

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY,
OCTOBER 3, 2000

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
RODNEY MOULDEN	Board Member
ANNE RENSHAW	Board Member
ROBERT SOCKWELL	Board Member

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Vice Chairperson
KWASI HOLMAN	Commissioner
JOHN PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

JERRILY KRESS	Director, Office of Zoning
SHERI PRUITT	Secretary to the Board of Zoning Adjustment
BEVERLEY BAILEY	Office of Zoning
PAUL HART	Office of Zoning

OTHER STAFF PRESENT:

MARY SANSONE Office of Corporation Counsel

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

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

(9:48 a.m.)

CHAIRPERSON REID: This is a meeting of the Board of Zoning Adjustment. The meeting will now come to order.

Mr. Hart?

MR. HART: Good morning, Madam Chair, members of the Board.

The first item on your agenda for this public meeting, October 3rd, is the minutes. The first minute is for September 5th public hearing. What is your --

CHAIRPERSON REID: Mr. Hart, I think that what we'd like to do is basically like a consent calendar.

MR. HART: Yes.

CHAIRPERSON REID: So, that you could basically read them all, and then I will have a motion and a second taken in its entirety rather than one at a time.

MS. MITTEN: Madam Chair, the only reason I would suggest that maybe we shouldn't do that is I can only vote on two of them, two sets of minutes, because the other two I wasn't in attendance. So, I can't vote on a block.

CHAIRPERSON REID: All right. Then take two at a time, the two that you were --

MS. MITTEN: I was here for the 13th and the 26th.

CHAIRPERSON REID: Okay.

MR. HART: I will take your two and -- okay. Madam

1 Chair, we are requesting a vote on the minutes for September 13th
2 public and September 26th public hearing.

3 MS. MITTEN: I had a -- before -- I'll make a
4 motion for approval, but prior to that I'd like to suggest an
5 addition to the September 26 minutes. On page 4, under
6 Corporation Counsel, there were actually two questions that were
7 put to the Corporation Counsel. So, there's one in addition to
8 the one that's listed.

9 And the second question has to do with the
10 university practice of transitioning housing from rental to
11 student occupied by giving preference to students. And the
12 question is whether or not that practice is consistent with the
13 Human Rights Act and the Fair Housing Act.

14 MS. RENSHAW: Repeat that again.

15 MS. MITTEN: The question to the Corporation
16 Counsel is, is the university's practice of transitioning housing
17 from rental housing to student occupied housing by giving
18 preference to students consistent with the Human Rights Act and
19 the Fair Housing Act?

20 CHAIRPERSON REID: Isn't that basically the same
21 thing?

22 MS. MITTEN: No. The issue that's in our minutes
23 has to do with the idea of providing incentives for students to
24 live off campus, which would be considered potentially
25 discriminatory towards the students. And the alternative, or the

1 second question is, is it a practice that could be potentially
2 discriminatory to non-students?

3 CHAIRPERSON REID: Okay. That was raised as a
4 question to Corp Counsel in that particular hearing?

5 MS. MITTEN: Yes, it was, because I raised it.

6 CHAIRPERSON REID: Oh, okay. Mr. Hart? It was
7 raised, but it was omitted inadvertently from the minutes. All
8 right. So, we're going to amend the minutes to include the other
9 question that was raised by -- the question to Corp Counsel that
10 was raised by Ms. Mitten.

11 MS. MITTEN: So, with that addition, I would move
12 adoption of the September 13 and September 26, 2000 minutes of the
13 BZA.

14 MS. RENSHAW: Second.

15 CHAIRPERSON REID: All in favor?

16 Opposed?

17 MR. HART: Staff will record the vote for the
18 September 13 and September 26 minutes public hearing. Motion made
19 by Ms. Mitten and seconded by Ms. Renshaw. The vote is five to
20 zero.

21 Now, the next minutes I will deal with will be
22 September 19. I'm going to go over the 5th for a particular --
23 we're waiting on Mr. Holman. Without Mr. Holman for the 5th, we
24 won't have a quorum. So, the minutes for September 19.

