

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + +

Wednesday, July 7, 1999

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The public meeting was held in Room 220, 441 Fourth Street, N.W., Washington, D.C., pursuant to notice, at 10:01 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD MEMBERS PRESENT:

SHEILA CROSS REID, Chairperson

BETTY KING, Vice Chairperson

GERRY GILREATH

JOHN F. PARSONS

STAFF PRESENT:

JOHN NYARKU, Staff

PAUL HART, Staff

ALAN BERGSTEIN, OCC

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1 MR. HART: Okay. The next item on the agenda is  
2 the case Application No. 16445 of the National Graduate University.  
3 That's at Buchanan Elementary School, pursuant to 11 DCMR 3108.1  
4 for a special exception under Section 206 to establish a private school  
5 with 200 students and 21 staff located in an R-4 district at premises  
6 1324 E Street, S.E., Square 1042, Lot 827.

7 CHAIRPERSON REID: Okay. We can -- go ahead.  
8 I'm sorry.

9 MR. HART: Do you want me to read the rest or do  
10 you --

11 CHAIRPERSON REID: Mr. Parsons has to read and  
12 has asked that we change the order of the items on the agenda to  
13 take care of his two cases. I think it's two that involve him first.

14 MR. PARSONS: The last two items on the agenda.

15 CHAIRPERSON REID: Okay. We'll just reverse it.

16 MR. HART: Okay.

17 CHAIRPERSON REID: Please.

18 MR. HART: So we'll move to Item No. 4 under the  
19 section for motions. The first case is Number 16428, which is a  
20 request for reconsideration in Application No. 16428 of the Republic of  
21 Equatorial Guinea.

22 MR. GILREATH: Excuse me, Madame Chair.

23 CHAIRPERSON REID: Yes.

24 MR. GILREATH: I'm not authorized to sit on the --

25 CHAIRPERSON REID: All right.

26 MS. KING: Well, you can sit there. Just don't  
27 participate.

1 MR. GILREATH: I'll just remain silent.

2 CHAIRPERSON REID: Pretend like you're not here.

3 MR. GILREATH: Right.

4 MR. HART: Pursuant to Section 206 of the Foreign  
5 Mission Act, approved August 24th, 1982, 96 Stat. 286, Public License  
6 97-241, 22 USC 4306, D.C. Code Subsection 1206, and 11 DCMR  
7 1002.1, to permit a new chancery use by the Embassy of the Republic  
8 of Equatorial Guinea in an R-5-D district at premises 2020 16th Street,  
9 N.W., Square 175, Lot 805.

10 The hearing date was February the 17th, 1999. The  
11 decision date was March the 3rd, 1999. Board members present was  
12 Sheila Cross Reid, Reginald Griffith, and John G. Parsons, who voted  
13 not to disapprove, and Betty King voted to disapprove the application.

14 The final order was written. The date on the final  
15 order was June 22nd, 1999.

16 CHAIRPERSON REID: Let's see now.

17 MS. KING: John, did you read the record?

18 MR. PARSONS: Sure, certainly.

19 CHAIRPERSON REID: My understanding was that  
20 the motion for reconsideration is predicated upon the fact that the  
21 Board did not prepare a transcript of the proceedings. Are you --

22 MR. HART: Yes.

23 CHAIRPERSON REID: -- with this, Mr. Hart?

24 MR. HART: Yes, Madame Chair. The information  
25 included in your packages indicated that one of the problems that the  
26 opposition has is that the Board did not or a transcript did not exist for  
27 the hearing of this case, and that is totally inaccurate.

1 CHAIRPERSON REID: No. That's why I --

2 MR. HART: That is what.

3 CHAIRPERSON REID: I don't understand how they  
4 are contending that there was no transcript when we do have a  
5 transcript.

6 MR. HART: We do have a transcript. What I think is  
7 that there was or is a misunderstanding of meeting and hearing.

8 CHAIRPERSON REID: Okay.

9 MR. HART: The meeting, a written transcript does  
10 not exist for the meeting, and it is my understanding it is not a legal  
11 requirement that we do have a written transcript for the meeting.

12 However, for the hearing there is a written transcript,  
13 and I thought it wise to send that transcript on to the Board members,  
14 despite the fact that I knew that they were aware it existed and just for  
15 them to see and to read it.

16 CHAIRPERSON REID: Was there any  
17 communication with you, Mr. Hart on behalf of the Dupont Circle  
18 Citizens Association in regard to a request for transcript?

19 MR. HART: There was some communication with  
20 myself and another member of staff, and I personally indicated that  
21 there was not a transcript for the meeting, and --

22 CHAIRPERSON REID: And they interpreted that to  
23 mean that there was not --

24 MR. HART: -- I assume, because that is what I was  
25 asked -- yes, for the entire proceeding, yes.

26 CHAIRPERSON REID: -- one for the hearing.

27 MR. HART: Yes.

1 CHAIRPERSON REID: Okay.

2 MS. KING: Also for the record, I think we need to --  
3 our record needs to reflect that Mr. Parsons did, in fact, read the  
4 transcript of the hearing.

5 MR. PARSONS: Certainly.

6 MS. KING: I mean I may have been on the losing  
7 side, but as long as everybody was fully apprised of the full transcript  
8 of the case, I don't see any reason to reverse it.

9 MR. HART: Yes, I agree with that in that in their  
10 communication with the office, which should be in the packages, in the  
11 communication with the office, they cited the fact that in addition to  
12 their opposition, the first opposition, that a member left, and in addition  
13 to not having access to a transcript which did not exist, the individual  
14 did not hear the rest of the hearing.

15 MR. PARSONS: I left the hearing at approximately  
16 24 as I recall.

17 MR. HART: Yes.

18 MR. PARSONS: To attend a meeting, and I reported  
19 at that time that I would review the record.

20 MR. HART: Yes.

21 MR. PARSONS: Which I did.

22 MR. HART: Yes.

23 MR. PARSONS: There were three witnesses in  
24 opposition that followed, beginning with Ms. Seline (phonetic).

25 MR. HART: That's correct.

26 MR. PARSONS: And I reviewed that. So I think it's a  
27 big misunderstanding.

1 MR. HART: I think the mix-up here is the meeting  
2 and hearing definitions.

3 CHAIRPERSON REID: And also maybe they were  
4 not aware of the fact that although Mr. Parsons did leave, that he --

5 MR. HART: Yes, that he --

6 CHAIRPERSON REID: Clearly it is within auspices of  
7 the procedures to read the proceedings and thereby for him to make a  
8 decision predicated upon what they have gleaned from having read  
9 the testimony transcript.

10 MR. HART: Yes.

11 CHAIRPERSON REID: And that he has done that.

12 MS. KING: As a matter of policy we have no record  
13 of our meetings? We're having a transcript now.

14 CHAIRPERSON REID: They record the tape, but  
15 there's no written transcript.

16 MS. KING: I see. So the meeting of March whatever,  
17 March 3rd --

18 MR. HART: March 3rd.

19 MS. KING: -- was, in fact, recorded on tape, and the  
20 Dupont Circle Citizens Association is free to review it should they wish  
21 to do so?

22 MR. HART: No, no. That day we had some  
23 mechanical problem and everything went blank on us, and we were  
24 under the assumption that it was being taped. That is what they  
25 understood when they asked for a meeting, for a meeting that they  
26 included the entire meeting hearing. The meeting piece does not  
27 exist. That was not taped inadvertently.

