

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

APRIL 5, 2000

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ROBERT N. SOCKWELL	Vice Chairperson
RODNEY L. MOULDEN	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner
CAROL J. MITTEN	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Sheri Pruitt	Secretary, BZA
Beverly Bailey	Office of Zoning
Paul Hart	Office of Zoning
John Nyarku	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Mary Nagelhout, Esq.
Marie Sansone, Esq.

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

(9:53 a.m.)

CHAIRPERSON REID: The meeting will please come to order. I would like to apologize for our delay this morning. We were in executive session and we will open our meeting and take care of the minutes and some of the other preliminary matters that we have to do today. We will then recess to go back into our executive session and come back out to give the remainder of our deliberations.

Ms. Pruitt.

MS. PRUITT: Good morning, Madam Chair.

CHAIRPERSON REID: Good morning.

MS. PRUITT: Before you today are the public minute meetings of March 1, bench minute meetings of March 1 and 22. I don't know if you would like to take them all at once.

CHAIRPERSON REID: Mrs. Pruitt is suggesting that in regard to the minutes that they be approved en mass or a consent calendar so that we don't have to each one individually. If there is no objection or if you have any comments or corrections or anything of that nature, we can do that. For the most part, the motion will be put on the floor to take all the minutes at the same time. Can I get a motion?

MR. MOULDEN: Second.

CHAIRPERSON REID: Was there a motion?

MR. MOULDEN: I second the motion to --

1 CHAIRPERSON REID: You have to make a motion.

2 MR. MOULDEN: I would like to make a motion to have
3 the minutes included under the consent calendar to group them all
4 together and not to individually hear each one of the minutes.

5 CHAIRPERSON REID: Okay. I second it. Mr.
6 Sockwell, did you have any comments or questions or the minutes?

7 VICE-CHAIRPERSON SOCKWELL: No.

8 CHAIRPERSON REID: And you, Ms. Mitten, did you
9 have any?

10 COMMISSIONER MITTEN: I wasn't present for any of
11 the meetings so I won't be able to vote.

12 CHAIRPERSON REID: All in favor, aye?

13 (Chorus of Ayes.)

14 MS. PRUITT: The staff would record the vote as
15 three to zero to one to approve. The motion made by Mr. Moulden
16 and seconded by Ms. Reid. Ms. Mitten not voting not being
17 present.

18 CHAIRPERSON REID: Okay. We have a couple of
19 preliminary issues, or rather a couple of issues that we would
20 like to deal with in a preliminary manner, and that's application
21 16531 of Father Flanagan's Boys Town. This application was self-
22 certified and there were some questions about in reference to
23 certification so we referred this to the Zoning Administrator's
24 Office to get a reading on how they saw this self-certification.

25 They promised that they would try to get back to

1 us. They couldn't get back to us with the information for the day
2 but they would try to so we could do a decision meeting on the
3 12th. I've talked with the applicant and it's not what they'd
4 like but they don't mind if we continue it to the 12th to allow
5 the Board to get the ZA's information to make a better decision.

6 CHAIRPERSON REID: Okay. Is that put to us in the
7 form of a motion, Ms. Pruitt, or just for information that it's
8 going to be referred to ZA?

9 MS. PRUITT: We've already referred it to the ZA,
10 the staff has.

11 CHAIRPERSON REID: So there is no action then that
12 we need to take other than you're informing us?

13 MS. PRUITT: You could actually go forward today if
14 you felt comfortable but I would think it would be prudent to have
15 the ZA's input on this particular case.

16 CHAIRPERSON REID: Yes. That would be my
17 understanding that given the fact that there is some question in
18 regard to the type of relief that's being requested, then it's
19 proper and prudent that we do that. I have no problem with moving
20 it to the April 12th meeting date unless other Board members have
21 any objections or comments.

22 MS. PRUITT: We also have a second case, Jewish
23 Primary Day School, application 16556. This is a little different
24 issue. We have not received all the transcripts. We got the
25 first transcript late close of business on Monday and we are

1 expecting the second transcript close of business on Thursday.

2 The parties in opposition have not been able to --
3 they have stated they have not been able to do their findings of
4 fact because they haven't had a full transcript. I've talked to
5 all the parties. At that point we thought all the transcripts
6 were going to come in on Monday and they were okay with the April
7 12th time frame.

8 Now that they won't get the complete set until
9 Thursday, I'm really asking the Board what you would like to do.
10 Do you still want to maintain the April 12th time frame? It gives
11 them a little less than a week to write the full findings of fact.

12 Or do you want to reschedule it for another day besides April
13 12th understanding that the applicant really has requested a bench
14 decision because of the urgency on their part.

15 VICE-CHAIRPERSON SOCKWELL: Madam Chair, didn't the
16 Jewish Primary Day School give us a time table?

17 MS. PRUITT: They really wanted a decision today.
18 I did talk to both parties and applicant to find out what the
19 implications would be of changing it and they didn't mind a week
20 delay. I think many think longer may be problematic for them
21 because of registration. If you were to approve it, they would
22 have problems. If you don't approve it, it's not an issue but
23 they would like to know one way or the other.

24 VICE-CHAIRPERSON SOCKWELL: So that gives us less
25 than a week.

1 MS. PRUITT: It gives the parties in opposition
2 less than a week to do their findings of fact. There are several
3 Board members who have to read parts of the record and we have to
4 find out what the March 15th hearing states, if whether everybody
5 was there for there or not.