25 MS. KRESS: We only need three for a quorum.

1 MR. HART: Yes, but, no, the September 5th, only
2 three members are here, and Mr. Holman is coming later.

3 CHAIRPERSON REID: I thought that he had submitted
4 a proxy.

5 MR. HART: No, Mr. Hood has submitted a proxy for
6 another day; Mr. Holman hasn't.

7 CHAIRPERSON REID: He hasn't.

8 MR. HART: But he's coming later, so we --

9 MS. KRESS: We should do that for the future.
10 Let's just hold it, yes.

11 CHAIRPERSON REID: We'll hold it until he comes,
12 and then we'll pick that up.

13 But for the 19th, Mr. Hart, I didn't receive those
14 minutes.

15 MR. HART: Those minutes should be in your package.

16 MS. PRUITT: They should be part of your overall
17 package that looks like this.

18 CHAIRPERSON REID: I did not --

19 MR. HART: The complete package has all four --

20 MS. PRUITT: Mr. Reid?

21 CHAIRPERSON REID: I understand how it's supposed
22 to look, but I got three in mine.

23 MS. KRESS: We will get you something. Beverly,
24 could you please get Ms. Reid a copy of these minutes?

25 CHAIRPERSON REID: Yes, I didn't get this.

1 MS. KRESS: That's the particular minutes.

2 CHAIRPERSON REID: Then we'll also hold this one as
3 well.

4 We'll hold the minutes for the 5th and the 19th
5 until Mr. Holman gets here. Then we can vote on those minutes
6 after he has an opportunity to look over the ones of the 19th that
7 I did not get a copy of.

8 MR. HART: The next agenda item, Application 16296.
9 This application was filed with the Office of Zoning on September
10 18, 1997. To date, no further action has been taken by the
11 Applicant. In a letter dated August 23, 2000, the Office of
12 Zoning requested that the Applicant indicate whether there were
13 plans to continue or withdraw the application. The Office further
14 indicated that if a written response is not received by September
15 15, 2000, the case would be placed on the Board's public meeting
16 agenda for October 3, 2000 with a recommendation that the case be
17 dismissed.

18 There was no response from the Applicant.

19 CHAIRPERSON REID: There being no response from the
20 Applicant in regard to this particular case, I would go along with
21 the staff recommendation that this particular case be dismissed.

22 Can I get a second?

23 MR. MOULDEN: Second.

24 CHAIRPERSON REID: Comments?

25 All in favor?

1 Opposed?

2 MR. HART: Staff will call the vote as five to zero
3 to dismiss this case. The motion was made by Mrs. Reid, seconded
4 by Mr. Moulden.

5 The next case is Application 16407 of the Capitol
6 Hill Group, pursuant to 11 DCMR Subsection 3108.1, which is a new
7 subsection in 3104.1, for a special exception under Section 359
8 for opening an additional 32 beds in an existing nursing facility
9 at 700 Constitution Avenue, Northeast. This is Square 865, Lot
10 76.

11 In a letter dated April 21, 2000, the Applicant
12 requested a modification to condition number 4 of BZA Order Number
13 16407 and the legal description of the subject site. The
14 requested modification sought to reduce the number of parking
15 spaces provided in condition number 4, from 276 off-street parking
16 spaces to 200 off-street parking spaces and to reflect that the
17 Square for which the relief was sought was Square 895, not Square
18 865.

19 At it's public meeting in June, on June 7, 2000,
20 the Board reviewed and discussed the record of the case and the
21 modification request. Accordingly, the Board ordered that the
22 parking space requirement in BZA Order Number 16407 be reduced
23 from 276 spaces to 200, and the legal description of the site be
24 written to reflect Square 895 instead of Square 865. Modification
25 Order Number 16407 was signed September 8, 2000.

1 In a letter submitted to the Office of Zoning on
2 September 13, 2000, the Advisory Neighborhood Commission 6A
3 submitted a motion for reconsideration of the Modification Order
4 16407. The ANC attests that on September 7, 2000 at its regular
5 monthly meeting with a quorum present, a motion to request
6 reconsideration of Modification Order Number 16407 was unanimously
7 passed.