1 MR. PARSONS: But that's not -- that's not a part of  
2 their motion. It has nothing to do with the meeting.

3 MS. KING: No.

4 MR. HART: Huh-un, no.

5 MS. KING: There isn't a transcript in writing.

6 MR. PARSONS: Based on this description, I would  
7 move that we deny the request, deny the motion -- excuse me -- to  
8 reconsider.

9 CHAIRPERSON REID: I second that, and we have a  
10 proxy for Mr. Griffith?

11 MR. HART: Yes. Mr. Griffith --

12 CHAIRPERSON REID: Let me call for the vote then.

13 MR. HART: Pardon?

14 CHAIRPERSON REID: Let me call for the vote.

15 MR. HART: Sure.

16 CHAIRPERSON REID: All in favor?

17 MS. KING: What is the motion, please?

18 CHAIRPERSON REID: The motion is to deny.

19 MS. KING: Okay. Thank you.

20 CHAIRPERSON REID: Aye.

21 (Chorus of ayes.)

22 CHAIRPERSON REID: And Mr. Griffith?

23 MR. HART: Mr. Parsons?

24 Okay. The staff would record the vote as three to one

25 --

26 CHAIRPERSON REID: But it --

27 MS. KING: No. I lost on the original case, but I don't

1 see that that is a reason -- anything in this pleading is a reason to  
2 overturn that verdict.

3 MR. HART: Okay.

4 MS. KING: I didn't like the verdict, but I lost it, and I'm  
5 not going to vote against.

6 CHAIRPERSON REID: Not liking it again.

7 MS. KING: I mean I don't like it, but I mean I lost.

8 MR. HART: Okay.

9 MS. KING: So I vote for the motion to deny.

10 MR. HART: Okay. Staff will record the vote as four --

11 CHAIRPERSON REID: Mr. --

12 MR. HART: Yeah?

13 CHAIRPERSON REID: Did you give Mr. Griffith's  
14 vote?

15 MR. HART: Yes, I went into it with what I'm about to  
16 say.

17 Then four to zero to deny the request. Mr. Parsons,  
18 Ms. Reid, Ms. King to deny, and Mr. Griffith by proxy also to deny.

19 CHAIRPERSON REID: All opposed?

20 (No response.)

21 CHAIRPERSON REID: Mr. Hart, would you make  
22 sure that a copy of the transcript of the proceedings is forward to  
23 Dupont Circle Citizens Association.

24 MR. HART: Yes, ma'am.

25 CHAIRPERSON REID: Thank you.

26 One more?

27 MR. HART: That's it. Next case.

1                   This is Case No. 16421, request for rehearing in the  
2                   Application of Howard University Metropolitan Day School, Inc.,  
3                   pursuant to 11 DCMR 3108.1 for a special exception under Sections  
4                   205 and 206 for construction of a private school for 220 students and  
5                   24 staff and a staff (sic) development center for 20 children and two  
6                   staff persons located in an R-2 district at premises 1240 Randolph  
7                   Street, N.E., Square 3923, Lot 25.

8                   The hearing dates on this case were January 20th,  
9                   1999, March 3rd and 31st, 1999. The decision date was April 21st,  
10                  1999.

11                  The Board members present were Jerry Gilreath,  
12                  Sheila Cross Reid, and John Parsons. The vote was Gilreath, Reid,  
13                  and Parsons to grant, Betty King not voting, not having heard the  
14                  case.

15                  CHAIRPERSON REID: All right. This particular  
16                  motion with regard to the contention by the ANC, ANC 5-A, that there  
17                  was an error made in regard to the order having been issued, and that  
18                  the Board should not have stipulated within the order that there be a  
19                  time -- I mean an additional number of students, and I refer specifically  
20                  to Order No. 1 of the -- I'm sorry -- Item No. 1 of the order that said  
21                  that in two years the application may request an increase in the  
22                  number of students up to the maximum of 240 by providing sufficient  
23                  evidence that the traffic, parking, and noise associated with the school  
24                  will not affect adversely the use of surrounding and neighboring  
25                  properties.

26                  And in that regard, we're going to have some  
27                  discussion as to how to best address that at this time.

1 MR. PARSONS: Madame Chair, let me try that.

2 It seems as though the first condition in the order on  
3 page 12 is the one that is troubling, and I think it does need  
4 amendment.

5 CHAIRPERSON REID: All right.

6 MR. PARSONS: As well, in reviewing the order, the  
7 last paragraph at the bottom of page 11 of this, the penultimate  
8 paragraph there at the bottom of page 11 under the conclusions of law  
9 would also need to be revised.

10 The intent, at least my intent in surfacing this idea,  
11 was to say that although a case had been made for 240, that is, the  
12 application was 240 students, we didn't feel comfortable making that  
13 decision at this time. That is, 150 seemed to be the level that we were  
14 comfortable with, and that if at a later time they wanted to come  
15 forward with the 240 again, we would consider that.

16 The error made here in the order is that we cannot do  
17 that unless it's a new case. So I think we have to strike the reference  
18 to the fact that the Applicant need only provide testimony and  
19 evidence, but rather, they would have to come forward with a new  
20 application for 240.

21 And I think we talked about a period of approximately  
22 two years. That would give a chance for the other conditions that we  
23 placed in the order to be implemented, the community liaison and all  
24 of the other mitigating measures and conditions we put into this to see  
25 if it was working.

26 So I think as long as the order will reflect that intent  
27 and not give the impression that we decided 150 was it and there

1 could be no more, I think my intent would be satisfied.

2 MR. GILREATH: John, what if we had approved, I  
3 guess, a 310 provided that --

4 MR. PARSONS: Two, three, ten, two, forty.

5 MR. GILREATH: What's the high number that they  
6 wanted, 240?

7 MR. PARSONS: Two, forty.

8 MR. GILREATH: Okay, and we said 150, vote of  
9 approval.

10 MR. PARSONS: Yes.

11 MR. GILREATH: Okay. Suppose we had approved  
12 the 240 and say we approve this. However, the Board reserves the  
13 right to review the developments of this during the interim, a certain --  
14 one year or what have you -- they come back in. Would that have  
15 gotten around this?

16 We -- you're saying in effect we approved 150 and  
17 you can't go 240 because we approved that. If we had approved the  
18 240 and set conditions where those could come in and tell us what the  
19 traffic conditions were, the impacts, and so forth, and could be used.

20 If there were negative impacts, we could say, well,  
21 you can go up to 240, but the discretion of the Board is that you can  
22 only go maybe to 190 or 200. Maybe our legal counsel could address  
23 that.

24 MR. BERGSTEIN: I'm trying to hear you all the way  
25 down here.

26 MR. GILREATH: Oh, sorry.

27 MR. BERGSTEIN: First, my name is Alan Bergstein.

1 I'm Chief of the Public Works Section.

2 If you feel you have substantive evidence on the  
3 record that would support 240, then you could grant 240. You could  
4 grant 240 phased in, but your order has to do one or the other. It has  
5 to grant a specific number, and your findings of fact and conclusions  
6 of law have to support that number.

7 You can require as a condition that number be  
8 phased in as a condition of the order, but the order, in order to achieve  
9 administrative finality, has to grant or deny a request that's in the  
10 application and support that ultimate conclusion.

11 The problem, I think, is that the order was interpreted  
12 as granting a request that had not yet been made based upon  
13 evidence that had not yet been received, and I think that's what the  
14 Board is intending to clarify, that it was not its intent to do.

15 But you would have to reissue the decision because  
16 that's not what this decision does. This decision grants 150. So you'd  
17 have to reissue the decision granting 240, making sure that the  
18 findings and conclusions support 240, and then phasing it in as a  
19 condition.