6 COMMISSIONER MITTEN: Can I ask a question then?
7 Is there anything in our regulations that say what the minimum
8 time span should be between the time the transcripts are
9 available?

10 MS. PRUITT: No, there's nothing in our regulations
11 directly. It has been this Board's practice that they get at
12 least a week before the transcripts before findings of fact are
13 due to give people ample time to incorporate all that information.

14 CHAIRPERSON REID: I was going to say that I would
15 be amenable to the postponement to April 12th for us to then have
16 our decision meeting. Let me ask you before I go any further, Ms.
17 Pruitt, the issue of the transcript not being available is
18 something that is on us, the Zoning Office, or is it something
19 that is not caused by us?

20 MS. PRUITT: I think it's a little bit of
21 everything. We've had so many hearings that have been very long
22 and the purchase orders have been for certain amounts and we've
23 exhausted them a lot quicker than we had anticipated. We have
24 already put in the process for transferring money but if you've
25 ever worked with the District budget, it takes forever just to do

1 something simple like that so we couldn't get the transcripts.

2 CHAIRPERSON REID: Typically an applicant or a
3 party in opposition would have how much time to construct their
4 draft order of findings of fact?

5 MS. PRUITT: As I was telling Ms. Mitten, it has
6 been the Board's policy to give them a week.

7 CHAIRPERSON REID: And Thursday gives them a little
8 less than a week?

9 MS. PRUITT: Yes.

10 CHAIRPERSON REID: Okay.

11 MS. PRUITT: That's with the understanding that
12 they have already part of a transcript.

13 CHAIRPERSON REID: They already have part of one.
14 Okay. That's what I was just going to say. All right. I think I
15 wouldn't have any problem with postponing it until Wednesday but I
16 think that if we try to take it any further, that it would cause
17 some unnecessary hardship for the applicant.

18 MR. MOULDEN: Okay. I have no problem with that
19 either but my question was the transcripts will be available
20 Thursday and how would the opposition party know that?

21 MS. PRUITT: Excuse me?

22 MR. MOULDEN: How will the opposition party be
23 aware?

24 MS. PRUITT: I will call them.

25 MR. MOULDEN: You will call them?

1 MS. PRUITT: Um-hum. I've talked to them.

2 CHAIRPERSON REID: So they can pick it up on
3 Thursday?

4 MS. PRUITT: Yes.

5 MR. MOULDEN: It's just one day off so I don't see
6 a problem with that.

7 CHAIRPERSON REID: Then by consensus we agree to
8 the April 12th postponement of the Jewish Primary Day School
9 decision.

10 MS. PRUITT: The other preliminary issue that I
11 would like to deal with is actually a case for this afternoon, the
12 Kraus case for this afternoon. In the Kraus case they are
13 requesting a continuance and both the attorney and the party are
14 here and would request a continuance. Unfortunately I don't have
15 my information in front of me as to when they would like to have
16 this hearing heard.

17 MR. MOULDEN: Ms. Pruitt, what is the reason for
18 the continuance request?

19 MS. PRUITT: I believe Mr. Kraus has been very sick
20 and in the hospital and has been unable to sort of participate in
21 the negotiations. They're trying to work out a settlement.

22 CHAIRPERSON REID: The letter from Mr. Gell
23 stipulated that they are still in the process of trying to work
24 something out, trying to come to a meeting of the minds. They
25 felt that a postponement would be necessary in order to accomplish

1 that. I have no problem with it in that they are attempting to
2 try to come to an agreement. What date was it?

3 MS. PRUITT: Late July.

4 CHAIRPERSON REID: Okay. And both attorneys have
5 agreed to -- I understood in the letter from Mr. Gell that both
6 attorneys had talked about it and they were unable to --

7 MS. PRUITT: Actually, they are both here.

8 CHAIRPERSON REID: Yes, I see that. Late July?

9 MS. PRUITT: We have two hearings scheduled in July
10 already. They are tentatively scheduled and they are both trash
11 transfer which is on the 11th and then the 24th.

12 CHAIRPERSON REID: Do you anticipate that taking
13 all day?

14 MS. PRUITT: All day? Yes.

15 CHAIRPERSON REID: All day cases, the 11th and
16 24th?

17 MS. PRUITT: Um-hum.

18 CHAIRPERSON REID: We could put that --

19 MS. PRUITT: We could put it on the first meeting
20 day, which actually that's something I need to talk about. It's
21 the 4th of July. The first Wednesday of the month is the 4th so
22 we need to discuss how you want to do that.

23 VICE-CHAIRPERSON SOCKWELL: How about if?

24 MS. PRUITT: How about when as opposed to it being
25 on the 4th? But there is the first meeting date because you're

1 having right now three meetings a month so that would be the
2 hearing date that's tied to the meeting also.

3 CHAIRPERSON REID: But would it be prudent to move
4 it to Thursday?

5 MS. PRUITT: That's what I wanted to ask you all
6 about that.

7 CHAIRPERSON REID: So we won't miss that whole
8 week.

9 MS. PRUITT: Right. That's what I wanted to talk
10 to you about, when you wanted to schedule it.

11 CHAIRPERSON REID: Are you back from your vacation
12 at that time, Mr. Sockwell? The day after?

13 VICE-CHAIRPERSON SOCKWELL: Don't worry about it.

14 CHAIRPERSON REID: Is that all right with you, the
15 5th?

16 COMMISSIONER MITTEN: If that's my turn to show up,
17 I'm available.

18 CHAIRPERSON REID: That's right. You might not
19 even have to be here.

20 COMMISSIONER MITTEN: Somebody from the Zoning
21 Commission will be here.

22 VICE-CHAIRPERSON SOCKWELL: The fact that the two
23 attorneys are sitting so close together may mean it shouldn't be
24 very short.

