

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY,
FEBRUARY 16, 2010

The Regular 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, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD	Chairman
SHANE L. DETTMAN	Vice Chairman (NCPC)
MERIDITH MOLDENHAUER	Board Member
NICOLE SORG	Board Member

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

This transcript constitutes the minutes from the Public Meeting held on February 12, 2010.

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

WELCOME:

Marc Loud, Chairman 3

FRANKLIN COMMONS INTERGENERATIONAL DAY CARE

APPLICATION NO. 18013 - ANC-5C:..... 4

Ex. 37 - Applicant Filing..... 5

Board Deliberation:..... 6

Motion to approve Application 18013..... 13

VOTE: 4-0-1 to grant the application..... 14

PETER AND LESLIE SHIELDS

APPLICATION NO. 18021 - ANC-3E:..... 16

Ex. 33 - Revised Plans/Narrative..... 17

Ex. 32 - ANC-3E Letter..... 17

Ex. 34 - Rosenthal Email..... 17

Board Deliberation:..... 19

Motion to approve Application 18021..... 27

VOTE: 3-0-1 to grant the application..... 27

ADJOURN:

Marc Loud, Chairman 28

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

2 9:42 a.m.

3 CHAIRMAN LOUD: Good morning. This
4 Public Meeting will, please, come to order.
5 Ladies and gentlemen, this is the February 16th
6 Public Meeting of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Marc Loud, Chairperson
9 and joining me today are Vice Chairman, Shane
10 Dettman, to my right representing the National
11 Capital Planning Commission, Meridith
12 Moldenhauer, BZA Mayoral Appointee, Ms. Nikki
13 Sorg, BZA Mayoral Appointee.

14 To her left is Mr. Clifford Moy,
15 Secretary of BZA, Ms. Lori Monroe, Office of
16 the Attorney General. And on my far left is
17 Ms. Beverley Bailey, Zoning Specialist here in
18 the Office of Zoning.

19 Copies of today's meeting agenda
20 are available to you and are located to my
21 left in the wall bin near the door.

22 We do not take any public testimony

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1 at our meetings, unless the Board asks someone
2 to come forward.

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

9 Please, turn off all beepers and
10 cell phones.

11 Does the staff have any preliminary
12 matters? And if there are no preliminary
13 matters, let's proceed with the agenda.

14 MR. MOY: Yes, sir. Good morning,
15 Mr. Chairman, Members of the Board. The first
16 of two cases for decision this morning in the
17 Special Public Meeting is Application No.
18 18013 of Franklin Commons Intergenerational
19 Day Care Center, Inc., pursuant to 11 DCMR
20 3104.1, for a special exception for a child
21 development center. This is for 50 children
22 and 14 staff under section 205 in the R-3

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1 District at premises 119 Franklin Street, N.E.

2 The property is in Square 3505, Lot 802.

3 If the Board will recall, on
4 January 19, 2010, the Board completed public
5 testimony, closed the record and scheduled its
6 decision on February 9th which was rescheduled
7 to today, February the 16th.

8 The Board requested additional
9 information to supplement the record. This is
10 from the applicant. The applicant made its
11 timely filing, that is in your case folders
12 identified as Exhibit 37. The filing is dated
13 February 2, 2010. The Office received it on
14 February 3, 2010.

15 The Board is to act on the merits
16 of the requested special exception request
17 from section 205. The Board also allowed the
18 applicant to submit supplemental information
19 that may amend the application for supporting
20 either an additional area variance or an
21 additional special exception relief.

22 That completes the staff's

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1 briefing, Mr. Chairman.

2 CHAIRMAN LOUD: Thank you, Mr. Moy.

3 I believe we are going to be led in the
4 deliberation by my colleague, Mrs.
5 Moldenhauer.

6 MEMBER MOLDENHAUER: Thank you,
7 Chairman. We have an Application No. 18013
8 for 119 Franklin Street for the Franklin
9 Commons Intergenerational Children's
10 Development Center.

11 There is a request for both special
12 exception relief, pursuant to 205, to permit a
13 child development center on this project and
14 also for an area variance to off-street
15 parking requirements contained in section
16 2101.1 of 1011 to reduce the parking
17 requirement for the proposed use from four to
18 zero.

19 I'll first start with the special
20 exception relief under 205 for the child
21 development center. We received extensive
22 information from the applicant on the property

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1 and they also submitted additional information
2 to us in regards to the relief requested and
3 the extent of the different services that will
4 be provided at the center.