20 MR. GILREATH: Well, when they come back in, will it  
21 have to be a new special exception?

22 MR. BERGSTEIN: Yes.

23 MR. GILREATH: So it's a new case altogether?

24 MR. BERGSTEIN: Yes. The only thing the rules  
25 allow for is a modification from plans that have been granted under  
26 special exception, but there's either the application for special  
27 exception and anything else that relates to an expansion of that

1 special exception, there's a new special exception that could be fairly  
2 characterized as a modification of the original plans.

3 MR. GILREATH: Okay, and our orders say that then?  
4 We approve 150 and, however, the Board is prepared to consider a  
5 higher number if they provide ample justification that it can be  
6 accommodated?

7 I mean, the idea, we're telling them that after the 150  
8 is reached, you come back in if you want to go 240 and you bring  
9 evidence to show that there's no negative impact. The citizens can  
10 take a look at it.

11 Well, of course, we can't ahead of time say we're  
12 favorable, can we?

13 MR. BERGSTEIN: You can give guidance to the  
14 parties and, in essence, guidance to a future Board as to your thinking  
15 as to what you would have envisioned as being required for 240, but  
16 it's obviously not binding --

17 MR. GILREATH: I see.

18 MR. BERGSTEIN: -- on the future Board, but you can  
19 certainly indicate that it was not your intent in only granting it for 150  
20 that under no circumstances could the 240 have been approved and  
21 even indicated that you felt that there was evidence that could have  
22 supported 240, but that at this point the showing was not sufficient to  
23 give you the comfort level that would have allowed you to actually  
24 grant that.

25 MR. GILREATH: Fine. I appreciate that.

26 MR. PARSONS: Now, what's the proper procedure?  
27 Do we have to have another vote to implement this? I mean instruct

1 you to do the necessary.

2 MR. BERGSTEIN: I think what you could do, and  
3 again, one of the problems with this motion is that it's called a motion  
4 for rehearing, but it's really seeking reconsideration. For rehearing  
5 they would have had to have shown you that there was new evidence  
6 on the record.

7 So what you would -- for reconsideration, they could  
8 even show that there was something in the order that was erroneous,  
9 and I think that what you're attempting to do is clarify what your intent  
10 was.

11 So what you could do is to vote to deny the motion for  
12 rehearing, grant the motion for reconsideration to the extent it relates  
13 to condition one, and then issue an order that would assist you with  
14 what you want to have you do, that would simply grant the  
15 reconsideration to the extent that the condition one is modified to  
16 strike that second sentence and to also address that last paragraph  
17 and conclusions of law; otherwise, that the order would still stand as  
18 modified.

19 CHAIRPERSON REID: If we deny the motion for a  
20 rehearing, does there have to be a motion for the reconsideration?  
21 There is no motion --

22 MR. BERGSTEIN: Well, I think I indicated when you  
23 read a pleading, you have to read it fairly and liberally to understand  
24 what is really being sought, and even though the motion was titled  
25 "Motion for Rehearing," I think that it's clear from reading it that what  
26 was being sought was reconsideration, as well.

27 So what my recommendation would be for the Board

1 to treat it as a motion for rehearing and for reconsideration, and that in  
2 your order, to address the rehearing issue, address the  
3 reconsideration issue, and then it sounds to me that your order would  
4 then grant the reconsideration to the extent that you just discussed.

5 CHAIRPERSON REID: Okay. I would like to say that  
6 I agree with my colleagues as to the change for the condition number  
7 one on page 12 of the BZA Order No. 16421, but also there was  
8 another issue that was raised by the ANC, and that was with regard to  
9 giving them the proper weight.

10 And I feel that then the scope of the hearing, as well  
11 as the order that we were very much aware of the concerns of the  
12 ANC and that we attempted to the best of our ability to address those  
13 concerns even within the order, and part of Mr. Parson's stipulation in  
14 regard to the number of students was predicated upon his being  
15 responsive to the concerns of the ANC, and contained within the order  
16 was 14 conditions that we felt would help to mitigate some of the  
17 issues that were raised by the ANC in regard to adverse impact, and  
18 we felt that in so doing that we were abiding by our responsibility to  
19 grant the ANC the great weight to which they are entitled.

20 MR. PARSONS: I would concur, Madame Chair, and  
21 I've taken the trouble to go through the order and make sure of that,  
22 and the concerns of the ANC are labeled A through K for Finding No.  
23 20, and when those are placed against the conditions in the order,  
24 you'll find that virtually every one of them has been addressed in the  
25 conditions.

26 CHAIRPERSON REID: Absolutely. Any other  
27 comments?

1 MR. GILREATH: I don't have any comments.

2 MR. PARSONS: I would move, Madame Chairman,  
3 that we, as I understand this -- help us if we're going in the wrong  
4 direction -- that we would deny the request for rehearing, but grant the  
5 motion for reconsideration.

6 MR. BERGSTEIN: To the extent it concerns condition  
7 one.

8 MR. PARSONS: To the extent it concerns condition  
9 one, and have the assistance of Corporation Counsel revise that to  
10 delete the reference to the concept of simply coming back without a  
11 hearing; that there would have to be a new application.

12 CHAIRPERSON REID: Now, although it would not be  
13 contained therein, Mr. Parsons, I just want to reiterate that we strongly  
14 suggest that there be a time for at least two years before such  
15 application, so that it would give us some frame of reference in which  
16 to be able to assess what the overall picture is at that particular site.

17 MR. BERGSTEIN: I understand.

18 CHAIRPERSON REID: But that does not have to be  
19 a part of the motion.

20 MR. BERGSTEIN: It would not be a condition, but an  
21 explanation of what the Board would like to see --

22 CHAIRPERSON REID: What we're looking for.

23 MR. BERGSTEIN: -- before higher student  
24 enrollment would be considered. It's your understanding that a future  
25 Board could disagree with this Board.

26 CHAIRPERSON REID: All right. All in favor of --

27 MR. GILREATH: We have a motion. Has it been

1 seconded?

2 MR. PARSONS: You were seconding while you were  
3 elaborating on the motion; is that right?

4 CHAIRPERSON REID: I thought I already seconded.

5 MR. PARSONS: No, you didn't use the word  
6 "second."

7 CHAIRPERSON REID: Oh, okay. I second.

8 MR. GILREATH: Okay.

9 CHAIRPERSON REID: All in favor of the motion as  
10 so stated by Mr. Bergstein, as Mr. Parsons has put forth but that has  
11 been clarified by Mr. Bergstein, I guess.

12 MR. PARSONS: By yourself. I thought that was a  
13 rolling motion from me to you. It was okay.

14 CHAIRPERSON REID: Okay. All right. All in favor?  
15 (Chorus of ayes.)

16 CHAIRPERSON REID: Opposed?

17 (No response.)

18 CHAIRPERSON REID: All right.

19 MR. PARSONS: Thank you for taking me out of  
20 order. I appreciate it.

21 CHAIRPERSON REID: Yes, sure. Thank you.

22 MR. HART: Let me quickly say the Board would  
23 record the vote as four to zero.

24 CHAIRPERSON REID: Three. Mrs. King did not --  
25 she was not involved in that particular case.

26 MR. HART: Yeah.

27 MS. KING: It was three to zero.

1 MR. HART: Three to --

2 MS. KING: I was not involved.

3 MR. HART: As stated.

4 MS. KING: -- the name appears elsewhere.

5 CHAIRPERSON REID: Where else do you see that?

6 MS. KING: The United Industrial Limited partition,  
7 number one under three, Laura Richards, John Parsons and Sheila  
8 Cross Reid.