25 CHAIRPERSON REID: Okay.

1 MS. PRUITT: I'm sorry. So was the conclusion --

2 CHAIRPERSON REID: The 5th.

3 MS. PRUITT: Thursday the 5th?

4 CHAIRPERSON REID: Um-hum.

5 MS. PRUITT: Okay.

6 CHAIRPERSON REID: Are you done with that?

7 MS. PRUITT: Yes.

8 CHAIRPERSON REID: Why not look at in the
9 secretary's report. This is just for information regarding
10 Parkside just to give us an update on what was happening with that
11 particular application. We don't have to really address that
12 today.

13 MS. PRUITT: I'm sorry?

14 CHAIRPERSON REID: I said since it was just an FYI
15 type of thing. There's nothing that you are asking us to do or
16 there is no action necessary.

17 MS. PRUITT: Well, the question was they made a
18 response to the request of where it is. Now you can decide if you
19 don't mind what they say and give them more time or else dismiss
20 the case. It's been almost four years now.

21 CHAIRPERSON REID: Well, as I said before, this is
22 a very unusual case and it involves a major project over in
23 Kenilworth Parkside and I think it's a very important project. I
24 think that as a result of that project being there, we've seen a
25 massive improvement or transformation of that particular area.

1 I feel that it's worthwhile enough that it doesn't
2 cost us anything to allow them the time they are dealing with
3 bureaucratic red tape. They are probably trying to get funding
4 from other sources and scrambling around and trying to figure out
5 how they are going to do that from some donations or whatever. I
6 have no problem with allowing them time to be able to do it.

7 MS. PRUITT: Now, it does cost us because they have
8 not paid their fee.

9 CHAIRPERSON REID: I don't understand what you
10 mean.

11 MS. PRUITT: I mean, you're saying there's no cost.
12 That's what we're really waiting for. There's been a decision
13 made and order written but the understanding was that the order
14 would not be released until they pay the rest of their fee.

15 CHAIRPERSON REID: Well, the thing was that -- I
16 mean, what is it costing us if we hear it today or hear it next
17 week or next year. The fact of the matter is that we have not
18 heard the case. They have not paid their fee and we don't know if
19 they ever will be able to pay it so the situation status remains
20 the same.

21 MS. PRUITT: Right. I just wanted to clarify.
22 There's not a hearing. All of this has been done. All we're
23 waiting on is the fee.

24 CHAIRPERSON REID: Again, if it's today or next
25 year, the situation remains the same there. If they can go

1 forward and pay their fee, fine. If they can't, they just can't.

2 MS. PRUITT: Do you want to set a time certain for
3 them to get back to us explaining the situation and if they have a
4 time frame of when they may be able to pay us?

5 CHAIRPERSON REID: We've been dealing with this for
6 the five years that I've been here. Well, maybe not exactly five
7 years but at least three or four years.

8 MS. PRUITT: It's been since 1996.

9 CHAIRPERSON REID: Okay. And it's the same thing.
10 There is a problem and I think that as such we should give them
11 the opportunity to be able to try to resolve whatever their issues
12 are because that is not a typical situation. This is a grassroots
13 organization that does not have the resources and we know that.
14 As such, I have no problem with extending them additional time,
15 whatever time. It doesn't really matter.

16 MS. PRUITT: That's what I wanted to know. Do you
17 have a time frame?

18 CHAIRPERSON REID: I don't want to put a time frame
19 on it.

20 VICE-CHAIRPERSON SOCKWELL: Madam Chair, apparently
21 this project is in litigation. This is what we're talking about,
22 right?

23 CHAIRPERSON REID: Yeah.

24 VICE-CHAIRPERSON SOCKWELL: Generally the agencies
25 of the District that I've been involved with respect litigation as

1 a legitimate reason for holding any decisions until such
2 litigation has been satisfied. That litigation is the principal
3 reason by which I would suggest that we give an open-ended time
4 limit on the continuance.

5 CHAIRPERSON REID: I didn't have that particular
6 document that Mr. Sockwell just showed me in my files. Did you?

7 MS. PRUITT: It should be.

8 MR. MOULDEN: Are you finished?

9 CHAIRPERSON REID: Yes.

10 MR. MOULDEN: Madam Chair, I think since this case
11 has been -- this issue has been going on for some time and we do
12 need to put down a time frame which is considerate of the
13 applicant's working this issue out so we can look forward to them
14 giving us some decision.

15 CHAIRPERSON REID: Mr. Sockwell just said that if
16 it's in litigation, they are not going to be able to do anything
17 until they get a decision.

18 VICE-CHAIRPERSON SOCKWELL: For example, the
19 Portholes project was tied up in litigation for a number of years.

20 The Department of Consumer and Regulatory Affairs was cognizant
21 of that fact and allowed certain issues to be held open until said
22 litigation was resolved.

23 I believe that in any case where the project is
24 tied up in the courts, that would be the more appropriate manner
25 of dealing with it. That is, to not make a decision when that

1 decision is out of the control, when the decision of the applicant
2 is out of it's own control.

