

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY,

FEBRUARY 23, 2010

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 10:30 a.m., Shane L. Dettman, Vice Chairman, and 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

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

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

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

This transcript constitutes the minutes from the Special Public Meeting held on February 23, 2010.

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

WELCOME:

Shane Dettman, Acting Chair 4

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

2 10:43 a.m.

3 ACTING CHAIR DETTMAN: This meeting
4 will, please, come to order. Good morning,
5 ladies and gentlemen. This is the February
6 23, 2010 Public Meeting of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Shane Dettman, Vice
9 Chairman of the BZA and representing the
10 National Capital Planning Commission. To my
11 left is Ms. Meridith Moldenhauer and Ms.
12 Nicole Sorg, Mayoral Appointees to the BZA.

13 Also to my left is Mr. Clifford Moy
14 and Ms. Beverley Bailey with the Office of
15 Zoning and Ms. Sherry Glazer with the D.C.
16 Office of the Attorney General.

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

20 We do not take any public testimony
21 at our meetings, unless the Board asks someone
22 to come forward.

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

7 At this time, please, turn off all
8 beepers and cell phones.

9 Does the staff have any preliminary
10 matters?

11 MR. MOY: Yes, we do, but we will
12 take that on a case-by-case basis, Mr.
13 Chairman.

14 ACTING CHAIR DETTMAN: Thank you,
15 Mr. Moy. I think if there are no preliminary
16 matters, we can proceed with today's agenda.

17 MR. MOY: Yes. Thank you, Mr.
18 Chairman. Good morning and also to the other
19 Members of the Board.

20 The first item for the Special
21 Public Meeting is Application No. 17964 of
22 Emory United Methodist Church, pursuant to 11

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1 DCMR 3104.1 and 310.2, for a variance from the
2 height requirements under section 770, a
3 variance from the floor area ratio
4 requirements under subsection 771.2, a
5 variance from the lot occupancy requirements
6 under section 772, a variance from the loading
7 facility requirements under section 2201, and
8 a special exception for multiple roof
9 structures and required setbacks under
10 subsection 770.6(a), 777 and 411.11, to allow
11 the construction of a new building containing
12 a church, office, retail, residential and
13 recreation uses, in the C-2-A District. This
14 is at premises 6100 through 6120 Georgia
15 Avenue, N.W., Square 2940, Lots 801, 802, 808
16 and 813.

17 As the Board will recall, on
18 January 26, 2010, the Board convened
19 Application 17964 for deliberation and the
20 Board acted to -- by consensus granted the
21 applicant's request that the Board postpone
22 its decision to February 23rd.

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1 It was the Board's intent that at
2 the February 23rd meeting that it would either
3 be a deliberation and decision on the merits
4 of the application in consideration of the
5 applicant's post-hearing revised plan
6 submitted in January or further discussion of
7 next steps if the applicant submitted further
8 plan revisions after evaluating the National
9 Park Service's proffered design changes.

10 There are two, first of all,
11 filings in the record, Mr. Chairman, from the
12 applicant. They have submitted, identified in
13 your case folders as, Exhibit 62 and 61.

14 There is also -- for the Board to
15 act on the multiple post-hearing filings which
16 was tabled at its January 26th meeting to
17 today, February 23rd. Those filings, very
18 quickly, are Exhibit No. 50, Exhibit 52. 52
19 is a corrected letter to replace a letter that
20 was filed previously, identified as Exhibit
21 45. Exhibit 53, 54, 55, 56, 57 and 59.

22 Finally, also, yesterday, the Board

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1 -- the Office received four letters in the
2 record. These are letters that appear to be
3 in response to the applicant's filing, which
4 is Exhibit 62. And these letters are Exhibits
5 63, 64, 65 and 66 from the Civil War Round
6 Table, the Park Service, the U.S. National
7 Park Service, Gary Thompson, as an individual
8 and as a Member of ANC-4 Single Member
9 District, and from a Ms. De Soto,
10 respectively.

11 And with that, I think that staff
12 is going to conclude.

13 ACTING CHAIR DETTMAN: Thank you,
14 Mr. Moy. Colleagues, I think that we have one
15 or two preliminary matters to put to bed
16 before we actually get into the merits of the
17 case.

18 The first one was, Mr. Moy
19 mentioned, that at the January 26th Public
20 Meeting, we had kind of left it in limbo as to
21 whether or not we were going to either
22 deliberate today or pursue next steps as a

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1 result of a potential change in plans.

2 I think that, as Mr. Moy pointed
3 out, the applicant's filing, Exhibit No. 62,
4 that we received, which was a response by the
5 applicant to the National Park Service's
6 proposed modifications to the development, I
7 think, as a result of the applicant looking at
8 the National Park Service's proposed changes
9 and ultimately determining that those changes
10 would jeopardize the feasibility of the
11 project and, hence, no additional changes to
12 the plans have been made, I think that there
13 is nothing that prevents the Board from going
14 forward and deliberating and deciding this
15 case today.

16 And let me just check in with my
17 colleagues here to see if they agree with
18 that.

19 MEMBER MOLDENHAUER: Yes, I would
20 concur. I believe we can move forward based
21 on the letters, both received by Mr. Keys and
22 also then the response received by the U.S.

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1 Department of Interior, National Park Service.

2 ACTING CHAIR DETTMAN: Thank you,
3 Ms. Moldenhauer. And Ms. Sorg is shaking her
4 head yes.

5 Okay. The next preliminary matter,
6 I think, is the issue of the multiple post-
7 hearing submissions that we received and to
8 first address Exhibit No. 61.

9 If you will recall, at the January
10 26, 2010 meeting, the issue of whether or not
11 the applicant's post-hearing submission was
12 filed timely or not. The applicant testified
13 that the filing did come in on December 28th,
14 which was timely. It was sent via email.

15 However, the hard copy fax or
16 delivered in hard copy by a messenger did not
17 come in on the 28th. And according to Exhibit
18 61, again submitted by the applicant, it
19 indicates that the filing came in on the 28th.