9 CHAIRPERSON REID: What number is that?

10 MS. KING: On the second page of the agenda, I  
11 have something called 61 -- 16164, United Industrial Limited  
12 Partnership. I don't have --

13 CHAIRPERSON REID: Okay. I don't think he heard  
14 you.

15 MR. PARSONS: I'm sorry?

16 CHAIRPERSON REID: Mr. Parsons there's one other  
17 one that you're also involved in, and that's 16164, request for  
18 modification of plans in Application No. 16164 of SMC-United  
19 Industrial Limited Partnership. It's on page 2 of the agenda.

20 MS. KING: It's the post office parking.

21 CHAIRPERSON REID: That was pretty  
22 straightforward.

23 MR. GILREATH: Yes, it's really changing from --

24 MS. KING: Does John need to be here?

25 CHAIRPERSON REID: Right, for the vote.

26 MR. GILREATH: They authorize the U.S. Postal  
27 Service to use this parking rather than the United Investment

1 Partnership, as I understand it.

2 MR. PARSONS: Can I review that tonight? I did not  
3 get to this one.

4 (Pause in proceedings.)

5 CHAIRPERSON REID: Ms. King, you have that file,  
6 the 16164?

7 MS. KING: Yeah.

8 CHAIRPERSON REID: Let me see it, please. I don't  
9 know where mine is. Oh, are you reading it? I'm sorry.

10 MS. KING: I was just reading it, yeah.

11 CHAIRPERSON REID: Okay. Do you want to call it?

12 MR. HART: Application -- Motion No. 16164, request  
13 for modification of plans in Application No. 16164 of SMC-United  
14 Industrial Limited Partnership, as amended, pursuant to 11 DCMR  
15 3108.1, for a special exception under Section 213 to establish a  
16 parking lot for vehicles of the U.S. Postal Service in an R-1-B district  
17 at the rear of 3070 V Street, N.E. That is Square 4365, Lots 805 and  
18 806.

19 The hearing date was October 16th, 1996. The  
20 decision date was November 6th, 1996. The Board members present  
21 were Laura Richards, John G. Parsons, Sheila Cross Reid to grant;  
22 Susan Morgan Hinton to grant by absentee vote; Angel Clarens not  
23 present, not voting.

24 The final date of the order was January 2nd, 1998.

25 MS. KING: Madame Chair, it seems to me that this is  
26 a modification with very little difference. I think that I don't know -- I  
27 mean, they're simply replacing Post Office vehicles with Metropolitan

1 Police Department vehicles. It seems to me to be very reasonable. I  
2 mean their new tenants wouldn't be denied the use of the parking lot  
3 without this modification, and it seems to me to be a very benign thing  
4 to request, and I would move that we grant it.

5 CHAIRPERSON REID: And also basically they would  
6 ask that the conditions of the order, Sections 3(b) and 3(c), be  
7 changed to read that service vehicles for the tenant of the adjacent  
8 building shall be restricted to the northern portion of the facility. Well,  
9 that was 3(b), and 3(c), "employee . . . vehicles for the tenant of the  
10 adjacent building shall be restricted to the central portion of the facility  
11 and all other conditions of the order will remain in full force and effect."

12 MS. KING: Okay. I didn't have the file in front of me  
13 at the time.

14 CHAIRPERSON REID: Yeah.

15 MS. KING: But I concur with that amendment to my  
16 motion.

17 MR. PARSONS: I would second the motion, and I  
18 think there's a lesson to be learned here that we should be aware of in  
19 the future. To specify a particular organization, parking was on the  
20 issue. What this amendment would do was define how the parking  
21 was going to be used for any tenant they had in the future.

22 CHAIRPERSON REID: It should have been done at  
23 first.

24 MR. PARSONS: I'm glad we're not repeating the  
25 error by saying now it's the police, and they'll be back in two years  
26 with somebody else.

27 CHAIRPERSON REID: Right. Okay. Is there a

1 second? Did you second it?

2 MR. PARSONS: Yes.

3 CHAIRPERSON REID: Okay. All in favor?

4 (Chorus of ayes.)

5 MR. GILREATH: Am I permitted to vote on this or  
6 shall I refrain? You've got a majority here without me.

7 CHAIRPERSON REID: No, you can vote.

8 MR. GILREATH: Okay. I'll vote aye.

9 CHAIRPERSON REID: Okay. Thank you.

10 MR. HART: Staff would record the vote as --

11 CHAIRPERSON REID: I think we're straight now.

12 MR. HART: -- four to zero to grant: Ms. King, Mr.  
13 Parsons, Mr. Gilreath, and Ms. Reid.

14 CHAIRPERSON REID: Now to go back to the  
15 beginning.

16 MS. KING: The National Graduate University, which  
17 has already essentially been read, has it not?

18 MR. GILREATH: Yes.

19 CHAIRPERSON REID: Oh, right. That was at first,  
20 but this -- because other people have come in now, let's reread it,  
21 please.

22 MR. HART: This is a case to be decided, Application  
23 16445 of the National Graduate University. That's the Buchanan  
24 Elementary School, pursuant to 11 DCMR 3108.1 for a special  
25 exception under Section 206 to establish a private school with 200  
26 students and 21 staff located in an R-4 district at premises 1324 E  
27 Street, S.E. That's in Square 1042, Lot 827.

1                   The hearing date was June 16th, 1999. The Board  
2 members present were Sheila Cross Reid, Betty King, Jerry Gilreath,  
3 and Angel Clarens.

4                   The status. The Board is scheduled to make a  
5 decision on the application at this meeting. Submissions were due  
6 June 30th, 1999, with the understanding that if the applicant was  
7 unable to meet the June 30th, 1999, deadline, he was advised to  
8 notify the Officer of Zoning.

9                   Do you want me to read the conditions? They are  
10 requests from this --

11                   CHAIRPERSON REID: What line?

12                   MR. HART: There are eight -- eight submissions.

13                   CHAIRPERSON REID: Oh, no, no. We have them  
14 before us. Basically what we asked of them, to provide us with, and  
15 quite frankly, I was not satisfied that the request had been aptly --

16                   MS. KING: Certainly the economic viability question  
17 is just simply not answered.

18                   CHAIRPERSON REID: It just hasn't been addressed,  
19 and what they did was they --

20                   MS. KING: Well, they addressed it by saying --

21                   CHAIRPERSON REID: Let me --

22                   MS. KING: -- we hope nothing bad will happen, but  
23 it's meaningless.

24                   CHAIRPERSON REID: Let me finish this.

25                   What they gave us was a resolution or a statement, I  
26 should say, by the Board of Directors, Board of Governors, and it  
27 stipulates that the National Graduate University has resources, that

1 "the Board of Governors will direct that these resources be . . . as well  
2 as the District of Columbia."

3 What we asked for was financial information that  
4 would reflect for us the financial viability of that particular institution  
5 and whether it had the wherewithal to be able to sustain itself for the  
6 next ten years, and I did not see that.

7 MR. GILREATH: Well, I feel that that's really, as you  
8 say, a resolution rather than a statement of financial condition.

9 CHAIRPERSON REID: We needed to see an income  
10 and expense statement, balance sheet, or something that would  
11 reflect the net worth so as to give us a comfort level that there would  
12 not be a problem with the school being able to maintain itself, and that  
13 it is not, as has happened with some of the buildings that have gone  
14 up in the District, become a victim of blight as a result of not having  
15 the necessary financial solvency to continue it.