3 MR. MOULDEN: My comment was based on the fact did
4 we have any hearing dates that they would go to trial. I mean, do
5 we know any specific dates as far as litigation when this thing
6 could be resolved? If we have dates, we could --

7 MS. PRUITT: No, to my knowledge we have no
8 information.

9 MR. MOULDEN: If we had dates, I was going to base
10 it on the dates.

11 VICE-CHAIRPERSON SOCKWELL: Right. But the point
12 is even if we had dates for hearings, we wouldn't have dates for
13 decisions and I think that it is best to leave this open-ended
14 until the litigation is satisfied. I would suggest that if you
15 want to place any kind of a deadline on them, put three months
16 that they should respond to us within 90 days of the decision on
17 litigated issues. That would be reasonable, I would think.

18 MR. MOULDEN: So the issue is that we don't release
19 the order until they pay.

20 CHAIRPERSON REID: I should also reiterate for the
21 record again that the fees that they are being asked to pay is
22 something like \$60,000 and they don't have it so that is part of
23 the issue with them taking so long to be able to take care of
24 this. We can say within 90 days after the decision has been
25 reached pursuant to the litigation that's pending if you like

1 that. I have no problem with it.

2 VICE-CHAIRPERSON SOCKWELL: We should certainly
3 expect the applicant to respond to us as soon as litigation has
4 been satisfied so that at that time they would know which
5 direction they are going in.

6 CHAIRPERSON REID: All right. Ms. Pruitt?

7 MS. PRUITT: Staff will write a letter indicating
8 that.

9 CHAIRPERSON REID: All right. What else do we
10 have?

11 MS. PRUITT: Those are the only preliminary issues.
12 We do also have a case to be heard this morning, the Welch
13 family.

14 CHAIRPERSON REID: The Welch family. Okay. We
15 also have Frank Jackson --

16 MS. PRUITT: Right. That's --

17 CHAIRPERSON REID: -- decision.

18 MS. PRUITT: Yes.

19 CHAIRPERSON REID: Would you like to take this up
20 now or would you like to do it after executive session?

21 MR. MOULDEN: We can do it now.

22 CHAIRPERSON REID: It's pretty straightforward.
23 Okay. We'll call it.

24 MS. PRUITT: Application 16530, Frank Jackson,
25 pursuant to 3103.2 for variance from the minimum side yard setback

1 requirements under Section 405 to allow the proposed addition
2 (deck) to a single-family detached dwelling in an R-1-B District
3 at premises 2223 Lawrence Street, N.W. (Square 4247, Lot 807).

4 The Board heard this case on March 1 and voted to
5 approve the variance. However, after the Board voted to approve
6 it, it came to the Board's attention that the affected ANC had
7 requested that the record be left open so that it could submit
8 their official report.

9 We have now gotten our official report and it's
10 favorable and it's really a matter of you reaffirming your
11 original vote.

12 CHAIRPERSON REID: The ANC-5A with a quorum present
13 and a vote having been taken has voted to not object to the
14 application and that was the only thing we needed on that. I move
15 that we reaffirm our original vote in reference to the approval of
16 this application. Do I hear a second?

17 VICE-CHAIRPERSON SOCKWELL: Second.

18 CHAIRPERSON REID: All in favor?

19 (Chorus of Ayes.)

20 CHAIRPERSON REID: Opposed?

21 (None opposed.)

22 MS. PRUITT: I'm sorry. Mr. Moulden, did you
23 oppose?

24 CHAIRPERSON REID: All in favor aye?

25 (Chorus of Ayes.)

1 CHAIRPERSON. REID: All opposed?

2 (None opposed.)

3 CHAIRPERSON REID: Okay.

4 MS. PRUITT: Staff will record the vote as three to
5 zero to one. Motion made by Mrs. Reid, seconded by Mr. Sockwell.

6 Ms. Mitten not voting not having been present.

7 CHAIRPERSON REID: That basically takes care of the
8 matters this morning. Any other comments or discussion from the
9 Board members? Then we will recess for 30 minutes and we'll
10 resume to come back and give a decision on the KASS case, the
11 Studio House case.

12 (Whereupon, a recess was taken from 10:15 to 11:23
13 a.m.)

14 CHAIRPERSON REID: All right, we'll resume our
15 discussion from this morning and we will begin with our decision
16 regarding the first application. Read the case number, please.

17 MS. PRUITT: Case No. 16457 of KASS MA L.L.C.,
18 pursuant to D.C.M.R 3104.1 for special exception under section 410
19 and 2516 to allow the construction of 33 new single-family
20 detached dwellings with garages in a theoretical lot subdivision
21 and 176 luxury garden apartments in R 5A and R 5B district at
22 premises bounded by Good Hope Road, S.E. between 24th Street,
23 S.E., to the east, and 18th Street S.E., to the west. Square
24 5735, parcels 211/96, 220/31, lot 804 and square 5763, parcels 219
25 /18.

1 The hearing dates for this were January 19,
2 February 16, 23, and today's a decision date. The Board requested
3 additional information which included a Memorandum of
4 Understanding between the School Board Member William Lockridge
5 and the Developer regarding the proposed educational plan,
6 adjustments by the Applicant to concerns identified by the Park
7 Service, a traffic management plan, and draft findings by the
8 applicant.

9 In your package you have a copy of all that
10 information. This is now before you for deliberation.

11 CHAIRPERSON REID: Board members --

12 MS. PRUITT: I'm sorry, Madam Chair, before you go
13 into deliberation, I would like to read Mrs. Renshaw's information
14 into the record so that you'll have some context.