5 The special exception relief
6 provides that the center has the capabilities
7 of meeting all applicable codes and licensing
8 requirements from OSSE. And we have a letter
9 which is our Exhibit No. 32 from OSSE
10 indicating that they have established all
11 licensing requirements and that they would
12 approve this request.

13 We also have information regarding
14 the center should not be located or designated
15 to create any objectionable traffic
16 conditions. We have information from OP that
17 they don't believe that any additional traffic
18 conditions would exist.

19 The applicant presented sufficient
20 statements during the hearing stating that
21 most of the children will come from the
22 Franklin Commons Apartment Buildings or

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1 neighboring areas, that the children will be
2 walking and there won't be additional traffic.

3 In addition to that, two of the
4 staff members or potentially more would also
5 be local Franklin Commons residents and thus
6 additionally not contributing to any traffic
7 conditions.

8 The center for the facility shall
9 provide sufficient off-street parking to meet
10 the reasonable needs of the teachers,
11 employees and visitors. I believe that this
12 is satisfied. Also a police report addresses
13 that, however, there is also additional
14 aspects of this that we will discuss in a
15 moment in regards to the variance for off-
16 street parking.

17 The center and facility will
18 include any outdoor space provided and there
19 is an outdoor playground that already exists
20 at the Franklin Commons property. And that
21 under 205.6, the Board shall require any
22 special treatment for design or screening of

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1 planting in the area, and I don't believe that
2 would be necessary as is confirmed by OP's
3 report.

4 They also addressed all the
5 additional elements of section 205, which I
6 won't go into detail, but I will incorporate
7 through OP's report.

8 And I believe that they have
9 satisfied all of those requirements.

10 In the variance for off-street
11 parking, the uniqueness for a variance, I
12 believe, in this case, is not the specific
13 aspect that it was a PUD, but rather that the
14 property was built as is and that in reviewing
15 whether or not they already have 100 parking
16 spaces for the 100 units.

17 And in reviewing the additional lot
18 and area where potentially additional parking
19 could be created, there really is no other
20 spaces that can be developed for parking on
21 this site without taking away from some of the
22 amenities that were already provided.

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1 In addition to that, confluence of
2 factors and the fact that they have actually,
3 you know, pursued additional off-street
4 parking, they have provided us some additional
5 information, Exhibit No. 37, which shows that
6 they have contacted multiple neighboring
7 facilities, such as the Trinity College and
8 also they have contacted the Shaed Elementary
9 School to try to contact them regarding
10 additional off-street parking.

11 And that was both of those local, I
12 guess, additional communities stated that they
13 would not be able to provide parking.

14 So I think that based on that
15 confluence of factors, one, the fact that
16 there is no additional expandable space on the
17 property and, two, the fact that there is no
18 ability for them to get off-street parking,
19 provides uniqueness.

20 The practical difficulty is that
21 they would not be able to provide off-street
22 parking by purchasing it from a local neighbor

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1 and I think that the intent of the Zoning Plan
2 would not be affected negatively because it's
3 actually something that would be positive for
4 the public good.

5 A child development center in this
6 area is needed. There was sufficient
7 testimony from the applicant about the after
8 school specials and things of that effect that
9 would help the local children in the area and
10 we think that that would be in support of the
11 Zoning Plan.

12 We have the application. OP states
13 that the ANC-5C had a regular scheduled
14 meeting on November 17th and recommended
15 approval.

16 And based on the above, I would
17 open up any additional discussion.

18 CHAIRMAN LOUD: Thank you, Board
19 Member Moldenhauer. I think that was an
20 excellent summary of both the facts in the
21 variance test and the confluence of factors
22 analysis, in particular.

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1 I agree with your analysis overall
2 and specifically that the confluence of
3 factors and the inability of the applicant,
4 after making an extensive outreach effort, to
5 identify additional parking and that
6 contributing to some already existing
7 uniqueness around a number of spaces on site
8 to make it a confluence of factors around
9 uniqueness. Which would have been the only
10 area that, to me, they needed to beef up and I
11 think they did beef it up. And I think you
12 captured it.

13 Actually, let me see if other Board
14 Members have any comments or questions. And I
15 believe the three of us are the, you, myself
16 and Vice Chair Dettman, only ones voting on
17 this one.

18 So there do not appear to be any
19 additional comments or feedback, given how
20 thorough your analysis was.

21 Is there a motion?

22 MEMBER MOLDENHAUER: Yes. There is

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1 a motion to approve the application for the
2 Franklin Commons Day Care Center for special
3 exception for the child development center
4 under 205 in an R-3 District and also for an
5 area variance to off-street parking
6 requirements contained in section 2101.1 for
7 off-street parking from four to zero.