16 I have no doubt that they probably do, but we need to  
17 see it.

18 MR. GILREATH: I think not only a financial statement  
19 of your resources right now, but you project into the future. You say  
20 the revenues that this facility will produce and the income from your  
21 endowment and so forth, and we look at that and we say the  
22 maintenance of the building and so forth and the costs you will have,  
23 that you will have ample resources to keep your operation viable.

24 Mr. Clarens, who is not here today, I remember, was  
25 very concerned about that maybe three or four or five years hence  
26 maintaining this building, the cost would be so great that you really  
27 would not be able to sustain it in the future.

1                   So we need a little bit more than just a statement  
2 saying that they're committed to do this.

3                   CHAIRPERSON REID: Also we ask that they identify  
4 a formula for the full-time student equivalent, how they came about  
5 that. Did you see that?

6                   MS. KING: Yeah, we got that. It shows up in the  
7 traffic report.

8                   MR. HART: Traffic study.

9                   CHAIRPERSON REID: Where? What page?

10                  MS. KING: I've got the report. Here it is.

11                  CHAIRPERSON REID: Okay, all right. Correct me if  
12 I'm wrong, but the way that I -- I saw this, but the way that I interpreted  
13 this was that they reflected what the full-time equivalent was, but they  
14 didn't reflect how they came about what the formula was for deriving  
15 that particular number, and I didn't -- do you see that?

16                  MR. GILREATH: No, I think they were seeking the  
17 number of students that would be on the campus at any --

18                  CHAIRPERSON REID: The process.

19                  MR. GILREATH: -- one time.

20                  CHAIRPERSON REID: The process that they utilize  
21 to determine the full-time equivalent, they just gave a chart reflecting  
22 numbers, but not showing what they use as a formula for coming up  
23 with that figure.

24                  I'd like to see that. Therefore, I would --

25                  MS. KING: Now, given that we're not meeting again,  
26 not having another meeting until September, and I presume that that's  
27 an unwarranted delay, Sherry called me or somebody called me to

1 see if we -- and booked a meeting for the beginning of August. Could  
2 we -- could we have a special meeting to consider any additional  
3 information that they want to give us?

4 CHAIRPERSON REID: Well, she did call me as well  
5 as ask if we could have a special meeting in August, but out of the full  
6 year August is the month that I am not available. I have basically  
7 scheduled everything that we need to do for the summer in that  
8 month, and I just can't, would not be able to accommodate that.

9 MS. KING: Oh, I never got that message back.

10 CHAIRPERSON REID: Yes.

11 MS. KING: Well, it just seems to me that if they can  
12 come up with this information, they shouldn't necessarily have to wait  
13 until the first meeting in September to bring it forth. It's unfortunate  
14 that at every stage we've had to winkle (phonetic) additional  
15 information out of this university, but --

16 CHAIRPERSON REID: Well, on the -- is it the 21st? -  
17 - our hearing date this month, if they would submit it, we could take it  
18 up prior to the hearing. What's the date of that hearing?

19 MR. HART: The hearing for this month is the 21st.

20 CHAIRPERSON REID: The 21st. I have no problem  
21 with taking it up then, but I don't -- here's the thing that gives me  
22 pause. I don't want to have to continually keep going back and asking  
23 for more things. I'd like to give them one more opportunity --

24 MS. KING: Oh, yeah. I agree with that.

25 CHAIRPERSON REID: -- to provide us with what  
26 we're asking form. What we're asking for is not anything that's very  
27 difficult. It's pretty much a part of standard operating procedures for

1 most institutions. So they should be in place in the accounting office  
2 or with the accounting, the CPA, somewhere, and if, in fact, we cannot  
3 get that, I can see no reason to continue to request it. We'll just have  
4 to go ahead and make our decision based on what we have in front of  
5 us on that date certain.

6 How do you feel?

7 MR. GILREATH: I think that's reasonable.

8 CHAIRPERSON REID: So give them another  
9 opportunity, one more opportunity to provide us with specifically what  
10 we've asked for. If there is any problem, they can confer with staff to  
11 make sure that they are providing us with the information that was  
12 requested.

13 MS. KING: And then it's due what, a week from  
14 today?

15 CHAIRPERSON REID: Mr. Hart can give us the time  
16 frame.

17 MR. HART: Yes. We've got the -- yes, approximately  
18 a week from today on the 15th, the very latest on the 15th of --

19 MS. KING: Close of business on the 15th?

20 MR. HART: That's correct. That's correct.

21 MS. KING: Thursday, the 15th.

22 MR. HART: So that it will be in the packages, and,  
23 Madame Chair, if I may, please emphasize that the applicant meets  
24 with staff and talks with staff about the specific requirements because  
25 I think in reading their submissions that they think that they have  
26 responded to what we asked for, and the two examples you gave is  
27 what I'm talking about.

1                   It isn't clear. It's not what the Board usually wants  
2                   under these circumstances, and so, you know, if they would like to talk  
3                   to staff, we can explain to them what level of specificity they have to  
4                   provide so that it makes sense to bring it into the staff.

5                   CHAIRPERSON REID: I stipulated to the income and  
6                   expense statements that they have. They should have them.

7                   MS. MOON: Or information about their endowment or  
8                   something, but --

9                   CHAIRPERSON REID: Reserves.

10                  MS. MOON: -- what Ms. Reid is concerned about is  
11                  that they -- if we approve this, they buy the building. They move in,  
12                  and then abandon it or don't have the resources for it. We want some  
13                  kind of undertaking. They have a very impressive list of trustees, but,  
14                  you know, this letter saying, you know --

15                  CHAIRPERSON REID: "We have the money."

16                  MS. KING: -- "We're good for it" --

17                  CHAIRPERSON REID: Right.

18                  MS. KING: -- isn't really adequate.

19                  And in the other matter, you know, most traffic studies  
20                  are done that we see for campus plans -- are for existing campuses,  
21                  and they go out and study real conditions. For the traffic study to be  
22                  quoted as the source of the FTE student and staff or the maximum  
23                  number total of student and staff when there is no institution there and  
24                  there are no students and staff there now is really not adequate.

25                  Is that correct, Madame Chair?

26                  CHAIRPERSON REID: I agree.

27                  MR. HART: Would it be helpful for you -- just a

1 suggestion -- that you continue to because you've done half of this  
2 already --

3 MS. KING: I'm sorry. I cannot hear you.

4 MR. HART: Would it be possible -- you've gone  
5 through at least four of the requests that we, that the Board needs. I  
6 think it would be helpful if you explained the additional request.

7 MS. KING: That's it.

8 MR. HART: Yeah.

9 MS. KING: Those are the two as far as I'm  
10 concerned, the budget matters, the -- at a minimum, identify the  
11 school's endowment and how the site, building, and grounds would be  
12 maintained for the next ten years.

13 A resolution of the Board saying we're good for it is  
14 not what we're asking for.

15 CHAIRPERSON REID: And among the things that  
16 were asked for, number one, the formula, and let's underline  
17 "formula," used by the university for computing full-time equivalents;  
18 the budget matters. I think we had a landscape plan. We had the  
19 traffic study and the stuff for the proposed loading area to show these  
20 new zoning standards. We have that.