15 MS. PRUITT: All right.

16 MR. HART: Madam Chair, this memorandum I am about
17 to read on the KASS Case also includes Boys Town in the one
18 memorandum, so I want to make that straight before I start
19 reading. This part in fact will deal with the Good Hope Road
20 Project at this point.

21 CHAIRPERSON REID: The concerns are the same for
22 both sites, right?

23 MR. HART: Yes.

24 CHAIRPERSON REID: Okay, now once it's read into
25 the record, do we have to do it again for Boys Town?

1 MS. PRUITT: Yes, we would.

2 CHAIRPERSON REID: Go ahead, Mr. Hart.

3 MR. HART: This memorandum is from Commissioner
4 Anne Renshaw to Theodore Gordon, Senior Deputy Director for the DC
5 Department of Health, and the Deputy Director of Environmental
6 Health Administration, and it is cc: to Patrick Canavan, Special
7 Assistant to the Office of the City Administrator, and also to
8 Jerrily Kress, Director of the Office of Zoning.

9 The subject is landfills, and it addresses this
10 problem in Boys Town, at Sargent Place and Delphine Place, N.E.,
11 and Good Hope Road, S.E., on the south side between 18th and 24th
12 Streets, S.E., abutting Ft. Stanton Park.

13 The message reads as follows:

14 "Boys Town, thank you for faxing on March 9
15 an updated fact sheet on the drainage problem
16 stemming from the existing landfill at Boys Town,
17 Sargent Road N.E. One note. From this information
18 that the Watershed Protection Division can only
19 provide regulatory oversight, including planned
20 review and inspection of this project.

21 "Water drainage from the Boys Town Landfill
22 is a 15 to 20 year unresolved quality of life and
23 health issue, impacting Delphine Place homeowners.

24 Speaking for myself, and trying to ascertain what
25 is in this landfill, did the city keep records of

1 what was actually dumped on that property, other
2 than a general description on Metro construction
3 and debris? Is the landfill vented, and if yes, in
4 what directions? Is the run-off surface water and
5 or discharge from the interior of the landfill? Is
6 there anything more than DOH can do beyond
7 regulatory oversight to stimulate, mandate, and or
8 enforce the immediate cleanup of this landfill as
9 charged?

10 "One Delphine Place resident testified to
11 smelly water in her basement related she feels to
12 the landfill drainage. Has the DOH WPD taken
13 samples of the water found at the Delphine Place
14 Basement to ascertain what is leaking, or oozing
15 into the house abutting the landfill?

16 "Two Good Hope Road S.E. Another former
17 Metro Landfill site is property located on the
18 Southside of Good Hope Road S.E. between 18th and
19 24th Street, S.E., on either side of a section of
20 Ft. Stanton Park. National Park Service property.

21 "Did the city keep records of what was
22 dumped on this property other than Metropolitan
23 Construction debris? Is this landfill vented, and
24 if yes, in what direction? When a longstanding
25 landfill is disturbed, what controls are mandated

1 by DOH to measure possible air and water pollution?

2 What City agency if not DOH determines the
3 stability of landfill property for large scale
4 construction activity?

5 "Does compacted landfill property shift over
6 time? And if yes, what happens on the buildings
7 situated on the site? Is soil compacted, soil
8 preparation, regulated and by what D.C agency?
9 Many thanks for providing answers to these landfill
10 questions. If possible, a response by the end of
11 the month would be greatly appreciated."

12 That is the end of the message.

13 CHAIRPERSON REID: Okay. Any comments from Board
14 Members?

15 COMMISSIONER MITTEN: Well I think Mrs. Renshaw
16 raised a lot of issues that are legitimate issues. They are not
17 necessarily issues that are appropriately brought up in this
18 context, but I would like to make sure that when we dispose of
19 this case that we refer all of the materials that have been
20 submitted that relate to environmental concerns or erosion issues,
21 that we forward all of that to the Department of Health.

22 CHAIRPERSON REID: Okay.

23 VICE-CHAIRPERSON SOCKWELL: I as well agree that
24 Ms. Renshaw has brought up some salient issues. As to the extent
25 that we can deal with them, there is some question, but I do

1 believe that they should be referred forward.

2 CHAIRPERSON REID: All Right. Very well. Let's
3 move now to the discussion regarding the particular case before us
4 and I will then entertain a motion for our particular position on
5 this case. Would members --

6 COMMISSIONER MITTEN: Madam Chair, would you like a
7 motion first, or -

8 CHAIRPERSON REID: No.

9 COMMISSIONER MITTEN: Discussion first?

10 CHAIRPERSON REID: Discussion.

11 COMMISSIONER MITTEN: Well I'll begin by saying
12 that I am in favor of the application that's before us for both
13 single family and multi-family development on this property.
14 There are myriad conditions that have been proposed and I think we
15 need to give greater specificity to some of those conditions so
16 that the community can be assured that they will be met, and met
17 in a timely manner.

18 I guess just in general I'd like to say that we
19 heard a lot of concern from the community over the introduction of
20 new multi-family units in a neighborhood where there are a lot of
21 vacant or under-utilized multi-family properties that haven't been
22 taken care of and so forth. And all indications are in this case
23 both specifically, and in the context that is being created,
24 across the river, that this is a different kind of project than
25 exists in this community right now.

1 It's a different quality of project, it's catering
2 to a different economic level, and I think that that is something
3 to be -- in the context of considering whether this is going to
4 have a positive impact on the community, or a negative impact on
5 the community, I think that we can be assured that it will have a
6 positive impact.