20 The Office of Zoning was not able to say
21 process this until two days later on December
22 30th.

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1 And what is provided to us as an
2 attachment to Exhibit No. 61 is the email
3 exchange between the applicant and the Office
4 of Zoning, which kind of spells out what
5 occurred. This was happening over the holiday
6 weekend. You know, there was minimal staffing
7 at the Office of Zoning.

8 I think although at the time this
9 filing, the Office of Zoning was not
10 officially recognizing electronic filings as
11 counting towards being timely or not, I think
12 for purposes of our deliberation, I would be
13 willing to consider the filing that came in on
14 December 28th as a timely filing and go forward
15 from there.

16 So in a sense, that would not
17 require any kind of waiving of the rules for
18 us to consider that application, that
19 particular filing, which I think is Exhibit
20 No. 53 in our record, as being filed timely.

21 And I see heads nodding in the
22 affirmative.

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1 Finally, I think that we have in
2 our record, again, multiple post-hearing
3 submissions. Mr. Moy kind of listed out what
4 the exhibit numbers are. It's essentially
5 Exhibit No. 50, Exhibit Nos. 52 through 57,
6 59, 62 and then Exhibits 63 through 66. And
7 Mr. Moy noted that 52 is a corrected letter
8 that was submitted prior to the hearing. And
9 Exhibit No. 62, I believe, is a response by
10 the National Park Service to the applicant's
11 submission in Exhibit No. 61.

12 Essentially, the majority, if not
13 all of these post-hearing submissions are
14 letters from persons in opposition or
15 organizations in opposition.

16 And the question here is whether or
17 not the Board should waive its rules under
18 3100.5 and allow these submissions into the
19 record.

20 Looking at the information, I think
21 that most of the information that was
22 submitted in these are letters from

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1 organizations that have already weighed in on
2 the hearing. The information is almost
3 entirely duplicative of what is in the record
4 already.

5 So I would see a reason for
6 actually waiving our rules, again under
7 3100.5. I see for good cause shown, no
8 prejudice to any party and just simply allow
9 them into the record and move forward from
10 there.

11 MEMBER MOLDENHAUER: I would agree.

12 MEMBER SORG: I also agree.

13 ACTING CHAIR DETTMAN: Thank you.

14 So that takes us to getting into the merits of
15 the application.

16 And what I would like to do first
17 is kind of just set up our discussion by
18 briefly describing the application. And I
19 won't repeat too much of what Mr. Moy has
20 already laid out for us.

21 This is an application for the
22 development of a mixed-use project located on

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1 Georgia Avenue at 6100 through 6120 Georgia
2 Avenue, N.W. The subject property is composed
3 of several lots inside Square 2940. It is
4 located in Ward 4, ANC-4A.

5 And again, this is for an
6 application for the development of a mixed-use
7 project.

8 The applicant is requesting in
9 total six areas of relief and I'll just very
10 briefly recount them.

11 It is a height variance. And the
12 four variances that are being requested here
13 are all area variances. There is a height
14 variance being requested under section 700.
15 This property is located in the C-2-A Zoning
16 District which allows a maximum height of 40
17 feet.

18 What is being proposed is a total
19 building height of 63 feet 4 inches or a
20 variance of about 13 feet 4 inches.

21 There is a request under section
22 771 from FAR. In this area, there is a

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1 maximum FAR allowable of 2.5 or looking at the
2 land area of this particular location, roughly
3 120,800 square feet of development.

4 What is being proposed is an FAR of
5 2.97 or an excess of .42 of the allowable FAR.

6 That's, essentially, an additional 22 or
7 23,000 square feet of developable area or
8 roughly 19 percent of what is allowed as a
9 matter-of-right.

10 There is a variance from the lot
11 occupancy requirement under 772. The
12 regulations call for a maximum of 60 percent.

13 What is being proposed is 67
14 percent or an additional 3,800 square feet of
15 land area.

16 The last variance being pursued is
17 a variance from the loading requirements under
18 2201.1. The regulations call for one 30 foot
19 loading berth, one 55 foot loading berth, a
20 100 square foot platform as well as one
21 service delivery space. The degree of the
22 variance under the loading is quite minimal, I

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1 think.

2 What is being proposed, there are
3 actually two 30 foot loading docks and two 125
4 square foot loading platforms.

5 Accounting for the parking, the
6 grandfathering from the number of parking that
7 is applicable to the church. There is no
8 variance with respect to parking being
9 pursued. The proposal will be providing 97
10 total parking spaces.

11 Finally, with respect to the
12 special exception that is being pursued under
13 411, that is a special exception to allow
14 multiple roof structures. I believe, in the
15 development there are three roof structures.
16 And so there is going to be three roof
17 structures, but not included in one total
18 enclosure.

19 And finally, from the setback
20 requirements for one of the roof structures
21 not meeting the 1:1 setback requirement.

22 There was a note in the Office of

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1 Planning's report about how they analyzed the
2 special exception roof structure request as a
3 variance. And we have seen several of these
4 situations where the Board has looked at this
5 multiple times and determined that they will
6 continue to look at these requests as special
7 exceptions.

8 So, colleagues, that's basically
9 what we have before us today.

10 The proposed development, I have
11 already talked about how it's a mixed-use
12 development. Essentially, what we have on the
13 site is an existing church that also owns a
14 single-story, what looked to be, at one time,
15 a house and is now being used for office space
16 that exists currently on the site as well as a
17 small one-story building on the rear west side
18 of the property.

19 What is being proposed is a
20 combination of commercial and residential and
21 church-related uses on the site. The
22 development will be located kind of along the

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1 sides and around the back of the existing
2 church and will be composed of several
3 different types of housing.

4 We heard testimony from Pastor
5 Daniels as well as the architect and other
6 members of the community that there is a real
7 need for different types of housing. And what
8 is being contemplated here is a total of 91
9 units broken down into a collection of senior
10 housing, transitional housing, affordable
11 housing as well as support housing.