21 A floor plan showing the interior layout of the building.

22 MS. KING: Do we have that? Is it in the file?

23 CHAIRPERSON REID: Do we not have that?

24 MR. HART: I looked in the -- I don't recall it being  
25 submitted.

26 CHAIRPERSON REID: If it's not --

27 MR. HART: Yes, it can be.

1 CHAIRPERSON REID: If not, then please submit  
2 that.

3 MR. HART: Okay.

4 CHAIRPERSON REID: Wait a second.

5 MS. KING: And we have the comparison of the past  
6 use or proposed use.

7 CHAIRPERSON REID: Okay. We have that, and a  
8 complete list of programs in a time frame when each is to begin.

9 MS. KING: I'm not sure we have that. Do we have  
10 that?

11 CHAIRPERSON REID: We have the programs.

12 MR. HART: The programs, but not the --

13 CHAIRPERSON REID: They did have programs, to  
14 continue herein, but I don't know if they --

15 MR. HART: There's no timing on it.

16 CHAIRPERSON REID: -- gave a schedule as to the  
17 time frame when they're supposed to begin.

18 MS. KING: Yeah, okay.

19 CHAIRPERSON REID: So there are four items that  
20 have not been -- still have not been adequately dealt with, and those  
21 are Items 1, 2, 6, and 8.

22 MR. HART: Okay.

23 CHAIRPERSON REID: Okay?

24 MR. HART: Yes. As of yesterday, the Capitol Hill  
25 Restoration Society nor the ANC had been served. There's a notation  
26 here on that.

27 MS. KING: Oh, well, then they must do that.

1 MR. HART: Yes.

2 MS. KING: They must do that.

3 MR. HART: So I have to talk to them.

4 MS. KING: Immediately.

5 CHAIRPERSON REID: They have never been or you  
6 mean they had not been served with the additional information?

7 MR. HART: Yes.

8 CHAIRPERSON REID: Okay. That is a part of the  
9 request that they would have to be served.

10 MS. KING: But when we meet two weeks from today,  
11 that will be their last crack at this.

12 MR. HART: Yes.

13 MS. KING: If they haven't served the parties, if they  
14 haven't adequately answered our questions, they may not get their  
15 permission.

16 CHAIRPERSON REID: Can we take it up at nine,  
17 meet at nine on that day?

18 MS. KING: Yeah, why not?

19 CHAIRPERSON REID: Okay.

20 MR. HART: Okay. Let me just repeat this quickly.  
21 We've identified to the applicant the specific submissions that haven't  
22 met all requirements. At a special public meeting at nine o'clock on  
23 July 22nd, we'll take this matter up again for a decision.

24 CHAIRPERSON REID: All right. Okay. The next  
25 item on the agenda, please.

26 MR. HART: Okay. The next item on the agenda is  
27 number 16071, request for modification of approved plans in

1 application of the Washington International School, as amended,  
2 pursuant to 11 DCMR 3107.2, for a variance from the use provisions,  
3 Subsection 320.3, to allow the alteration and conversion of a school  
4 building into a 14-unit apartment house in an R-3 district at premises  
5 2735 Olive Street, N.W., Square 1215, Lot 806.

6 The hearing date was September 20th, 1995. The  
7 decision date was December 6th, 1995. The Board members present  
8 at that meeting were Susan Morgan Hinton, Maybelle Taylor Bennett,  
9 Angel Clarens, Laura M. Richards, who voted to grant; Craig Ellis to  
10 grant by absentee vote.

11 The final date of the order was March 26th, 1997.

12 CHAIRPERSON REID: All right. Let's see. Basically  
13 this is a request for modification of the approved plans.

14 Opposition to the request for modification of the  
15 approved plans. We have the --

16 MS. KING: No.

17 CHAIRPERSON REID: Excuse me, Ms. King,  
18 please.

19 The opposition is being represented by Mr. Richard A.  
20 Green, and go ahead.

21 MS. KING: My understanding is that this is a wrangle  
22 over one parking space.

23 CHAIRPERSON REID: Right.

24 MS. KING: There are 14 units. Fourteen spaces are  
25 proposed in the amendment instead of the 15. In, as I read it, the  
26 original proposal when it came before the Board was for 15 parking --  
27 15 units and one space per unit. The architect, and a copy is

1 enclosed, in fact, amended the plans. You know, in the midst of the  
2 hearing, they rewrote -- he redrew the plans for the penthouse or the  
3 top floor or whatever to reduce by one the number of --

4 CHAIRPERSON REID: Parking spaces.

5 MS. KING: -- of parking places.

6 Now, under the zoning regulations they would really  
7 only need to provide one parking place for each four units, but they're,  
8 in fact, proposing to do one for each one, and I think that it's clear that  
9 it was the intention of the Board when it heard this case to have one  
10 space for each unit, and the fact that, you know, there was -- that one  
11 extra space was to be provided by the order is just a technical  
12 amendment really, not a serious modification.

13 CHAIRPERSON REID: And also, I agree with you,  
14 but also the issue of the tolling of the time for the request for waiver for  
15 the request for modification -- Mr. Bergstein, perhaps you can shed  
16 light because I kind of got confused with both sides giving their take  
17 on what, in fact, is the correct time period, whether or not --

18 MR. BERGSTEIN: Unfortunately I did not receive this  
19 package.

20 CHAIRPERSON REID: -- whether or not they were  
21 timely in their application for the request for the modification.

22 MS. KING: The issue is that --

23 MR. BERGSTEIN: I was just saying that I did not  
24 receive this tab.

25 MS. KING: No, but I'm trying to frame the issue.

26 MR. BERGSTEIN: Yes, if you're framing it for me, go  
27 ahead.

1 MS. KING: Right. The order was issued on a date,  
2 but there -- and there were appeals and appeals and appeals, and in  
3 fact, the final action took place last November.

4 CHAIRPERSON REID: November 30th, 1998.

5 MS. KING: The 30th, yeah. That was when the  
6 memorandum of opinion from the D.C. Court of Appeals was issued.  
7 So they are contending that their application fell within the six months.

8 When do you start counting the six months? When all  
9 appeals have been exhausted?

10 MR. BERGSTEIN: That's a very good question.  
11 Normally you would want to see an order staying an effect of  
12 something in order to say -- the rule literally says -- I'm looking at  
13 3335.3, and remember that it's waivable irregardless of --

14 CHAIRPERSON REID: Right.

15 MS. KING: Yeah, but I mean --

16 MR. BERGSTEIN: But to answer your question, it  
17 says no later than six months from the final date of the written order  
18 approving the application. It's very specific.

19 MS. KING: Oh, I see.

20 MR. BERGSTEIN: It doesn't say from the effective  
21 date.

22 MS. KING: Okay.

23 MR. BERGSTEIN: It says from the written --

24 MS. KING: Okay.

25 CHAIRPERSON REID: No, no, no, but what about  
26 the tolling period during the appeal?

27 MR. BERGSTEIN: Well, what I'm saying is because

1 it's written so specifically, from the final date of the written order, final  
2 date as opposed to effective date might seem to be a different thing,  
3 and even still you would expect to see a stay of the order.

4 In other words, if there is no stay and they could  
5 proceed with the modification -- the purpose of this provision is to say  
6 once you start your construction and start implementing the order, we  
7 assume that after six months it's no longer truly a modification but  
8 something else.

9 If they were prevented from proceeding because  
10 there was a stay and they really couldn't begin their construction or  
11 design activities until six months ago, then it would make sense to say  
12 that really the final date of the order is the date upon which they can  
13 act upon the order.

14 If they were authorized and there has been no stay  
15 and they could have acted upon the order as early as 1995, then they  
16 really had three years to determine whether or not this modification  
17 was necessary and the reason behind the rule wouldn't be affected by  
18 the fact that there was an appeal, if you understand what I'm saying.