7 I think to the extent that the citizens -- I think
8 I'd just like to read from Bernice Kernie's testimony. She had
9 said that those of us who have lived in Anacostia or more than 30
10 years and are homeowners believe that the key to economic
11 development and long term stabilization of our tax-bases is
12 through home ownership.

13 And that was the source of a lot of this resistance
14 to more multi-family development. I guess that I would recommend
15 to the community that they need to be aware of the fact that the
16 vision that has been set forward for their community and the
17 context of the comprehensive plan is for moderate density
18 residential development, and to the extent that she would like to
19 instead of providing a place where there could be more multi-
20 family developed, I think you need to speak to your legislators
21 when the comprehensive plans comes up for renewal, and say we
22 would really like to promote single-family residential and maybe
23 the vision needs to be changed.

24 So while we are meant to react to the vision as it
25 exists, which is moderate density residential on this site, it's

1 on for multi-family and I think what was proposed is consistent
2 with that. I would just recommend to the community that to the
3 extent that they would like things to be -- move in a different
4 direction in the future, that at least the first place to start is
5 with the comprehensive plan.

6 And I have other specific comments, but maybe I'll
7 defer to another Board Member at this time to make their remarks.

8 CHAIRPERSON REID: Okay. Mr. Moulden.

9 COMMISSIONER MITTEN: Madam Chair, I feel the
10 housing project is a good project for the community and the
11 District of Columbia in general. Specifically because it provides
12 a mixture type of housing, apartment and single family homes.

13 However, I hope that this project will be a benefit
14 to the community. That it will provide affordable housing and
15 also address some community needs and some development needs. I
16 think this project will -- the home ownership part will increase
17 the tax base for the District and attract various types of
18 residents to the area and may retain some in the area, so overall
19 I think that the project is a good project for the community,
20 however, there needs to be some conditions attached to this
21 project to ensure that it will address community concerns and just
22 development concerns.

23 VICE-CHAIRPERSON SOCKWELL: I have strong feelings
24 that this proposed development can act as a successful
25 development, as one catalyst for rehabilitation or replacement of

1 vacant buildings and renewed upkeep of existing populated multi-
2 family units and single family dwellings in the area.

3 I feel that a number of conditions have been
4 proposed by the National Park Service and others. The assertions
5 by the applicant of how it will more effectively confront the
6 community in a positive way, have some unresolved and/or
7 unquantified aspects which we will have to look into but I feel
8 that this neighborhood, like many neighborhoods that have
9 previously been unwanted by the development community, totally
10 underdeveloped, are in the midst of a major change in interest in
11 Washington and all of its neighborhoods, and that people are
12 looking for housing.

13 People are looking for quality housing and this is
14 one infield development which hopefully, like many others, will
15 eventually network and link together to produce over all
16 improvements in the quality of life in Anacostia and in other less
17 often looked upon neighborhoods. So I believe that we have
18 something that we can look forward to.

19 CHAIRPERSON REID: Board Members, this project for
20 me was rather troubling in that as you recall, the first time this
21 case came before us we turned it down and we did so because we
22 felt that the applicant had not met its burden of proof with
23 regard to the aspect of a special exception to adverse impact.

24 The community made it very clear to us that they
25 opposed it because of the fact that I don't think they had been

1 adequate outreach or lobbying of the persons who would be directly
2 impacted upon the development going forward. And as such, when it
3 came back for rehearing, we received quite a few letters in which
4 many of the opponents and prominent entities in the community had
5 reversed their positions 180 degrees and had started to support
6 this project which made us feel it warranted a second look.

7 Now when we had the presentation of the second --
8 the rehearing of the case, what I was looking to see, was how is
9 this case different from the first case. And what I did note was
10 that the applicant had made a colossal effort this time to reach
11 out to the community, to find out what the community concerns
12 were, to be cognizant of what kind of impact it would have on the
13 community, and to also look to what they could do as developers to
14 try to revitalize that whole area, not just with putting a project
15 in the middle of the community, but to demonstrate that they were
16 interested in being a good neighbor, and to show that they would
17 like to give back to the community.

18 Since then we've gotten in our records and heard
19 testimony there have been several agreements that have been struck
20 with various entities and various organizations in the community.

21 There have been proffers of assistance in terms of technological
22 training for the children, in terms of revitalizing or rehabbing
23 some of the wooded up houses in the community and providing funds
24 for a traffic analysis that would address some of the issues that
25 came up in regard to the traffic problems.

1 While I did have reservations, I feel that in the
2 long run, coming from a real estate point of view, that area had
3 been one that had been kind of overlooked, and it was fraught with
4 all kinds of problems, but given the current atmosphere and
5 environment in regard to real estate in the city, it now appears
6 to me that obviously that whole area is going to experience a
7 reawakening, if you will, and as such, I think that the community
8 there should be able to benefit, and therefore I would consider
9 supporting this application with adequate conditions that would
10 reflect the concerns of the community as well as the National Park
11 Service, as well as the Office of Planning, as well as the
12 agreements with the ANC.

13 Conditions with the ANC, agreements with the
14 various organizations, the terms that have been entered into in
15 terms of various agreements being reflected in the conditions and
16 anything and everything that we can possibly utilize to ensure
17 that the community is made comfortable with such a development
18 coming in its midst.