12 In addition to that, the existing
13 church is going to be slightly expanded to
14 increase the size of its sanctuary. There is
15 going to be accessory office space that will
16 support the church functions. There will be a
17 full-sized gym located behind the church along
18 the western property line of the site.

19 Just to briefly describe the
20 surrounding context, again, we have a church
21 which sits elevated above Georgia Avenue for
22 some very specific reasons that we will get

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1 into.

2 Immediately to the east across
3 Georgia Avenue, you have a collection of one-
4 story commercial uses that exist also slightly
5 to the north and also to the south. To the
6 immediate north, northwest and west, you have,
7 primarily, what is a single-family detached
8 residential neighborhood and as well as to the
9 south, there is kind of a mix of some multi-
10 unit dwellings, some other commercial uses.

11 And finally, running along the
12 western property line of the site is kind of a
13 stub of Old Piney Branch Road that doesn't
14 quite go through from Quackenbos on the south
15 to Rittenhouse on the north. It kind of stops
16 halfway. And it is primarily used for access
17 to the church's existing surface parking lot.

18 On the west side of Old Piney
19 Branch Road is Fort Stevens, which is a
20 locally designated historic Civil War Park as
21 well as listed in the National Register for
22 historic places.

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1 I think with that, I can turn it
2 over to my colleagues just briefly before
3 going into the variance analysis and the
4 special exception analysis to see if you
5 wanted to add anything with respect to the
6 overall context that I provided.

7 MEMBER MOLDENHAUER: Vice Chairman
8 or Chairman Dettman, I believe that you
9 provided a very thorough summary. I think
10 that if we want to jump right into some of the
11 analysis that, at that point, I'll kind of
12 pull in any additional facts or notes that I
13 have from the hearing that go to some of the
14 more, I guess, poignant aspects of our
15 deliberation that we will be addressing.

16 ACTING CHAIR DETTMAN: Great.
17 Thank you. Okay. Why don't I get us started
18 here?

19 I'm going to take up the special
20 exception first under 411.11. I think we are
21 probably all very familiar with what the
22 threshold is for meeting the special exception

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1 burden under 411.11.

2 But I'll just read the first couple
3 of sentences there, because I think it
4 provides us with the context of the burden
5 that needs to be met. And I won't read the
6 whole thing again.

7 But it basically says "Where
8 impracticable because of operating difficulty,
9 size of the building lot or other conditions
10 relating to the building or surrounding area
11 that would tend to make full compliance on
12 duly restrictive, prohibitively costly or
13 unreasonable" and it goes on to say that "The
14 Board by way of a special exception can
15 provide relief from the roof structure
16 requirements of 411."

17 And again, this is for a request
18 for multiple roof structures not within one
19 enclosure and the 1:1 setback requirement.

20 The development being proposed here
21 contemplates three roof structures located on
22 the north wing of the building, the northern

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1 most wing of the building, along the southwest
2 a small roof structure and then the one roof
3 structure that does not meet the 1:1
4 requirement is located immediately south of
5 the existing church.

6 And with respect to the number of
7 roof structures, I think the burden has been
8 met. And we have seen this several times.
9 It's that given the layout of the site where
10 elevator cores and penthouse enclosures need
11 to be located in order to efficiently and
12 adequately service the different components of
13 this project, I think that the burden has been
14 met to justify these three enclosures and not
15 require them to enclose them all into one
16 uniform enclosure at a uniform height, which
17 the standard is, because, essentially, that
18 would add unnecessary bulk, unnecessary cost.

19 It would be quite prohibitive.

20 Just looking at the roof plan of
21 this project, I think that that's justified.

22 With respect to the 1:1 setback, in

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1 testimony and in questioning from the Board,
2 the architect stipulated that the location of
3 this one roof structure, again, immediately
4 south of the church, really needs to be there
5 in order to adequately service the mezzanine
6 level of the church.

7 There are ADA accessibility
8 requirements that need to be met for the
9 efficient movement of people through the space
10 and into other areas of the building. This is
11 a place where the roof structure really,
12 really needs to be and the location of the
13 church and the need to service the mezzanine
14 level and the new functions of the church is
15 really driving the location here.

16 And again, to require the applicant
17 to set it back away from that, that court wall
18 I'll call it, could really kind of change the
19 interior layout of the building. So again, as
20 this is a special exception and I think that
21 the criteria for the special exception had
22 been met and I think I would be in favor of

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1 that request.

2 MEMBER MOLDENHAUER: I would
3 concur. I think that, as you said, there has
4 been testimony in our record. We also have
5 information about the existing church building
6 and that the applicant has worked with HPRB,
7 even though the building is not designated
8 historic. It does have historic aspects and
9 they have been working with them.

10 And there were some factors of
11 trying to maintain that. And I believe that
12 the Historic Preservation, actually, staff was
13 working with them and encouraged them to
14 provide some open area, which also had to
15 separate the roof structures and separate the
16 building massing on the Georgia fronting side.

17 And thus was also a contributing factor as to
18 why they had to seek this relief.

19 And so I believe they satisfied
20 this requirement.

21 ACTING CHAIR DETTMAN: Thank you,
22 Ms. Moldenhauer.

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1 Ms. Sorg, anything?

2 MEMBER SORG: No. I think that
3 your analysis is correct and I also agree.

4 ACTING CHAIR DETTMAN: Thank you.
5 So let's move on to the four areas of relief
6 that are being requested by way of a variance.

7 And just very quickly, the wording
8 of the variance states that "whereby reason of
9 exceptional narrowness, shallowness or shape
10 of a specific property at the time of the
11 original adoption of the regulations or by
12 reason of exceptional topographical conditions
13 or other extraordinary exceptional situation
14 or condition of a specific piece of property,
15 the strict application of any regulation
16 adopted under the Zoning Regs would result in
17 a peculiar and exceptional practical
18 difficulty or exceptional and undue hardship."

