

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Board of Zoning Adjustment  
441 4th Street, N.W.  
Washington, D.C. 20001

PUBLIC MEETING AND PUBLIC HEARING  
May 17, 2011  
Start: 9:41am - End: 3:02pm

Second Floor Hearing Room, Suite 220 South  
Washington, D.C. 20001

Board Members

Meridith Moldenhauer - Chairperson  
Nicole Sorg - Vice Chairperson  
Jeffery L. Hinkle - NCPC  
Michael G. Turnbull - Architect  
Greg Selfridge - Zoning Commission  
Clifford Moy - Secretary  
Beverley Bailey - Office of Zoning  
Mary Nagelhout - Office of the Attorney General  
John Nyarku - Office of Zoning

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

2 CHAIRPERSON SORG: This meeting will  
3 please come to order good morning ladies and  
4 gentleman. This is the Tuesday May 17, 2011,  
5 Public Meeting of the Board of Zoning Adjustments  
6 for the District of Columbia. My name is Nicole  
7 Sorg, Vice Chairperson, joining me today to my  
8 right is Jeffrey Hinkle, Representative of the  
9 National Capital Planning Commission, to my  
10 immediate left Mayoral Appointee Lloyd Jordan and  
11 to my far left Mr. Peter May representing the  
12 Zoning Commission. Copies of today's meeting  
13 agenda are available to you and are located to my  
14 left in the wall bin near the door. We do not  
15 take any public testimony at our meeting unless  
16 the Board asks someone to come forward. Please  
17 be advised this proceeding is being recorded by a  
18 court reporter and is also being webcast live,  
19 accordingly we must ask you to refrain from any  
20 disturbing noises or actions in the hearing room.  
21 Please turn off all cell phones and beepers at  
22 this time as to not disturb these proceedings.

1 Mr. Secretary, do we have any preliminary  
2 matters?

3 SECRETARY MOY: None of any substance  
4 Madam Chair.

5 CHAIRPERSON SORG: Okay then lets proceed  
6 with the agenda.

7 **Application No. 18220**

8 MR. MOY: This morning Madam Chair before  
9 moving into the cases scheduled for decision we  
10 also have before the Board for action an  
11 expedited review calendar. There is only one  
12 case for today which is Application No. 18220 of  
13 Stuart and Wilma Bernstein. I'm going to read  
14 the caption which is pursuant to 11 DCMR 3104.1  
15 for a special exception to allow a rear addition  
16 to a one family detached dwelling under Section  
17 223, not meeting the lot occupancy Section 403  
18 requirements in the R-1-B District at premises  
19 2435 Kalorama Road N.W. property located in  
20 (Square 2502, Lot 48). As Board will recall  
21 expedited review calendar items Madam Chair are  
22 zoning applications where the application waives

1 the right to a public hearing. Applications are  
2 subject to either Board approval or removal from  
3 the calendar for rescheduling to a future date.  
4 The requirements are pursuant to Section 3118.3,  
5 .6 and .7 of the Zoning Regulations. The Board's  
6 action is to vote on this one case listed on the  
7 expedited calendar Madam Chair.

8 CHAIRPERSON SORG: Thank you Mr.  
9 Secretary. One of probably the better reasons to  
10 include a case on our expedited review calendar  
11 is because they're asking for less relief that  
12 they previously had so is what we're looking at  
13 here. I think in my opinion there's a good  
14 reason for this to be on this calendar of ours.  
15 The Applicant's asking for very little relief in  
16 fact only in lot occupancy going from 50.6% down  
17 to 49.8% by enclosing part of a deck. ANC is in  
18 support, HPRB and Kalorama Historical Society  
19 have given concept level approval. The Applicant  
20 has letters from all their surrounding neighbors  
21 in support as well as Office of Planning. I  
22 don't have anything further on this case. In

1 terms of deliberation it seems like everything is  
2 in order and it's a very small amount of relief  
3 that's being requested. Are there any other  
4 deliberations from Board Members? Seeing none  
5 then I will submit a motion to approve Case No.  
6 18220 Stuart and Wilma Bernstein, pursuant to  
7 Section 3104 for a special exception to our rear  
8 addition one family detached dwelling at 2435  
9 Kalorama Road N.W. A motion has been made is  
10 there a second?

11 MR. MAY: Second.

12 CHAIRPERSON SORG: A motion has been made  
13 and seconded all those in favor say aye.

14 CHORUS: Aye.

15 MR. MOY: Staff would record the vote as  
16 4 to 0 to 1. This is on the motion of  
17 Chairperson Sorg to approve the one application  
18 on the expedited review calendar. Seconded the  
19 motion Mr. Peter May and also in support of the  
20 motion Mr. Jordan and Mr. Hinkle. No other Board  
21 Members participating. So again that's an  
22 approval vote on a vote of 4 to 0 to 1.

1 CHAIRPERSON SORG: Okay can we call the  
2 next case.

3 **Motion Order No. 17907**

4 MR. MOY: First case before the Board for  
5 decision then is a motion for a two-year  
6 extension of the validity of the order. This is  
7 to Application No. 17901 of the Embassy of Spain.  
8 The request was pursuant to Section 3130 of the  
9 Zoning Regulations. The original application was  
10 approved on February 10, 2009, and that  
11 application the relief was to 11 DCMR 1002 to  
12 permit the location of a Chancery Annex in the R-  
13 5-D District at premises 2801 16<sup>th</sup> Street, N.W.  
14 Property located in (Square 2577, Lot 821).

15 The filing from the Applicant Madam Chair  
16 in your case folders is identified as "Exhibit  
17 40". There were two subsequent filings in  
18 response one from the U.S. Department of State  
19 identified as "Exhibit 42" and the Office of  
20 Planning's report identified as "Exhibit 41".  
21 Finally as a preliminary matter Madam Chair Staff  
22 believes there's an issue as to the applicability

1 of Section 3130 to Chancery cases so with that  
2 that completes the Staff's briefing Madam Chair.

3 CHAIRPERSON SORG: Thank you Mr.  
4 Secretary. That's right this was a rulemaking  
5 approval of the Foreign Missions Act and we spoke  
6 with legal counsel who suggested that the two  
7 year regulation under 3130 doesn't apply to  
8 Chancery's based on Sections 3134.4 and 3134.6  
9 which say that the other pieces of that  
10 regulation don't apply in matters having to do  
11 with Chancery's. So I think what I would suggest  
12 that we do in this case is that the Board on our  
13 own motion modify Order No. 17907 to remove what  
14 was a standard clause referring to the two-year  
15 time limit to remove that clause from the  
16 original order that was granted in this case. Do  
17 any Board Members have comments on that course of  
18 action?

19 MR. MAY: Is the range of actions that we  
20 can undertake simply just to remove that  
21 provision or can we modify it and extend it for  
22 the two year period that was requested?

1           CHAIRPERSON SORG: Well the second piece  
2 of the suggestion I think goes a little bit like  
3 to modify the original order based on the fact  
4 that the regulation isn't required for Chancery's  
5 and in modifying the original order then would  
6 render the current request moot and we would  
7 dismiss the current request.

8           MR. MAY: The fact is that it would  
9 simply be extended. Oh I see 3130 doesn't apply  
10 at all so we were incorrect in having a two-year  
11 limit.

12           MR. JORDAN: Madam Chair I would agree  
13 with you I think we remove the provision and  
14 therefore it's not necessary for the motion and  
15 not to do any extension because it's not  
16 applicable anyway.

17           CHAIRPERSON SORG: Thank you Mr. Jordan.  
18 Okay so that being said I will submit a motion  
19 to modify order No. 17907 to delete the second  
20 all capitalized paragraph on page 7 erroneously  
21 subjected this Chancery application to the time  
22 limits for filing building permit application

1 stated in (subsection 3130.1). A motion has been  
2 made is there a second?

3 MR. JORDAN: Second.

4 CHAIRPERSON SORG: A motion has been made  
5 and seconded all those in favor say aye.

6 CHORUS: Aye.

7 CHAIRPERSON SORG: I guess Mr. Moy can  
8 you call back the vote?

9 MR. MOY: Is there going to be a seconded  
10 motion recorded. Let me get the vote count on  
11 this motion before I do that we have an absentee  
12 ballot from the NCPC Representative Marcel Acosta  
13 and his absentee vote is to modify the Order No.  
14 17907 as the motion stated. So that would give a  
15 final vote of 4 to 0 to 1.

16 MR. JORDAN: I believe that goes to the  
17 subsequent motion.

18 CHAIRPERSON SORG: Correct.

19 MR. JORDAN: That would go to the  
20 subsequent motion. His particular absentee  
21 wouldn't be applicable to that which we just  
22 moved. His motion was to grant the extension?

1           MR. MOY: No, no, no, his absentee vote  
2 is to modify the Order No. 17907 the original  
3 order which would remove the clause that  
4 addressed the time limit on 3130. In other words  
5 he would be in agreement with the motion that was  
6 made. That would give a final vote of 4 to 0 to  
7 1. Motion of the Chair Ms. Sorg, second motion  
8 Mr. Jordan and in support of the motion Mr. May  
9 and...

10           CHAIRPERSON SORG: It probably would have  
11 been easier to do both of these together but also  
12 it's been a separate motion now to dismiss the  
13 present request for extension under 17907 is  
14 there a second for the second motion?

15           MR. JORDAN: Second.

16           CHAIRPERSON SORG: Okay so the second  
17 motion has been made and seconded all those in  
18 favor say aye. And now we can clear up the rest  
19 of this.

20           MR. MOY: Okay well then of course as we  
21 discussed Mr. Acosta's absentee vote in agreement  
22 so it would give a final vote of 4 to 0 to 1 on

1 the motion that's been cited by the Chair Ms.  
2 Sorg, seconded by Mr. Jordan. Also in support  
3 Mr. May and Mr. Acosta and Ms. Moldenhauer not  
4 participating.

5 CHAIRPERSON SORG: Alright thank you Mr.  
6 Secretary, of course that was a little confusing  
7 but we can go ahead and call the next case.

8 **Application No. 17521**

9 MR. MOY: The next case is also a motion  
10 for a two year extension of the validity of the  
11 order. This is to Application No. 17521 of 601-  
12 645 H Street Ventures, LLC. Pursuant to Section  
13 3130 of the Zoning Regulations. The original  
14 application was approved on December 5, 2006 and  
15 February 6, 2007. For the record I'm going to  
16 read the caption of that original relief. That  
17 was to 11 DCMR 3103.2 for a variance from the lot  
18 occupancy requirements under Section 772 and a  
19 variance from the residential recreation space  
20 requirements under Section 773 and pursuant to 11  
21 DCMR 3104.1 and 1325.1 a special exception from  
22 the lot occupancy requirements of 1324.4. A

1 special exception from 1303.2 to permit a  
2 driveway on H Street a special exception pursuant  
3 to 2514.2. This is for a 35 foot extension of a  
4 less restrictive district into a more restrictive  
5 district and a special exception under 1320.4 to  
6 allow an addition that increases the gross floor  
7 area of an existing building by more than 50% on  
8 a lot that has 6,000sqft or more of land area and  
9 the H Street N.E. Neighborhood Commercial Overlay  
10 District in the HS/C-2-A and HS/C-2-C District at  
11 premises 601-645 H Street, N.E. property located  
12 at (Square 859, Lot 177). The Applicant made his  
13 filing and the filing is identified as "Exhibit  
14 119" in your case folders. Subsequent to the  
15 Applicant's filing there are 3 documents in  
16 response, first is a report from the Office of  
17 Planning identified as "Exhibit 124". We have a  
18 filing from ANC 6-C identified as "Exhibit 123"  
19 and a filing from the H Street Main Street  
20 Organization and that document is identified as  
21 "Exhibit 122". So with that the Board is to act  
22 on the merits of the request to extend the

1 validity of the order pursuant to Section 3130  
2 and the specific requirements as described in  
3 (subsections 3130.6 sub A thru sub C). That  
4 completes the Staff's briefing Madam Chair.

5 CHAIRPERSON SORG: Thank you Mr. Moy. I  
6 can go ahead and start off the discussion in this  
7 case. This was originally approved in August of  
8 2007 and I'll note we've seen this I think a  
9 couple of times before. One note in this case  
10 the first request for extension was made before  
11 the revision of the regulation surrounding 3130  
12 and before there was a restriction on the number  
13 of extensions that could be granted to relief  
14 under that subsection. Therefore we would treat  
15 this request as the first extension under the  
16 current regulations as the revisions to these  
17 laws are prospective in nature and not  
18 retroactive. That being said I think the  
19 information we've received from the Applicant  
20 requesting extension here in my opinion is pretty  
21 full as the secretary mentioned we received  
22 support in a noticed meeting with a quorum from

1 the ANC 6-C as well as from H Street Main Street  
2 Organization. Also in our "Exhibit 119" we have  
3 a sworn affidavit of the president Mr. Cammlier  
4 who notes that they've sought funding from 25  
5 institutional lenders, and so-forth, named  
6 several of them as well as providing some  
7 materials which seem to be used for marketing for  
8 the project. Office of Planning is also in  
9 support of this application for extension. I  
10 would be in favor of granting this. Are there  
11 any Board Members with further deliberation?  
12 Seeing none, I will submit a motion to approve  
13 the two year time extension of the validity of  
14 the order to Application No. 17521-B for 601 to  
15 645 H Street Ventures LLC. I would also note in  
16 the motion that as some of the relief  
17 particularly variance relief under residential  
18 recreation space requirements under 773 is no  
19 longer required we would instruct the staff in  
20 OAG to write an order for extension that  
21 appropriately reflects the change in this  
22 regulation. A motion has been made is there a

1 second?

2 MR. MAY: Second.

3 CHAIRPERSON SORG: A motion has been made  
4 and seconded all those in favor say aye.

5 CHORUS: Aye.

6 CHAIRPERSON SORG: All those opposed.

7 Mr. Moy can you read back the vote please.

8 MR. MOY: Yes, Staff would record the  
9 vote as 4 to 0 to 1 on the motion of the Chair to  
10 approve the request for a two year extension as  
11 well as modifying the original caption to remove  
12 the variance relief under 773. Seconded the  
13 motion is Mr. Peter May, also in support of the  
14 motion Mr. Jordan and Mr. Hinkle, There is one  
15 Board Member not participating today.

16 MS. GLAZER: Madam Chair I don't think  
17 the motion as I understood it was specifically to  
18 modify the caption; it was just more general to  
19 allow staff and OAG to craft an appropriate  
20 order.

21 CHAIRPERSON SORG: That's correct.

22 MS. GLAZER: That might be one

1 possibility.

2 CHAIRPERSON SORG: Correct, thank you.

3 **Application No. 17913**

4 MR. MOY: The next item before the Board  
5 is a motion for a two-year extension. The  
6 validity of the order to Application No. 17913 of  
7 Gonzaga College High School, pursuant to Section  
8 3130 of the Zoning Regulations. The original  
9 application was approved on April 28, 2009, and  
10 in that application the relief was to 11 DCMR  
11 3104.1 and 3103.2 for a special exception to  
12 construct new facilities for academic and  
13 athletic uses to construct a below grade parking  
14 garage and to make other related modifications to  
15 the campus under Section 206 and a variance from  
16 the court requirements under Section 406 in the  
17 R-4 C-2-A and C-3-C Districts. This is at  
18 premises 19 I Street, N.W. (Square 622, Lots 90  
19 and 840). The Applicant's filing is identified  
20 as "Exhibit 34" in your case folders. Again we  
21 have 2 filings in response. The Office of  
22 Planning report is identified as "Exhibit 36" in

1 your case folders. The Board is also in receipt  
2 of an ANC 6-C letter which was date stamped  
3 yesterday Monday, May 16<sup>th</sup> in support and that  
4 exhibit number is "Exhibit 37". So with that the  
5 Board is to act on the merits of the request  
6 pursuant to Section 3130 and the requirements as  
7 described in (subsections 3130.6 sub A thru sub  
8 C) and that completes the Staff's briefing Madam  
9 Chair.

10 CHAIRPERSON SORG: Thank you Mr. Moy.  
11 This seems to be another request for time  
12 extension that seems to be in order. The request  
13 from Gonzaga College High School was timely filed  
14 and ANC as was just noted voted unanimously to  
15 support the extension in their letter submitted  
16 yesterday. OP is in support and we've received a  
17 letter from the President Reverend Lingin who  
18 states that in fact the school has been pursuing  
19 the project having spent over a million dollars  
20 between the issuance of the order on the project  
21 including AU services and other costs. Based on  
22 lowered donations to the schools and the economic

1 downturn isn't able to start into construction at  
2 this time. I would be in support of the extension  
3 do any Board Members have any further  
4 deliberations?

5 MR. JORDAN: Madam Chair my only question  
6 is, are we requiring an affidavit that there has  
7 been financing sought or are we just accepting  
8 any representation?

9 CHAIRPERSON SORG: Well generally  
10 speaking in my opinion this case, because it's a  
11 private school to me is a little bit different  
12 than most of the time extension cases that we've  
13 been reviewing in the sense that those are  
14 developer led. Here the reasoning for the  
15 request for extension has to do and my  
16 understanding primarily with the giving of the  
17 school families and alumni decreasing and that  
18 affecting the ability of the school to raise  
19 money for the projects.

20 MR. JORDAN: I guess mine goes towards  
21 process and precedence and procedure and I'm just  
22 kind of more asking what that is. Is it a letter

1 or is it by affidavit, so that as we go forward  
2 we have some consistency in what we're requiring  
3 that's just a general question?

4 MR. MAY: If I could jump in on this  
5 discussion the idea of getting the affidavit  
6 generally speaking I think is a good step I don't  
7 think it's anything that's required by our  
8 regulation I think it's just something that  
9 demonstrates beyond simply writing a letter that  
10 somebody is swearing to the fact that there's  
11 been this issue. I think in the past we've  
12 gotten some, certainly in the Zoning Commission  
13 we've gotten some less than complete  
14 representations about efforts to get financing  
15 for projects and so-on and we've questioned those  
16 things and insisted on the Applicant submitting  
17 additional information. I would tend to agree  
18 with the Chair that in this particular  
19 circumstance we're talking about a private school  
20 that's relying on donations for at least the base  
21 of their financing, I think that's legitimate  
22 enough and I think it would be consistent with

1 pass practice of the Zoning Commission and the  
2 BZA to act accordingly. We may come to regret it  
3 at some point in the future and I think at that  
4 point we can start insisting on affidavits but I  
5 think at this point it's probably not necessary.

6 MR. JORDAN: Again Madam Chair I'm not  
7 questioning the validity of the representation  
8 made but just for the process and precedence as  
9 we go forward for my own information.

10 CHAIRPERSON SORG: I agree thank you Mr.  
11 Jordan and I think it's important and we have  
12 definitely as Mr. May pointed out been working  
13 over the past at least year or more to make sure  
14 that these time extension applications especially  
15 in the representations that are made regarding  
16 economic difficulty and so forth that they have  
17 been stand-up better to the kind of reading that  
18 we want to give them. But I also would agree  
19 with Mr. May's point that in this case it's a  
20 little bit different a more specific type of  
21 request in my opinion.

22 MR. HINKLE: Madam Chair I'll just weigh

1 in I tend to agree as well this is a private  
2 institution and sometimes they way finance  
3 projects are a little bit different than some of  
4 the other projects that we've been seeing and we  
5 have been starting to request affidavits for  
6 testifying on financial difficulties for these  
7 private projects but I think this is a different  
8 case.

9 CHAIRPERSON SORG: Thank you Mr. Hinkle.  
10 Are there any further deliberations?

11 MS. GLAZER: Madam Chair I just want to  
12 point out that I think that the previous Chair  
13 had stated that affidavits would be required in  
14 future requests for extensions so the Board might  
15 want to articulate whether it's modifying that  
16 rule somewhat or stating that this is  
17 distinguishable because it's a private school.  
18 Then so that private schools in the future will  
19 know if other private schools come in what they  
20 need to do to make their showing under the  
21 section. I mean the Board can do it on a case by  
22 case basis too I'm just saying I think that issue

1 should be addressed.

2 CHAIRPERSON SORG: Thank you I appreciate  
3 that. Yes I think that's sort of what we're  
4 getting at, pointing out is that we do and have  
5 been requiring and will continue to require  
6 affidavits and other representations such as bank  
7 letters from applicants in general but I think  
8 that this case is specific as Mr. Hinkle and Mr.  
9 May, as we pointed out a couple of times in that  
10 it is a private institution a private school and  
11 its funding and reasons for requesting the  
12 extension while they are economic are based  
13 differently than these applications generally  
14 are. That being said I would submit a motion to  
15 approve request for a two year extension of the  
16 validity of the order to Application No. 17913 of  
17 Gonzaga College High School. A motion has been  
18 made is there a second.

19 MR. JORDAN: Second.

20 CHAIRPERSON SORG: A motion has been made  
21 and seconded, all those in favor say aye.

22 CHORUS: Aye.

1 CHAIRPERSON SORG: All those opposed.

2 Mr. Moy can you please read back the vote?

3 MR. MOY: Yes Staff would record the vote  
4 as 4 to 0 to 1 this is on the motion of  
5 Chairperson Sorg, seconded the motion Mr. Jordan  
6 and in support of the motion Mr. May and Mr.  
7 Hinkle. We have a Board Member not present and  
8 not voting. This is approval for a two year  
9 extension and final vote 4 to 0 to 1.

10 **Application No. 18199**

11 MR. MOY: The next item before the Board  
12 is Application No. 18199 of Church of Jesus  
13 Christ, pursuant to 11 DCMR 3104.1 for a special  
14 exception to permit a child development center  
15 this is for 80 children, 30 of which are under 2  
16 years old and 14 staff under Section 205 in the  
17 R-1-B District. This is at premises 3456  
18 Pennsylvania Avenue, S.E. Property located in  
19 (Square 5528, Lot 30). On April 12, 2011, the  
20 Board completed all the testimony, closed the  
21 record and scheduled its decision on May 17<sup>th</sup>.  
22 The Board requested additional information to

1 supplement the record this is in the form of a  
2 letter from ANC 7-B. In your case folders Madam  
3 Chair is that document from ANC 7-B they filed  
4 the documents are dated April 13, 2011, received  
5 in the office April 18<sup>th</sup>, again that's identified  
6 as "Exhibit 31". The Board is to act on the  
7 merits of the request for the special exception  
8 under Section 205. That completes the Staff's  
9 briefing Madam Chair.