19 And as such, we feel that in so doing we feel that
20 we would better ensure that we had a viable and feasible
21 development, multi-family and single-family housing going in, and
22 that the community as a whole would derive, hopefully derive,
23 benefit from a decision that we make today.

24 So, unless any other Board Members have any other
25 comments, then we can now -- I'll ask for the question, and

1 entertain a motion.

2 COMMISSIONER MITTEN: I move that we approve the
3 application that is before us with conditions and those conditions
4 to be fleshed out subsequent to --

5 CHAIRPERSON REID: Right.

6 COMMISSIONER MITTEN: I don't know how you want to
7 handle the --

8 CHAIRPERSON REID: First of all, let me get a
9 second before we --

10 VICE-CHAIRPERSON SOCKWELL: I'll second the motion
11 for approval.

12 CHAIRPERSON REID: Okay, we would -- because of the
13 voluminous amount of conditions and agreements, and documents,
14 that pertain to mitigating adverse impact, and diffusing any
15 deleterious effects that this development may have in the
16 community, we will not deal with conditions today. We have to
17 flesh them out and to get our arms around which conditions are
18 applicable and determine how we can best do that.

19 So today we will make - we will have the vote and
20 then we will, in working with the Corp Counsel determine what
21 conditions will be imposed as part of the order.

22 VICE-CHAIRPERSON SOCKWELL: And if I might add,
23 Madam Chair, any conditions that are not made part of an order
24 would certainly merely preclude our having input or impact on
25 whether those needs of various parties are important to what we

1 doing, but in regard to the development itself, we would hope that
2 the applicant and those who have issues will come together and
3 satisfy all of those that are most salient.

4 CHAIRPERSON REID: Mr. Sockwell, you mean -- what
5 are you saying?

6 VICE-CHAIRPERSON SOCKWELL: In other words, any
7 conditions that we don't make may be part of some assertions by
8 various parties in the case, and that those conditions that we
9 don't make part of the order are still issues that the developer
10 and those entities should try to work out, if they are deemed
11 relevant so that they don't have to be something that we will
12 become party to with regard to the order.

13 CHAIRPERSON REID: So, in other words you are
14 saying that if in fact there is some other issue that is not
15 contained within our conditions, that you recommend that the
16 applicant and any opposition try to hammer that out?

17 VICE-CHAIRPERSON SOCKWELL: Exactly. That would be
18 the neighborly thing to do.

19 CHAIRPERSON REID: We better do it with conditions.

20 VICE-CHAIRPERSON SOCKWELL: Hmm?

21 CHAIRPERSON REID: We better do it with conditions.

22 VICE-CHAIRPERSON SOCKWELL: Well, if we don't think
23 they are important enough to make them conditions, and yet they
24 are something that the applicant wishes to work with, it's the
25 applicant's prerogative.

1 CHAIRPERSON REID: Oh, I see. In other words you
2 are saying that you don't want to limit it to whatever --

3 VICE-CHAIRPERSON SOCKWELL: The applicant wouldn't
4 be limited -

5 CHAIRPERSON REID: -- we include in the conditions?

6 VICE-CHAIRPERSON SOCKWELL: Exactly.

7 CHAIRPERSON REID: Okay, the conditions, once the
8 conditions are hammered out, then we will review the conditions
9 and determine that we are all in the same page with them, and have
10 them to be included as a part of the order.

11 COMMISSIONER MITTEN: Perhaps it would be advisable
12 to set a date by which we would do that, because as I would
13 understand it, the order really wouldn't be completed until the
14 conditions are finalized.

15 CHAIRPERSON REID: Well, this is going to be a full
16 order and it will take some time, because it has so many different
17 issues to be contained therein with the findings of facts, and
18 conclusions of law, so Ms. Pruitt, do you want to set a date for
19 when the conclusions --

20 MS. PRUITT: I would have to refer with Corp
21 Counsel.

22 CHAIRPERSON REID: I'm sorry, the conditions would
23 be --

24 MS. PRUITT: If you can give us at least two weeks,
25 a little bit -- and then we could set it. I am trying to think of

1 our next meeting. The next meeting is on the 18, but you have a
2 very full agenda that day.

3 CHAIRPERSON REID: If the conditions are gotten to
4 us in our packages, then the only thing that we would really
5 discuss is those that we may have had some issue with or some
6 objection to. But I think that we are all on the same accord,
7 basically, as to the conditions that have been set forth.

8 We have tons of conditions, and we just want to
9 make sure that they are specified and they are condensed down to
10 what is needed without leaving anything out and that's why we
11 don't have the time to do that today.

12 MS. PRUITT: I just wanted to make you aware that
13 you already have a special public meeting on the 18th to discuss
14 the Clarke case anyway.

15 CHAIRPERSON REID: So, we could do that that day?

16 MS. PRUITT: That starts at nine, so that means
17 that you'd have to --

18 CHAIRPERSON REID: Is that good? Mrs. Sansone?
19 All right. That's fine.

20 MS. PRUITT: Just so that I am clear, you are going
21 to meet in executive session to deal with the conditions or are
22 you going to do it in deliberation out here?

23 CHAIRPERSON REID: We'll do it on the dais.

24 MS. PRUITT: Okay, and you are starting at nine?

25 CHAIRPERSON REID: Yes, it should not be that much

1 that we have to discuss. I think that we are all on the same page
2 as far as the need for including these various conditions that
3 have come from different sources into the order of it, we just
4 want to do it in an organized manner to ensure that we give as
5 much comfort to the opposition as we can through the -- to
6 mitigate and to diffuse any adverse impact.