19 MS. KING: Yeah, I do.

20 MR. BERGSTEIN: And, therefore, unless there was a  
21 stay where they were actually precluded from implementing and  
22 commencing the plans and, therefore, they really only had from  
23 November to realize that this was a modification that was required,  
24 there are no different positions from anybody else who didn't have an  
25 appeal, and I'm not saying that that's not a reason for not granting the  
26 waiver, but in terms of consider whether or not something had been  
27 tolled, you normally equate tolling with where you're prevented from

1 doing something and then when that period of prevention stops, then  
2 you can judge the conduct. So --

3 MS. KING: Yeah, but given all of the stages in the  
4 progress of this, of motions and countermotions and appeals and so  
5 forth, it seems to me not unreasonable to waive the requirement that  
6 they file within six months.

7 MR. BERGSTEIN: There's another -- excuse me, if I  
8 may -- there's another requirement also you're going to have to weigh.

9 MR. HART: Excuse me, Madame Chair. This may  
10 be --

11 CHAIRPERSON REID: I can't hear you, Paul.

12 MR. HART: I have here a statement by the  
13 opposition that it say request that the application -- the letter in the  
14 case opposing would be withdrawn, and the applicant has no  
15 objection to this, which makes this whole --

16 CHAIRPERSON REID: Well, that could have been  
17 taken care of in the very beginning, and then we wouldn't even have  
18 to get into this discussion.

19 MR. HART: Yeah.

20 MS. KING: I'm sorry. You have a letter from -- oh.

21 CHAIRPERSON REID: Withdrawing the opposition to  
22 the request for modification.

23 MR. HART: Okay. That -- that -- okay.

24 CHAIRPERSON REID: Then what's the point?

25 MR. HART: The applicant has a July 2nd letter. The  
26 opposition requested that applicants do write a second letter, in this  
27 case is stricken from the record, and the applicant has no objection.

1 CHAIRPERSON REID: The applicant, but --

2 MR. HART: The opposition has requested that the  
3 applicant's July 2nd letter --

4 CHAIRPERSON REID: Oh, okay.

5 MR. HART: -- be stricken from the record, and the  
6 applicant has no objection to this.

7 CHAIRPERSON REID: So then this becomes a moot  
8 issue.

9 MR. HART: Yeah, it does.

10 MS. KING: No, no, it doesn't. It's the second letter  
11 from the applicant that they want to strike. The opposition said that it  
12 was not proper for us to consider that information in that second letter.

13 The problem remains the same. We have to waive  
14 the six months if we're going to consider this and then decide the  
15 case.

16 CHAIRPERSON REID: Okay. Maybe I  
17 misunderstood. Mr. Hart did you say that you've got a letter from the  
18 opposition rescinding the --

19 MR. HART: Let me read the note I have here.

20 MS. KING: Was this given to her yesterday?

21 MR. HART: This one?

22 MS. KING: I've given Ms. Reid the letter that you  
23 faxed to me yesterday.

24 CHAIRPERSON REID: Okay.

25 MS. KING: So the letter of July 2nd is not -- does not  
26 become part of the record of this case.

27 MR. GILREATH: Well, can we work that from a

1 different point of view? If we believe that a modification is warranted,  
2 that 14 parking spaces are proper, we can modify. It's a very minor  
3 thing.

4 And then so if we agree on that, can we legitimately  
5 waive it? Are there going to be legal reason that with all of the  
6 arguments we cannot legitimately do this or can we?

7 MR. BERGSTEIN: The standard waiver for your rules  
8 is whether or not it's prejudicial to any party and for good cause, and I  
9 was just going to point out that you need to waive another rule, which  
10 is 333.56. "No member shall vote on a request for modification of a  
11 plan if a member participated in voting in the original decision," and  
12 the order reflects that Elmer Price, Chairman King, and Chairman  
13 Reid of this panel voted for that decision. So you would have to waive  
14 the rules to permit the other members of this panel to vote.

15 CHAIRPERSON REID: So waived.

16 MS. KING: Do we have to vote on waiving or is your  
17 word enough?

18 MR. BERGSTEIN: Well, let me -- it's also for good  
19 cause shown, and when Mr. Price didn't vote on the waiver as part of  
20 your motion so that that's clear what you're doing, that you consider  
21 the fact that he's waived.

22 MS. KING: So we have to -- so you're proposing that  
23 we waive?

24 CHAIRPERSON REID: And allow Mr. Gilreath to  
25 participate, and then we have to vote on --

26 MS. KING: I second it.

27 CHAIRPERSON REID: I was -- I just kind of did it by

1 the chair's prerogative.

2 MS. KING: Yeah, but you don't have the prerogative.

3 He said we had to vote.

4 CHAIRPERSON REID: I have no problem with a  
5 vote, Ms. King. All in favor.

6 (Chorus of ayes.)

7 CHAIRPERSON REID: All opposed.

8 MR. GILREATH: I'm not --

9 CHAIRPERSON REID: The ayes --

10 MR. GILREATH: I'm not permitted to vote, I mean.

11 CHAIRPERSON REID: It's moot, I mean. He can't  
12 vote anyway.

13 So let's get to the second part, which is the waiver of  
14 the time limit, and it has to be predicated upon for good cause shown.  
15 Let's see. Only for good causae shown, and if in the judgement of the  
16 Board the waiver will not prejudice the rights of any party and, third, it  
17 is not otherwise prohibited by law.

18 So I don't think so. I don't have a problem with the  
19 waiver.

20 MR. GILREATH: Well, my feelings are, I mean, I  
21 support the waiver if it can be legally acceptable.

22 MS. KING: And it can.

23 MR. GILREATH: And legal counsel, if he can tell us  
24 we can waive it, I'm in fully support.

25 On the other hand, if he says there are certain factors  
26 here, legal factors, that we can't -- so if we can get an okay from him  
27 saying we can waive it --

1 MS. KING: WE can do that.

2 MR. GILREATH: -- I'm all for it, but --

3 MR. BERGSTEIN: I honestly have not read the  
4 submission. So I don't know what the good cause is for the period of  
5 time, and therefore, I really can't make a judgment, but it's really a  
6 factorial issue more than a legal one.

7 If they were proceeding on the plan since 1995, what  
8 was the reason for the extended period of time before they came here  
9 and requested the modification? If it sounds like it's justified, why it  
10 took this period of time to recognize -- and again, I don't know if they  
11 waited to begin the construction of this structure until the appeals were  
12 final. They did a self-imposed stay, for example, and again, I don't  
13 know. If they did a self-imposed stay and just now were beginning the  
14 plans and just now recognize that --

15 CHAIRPERSON REID: Well --

16 MR. BERGSTEIN: -- 14 versus 15 parking spaces  
17 were desirable, that would be good cause, but again, I have no read  
18 this.

19 CHAIRPERSON REID: Let me read this portion of  
20 the submission by Attorney Collins in that regard.

21 It says, "The modification to plans were developed in  
22 response to issues raised during the historic preservation review  
23 process, which occurred after the court of appeals case was over. It  
24 would have been imprudent for the applicant to proceed to the final  
25 historic preservation design review phase before the Board of Zoning  
26 Adjustment process of the appeal is completely over."

27 So I think that would suffice for good cause.

1 MR. BERGSTEIN: Well, if that's the reason.

2 MS. KING: That's a very valid reason, I think.

3 CHAIRPERSON REID: So in regard to the waiver --

4 MR. GILREATH: I must admit I'm not -- there's much  
5 legal -- excuse me -- consideration. I agree we have to make the  
6 judgment, but if the Corporation Counsel go through the analysis and  
7 he says in his judgment he feels that the Board can determine there is  
8 a good cause for this, now, if you two have already determined there's  
9 a good cause, I certainly would not oppose it. I'm really not clear as to  
10 --

11 MS. KING: I think there's a good cause.

12 CHAIRPERSON REID: I think there's a good cause.

13 MS. KING: The historic preservation, when you're  
14 building in Georgetown, you have to deal not only with the Fine Arts  
15 Commission, but with the Historic Georgetown Board, and for  
16 somebody to rush pell-mell into something under those  
17 circumstances, it would become extremely prejudicial to their whole  
18 project.