10 CHAIRPERSON SORG: Thank you Mr.  
11 Secretary. As I see the Applicant in the  
12 audience I'll note again this is a public meeting  
13 in which the Board deliberates on the facts of  
14 the case and the presence and the testimony of  
15 the Applicant isn't required unless we request  
16 something additional but the record has been  
17 closed in this case. I can start off our  
18 discussion here basically in the hearing of this  
19 case this is a child development center that's  
20 been around for almost 20 years and the record  
21 that was submitted, the record in this case save  
22 for the ANC report was really rather full in this

1 case. I think primarily we held off our  
2 deliberations and decisions on the case to  
3 receive that report which we now have. I will  
4 note that in our "Exhibit No. 28" Office of  
5 Planning recommends approval and I'll incorporate  
6 their discussion of the application under 205 for  
7 the record. Also I don't have an exhibit number  
8 for this that we received 18 letters of support  
9 from neighbors and parents who have had their  
10 children at the child development center. In our  
11 "Exhibit No. 26" the office of the State  
12 Superintendent of Education recommends approval  
13 and we have the license number in "Exhibit No.  
14 9". While I don't believe that the ANC report  
15 that we received in our "Exhibit No. 31" exactly  
16 meets the criteria for great weight set forth  
17 under 3115.1 clearly we can see from their letter  
18 that those commissioners that were there voted  
19 unanimously in support of the application. I  
20 have no other comment on the conditions related  
21 to this special exception that I would open up to  
22 other Board Members for any deliberation on the

1 merits of the case before I get to that. Do any  
2 Board Members have anything to add? Okay seeing  
3 none there are in the previous renewals of the  
4 special exception there are 11 conditions that  
5 were required along with this and OP in their  
6 report beginning on page 4 makes some suggestions  
7 to changes on those conditions. Namely doing  
8 away with condition number 1 which is the 3 year  
9 time limit and I think based on the centers  
10 performance in the neighborhood and the support  
11 that they've received. As I mentioned they've  
12 been in operation for almost 20 years. I think  
13 I'd been in support of removing that condition.  
14 Also as per the request the second condition  
15 would be changed, the second sentence reading the  
16 number of employees shall not exceed 14 instead  
17 of 8 that's in the request. Also condition  
18 number 8 I think is in my mind overly explicit  
19 and prescriptive in terms of the way that this  
20 CDC is required to interact with their ANC and I  
21 think that they've show a record over the years  
22 of interacting in a positive way and in a

1 cooperative way with the neighborhood. I think  
2 sometimes we advocate conditions requiring  
3 applicants to meet with their ANC and do  
4 community outreach in that regard. Generally  
5 speaking I think we've tried to give a little bit  
6 of flexibility to the applicant's and the ANC's  
7 to be able to manage that relationship in a  
8 somewhat less prescriptive way. Also those I  
9 think are conditions that we generally impose on  
10 newer organizations. I think especially as I  
11 would advocate for removing the time limit on  
12 this I would also suggest that we remove  
13 condition number 8 as well and finally condition  
14 number 10 is an item that was the installation of  
15 a guard rail and that has already been completed  
16 so it's no longer relevant. That being said is  
17 there any comments by Board Members on changes in  
18 the conditions on this application?

19 MR. HINKLE: Thank you Madam Chair I'm in  
20 agreement with you in terms of the conditions.  
21 There has been a long history with this CDC and  
22 if there were some negative impacts upon the

1 neighborhood I think we would have heard it  
2 through this hearing and we didn't hear that, in  
3 fact we heard just the opposite. You're right  
4 this has been operating for a long time so  
5 removal of the first condition which is the  
6 approval during a specific period of time I think  
7 removal of that condition is fine. Removal of  
8 condition number 8 as you said is really  
9 prescriptive and these conditions are set out for  
10 addressing potential adverse effects and I think  
11 over the course of time that there haven't  
12 necessarily been any so I'm certainly supportive  
13 of removal of that condition. Then as you said  
14 condition number 10 has already been completed so  
15 that certainly doesn't need to be in the new  
16 order.

17 CHAIRPERSON SORG: Thank you Mr. Hinkle  
18 is there any further deliberations or comments?  
19 Seeing none I will submit a motion to approve  
20 Application No. 18199 Church of Jesus Christ for  
21 a special exception to permit a child development  
22 center for 80 children, 14 staff under Section

1 204 with the conditions recommended by the Office  
2 of Planning on pages 4 and 5 of their report. As  
3 recommended in addition, removing condition  
4 number 8 the requirement for meeting the ANC in  
5 this manner. A motion has been made is there a  
6 second?

7 MR. JORDAN: Second.

8 CHAIRPERSON SORG: A motion has been made  
9 and seconded. All those in favor say aye, aye.

10 CHORUS: Aye.

11 CHAIRPERSON SORG: All those opposed.

12 Mr. Secretary can you please read back the vote.

13 MR. MOY: Yes Madam Chair. Staff would  
14 record the vote as 3 to 0 to 2 this on the motion  
15 of Chairperson Sorg to approve the special  
16 exception relief under Section 205 as condition  
17 by the Board. Second the motion Mr. Jordan and  
18 also in support of the motion Mr. Hinkle. We  
19 have 2 members not present and not voting with us  
20 today. So again that's a final vote of 3 to 0 to  
21 2.

22 CHAIRPERSON SORG: Thank you Mr.

1 Secretary and I think we can request a summary  
2 order in this case.

3 MR. MOY: Very good thank you Madam  
4 Chair.

5 CHAIRPERSON SORG: All righty.

6 **Application No. 18201**

7 MR. MOY: Alright the last application  
8 before the Board in its decision making is  
9 Application No. 18201 of Ingomar Associations  
10 Inc. pursuant to 11 DCMR 3103.2. This is for a  
11 variance from the year yard requirements under  
12 (subsection 933.2) to allow a 4-story rear  
13 addition to an existing building. This is for  
14 commercial and residential occupancy in the W-1  
15 District at premises 1072 Thomas Jefferson  
16 Street, N.W. property located in (Square 1198,  
17 Lots 821 and 822). Also Staff reminds the Board  
18 that the Applicant amended the application to add  
19 additional variance relief for the court  
20 requirements under Section 935 and special  
21 exception relief from the parking spaces under  
22 Section 2120.6. In your case folders this

1 morning Madam Chair you have one filing, this is  
2 a response filing from the Applicant dated May  
3 12, 2011, identified as "Exhibit 36". The other  
4 filing which was requested by the Board at its  
5 public hearing on April 26<sup>th</sup> was a DDOT letter and  
6 as of today there's no filing from DDOT. So with  
7 that the Board is to act on the merits of the  
8 requested variance and special exception relief.  
9 That completes the staff's briefing Madam Chair.

10 CHAIRPERSON SORG: Thank you Mr. Moy I  
11 will first note for the record that while I was  
12 not present for the original hearing I have  
13 reviewed the record and will be participating.  
14 To begin our deliberations I will turn to Mr.  
15 Hinkle.

16 MR. HINKLE: Thank you Madam Chair. As  
17 Mr. Moy stated this is an application for a  
18 variance from a rear yard requirement under  
19 (subsection 933.2) as well as relief from court  
20 requirements under Section 933 and special  
21 exception relief from parking spaces under  
22 2120.6. What's being proposed is a 4-story

1 addition to an existing historic commercial  
2 structure in Georgetown on Thomas Jefferson  
3 Street. Regarding the variance relief that's  
4 requested this property again is historic and  
5 both the Foundation for the Preservation of  
6 Historic Georgetown as well as the Old Georgetown  
7 Board has weighed in on this project and provided  
8 some I guess you might call them restrictions in  
9 terms of what could be done. This includes  
10 preserving the adjacent open space to the  
11 existing building, requiring the proposed  
12 addition to be pushed towards the rear so it's  
13 not necessarily visible from Thomas Jefferson  
14 Street. Essentially those are the two basic  
15 restrictions. What this does is really restrict  
16 how the addition can fit on the property.  
17 Currently there's three parking spaces at a grade  
18 on the rear of the property that are accessed  
19 from the alley and what these restrictions would  
20 do in terms of the addition is eliminate those  
21 parking spaces which would allow the addition to  
22 fit within the property but still meet those

1 requirements above the Old Georgetown Board and  
2 the Foundation for the Preservation of Historic  
3 Georgetown. So what this does really is we've  
4 heard from the Applicant's that these  
5 restrictions do set a hardship upon developing  
6 this property. With these restrictions it's  
7 really an exceptional condition and they are  
8 subject to scenic and open space and  
9 architectural façade which is really a confluence  
10 of factors and characteristics which makes it  
11 difficult to develop again that makes a practical  
12 difficulty. So it's really in my opinion that  
13 relief from these variances would not be  
14 detrimental to Georgetown and the environment as  
15 well as to the Zoning Code. In regards to the  
16 parking there has been a Zoning Administrator  
17 determination under Section 2120 that the removal  
18 of existing parking spaces on a historic property  
19 even if they're not required parking spaces may  
20 result in the need for special exception approval  
21 under Section 2120.6. This is why the Applicant  
22 is requesting relief under that; again there are

1 existing parking spaces on sight which would need  
2 to be removed to accommodate what's being  
3 proposed in terms of the addition. We did hear  
4 from the ANC 2-E which has no objection to the  
5 application for the rear yard variance as well as  
6 the variance of the open court and a special  
7 exception for the removal of the parking spaces.

8 This is a letter dated April 12, 2011, our  
9 "Exhibit 27". We also did have a party in  
10 opposition on this case and that party brought to  
11 the Board's attention some issues related to the  
12 closing of the street or partial closing of the  
13 street during construction. Some potential  
14 destabilization of the adjacent structure,  
15 traffic in the alley and how that would be  
16 affected. So at the end of the hearing the Board  
17 actually did request to receive an opinion from  
18 the District Department of Transportation and  
19 weigh in on this project and some of the issues  
20 that were brought up by the party in opposition.

21 I believe Mr. Moy stated that we did request  
22 that letter and then request a supplemental

1 response from the Applicant. What we did not  
2 receive is a letter from DDOT. However we did  
3 receive an additional supplement from the  
4 Applicant that showed that there are additional  
5 parking opportunities within the neighborhood and  
6 discussed further some of these other issues. So  
7 with that I'm in support of this application and  
8 I'll open it up to other discussions with the  
9 Board.

10 CHAIRPERSON SORG: Thank you very much  
11 Mr. Hinkle for your in-depth comments. I agree  
12 with your assessments here I think the building  
13 envelope and form and location is pretty much  
14 (inaudible) by the requirements there so that  
15 confluence of factors I really agree satisfies  
16 that prong of the variance test. As well as I  
17 would echo your comments on the practical  
18 difficulty as well as the second and third prong.  
19 So it seems to me that it's a question of  
20 parking and I think unfortunately though I know  
21 both the Office of Zoning and the Applicant have  
22 made significant efforts to reach out to DDOT

1 unfortunately we didn't get anything there. I  
2 also would agree with your assessment of the  
3 question of parking its historic resources if  
4 there weren't parking there you would need them  
5 but there are. The need that's created by, but  
6 they are there so you can't without the special  
7 exception get rid of them. I think that the need  
8 is created by this new project is pretty de  
9 minimis and so I would be in favor of supporting  
10 that portion of the application as well. Are  
11 there any additional deliberations? Then is  
12 there a motion?

13 MR. HINKLE: I would like to make a  
14 motion to approve the Application No. 18201 of  
15 Ingomar Associates Inc. pursuant to 11 DCMR  
16 Section 3103.2 for a variance for the rear yard  
17 requirements under (subsection 933.2) and for a  
18 variance of the court requirement to the Section  
19 935 and for special exception relief from parking  
20 spaces under Section 2120.6 to allow a 4-story  
21 rear addition to an existing new building for  
22 commercial and residential occupancy in the W-1

1 District at 1072 Thomas Jefferson Street, N.W.

2 CHAIRPERSON SORG: A motion has been made  
3 is there a second?

4 MR. JORDAN: Second.

5 CHAIRPERSON SORG: A motion has been made  
6 and seconded all those in favor say aye.

7 CHORUS: Aye.

8 CHAIRPERSON SORG: All those opposed?  
9 Mr. Secretary can you please read back the vote?

10 MR. MOY: Yes with pleasure Madam Chair.

11 Before I do so we do have an absentee vote from  
12 another participant on the application and that  
13 is Mr. Hood from the Zoning Commission. His  
14 absentee vote is to approve the application so  
15 that would give a resulting vote of 4 to 0 to 1  
16 this on the motion of Mr. Hinkle, seconded the  
17 motion Mr. Jordan. In support of the motion Mr.  
18 Hood now and Ms. Sorg and we have one member not  
19 present and not voting. So again the final vote  
20 to approve for the variance and special exception  
21 relief is 4 to 0 to 1.

22 CHAIRPERSON SORG: Thank you very much.

1 I think that concludes our public meeting.

2 MR. MOY: Yes it does Madam Chair.

3 **A.M. Session**

4 CHAIRPERSON SORG: This meeting will  
5 please come to order. Good afternoon ladies and  
6 gentleman. This is the May 17, 2011, Public  
7 Hearing of the Board of Zoning Adjustments for  
8 the District of Columbia. My name is Nicole Sorg  
9 Vice Chairperson, joining me today to my right is  
10 Jeffrey Hinkle, Representative of the National  
11 Capital Planning Commission, to my left is Lloyd  
12 Jordan, Mayoral Appointee and also Mr. Peter May  
13 representing the Zoning Commission. Copies of  
14 today's hearing agenda are available to you and  
15 are located to my left in the wall bin near the  
16 door. Please be advised this proceeding is being  
17 recorded by a court reporter and is also being  
18 webcast live. Accordingly we must ask you to  
19 refrain from any disturbing noises or actions in  
20 the hearing room. When presenting information to  
21 the Board please turn-on and speaking into the  
22 microphone, first stating your name and home

1 address. When you are finished speaking please  
2 turn-off your microphone so that your microphone  
3 is no longer picking up sounds or background  
4 noise. All persons planning to testify either in  
5 support or in opposition are to fill out two  
6 witness cards these cards are located to my left  
7 in the wall bin near the door and on the tables  
8 in front of you. Upon coming forward to speak to  
9 the Board please give both cards to the court  
10 reporter sitting to my right. The order of  
11 procedures for special exceptions and variances  
12 is: 1. Statement of the Applicant and Applicant's  
13 Witnesses. 2. Parties and persons in support. 3.  
14 Parties and persons in opposition. 4. Government  
15 Reports including Office of Planning and  
16 Department of Transportation, Office of the State  
17 Superintendent for Education and the Department  
18 of Public Works. 5. Reports from the ANC. 6.  
19 Rebuttal and closing statements by the Applicant.  
20 Pursuant to Section 3117.4 and 3117.5 the  
21 following time constraints will be maintained.  
22 The Applicant persons and parties except an ANC

1 in support including their witnesses will be  
2 given 60 minutes collectively. The persons and  
3 parties except an ANC in opposition including  
4 witnesses will be given 60 minutes collectively.  
5 Individuals will be given 3 minutes and  
6 associations or organizations will be given 5.  
7 These time restrictions do not include cross  
8 examinations or questions from the Board. Cross  
9 examination of witnesses is permitted by all  
10 parties and Applicants. The ANC within which the  
11 property is located is automatically a party to a  
12 special exception or variance case. Nothing  
13 prohibits the Board from placing reasonable  
14 restrictions on cross examination including time  
15 limitations or limitation on the scope of cross  
16 examination. The record will be closed at the  
17 conclusion of each case except for any materials  
18 specifically requested by the Board. The Board  
19 and the Staff will specify at the end of each  
20 hearing exactly what is expected and the date  
21 when the material must submitted to the Office of  
22 Zoning. After the record is closed no other

1 information will be accepted by the Board. The  
2 Sunshine Act requires that a public hearing on  
3 each case be held in the open before the public.  
4 Pursuant to Section 405B and 406 of the Open  
5 Meeting Amendment Act of 2010, the Board may  
6 consistent with its rules and procedures and the  
7 Open Meeting Amendment Act enter into closed  
8 meetings or closed emergency meeting on a case  
9 for purposes of seeking legal counsel in a case  
10 per Section 405B4 and or deliberating on a case  
11 pursuant to Section 405B-13 of the law but only  
12 after providing the necessary public notice and  
13 taking a roll call vote. The decision of the  
14 Board in these contested cases must be based  
15 exclusively on public record. To avoid any  
16 appearance to the contrary the Board requests  
17 that persons present not engage the members of  
18 the Board in conversation. Please turn off all  
19 beepers and cell phones at this time as to not  
20 disturb these proceedings. All individuals  
21 wishing to testify today please rise and take the  
22 oath. Mr. Secretary, will you please administer

1 the oath.

2 MR. MOY: Yes. Do you solemnly swear or  
3 affirm that the testimony you're about to present  
4 in this proceeding is the truth, the whole and  
5 nothing but the truth? You may consider yourself  
6 under oath.

7 CHAIRPERSON SORG: Thank you very much.  
8 The Board will now consider any preliminary  
9 matters. Preliminary matters are those which  
10 relate to whether a case should or will be heard  
11 today such as a request for postponement,  
12 continuance or withdrawal or whether proper or  
13 adequate notice of a hearing was given. If you  
14 are not prepared to go forward with a case today  
15 or if you believe that the Board should not  
16 proceed, now is the time to raise such a matter.  
17 Mr. Secretary, do we have any preliminary  
18 matters?

19 MR. MOY: The Staff is not aware of any  
20 preliminary matters this morning Madam Chair.

21 CHAIRPERSON SORG: Okay then let us call  
22 the first case.

1 **Application No. 18211**

2 MR. MOY: Good morning Madam Chair,  
3 Members of the Board. That case would be  
4 Application No. 18211. This is the application  
5 of Gregory Fishbein, pursuant to 11 DCMR 3104.1  
6 for a special exception to allow a rear deck  
7 addition to an existing one-family row dwelling  
8 under Section 223, not meeting the lot occupancy  
9 Section 403, and non-conforming structure  
10 requirements under (subsection 2001.3). This is  
11 in the R-3 District at premises 2912 Dumbarton  
12 Street, N.W. property located in (Square 1234,  
13 Lot 829).

14 CHAIRPERSON SORG: Thank you Mr.  
15 Secretary. I see the Applicant has approached,  
16 can you please introduce yourself with your name  
17 and address for the record please.

18 MR. ZAPATKA: I am Christian Zapatka,  
19 Architect representing Gregory Fishbein. My  
20 office is at 1656 33<sup>rd</sup> Street, N.W. Washington.

21 CHAIRPERSON SORG: Thank you very much  
22 and I know that we have in our record an

1 authorization for you to represent the Applicant  
2 in this case.

3 MR. ZAPATKA: Yes.

4 CHAIRPERSON SORG: I believe that the  
5 record here is pretty full so go ahead and  
6 present your case as you like.

7 MR. ZAPATKA: Yes it's an application for  
8 a special exception Section 223 to permit the  
9 building of a deck at the back of the house that  
10 is 5 feet above grade rather than 4 feet. There  
11 are two neighbors to the east and west. The  
12 neighbor to the east has a similar deck not as  
13 deep. The homeowner at 2912 Dumbarton, Gregory  
14 Fishbein has been in contact with her about a  
15 year for this idea and she has been consistently  
16 supportive of the proposal. More recently he was  
17 able to reach the neighbor to the west whose  
18 house is actually facing 30<sup>th</sup> Street and the rear  
19 garden is a tall brick wall so she in fact  
20 doesn't see any of the gardens at 2912 Dumbarton.  
21 She however was shown the drawings by Gregory  
22 Fishbein and was supportive of the proposal. At

1 the rear of the property is a garage for a house  
2 facing 29<sup>th</sup> Street and then beyond is a parking  
3 lot for an apartment building that faces 30<sup>th</sup>  
4 Street. ANC 2-E gave a favorable report for the  
5 proposal and I know we received a report from the  
6 Office of Planning as well in support of the  
7 proposal. I guess I just want to emphasize that  
8 through the photographs and drawings we've  
9 presented it's clear that the proposed deck would  
10 not adversely affect the neighborhood and  
11 certainly not present additional traffic  
12 problems, or increase noise levels or introduce  
13 excessive lighting. Once again the neighbors  
14 immediately adjacent have been supportive as well  
15 as the ANC 2-E.

16 CHAIRPERSON SORG: Thank you very much.  
17 I just have one quick question for you. I know  
18 that in the application you said you've got  
19 concept. Oh that you presented for Fine Arts and  
20 also OGB already?

21 MR. ZAPATKA: Yes it was the proposal was  
22 submitted to Old Georgetown Board Commission and

1 Fine Arts. They deemed the project not visible  
2 from public space and hence passed it onto  
3 Historic Preservation Review Board. It's at that  
4 point when we applied for permitting that we  
5 discovered that a deck that's higher than 4ft off  
6 the ground would require zoning relief.

7 CHAIRPERSON SORG: Yep. Okay thank you  
8 do Board Members have any questions for the  
9 applicant? Seeing none we can turn to the Office  
10 of Planning.

11 MS. JACKSON: Good morning for the record  
12 my name is Arlova Jackson with the Office of  
13 Planning. The Office of Planning recommends  
14 approval of the application. We find it meets  
15 the standards found in Section 223. I'd be happy  
16 to stand on the record and just take any  
17 questions you have at this time.

18 CHAIRPERSON SORG: I don't have any  
19 questions. Do other Board Members have questions  
20 for the Office of Planning? Does the Applicant  
21 have any questions for the Office of Planning?

22 MR. ZAPATKA: No.

1           CHAIRPERSON SORG: Okay, thank you. Now  
2 we can move to any individuals or parties in the  
3 audience in support or in opposition to the  
4 application. Seeing none is there anybody in the  
5 audience from ANC 2-E. I will note for the  
6 record that we received in our "Exhibit 24" a  
7 letter from ANC 2-E indicating that they had  
8 adopted a resolution of no objection and this  
9 letter meets are standards for great weight which  
10 we will give it. Are there any closing  
11 statements?

12           MR. ZAPATKA: None other than the  
13 Applicant has been very patient and cooperative  
14 with the process in the past year.

15           CHAIRPERSON SORG: Okay thank you. Are  
16 there any final questions from Board Members?  
17 Seeing none I think we can go ahead and move into  
18 deliberations on this case. Like I said at the  
19 outset I thought that the record was pretty full  
20 here. The relief that the Applicant is asking  
21 for is pretty light. I will just note for the  
22 record Office of Planning report and "Exhibit No.

1 26" in support as well as I just mentioned  
2 "Exhibit No. 25" ANC 2-E also we have a  
3 submission in "Exhibit No. 8" from the Applicant  
4 of the passing on of the review by fine arts. He  
5 also testified that they are going in front of  
6 HPRB. While we don't have letters on our record  
7 I believe from the neighbors the Applicants  
8 Architect testified that the Applicant has been  
9 in contact and has shared drawings and received  
10 the support of both the east and west neighbors.  
11 As well he testified that the deck addition  
12 wouldn't be visible to any other of the  
13 surrounding properties. That being said I would  
14 be in support of approving this application. Are  
15 there any further deliberations by Board Members?  
16 Seeing none I will submit a motion to approve  
17 Application No. 18211, pursuant to 11 DCMR 3104.1  
18 for a special exception to allow rear deck  
19 addition to an existing one family row dwelling  
20 under Section 223, not meeting the lot occupancy  
21 requirements under 403, non-conforming structure  
22 under 2001.3 at 2912 Dumbarton Street, N.W. A

1 motion has been made is there a second?

2 MR. JORDAN: Second.

3 CHAIRPERSON SORG: A motion has been made  
4 and seconded. All those in favor say aye.

5 CHORUS: Aye.

6 CHAIRPERSON SORG: All those opposed?

7 Mr. Secretary can you please read back the vote?

8 MR. MOY: Yes Staff would record the vote  
9 as 4 to 0 to 1 this on the motion of Chairperson  
10 Sorg to approve the application for special  
11 exception relief under Section 223, not meeting  
12 lot occupancy 403, non-conforming structure  
13 provision under 2001.3. Seconded the motion Mr.  
14 Jordan and also in support of the motion Mr.  
15 Peter May and Mr. Hinkle. We have a Board Member  
16 not participating this morning. So again the  
17 vote is to approve is 4 to 0 to 1.

18 CHAIRPERSON SORG: Thank you very much  
19 and I think we will request a summary order.

20 MR. MOY: Very good thank you Madam  
21 Chair.

22 CHAIRPERSON SORG: Thank you. When

1 you're ready we can all the final case of the  
2 morning.

3 **Application No. 18208**

4 MR. MOY: The next application for Board  
5 Action and the final case for the morning session  
6 is Application No. 18208, this is the application  
7 of the Capital Hill Day School, pursuant to 11  
8 DCMR 3104.1 and 3103.2, for a variance from the  
9 parking requirements under Section 2101.1, and a  
10 special exception to allow the temporary  
11 placement and use of modular classrooms from May  
12 2011 to March 2012. This is for a private school  
13 under Section 206 in the R-5-B District at  
14 premises 1000 5<sup>th</sup> Street, S.W. property located in  
15 (Square 881-W, Lot 800). Staff also for the  
16 record the Applicant has also amended the  
17 application to include relief from special  
18 exception 2516 that's noted in your "Exhibit 25"  
19 in your case folders. So with that that  
20 completes the reading from the Staff Madam Chair.