19 As I have stated already, the four
20 variances that are being pursued here are all
21 area variances, which require the applicant to
22 meet the standard of a practical difficulty.

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1 With regard to the first prong of
2 the variance test, as to whether or not the
3 subject property has a particular exceptional
4 condition or situation, I think that the
5 applicant has adequately demonstrated that
6 this property does demonstrate a collection of
7 exceptional situations.

8 First and foremost, it was the
9 existing berm along Georgia Avenue and that
10 slightly wraps around the corner onto
11 Quackenbos and then kind of decreases in grade
12 as it moves towards Old Piney Branch Road.

13 It was testified to that the 14
14 foot berm that exists along Georgia Avenue is
15 most likely a remnant of Fort Stevens Civil
16 War, the Civil War Fort that exists to the
17 west.

18 We got a little testimony about the
19 evolution of this site and how actually the
20 church site at one time was a Civil War
21 Battlement referred to as Fort Massachusetts.

22 Over time the Civil War Fort expanded to the

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1 west to be Fort Stevens.

2 During that same time, the church,
3 which has always had a presence on this site,
4 fully occupied the eastern portion of the fort
5 and, hence, the remnant of berm still exists.

6 Other exceptional conditions on
7 this property was that the applicant has a
8 desire by the direction of the Historic
9 Preservation Office to -- although not
10 individually landmarked and not located or
11 contributing to an existing Historic District,
12 the existing church does exhibit some
13 architectural merit. It is worth saving the
14 existing church.

15 Those were the two exceptional
16 conditions that I really kind of gleaned from
17 the transcripts and the record that really
18 went towards connecting up to the second
19 prong, which I'll get into.

20 But perhaps a third exceptional
21 condition here is the actual -- the
22 programmatic use or the programmatic need of

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1 the church in and of itself. I think that the
2 Court of Appeals in Monaco did stipulate that
3 the Board does not err in considering the
4 programmatic needs of a nonprofit and extended
5 to a church.

6 Considering their programmatic need
7 as part of the first prong and specifically
8 that other exceptional situations outside of
9 the property in and of itself, and so I think
10 that that contributes to the first prong.

11 But of course, the Court of Appeals
12 has gone on to say that that does not exempt
13 the applicant from having to meet all three
14 prongs. It's just that we can approach the
15 variance test, the first prong of the variance
16 test in a little bit more of a flexible
17 manner.

18 But nonetheless, I think that
19 factoring out the Monaco statement, I think
20 that the first prong is met nonetheless.

21 Whether or not the exceptional
22 conditions on the property give rise to a

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1 practical difficulty upon the property owner
2 if the Zoning Regulations were strictly
3 applied, I think that that burden has been met
4 as well.

5 And I can very quickly go through
6 how the exceptional conditions give rise to
7 practical difficulties with each individual
8 area of relief.

9 By way of the 14 foot grade
10 separation between Georgia Avenue and the
11 church and the requirement by the Zoning
12 Administrator for the applicant to measure
13 their building height from Georgia Avenue,
14 gave rise to the height variance that is being
15 pursued, which was interesting to me.

16 It was a little bit in a different
17 direction than what is typically practiced in
18 terms of measuring building heights, that here
19 you have a site that is bordered on three
20 sides by roads, by existing roads. And as
21 testified to, by the applicant, if they were
22 able to measure their building from Old Piney

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1 Branch Road, they would be able to come in
2 under the 50 foot matter-of-right height.

3 But having the requirement to
4 measure from the curb of Georgia Avenue and
5 with the church located 14 feet above Georgia
6 Avenue, it added 14 feet of building height,
7 which, essentially, gets you from a 50 foot
8 allowable height to 64 feet 3 inches, I think
9 it was, in the variance test.

10 So I think that the change in the
11 topography and the requirement to measure from
12 Georgia Avenue does give rise to some
13 practical difficulties for the owner.

14 With respect to the FAR, it was
15 testified to that because of the change in
16 topography going from south to north, from
17 Quackenbos towards Rittenhouse, there was a
18 substantial change in elevation there as well
19 as you made your way up Old Piney Branch Road.

20 And because of that change in
21 grade, a portion of the underground parking
22 garage projected above the grade along the

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1 southern most portion, the southwestern
2 portion, of the building which required that
3 space to be counted towards the FAR.

4 And in order to rectify that, in
5 order to fully comply with the Zoning
6 Regulations under 771, would require a
7 substantial excavation of the property in
8 order to get those parking garages fully
9 below-grade and not counted towards FAR.

10 The lot occupancy variance is
11 really driven by the exceptional condition to
12 retain the existing church to the maximum
13 extent possible and the need to meet a certain
14 programmatic requirement that the church
15 wanted to meet in order to make the project
16 economically feasible.

17 And finally with respect to
18 loading, it was testified to that because of
19 the width of Old Piney Branch, the depth of
20 the building itself and the relationship to
21 the rear of the existing church and the
22 basement of the existing church that it was

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1 difficult for the applicant to provide that 55
2 foot loading berth.

3 And so in lieu of that, they are
4 providing two 30 foot loading berths as well
5 as a couple loading docks, loading platforms I
6 should say.

7 Now, so I think that with respect
8 to all three variance requests, four variance
9 requests I should say, I think that the
10 exceptional condition of the property do give
11 rise to practical difficulties upon the
12 property owner if the regulations were
13 strictly applied.

14 And so it gets me down to the third
15 prong, which I say that's kind of where my
16 analysis, my favorable analysis breaks down a
17 little bit.

18 I think with respect to whether or
19 not the relief can be granted without causing
20 substantial detriment to the public good or
21 compromise the intent, purpose and integrity
22 of the Zone Plan, this was a very, very, very

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1 close call to me.

2 I think probably sitting here on
3 the dias I went back and forth three times
4 already. It was a very, very close call, but
5 I think that where I end up is the extent of
6 the relief being requested and the fact that
7 this really is, as testified to by the
8 applicant, a matter-of-right project that is
9 sitting on top of a podium.

