 to improve the line the sight. That was a

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1 part of our record. It was something that we
2 discussed at the deliberation. So, I won't
3 spend a lot time going into it now.

4 Now, to the substance of what the
5 movants have raised. On the parking spaces,
6 essentially the movants argue that the
7 standard that was used by the Board for
8 determining parking was an incorrect -- well,
9 the standard was correct, but the application
10 was incorrect. In other words, that the
11 finding of 72 parking spaces based on maximum
12 attendance rate was an erroneous application
13 of the standard. Upon my review of the
14 decision and the deliberation underlying the
15 decision, I don't find that to be the case.
16 When we went over the parking spaces and how
17 parking spaces are calculated and the number
18 of parking spaces that would be appropriate
19 for this project, the Board looked at a number
20 of different pieces that were in evidence.

21 First, we took a look at chapter
22 21. And under chapter 21 and its calculation

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1 of parking spaces for a church, only 28 spaces
2 were required, and that calculation is based
3 on the size of the sanctuary and a formula
4 that's used. So the applicant in this case
5 provided 72. Chapter 21 only requires 28. We
6 further looked at a study that was submitted
7 by the applicant based on ITE industry data
8 for churches. And that study suggested or
9 concluded that 46 spaces would be the
10 appropriate number of spaces for a 279-seat
11 sanctuary. That was in the traffic impact
12 study report, which was Exhibit 30 at the
13 underlying record, page 26 of the exhibit.
14 And they used a formula, as I recall, that was
15 .16 times the number of seats in the
16 sanctuary, plus one, so that they came out
17 with a total of 45 parking spaces. And again,
18 in this case the applicant provided 72 parking
19 spaces, in addition to which there was a
20 parking utilization study that the applicant
21 provided, dated February 9 of '09. And that
22 showed that there were 130 parking spaces

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1 available within a two-block radii of the
2 proposed project on Sunday between 10:00 a.m.
3 and 11:00 a.m.

4 All of that formed the basis of
5 our record that we looked at and deliberated
6 on in reaching the conclusion that 72 parking
7 spaces supplied a sufficient number of spaces
8 for the maximum number of people who could use
9 the facility. In other words, we determined
10 the maximum number who could use the facility
11 by taking a look at chapter 21, taking a look
12 at the ITE standard, taking a look at the
13 available parking spaces in the surrounding
14 two-block radii. And based on that, and based
15 on testimony of the applicant as well, came to
16 the conclusion that 72 spaces met the
17 standard. So that's my response to the
18 parking space discussion.

19 With respect to pedestrian safety,
20 which again was raised in both motions for
21 reconsideration, there was evidence in the
22 record; it was applicant's Exhibit 30, pages

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1 32 and 33, that there would be a level of
2 service B for pedestrians at the intersections
3 that were in play in the evidence and the
4 discussion around that evidence. And that was
5 a part of our record and was perfectly
6 permissible for the Board to look at that,
7 evaluate it and conclude that it was
8 persuasive evidence.

9 With respect to the adverse
10 traffic impact with respect to Sundays, the
11 applicant's testimony was that 260 people
12 would use the church. In addition to that
13 being part of the evidence, there was the
14 March 2009 study, which was at Exhibit 30,
15 page 24, which showed that at Emerson and
16 Piney Branch, which is that critical
17 intersection there, that the maximum capacity
18 in one hour is 167 vehicles, that Emerson
19 would have only 36 vehicles in an hour and
20 Piney Branch would have 45 vehicles in an
21 hour. The evidence further showed; and this
22 is at the applicant's Exhibit 56, pages 25 and

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1 26, all of which was brought up during the
2 deliberation, that the church project would
3 only add 87 new vehicles to Sunday traffic at
4 16th and Emerson.

5 I've spoken about the DDoT access
6 point question with respect to the adverse
7 impact versus substantial detriment
8 discussion. Just by way of background, the
9 relief sought in the underlying case was both
10 for a special exception and for a variance,
11 a special exception under 1553, Sixteenth
12 Street Heights Overlay, and then the variance
13 was from section 1553.2(b)(2), because there
14 was a parking lot located between the
15 principal building and a public right of way
16 and you had to gain entrance to the parking
17 lot by crossing the public right of way, and
18 the applicant sought a variance from that
19 because there was no other way to gain
20 entrance.

21 So with respect to special
22 exception, the standard is adverse impact.

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1 It's written into our regulations as such.
2 And in all of our cases the adverse impact is
3 the standard for a special exception.