8 The hearing date was June 7 of the Modification
9 Order. The decision date was June 7.

10 The Board members present at that case was Ms.
11 Mitten, Mr. Sockwell, Mr. Moulden, Ms. Renshaw, the vote to grant,
12 and Ms. Sheila Cross Reid to grant by a proxy vote.

13 CHAIRPERSON REID: All right, thank you.

14 Board members, discussion?

15 MS. MITTEN: Madam Chair?

16 CHAIRPERSON REID: Yes.

17 MS. MITTEN: I think that there are several issues
18 that have been raised by the ANC, and the most significant is the
19 issue of notice and their ability to participate in the decision
20 that we made. And I think that every opportunity should be given
21 to them to participate given that it's outside of their --
22 evidently outside of their control that they weren't given that
23 opportunity to participate.

24 And there's also some additional information that I
25 think would be relevant to the decision that we made originally

1 regarding, among other things, the status of the parking garage
2 and the impact of the proposed townhouse development.

3 Now, the ANC has requested -- they have requested
4 reconsideration, and I would just like to suggest that if we,
5 instead of reconsideration which would really confine us to the
6 record that we have, I'd suggest that we consider having a
7 rehearing so that we could allow additional evidence in including
8 the report of ANC 6A and some additional information regarding the
9 status of the parking garage and some of the other issues related
10 to parking.

11 So, I would move for a rehearing of this case.

12 MS. RENSHAW: Second.

13 CHAIRPERSON REID: Any other discussion?

14 I have no problem with that. I do agree with my
15 colleague that there are some issues that do need to be addressed
16 with regard to the concerns of the ANC.

17 So, all in favor?

18 Opposed?

19 MR. HART: Staff will call the vote as five to zero
20 for this case to be reheard. The motion was made by Ms. Mitten
21 and seconded by Ms. Renshaw.

22 The next case before you, Madam Chair and the
23 Board, is --

24 MS. MITTEN: Could I just interrupt before you
25 proceed? Is it possible to give -- since there are people here, I

1 assume, that are concerned with this -- is it possible to give the
2 date for the -- or premature? Okay.

3 MS. KRESS: I'm sorry, we haven't set a date. It
4 will tentatively, because of our current schedule, probably be in
5 February.

6 MS. MITTEN: Okay. Thank you.

7 MR. HART: The next application is Application
8 Number 15613, Application of Nidal Sukhtian, as amended, pursuant
9 to 11 DCMR 3107.2, the new section 3103.2, for a variance from the
10 minimum lot occupancy requirement, Section 532, a variance from
11 the minimum area required as residential recreation space,
12 Subsection 533.4, and a variance to allow residential recreation
13 space on a roof deck with dimensions of less than 25 feet,
14 Subsection 533.8, for construction of a four-unit apartment house
15 in an SP-1 District at premises 1622 18th Street, N.W., Square
16 134, Lot 164.

17 In a letter dated September 8, 2000, the Applicant
18 requests modification of plans for BZA Order Number 15613. The
19 revised plans reflecting the requested modifications were
20 submitted to the D.C. Department of Consumer and Regulatory
21 Affairs on May 11, 2000.

22 A letter of opposition, dated September 13, 2000,
23 was filed by Richard B. Nettler, Esquire, on behalf of Drs. Sylvia
24 Tetrault and Harvey Steinberg, owners of the condominium units
25 directly affected by the proposed modification.

1 The hearing dates on this case were January 22 and
2 June 17, 1992. The decision dates were March 4, April 8, July 29,
3 September 2, and October 7, 1992.

4 The Board members sitting on this case were Susan
5 Morgan Hinton, Betty King, and Sheila Cross Reid.

6 This case is before you, Madam Chair.

7 CHAIRPERSON REID: Okay. Thank you, Mr. Hart.

8 Discussion, Board members, in regard to this
9 particular case before us? If I could get some input.

10 MS. MITTEN: Madam Chair?

11 CHAIRPERSON REID: Ms. Mitten?

12 MS. MITTEN: Well, I think, first off, we have to
13 recognize the fact that the request for modification is deficient
14 in several respects. One is that our rules require that reasons
15 be listed for the requested modification, and there really isn't
16 any reasoning put forward in the request. And the second
17 deficiency is that the ANC was not served, and they are required
18 to be served with the request. So, those are two issues that I
19 think warrant denial of the request for Modification.