10 And with respect to the additional
11 height that is being provided, but not so much
12 the height, but more so the FAR and the lot
13 occupancy, the extent of how much this
14 building is spread out across the site and its
15 impacts that it has on adjacent Fort Stevens,
16 which again is a D.C. Landmark as well as a
17 national landmark, I end up with a conclusion
18 that I do see a potential for substantial
19 detriment to the public good.

20 I think if this was any other park,
21 if this was a playground, I would definitely
22 see it a different way. I think that my

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1 conclusion in no way is influenced by the fact
2 of who owns this property. I think that what
3 really drives me to my conclusion is that this
4 is and has been a historic landmark, a local
5 landmark since 1964, a national landmark since
6 1966 with the advent of the National Register
7 of Historic Places.

8 And I think that the extent of the
9 FAR and the lot occupancy, the variance
10 requests does create, does elevate it just a
11 notch above substantial detriment on those
12 qualities that contribute to this site being
13 listed as such.

14 You know, this property has an
15 association with a very important event in
16 American history. It also has an association
17 with a very important person, with Abraham
18 Lincoln actually being fired upon at Fort
19 Stevens during the Civil War.

20 I don't think that the proposed
21 project is substantially detrimental to those
22 associations and the ability to interpret

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1 those associations. But I think that the
2 location of Fort Stevens, and it is there for
3 a very, very specific reason, the entire
4 collection of Civil War Defenses of Washington
5 are located on the highest points along the
6 topographic ridge that surrounds our city.

7 They were there in order to afford
8 360 degree sweeping views of the city in order
9 to look out over the landscape. Yes, that
10 landscape has changed over time. And I don't
11 equate this project in the same way as I would
12 a recent very controversial project of
13 building at Walmart on the Manassas -- on the
14 edge of the Manassas Battlefield.

15 This is very different. These
16 parks have become urban parks. And I'm very
17 cognizant of that. It's interesting where you
18 have a lot of things coming together here.
19 You have Georgia Avenue, which was, at the
20 time of the Civil War, the seven street
21 turnpike, the route that the southern troops
22 chose to take as they were trying to enter

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1 into the nation's capital.

2 Over time it has become an
3 important commercial corridor and it has been
4 the focus of a lot of efforts to make this
5 thing a thriving commercial corridor. And it
6 is running smack dab against this historic
7 landscape. And surrounding this historic
8 landscape is a very low density residential
9 neighborhood.

10 And so you have a lot of things
11 coming together here. And a lot of different
12 initiatives as well, which I am very full
13 aware of.

14 The District's elements of the
15 Comprehensive Plan has a policy that targets
16 this area for commercial development and
17 economic growth. At the same time, it has a
18 policy that says that we should prevent local
19 and federal actions that will compromise the
20 integrity of the Fort Circle Parks as well as
21 there is a large initiative, both federal,
22 local as well as at the private citizen level,

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1 to find a way to connect these parks and make
2 them really an important asset into the city.

3 And so I think that the qualities
4 of the -- those qualities that put this site
5 here on this high point to provide those
6 sweeping views, there is potential for
7 substantial detriment to that. I think that
8 the ability to look east out over the rooftops
9 of buildings that sit lower on Georgia Avenue
10 is significant.

11 I'm aware that any development on
12 this property maybe above two stories would
13 get rid of that direct east view. But I think
14 that the additional FAR and the lot occupancy
15 creates substantial detriment, in particular,
16 the northwest corner of that building. And
17 that was really the focus of our deliberation.

18 The applicant has made revisions to
19 their plans. They made that corner at the
20 request of Board Member Moldenhauer to make it
21 a bit more transparent, to make it less so
22 that it looms over that eastern most parapet

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1 or battlement or whatever you want to
2 characterize it as.

3 But nonetheless, I think that the
4 visual openness, that sense of openness and
5 the reason why these forts are located as
6 such, I consider the development to create
7 substantial detriment to the public good.
8 This is the reason why we landmark things.
9 It's to save them in order to interpret to
10 educate the public and future generations.

11 And so I think that that is going
12 to be diminished in a way that is fairly
13 substantial, in my mind. And with that, I
14 will turn it over to my colleagues.

15 MEMBER MOLDENHAUER: Thank you. I
16 think that, as you said, in reviewing the
17 variance test it definitely is a very tight
18 case. I agree with your analysis on the first
19 two prongs. And I think that the applicant
20 very strongly satisfies both of the first two
21 prongs.

22 The first prong in regards to the

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1 topography, I think that there really is no
2 doubt in my mind that they satisfy that. And
3 so I think the second prong, they satisfy.
4 They provided sufficient testimony at the
5 hearing and there was really no opposition to
6 the issue of whether or not there was a
7 detriment in that matter in regards to
8 building to the standard and to having an
9 exemption.

10 And I think that the third prong is
11 really where the challenging analysis comes
12 from. And I agree with you that this has been
13 a case where I have been going through my
14 notes in extensive detail. And I come out
15 just on the other side.

16 I think that it is an exceptionally
17 close call, but I do not feel as though that
18 there is a substantial detriment.

19 I believe there absolutely is a
20 detriment, but reviewing the facts and the
21 issues, I look at a couple of different
22 things.

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1 One, I look at, I'm just going to
2 pull from a couple different documents, then
3 pull that together in my analysis, ANC-4A, our
4 Exhibit 23, that is a letter that should be
5 given great weight from the community
6 providing support.

7 In addition to that, we also have
8 the OP report which we have to give great
9 weight to. And even though the report doesn't
10 specifically address -- it does support the
11 project and it does address the last prong, it
12 doesn't really address the issue of the
13 historical aspect of the Fort. More of the
14 issues with historical preservation of the
15 actual church itself.