21 CHAIRPERSON SORG: Thank you Mr.  
22 Secretary. We have one preliminary matter which

1 is of the amended application but why don't we  
2 have those folks at the table introduce  
3 yourselves, with your name and home address for  
4 the record.

5 MS. OLSON: Good morning Madam Chair,  
6 Members of the Board and Commissioner May. My  
7 name is from the law firm of Greenstein, Dalorm  
8 and Luxe. I'm accompanied by my colleague Jacque  
9 DePuy and I'm also accompanied by Jason Gray the  
10 head of the Capital Day School and Jim Weelwine,  
11 Business Manager for the school. Do you want to  
12 state your addresses for the record?

13 MR. WEELWINE: My address is 313  
14 Crownville Drive, Alexandria, VA.

15 MR. GRAY: Jason Gray, 7219 Mentor Place,  
16 Takoma Park, MD.

17 MS. OLSON: As I said we're the attorneys  
18 representing the Applicant in this case, Capitol  
19 Hill Day School. I also should add that in  
20 addition we have in the audience David Cortiella  
21 representing the D.C. Housing Authority the  
22 agency with jurisdiction over the land where the

1 modular classroom building will be temporarily  
2 placed and Christopher Regan the Project Manager.

3           CHAIRPERSON SORG: Thank you very much.  
4 As the secretary read in the caption you all  
5 submitted an amended application requesting  
6 further relief. I think the amendment included  
7 the special exception to allow two or more  
8 principle buildings on a single subdivided lot.  
9 I think that given the relationship of the  
10 additional relief requested we can, I would be in  
11 favor of allowing the amended application and  
12 going forward with the hearing today. Are there  
13 any comments from any other Board Members? Okay  
14 so we will allow the amended application and you  
15 can go ahead.

16           MS. OLSON: Okay thank you. As stated we  
17 are seeking zone relief, special exception  
18 pursuant to 206 to allow the temporary placement  
19 and use of modular classrooms by the Applicant  
20 while the school goes through a substantial  
21 renovation at its existing place. Special  
22 exception pursuant as you just said to Section

1 2516 to allow two or more principle buildings on  
2 a single subdivided lot and an area variance  
3 pursuant to 2101 from required parking in the R-  
4 5-B Zone District. Our client has received no  
5 opposition to the modular building at this  
6 temporary location during the construction of the  
7 main school building. The project received  
8 support from the Office of Planning, ANC 6-D, the  
9 D.C. Housing Authority, the Capitol Quarter  
10 Homeowners Association and the Capitol Hill  
11 Restoration Society. Our client has already  
12 secured vehicular parking spaces a half a block  
13 away and bus parking spaces approximately 5  
14 blocks away. Our client agrees to all the  
15 conditions in the Office of Planning Report. In  
16 addition our client has already met with DDOT  
17 regarding pick up and drop off and DDOT has  
18 agreed to temporarily restrict the curbside  
19 adjacent to the school on 5<sup>th</sup> Street. Given the  
20 support and the fact that since the fall semester  
21 is rapidly approaching and our client needs to  
22 pull permits for this modular classroom as soon

1 as possible we are willing to stand on the record  
2 and request a bench decision and summary order.  
3 Or if the Board would prefer we can run through  
4 an abbreviated testimony whereby Mr. Gray the  
5 head of the school and Mr. Weelwine the Business  
6 Manager of the School can go over the need for  
7 the modular classroom and their exhaustive search  
8 to find available accommodations for this school  
9 during construction, the urgency of pulling  
10 permits and the accommodations for vehicular and  
11 bus parking spaces. Either way we're available  
12 for questions. Thank you.

13 CHAIRPERSON SORG: Thank you very. I  
14 think that the prehearing statement submitted  
15 here and what we're seeing in the record for the  
16 need for the modular classrooms as well as the  
17 narrative of the school search is set out pretty  
18 well. I would be willing to go ahead and see if  
19 the Board has questions. On the other hand if  
20 other Board Members want to hear full  
21 presentation.

22 MR. JORDAN: I don't need a full

1 presentation I just have a couple of quick  
2 questions. Is the Capitol Quarters Homeowners  
3 Association, the townhouse association right  
4 across the street?

5 MS. OLSON: Yes that's correct it's  
6 across from 5<sup>th</sup> Street.

7 MR. JORDAN: Regarding the parking there  
8 was something, there was a letter about a parking  
9 facility but somewhere nearby. So for the  
10 parking facility is the school going to purchase  
11 those parking spaces for their staff?

12 MR. OLSON: I think Mr. Weelwine would be  
13 better to answer that question.

14 MR. WEELWINE: My name is Jim Weelwine  
15 I'm the business manager for the Capitol Hill Day  
16 School. We subsidized parking for faculty and  
17 staff and they're allowed to contribute the  
18 balance on a tax free basis through payroll. So  
19 we subsidize it for \$50 per month.

20 MR. JORDAN: What is the parking costs  
21 going to be?

22 MR. WEELWINE: We have not concluded

1 these negotiations with U Street but we're  
2 getting them (inaudible).

3 MR. JORDAN: Okay.

4 CHAIRPERSON SORG: On that note do you  
5 think that the requirement for the staff and  
6 faculty parking will be a similar requirement  
7 from them as you go forward in your lease?

8 MR. WEELWINE: Generally it's been our  
9 experience we've got over 50% of the people who  
10 already participate in the Smart Benefits Program  
11 with Metro. So over half of the faculty and  
12 staff will arrive at site using public  
13 transportation? We provide parking on site right  
14 now for faculty and staff in this location. I'm  
15 not sure that our entire allocation of 29 spaces  
16 would be used.

17 MR. JORDAN: Again going back to the  
18 parking because that's one of the main  
19 considerations I see on National Day, National  
20 Baseball game day. I guess in regards to the  
21 parking, the parking relationship I think you  
22 said has not been completed yet. I guess my

1 question was then would they be reserved spaces  
2 for your faculty that regardless of ballgame day  
3 they would have a place to park?

4 MR. WEELWINE: Yes Mr. Jordan they will.

5 MR. JORDAN: Okay.

6 CHAIRPERSON SORG: So any other Board  
7 Members have questions?

8 MR. MAY: As I recall this site is part  
9 of the Capper-Carrolsburg PUD? Can you tell me  
10 what the ultimate construction will be on this  
11 site?

12 MS. OLSON: Yes. Commissioner May the  
13 ultimate construction on site is going to be for  
14 the community center and as far as that Capper-  
15 Carrolsburg PUD it requires June 2013  
16 construction of the community center on site and  
17 we have certainly discussed this with the housing  
18 authority and there should be no problem with our  
19 temporary use of that before that time.

20 MR. MAY: So I'm sorry June 2013 is the  
21 start of construction that's required?

22 MR. OLSON: I believe so, yes.

1           MR. MAY: Because that has been a  
2 contentious issue because that community center  
3 has been delayed on several occasions. You have  
4 total certainty that your need for the site is  
5 going to be, you'll be complete by what is it  
6 next fall, or no next spring, March of 2012, so  
7 not even a full year.

8           MS. OLSON: Correct.

9           MR. MAY: Why is it that the parking  
10 could not actually be provided on site? It seems  
11 like there's ample room behind that building to  
12 have some parking if not all of it?

13           MR. WELLSWINE: You see the site right  
14 here it's this narrow piece of land to the west  
15 of the parking garage?

16           MR. MAY: Yes.

17           MR. WELLSWINE: Our modular units occupy  
18 the largest portion of the lot. The small amount  
19 that remains in the rear will be used for play  
20 area as well as this area down here.

21           MR. MAY: I didn't realize you were going  
22 to try to put in some play area there. The work

1 that's going to happen in your existing building  
2 is just the renovation at this point? It's not  
3 the addition that was approved sometime ago?

4 MR. WEELWINE: Correct.

5 MR. MAY: Alright. I don't think I have  
6 any other questions.

7 CHAIRPERSON SORG: Thank you Mr. May. It  
8 looks like there's some process to be gone  
9 through to process this as a tax lot. Is that  
10 something that's proceeding so that you can do  
11 your construction?

12 MS. OLSON: Actually my colleague Jacque  
13 DePuy will answer that question.

14 MR. DEPUY: Madam Chair for the record  
15 Jacque DePuy, Co-Council with Ms. Olson. We've  
16 been in conversation with the Zoning  
17 Administrator about this site and the platting  
18 requirements because it's a Federal Reservation  
19 and because of the somewhat unique circumstance  
20 namely that the Federal Reservation goes partly  
21 into the right of way of 5<sup>th</sup> Street. The Office  
22 of Surveyor will not allow a subdivision to

1 occur. So there would be no subdivision. With  
2 respect to tax lot there is currently a tax lot  
3 and with relief from the requirement of having 3  
4 structures on one lot we will not need to make  
5 any changes to the lot and therefore will proceed  
6 on the basis of the current tax lot.

7 CHAIRPERSON SORG: I see so it will  
8 continue to be one record lot.

9 MR. DEPUY: One tax lot yes. The Federal  
10 Reservation is now a tax lot and that will  
11 continue with no change.

12 CHAIRPERSON SORG: Okay thank you. Do  
13 any Board Members have further questions at this  
14 time? If not why don't we move to the Office of  
15 Planning?

16 MR. COCHRAN: Thank you Madam Chair Steve  
17 Cochran. Apparently I'm going to make a very  
18 brief report. I don't know what went wrong with  
19 my voice. Just one correction in our report in  
20 the last paragraph on the first page when he said  
21 to proceed with the addition that had previously  
22 been approved. In fact the Applicant is not

1 going to be building that addition they are  
2 asking for this relief to relocate temporarily in  
3 order to completely rehabilitate the existing  
4 building rather than proceeding with the addition  
5 that was previously approved. Otherwise OP  
6 stands on the record.

7 CHAIRPERSON SORG: Thank you very much.  
8 Do Board Members have questions for the Office of  
9 Planning?

10 MR. MAY: I have one quick question. Are  
11 you saying that the addition will not be  
12 undertaken ever nor is it just not being done  
13 now?

14 MR. COCHRAN: The Applicant told me today  
15 that they're not building the addition but to  
16 clarify that you would be better off asking the  
17 Applicant.

18 MR. MAY: Okay, I'm just curious because  
19 I know that's still pending and the clock is  
20 ticking.

21 MR. GRAY: Our intention at this point is  
22 to allow our, the pending application for that to

1 lapse.

2 MR. MAY: Okay thanks.

3 MR. COCHRAN: Excuse me the main reason I  
4 brought that up because the Applicant does refer  
5 to a abiding by the conditions of Order 17540,  
6 17541 and just wanted to be sure that even if  
7 they don't build the addition those conditions  
8 still hold.

9 MR. MAY: Very good thank you.

10 CHAIRPERSON SORG: Do other Board Members  
11 have questions for the Office of Planning?  
12 Seeing none does the Applicant have any questions  
13 for the Office of Planning?

14 MS. OLSON: No we do not.

15 CHAIRPERSON SORG: Okay thank you. Now  
16 we will see if there are any individuals in the  
17 audience in support or in opposition to this  
18 case? Seeing no one approaching, we will move to  
19 ask if there is any one from ANC 6-D in the  
20 audience. Seeing no one I will reference our  
21 "Exhibit No. 23" a letter from ANC 6-D meeting  
22 our requirements for great weight to support the

1 application. With that we will turn back to the  
2 Applicant for any closing statements.

3 MS. OLSON: Thank you. Given that  
4 there's no opposition and the urgency for pulling  
5 permits in time to have the modular classrooms  
6 set up for the fall semester we respectfully  
7 request a bench decision and summary order.  
8 Thank you.

9 CHAIRPERSON SORG: Thank you very much.  
10 With that I think we can go ahead and do that and  
11 begin deliberations on the case and I will start  
12 us off. There are as we've heard 3 basic areas  
13 of relief that are requested. The first being to  
14 allow the Capitol Hill Day School to use this lot  
15 for school purposes under 206. The reasoning for  
16 that special exception looks a lot like the  
17 special exception that they have regularly for  
18 their permanent space. You can see for example  
19 in OP's report the conditions imposed by the  
20 order pertaining to their school which is 17540-  
21 41 would hold here 255 students, 43 faculty and  
22 staff, pre-kindergarten to 8<sup>th</sup> grade, the hours

1 evening and weekend functions would apply here on  
2 a temporary basis. I don't see any issue with  
3 that continued use with those conditions on this  
4 temporary space. The second piece of relief  
5 required special exception under 2516 which we've  
6 talked about to allow 2 principle buildings on a  
7 single lot. We heard from council as well as the  
8 school administrators on that point. Finally the  
9 area variance for parking previously the school  
10 had provided parking as well as parking subsidies  
11 both for parking and for use of public  
12 transportation. The Applicant testified that  
13 more than 50%, I think, of their faculty and  
14 staff use public transportation. Also they've  
15 submitted in our believe it's our "Exhibit No.  
16 26" a letter from U Street Parking with whom they  
17 are working with to contract to provide 29 spaces  
18 which they've testified is more than enough to be  
19 dedicated to the school use during all their  
20 hours and functions. We've seen as the Applicant  
21 has mentioned no opposition in the case. OP is  
22 in support, ANC as we mentioned is in support,

1 the local homeowners association has voiced their  
2 support as well as the Capitol Hill Restoration  
3 Society. That being said I would be in support  
4 of approving this application are there further  
5 deliberations from other Board Members?

6 MR. MAY: I think this is pretty straight  
7 forward matter and doesn't require a lot of real  
8 debate about it; it was all pretty straight  
9 forward. I guess the one thing that's a little  
10 bit occurred to me and maybe the Applicant stated  
11 this, but the conditions that were proposed by  
12 the Office of Planning is the Applicant  
13 comfortable with all those conditions?

14 MR. GRAY: Yes.

15 CHAIRPERSON SORG: Thank you very much  
16 for pointing that out Mr. May. They indicated  
17 the Applicant at the very outset that they were  
18 in agreement with the conditions that Office of  
19 Planning is proposing. Are there any further  
20 deliberations from other Board Members? Okay  
21 then I will submit a motion to approve  
22 Application 18208 Capitol Hill Day School,

1 pursuant to 11 DCMR 3104.1, and 3103.2 a variance  
2 from parking requirements under Section 2101.1,  
3 special exception to allow temporary placement  
4 and use of modular classrooms from May 2011 to  
5 March 2013, for a private school under Section  
6 206 at 1000 5<sup>th</sup> Street, S.E. and subject to the  
7 conditions recommended in the Office of Planning  
8 Report and our "Exhibit No. 27". A motion has  
9 been made is there a second?

10 MR. MAY: Second.

11 CHAIRPERSON SORG: A motion has been made  
12 and seconded all those in favor say aye.

13 CHORUS: Aye.

14 CHAIRPERSON SORG: All those opposed?  
15 Mr. Moy can you please read back the vote?

16 MR. MOY: Yes Staff would..

17 MS. GLAZER: Madam Chair I'm sorry Mr.  
18 Secretary, sorry to interrupt but in terms of the  
19 conditions I was glancing at OP's recommended  
20 conditions and the last one is indeed to  
21 incorporate conditions from another order however  
22 it's only to incorporate those conditions that

1 are relevant to the schools operation at the  
2 temporary site. If the Board Members want to  
3 look at "Exhibit 26" that's the Applicant's  
4 prehearing statement that order that's referenced  
5 is incorporated in their numerous conditions some  
6 of which do apply to the addition. There was  
7 testimony that the addition would not be built so  
8 I think that it might be wise for the Board to  
9 consider which conditions are going to be  
10 incorporated and which are not.

11 CHAIRPERSON SORG: Thank you very much  
12 for pointing that out. Let's take a quick look  
13 at those before we continue. Can you mention  
14 again which tab that you seen these under?

15 MS. GLAZER: I don't have a tab but it's  
16 about the, well its closer to the end of the  
17 attachments. The conditions are on page 17.

18 CHAIRPERSON SORG: Okay it seems that  
19 we've gotten a little bit ahead of ourselves. So  
20 what we will do is we will take the current  
21 motion off the table, go back and clean up our  
22 conditions and then we can resubmit the motion

1 based on the conditions that we want to suggest.

2 MR. JORDAN: Madam Chair I think the  
3 proper way for us would be to either just make a  
4 substitute motion or to amend the motion  
5 otherwise we have to do something with the  
6 motion. So we can just simply make a new motion  
7 by substitute with the new terms, whatever it's  
8 going to be.

9 CHAIRPERSON SORG: Does OAG have a  
10 suggestion as to the correct process to move  
11 forward to incorporate the conditions.

12 MS. GLAZER: I think its fine to make an  
13 amended motion when you're ready but first you  
14 need to determine which conditions are going to  
15 be part of this order.

16 CHAIRPERSON SORG: Okay thank you.

17 MR. MAY: Madam Chair perhaps we just go  
18 through them all together one at a time. We're  
19 trying to narrow it down. I did quick pass  
20 myself but I'm not ready to just sort of do it as  
21 a block. But do we have also the Applicant's  
22 recommended conditions?

1 CHAIRPERSON SORG: We do, and we have one  
2 copy.

3 MR. MAY: Maybe you can just read off the  
4 numbers of the ones that they think still apply  
5 and we can all make note of that and then  
6 consider that as we go through them one by one.

7 CHAIRPERSON SORG: Thank you very much  
8 Mr. May that's an excellent way of proceeding.  
9 So the Applicant is proposing that the relevant  
10 conditions are 3, 4, 5, 6, 7, 8, 9, 13 and 15.

11 MR. MAY: I'm off by 2.

12 MR. DEPUY: Madam Chair we did our list  
13 quickly and we're probably in agreement with Mr.  
14 May we don't believe that 6 or 9 would apply.

15 MR. MAY: Those were the other two that I  
16 struck.

17 MR. DEPUY: How did you know that?

18 CHAIRPERSON SORG: They have 2 more  
19 minutes to look it over again.

20 MR. MAY: I still think going through  
21 them one at a time and everyone speaking  
22 affirmatively about them is important.

1           CHAIRPERSON SORG: Absolutely what we can  
2 do then is I can read off each of the conditions  
3 in the original order and we can discuss which  
4 ones to keep and which ones to leave off and then  
5 we can go to the further recommended conditions  
6 that OP suggests that we include. So the first  
7 condition in order 17540 and 17541, number 1.  
8 The addition to the Dent Building shall be  
9 constructed in accordance with the plans in  
10 "Exhibit No. 31" and final number 17540;  
11 Applicant shall have flexibility to modify the  
12 design of exterior elements of the addition which  
13 are initiated by the Historic Preservation Review  
14 Board and do not require Zoning Relief. So my  
15 opinion as we've heard in testimony the addition  
16 is not happening. I would remove this condition.

17           MR. MAY: I think that whether or not its  
18 happening isn't really even relevant to this  
19 case.

20           CHAIRPERSON SORG: Not relevant to the  
21 relief that's in the project that's being done in  
22 this case. I'm seeing nodding of heads here.

1 Number 2. At the beginning of the next academic  
2 year i.e. September after the issuance of a valid  
3 certificate of occupancy for the addition use of  
4 the 214 Building shall be limited to  
5 administrative offices and support functions in  
6 conjunction with the schools use of the Dent  
7 Building as with condition number one it's not  
8 relevant to the temporary site and relief  
9 requested in this case. Condition number 3 the  
10 total number of students enrolled in the school  
11 shall not exceed 255. This condition I think is  
12 relevant and I think my fellow Board Members are  
13 agreeing so we will include condition number 3.  
14 Condition number 4 the educational program  
15 offered by the Applicant shall not extend beyond  
16 a day program and an afterschool program for pre-  
17 kindergarten through 8<sup>th</sup> grade students except for  
18 a summer camp that serves the same grade levels  
19 and is also subject to all other conditions set  
20 forth in this order. Condition number 4 I think  
21 it relevant and should be included in the motion.  
22 Agreement is being made. Condition number 5 no

1 more than 43 faculty and staff members shall be  
2 employed at the school this too I think is  
3 relevant to the relief in the project, nodding in  
4 agreement okay good. Condition number 6 the  
5 Applicant shall provide parking spaces on the  
6 subject property to accommodate 20 automobiles  
7 during normal i.e. daytime hours of operation and  
8 3 school buses after hours as shown on the site  
9 plan "Exhibit No. 31" file number 17540 during  
10 the day if the school buses are not in use they  
11 shall be parked behind the Dent building or an  
12 alternate off-site location. This one I think we  
13 can agree is not applicable.

14 MR. JORDAN: I don't know if that'  
15 exactly correct. I think it has, I think they  
16 need to make the arrangements because everyone is  
17 not going to be using public transportation.

18 CHAIRPERSON SORG: Right if we were to,  
19 if I were to finish one of the conditions put  
20 forward by OP takes care of the parking and that  
21 condition which we would get to later references  
22 from the OP Report on page 1 so that condition

1 which we will read after I think we finish going  
2 through these provides for contract for off  
3 street parking for 29 faculty and staff parking  
4 spaces under the temporary relief sought.

5 MR. JORDAN: Madam Chair so you're saying  
6 we need to look at both of these at the same time  
7 as we go through them because we may be in  
8 opposition to something they removed that's not  
9 here.

10 CHAIRPERSON SORG: That's correct in this  
11 case I would advocate removing this condition and  
12 adding to this temporary relief the condition  
13 that OP is suggesting on page 1 of their report.

14 Okay so 6 is out. Number 7 normal hours of  
15 operation of the school shall be from 8am to 6pm  
16 Monday through Friday. Number 8 evening and  
17 weekend functions and activities for gatherings  
18 of 25 or more persons shall be limited to those  
19 functions and activities that are customary for  
20 an elementary school such as theatrical or  
21 musical productions, back to school nights,  
22 science, math and art fairs and similar

1 activities and shall not exceed on average more  
2 than 2 per month. No facilities within the Dent  
3 or 214 building shall be made available for  
4 commercial purposes. I think we can keep this  
5 condition if other members think that we should  
6 strike for the purposes of the temporary order  
7 the last sentence we could do that.

8 MR. HINKLE: Madam Chair I would propose  
9 to strike that last sentence.

10 MR. JORDAN: It's certainly not relevant  
11 but there is an open question about whether the  
12 new temporary facility might be used for  
13 commercial purposes but I can't believe we have  
14 to worry about that.

15 CHAIRPERSON SORG: I would agree. So we  
16 will strike the last sentence of condition number  
17 8 for the purposes of a temporary order. Number  
18 9 the Applicant will ensure that any lights on  
19 the exterior of the Dent Building, its addition,  
20 or the 214 building do not shine onto any  
21 neighboring properties other than the 214  
22 building but only for so long as the application

1 uses the 214 building for school uses in  
2 conjunction with the use of the Dent Building.  
3 Lighting of these buildings is not in my opinion  
4 relevant here I think we can strike condition  
5 number 9, agreement is here. Condition number 10  
6 subject if necessary to review by HPRB on the  
7 issuance of public space permits therefore the  
8 Applicant shall screen the air conditioning units  
9 that are located on grade in the public space  
10 along 2<sup>nd</sup> Street, S.E. with an acoustic screen  
11 wall in order to mitigate their noise impacts on  
12 nearby properties. I think this condition is  
13 also not relevant to the temporary relief sought.  
14 Agree okey-doke. Condition number 11; subject  
15 if necessary to review by HPRB the Applicant  
16 shall erect or install a fence between the  
17 reconfigured parking lot and the abutting public  
18 alley. The fence may be moveable. Also not  
19 relevant to today's discussion and therefore out.  
20 Condition number 12; the Applicant shall post  
21 signs that instruct faculty, staff and visitors  
22 who use the onsite parking spaces in the rear of

1 the Dent building to back into such parking  
2 spaces. They are not parking in the rear of the  
3 Dent building in the relief that is sought  
4 therefore I would strike condition number 12.  
5 Condition number 13; the Applicant shall provide  
6 faculty and staff with incentives such as Metro  
7 check program to encourage the use of public  
8 transportation and to carpool to and from the  
9 subject property. Applicant testifying that this  
10 was a current practice and something that they  
11 would continue so would include condition number  
12 13 of the original order. Condition number 14;  
13 all previous orders and conditions therein  
14 pertaining to the subject property shall remain  
15 in effect until issuance of a valid certificate  
16 of occupancy for the addition at which time this  
17 order and conditions herein shall supersede all  
18 such previous orders and their conditions.  
19 Fourteen for our temporary order, I think, not  
20 relevant as well, nodding in agreement okay 14 is  
21 out. Condition number 15; the Applicant shall  
22 maintain a community liaison and shall meet with

1 concerned neighbors and other interested parties  
2 including the local ANC Representative a minimum  
3 of four times per year. All property owners  
4 within 200 feet of the subject property shall be  
5 notified in advance of such meetings and shall be  
6 invited to attend. This condition is in the  
7 order and Applicant is okay with keeping it so 15  
8 we can go ahead and keep it. Moving on to those  
9 conditions suggested by the Office of Planning on  
10 page 1 of their report. Condition number 1; in  
11 this report relief shall expire on May 31, 2012.