4 With respect to the part of the
5 applicant's case that required a variance, one
6 of the three prongs for the variance test is
7 substantial detriment. So when the Board, in
8 our written decision and the underlying
9 deliberation relative to our written decision,
10 talked about substantial detriment, we were
11 talking about it in connection with the
12 variance requirement that related to the
13 applicant's case for relief. When we talked
14 about adverse impact, we were talking about it
15 with respect to the special exception relief
16 sought by the applicant. So I think there may
17 have been some confusion about that and I
18 don't pass judgment on whether ultimately the
19 burden was softened for the applicant by
20 moving to the substantial detriment standard.

21 The point from the BZA's
22 perspective, from my perspective, is that

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1 that's the law and we have to follow that law.
2 If a party seeks a variance, one of the three
3 things that we have to look at is whether
4 they've shown that there's no substantial
5 detriment to the public good. That word
6 "substantial" is a little higher than not
7 having a word there, but it is what it is.
8 That's what the law requires.

9 With respect to the ANC great
10 weight issue and whether or not the Board
11 should have given the ANC great weight in this
12 case, we did receive a report from the ANC.
13 It was our Exhibit 44. The report referenced
14 a number of concerns of the CBENA group. In
15 fact, I think the report talked about the
16 CBENA president who also appeared before us as
17 part of the underlying hearing, raising a
18 number of concerns about parking, about
19 pedestrian safety, about the traffic
20 congestion; in fact, the very things that I've
21 just gone over and that were in the decision
22 and were absolutely covered in detail in the

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1 deliberation. And the Board made it a point
2 to address each of these points with respect
3 to the deliberation and they were mentioned in
4 the written decision.

5 The ANC's report mentioned
6 concerns from a zoning land use perspective.
7 They mentioned concerns about the increase of
8 vehicular traffic. We addressed that in the
9 deliberation. We addressed that in the
10 decision. They mentioned concerns about
11 parking. During the hearing we went into the
12 parking issue with respect to what chapter 21
13 required, what the applicant was proposing,
14 what the ITE standard was, what the parking
15 availability would be in the surrounding two-
16 block area.

17 So, these issues were addressed.
18 The size and the scale of the proposed
19 building, we talked about that in the
20 deliberation. There was testimony from the
21 Office of Planning in that regard. So there
22 was an acknowledgement of these issues in the

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1 deliberation and where it was appropriate to
2 include all of these details in the decision,
3 they made their way into the decision.
4 Clearly, you can't include every single thing
5 that was part of the transcript in the written
6 decision, but all of the issues were
7 discussed.

8 And with that, I'll cease my
9 remarks and turn it over to colleagues, or to
10 colleague.

11 MEMBER MOLDENHAUER: Thank you
12 very much. I actually did not sit on this
13 case initially, but I have gone through and
14 read the record. And I believe that Chairman
15 Loud's summary of the facts and of the
16 analysis were exceptionally thorough and do go
17 through all the different issues. I agree
18 with him on predominantly all the points,
19 especially the fact that there's been no
20 really new issues raised on this Motion for
21 Reconsideration. And thus, for that major
22 issue, I would believe that it would be proper

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1 to deny the Motion for Reconsideration.

2 The only element that I would like
3 to address would be that in my review of the
4 ANC report, it appears as though they do
5 submit all of the information that would be
6 necessary, and that they incorporate in their
7 last sentence all of the comments. And thus,
8 you know, that would be given great weight.
9 But from my review of the analysis and the
10 order, that was provided. And so I just
11 wanted to make that one distinction in my
12 review of the facts.

13 But other than that, I agree with
14 everything that was mentioned by Chairman Loud
15 and I would agree. And if there's any
16 additional discussion.

17 CHAIRPERSON LOUD: Well, there's
18 no additional discussion from me. I think
19 sort of where I stand on the issue has been
20 put out there.

21 I think that in cases like this, I
22 always want to make sure that the ANC's point

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1 of view is heard, that when they've organized
2 witnesses in an effort to either support it or
3 to oppose it, that we are cognizant of that.
4 We take it into consideration. It's a part of
5 our deliberation and a part of our discussion.

6 I think that happened in this
7 case. I think also the rules regarding ANC
8 participation and whether or not they're given
9 great weight, and the court cases that have
10 come out of that have talked a lot about the
11 great weight going to the written position of
12 the ANC, not to the subsequent oral testimony
13 at the hearing. In this case it could have
14 been more clear that the ANC was taking
15 specific issues and concerns and making those
16 a part of its written Exhibit 44. That wasn't
17 clear to me, but I leave open the possibility
18 that my interpretation is not the only correct
19 interpretation. It appeared to me that
20 Exhibit 44 incorporated the concerns of the
21 CBENA group and its president and didn't
22 necessarily reflect the issues and concerns

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1 that the ANC brought into and were raising in
2 its Exhibit 44 and voted on and were placing
3 before us in terms of traffic.