7 MS. PRUITT: So you'll be doing both the Clarke
8 Case and this case within that half an hour?

9 (Laughter.)

10 CHAIRPERSON REID: Yes.

11 MS. PRUITT: Okay, I just wanted to be clear.

12 COMMISSIONER MITTEN: Madam Chair, just as a
13 procedural matter, should we, since we all have comments on the
14 conditions and how to tighten them up, should we give all that to
15 the Corporation Counsel, and then they'll draft - they'll put all
16 that together, and then give us a draft back to react to, or how
17 are we going to do that?

18 CHAIRPERSON REID: Corporation Counsel is in
19 agreement to -- however we decide to do it, they will all support
20 that decision.

21 COMMISSIONER MITTEN: Okay, well then I propose
22 that we each individually give them our comments, suggestions for
23 the conditions, and then they condense that all down to a final
24 draft.

25 CHAIRPERSON REID: Okay. All right, any further

1 discussion? Comments? All right all in favor, say aye.

2 (Chorus of Ayes.)

3 CHAIRPERSON REID: Opposed?

4 MR. MOULDEN: Aye.

5 CHAIRPERSON REID: I did that just before, didn't
6 I? Left your vote out. But let's do it again.

7 MR. MOULDEN: For the record I would like to say
8 that I read the transcripts, because I left early for one part of
9 the hearing.

10 CHAIRPERSON REID: Let me do that again, Mr.
11 Moulden, because I got you on the opposite when I said all
12 opposed.

13 Okay, all in favor?

14 (Chorus of Ayes.)

15 CHAIRPERSON REID: All opposed?

16 (None opposed.)

17 MS. PRUITT: Staff would record the vote is four to
18 zero to one to approve motion made by Mrs. Mitten, seconded by Mr.
19 Sockwell. Mrs. Renshaw abstaining, and I would like -- she asked
20 that something be read into the record in reference to her
21 abstaining in her decision.

22 I have decided to abstain. The D.C, Department of
23 Health has not provided me a written response to my memo. I am
24 not convinced that the two sites are suitable enough, stable
25 enough for building. I worry about what happens if the new homes

1 show signs of deterioration due to land shift.

2 We do not want to stand in the way of progress and
3 economic revitalization, but we also have to be concerned with the
4 public's health. This case is so sensitive that it is best for
5 the city members to come to a consensus with out my absentee
6 decision wrapped in conditions. Therefore, as I am out of town
7 for the vote, I will abstain.

8 (Whereupon, the hearing in the matter of the
9 application of KASS MA, L.L.C. was concluded at 11:53 a.m.)

10 CHAIRPERSON REID: Thank you. Okay, we have one
11 more case.

12 MS. PRUITT: The next case to be decided is
13 application 16554 of JAMES AND JULIA P. EDMONDS for the Studio
14 House of Arts pursuant to 3104.1 for a special exception under
15 Section 206 to permit the establishment of existing buildings to
16 be used for music of the art; the owners will reside on the top
17 two floors in the D/R-3 District at premises 2306 Massachusetts
18 Avenue, N.W. (Square 2507, Lots 4 and 5).

19 Your hearing date was March 1. The record was
20 closed at the end of the hearing except for the requested draft
21 orders which were submitted by March 27th.

22 CHAIRPERSON REID: All right, Board members.

23 MR. SOCKWELL: I move that the Studio House project
24 application be denied on the basis of traffic issues that cannot
25 be effectively managed with the level of traffic that would be

1 inherent to the use proposed.

2 MR. HOOD: Madam Chair, if I may add, I will second
3 the motion. After hearing deliberations and seeing the film, I
4 have some concerns and I know that the charge of this commission
5 and the Board of Zoning Adjustment is to protect the safety and
6 health of the citizens of the District of Columbia.

7 I think in approving this in a manner within that
8 circle, I think we are setting up some very tragic situations for
9 that community and for the students involved so I will second the
10 motion.

11 CHAIRPERSON REID: I concur with you, Mr. Hood and
12 Mr. Sockwell. I think that I was not convinced that given the
13 fact that we now have T Street -- no, the Q Street Bridge that is
14 inoperable right now but once it is open, then we have that
15 additional traffic coming around that circle.

16 For the cars to back into that circle I think would
17 be very dangerous. Particularly you have children involved here
18 and the adverse impact as presented to us by the community I think
19 has great merit. I was not convinced that the applicant made
20 their case so I would concur.

21 Do you have any comments, Mr. Moulden?

22 MR. MOULDEN: Yes. After reading the transcripts
23 on this case, I also agree that this project shouldn't be
24 approved.

25 CHAIRPERSON REID: All right. All in favor?

1 (Chorus of Ayes.)

2 CHAIRPERSON REID: All opposed?

3 (None opposed.)

4 MS. PRUITT: Staff would record the vote as four to
5 zero to deny. Motion made by Mr. Sockwell and seconded by Mr.
6 Hood.

7 (Whereupon, the hearing in the matter of the
8 application of JAMES H. AND JULIE P. EDMONDS FOR THE STUDIO HOUSE
9 SCHOOL OF THE ARTS was concluded at 11:55 a.m.)

10 CHAIRPERSON REID: That concludes our public
11 hearing for this morning -- meeting. Excuse me. Now we will go
12 into a public hearing.

13 (Whereupon, at 11:55 a.m. the public meeting was
14 adjourned.)

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