12 I think that we can incorporate that or, it's a  
13 function of the order really and if the order is  
14 timed to expire on that date.

15 MR. MAY: The only thing I would be  
16 concerned about is sometimes there are delays in  
17 construction and if there's enough room there on  
18 the Applicant's part. We are talking about 10  
19 months from now it's a very quick renovation so  
20 I'd hate to have the Applicant have to come back  
21 if they need another 2 weeks.

22 CHAIRPERSON SORG: I agree so you're

1 suggesting that the first condition not be  
2 included in the order?

3 MR. MAY: Not that it not be included but  
4 that maybe the Applicant wants to speak to  
5 whether March 31<sup>st</sup> really is sufficient.

6 CHAIRPERSON SORG: I agree with that and  
7 I think maybe another way to look at it is that  
8 the order will expire..

9 MR. MAY: I wouldn't want to have the  
10 order give them 2 years because of the concerns  
11 about what will eventually be built on the site.  
12 But I think if it's April 30<sup>th</sup> or May 31<sup>st</sup> or  
13 something like that I wouldn't think that would  
14 be a problem. Mr. Cochran seems to want to have  
15 a say.

16 MR. COCHRAN: My only concern with an  
17 extension to the end of May is that the Applicant  
18 is required to file the building permit by June  
19 2012 for the community center and may need to  
20 have access to the site to get an accurate  
21 assessment of what's required for the building  
22 permit.

1           MR. MAY: Hopefully they'll be able to  
2 coordinate that. We're not saying that they have  
3 to stay that long and certainly the school isn't  
4 going to stay any longer than the Housing  
5 Authority is going to let them. I think that the  
6 Housing Authority can exert appropriate controls  
7 over that. I'm detecting nods in the audience  
8 from the folks who I assume are the Housing  
9 Authority so they seem to indicate that they're  
10 okay with giving another month or two. Like I  
11 said I know how construction projects can be  
12 delayed and we don't want this to become an issue  
13 for the Applicant.

14           CHAIRPERSON SORG: I agree Mr. May and  
15 certainly I don't think anybody in the room has  
16 met a construction project that went perfectly, I  
17 certainly have not. My only question perhaps  
18 this is to, on this matter perhaps this is to OAG  
19 is the caption here looks like we're approving  
20 relief from May 2011 through March 2012 so 2  
21 questions I guess. There seems to be perhaps a  
22 redundancy between when we're looking at the

1 relief expiring and a condition that what we're  
2 discussing suggested by Office of Planning. Then  
3 also to incorporate the question of if the relief  
4 is expiring in March or at the end of March 2012  
5 what would be the usefulness of including a  
6 condition that wants to give flexibility beyond  
7 that?

8 MS. GLAZER: I think that's a good point  
9 Madam Chair if it's part of the caption I didn't  
10 notice that it was. If it is there's no need for  
11 condition it is redundant.

12 CHAIRPERSON SORG: Am I correct in  
13 thinking that the relief would expire at the end  
14 of March 2012 that's my understanding, and I want  
15 to be clear on that.

16 MR. MAY: I'm not sure, maybe I missed  
17 the question entirely do you want to run that one  
18 by me again?

19 CHAIRPERSON SORG: I believe that the  
20 caption is stating that we are voting on relief  
21 that would be in effect from May 2011 through  
22 March 2012 so if that's the case then based on

1 our discussion of the schedule uncertainty  
2 inherent in construction projects it's something  
3 that we may want to consider when we're looking  
4 at this condition relating to the expiration of  
5 the relief.

6 MR. MAY: Okay so you're just saying  
7 because they only applied for relief through  
8 March 2012 that that's what we should stick with,  
9 in essence?

10 CHAIRPERSON SORG: I think, I mean in my  
11 opinion I think that yes that perhaps we would  
12 want to consider striking that condition should  
13 there be hiccups in their construction project  
14 that requires more time than they would come back  
15 for an extension.

16 MR. MAY: Well I don't I certainly would  
17 not want to suggest that we have to sort of plan  
18 for an extension option I mean obviously if you  
19 grant relief through the end of March for next  
20 year and they need more time then they have to  
21 come back. I'm just trying to save them a little  
22 bit of potential legal fees if they have to do

1 that. I don't see any great problem with giving,  
2 instead of granting the relief through March 31<sup>st</sup>,  
3 granting the relief through May 31<sup>st</sup> but you know  
4 if there's a question about what was advertised  
5 then perhaps we don't have the flexibility to  
6 grant that without it being re-advertised in  
7 which case we should just move forward with March  
8 31<sup>st</sup>.

9 MS. GLAZER: I think that's a good point  
10 also. I don't know how it was advertised. I see  
11 on the first zoning application the specific date  
12 was inserted I don't see anything else submitted  
13 by the Applicant that has that information.

14 MR. MAY: Is it indicated in the  
15 affidavit of posting? I don't have mine here.

16 CHAIRPERSON SORG: I was just looking at  
17 that and you can't read it.

18 MR. MAY: Of course we may be fusing  
19 about nothing if the Applicant doesn't really  
20 care that much.

21 MR. JORDAN: Madam Chair I would agree  
22 with Mr. May. I think it makes all practical

1 sense what you're recommending and it would  
2 behoove this Board to act in a more practical way  
3 and more effective and efficient way than to  
4 maybe have to come back and require filing and go  
5 through the process unless there is some other  
6 type of prohibition from what you said to do.

7 CHAIRPERSON SORG: I agree and I think  
8 that's why we want to make sure we're not  
9 including any conditions that are going to  
10 hamstring the Applicant. I just want to get some  
11 clarity on whether this was advertised for relief  
12 in that way because if it is then I don't think  
13 that we can get around the way it was advertised.

14 I think if that's the case then probably the  
15 most efficient thing we can do is strike the  
16 first condition and go ahead with just when the  
17 relief is set to expire. So the question for OAG  
18 or Office of Zoning is can we get some clarity on  
19 was it advertised for March 2012 as an  
20 expiration?

21 MS. GLAZER: I just asked Mr. Moy that  
22 exact question and he said it was.

1           MR. MAY: I'm sorry it was advertized  
2 through March 2012? I guess our hands are tied  
3 in that regard.

4           CHAIRPERSON SORG: I agree and I think  
5 that your suggestion to build in some flexibility  
6 there is good. But that being said based on the  
7 advertisement because the order is set to expire  
8 in March 2012 I would suggest that we remove the  
9 first condition suggested by the Office of  
10 Planning because it's redundant of the time line  
11 of the order. Also if the Applicant needs to  
12 come back then they can ask for a time extension  
13 without having made to mess around with changing  
14 any conditions.

15           MR. MAY: Okay, I think our hands are  
16 tied.

17           MR. HINKLE: I agree with that.

18           CHAIRPERSON SORG: Exactly I agree, I  
19 agree with you. Moving on, oh look here we go  
20 again. Second condition suggested by Office of  
21 Planning all temporary structure shall be removed  
22 from the site by March 31, 2012. I would suggest

1 that we revise that condition to read something  
2 like at the expiration of Zoning Relief.

3 MR. MAY: See now this is one where I  
4 don't think the advertising really applies. I  
5 think that the advertised relief is to operate  
6 the school. Removal of temporary structures I  
7 think we can give them another couple of months  
8 and it's no skin off anyone's teeth. So May 31,  
9 2012 is what I would suggest.

10 CHAIRPERSON SORG: I like that  
11 suggestion. Other Board Members agree?

12 MR. HINKLE: I agree with Mr. May.

13 CHAIRPERSON SORG: Okay we're getting  
14 someplace, good. Alright number 3; the school  
15 shall enter into a contract for off street  
16 parking for 29 faculty and/or staff parking  
17 spaces effective prior to the 2011-2012 school  
18 year. We see the school is doing such things and  
19 we were a minute ago prepared to give them the  
20 variance for parking so I think we agree to this  
21 one, okay this is in. Number 4; school shall  
22 continued to offer pretax benefits for

1 transportation expenses up to the amount  
2 authorized by law. You want to keep it despite  
3 the slight redundancy?

4 MR. HINKLE: That's fine.

5 CHAIRPERSON SORG: Keeping it okay. The  
6 school shall park 3 buses in a rental parking  
7 facility for the duration of the construction.  
8 Alright and we've discussed the final one and  
9 have done our whole homework now and gone through  
10 the conditions. Okay so now we will circle that  
11 and I will submit a motion or an amended motion,  
12 I suppose to approve Application 18208 Capitol  
13 Hill Day School, pursuant to 11 DCMR 3104.1,  
14 3103.2 for variance from parking requirements  
15 under Section 2101.1, special exception to allow  
16 the temporary placement and use of modular  
17 classrooms from May 2011 through March 2012 for a  
18 private school under Section 206. Premises on  
19 1000 5<sup>th</sup> Street, S.E., subject to the following  
20 conditions contained in order number 17540 and  
21 17541 condition number 3, 4, 5, 7, 8 with the  
22 final sentence that reads no facilities within

1 the Dent or 214 building shall be made available  
2 for commercial purposes from condition number 8.  
3 Condition number 13, and condition number 15.  
4 In addition the following conditions recommended  
5 by the Office of Planning; number 1 all temporary  
6 structure shall be removed from the site by May  
7 31, 2012. Condition 2; the school shall enter  
8 into a contract for off street parking for 29  
9 faculty and/or staff parking spaces effective  
10 prior to the 2011-2012 school year. Number 3 the  
11 school shall continue to offer pretax benefits  
12 for transportation expenses up to the amount  
13 authorized by law. Number 4 the school shall  
14 park its 3 buses in a rental parking facility for  
15 the duration of the construction. A motion has  
16 been made.

17 MR. JORDAN: Madam Chair if you would  
18 allow me before you second the proper motion is  
19 not an amendment it would be a substitute motion  
20 because it takes out the original motion  
21 completely and substitute what you just said as  
22 opposed to an amendment we would have to then to

1 the amendment and then to the motion originally.  
2 So it's really a substitute..

3 CHAIRPERSON SORG: Excellent thank you  
4 for pointing that out I do accept that as a  
5 substitute motion.

6 MR. JORDAN: Then I second.

7 CHAIRPERSON SORG: Okay a motion has been  
8 made and seconded, all those in favor say aye.

9 CHORUS: Aye.

10 CHAIRPERSON SORG: All those opposed?  
11 Mr. Moy can you please read back the vote?

12 MR. MOY: Yes Staff would record the vote  
13 as 4 to 0 to 1. This on the motion of  
14 Chairperson Sorg to approve the relief requested  
15 and condition as stated by the Board. Seconded  
16 the motion Mr. Jordan and also in support of the  
17 motion Mr. Peter May and Mr. Hinkle and a Board  
18 Member not participating this morning. So again  
19 the final vote is 4 to 0 to 1.

20 CHAIRPERSON SORG: Thank you Mr. Moy and  
21 I think we're going to have a summary order.

22 MR. MOY: Very good.

1 CHAIRPERSON SORG: And that concludes our  
2 morning.

3 **P.M. Session**

4 CHAIRPERSON SORG: This meeting will  
5 please come to order. Good afternoon ladies and  
6 gentleman. This is the May 17, 2011, Public  
7 Hearing of the Board of Zoning Adjustments for  
8 the District of Columbia. My name is Nicole Sorg  
9 Vice Chairperson, joining me today to my right is  
10 Jeffrey Hinkle, Representative of the National  
11 Capital Planning Commission, to my left is Lloyd  
12 Jordan, Mayoral Appointee and also Mr. Peter May  
13 representing the Zoning Commission. Copies of  
14 today's hearing agenda are available to you and  
15 are located to my left in the wall bin near the  
16 door. Please be advised this proceeding is being  
17 recorded by a court reporter and is also being  
18 webcast live. Accordingly we must ask you to  
19 refrain from any disturbing noises or actions in  
20 the hearing room. When presenting information to  
21 the Board please turn-on and speaking into the  
22 microphone, first stating your name and home

1 address. When you are finished speaking please  
2 turn-off your microphone so that your microphone  
3 is no longer picking up sounds or background  
4 noise. All persons planning to testify either in  
5 support or in opposition are to fill out two  
6 witness cards these cards are located to my left  
7 in the wall bin near the door and on the tables  
8 in front of you. Upon coming forward to speak to  
9 the Board please give both cards to the court  
10 reporter sitting to my right. The order of  
11 procedures for special exceptions and variances  
12 is: 1. Statement of the Applicant and Applicant's  
13 Witnesses. 2. Parties and persons in support. 3.  
14 Parties and persons in opposition. 4. Government  
15 Reports including Office of Planning and  
16 Department of Transportation, Office of the State  
17 Superintendent for Education and the Department  
18 of Public Works. 5. Reports from the ANC. 6.  
19 Rebuttal and closing statements by the Applicant.  
20 Pursuant to Section 3117.4 and 3117.5 the  
21 following time constraints will be maintained.  
22 The Applicant persons and parties except an ANC

1 in support including their witnesses will be  
2 given 60 minutes collectively. The persons and  
3 parties except an ANC in opposition including  
4 witnesses will be given 60 minutes collectively.  
5 Individuals will be given 3 minutes and  
6 associations or organizations will be given 5.  
7 These time restrictions do not include cross  
8 examinations or questions from the Board. Cross  
9 examination of witnesses is permitted by all  
10 parties and Applicants. The ANC within which the  
11 property is located is automatically a party to a  
12 special exception or variance case. Nothing  
13 prohibits the Board from placing reasonable  
14 restrictions on cross examination including time  
15 limitations or limitation on the scope of cross  
16 examination. The record will be closed at the  
17 conclusion of each case except for any materials  
18 specifically requested by the Board. The Board  
19 and the Staff will specify at the end of each  
20 hearing exactly what is expected and the date  
21 when the material must submitted to the Office of  
22 Zoning. After the record is closed no other

1 information will be accepted by the Board. The  
2 Sunshine Act requires that a public hearing on  
3 each case be held in the open before the public.  
4 Pursuant to Section 405B and 406 of the Open  
5 Meeting Amendment Act of 2010, the Board may  
6 consistent with its rules and procedures and the  
7 Open Meeting Amendment Act enter into closed  
8 meetings or closed emergency meeting on a case  
9 for purposes of seeking legal counsel in a case  
10 per Section 405B4 and or deliberating on a case  
11 pursuant to Section 405B-13 of the law but only  
12 after providing the necessary public notice and  
13 taking a roll call vote. The decision of the  
14 Board in these contested cases must be based  
15 exclusively on public record. To avoid any  
16 appearance to the contrary the Board requests  
17 that persons present not engage the members of  
18 the Board in conversation. Please turn off all  
19 beepers and cell phones at this time as to not  
20 disturb these proceedings. All individuals  
21 wishing to testify today please rise and take the  
22 oath. Mr. Secretary, will you please administer

1 the oath.

2 MR. MOY: Yes. Do you solemnly swear or  
3 affirm that the testimony you're about to present  
4 in this proceeding is the truth, the whole and  
5 nothing but the truth? You may consider yourself

6 CHAIRPERSON SORG: The Board will now  
7 consider any preliminary matters. Preliminary  
8 matters are those which relate to whether a case  
9 will or should be heard today such as requests  
10 for postponement, continuance or withdrawal or  
11 whether proper and adequate notice of the hearing  
12 has been given. If you are prepared to go  
13 forward with the case today or if you believe  
14 that the Board should not proceed now is the time  
15 to raise such a matter. Mr. Secretary, do you  
16 have any preliminary matters?

17 MR. MOY: Staff is not aware of any major  
18 preliminary matters for this afternoon session  
19 Madam Chair.

20 CHAIRPERSON SORG: Okay then let's go  
21 ahead and call the first case.

22 **Application No. 18209**

1           MR. MOY: The first of two cases before  
2 the Board the first being Application No. 18209.  
3 This is the application of Washington Tennis and  
4 Education Foundation and the Government of the  
5 District of Columbia Government, pursuant to 11  
6 DCMR 3104.1 for a special exception to allow the  
7 construction of a public recreation and community  
8 center under (subsection 408.1) exceeding the  
9 maximum gross floor area in the R-5-A District at  
10 premises 100 Stoddert Place, S.E. property  
11 located in (Square 5407, Lot 807). The only  
12 other addition I have for the Board Madam Chair  
13 is that there has been an amendment to add  
14 additional relief to this application. That  
15 completes the Staff's briefing Madam Chair.

16           CHAIRPERSON SORG: Thank you Mr.  
17 Secretary. I see that the Applicant has come  
18 down and is sitting in front of us. Why don't  
19 you introduce yourselves for the record and then  
20 we'll look into the question of the amended  
21 application.

22           MR. TUMMONDS: Thank you very much. Good

1 afternoon Madam Chair, Members of the Board. I'm  
2 Paul Tummonds for the Law Firm of Goldsten and  
3 Storr's. The preliminary matter that Mr. Moy  
4 referred to was in our May 3<sup>rd</sup> submission of our  
5 prehearing statement we noted the additional  
6 request for relief with regards to the location  
7 of the parking spaces. Out of an abundance of  
8 caution we are requesting relief from Section  
9 2116.5 that says parking spaces are not allowed  
10 in the front yard and there is a special  
11 exception relief to allow that to occur. This is  
12 an irregularly shaped site, abnormally shaped  
13 site and we think that we have described in  
14 detail how we satisfy the 2116.5 relief. The  
15 Office of Planning has noted that in their report  
16 with regards to moving forward this afternoon to  
17 address that relief we noted that we had  
18 presented that relief to the ANC when they took  
19 up this case on May 3<sup>rd</sup> as well. We believe that  
20 allowing this case to move forward for this  
21 additional relief is appropriate given Section  
22 3100.5 of the Zoning Regulations and that

1 allowing this case to be heard on that specific  
2 area relief would not adversely impact any party  
3 in this case.

4 CHAIRPERSON SORG: Just to be clear the  
5 location of the parking on the plan has not  
6 changed since the posting or presentation to  
7 anybody?

8 MR. TUMMONDS: That's correct, since this  
9 case was initially filed on March 3<sup>rd</sup> the location  
10 of the parking spaces has not changed they've  
11 always been in the same location adjacent to the  
12 existing parking for the Benning Stoddert  
13 Recreation Center.

14 CHAIRPERSON SORG: Okay given that the  
15 presentations have been made with the parking  
16 located in the same place throughout the  
17 community outreach and notification and  
18 throughout and since the original posting I don't  
19 see that the amendment of the application to  
20 include the possible need for relief for that  
21 location of the parking would prejudice any  
22 potential parties. Any other Board Members?

1 Okay then we'll go ahead and accept the  
2 application as amended.

3 MR. TUMMONDS: Wonderful. Good afternoon  
4 Madam Chair, Members of the Board as I said I'm  
5 Paul Tummonds. Also here with me this after from  
6 Goldsten Storrs is Cary Kadlecek. On behalf of  
7 the D.C. Department of Parks and Recreation the  
8 Washington Tennis and Education Foundation is  
9 seeking special exception approval for the  
10 development of a new facility adjacent to the  
11 Benning Stoddert Recreation Center at 100  
12 Stoddert Place, S.E. This new facility will  
13 allow WTEF to continue its award winning programs  
14 of providing academic achievement supplemented by  
15 tennis and life and skills instruction to help  
16 D.C. youth achieve academic and personal  
17 successes. On May 3<sup>rd</sup> we submitted a detailed  
18 prehearing statement into the record of this case  
19 which clearly details how this project satisfies  
20 the special exception standards for a public  
21 recreation community center that is greater than  
22 40,000sqft and for locating parking spaces

1 adjacent to the new facility that are not located  
2 in the rear or side yard. The Office of  
3 Planning's report in this case agrees with our  
4 analysis and recommends approval of this  
5 application. On May 9, 2011 the Applicant, its  
6 design team and consultants met with ANC 7-A  
7 Commissioners and residence of the DuPont Commons  
8 Homeowners Association and participated in a  
9 walk-thru of the property which is followed by a  
10 thorough review of the proposed project. At that  
11 meeting and an ANC 7-A subsequent report in this  
12 case issues were raised about the project in the  
13 following general areas. 1. Potential fencing of  
14 the property. 2. Parking for special events. 3.  
15 Programs and meeting space for community groups.  
16 4. Construction and site management issues. Our  
17 testimony this afternoon and the information that  
18 has been submitted into the record previously  
19 will address the pertinent issues before the BZA  
20 that relate to these areas. Our first witness  
21 this after is Mrs. Eleni Rossides, Executive  
22 Director of WTEF. Ms. Rossides will provide

1 testimony regarding WTEF and its goals for this  
2 facility. She will also discuss the programs  
3 that will be offered at this facility for youth  
4 in the WTEF program as well as programs that will  
5 be made available for the adults in the  
6 surrounding community. Mrs. Rossides will also  
7 discuss the dialog that has occurred between WTEF  
8 DPR and the surrounding community. Our second  
9 witness is Ms. Ella Faulkner of the D.C.  
10 Department of Parks and Recreation. Ms. Faulkner  
11 will address the issue of parking for DPR  
12 sponsored events on the property. In response to  
13 the issues noted by the ANC and the DuPont Common  
14 Homeowners regarding site and construction  
15 management issues the Applicant has prepared a  
16 construction mitigation plan and submitted that  
17 plan into the record of this case earlier today.  
18 The Applicant proposes that this construction  
19 mitigation plan be included as a condition of the  
20 Board's approval of this project. Highlights of  
21 this plan include; designation of an onsite  
22 construction representative for members of the

1 community to call if any construction related  
2 issues arise, 2. Requirements regarding parking  
3 for construction workers, site maintenance and  
4 cleanliness, hours of proposed construction  
5 activity and pest and critter control. Finally a  
6 discussion of the dialog that has occurred with  
7 DDOE representatives regarding storm water  
8 management issues on this property.  
9 Representatives of the Applicant's Civil Engineer  
10 construction management and architecture firms  
11 are here this afternoon to address any questions  
12 that you may have regarding proposed facility or  
13 construction activity on this site. With that I  
14 will now have Mrs. Rossides present her  
15 testimony. MS. ROSSIDES: Good  
16 afternoon Madam Chair and Members of the Board I  
17 am Eleni Rossides the Executive Director of the  
18 Washington Tennis and Education Foundation. I'd  
19 like to provide you a little background regarding  
20 WTEF, our current programs, as well as our goals  
21 for this wonderful new facility at the property  
22 adjacent to the Benning Stoddert Recreation