16 And I specifically asked during the
17 hearing that question to the OP
18 representative. And I asked them based on the
19 new testimony by the National Park Service
20 would that change their support and especially
21 considering that there are different types of
22 sections of the D.C. Comprehensive Plan that

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1 are contradictory in this situation.

2 We have the pro-development aspect
3 of Georgia Avenue, trying to revitalize that
4 as a gateway to the District. We have the
5 need for low income housing. We have,
6 obviously, a large push towards that with the
7 new inclusionary zoning.

8 We have different elements of
9 variances which provide for considerations of
10 properties like this one, which has such a
11 unique topography. And as you said, it is
12 really providing almost a matter-of-right
13 development on this platform of the topography
14 that exists there.

15 And then you have as an opposition
16 to those different aspects, the D.C.
17 Comprehensive Plan to preserve the Fort Circle
18 Parks, which includes Fort Stevens.

19 And so I have to give a lot of
20 weight to OP's analysis and their opinion of
21 sitting here and hearing all of the testimony
22 and the different persons in opposition from

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1 the, you know, Civil War Round Table and the
2 different organizations that came and
3 presented, including the National Park
4 Service. And that they still believe that
5 this would not substantially be a detriment to
6 the public good or to the Comprehensive Plan.

7 In addition to that, I think that,
8 you know, looking at some of the last couple
9 of documents that came in, Exhibit 64, the
10 letter from the National Park Service, you
11 know, their letter says that, you know, it
12 would be a detriment. And I agree with that,
13 it would be a detriment.

14 But our analysis has to be is it
15 going to be a substantial detriment? And, you
16 know, in reviewing also those conflicting
17 Comprehensive Plan aspects, the last sentence
18 of the Fort Circle Park section states to
19 strongly support actions that would improve
20 their maintenance, connectivity, visibility
21 and safety of a fort.

22 And I think that there was

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1 substantial testimony by Reverend Daniels and
2 by the applicant that they were going to --
3 you know, that they are, obviously, very much
4 invested in the community, in the area, that
5 they are educating and respecting and
6 preserving the historical aspect of Fort
7 Stevens in connection with their mission of a
8 church.

9 And they also proffer, which I give
10 substantial weight to, and, you know, I'll
11 address that later, the ability to have I
12 believe what is identified on the plans a gift
13 shop or what they stated as a proffer of a
14 welcome center to provide information to allow
15 visitors to understand or to provide more of
16 that connectivity and the visibility of the
17 significance of this fort to, you know, the
18 fact, as you stated, Mr. Dettman, of the issue
19 of being able to see the, you know, southern
20 troops approaching, to be able to view all of
21 that.

22 And I think that there is also a

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1 factor of, you know, when you look at
2 detriment versus substantial detriment.

3 One of the questions that I asked
4 at the end of the hearing was to provide
5 better pictures or a pictorial understanding
6 of what is the current view from the northwest
7 corner of Fort Stevens and what is existing
8 currently and then, obviously, how that would
9 be changed by this development.

10 And we received documentation from
11 Mr. Keys, which provided a panoramic view.
12 I'm also referencing, which was part of the
13 original document, our exhibit -- it's one of
14 the applicant's initial submissions, which
15 provides the exterior site plans and an aerial
16 map of A0-1.

17 And looking at that and then
18 comparing that also to the panoramic views, if
19 you are standing on the eastern most point of
20 Fort Stevens, which I believe was a
21 significant aspect of the testimony by most of
22 the persons in opposition and by the National

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1 Park Service, currently that view northeast is
2 obstructed by a two or three-story building on
3 the corner of Rittenhouse Street and Georgia
4 Avenue.

5 And so the only change, if you are
6 looking towards the northeast corner, would be
7 your actual eastern view towards Georgia
8 Avenue. And as I said before, I do believe
9 that this is going to impact that portion of
10 the site, but I don't believe because of the
11 size of Fort Stevens and their ability for
12 individuals to go and appreciate the site and
13 maybe not stand on that first eastern most
14 berm, but maybe stand on one of the other four
15 or five berms and look out towards the
16 existing more residential aspect of that area
17 and see overtop of those homes and see what
18 could be -- you know, what would have been a
19 view very far and be able to identify the
20 soldiers coming and approaching, I believe
21 that's the importance.

22 And again, I go back to the

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1 proffer, which, you know, I believe should be
2 a condition that the applicant has stated
3 because they would be providing an information
4 center, a welcome center that would be able to
5 maintain the connectivity and that
6 understanding of the significance of the site.

7 MEMBER SORG: I, in my
8 deliberations, come down in great part in
9 agreement with the analysis of Ms.
10 Moldenhauer. But I would also like to add
11 that when we look at the perspective of the OP
12 report, which we have to give great weight,
13 and its focus on the preservation of the
14 church building itself, you know, that kind of
15 leads me to want to ensure that we are giving
16 consideration to the wide range of
17 stakeholders who comprise the public when we
18 deliberate on the project's impact on the
19 public good.

20 And so I think that, you know, in
21 that case, we have to think about, you know,
22 the additional support from the community and

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1 other stakeholders as well.

2 So that's just a small point that I
3 would add.

4 ACTING CHAIR DETTMAN: Thank you,
5 Ms. Sorg and Ms. Moldenhauer. Just a couple
6 of follow-up comments. And I certainly
7 appreciate your analysis.

8 Like I said, this was extremely
9 difficult for me. I think we zeroed in on the
10 same issue, the substantial detriment to the
11 public good. And I think in this situation,
12 I'm just ending up on the other side of the
13 berm.

14 With respect to the Office of
15 Planning report, yes, we do give it great
16 weight. Even in the testimony provided by the
17 Office of Planning and their description of
18 their discussions with the Historic
19 Preservation Office staff, I just found it
20 quite curious that all of the focus was on
21 this, non-landmarked, though architecturally
22 significant in a sense that it is fairly

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1 unique and some day it could be listed as a
2 landmark.

3 If you go through the report, their
4 analysis of the third prong does suggest that
5 they looked at the historical significance of
6 the site.