8 In this application, I would
9 provide a motion to approve this for a period
10 of five years.

11 CHAIRMAN LOUD: Okay. The motion
12 has been made. Is there a second to the
13 motion? Why don't I go ahead and second your
14 motion. All right. Is there further
15 deliberation? The motion has been made and
16 seconded. Further deliberation?

17 MS. MONROE: I just want to be sure
18 --

19 CHAIRMAN LOUD: Yes?

20 MS. MONROE: -- you are terming the
21 special exception as well as the parking
22 variance? It's all one package, correct?

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1 MEMBER MOLDENHAUER: Yes, correct.

2 MS. MONROE: Five years on both.

3 CHAIRMAN LOUD: Thank you, Ms.
4 Monroe for the clarification.

5 The motion has been made. The
6 motion has been seconded. Is there additional
7 deliberation?

8 Seeing none, all those in favor of
9 the motion say aye.

10 ALL: Aye.

11 CHAIRMAN LOUD: If there is any
12 opposition or absentee ballots, let the record
13 so reflect that.

14 And Mr. Moy, can you read it back
15 for us?

16 MR. MOY: Yes, sir. I'll read two
17 votes, I suppose. The first one is on the
18 motion of Ms. Moldenhauer to approve the
19 application for a period of five years. This
20 is for the special exception 205 and area
21 variance for off-street parking requirements
22 under section 2101.1. Seconding the motion,

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1 Mr. Chairman, Mr. Loud. Also in support of
2 the motion Mr. Dettman. We have no other
3 Board Members participating on this
4 application.

5 We do have an absentee ballot, Mr.
6 Chairman, from another participant on the
7 application and that's Mr. Turnbull. And his
8 absentee vote is to approve the applicant with
9 such conditions as the Board may impose.

10 So that would give a final vote of
11 4-0-1.

12 CHAIRMAN LOUD: Thank you, Mr. Moy.
13 I thank you again, Mrs. Moldenhauer, for
14 taking us through the Franklin case. I do
15 believe a summary order would be appropriate
16 in the case, there being no opposition
17 parties.

18 MR. MOY: Very good. Okay.

19 CHAIRMAN LOUD: Is there anything
20 further on this case?

21 MR. MOY: No, sir.

22 CHAIRMAN LOUD: Then why don't we

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1 call the next decision case?

2 MR. MOY: The next and last case
3 for decision this morning, Mr. Chairman, is
4 Application No. 18021 of Peter and Leslie
5 Shields. This is pursuant to 11 DCMR 3104.1,
6 for a special exception to allow a two-story
7 rear addition to an existing one-family
8 detached dwelling under section 223, not
9 meeting the side yard requirements under
10 section 405, in the R-1-B District. This is
11 at premises 4719 Butterworth Place, N.W. The
12 property is in Square 1536, Lot 834.

13 Also on January 19, 2010, the Board
14 completed public testimony on this
15 application, closed the record and scheduled
16 its decision to February 9, 2010. Of course,
17 that was rescheduled to today, February the
18 16th.

19 The Board requested additional
20 information to supplement the record from the
21 applicant and parties. For the applicant,
22 with respect to revised plans and supporting

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1 narrative, responses to the applicant's sun
2 study, responses to the applicant's filing and
3 a signed ANC resolution letter.

4 The first filing into the record in
5 your case folders, Mr. Chairman, is the
6 applicant's revised plans and narrative. It
7 is identified as Exhibit 33, dated January 26,
8 2010.

9 The Board is also in receipt of a
10 signed ANC-3E letter identified as Exhibit 32,
11 dated February 2, 2010.

12 There is also a filing from a John
13 Rosenthal, who was an individual in
14 opposition. That exhibit, Mr. Chairman, is
15 identified as Exhibit 34.

16 The Board is to act on the merits
17 of the special exception to allow the two-
18 story rear addition under section 223, not
19 meeting the side yard requirements. And that
20 completes the staff's briefing, Mr. Chairman.

21 CHAIRMAN LOUD: Thank you, Mr. Moy.

22 We are going to deliberate, obviously, this

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1 morning. And I'm going to take the lead on
2 that.

3 I think the initial thing, we had
4 the supplemental filings, as you indicated,
5 and two of these three we requested. And so
6 if there is any formality to making sure that
7 they are part of the record, I just wanted to
8 acknowledge that at the outset.

9 The third, I don't think we
10 specifically -- the two that we requested are
11 Exhibit 33 and Exhibit 32. Exhibit 32 being
12 the signed ANC report. The Commissioner did
13 attend the hearing and, at that time,
14 submitted an unsigned ANC report. So we
15 simply asked him to get a signed version of it
16 in.