1 Center. As Paul just mentioned I will also  
2 address some of the issues that have been raised  
3 in discussions that we have had with ANC 7-A  
4 Commissioners and residents of the DuPont Commons  
5 Homeowners Association. The Washington Tennis  
6 and Education Foundation also known as WTEF is an  
7 organization that's over 55 years old and it has  
8 been serving children in the Washington, DC area.  
9 The organization has changed as the needs of the  
10 children in Washington, DC have changed. We're  
11 one of the first organizations that added  
12 education to a sports organization. We felt very  
13 strongly about the connection to sports and  
14 especially an individual sport such as tennis can  
15 impact the education of children. So we changed  
16 our name from the Washington Tennis Foundation to  
17 the Washington Tennis and Education Foundation.  
18 This was copied by the United States Tennis  
19 Association as well as many other tennis  
20 organizations across the country and other sports  
21 organizations. We feel it's very important to  
22 help children achieve academically and utilize

1 sports to do that. We currently serve over 1500  
2 children every year. Our two main programs the  
3 first is our Arthur Ash Children's Program and  
4 that is held after school in 21 schools in N.E.  
5 and S.E. D.C and our second main program is our  
6 Center for Excellence Program where we are busing  
7 kids from N.E. and S.E. D.C. to our facility  
8 which is currently located in N.W. D.C. at the  
9 Fitzgerald Tennis Center. We are limited by the  
10 number of kids that we can serve. Limited by the  
11 existing center that we have and the busing of  
12 the kids back and forth every day. The Edna  
13 McConnell Clark foundation is a foundation that's  
14 nationally known for youth serving organizations  
15 they came in and did a year long due diligence of  
16 our programs and proved with external evaluators  
17 the efficacy of our programs. They proved that  
18 children in the Arthur Ash Children's Program  
19 have significantly higher promotion rates and  
20 significantly lower absence rates than the  
21 general school population. The Edna McConnell-  
22 Clark Foundation has reviewed over 14,000

1 children's organizations across the country and  
2 they chose us to invest in and enable us to  
3 expand to 21 schools in N.E. and S.E. D.C. Our  
4 Center for Excellence Program which has also won  
5 a number of awards for 14 consecutive years all  
6 of our seniors have gone on to college with  
7 either an academic athletic scholarship or  
8 financial aid package. Both of these programs  
9 are intensive 4 day a week programs. Given the  
10 description of the programs the need for this new  
11 facility is clear the majority of the children  
12 that we serve today are in N.E. and S.E D.C. All  
13 of which are about 10 minutes from the existing  
14 site at the Benning Stoddert Recreation Center.  
15 We had two strategic plans done first by McKenzie  
16 and Company and another by the Bridge Penn Group  
17 who said you all are providing wonderful  
18 programs; you've proved the efficacy of your  
19 programs. Your next step in your development you  
20 need to have a facility right in the backyards of  
21 the children where you are serving them. The  
22 Benning Stoddert Recreation Center is an ideal

1 location for us as I mentioned it's within 10  
2 minutes of all of our schools. These children  
3 and these families deserve a facility in their  
4 backyards they shouldn't have to be bused up to  
5 N.W. to use facilities. Kids will walk to our  
6 facility or we will transport this with your vans  
7 just 10 minutes away from the schools that they  
8 exist in. The Benning Stoddert Recreation Center  
9 is also a disturbingly underused facility. It's  
10 a beautiful piece of land, I'm not sure if you  
11 all have been to it but it as you can see from  
12 the drawings up there's it's a beautiful piece of  
13 land. Kids should be flooding that facility  
14 everyday and that's what we plan to do. One of  
15 our schools that we were in was the Benning  
16 Elementary School and that recently closed down.  
17 The principle that was there actually wouldn't  
18 let the kids come to the Benning Stoddert  
19 Recreation Center, it does have some existing  
20 courts right now, they're cracked and grass is  
21 growing through them and they don't have any nets  
22 but what we would do is we would come in and

1 provide the nets and do our programs at a number  
2 of the tennis courts in the city. The principle  
3 of that school would not let us run our programs  
4 at the Benning Recreation Center because it was  
5 too dangerous. He did not want his kids coming  
6 down there. We feel very strongly that we are  
7 going to revitalize this community center and  
8 this neighborhood with our facility. We plan to  
9 build new state of the art tennis, education and  
10 community center with 6 indoor courts, 9 outdoor  
11 courts and a 14,000sqft academic community center  
12 which will have classrooms, a computer room,  
13 counseling rooms and a very large community room.  
14 We plan to double the number of kids that we  
15 serve and serve more children. We will offer  
16 expanded hours because it will be our facility  
17 all day long. We will be open on weekends all  
18 summer long and throughout the winter months with  
19 an indoor facility. This will be a center that  
20 the children, families and the entire community  
21 deserve. We feel the facility will support the  
22 children and families in a number of ways. As I

1 said we'll serve more students, double the number  
2 of kids as our goal, we'll retain more students.  
3 We will operative extended hours into the  
4 evening and on the weekends all summer long.  
5 We'll provide growth opportunities for the kids,  
6 leadership opportunities, employment  
7 opportunities and we will serve as a community  
8 center that is a major goal of ours. This will  
9 be a place where families can come as well.  
10 We're very excited about creating programming for  
11 the adults and available members to the adjacent  
12 community as well as providing meeting space at  
13 appropriate times for local community  
14 organizations. At this stage of the development  
15 of the project we don't know exactly what the  
16 programs will be but we are committed to working  
17 with the ANC and the surrounding community to  
18 create programs that will be consistent with our  
19 organizations goals and the ideas put forth by  
20 the community. We have been engaged in  
21 discussions with the ANC 7-A Commissioners  
22 regarding this project for over 4 years now.

1 Through that process we believe we have created  
2 an open and constructive dialog that will prove  
3 to be very important once our new facility is up  
4 and running. That is why we hold heartedly  
5 accept the offer of the ANC 7-A with regard to  
6 the formation of a WTEF ANC 7-A development  
7 committee. We believe such a committee will  
8 allow issues related to construction parking or  
9 operations to be raised and addressed in an  
10 expeditious manner. I would like to specifically  
11 address a couple of other issues that are raised  
12 in the ANC 7-A report. The first is the request  
13 from the DuPont Commons Homeowners Association  
14 that we construct an 8ft rod iron fence along a  
15 significant portion of the property. While we  
16 understand that the neighbors' concerns is  
17 related to cut through pedestrian traffic we do  
18 not believe the construction of such a fence  
19 separating our facility and the DPR facility from  
20 the adjacent properties conveys the sense of  
21 community that we are seeking to create We will  
22 make sure that any people who are part of our

1 program that walk to our facility will do in an  
2 appropriate and respectful manner. In addition  
3 we have worked extensively with DPR regarding  
4 appropriate renovation of the existing outdoor  
5 tennis and basketball courts and the mix of uses  
6 that will ultimately occur at the recreation  
7 center. We do not plan on lighting the outdoor  
8 tennis courts or the basketball courts at this  
9 time. We will provide appropriate lighting along  
10 the paths to dissuade inappropriate behavior and  
11 not cause the adverse impacts on adjacent  
12 properties. We believe that having new  
13 facilities and courts with proper lighting will  
14 send the appropriate signals that loitering on  
15 the property will not be tolerated. Another  
16 issue that has been raised is regarding parking  
17 for special events. WTEF does not anticipate  
18 having any tennis tournaments at this property  
19 that would generate significant amounts of  
20 traffic. The only tournaments that WTEF may hold  
21 will be tennis matches between DCPS Schools which  
22 will not result in significant amounts of traffic

1 coming to this site. As I previously noted most  
2 of our kids will walk to the property or we will  
3 bring them in vans from the schools that we  
4 currently have our programs. The 26 parking  
5 spaces that we are providing on our site will be  
6 more than adequate to address our daily parking  
7 needs.

8 MR. TUMMONDS: I will have Ms. Faulkner  
9 from the Department of Parks and Rec address the  
10 Parks and Rec views on the parking for special  
11 events.

12 MS. FAULKNER: Thank you and good  
13 afternoon Madam Chair and Board Members. My name  
14 is Ella Faulkner, Community Planner for the  
15 Department of Parks and Rec. In response of this  
16 sponsored tennis tournament parking DPR will use  
17 our existing tennis programs and DPR fleet to  
18 coordinate transportation for any further tennis  
19 tournaments. DPR successfully administers tennis  
20 programs across the District and will use these  
21 established programs to facilitate information  
22 about future events and transportation choices.

1 DPR also has extensive experience in transporting  
2 District residents for special events of all age  
3 groups. Combined these two elements will allow  
4 DPR to minimize the parking need at the proposed  
5 facility during tennis tournaments.

6 MS. ROSSIDES: In conclusion I want to  
7 stress how excited we are about this project. We  
8 believe that the facility we are proposing will  
9 not adversely impact neighboring properties and  
10 will instead be a wonderful community center for  
11 the entire neighborhood. Thank you for your time  
12 this afternoon.

13 MR. TUMMONDS: That concludes our  
14 presentation. As I mentioned before our design  
15 team, architect civil construction manager is  
16 here to answer any questions you may have  
17 regarding the facility.

18 CHAIRPERSON SORG: Thank you very much.  
19 I think that based on what we've seen and some of  
20 the community comments for me it would be useful  
21 to hear from the architect a little bit about the  
22 site planning, the parking, and how the users are

1 meant to access the site and so on and so forth  
2 and the different program areas. Also it's kind  
3 of far away.

4 MR. LAZARO: Good afternoon Madam Chair,  
5 Members of the Board. As mentioned this will be  
6 in the existing Benning Stoddert facility from  
7 east Capitol Street that's the main access of the  
8 facility with 26 new parking spaces in front. As  
9 I was saying the new 26 parking spaces will be  
10 adjacent to the existing parking spaces of the  
11 Benning Stoddert facility. That will be our main  
12 access for the new WTEF facility. To the south  
13 it will be 9 outdoor tennis courts. We are  
14 revitalizing this area and fixing the old tennis  
15 courts and having all these new ones. The  
16 existing basketball courts will also be relocated  
17 at this site of the property. Looking at the  
18 main floor plan as mentioned we will have a  
19 14,000sqft academic and education portion of the  
20 building which will be facing the front and the  
21 south looking at the outdoor tennis courts.  
22 Computer rooms will be here three classrooms

1 adjacent to each other. A large community  
2 center, of course reception area and offices.  
3 Six outdoor tennis courts about 50,000sqft. these  
4 are before and after photos of what the facility  
5 will look like looking at it from east Capitol  
6 Street. Any questions?

7 MR. TUMMONDS: Mr. Lazaro if you could  
8 just put up the site plan once again and give the  
9 use to the east in the cut out area the use of  
10 the that property the adjacent property.

11 MR. LAZARO: This area, no this is the  
12 Seed School.

13 CHAIRPERSON SORG: So the new tennis  
14 center shares parking with the existing?

15 MR. TUMMONDS: This property, the  
16 existing 600,000sqft plus property will be  
17 divided into 2 record lots so we will have a  
18 single building on each record lot. This  
19 facility will satisfy all of its zoning  
20 requirements including parking so it's 26 spaces  
21 that Mr. Lazaro shows here are addressed to  
22 satisfy the parking demand for the WTEF facility.

1 The existing parking spaces on the property will  
2 continue to satisfy the requirements for the  
3 Benning Stoddert Rec Center facility.

4 CHAIRPERSON SORG: And the existing rec  
5 center, Benning Stoddert Rec Center facility does  
6 that also being renovated or is the project going  
7 on there?

8 MR. TUMMONDS: No, I mean the physical  
9 building itself will not be what is part of this,  
10 the outdoor basketball courts and tennis courts  
11 will be renovated but those are now going to be  
12 on the WTEF lot that is being created and is  
13 shown with the 9 outdoor courts and the 2  
14 basketball courts.

15 MR. LAZARO: If I may add part of what we  
16 are doing is this entrance plaza which we are  
17 sharing with the Benning Stoddert Center we will  
18 improve this entrance plaza to make it look like  
19 one entrance for both facilities. At the same  
20 time I believe we are repainting the existing  
21 Benning Stoddert Center so it looks more or less  
22 the same as the new facility.

1 MS. ROSSIDES: We've agreed to do a buff  
2 and scruff of the existing facility.

3 CHAIRPERSON SORG: Thank you. I have a  
4 couple of more questions but do any other Board  
5 Members have questions for Mr. Lazaro or any  
6 others?

7 MR. MAY: I may have a couple of  
8 architectural questions. The materials for the  
9 new building except of course for the large space  
10 where the tennis courts are what you're showing  
11 here with that elevation it seems like a  
12 different pallet from what was in that  
13 perspective view that you had just shown and it  
14 seems different from what the existing building  
15 is, not that the existing building is so great  
16 but can you tell me what's going on and are you  
17 trying to make it consistent and what's the  
18 actual materials?

19 MR. LAZARO: We are trying to make it as,  
20 it should complement the existing Benning  
21 Stoddert facility, and the existing facility has  
22 block walls on it. The lower portion of the new

1 facility which is the academic portion will also  
2 have block walls on it. The larger portion which  
3 is for the indoor tennis courts will be a pre-  
4 engineered building, so metal wall sites.

5 MR. MAY: What's the roof?

6 MR. LAZARO: The roof will be  
7 (inaudible).

8 MR. MAY: Color?

9 MR. LAZARO: We are looking at having  
10 this on the (inaudible) we'll have a light  
11 colored wall as we are trying to go for lead  
12 points on this one. The lower portion will be a  
13 little bit darker so that that short part of t he  
14 building will stand out.

15 MR. MAY: And is it going to be, is it  
16 green like the existing building?

17 MR. LAZARO: Initially we had it at green  
18 which is what we're showing here but this was an  
19 option that we were also looking at to match the  
20 Benning Stoddert yeah it should be green.

21 MR. MAY: I don't think the existing  
22 facility is..

1 MS. ROSSIDES: We haven't made decisions  
2 on it yet but we want it to be looking similar  
3 and we're going to do the buff and scruff.

4 MR. MAY: Well I mean it should be  
5 something that works well but I wouldn't  
6 necessarily copy what's there if it's not looking  
7 so great because it doesn't look so great.  
8 What's with these monitors popping out from the  
9 roof?

10 MR. LAZARO: It's just an architectural  
11 feature that on the corridors since the corridor  
12 is inboard we do not expect natural lighting  
13 without this (inaudible) there's no way for us to  
14 have adequate natural lighting which we think  
15 will be very nice in an inboard corridor so they  
16 should give us natural lighting.

17 MR. MAY: And so those are butting up  
18 against the metal building?

19 MR. LAZARO: Yes they are.

20 MR. MAY: That's an interesting detail.  
21 They're a little tall, but this is not really an  
22 architectural review I just can't help myself.

1 Maybe you pointed this out already but I missed  
2 it can you point out where the fence is that was  
3 requested by the neighbors?

4 MR. LAZARO: The fence requested by the  
5 neighbors is along the southern portion of the  
6 facility and going around.

7 MR. MAY: Okay and there's something  
8 indicated on your drawings does that mean there  
9 is a fence there now?

10 MR. LAZARO: This is an existing fence  
11 that is currently shown which is dilapidated and  
12 really does not work and as pointed out during  
13 our ANC meeting people are trying to cross  
14 through that fence.

15 MS. ROSSIDES: It's a chain link fence,  
16 it's shorter and there are holes in it.

17 MR. MAY: It's shorter its 6ft, 5ft?

18 MR. LAZARO: It's about 6ft.

19 MR. MAY: Okay thank you. But you're not  
20 keen on having the fence that has been proposed  
21 or...?

22 MS. ROSSIDES: Right the 8ft wrought iron

1 fence we don't feel that shows or encourages the  
2 community to come to the facility.

3 MR. MAY: So would you rather keep the  
4 existing fence or have no fence at all.

5 MR. ROSSIDES: We're open to a  
6 conversation about it. The existing fence it's  
7 got holes in it and they do cut through it.

8 MR. MAY: Is that part of your buff and  
9 scrub to fix the fence?

10 MS. ROSSIDES: It's not, right now it's  
11 probably and DPR issue on fixing the fence but  
12 open to figuring out a solution for the  
13 community.

14 MR. MAY: Okay thanks.

15 CHAIRPERSON SORG: One question to follow  
16 up on the..., we started getting into the fence  
17 before we hear what everybody has to say about it  
18 that WTEF's position on that is not that there  
19 should be no fence but can you clarify that?

20 MS. ROSSIDES: I think we're open to  
21 working out a solution with the community. What  
22 was proposed was the 8ft high wrought iron fence

1 so that's what we responded to. So if there are  
2 other suggestions we'd like to hear them. Right  
3 now it's not in our budget to replace the fence.  
4 Maybe work with DPR and find out what might be  
5 in their budget and what the community wants. We  
6 didn't feel 8ft wrought iron would be welcoming  
7 and we want the kids in the community to feel  
8 welcome and not make it feel like a prison.

9 CHAIRPERSON SORG: Sure I understand.

10 MR. TUMMONDS: We think one of the real  
11 benefits that came out of the ANC 7-A report was  
12 this idea of the formation of this WTEF ANC 7-A  
13 development community so that that would allow  
14 these types of issues as we complete construction  
15 as the operation occurs that we can have that  
16 dialog available to talk about what is the  
17 appropriate fence and truly once operations are  
18 occurring how to make sure that there's not  
19 loitering going on down there.

20 CHAIRPERSON SORG: Thank you. I wanted  
21 to go to a little bit the DPR programming. You  
22 described one tennis tournament that from what I

1 understand from your testimony that DPR will hold  
2 at this facility and can you describe what kind  
3 of other programming DPR is planning and that  
4 interaction?

5 MS. FAULKNER: Do you mean specifically  
6 what the tennis tournament at that particular  
7 site?

8 CHAIRPERSON SORG: Is that the only  
9 program for DPR that will be occurring in this  
10 facility?

11 MS. FAULKNER: Yes.

12 CHAIRPERSON SORG: Okay thank you.

13 MS. ROSSIDES: We did have earlier  
14 discussions with DPR about them would like to  
15 publicize to their community adult and senior  
16 programming tennis programming. We had  
17 discussions with them about WTEF providing that  
18 for them and they could publicize it to their  
19 constituents. We'll probably run the programs  
20 but DPR will probably publicize them and we're  
21 open to helping DPR do adult and senior  
22 programming we will provide that as well.

1           MR. TUMMONDS: I think what's interesting  
2 about this application as well is that public  
3 recreation center use is a permitted matter of  
4 right use in this zone. We are here today  
5 because of the physical structure that we have  
6 while we only have 14,000sqft of actual space  
7 that is used for the types of programs,  
8 classroom, and community space offices. We have  
9 6 indoor tennis courts which then makes this a  
10 60,000sqft facility that puts us into the special  
11 exception realm. We believe that the true  
12 impacts of this project on the community that  
13 warrant these special exception for 40,000sqft  
14 are probably more similar to a 14,000sqft center  
15 similarly the existing Benning Stoddert Rec  
16 Center is nowhere near a 40,000sqft recreation  
17 center so we think as noted in the Office of  
18 Planning Report this type of use is entirely  
19 appropriate for this site and it's been existing  
20 on this site and we think that through the oddity  
21 if you will of coming here before this special  
22 exception to look a facility when 50,000sqft of

1 it is 6 tennis courts. So we think with the  
2 impacts of this facility on the community are not  
3 significant and we really want this to be a  
4 facility that the community will embrace.

5 CHAIRPERSON SORG: Thank you do Board  
6 Members have other questions for the Applicant?

7 MR. MAY: What's on the existing the  
8 existing site of the proposed building?

9 MR. LAZARO: Currently they have as the  
10 existing site they currently have outdoor,  
11 there's a playground and some benches for other  
12 activities and that's basically it.

13 MR. MAY: The playground is being  
14 relocated?

15 MR. LAZARO: The playground is there and  
16 we are proposing to relocate it to this area.

17 MS. ROSSIDES: If I could I'd like to add  
18 to that. We were very excited to work out this  
19 site plan at the top of the hill and then at  
20 outdoor courts at the bottom of the hill and  
21 preserve the baseball diamond. At the top of the  
22 hill it's actually pretty sad it has a cemented

1 in circle that cannot be utilized. It had a  
2 cemented in pool and it has an abandoned pool  
3 house and so we feel very good about being able  
4 to put this facility up there which right now  
5 could not really be used for anything else.

6 MR. MAY: Okay. The existing tennis  
7 courts are going to be torn out and replaced or  
8 just fixed up?

9 MS. ROSSIDES: They're going to be torn  
10 out and replaced, they're cracked, and they have  
11 grass growing through them. We actually started  
12 programming there last summer and honestly have  
13 to have the courts mowed three times. They need  
14 to be completely ripped out and redone.

15 MR. MAY: Okay thanks.

16 CHAIRPERSON SORG: Do any other Board  
17 Members have questions currently for the  
18 Applicant? Okay then let's move to if you're  
19 finished with your presentation? I think you  
20 said you were, okay. So let's move to the Office  
21 of Planning please.

22 MR. JACKSON: Madam Chair, Members of the

1 Board my name is Arthur Jackson from the D.C.  
2 Office of Planning. We have before you a report  
3 from the Office of Planning that includes all of  
4 our information and I'll briefly summarize it by  
5 touching on the relief that's being requested.  
6 As noted before they are before you not because  
7 the use that's proposed is not allowed in the  
8 Zone District and is not allowed on the site but  
9 the use exceeds 40,000sqft in fact the most  
10 recent plan submitted by the Applicant increases  
11 the size of the overall complex to 64,930sqft  
12 which is over 24,000 more than is required for  
13 special exception. They also increased the size  
14 of the property to 324,700sqft so that the  
15 proposed building reaches a 19.99% lot occupancy  
16 which is less than the 20% that's allowed as a  
17 matter of right. The increased size of the  
18 building they're required to have 25 parking  
19 spaces and they are providing 26. They also have  
20 met requirements for the loading space for  
21 delivery space. So that in order for this  
22 application to be approved they have asked for

1 special exception relief from 408.1 and in that  
2 review we looked at whether the proposed use  
3 would be in harmony with the general purpose and  
4 intent of the Zoning Regulations and as noted by  
5 the Applicant the use is allowed, the question is  
6 the intent is the requirement for the special  
7 exception because of the size. We note that  
8 there would not be any change in the overall land  
9 use pattern on site. There would be no direct  
10 impact on the neighboring properties which are  
11 residential and an institutional the intensity of  
12 use would be buffered by the existing landscaping  
13 and the siding and the fact the largest building,  
14 the most active building will be further away  
15 from the adjacent residences than the existing  
16 tennis courts are. They propose to replace the  
17 courts that already exist. So the pattern of use  
18 would not by itself seem to have a negative  
19 impact on the existing residences and would be  
20 essentially the same on the existing school. In  
21 terms of whether the use would, that addresses it  
22 impacts the different residences. In terms of

1 the access of the access (inaudible). The  
2 current access is from east Capitol Street along  
3 Stoddert Place that would continue to be the case  
4 there would be no additional ingress egress to  
5 the site, I know that's a two edged sword but  
6 what we were pointing out was that there would be  
7 no additional impacts in terms of accessing the  
8 site from the adjacent neighborhoods. The  
9 existing situation would remain in status quo.  
10 Then with regard to the overall impacts we had  
11 noted that since this is a public/private  
12 partnership with WTEF providing a facility on  
13 public land that could be shared by the  
14 Department of Parks and Recreation by an  
15 agreement that was approved by the District we  
16 noted that it would be good to get an  
17 understanding of how the Department of Parks and  
18 Recreation would handle their proposed uses and  
19 there are representatives here today to explain  
20 that they will make every effort to address this  
21 and tournaments here as they have on their other  
22 facilities in the District. So that satisfies

1 our interest in getting that kind of a response.  
2 Then we go on to the relief that's need to  
3 locate the parking in front of the building as  
4 opposed to the side or the rear as the provided  
5 in the regulations. Again it makes the most  
6 sense to put the parking in front because if you  
7 move parking to the side of the building or to  
8 the rear that would extend the vehicle  
9 circulation into the site which would probably  
10 result in an increased loss of existing foliage  
11 which actually provides a lot of the buffering  
12 screen to the surrounding uses. Even if the fact  
13 that there is no other access into the site  
14 clustering all the parking together for this  
15 share facility really makes no sense in this  
16 case. Based on the analysis we think the  
17 modified application meets the standards for  
18 requested special exception relief that's been  
19 provided in the Applicant's application and that  
20 we support it. That concludes the brief of the  
21 Office of Planning Report and we're available to  
22 answer questions.