7 So historical significance does
8 factor into their analysis of the public good.

9 For some reason, it just didn't transfer into
10 the larger public good with respect to
11 historic preservation in general and why we
12 landmark things and why we try to save things.

13 But nonetheless, I think they
14 provided us with a very good analysis. I just
15 think it could have been a little bit stronger
16 given the unique surroundings of this
17 particular property. And not only of the park
18 itself, but also the significance of this
19 particular park in the entire system.

20 And this is described as being the
21 jewel of the Civil War Defenses of Washington.

22 And just before we move on perhaps

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1 to a motion, I just wanted to reiterate that,
2 again, this was a very, very difficult
3 analysis for me. I'm very cognizant of the
4 program that the church needs to meet, and
5 even more important, that wants to meet.

6 I think given the enormous gesture
7 that the church is making towards improving
8 their community, it's no surprise that
9 Chairman Loud is a Member of this Church. I
10 think the graciousness and the leadership that
11 he approaches his work on the Board is
12 indicative of his involvement with this
13 project.

14 And for that, the church and Mr.
15 Loud should be commended.

16 For me though, it got down to a
17 question of balancing the economic improvement
18 versus the historic preservation of the area.

19 We received one of the late filings, Exhibit
20 No. 65, and you know states that "Of course,
21 the city has to balance the need for economic
22 development against the value of historic

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1 preservation." And in some cases, economic
2 development must be favored.

3 He says "but not here. The project
4 would substantially adversely impact the
5 historic site itself."

6 As I have alluded to, I see that
7 confluence of things coming together here. We
8 want to really pump up Georgia Avenue as an
9 important commercial corridor and the church
10 sees this project as an opportunity to really
11 be a catalyst to help that revitalization of
12 Georgia Avenue along.

13 But to me, I think that it could be
14 just as an effective catalyst to the overall
15 development of Georgia Avenue with a matter-
16 of-right project that came in as a matter-of-
17 right FAR and lot occupancy and perhaps pull
18 that corner of the building away from the area
19 that the National Park Service really focused
20 on.

21 I don't see the National Park
22 Service's proposed revisions that the

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1 applicant very thoroughly looked at and
2 determined that this was really going to
3 jeopardize the project and there is no reason
4 why we would dispute that.

5 I think the National Park Service's
6 proposed revisions was a gesture to say if you
7 do this, there would be no detriment. I think
8 they were saying, if you do this, we come just
9 under calling this substantial detriment and
10 you have a quite sizeable project, but then we
11 also can reach a level where we can protect
12 the Civil War Park to a certain degree and not
13 consider this substantial detriment.

14 So with that said, that was kind of
15 the -- it was the additional spreading out of
16 the project towards that corner of the
17 property that got me to say that I consider
18 this substantial.

19 MEMBER MOLDENHAUER: I do agree
20 with you that the Office of Planning report is
21 lacking in some aspects and it is, I think,
22 inappropriately weighing too much towards the

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1 preservation of the church. But I think that
2 that was one of the very unique aspects of
3 this case, that you have all of these
4 different factors kind of being pressed upon
5 the applicant, where the HP, the Historic
6 Preservation staff from OP's statements in
7 their reports and from the applicant's
8 statements, were really pressuring the
9 applicant to push the structure or the massing
10 of the building back from Georgia Avenue.

11 That was then in complete
12 contradiction to the National Park Service's
13 desire to push the massing away from Fort
14 Stevens. And I think that it is unfortunate.

15 As I said in one of my first comments, and I
16 agree with you, this case is really on the
17 cusp of either, you know, being substantial or
18 not being substantial.

19 And I think that, you know, if all
20 of these parties and agencies could have
21 worked better, there may have been a better
22 resolution. But right now, our job is to

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1 interpret the facts as they are given to us.
2 And, you know, as I see all of the information
3 in front of me right now, I don't feel as
4 though this development, as it is being
5 presented by the applicant in its final
6 version of plans and statements as to what
7 they would do with that northwest corner, is a
8 substantial detriment to the public good.

9 And again, I think that as a church
10 and as a mission, you know, from hearing
11 statements from Reverend Daniels, I believe
12 that they would continue to preserve and
13 enforce the education of the fort in their
14 continued mission of their project.

15 And if we have no additional
16 discussions, maybe I'll present a motion.

17 In BZA Application No. 17964,
18 applicant, the Emory United Methodist Church,
19 I submit a motion to approve relief sought
20 pursuant to 11 DCMR 3104.1 and 3103.2, for a
21 variance from the height requirements of
22 section 770, a variance from the FAR

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1 requirements of subsection 771.2, a variance
2 from the lot occupancy requirements of section
3 772, a variance from the loading facility
4 requirements of section 2201, and a special
5 exception for multiple roof structures and
6 required setbacks under subsection 770.6(a)
7 and 777 and section 411.11, to allow the
8 construction of a new building containing a
9 church, office, retail, residential and
10 recreational uses in the C-2-A District at
11 premises 6100 to 6120 Georgia Avenue, N.W.

12 And I would condition that approval
13 upon the proffered construction of a welcome
14 center to preserve and educate individuals
15 about Fort Stevens.

16 ACTING CHAIR DETTMAN: There has
17 been a motion made. Is there a second?

18 MEMBER SORG: I'll second.

19 ACTING CHAIR DETTMAN: The motion
20 has been made and seconded. Before I call for
21 a vote, I just wanted to say for the record
22 that ANC-4A, and Ms. Moldenhauer you alluded

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1 to their resolution, that's our Exhibit No.
2 23, with a quorum present they voted
3 unanimously to support the project.

4 And just very quickly, we did
5 receive a report from DDOT that offers
6 conditional support for the project, that's
7 our Exhibit No. 35. They did raise some
8 issues that were adequately addressed by way
9 of a response by the applicant. So just to
10 make sure that we are covering all of our
11 bases here.