17 And then the Exhibit 33 is the
18 exhibit that deals with one of the issues that
19 had become contentious at the hearing
20 regarding the alleged pooling of storm water
21 along the center line of the alley adjacent to
22 the proposed addition. So Exhibit 33 speaks

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1 to that.

2 Then the third filing is an email
3 that does not have an exhibit number, but it
4 is an email from a Mr. Rosenthal, who was a
5 witness at the hearing, and who raised a
6 number of issues regarding primarily the
7 pooling of the water in the alley and also
8 some shadowing issues.

9 So I think that all three of these
10 documents should be admitted into our record,
11 because they are going to be relied upon as
12 part of the deliberation.

13 With that being said, then let me
14 start us off just to briefly recap the facts.

15 In this case, the applicant
16 submitted plans for a two-story plus basement
17 rear west addition with a proposed
18 noncompliant west side yard of 4 feet 6
19 inches. 8 feet is required in the R-1-B Zone.

20 There was and is an existing nonconforming
21 west side yard that measures 3 feet already.

22 The proposed addition conforms to

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1 all other zoning requirements, including the
2 rear yard and the lot occupancy, the height,
3 so on and so forth.

4 The proposed addition is adjacent
5 to a 16 foot alley to the west, which has, and
6 this became an issue at the hearing, an
7 historical water pooling issue near and
8 surrounding the alley center line. In fact,
9 even before this addition is added to the
10 property, there is a tremendous pooling of
11 water in the center line of the alley.

12 So it could not be said that this
13 addition would cause that pooling, but I think
14 the witness who appeared suggested that it
15 would contribute to the worsening of that
16 condition. And the gentleman who raised that
17 issue was a Mr. Rosenthal.

18 The project is supported by the
19 Office of Planning in their Exhibit 24. It is
20 supported by the ANC in their Exhibit, now we
21 have numbered it, No. 32. There are eight
22 neighbors that signed a petition of support.

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1 Seven or eight, I couldn't exactly tell the
2 number, because some of the signatures got a
3 little blurry, but at our Exhibit 22 these
4 neighbors offer their support.

5 And as indicated at the hearing, it
6 was only opposed by Mr. Rosenthal, who raised
7 a number of issues, but the relevant zoning
8 issues from the standpoint of the section 223
9 relief were that the addition would cause some
10 adverse light impacts to his property, which
11 is to the west of the addition, across the 16
12 foot alley. And it would also worsen the
13 referenced existing alley storm water problem.

14 In supplemental pleadings, and we
15 gave the applicant as well as Mr. Rosenthal
16 and the ANC an opportunity to supplement their
17 pleadings, the applicant has submitted site
18 plans at Exhibit 33 along with a narrative
19 showing the rerouting of the storm water issue
20 that was raised at the hearing.

21 And as indicated, Mr. Rosenthal has
22 submitted an email, through the applicant,

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1 wherein he withdraws his opposition to the
2 application insofar as the water pooling issue
3 is concerned, which is significant, because I
4 think we probably would have decided that case
5 on the day of the hearing, but for some issues
6 surrounding, number one, the water pooling
7 and, number two, some alleged shadowing.

8 So the water pooling issue is no
9 longer an issue, because of what the applicant
10 has done by way of outreach, which is captured
11 in Exhibit 33. And I'm not going to go over
12 all of what is in Exhibit 33, but,
13 essentially, it's a document that outlines how
14 the applicant intends to reroute water away
15 from the alley and allow it to be captured in
16 a way that will not contribute to the existing
17 pooling problem in the alley.

18 The second issue that Mr. Rosenthal
19 raised was an issue regarding alleged adverse
20 light impacts on his property. That was a
21 position that the Office of Planning did not
22 agree with. They did not believe that with a

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1 significant setback to the property from the
2 16 foot alley from the existing, I think about
3 3 or 4 foot setback on Mr. Rosenthal's
4 property, that there would be significant
5 shading.

6 The applicant in addition submitted
7 a sun study that he testified, that the
8 applicant's architect testified, had been
9 prepared and captured the shadow impacts to
10 Mr. Rosenthal's property in June, in March and
11 in December showing different levels of
12 shadowing.

13 Mr. Rosenthal had some concerns
14 about that at the hearing. We gave Mr.
15 Rosenthal an opportunity to submit a response
16 to the shadow study by February 2nd. He did
17 not do that.

18 Moreover, I believe I'm
19 interpreting his email correctly, that I have
20 referenced earlier that is not numbered, where
21 he withdraws his opposition to the project,
22 except for issues of height, which is a

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1 matter-of-right issue for the applicant.