1           CHAIRPERSON SORG: Thank you very much.  
2 I think you've cleared up this..., mostly in your  
3 testimony but in your table in page 3 there were  
4 in the parking 14 spaces but they've got 26 so  
5 there's no relief required for the parking there.

6           MR. JACKSON: Right. This table does not  
7 reflect the increased size of the building that  
8 accompanied the increase size of the lot.

9           CHAIRPERSON SORG: Okay as well, I just  
10 wanted to make sure to clear that up. Thank you  
11 do other Board Members have questions for the  
12 Office of Planning? Actually I have one other  
13 one. What's the size of the drive if you know?  
14 You said that the Office of Planning was  
15 comfortable with the one means of ingress and  
16 egress.

17           MR. JACKSON: The roadway appears to be  
18 30 feet, the driveway will be 24.

19           CHAIRPERSON SORG: Right okay, alright  
20 thank you. Other Board Members have questions  
21 for the Office of Planning? Does the Applicant  
22 have any questions?

1 MR. TUMMONDS: No questions.

2 CHAIRPERSON SORG: I'd like to move next  
3 to ANC 7-A is anyone here representing the ANC?  
4 Seeing no one I will incorporate, well first I  
5 will note that we received the ANC letter one day  
6 after the submission deadline which would have  
7 been Monday May 9<sup>th</sup>; it looks like we received  
8 this on Tuesday May 10<sup>th</sup>. So in the letter is  
9 contained a brief discussion of the reasoning  
10 behind the commissions late submission being  
11 dealing with community concerns in crafting it  
12 from what I understand. I don't see, it's one  
13 day late, I don't see any prejudice or reason not  
14 to accept the ANC letter unless any other Board  
15 Members do. We will then accept the ANC letter  
16 which is our "Exhibit No. 29" and note that the  
17 ANC 7-A voted to support the application and that  
18 given the notation it meets our requirements to  
19 receive great weight. I was hoping that somebody  
20 from the ANC would be here to be able to talk  
21 about his. I've got a little bit of confusion  
22 about their submission so I guess what I'll do is

1 if the Applicant has spoken with the ANC. Is  
2 somebody raising their hand that's from the ANC?  
3 I think if you're going to make a statement then  
4 why don't you come down and do it on the  
5 microphone and then we can see whether or not  
6 you're authorized to speak for them.

7 MS. CARR: I am ANC Commissioner Carson  
8 Carr 7-A-01. I am not the designated person that  
9 was elected by the Board to speak; I am here on  
10 behalf of my own Single Member District and other  
11 residents of 05.

12 CHAIRPERSON SORG: Okay so what we'll do  
13 thank you for saying that. Why don't we, we'll  
14 accept the report give it great weight and move  
15 on. I have some questions about some of the  
16 community concerns maybe as we get individuals to  
17 testify we'll clear those up and then perhaps we  
18 can ask you a couple more questions about the  
19 Applicants presentation to the ANC and that vote  
20 and how that went. Why don't we see if there are  
21 any individuals in the audience here to testify  
22 in support or in opposition of the application?

1 You can go ahead and come forward and take a seat  
2 at the table. Ms. Carson Carr you've introduced  
3 yourself before but why don't you go ahead and do  
4 it one more time.

5 MS. CARR: Good afternoon my name is ANC  
6 Commissioner Carson Carr 7-A-01.

7 CHAIRPERSON SORG: We have one more  
8 individual if you could introduce yourself, your  
9 name and home address for the record please.

10 MS. MAY: Good afternoon my name is Tara  
11 May and I'm representing the home owners at  
12 DuPont Commons. My address is 3809 Bay Lane,  
13 S.E.

14 CHAIRPERSON SORG: Great thank you very  
15 much. Why don't we start with you Ms. Carson  
16 Carr?

17 MS. CARR: Thank you. I'm here today on  
18 behalf of my single member district as well as my  
19 parents who live in 05. My parents are seniors  
20 90 and 80 and they use the Benning Stoddert  
21 outside area just about every day and I'm just  
22 concerned about what is going to happen in their

1 lack of use would be for them. The center is a  
2 well used center by the neighborhood children. I  
3 want you to just take a look at what happened on  
4 last Wednesday at the center; 6 o'clock in the  
5 evening there was a T-ball game on the field with  
6 40 little from 5 to 8 year olds and some 4 year  
7 olds who think they're 5 so they snuck in. At  
8 the back of the field there were at least 30 men  
9 who are part of the metro semi-pro football  
10 warming-up doing their little thing on the back  
11 of the field. On the outside basketball court  
12 there were children using that, there was no one  
13 on the tennis courts. At the top of the hill  
14 where the rec center is there were children using  
15 the basketball court inside as well as there were  
16 cheerleaders in the other part of the rec center  
17 with cheerleading practice. So I just want to  
18 let you know that that center is use by the  
19 community. Parking is an issue, all those little  
20 things that you just heard me say the little bit  
21 of parking that's in there now is a mess. The  
22 center is located on a very busy street, East

1 Capitol Street. There isn't parking on the lane  
2 that's right beside the center on the south side,  
3 on the north side you can park there but that  
4 means that people with children would have to  
5 cross back and forth that busy street. We were  
6 told at the public meeting on the 9<sup>th</sup> that there  
7 would be 14 spaces and now I hear 26 spaces so  
8 I'm a little confused and if you could clear that  
9 part up for me exactly where are you getting 26  
10 spaces from? The issue that the residents  
11 brought out and I brought out was about the  
12 jamming one way in for all of that parking and  
13 when you have an event or just when people are  
14 doing anything in there you've got to beep beep  
15 who's car is this with the normal thing going on  
16 and now you're talking about putting 26 more  
17 parking spaces on the other side you already have  
18 at least 10 and when people go in there you just  
19 pile until there's no more space because  
20 everybody knows you're somewhere and you can come  
21 move your car. So I'm very concerned and so were  
22 the residents. The basketball court I asked WTEF

1 that we want this center but we want it with you  
2 recognizing and respecting the residents that are  
3 there. I don't have any problem with children  
4 learning tennis and I have 5 grands and there  
5 will probably a couple of kids down there  
6 learning how to do that but there are children  
7 now who will never care about tennis. But to  
8 keep them off the street and to keep them doing  
9 something positive they like basketball and they  
10 are cutting them out of courts. To only have two  
11 outdoor courts and then they're going to put them  
12 all the way back in the back of the property.  
13 I've lived in that area since 1970 where they're  
14 going to put the courts stays wet all the time.  
15 There is already cement drainage down there where  
16 they're going to put the courts. Yes they told  
17 us they were going to make a difference. I told  
18 them when they built DuPont Commons I was  
19 Commissioner at that time and they told us about  
20 this natural drainage and all that and she'll  
21 tell you about the water problem that they have.  
22 That's the concern that I have with the

1 basketball the amount of courts that you cut down  
2 for the children in the neighborhood and where's  
3 located and how it's located. They have it has a  
4 T so if kids are running full force on this court  
5 they're going to run into the kids that's on this  
6 court. No nobody needs to go to Children's, so  
7 that's for the basketball court. The playground  
8 area could I stand up and go over there with the  
9 basketball court too to show you on the map.

10 CHAIRPERSON SORG: You can.

11 MS. CARR: Okay what they're saying here  
12 this area there's a pavilion that seats probably  
13 at least two tables that's used very often,  
14 weekly by people doing picnics and out of the  
15 rain, getting out of the weather. There's a  
16 playground area beside it. The cement circle  
17 that they're talking about used to be a sand pit  
18 that they had toys and stuff for children to  
19 play, they're taking the sand out so that's why  
20 it's just a circle cement circle. Up here used  
21 to be a pool a 3ft pool and about 6 years ago a  
22 company came and said that they would make it a

1 wet park and that's what they did, they filled in  
2 the 3ft pool and just make is sprinklers for  
3 children to use. It works, it don't, it don't,  
4 it don't but that's what all of this area. So it  
5 is a used area up here and they want to try to  
6 put all of this into this little area right here.  
7 These are real mature trees here so there are  
8 already a couple of picnic tables down here that  
9 people use to watch the games and they play  
10 checkers and stuff like that right here. When  
11 they want to use this area to try to bring this  
12 down I thought it was too small but we also said  
13 we wanted the mature trees to stay in this area.  
14 The outside building we never talked about that  
15 at the ANC meeting, how it looks that was never  
16 discussed. What was discussed was they said that  
17 they would do something to the façade of the  
18 existing rec but I had some comments about that.  
19 The lighting there is lighting that goes down  
20 the trails already it's been there for years.  
21 Like I said I've been here when they built that  
22 rec. The community was not given, nor the ANC

1 updated plans so what we heard on last Monday  
2 they were saying things and I was asking  
3 questions and they were saying well that's not on  
4 the plan now. I said well this is the plan, this  
5 book that we have so I'm just concerned about  
6 those things and I hope the Board in  
7 consideration to make sure that the community is  
8 not disrespected.

9 CHAIRPERSON SORG: Thank you very much.  
10 Why don't we go ahead and hear from Ms. May it  
11 sounds like you share some concerns and then we  
12 can go ahead and ask questions to both of the  
13 individuals. Go ahead Ms. May.

14 MS. MAY: Good afternoon. Some of the  
15 concerns that the homeowners have regarding this  
16 project is the fact that right now there is a  
17 fence a 6ft chain fence that a hole is cut in  
18 between it, that's to keep the kids on the Ridge  
19 Road side they usually crawl through the  
20 neighborhoods, running through people's backyard  
21 and in the process their yards are being  
22 destroyed, we find bottles and trash. Just like

1 the pond that we talk about that they put the  
2 buyer retention pond, we find bottles and trash  
3 tossed into the ponds as they utilize that  
4 facility so we requested an 8ft wrought iron  
5 fence because if they notice that on the Seed  
6 School side they have that same particular fence,  
7 Seed School is on one side and we're on the other  
8 side of the area in which they are talking about  
9 placing basketball court, tennis, the outdoor  
10 portion of the project. Each time the fence is  
11 repaired there's a hole cut back in it so we are  
12 constantly dealing with that issue. As far as  
13 the drainage when they did the part when they  
14 broke ground to build the 147 homes in DuPont  
15 Commons they were supposed to address the issue  
16 of water because that area stayed flooded. The  
17 homeowners are still dealing with the backyards  
18 being wet and also water running off the hill.  
19 So to deal with that area where they are talking  
20 about putting outdoor tennis courts, basketball  
21 courts and you have water coming from one side  
22 and then coming off the other side. They also

1 talk about that they wasn't going to light the  
2 paths now. If you notice there are paths leading  
3 from the tennis courts and the basketball courts  
4 that lead up to the facilities. They're not  
5 talking about doing anything but cleaning it up.  
6 There needs to be some lighting out there we  
7 walk the grounds at night from the courts to the  
8 area which they were talking about placing the  
9 building on. Those paths are pretty dark and  
10 it's just a matter of time once they get things  
11 going down there that you'll have kids hanging  
12 out behind the homes. We already have the lights  
13 reflecting from Seed School into the windows of  
14 the homeowners so if they put as many tennis  
15 courts as they're talking about there's going to  
16 be a lot of loitering down there after hours.  
17 That's something that we deal with now so we know  
18 if they add something else down there we're  
19 really going to have a problem. I know that  
20 they're saying that the wrought iron fence  
21 doesn't make it inviting but they still have to  
22 recognize that there's a community right behind

1 there. I mean there's ways to get in and out of  
2 the area which they are talking about placing the  
3 tennis courts. We as homeowners we want our area  
4 to be protected and the fence will deter the kids  
5 from running through the back of people's houses  
6 to get over to the other side. They will have to  
7 walk around and take the long way. They are  
8 talking about parking; we already have an issue  
9 with parking now within our community. Just to  
10 add 26 additional parking spaces in addition to  
11 the ones that I believe is about 10 those 26  
12 parking spaces will be used by probably the  
13 people that's using Benning Stoddert because they  
14 already are parking on, I think that's the B  
15 Street side where the baseball field is, they  
16 already if you see Stoddert Terrace, Stoddert  
17 Place they park along that side so cars are  
18 already overflowed now so if they just do an  
19 additional 26 parking spaces and with the tennis  
20 center it's going to impact our neighborhood. So  
21 yes we've requested that they do some sort of  
22 zoning where they can do like even zoning for the

1 homeowners that way if there's something going on  
2 if you have the event parking pass in your window  
3 then you know it's okay for you to park there.  
4 Right now we're already dealing with parking  
5 issues to the point where we have to call the MPD  
6 out because neighbors get a little hostile about  
7 not being able to park where they pay their  
8 mortgage. They also when they spoke about the  
9 fence they were talking about making it look like  
10 a prison but there's already trees that's in  
11 front of the fence so therefore it will be a  
12 buffer. The trees will still be there because  
13 they said they will plant for every tree that  
14 they take down they were going to plant 3 so  
15 planting trees along side that fence will not  
16 give it a prison look. I believe that's all I  
17 have for right now, thank you.

18 CHAIRPERSON SORG: Thank you very much.  
19 Do Board Members have questions for Ms. May or  
20 Ms. Carson-Carr?

21 MR. MAY: How many do you know how many  
22 basketball courts will be lost?

1 MS. MAY: Right now there's 8 courts  
2 there, all 8 of them don't have a backboard on  
3 there so I believe that right now it's 6 and it's  
4 only going to be 2 when they finish with the  
5 project.

6 MR. MAY: You mentioned a picnic pavilion  
7 that will be lost as well, is it just the one  
8 that you pointed out?

9 MS. MAY: Yes.

10 MR. MAY: In terms of the parking issues  
11 in the neighborhood is that a daily issue or is  
12 it an issue only when there are large events or  
13 only on weekends, or evenings, what's the nature  
14 of the issue with overflow parking for the  
15 existing rec center into the neighborhood?

16 MS. MAY: Right now it's a daily issue  
17 with the homeowners already there, not saying  
18 that with the existing recreation center I'm  
19 saying just with the 147 homeowners that are  
20 currently there within the neighborhood there's  
21 already parking issues daily so if they were to  
22 do it. We want the tennis center but we just

1 want them to do something to prevent extra...

2 MR. MAY: Okay so within the neighborhood  
3 or that development area where there's a parking  
4 issue right now is it controlled by residential  
5 parking permits?

6 MS. MAY: No.

7 MR. MAY: It's not controlled and have  
8 you considered that because that's how most  
9 neighborhood deal with issues of outside parkers.

10 MS. MAY: Well we right now after we  
11 found out which was less than a month ago that  
12 this project was taking place we did explore the  
13 options of residential parking. The only thing  
14 is if you're talking about zoning over there that  
15 means that most of the people that will use the  
16 facilities will be in that zoned area so if we're  
17 talking about being able to park as long as they  
18 have that Zone 7 in their window they can park  
19 that's why we're asking for a special event  
20 because you can live on another side of using  
21 Zone 7 and just park within that area so it still  
22 wouldn't really solve the problem. When you zone

1 a street but you just live in that zone you can  
2 still utilize the street.

3 MR. MAY: It wouldn't necessarily solve  
4 the problem completely but it certainly makes a  
5 dent. I recall when they instituted, the  
6 extended the hours for residential parking  
7 permits in the vicinity of the stadium that it  
8 actually had a beneficial effect in the  
9 neighborhood.

10 MS. MAY: That's why we were asking for  
11 the special events parking.

12 MR. MAY: I'm not talking about a special  
13 event permit; I'm just talking about extending  
14 the hours. It used to be in the old days it  
15 turned off at 6:30 but there were many evening  
16 events and so when they ran to 8:30 it had a  
17 beneficial effect.

18 MS. CARR: Can I make a comment? Also  
19 that we used to meet there for the ANC and there  
20 would be the parking that's there is inadequate  
21 now. So the people would have to go across East  
22 Capitol Street and park on East Capitol Street

1 and also that my grandson uses that rec for  
2 basketball so that's an issue and that runs from  
3 December to March and that's an issue for that  
4 too when all the parents come with the basketball  
5 you've got to go all the way across the street to  
6 park properly.

7 MR. MAY: All the way across East Capitol  
8 Street. And there's as I recall, I don't recall  
9 there's being a light.

10 MS. CARR: There is a light there.

11 MR. MAY: So you can cross the street  
12 with a control. Ok and when you cross the street  
13 I know that at a certain point it starts ramping  
14 up. I know East Capitol Street goes into an  
15 underpass so what is it Minnesota the  
16 intersection above it?

17 MS. CARR: Yes.

18 MR. MAY: So it is still possible to walk  
19 across the street and get to the neighborhood  
20 across the street across East Capitol right?

21 MS. CARR: Right. This is East Capitol  
22 going to the tunnel it divides off to that little

1 side street right there so that's where people  
2 are parking. You're up here and you walk down so  
3 it's a little walk, and that's resident.

4 MR. MAY: This stretch over here of B  
5 Street that's next to the site I assume that  
6 there's parking on that street too.

7 MS. CARR: You're not supposed to but  
8 people do park there. It goes down to one lane  
9 to right on into.

10 MR. MAY: I can understand the one lane  
11 area but the area where it's two way, you're not  
12 allowed to park there?

13 MS. MAY: I'm not sure.

14 MS. CARR: I know where the field is  
15 you're not supposed to park. You used to but now  
16 they've come passed and put stripes in the street  
17 so they've made it one lane so we used to park on  
18 the other side and they stripped it out on that  
19 side right by the field area.

20 MR. MAY: Okay.

21 MS. MAY: I want to add something.  
22 Within our neighborhoods we are also being impact

1 with the Seed School so when Seed School has  
2 events at their school that parking trickles into  
3 our community already too. So that's some of the  
4 other issues dealing with the Seed School and  
5 with this Tennis center we're already dealing  
6 with..., in addition to the homeowners.

7 MR. MAY: When it comes to the Seed School  
8 is there anything exceptional about that school  
9 that makes it different from other schools in  
10 neighborhoods. Other schools across the city  
11 have evening events, back to school night, things  
12 like that that have an impact on neighborhood  
13 parking. Is the Seed School somehow different?

14 MS. MAY: Seed School is a boarding  
15 school and they usually have times where the  
16 parents can come in or family members can come in  
17 and hang around with the children. So usually  
18 when something like that takes place we have to  
19 deal with that parking coming up into our  
20 community.

21 MS. CARR: They have a lot of special  
22 events at the Seed School because they're really

1 internationally. So they had like Prince Charles  
2 when he was here he went over there, that's the  
3 second time he's been over there. It's true, I  
4 was there looking with my camera. They do a lot  
5 with the students that they have in that  
6 building.

7 MR. MAY: Okay I was just trying to  
8 understand if they were significantly different  
9 from other schools. I'm not sure if the boarding  
10 school is a benefit or a disadvantage when it  
11 comes to the parking impacts because if it's this  
12 little bit of separation that comes with boarding  
13 school and maybe not as many parent visits then  
14 you might have a regular neighborhood school.

15 MS. CARR: Yeah we know it's only  
16 boarding during the week from Sunday night to..

17 MR. MAY: So is there rush on Sunday  
18 night? Then again on Friday afternoon?

19 MS. CARR: Yes.

20 MR. MAY: Is there a specific impact to  
21 the neighborhood as a result of that?

22 MS. MAY: Yes. They also have sports

1 going on within the school so when they're  
2 holding their events then we have to deal with  
3 the parking.

4 MR. MAY: That's sort of normal for a  
5 school zone. Okay thanks.

6 CHAIRPERSON SORG: So to follow up on the  
7 parking discussion to boil it down it sounds like  
8 most of the concern, correct me if I'm wrong,  
9 most of the concern has to do with evening  
10 special events would you say that's accurate?

11 MS. MAY: Evening and weekend because all  
12 the kids don't go home on weekends all the time.

13 CHAIRPERSON SORG: In general in the rec  
14 center area.

15 MS. CARR: Another way out because like I  
16 said if there's 10 spaces there already their  
17 going to add 26 to it and hopefully that's the  
18 number all those cars going that direction and  
19 then parents are still trying to get their kids  
20 up to the center then when your turning around  
21 you should see us trying to get out of there  
22 sometime it's a mess.

1 CHAIRPERSON SORG: It sounds like a  
2 heavily used center which is good.

3 MR. JORDAN: Yeah, Madam Chair if I could  
4 ask, Ms. May are you supportive of having this  
5 center this new tennis education center or not?

6 MS. MAY: Yes we are supportive of it we  
7 just want to make sure that...

8 MR. JORDAN: And the same thing for you  
9 Ms. Carson?

10 MS. CARR: Yes we are supportive we just  
11 want to make sure you respect the community and  
12 abide by their wishes as much as possible.

13 MR. JORDAN: So it's your belief that the  
14 center would enhance the neighborhood, provide  
15 some adequate uses?

16 MS. MAY: In addition to what's already  
17 there the rec center, yes.

18 MR. JORDAN: It seems like the problems  
19 that you're outlining are a deeper problem that  
20 already exists and it really needs to be looked  
21 at overall in a comprehensive way.

22 MS. MAY: Yes because when they actually

1 built our homes they were supposed to deal with  
2 the drainage system of our pond so the pipes are  
3 not connected and that's what we were trying to  
4 explain to the civil engineer that there's some  
5 issues how the trash coming in off of Ridge Road,  
6 through the sewage system is coming down into the  
7 ponds and it's just constantly coming through and  
8 that has a lot to do with the backup of the pond  
9 system and everything so we were just basically  
10 informing them that they might want to take a  
11 look at how they connect because additionally  
12 there were supposed to come out and connect the  
13 pipes but it's been since 2004 and we haven't  
14 gotten anything done.

15 MR. JORDAN: Let me ask you, you talk  
16 about that lighting after those back trails is  
17 that area lit now, that area in the back there?

18 MS. CARR: It can be.

19 MR. JORDAN: Is it lit now?

20 MS. MAY: No.

21 MS. CARR: There are poles there. It  
22 took the new Mayor to come out this year to get

1 the front lights fixed on the rec that was 4  
2 months in waiting. So it's an electrical issue,  
3 it's lit but if you don't have the electric  
4 working right.

5 MR. JORDAN: So it has the ability to be  
6 lit but it's not lit. There are comprehensive  
7 issues that go deeper that require some other  
8 services that need to happen, that's what I'm  
9 hearing.

10 MS. CARR: Yes.

11 MS. MAY: Yes.

12 MR. JORDAN: Thank you.

13 CHAIRPERSON SORG: Thank you Mr. Jordan.

14 I want to go back to the Applicant with a couple  
15 of things that I think we're hearing both in the  
16 testimony and in the recommendations that came  
17 from the homeowners association. You responded  
18 to some of them in your initial statement today.

19 I wanted to hear a little bit about the site  
20 lighting it sounds like, and I think this is  
21 mentioned in the report as well, a desire for  
22 site lighting especially in the path ways is

1 that something that you have discussed with DPR  
2 and the community?

3 MS. ROSSIDES: Right so we actually feel  
4 that we'll be enhancing the lighting because  
5 we're going to light the pathway along the  
6 outdoor courts and then we're lighting the  
7 pathway that leads to the indoor facility. So  
8 we're going to be lighting the pathway here and  
9 here so we think we'll enhance it because if  
10 there are electrical issues as Ms. Carr mentioned  
11 and so it's not well lit now at all. We do not  
12 want to at the beginning light the tennis courts  
13 or the basketball courts because we do feel that  
14 will encourage the loitering and we don't feel at  
15 this time that we want to be on the site at night  
16 time.