19 So I think that coupled with the delays even absent a  
20 stay through the legal process, then you also have the historic  
21 preservation process. It seems to me that it's not unreasonable, and I  
22 believe from what Alan has said also quite legal, for us to determine  
23 that there is good cause --

24 MR. GILREATH: Okay. Well, I --

25 MS. KING: -- for this delay.

26 MR. GILREATH: That sounds reasonable to me. I  
27 have no problem with that.

1 CHAIRPERSON REID: Yeah, I think that --

2 MS. KING: And, therefore, I would move that we  
3 waive the rule on the six months and consider this case.

4 MR. GILREATH: And I second the motion.

5 CHAIRPERSON REID: All right. All in favor?

6 (Chorus of ayes.)

7 CHAIRPERSON REID: Opposed?

8 (No response.)

9 CHAIRPERSON REID: Okay. Now --

10 MS. KING: Now, I think this modification is extremely  
11 minor. I understand how people become -- you know, the concerns of  
12 parking in Georgetown. I lived there for a number of years myself,  
13 and parking is a big problem, but there will be one parking space for  
14 each unit in this complex, in the apartment building, and I don't think  
15 that it's going to have an adverse impact to eliminate the one extra  
16 parking space, and so therefore, I would vote in favor of the  
17 modification.

18 MR. GILREATH: Well, I second. That's a motion?

19 MS. KING: That's a motion.

20 MR. GILREATH: Well, I second that, and I concur. I  
21 feel this one additional parking space is really not a sufficiently  
22 significant factor to prejudice. I think the developer should be  
23 permitted to just provide 14 parking spaces and that we should make  
24 the modification to the plans or approve it accordingly.

25 CHAIRPERSON REID: I would concur. My  
26 sentiments exactly.

27 All in favor.

1 (Chorus of ayes.)

2 CHAIRPERSON REID: Opposed?

3 (No response.)

4 CHAIRPERSON REID: Did you second that?

5 MR. GILREATH: Yes, I did. I seconded.

6 CHAIRPERSON REID: All right.

7 MR. HART: Staff will record the vote as three to zero,  
8 Ms. King, Mr. Gilreath, Ms. Reid, to grant the modification.

9 Finally, Application No. 16273. They have made a  
10 request for modification of approved plans for Application 16273 of the  
11 Lab School of Washington and George and -- Lab School of  
12 Washington and George and Georgette Amouri, pursuant to 11 DCMR  
13 3108.1, for a special exception under Section 206 to allow an addition  
14 to an existing private school and an increase in the maximum  
15 enrollment from 250 students to 310 students in an R-1-B district at  
16 premises 4759 Reservoir Road, N.W., Square 1372, Lots 19, 20, and  
17 24.

18 The hearing date was November 19th, 1997. The  
19 decision date was December 3rd, 1997. The Board members present,  
20 with a vote of three to zero, was Betty King, Sheila Cross Reid, Susan  
21 Morgan Hinton to grant and adopt the proposed order; Laura M.  
22 Richards not voting, not having heard the case.

23 The final date of the order was February 24th, 1998.

24 MS. KING: Madame Chair, in order for Mr. Gilreath to  
25 vote, I would make a motion that he has read the materials for this  
26 amendment and heard our discussion in executive session, and I  
27 would suggest that we permit him to vote.

1 CHAIRPERSON REID: Okay. Well, we can stipulate.

2 MR. GILREATH: And for the record, I read all of the  
3 material, and to my mind this is not an unduly complicated case, and I  
4 feel that I understand all of the essentials.

5 CHAIRPERSON REID: Thank you. All right.

6 MS. KING: Now, what we're dealing with is a  
7 situation where the Lab School found that they could not fit this  
8 language or speech lab into the plans as we had originally approved  
9 them.

10 CHAIRPERSON REID: Right.

11 MS. KING: And that they wished to add that one  
12 classroom to an existing carriage house. At an earlier meeting we had  
13 felt that it was more than a minor -- it was a consensus of the Board  
14 that it was more than a minor modification and that they might have to  
15 come back.

16 They have since expressed their issues and concerns  
17 with a good deal more clarity in their recent submission, and it turns  
18 out that what we're dealing with is a 515 square feet addition to a  
19 project that is, in fact, in excess, I believe, of 9,500 square feet.

20 I would contend that this is, in fact, a minor  
21 modification. There appears, although we have nothing from the  
22 ANC, there appears to be -- the applicant has said that they have met  
23 with the ANC and they informed them, and so absent any community  
24 opposition to this modification, I would move that we grant it.

25 MR. GILREATH: I second the motion, and I feel that  
26 the addition is so minor it will not affect the views, the lighting, the air  
27 circulation or be any kind of traffic impacts that flow from this. So I

1 second the motion and support it.

2 CHAIRPERSON REID: I concur, and also it would --  
3 basically just the reverse -- it would help to mitigate the adverse  
4 impact of the noise by placing it somewhere other than in the new  
5 siting, as opposed to where they had originally planned to put it. So I  
6 have no problem with it. It seemed to be a very small change, 515  
7 square feet out of 9,500 square feet. I have no problem with it, and  
8 we don't have any opposition to it.

9 So did you second?

10 MR. GILREATH: Yes, I did.

11 CHAIRPERSON REID: Okay. All in favor?

12 (Chorus of ayes.)

13 CHAIRPERSON REID: Opposed?

14 (No response.)

15 MR. HART: Staff --

16 MR. BERGSTEIN: If I may, this also does require a  
17 waiver of the six month rule.

18 MS. KING: Oh, I beg your pardon, yes. I move that  
19 we waive the six month rule, that in fact, they could not have -- they  
20 appear not to have been able to, within the six month period, to  
21 determine that what they had originally planned was not feasible and  
22 that, therefore, there's good cause for us to waive the six month rule.

23 MR. GILREATH: I second the motion.

24 CHAIRPERSON REID: All in favor?

25 (Chorus of ayes.)

26 MR. HART: Staff records the vote as three to zero to  
27 grant the modification, Ms. King, Mr. Gilreath, and Ms. Reid.

1 CHAIRPERSON REID: Okay.

2 MR. HART: Madame Chair, that concludes it.

3 CHAIRPERSON REID: That concludes the session  
4 for this morning.

5 I just wanted to also just go on the record, this being  
6 the last meeting of our -- until we have the recess. I wanted to  
7 personally thank the staff for its commitment and untiring work and the  
8 fact that they have had -- we are very much aware of the fact that  
9 you've had some challenges to undergo, and I wanted to make sure  
10 that all the staff realize and know that we are very much appreciative  
11 of all of the work that you've done and all of the sacrifice that you have  
12 made, and we very much appreciate you, and I just wanted to thank  
13 you.

14 MR. GILREATH: I think the staff has been hard  
15 working, energetic, and very cooperative, and I'm very pleased with  
16 the services you provided.

17 MS. KING: Here, here.

18 CHAIRPERSON REID: Okay. Thank you with that,  
19 and we'll end this session.

20 (Whereupon, at 11:16 a.m., the meeting was  
21 concluded.)

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