12 And again, we have our Office of
13 Planning report, Exhibit 22, in support. And
14 I think that we did address all of the issues
15 raised in the Office of Planning report and we
16 did afford it the great weight that it is
17 entitled to.

18 So a motion has been made and
19 seconded.

20 All those in favor say aye.

21 MEMBER MOLDENHAUER: Aye.

22 MEMBER SORG: Aye.

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1 ACTING CHAIR DETTMAN: Opposed?
2 Opposed. And no abstentions. Mr. Moy, could
3 you call the vote and indicate whether or not
4 we have any absentee ballots?

5 MR. MOY: Yes, sir. This vote is
6 on the motion of Ms. Moldenhauer to approve
7 the application with the relief as cited with
8 one condition, seconded by Ms. Sorg with Mr.
9 Dettman opposed, which would be 2-1-1, because
10 we have one Board Member who is recused from
11 the application.

12 We do, as you have mentioned, Mr.
13 Chair, have an absentee vote from another
14 participant who is Mr. Hood. And his absentee
15 vote is to approve with such conditions as the
16 Board may impose. So that would give a final
17 vote of 3-1-1. So the motion carries.

18 ACTING CHAIR DETTMAN: The motion
19 carries. Very well.

20 With that, I think the last
21 remaining question before the Board right now
22 is whether or not we want to waive our rules

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1 for findings of fact and conclusions of law
2 and issue a summary order.

3 There are no parties in opposition,
4 though there was substantial opposition by way
5 of persons providing testimony. But I think
6 the standard is that there are no parties in
7 opposition, which allows the Board to prepare
8 a summary order. And I guess I'll just kind
9 of turn it over to my colleagues to see what
10 they think on that.

11 I'm not against it actually. If
12 there was a party, obviously, we would be
13 preparing a full order. I think that the
14 record will reflect that we allowed in all of
15 the testimony through verbal testimony as well
16 as on paper.

17 All of the opposition that was
18 provided or expressed to us, I think that we
19 weighed that opposition adequately. I think
20 that we incorporated it into our deliberations
21 quite thoroughly.

22 So I think that we have addressed

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1 all their concerns and would be in favor of
2 waiving our rules and providing a summary
3 order.

4 MEMBER MOLDENHAUER: I would agree.

5 I think that based on the fact that there are
6 no specific parties in opposition, but only
7 persons in opposition, I think that this would
8 be an opportunity for a summary order.

9 MEMBER SORG: I also agree.

10 ACTING CHAIR DETTMAN: Great. So
11 the record will reflect the Board has waived
12 its rules to allow for the preparation of a
13 summary order for this case.

14 And I think that there is one more
15 item on the Public Meeting agenda, but I think
16 we are going to take a break and regroup here.

17 I wanted to thank the applicant and the
18 architect for a great presentation and say
19 congratulations to Pastor Daniels. The
20 applicant prevailed on the application. It is
21 a very, very worthwhile project, absolutely.

22 And I look forward to seeing the

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1 community benefits to it. And I thank the
2 staff for putting up for a very long hearing
3 on this one. I think we kept a very clean
4 record and I think that reflected in our very
5 thorough deliberation here.

6 So with that, I think we will
7 close.

8 (Whereupon, at 11:41 a.m. a recess
9 until 11:59 a.m.)

10 CHAIRMAN LOUD: Good morning. The
11 Special Public Meeting is back in session.
12 And I believe we have one additional case for
13 this morning.

14 I'm Marc Loud, Chairperson. And
15 joining me is Mr. Michael Turnbull
16 representing the Zoning Commission. The other
17 Board Members have been out here earlier for
18 the Emory case and so they have already
19 introduced themselves.

20 With that, I'll turn it over to
21 you, Mr. Moy, and I believe that there is an
22 additional case to call?

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1 MR. MOY: Yes, sir. There is one
2 last item for the Special Public Meeting.
3 I'll tee it up for you and the Board.

4 We have in the Board's possession a
5 Consent Motion attendant to Application No.
6 18040. And it's a Consent Motion filed by the
7 attorney representing the applicant. They are
8 requesting a rescheduling of their advertised
9 date, which is March the 2nd, to the afternoon
10 of April the 20th.

11 This would allow the applicant
12 additional time to prepare their final
13 submission materials.

14 So that's the quick of it, Mr.
15 Chairman. As I said, it's in concurrence with
16 the Chair of ANC-3D. And that's to their
17 filing which is in the record file identified
18 as Exhibit 22.

19 So with the Board's agreement,
20 concurrence either by vote or consensus, the
21 staff would like to move forward with this
22 application.

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1 CHAIRMAN LOUD: Thank you, Mr. Moy.
2 Having reviewed what you just described and
3 it is Exhibit 22, I'm in full support of the
4 continuance to April? Can you give me the
5 date again, April?

6 MR. MOY: April the 20th.

7 CHAIRMAN LOUD: April the 20th.
8 And unless Board Members disagree, I think we
9 can dispense with this fairly quickly.

10 The only thing I would add is that
11 if there are any applications that come in,
12 for example, applications for party status, or
13 other information that comes in from persons
14 that live in the 200 foot radii, that we give
15 them, between now and April the 20th, some
16 indication either by phone call or whatever
17 the appropriate manner would be of the change
18 in date.

19 MR. MOY: Absolutely. Staff can
20 handle that, address that administratively.

21 CHAIRMAN LOUD: Okay. All right.
22 With that, do we need a motion?

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1 MR. MOY: I don't believe so.

2 CHAIRMAN LOUD: Okay. Then by
3 consensus, unless Board Members see it
4 differently and I see them nodding in
5 agreement with me, we will continue BZA 18040
6 to April 20th.

7 Anything further?

8 MR. MOY: That's it, Mr. Chairman.
9 Thank you very much.

10 CHAIRMAN LOUD: Thank you, Mr. Moy.
11 And this Special Public Meeting is
12 adjourned.

13 (Whereupon, the Special Public
14 Meeting was concluded at 12:02 p.m.)
15

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