17 CHAIRPERSON SORG: I'm sorry can you  
18 point to the pathway lighting?

19 MS. ROSSIDES: Here and here because  
20 there's an entrance here.

21 CHAIRPERSON SORG: And what about the  
22 pathways that are going through the woods?

1 MS. ROSSIDES: It's not lit right now,  
2 these are not currently lit and right now we're  
3 not planning on lighting them. We are putting in  
4 the ability to light the tennis courts in the  
5 future but we just want to see how the community  
6 to responds. Like I said the positive response  
7 we got at the ANC meeting we don't want to  
8 encourage loitering right now. We hope 5, 6, 7  
9 years from now the center will change and it will  
10 be a safe place to be there after dark but we  
11 don't feel comfortable with that right now.

12 CHAIRPERSON SORG: Okay thank you. With  
13 regard to the parking and going back to the  
14 Applicant again here you said in your statement  
15 earlier that you agreed to provide something to  
16 the community what was that that you were  
17 agreeing to in that statement in your opinion?

18 MS. ROSSIDES: In terms of parking?

19 CHAIRPERSON SORG: Yeah.

20 MR. TUMMONDS: First with regards to  
21 parking is that the Washington Tennis Facility  
22 itself does not anticipate having large scale

1 tennis tournament types of events so we don't  
2 think there will be a special even parking impact  
3 through the WTEF facility. The Office of  
4 Planning Report noted that in the memorandum of  
5 understanding between WTEF and DPR it gave DPR  
6 the ability to have up to 2 tennis tournaments a  
7 year on the site. So as Mr. Jackson noted there  
8 was a question (inaudible) how would DPR address  
9 that issue of parking. I think Ms. Faulkner  
10 testified today to say DPR has a practice of when  
11 they do have tournaments of using their fleet to  
12 use the fleet to come in and provide parking to  
13 dissuade individual automobiles from coming to  
14 the site. We think that the provision of the 26  
15 cars on our property in addition to the 10 that  
16 exist will provide ample parking for the everyday  
17 use. I think that's what Mr. May was getting at  
18 is are these concerns everyday or are they  
19 special event? We would also note that while Ms.  
20 Rossides talked about the WTEF facility here  
21 would allow for expanded hours there will  
22 certainly be times when WTEF will not be having

1 activities but the Benning Stoddert Rec Center  
2 will and there will be 26 spaces adjacent to the  
3 existing 10 and we think that will help provide  
4 overflow parking to meet the everyday parking  
5 needs of both facilities. So I think it's a  
6 matter of the special events. We think we have  
7 programs in place to deal with that then also the  
8 beauty we think the benefit of this development  
9 committee between WTEF and ANC 7-A will help  
10 address that issue when the WTEF facility is up  
11 and running, when the Benning Stoddert Rec Center  
12 is fully revitalized. We think that will be the  
13 true benefit of making sure that this is not a  
14 facility that causes adverse impacts on the  
15 surrounding community.

16 CHAIRPERSON SORG: Thank you very much.  
17 One other question that we hear brought up by the  
18 individual testimony has to do with drainage and  
19 standing water issues. It seems like on the  
20 basketball courts it looks like we're waving to  
21 the civil engineer.

22 MS. RAMSEY: Good afternoon Madam Chair,

1 Mary Ramsey, (inaudible), Civil Engineer. We  
2 have had a concept meeting with the District  
3 Department of the Environment to review the  
4 proposed development and the subject  
5 sedimentation (inaudible). Obviously as a  
6 prerequisite to obtaining building permit as we  
7 have discussed with them we will be submitting  
8 plans for review and approval. What we have  
9 discussed at preliminary is the use to the extent  
10 possible and we have to sub (inaudible) technical  
11 report and investigate the feasibility of having  
12 low impact design by retention to treat the  
13 runoff from the new facility and to meet the  
14 requirements for the development as would be  
15 required. We were fortunate to have had the  
16 presence of Tim Carey Carey at the last ANC  
17 meeting and Tim has suggested to us that both  
18 DDOE and Wiseminch will collaborate on existing  
19 utility infrastructure that had been put in place  
20 with recent developments adjacent to the site to  
21 accommodate some of the inherent drainage and  
22 punting problems that they have at the south of

1 the site. So since that ANC meeting I've gotten  
2 an email from DDOE to say that they are looking  
3 into those drawings and once they have those  
4 drawings we are going to revisit and review those  
5 drawings and collaborate with them, the  
6 (inaudible) management issues.

7 MR. TUMMONDS: I think we're aware of the  
8 issues that Ms. May and her community have  
9 addressed with their existing bio-retention  
10 ponds, DDOE is aware of that and through the  
11 permitting process we will hopefully fix those  
12 existing problems but then also we don't want to  
13 create the new basketball courts or new tennis  
14 courts in an area that has significant storm  
15 water problems that is something that we're going  
16 to have to take a look at. While I don't want to  
17 say that we WTEF, DPR are going to fix the DuPont  
18 Commons Homeowners Association but we're  
19 cognizant of that and hopefully we can come up  
20 with a situation that will make it better.

21 CHAIRPERSON SORG: Thank you very much,  
22 anything further?

1           MR. JORDAN: Madam Chair I was going to  
2 ask about the basketball courts. I do see that  
3 they run in a T pattern. Have you ever played  
4 ball much where you don't stop after you do your  
5 lay up and run into the other court? I say that  
6 in a sense of I don't know how much interaction  
7 has been held between the community and the group  
8 some of these things seem like they can be worked  
9 out in conversation especially something like  
10 that. The other question goes to the number is  
11 there a magic number to the amount of outside  
12 tennis courts and how did that number come about,  
13 is it the 9 that are sitting there?

14           MS. ROSSIDES: So we had obviously we've  
15 had extensive conversations with the Department  
16 of Parks and Recreation and they did a use  
17 assessment of the facility. They came back to us  
18 and said they needed two outdoor courts and  
19 that's how it was arrived at. So they looked at  
20 the uses of the facility. In terms of the 9  
21 outdoor courts we plan to have 3 of those courts  
22 and it's called quick start tennis and they're

1 going to be specifically for 3, 4, 5, and 6 year  
2 olds. So there are going to be 6 full size  
3 courts and so we can start kids at 3, 4, and 5  
4 years old which are what we want to do. We want  
5 to get these kids really young and have them  
6 committed and you know so engaged with WTEF that  
7 obviously we can influence them in their  
8 academics and positive life paths. So 3 of those  
9 courts are going to be dedicated to that and then  
10 we'll have 6 outdoor full size courts so that we  
11 can accommodate all age groups.

12 MR. JORDAN: Okay thank you.

13 MS. ROSSIDES: Three courts three quick  
14 start courts actually each court will be split up  
15 into two, it's called mini courts, and mini quick  
16 start courts so we're going to be able to  
17 accommodate so many little kids. We feel in  
18 order to, this will help us serve more and more  
19 children.

20 MR. MAY: Can I ask a follow up on the  
21 storm water issues? My question right now is  
22 that there's a lot of paved surface there right

1 now is all that paved surface just shedding into  
2 the storm sewer system, existing infrastructure?

3 MS. RAMSEY: We will be providing quantity  
4 and...

5 MR. MAY: I'm not asking what you will  
6 provide, I'm asking the...

7 MS. RAMSEY: The existing conditions  
8 correct there's no storm water management and  
9 devices that we are aware of that's on the  
10 subject site.

11 MR. MAY: Okay so does that run off  
12 actually exacerbate any of the problems in the  
13 adjacent property I mean is the storm sewer  
14 system adequate for that surface area and is  
15 contributing right now...

16 MS. RAMSEY: There is an extensive storm  
17 sewer system present however we have heard that  
18 there is a presence of an underground stream and  
19 DDOE has indicated that they had reviewed and  
20 that there's some existing infrastructure that  
21 was put in place to take care of that stream so  
22 that there wouldn't be competing interest getting

1 into the sewer at the same time and it would  
2 delay the time of concentration. But as I say we  
3 have not had the ability to review those drawings  
4 as of yet.

5 MR. MAY: Okay. So the existence of the  
6 underground stream maybe part of the problem with  
7 the rain gardens or whatever they are right now  
8 are supposed to be taking on the runoff from  
9 DuPont Commons right?

10 MS. RAMSEY: Correct.

11 MR. MAY: I know that DDOE and DC Water  
12 are going to make sure that you hold all of your  
13 rain water makes it as if there was no paved  
14 surface right in terms of the conditions?

15 MS. RAMSEY: Right, we will be meeting  
16 the current DDOE requirements for storm wash  
17 management control.

18 MR. MAY: But if it involves LID that  
19 would have to be on the assumption that the  
20 ground is not already saturated.

21 MS. RAMSEY: Correct we will have to  
22 review that and perhaps come up with an

1 alternative solution. Obviously the preference  
2 would be for LID but if that's not an acceptable  
3 solution it will probably be in the form of a  
4 structure.

5 MR. MAY: Sand filters and all that and  
6 large concrete vaults. Okay thanks.

7 CHAIRPERSON SORG: Thank you. Are there  
8 any further questions for the Applicant?

9 MR. WILMONT: Good afternoon I'm sorry I  
10 was late I'm David Wilmont and I'm a board member  
11 of the foundation. I wanted to make a couple of  
12 comments and one of them has to do with the  
13 basketball courts. I probably more than anyone  
14 else except for the people who are in this room  
15 spend a great deal of time on that site I  
16 probably know every inch of that site. One of  
17 the things that is there now if I were to take  
18 you there is that there are actually 4 basketball  
19 courts there are not nets in a couple of them and  
20 then if you go there you'll see that they are  
21 already T-shaped so it's not something that we're  
22 introducing. That's one of the reasons I had

1 indicated to the commission because I started  
2 this process some years ago that what we needed  
3 to do is to do a site walk, people need to walk  
4 the site as we do because in all earnest there  
5 are just a serious of problems that are  
6 associated with that entire area much of which  
7 I'd like to see addressed as well. I think that  
8 when you look at the Commons they were done a  
9 dis-service by whoever developed that property  
10 and whatever oversight was conducted with respect  
11 to that and that needs to be fixed. Decisions  
12 were made about the (inaudible) school we weren't  
13 part of that. But they do have impacts as we  
14 know. We've been working with kids and you've  
15 probably heard this, for some time, for close to  
16 20 some odd year and we bus kids now to our  
17 facility. We have large tournaments there and we  
18 have been able to work those out with the  
19 community as well. What we're trying to do is to  
20 achieve partnership and that's what we've been  
21 trying to do from day one. When I first went to  
22 the community and it was the leadership council

1 and I think Ms. Carson was there it was some  
2 years ago. I expressed then that's what we were  
3 attempting to do. For me it's very simple there  
4 are two words that drive why we are trying to do  
5 this and a lot of times they get overlooked. One  
6 is this is about kids and it's about education.  
7 I think that much of the money that we've raised  
8 in connection with this is because people share  
9 that feeling. I believe the good people of this  
10 community share that view as well. Much of  
11 what's there now is broken it doesn't work and so  
12 what we're trying to do in the course of this  
13 partnership is to fix some of that in the context  
14 of an agreement with the community. We can't fix  
15 all of it and I wouldn't purport that we have the  
16 resources to fix all of it but we're not  
17 unmindful of what's there now. So I think that  
18 this is a process that we will undertake with the  
19 community because we're committed to doing that.  
20 Mrs. Carson continues to tell me that we can't  
21 disrespect. Anybody who has known our work in  
22 the community and knows me specifically knows

1 that this is not what this is about. I don't  
2 mean it for disrespect to anyone. As you know  
3 plans change and we try to provide all the  
4 updated information as it comes available and we  
5 will continue to do that. So I think what's  
6 important here is that those who came out for the  
7 tour sites and I have probably participated in  
8 probably a half dozen of them myself. They  
9 expressed to us some of the concerns they had, we  
10 have our team out there so that they could hear  
11 those concerns specifically and how we should be  
12 addressing them. Some of them seem somewhat  
13 difficult to us because to construct an 8ft fence  
14 on something to keep people out the problem is  
15 that we're trying to bring people in particularly  
16 the young people is concerning to me  
17 specifically. So I submit to Mrs. Carson and to  
18 the other committee members that I've been  
19 working with, media members I've been working  
20 with that we're going to try to do our level best  
21 to help them address the problems that are  
22 existing and to be sure that we don't add to

1 those problems by what we're proposing to do on  
2 that site. So it's important to look at the site  
3 as it is and to look at what's there as I said to  
4 Mrs. Carson very early on, I don't think we're  
5 going to raise a lot of money to put basketball  
6 courts in a place that they're going to sink into  
7 water, we're just not going to do that. I don't  
8 think that the District Government would allow us  
9 to do that. So we're going to look at all these  
10 problems very carefully and we're going to come  
11 up with solutions that were for the community and  
12 for ourselves as well.

13 CHAIRPERSON SORG: Thank you Mr. Wilmont.  
14 I think that it's clear to me the type of  
15 community outreach that has been going on there  
16 for several years and I think telling is in  
17 answer to Mr. Jordan's question the individuals  
18 that came here to testify while they have  
19 concerns that they raised and those things are  
20 important and shared among community members it  
21 was clear to see that they were in support. So I  
22 think that this is the kind of hearing that I

1 like to see in which people are floating ideas  
2 back and forth and in which we get to move  
3 forward looking at and analyzing the project with  
4 the community fairly confident that their  
5 concerns are going to be heard and that this is a  
6 collaborative process. That being said I would  
7 ask if there are any final questions for the  
8 Applicant by the Board Members or the  
9 individuals. Then I would invite you to go ahead  
10 and make any closing statements that you have.

11 MR. TUMMONDS: Thank you. As evidenced  
12 by the information that we've submitted in the  
13 record...

14 AUDIENCE MEMBER SPEAKING

15 CHAIRPERSON SORG: I'm sorry we  
16 definitely hear the concerns that you've made and  
17 we're going to make sure that this process keeps  
18 going. Please continue.

19 MR. TUMMONDS: As evidenced by the  
20 information that was submitted into the record in  
21 the prehearing statement on May 3<sup>rd</sup> and the in the  
22 testimony presented here this afternoon the

1 Applicant has satisfied the standards for the  
2 requested special exception relief. Moreover the  
3 Applicant has heard and responded to the concerns  
4 that have been raised by ANC 7-A and Ms. May and  
5 the DuPont Commons Homeowners Association  
6 regarding the potential impacts of this project  
7 in response to those concerns the Applicant has  
8 created a construction mitigation plan that it  
9 has offered to be a condition of the BZA approval  
10 and the Applicant has agreed to participate in a  
11 WTEF ANC 7-A development committee which would  
12 allow issues related to the construction,  
13 parking, or operations of the facility to be  
14 addressed in an expeditious manner. For all  
15 these reasons the Applicant requests that you  
16 approve BZA Application No. 18209. Thank you  
17 very much.

18 CHAIRPERSON SORG: Thank you very much.  
19 So what I would like to propose I don't think  
20 that we are going to be prepared to deliberate  
21 and vote on this case today but what I would like  
22 to propose and I invite my other Board Members to

1 weigh in is we'll close the hearing today and  
2 have a couple of specific things that we want to  
3 request from the Applicant. My idea specifically  
4 is, you know we've talked a lot around, there's  
5 been a good deal of community outreach I know.  
6 The ANC has weighed in as supportive and has  
7 incorporated, I guess, the concerns of the DuPont  
8 Commons Homeowners Association. What I might  
9 like to see is to request that the Applicant come  
10 up with a list of possible conditions, an  
11 agreement with the community, and I would suggest  
12 that they solicit the agreement of the community  
13 and ANC although that's of course up to the  
14 Applicant. We would request that those be  
15 submitted by a date that we can establish and  
16 allow the ANC which is the only party in this  
17 case time to respond to that before our public  
18 meeting in which we would deliberate. Is that  
19 something that other Board Members would think  
20 would be helpful? Also are there any other  
21 materials that Board Members might think would be  
22 useful?

1           MR. MAY: I can't say that there are  
2 specific pieces of information that I would like  
3 to see but it does seem to be that what your  
4 requesting Madam Chair is thoroughly appropriate  
5 because this is something that clearly has  
6 significant support and it's going to be a  
7 significant benefit to the community. There are  
8 just some open issues I think where not everyone  
9 believes that their issues have been addressed.  
10 I think that the more progress can be made; this  
11 is the time I think where often projects like  
12 this sort of float around for awhile and they  
13 don't seem very real. Well now this one is  
14 getting very real and I think that everybody has  
15 to come to the table and I think the time is  
16 right to get substantial agreements with the  
17 effected neighbors. It seems to be that it is  
18 easily within reach so I would encourage the  
19 Applicant to make and earnest effort in that  
20 regard and the members of the community to do the  
21 same, the ANC and of course the residents in the  
22 nearby DuPont Commons, so thank you.

1           CHAIRPERSON SORG: Thank you Mr. May  
2 that's exactly what I was thinking and I echo  
3 your comments.

4           MR. JORDAN: Madam Chair I understand  
5 what's being said here. I guess my concern is  
6 that these issues that have been defined have  
7 kind of went beyond the boundaries of this  
8 project and are kind of deeper and I don't know  
9 if some of those things are going to be able to  
10 be solved in conversation. I'm not in opposition  
11 to what you're saying I just think that we need  
12 to be sure in the context of this discussion that  
13 its' relevant to this project particularly and  
14 that the project related issues can be solved.

15           CHAIRPERSON SORG: I definitely agree  
16 with you Mr. Jordan and as I think Mr. Wilmont  
17 also mentioned as well there are certainly a wide  
18 range of issues surrounding deterioration and  
19 facilities in the overall area here. We all  
20 understand that there are certain pieces that are  
21 pertinent to the relief that's being requested as  
22 well as the project that's on the table. I think

1 that WTEF understands that and I think the  
2 community also understands that we're not going  
3 to point a wand and be able to solve everything.  
4 I think that going through this process as Mr.  
5 May mentioned will allow the community, the ANC  
6 and WTEF to get together on a kind of what's the  
7 most important things that they can perhaps help  
8 address. Also subsequently I think that it's our  
9 job at the end of the day to take a look at  
10 whatever we receive in advance of the public  
11 meeting and to have ultimately analyzed whether  
12 we think that those are going to the concerns as  
13 you mentioned that are specific and relevant to  
14 what we see in the record and to the project. Is  
15 there anything further?

16 MR. MAY: No just to echo that thought  
17 that I think we want to get a more substantial  
18 agreement between the Applicant and the community  
19 but I think that there is enough information in  
20 the record right now that a decision can be made  
21 even if nothing changes substantively. I just  
22 would really like it to change substantively so

1 we can all be a little bit more comfortable with  
2 it. I'm sure we will be prepared to go ahead  
3 when it comes back for decision.

4 CHAIRPERSON SORG: Thank you Mr. May I  
5 agree. So I think what we would like to do if  
6 there's nothing further is take a look at our  
7 calendar to see when we might..., do you have any  
8 questions about what we're requesting first of  
9 all.

10 MR. TUMMONDS: I think I'm aware and I  
11 think it is important that what you said that to  
12 know that there are some things that we think  
13 both parties can agree to and some things that I  
14 think both parties will just have to understand  
15 that are outside of the scope of this public rec  
16 center. We will do our best but I think  
17 ultimately the BZA will rule in accordance with  
18 their authority under the Zoning Regs. We would  
19 encourage it and I think as Commissioner May  
20 mentioned, we're close, so I think that there's  
21 no question what the issues are we just need to  
22 do it. So I would say that I would like to have

1 that time frame as close as possible so that  
2 everyone is encouraged to get this done and then  
3 we can move on. So I would like to, if possible  
4 I would look to have the decision meeting would  
5 be in June and so that we can do it in two weeks  
6 get this done and then move on.

7 CHAIRPERSON SORG: I hear ya, alright.  
8 I'd like to give some amount of time to be able  
9 to establish these submissions and give the ANC  
10 some time to respond can you help me with some  
11 suggestion Mr. Moy.

12 MR. MOY: Madam Chair although there's a  
13 full ANC 7-A letter in the record they are not  
14 here at this proceeding and I just checked and  
15 someone else can correct me but my understanding  
16 is that ANC 7-A meets the third Tuesday of the  
17 month if you want any recording or some response  
18 from them which would put the third Tuesday as  
19 June 21<sup>st</sup> unless they have an emergency meeting,  
20 so that's something to consider.

21 CHAIRPERSON SORG: Gotcha.

22 MR. MOY: Because otherwise the decision

1 dates I'm looking at is either June 7<sup>th</sup> or July  
2 12<sup>th</sup> those are the two decision dates.

3 CHAIRPERSON SORG: I think that were  
4 going to have to schedule it in July.

5 MR. JORDAN: I thought the ANC already  
6 weighed in.

7 MR. MOY: Well they did Mr. Jordan; they  
8 did that's why I'm leaving it up to the Board  
9 whether or not you want a response from the full  
10 ANC.

11 MR. JORDAN: I think the ANC in their  
12 letter deferred to the DuPont Neighborhood  
13 Association in their letter.

14 MR. MOY: Yes as I read in their letter  
15 they state that the conditions that were raised  
16 at the time of the hearing WTEF would address the  
17 concerns of the DuPont Commons and support the  
18 participation of the development committee for  
19 the effected stakeholders as I'm reading. So  
20 it's up to the consideration of the Board what  
21 you desire.

22 MR. JORDAN: That's why I was saying so

1 it doesn't become contingent upon that because  
2 they've kind of deferred that to the DuPont  
3 Commons.

4 MR. MAY: Is there a reason why July 12<sup>th</sup>  
5 would be problematic for the Applicant for a  
6 decision on this? I'm just curious.

7 MS. ROSSIDES: We're trying to break  
8 ground on this by September and we're trying to  
9 move this process along as fast as possible we  
10 have had numerous meetings over the last 6 months  
11 with the ANC, there's unanimous approval from the  
12 ANC.

13 MR. MAY: I'm not asking you to argue the  
14 case again I'm just curious about what the impact  
15 is of July 12<sup>th</sup>.

16 MS. ROSSIDES: We're trying to move  
17 forward and break ground by September.

18 MR. MAY: Okay and if you get a decision  
19 in July you would not be able to do that?

20 MR. ALBANESE: Good afternoon Madam Chair  
21 and Board. My name is Tony Albanese I'm with  
22 Gilbain Building Company; I am the construction

1 manager for the project. That decision will  
2 affect our ability to file a permit if we wait  
3 that long, that's our hold up point.

4 MR. MAY: So when were you planning to  
5 file for permit?

6 MR. ALBANESE: If we received a favorable  
7 review today we're within two weeks of starting  
8 our construction document phase and at that point  
9 we're about 4 to 6 weeks from receiving the  
10 permit. So we'd like to keep the process moving  
11 as Ms. Rossides said.

12 MR. MAY: Okay.

13 CHAIRPERSON SORG: Alright I think given  
14 the concerns we've heard and given that the  
15 Applicant does already have the support of the  
16 ANC I'll go ahead and I'll put this for decision  
17 on June 7<sup>th</sup>, that would be the next one correct  
18 Mr. Moy?

19 MR. MOY: That's correct Madam Chair.

20 CHAIRPERSON SORG: Alright so then we'll  
21 work backwards from there. That would mean we  
22 can require submission by the Applicant does a

1 week give you enough time? Two weeks by the 31<sup>st</sup>  
2 and then we can give the ANC a deadline of Monday  
3 June 6<sup>th</sup>.

4 MR. TUMMONDS: We can shorten our time,  
5 the two week time period; you can give us 10 days  
6 it gives more time for the ANC to work with. We  
7 would absolutely. Because as I said we will know  
8 very shortly, this is not the first dialog we've  
9 had it's been an ongoing dialog we'll know those  
10 things that we can agree on and those things that  
11 will just have to be hanging out there. So I  
12 think 10 days would be fine for us.

13 CHAIRPERSON SORG: You know the trouble  
14 is also that you run into Memorial Day and people  
15 don't like to review documents on Memorial Day in  
16 general I feel.