4 But out of an abundance of
5 caution, my larger point is that we did
6 address all of those concerns. And whether
7 the concerns were raised by the CBENA group,
8 by the ANC, or by both, I think we went out of
9 our way to be real specific, because it was a
10 really full record and both sides did a really
11 thorough job of presenting cases. And so
12 again, not to just become redundant at this
13 point, but I think we did address all of the
14 concerns that the ANC raised, both at the
15 hearing and that were raised in its Exhibit 44
16 through the remarks of Ms. Thompson from the
17 CBENA group. But in terms of making that ANC
18 report a great-weight report, I'm also of the
19 opinion that the report just needs to be real
20 clear that the ANC has a set of issues that
21 are zoning-related issues as a part of the
22 report and that the ANC as a whole voted on

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1 those issues, and those issues are articulated
2 in writing for us to be real clear about it.

3 So with that, then what I would
4 like to do, and I think as I understand it, we
5 need to have separate motions. Is that
6 correct?

7 (No audible response.)

8 CHAIRPERSON LOUD: All right. So,
9 what I'd like to do first then is move that we
10 deny the Motion for Reconsideration filed by
11 the ANC, which is our Exhibit 61, if I'm not
12 mistaken. Yes, our Exhibit 61. So, I'd like
13 to move for denial of the Motion for
14 Reconsideration filed by ANC 4C.

15 MEMBER MOLDENHAUER: I second.

16 CHAIRPERSON LOUD: All right.
17 Motion's been made and seconded. Is there
18 further discussion?

19 (No audible response.)

20 CHAIRPERSON LOUD: Hearing none,
21 all those in favor say aye. Aye.

22 MEMBER MOLDENHAUER: Aye.

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1 CHAIRPERSON LOUD: All those
2 opposed?

3 (No audible response.)

4 CHAIRPERSON LOUD: Are there any
5 abstentions?

6 (No audible response.)

7 MR. MOY: Yes, sir. Mr. Chair,
8 before I give the final vote, there is an
9 absentee ballot from Shane Dettman, who
10 participated on the application. And this
11 absentee vote for the Motion for
12 Reconsideration filed by ANC 4C is to deny the
13 motion. So that would give a final vote of 3
14 to 0 to 2 on the motion of the Chair, Mr.
15 Loud, seconded by Ms. Moldenhauer to deny the
16 Motion for Reconsideration filed by ANC 4C, no
17 other board member or Zoning Commissioner
18 participating. So again the final to deny, 3
19 to 0 to 2.

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

22 I would now like to turn to the

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1 second Motion for Reconsideration. That's the
2 motion if the CBENA group that's our Exhibit
3 62. And I would like to denial of the Motion
4 for Reconsideration filed by the CBENA group.

5 Is there a second?

6 MEMBER MOLDENHAUER: I second.

7 CHAIRPERSON LOUD: Motion's been
8 made and seconded. Is there further
9 discussion?

10 (No audible response.)

11 CHAIRPERSON LOUD: Hearing none.

12 All those in favor say aye. Aye.

13 MEMBER MOLDENHAUER: Aye.

14 CHAIRPERSON LOUD: All those who
15 oppose?

16 (No audible response.)

17 CHAIRPERSON LOUD: Are there any
18 abstentions or absentees?

19 MR. MOY: Yes, sir. Again, we
20 have an absentee ballot from Shane Dettman,
21 who participated. And his absentee ballot is
22 to deny the Motion for Reconsideration filed

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1 by CBENA group. Again, that would give a
2 total vote, final vote of 3 to 0 to 2 on the
3 motion of the Chair, Mr. Loud, to deny the
4 Motion for Reconsideration filed by the CBENA
5 group, seconded by Ms. Moldenhauer, in support
6 of course by absentee, Mr. Dettman. So again
7 3 to 0 to 2.

8 CHAIRPERSON LOUD: Thank you, Mr.
9 Moy. Is there anything further in this case?

10 MR. MOY: No, sir.

11 CHAIRPERSON LOUD: Okay. Then I
12 think the special public meeting is adjourned.

13 (Whereupon, the meeting was
14 adjourned at 10:35 a.m.)
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