2 The proposed height is matter-of-
3 right. And what Mr. Rosenthal terms length,
4 and I'm not sure what he means by that.

5 But overall, the issues that the
6 applicant needs to establish to receive the
7 223 relief were articulated by the applicant
8 well. They were also captured well in the
9 Office of Planning report at Exhibit 24 where
10 they walked through a section 223 analysis.
11 And I'm not going to repeat for our record
12 everything that is in Exhibit 24. I'm just
13 going to incorporate it by reference.

14 I will say that the issue of the
15 shadowing, I think, was not sufficiently made
16 by the witness who appeared, Mr. Rosenthal. I
17 think that significant setback of about
18 anywhere from 24 to say 28 feet between the
19 proposed addition and the witness' property
20 would, as OP suggested in its report, make the
21 shadowing issue de minimis.

22 And again, I note that Mr.

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1 Rosenthal was given an opportunity to sort of
2 buttress his position with a follow-up memo
3 for our consideration and has not done that.

4 So again, I think that the elements
5 of 223 were met. They are captured very well
6 in OP's report, Exhibit 24. I'm not going to
7 repeat that. And I will be voting in favor of
8 this application.

9 Let me stop there and see if Board
10 Members have any additional thoughts.

11 VICE CHAIRMAN DETTMAN: Thank you,
12 Mr. Chairman. I am in agreement with your
13 analysis. And I think you have taken us
14 through all the pertinent elements of 223
15 quite sufficiently.

16 My only comment that I have is that
17 I read Mr. Rosenthal's email a little bit
18 differently, in that I'm not certain that he
19 did withdraw his opposition with respect to
20 the shadowing. I think that the shadowing is
21 a product of the proposed length and height of
22 the structure and he does certainly, in his

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1 email, stipulate his continued objection to
2 those two elements, the length and the height.

3 But nonetheless like you stated, we
4 can rely upon OP's expertise in analyzing
5 these types of cases. In addition to their
6 expertise, we have the ANC looking at this for
7 impacts.

8 And to add to our analysis is the
9 shadow study that was submitted. So I think
10 with those three things, we can, and the
11 Board's experience analyzing these types of
12 cases, draw the conclusion that the impacts to
13 shadowing, light and air of the proposed
14 addition of Mr. Rosenthal's property would not
15 rise to the level of having a substantial
16 adverse effect on Mr. Rosenthal's property.

17 And again, I'm in support of the
18 application for those reasons.

19 CHAIRMAN LOUD: Thank you, Mr.
20 Dettman. Are there further reflections or
21 additional feedback on the application?

22 Okay. Hearing none, then I would

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1 like to move approval of Application No. 18021
2 for special exception relief under section 223
3 for addition to a one-family dwelling in the
4 R-1-B. Is there a second?

5 VICE CHAIRMAN DETTMAN: Second.

6 CHAIRMAN LOUD: Okay. A motion has
7 been made and seconded. Is there further
8 deliberation?

9 Hearing none, all those in favor
10 say aye.

11 ALL: Aye.

12 CHAIRMAN LOUD: All those who
13 oppose? And, Mr. Moy, if you could read back
14 the vote with any abstentions?

15 MR. MOY: Yes, sir, Mr. Chairman.
16 This vote is 3-0-1. This is on the motion of
17 the Chair, Mr. Loud, to approve the special
18 exception relief under section 223, not
19 meeting the side yard requirements of 405.
20 Seconding the motion is Mr. Dettman, also in
21 support of the motion is Ms. Moldenhauer.

22 No other Board Member

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1 participating. We again have an absentee
2 ballot from another participant on the
3 application and that's Mr. Turnbull. And his
4 absentee vote is to approve with such
5 conditions as the Board may impose. So that
6 would give a resulting vote of 4-0-1.

7 CHAIRMAN LOUD: Thank you, Mr. Moy.

8 MR. MOY: You're welcome.

9 CHAIRMAN LOUD: I believe this case
10 did not have a party in opposition.

11 MR. MOY: That's correct.

12 CHAIRMAN LOUD: And that it would
13 be appropriate for a summary order.

14 MR. MOY: Very good.

15 CHAIRMAN LOUD: Okay. Is there
16 anything further on the decision calendar?

17 MR. MOY: No, sir.

18 CHAIRMAN LOUD: Okay. Why don't we
19 do this? Why don't we adjourn the decision
20 calendar and take about a 10 minute break and
21 we will reconvene at 10:15 and begin this
22 morning's hearing calendar?

NEAL R. GROSS

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(Whereupon, the Public Meeting was
concluded at 10:07 a.m.)

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