17 MR. MOY: The 10<sup>th</sup> day would be May 27<sup>th</sup>  
18 which is a Friday.

19 CHAIRPERSON SORG: Okay then why don't we  
20 get the Applicant's submission on May 27<sup>th</sup> and  
21 we'll give the ANC a deadline of Monday the 6<sup>th</sup>  
22 for any response should they want to make them.

1 MS. GLAZER: Madam Chair is for the ANC  
2 and the association as well?

3 CHAIRPERSON SORG: The ANC is the only  
4 party in this case. So I would expect the  
5 Applicant to serve their submission on a party  
6 which would be the ANC and that the party would  
7 be invited to respond.

8 MR. MOY: I understand earlier that  
9 rightly or wrongly the Applicant would also in  
10 crafting the conditions would be also working  
11 with the community which would be the homeowners.

12 CHAIRPERSON SORG: That's up to the  
13 Applicant but as the only party in the case it's  
14 up to the ANC to craft any response representing  
15 whatever interest they represent. It's also up  
16 to the Applicant to use their own judgment as to  
17 how to engage the ANC and the rest of the  
18 community in crafting whatever submission they're  
19 going to craft.

20 MR. MAY: Certainly possible that the  
21 Applicant could incorporate a letter from the  
22 homeowners association in support of whatever

1 proposal they come to agreement on.

2 CHAIRPERSON SORG: Ms. May did you have a  
3 comment I saw you waving but if you're going to  
4 make one you better come to the mic. I just  
5 wanted to get that in before you started talking  
6 and then you have to repeat yourself.

7 MS. MAY: I just wanted to say that the  
8 ANC meets on the first Tuesday of the month not  
9 the third.

10 CHAIRPERSON SORG: Thank you should have  
11 called on you earlier. Well we knew when we  
12 scheduled this we weren't going to have an entire  
13 ANC meeting and we've already approved it so I'm  
14 going to leave it up to the Applicant to do the  
15 foot work to solicit whatever it is, the  
16 cooperation that they're going to get.

17 MR. TUMMONDS: And in this case the ANC  
18 when they took their vote on May 3<sup>rd</sup> that was a  
19 special public meeting for this so we're  
20 hopefully that they will follow suit,

21 CHAIRPERSON SORG: There you go  
22 everybody's mobilized. Alright so if that's

1 clear then we can go ahead and schedule this.  
2 You've got all the dates down Mr. Secretary?

3 MR. MOY: Yes decision June 7<sup>th</sup>,  
4 Applicant to file May 27<sup>th</sup>, Friday and any  
5 responses from the full ANC June 6, which is on  
6 Monday.

7 CHAIRPERSON SORG: Alright thank you  
8 everybody. Alright we're going to take like a 5  
9 minute break and we can call the last case for  
10 the day.

11 **Application No. 18210**

12 MR. MOY: The last case for this  
13 afternoon session is Application No. 18210. This  
14 is the application of Noodles and Company,  
15 pursuant top 11 DCMR 3104.1 and 3103.2 and  
16 1304.1. This is for a variance from the  
17 enclosure wall requirements under (subsection  
18 721.3, sub J) and a special exception to  
19 establish a fast-food establishment under  
20 (subsection 1307.5) in the WP/C 2-B District at  
21 2635 Connecticut Avenue, N.W. property is in  
22 (Square 2204, Lot 161).

1           CHAIRPERSON SORG: Thank you Mr. Moy I  
2 see that the Applicant has joined us. Introduce  
3 yourself for the record.

4           MS. BROWN: Thank you Madam Chair good  
5 afternoon I'm Caroline Brown with the Law Firm of  
6 Holland and Knight. Here with me today is Perry  
7 Reith on behalf of the property owner Groves and  
8 Urban Retail LLC and Trapper Martin the Regional  
9 Manager for Noodles and Company. I can proceed  
10 with presentation.

11           We're very pleased to have the support of  
12 the Office of Planning for our Application today  
13 as well as a resolution from the Advisory  
14 Neighborhood Commission 3-C agreeing not to  
15 oppose the application in light of the conditions  
16 that we've agreed to. In fact we're not aware of  
17 any opposition to our application so we are  
18 prepared to rest on the record if that is  
19 appropriate or make a short presentation as you  
20 wish.

21           CHAIRPERSON SORG: Why don't we do a  
22 quick summary and then we'll go onto questions.

1 MS. BROWN: You bet. We're here today  
2 seeking special exception relief from the Woodley  
3 Park Overlay provisions in order to allow a fast  
4 food establishment in the Overlay area. We're  
5 also seeking two variances from the C 2-B  
6 provisions for fast food establishments  
7 pertaining to the brick enclosure walls that are  
8 required for the entire length of the lot line,  
9 now withstanding the fact that Noodles only  
10 occupies a small portion of the building.  
11 Secondly the brick enclosure wall for the refuse  
12 containers for the noodles restaurant. I don't  
13 know if you all are familiar with the noodles  
14 concept but it is in all respects a restaurant  
15 except for the timing of payment. It serves  
16 noodles dishes from around the world and you find  
17 that all meals are cooked to order. You will  
18 find them in the surrounding jurisdictions in  
19 Silver Spring, Bethesda, Boston, if you're  
20 familiar with Pete's Pizza in Tinley Town that's  
21 a similar operation in that is a fast food  
22 establishment or Panera. So it's known in the

1 industry as a fast casual restaurant. It's a  
2 hybrid between a full service restaurant and a  
3 fast food restaurant. All food is served on  
4 ceramic dishware. Food is eaten with metal  
5 utensils; the wait staff brings the food to the  
6 table and buses the tables after the guest's  
7 leaves. They don't produce any paper waste other  
8 than paper napkins it's atypical of a fast food  
9 restaurant. They don't have any cooking oil  
10 waste because none of their foods are deep fried.  
11 They don't have a drive through or a large  
12 parking lot or glaring lights or loitering  
13 customers. These were all the negative impacts  
14 that generated the fast food establishment  
15 regulations back in 1985 and then generated some  
16 of the revisions that occurred in 2007. It's  
17 just about this time that the concept of the fast  
18 casual restaurant was emerging so they never  
19 truly got captured in the Zoning Regulations that  
20 we have in place today. So while this Noodles  
21 concept is technically a fast food operation  
22 under the Zoning Regulations as determined by the

1 Zoning Administrator it doesn't produce the paper  
2 waste or cooking oil waste that a McDonalds  
3 would. In fact it can produce even less waste  
4 than your typical full service restaurant.  
5 Adjacent to them in this block is Lebanese  
6 Restaurant that does have the cooking oil waste  
7 drums because that's what they use. Then this  
8 restaurant will not produce any of that similar  
9 waste yet they have the restrictions that apply  
10 to them. We have worked very hard with the  
11 community to address the concerns that they had  
12 about operations of the restaurants and other  
13 establishments in the alley in general and  
14 specifically to this building. The community  
15 agreed that the brick enclosure wall along the  
16 lot line would be an impediment to traffic in the  
17 alley because it's narrow, 15ft wide and it would  
18 be difficult for residents to back out of the  
19 space and it would create conflicts with trucks  
20 servicing the businesses along Connecticut  
21 Avenue. Right now trucks pull into the alley  
22 from Woodley Road and then they back out because

1 you cannot turn around in the alley. So by  
2 forcing the Applicant to have the brick lot line  
3 wall it would exacerbate that condition.  
4 Similarly you would run into the similar issues  
5 with the brick enclosure wall for the refuse  
6 container. There would be conflicting traffic  
7 issues. So as a compromise with the community we  
8 came up with the following plan. One was to  
9 install a trash compactor that could serve the  
10 entire, all the tenants in the building as  
11 opposed to just Noodles. We would also have a  
12 fence enclosing the rear exit stairs so that all  
13 the refuse containers could be obscured from view  
14 from across the alley and all trash service would  
15 be consolidated into one waste service provider  
16 so that it would reduce the number of trips in  
17 the alley and it would reduce the amount of trash  
18 generated. By having the trash compactor you  
19 also reduce the amount of odors generated by the  
20 refuse and rodent issues because it's all  
21 contained and water tight. So we have agreed to  
22 all the conditions enumerated in the ANC

1 resolution. We have also set those out in our  
2 prehearing statement submitted on May 3<sup>rd</sup> and you  
3 will also find it in the OP report. So we're  
4 happy to have their support in this matter and if  
5 you have any questions we have our  
6 representatives here to answer them.

7 CHAIRPERSON SORG: Thank you very much.  
8 Do Board Members have any questions of the  
9 Applicant? Yes Mr. May.

10 MR. MAY: How does, it's hard to  
11 understand where the stair enclosure is, is that  
12 shown in a drawing or an exhibit?

13 MS. BROWN: Yes I'll direct you to two  
14 exhibits to help explain it. If you go to our  
15 prehearing submission and to Tab A there are  
16 photographs. On page 4 those photographs the top  
17 photograph you'll see a white car and you'll see  
18 stairs sort of in an A shape. Beneath the stairs  
19 is where you'll see some trash receptacles there  
20 will be a fence that will be installed in front  
21 of that stairway and that corresponds to the  
22 "Exhibit D" in our prehearing submission.

1           MR. MAY: I was looking at "Exhibit D"  
2 now I'm matching it up. So all of the trash will  
3 be contained under the stairs?

4           MS. BROWN: Except for the trash  
5 compactor. So by consolidating trash service  
6 there will be the trash compactor for the solid  
7 waste generated. There will be a separate  
8 receptacle for recycling of cardboard materials  
9 and there will be a third recycling bin for  
10 bottles and cans. Those will fit under the  
11 stairs. Then there will be also four Lebanese  
12 Tavurna there are linen bins and their cooking  
13 waste oil that will be under there and stored  
14 under the stairs so it will fit and will be  
15 contained. The only dumpster that should be, or  
16 the only waste element that you'll see is the  
17 trash compactor.

18           MR. MAY: Where will that be?

19           MS. BROWN: That's going to be in front  
20 of the stairs you want to keep it close to the  
21 exit so people don't...

22           MR. MAY: So where the white car is?

1 MS. BROWN: Exactly.

2 MR. MAY: Then the only other question is  
3 how does material go into this restaurant? Does  
4 it go up the stairs in the back?

5 MS. BROWN: I believe so.

6 MR. MAY: There isn't going to be any  
7 loading through the front door.

8 MS. BROWN: There is no loading through  
9 the front door all service is done through the  
10 alley.

11 MR. MAY: Okay it looks a little  
12 circuitous but, thank you.

13 MR. HINKLE: Thank you Madam Chair just a  
14 quick question. In looking at the photographs  
15 the one on the bottom of the page 4 there's a  
16 large trash compactor there, I'm sorry a large  
17 trash receptacle there. Is that the type of  
18 receptacle that's going underneath or behind the  
19 fence?

20 MS. BROWN: Yes it's roughly that size a  
21 little bit smaller.

22 MR. HINKLE: Okay so it will fit?

1 Because I'm looking at this photograph and it  
2 doesn't appear if you look at the plan that that  
3 receptacle will fit back there.

4 MS. BROWN: Yes it does. We're going to  
5 make sure wherever the fence goes there's enough  
6 depth to screen it. So that will be something  
7 that will be checked in the field.

8 MR. HINKLE: Okay and it will be  
9 guaranteed to be closed all the time. I can see  
10 it not being put back enough or far enough so  
11 that the gates don't close, so that the gates  
12 stay open all the time. I guess it's a  
13 management issue that I'm concerned with.

14 MS. BROWN: It is and the employees will  
15 be instructed to keep the gates closed at all  
16 times. I have to tell you though with the  
17 landlord here as the owner of the building they  
18 are pretty fastidious about making sure that they  
19 keep that area clean. The two times that I've  
20 been out there to visit the site there has been  
21 someone out there to sweep the alley and pick up  
22 the extra trash.

1 MR. HINKLE: There will also be  
2 restrictions in parking in that area so that you  
3 can access the trash receptacles?

4 MS. BROWN: Well parking is not  
5 permitted, well first of all you've got to have  
6 the trash compactor there that's going to block  
7 it and there typically is some jockeying of cars  
8 back there. Temporarily people will pull into  
9 that but if there is a trash truck or delivery  
10 the cars immediately pull out.

11 MR. HINKLE: Okay thank you I was just  
12 looking at this photograph of the white car and  
13 that concerned me. Thank you.

14 CHAIRPERSON SORG: Thank you Mr. Hinkle.  
15 I just wanted to, I think I heard this but maybe  
16 I'm wrong that the establishment uses no  
17 disposable food containers is that correct?

18 MS. BROWN: For carryout there will be  
19 paper products but they will be taken off site  
20 and disposed of at somebody's home or other place  
21 of business.

22 CHAIRPERSON SORG: Gotcha, okay thank you.

1 Are there any additional questions? Okay then  
2 we move to the Office of Planning please.

3 MR. GOLDSTEIN: Good afternoon for the  
4 record my name is Paul Goldstein. The Office of  
5 Planning recommends approval subject to  
6 conditions of the applications request for  
7 special exception relief from Sections 1304.1 and  
8 1307.5 an area variance relief from Section  
9 721.3J to create a fast food establishment at  
10 2635 Connecticut Avenue, N.W. The subject  
11 property is (Lot 161, Square 2204) which is zoned  
12 C-2-B located in the Woodley Park Neighborhood  
13 Commercial Overlay District. The WP Overlay  
14 permits fast food establishment subject to the  
15 satisfaction of special exception criteria of  
16 Section 1304.1. OP's report details how the  
17 application demonstrates that the special  
18 exception criteria have been met. I'm happy to  
19 answer any more specific questions that the Board  
20 may have. Suffice it to say that the proposed  
21 use would advance the purposes of the  
22 Neighborhood Commercial Overlay District and

1 their exceptional circumstances that exist which  
2 justify the waiver. As part of the special  
3 exception approval OP recommends that the Board  
4 adopt the conditions that the Applicant has  
5 offered and which have been formed in  
6 consultation with the ANC and other neighbors to  
7 mitigate the impact of the fast food  
8 establishment on the rear alley and adjacent  
9 neighbors. Concerning the area variance relief  
10 the application seeks relief from Section 721.3J,  
11 Section 2 and 3. The application demonstrates  
12 that the property exhibits exceptional conditions  
13 which lead to a practical difficulty which is  
14 unnecessarily burdensome to the owner. Further  
15 the proposal should not cause a substantial  
16 detriment to the public good or impair the  
17 intent, purpose and integrity of the Zoning  
18 Regulations and Map. Finally I'd like to commend  
19 the Applicant, the ANC and the Woodley Park  
20 Citizens Association among others for reaching an  
21 agreement that will benefit the proposed business  
22 as well as the greater neighborhood. That

1 concludes my presentation I'm now available for  
2 any questions. Thank you.

3 CHAIRPERSON SORG: Thank you very much.  
4 Do any Board Members have any questions for the  
5 Office of Planning? Okay seeing none does the  
6 Applicant have any questions for the Office of  
7 Planning?

8 MS. BROWN: No questions Madam Chair.

9 CHAIRPERSON SORG: Okay. A question  
10 brought up to me. Mr. Goldstein mentioned that  
11 you had reached an agreement with the Woodley  
12 Park Historical, what is it?

13 MR. GOLDSTEIN: I believe the Woodley  
14 Park Citizens or Community Association has been  
15 involved in these discussions in coordination  
16 with the ANC. Perhaps the Applicant may be able  
17 to describe some of those communications further.

18 CHAIRPERSON SORG: Right that's what I  
19 was trying to get at, please.

20 MS. BROWN: We met with the Woodley Park  
21 Citizens Association, the Planning and Zoning  
22 Committee of the ANC 3-C and then the full ANC 3-

1 C meeting where members of the Woodley Park  
2 Citizens Association were present and it was  
3 through the two organizations that we worked out  
4 these conditions that are in the resolution of  
5 the ANC.

6 CHAIRPERSON SORG: Okay thank you. Okay  
7 now let us see if there are any individuals in  
8 the audience wishing to testify in support or in  
9 opposition of the application? Seeing none we  
10 will move on to see if there is anybody in the  
11 audience from ANC 3-C. Seeing no one I will  
12 reference for the record our "Exhibit No. 26"  
13 which is ANC 3-C resolution number 2011-013 which  
14 I believe satisfies our requirements for great  
15 weight and in which the ANC resolved to oppose  
16 the application unless conditions are met which  
17 the Applicant has agreed as well as OP has agreed  
18 that they are willing to meet the conditions set  
19 forth in the ANC resolution. That being said we  
20 can go ahead to any closing statements that you  
21 have.

22 MS. BROWN: Thank you Madam Chair. Based

1 on the information that you've heard today and  
2 the full record before you we believe we have  
3 fully demonstrated that we have met our burden of  
4 proof for special exception relief to establish a  
5 fast food establishment in the Woodley Park  
6 Overlay and variance relief from the enclosure  
7 wall requirements for fast food establishments in  
8 the C-2-B District. We therefore ask for your  
9 favorable ruling today and with the conditions  
10 listed in both our statement of the OP report and  
11 the ANC resolution and we would be delighted if  
12 you would rule from the bench today. Thank you.

13 CHAIRPERSON SORG: Thank you very much.  
14 With that we can go ahead and close this hearing  
15 and move into deliberations. I can start us off  
16 and I will do that. I think that the record is  
17 pretty full in this case and I think any  
18 remaining questions have been answered definitely  
19 in the testimony today in the hearing. I will  
20 note that for a fast food restaurant to have no  
21 opposition I think is unique in itself. First of  
22 all and yes based on the conditions that are put

1 forward and that the Applicant has accepted by  
2 the ANC and it's resolution it seems as though we  
3 in fact that we in fact do have a fast food  
4 restaurant with no opposition. That being said  
5 I'm, on kind of a side note I'm pleased to see an  
6 establishment here that while it's classified as  
7 fast food based on the method of payment really  
8 has a content that is less a kin to a classic  
9 McDonalds type fast food concept and more towards  
10 what the Applicant calls fast casual. It's nice  
11 to hear that they're not serving fried foods.  
12 It's nice to hear that they're not using  
13 disposable containers in the eating in portion.  
14 So I think as an establishment I'll also  
15 incorporate OP's report as our "Exhibit No. 28".  
16 I think that they do a good job in laying out  
17 the case for the special exception under the  
18 Woodley Park Overlay as well as a narrative  
19 describing the way that the project interacts  
20 with the Neighborhood Commercial Overlay District  
21 and the way that those two things worked together  
22 in this case. As well as the exceptional

1 circumstances related to the property, it's  
2 elevation, it's slope, as well as the existing  
3 conditions of the stairwell of the establishment  
4 in relation to its neighbors in a larger building  
5 that abuts an alley. That being said I think  
6 also similarly satisfies the prongs for the  
7 variance test under the relief from 721.3 clearly  
8 showing that the two sections from which the  
9 Applicant would require relief including the  
10 brick wall along the entire rear of the property  
11 as well as brick enclosures for the dumpsters.  
12 It seems pretty clear that the ways in which  
13 that's impossible on this project based on its  
14 location within the building as well as the  
15 surrounding existing conditions in the rear.  
16 Also I think the Applicant has shown us a well  
17 thought out and practical plan to manage the  
18 affects that that section is in place intending  
19 to mitigate. So that being said I would be in  
20 support of the application and I'll open up for  
21 any further deliberation.

22 MR. MAY: I just had a couple of

1 thoughts. One is that reading this case the  
2 first time through it seem like the case was very  
3 strongly made for a variance because most of the  
4 circumstances associated with a variance just  
5 didn't seem to be that compelling until you start  
6 to think about the actual requirement that you're  
7 seeking a variance from. When you try to think  
8 about that particular requirement to have the  
9 enclosure wall at the property line and the  
10 enclosure of the dumpsters it just really is a  
11 very difficult thing to achieve in this  
12 circumstance. It's also sort of an oddity that  
13 it winds up being kicking in because the fact  
14 that this falls on the fast food side of the line  
15 between restaurants and fast food it's a close  
16 call and hopefully in the Zoning Regulation re-  
17 write now underway we won't have this sort of an  
18 issue in the future because it's focused less on  
19 the specifics of the use and more on the impacts  
20 associated with those uses when it comes to  
21 determining requirements for properties like  
22 this. The other thing that I think is odd and

1 worth noting here is that we have a resolution  
2 from the ANC that says that they're opposed on  
3 the last certain conditions they're opposed.  
4 Generally speaking in the past my experience has  
5 been that ANC's tend to support with conditions  
6 rather than oppose on less conditions, this  
7 almost sounds threatening. I'm glad that the  
8 Applicant is able to meet them but it's like it  
9 sets an odd tone for the discussion. I didn't  
10 want to just let that pass it just seems a very  
11 strange thing. I'm glad that the Applicant is  
12 meeting the conditions and so presumably that  
13 means the ANC technically is supporting this even  
14 though they opposed it.

15 CHAIRPERSON SORG: Thank you Mr. May I  
16 appreciate you putting both of those things on  
17 the record I think they're both important points.  
18 I agree that the tone of the ANC resolution was  
19 a little bit odd to me and that it's not  
20 something we're used to seeing. I don't know if  
21 the Applicant agrees with the condition that  
22 kicks it over technically to support but I think

1 we can get with the spirit of what's trying to be  
2 done here. I think especially your first point  
3 is particularly important and I definitely wanted  
4 to make sure that a comment on the variance test  
5 here because as we often say it's a high mark  
6 it's a high standard to meet and I agree that in  
7 first reading it doesn't seem the elements in the  
8 opening report and in the file here don't seem  
9 that remarkable in terms of meeting a variance  
10 test until you really, and I think in this case,  
11 it is unique in the sense that it's the specific  
12 requirement that of the fast food that as you  
13 said is kicking in the variance that is a little  
14 bit different from a general variance in a sense  
15 that the requirements to go along with it are so  
16 specific. I think that the provisions from which  
17 the Applicant is seeking relief under the  
18 variance are themselves particularly onerous in  
19 this very specific case and are made more so  
20 because of the specificity of the property. So  
21 to me it's a variance case with several factors  
22 that through understanding that the specifics of

1 the property and the way that waste basically is  
2 managed kind of grew on me I suppose. Are there  
3 any further deliberations? Seeing none I will  
4 submit a motion to approve Application No. 18210  
5 of Noodles and Company, pursuant to 11 DCMR  
6 3104.1, 3103.2 and 1304.1 for a variance from the  
7 enclosure wall requirements under (subsection  
8 721.3J) and a special exception to establish a  
9 fast food establishment under Section 1307.5 in  
10 the Woodley Park C-2-B District at 2635  
11 Connecticut Avenue, N.W. A motion has been made  
12 is there a second?

13 MR. HINKLE: Second.

14 CHAIRPERSON SORG: A motion has been made  
15 and seconded all those in favor say aye.

16 CHORUS: Aye.

17 CHAIRPERSON SORG: All those opposed?  
18 Mr. Moy can you please read back the vote?

19 MR. MOY: Yes with pleasure. Staff would  
20 record the vote as 4 to 0 to 1 this on the motion  
21 of Chairperson Sorg to approve the application,  
22 let me ask did the motion include the conditions.

1 CHAIRPERSON SORG: Yes Mr. Secretary the  
2 motion included the conditions.

3 MR. MOY: Alright so that would be the  
4 five conditions as discussed. Seconded the  
5 motion Mr. Hinkle, also in support of the motion  
6 Mr. May and Mr. Jordan and we have a Board Member  
7 not participating today. So again the vote is  
8 for approval on the vote of 4 to 0 to 1.

9 CHAIRPERSON SORG: Thank you Mr. Moy.  
10 Can we request a summary order?

11 MS. GLAZER: Yes if you are incorporating  
12 the conditions?

13 CHAIRPERSON SORG: Yes we are  
14 incorporating the conditions and requesting a  
15 summary order.

16 MS. GLAZER: Then you would interpret the  
17 ANC letter as being in support so there would be  
18 no adverse party.

19 CHAIRPERSON SORG: That's sort of what I  
20 was getting at so yes that's my interpretation.  
21 Alright thank you everybody. So that concludes  
22 our hearing for today.