20 I think if the Applicant wants to go forward with
21 this, I would suggest that a rehearing would be in order, given
22 that there seems to be several significant changes proposed.

23 So, I could make a two-part, or two motions.

24 CHAIRPERSON REID: Yes. The nature of the request,
25 I agree, the reasons for setting forth to us the reasons why they

1 felt it was a need for a modification is not evident. One of the
2 issues was the building height being reduced, which should be, of
3 course, less invasive for the community, but then rear yard was
4 increased. And given the fact that there was no notice as
5 required to the ANC, that puts us in kind of a quandary.

6 Now, I don't know, and I'd like to hear from other
7 Board members as to whether or not if you feel that if we should
8 move forward or either have a rehearing or continue this issue
9 about a modification, giving him time to submit to us a rationale
10 for why the modifications are being requested, and also to give it
11 to time for the ANC to give us its input. That is another way to
12 go with that.

13 I'd like to hear from my colleagues as to what your
14 thinking is.

15 MR. MOULDEN: Is there anyone in the audience from
16 the ANC here that --

17 CHAIRPERSON REID: They can't talk.

18 MR. MOULDEN: -- to give a report?

19 CHAIRPERSON REID: They can't talk.

20 MR. MOULDEN: They can't give -- okay.

21 CHAIRPERSON REID: Yes, no one from the audience
22 can speak in the meeting.

23 MR. MOULDEN: Okay. The case here, the
24 modifications seem very minor. The reduction of height and the
25 increase of three-tenths of a foot is very minor. I don't have

1 any problem with that, but I do have a problem that we don't have
2 any input from the ANC. So, for the sake of time, I would like to
3 get these cases through and done and over with, but we have to
4 allow for the community input.

5 So, I recommend that we just ask for a continuance
6 until we get that information.

7 CHAIRPERSON REID: Okay. Mr. Sockwell? No
8 comment?

9 Ms. Renshaw?

10 MS. RENSHAW: I would concur with Ms. Mitten's
11 request for a denial and then a rehearing with new information. I
12 think that there is need. There has been a long period of time
13 here. But I would go with that and would second her suggestion if
14 she's made it into a two-part motion.

15 MS. MITTEN: Well, let me start with -- we'll take
16 it in pieces, and then we'll see where it goes.

17 MS. RENSHAW: Sure.

18 MS. MITTEN: I'll move that we deny the request for
19 modification regarding 1622 18th Street.

20 CHAIRPERSON REID: Ms. Renshaw --

21 MS. RENSHAW: Second.

22 CHAIRPERSON REID: Okay. All in favor?

23 Okay. The motion would fail with a lack of --

24 MS. PRUITT: I'm sorry, could we actually get a
25 vote again? I wasn't able to catch that.

1 CHAIRPERSON REID: Okay. I didn't say opposed.

2 All in favor?

3 Opposed?

4 MS. PRUITT: Mr. Sockwell?

5 MR. SOCKWELL: Abstention.

6 MR. HART: The staff will call this part of the
7 vote for the request for modification to be denied. The motion
8 was made by Ms. Mitten, seconded by Ms. Renshaw. Mr. Sockwell
9 abstained.

10 The vote of four to zero to one.

11 MS. PRUITT: Two to two to one.

12 CHAIRPERSON REID: No, no. Two in favor, two
13 opposed, and one abstention.

14 MS. KRESS: So, the motion does not carry.

15 CHAIRPERSON REID: Would you like to make a motion?

16 All right, we'll have another motion.

17 MR. MOULDEN: I'd like to make a motion that we
18 continue this case after receiving information from the ANC on
19 their concern and input for this project.

20 CHAIRPERSON REID: I think we want to give a time
21 certain for the Applicant to submit to us a rationale for the
22 modification which has been submitted or requested --

23 MR. MOULDEN: Right.

24 CHAIRPERSON REID: -- as well as time for the ANC
25 to be able to participate and give us their position as far as

1 this case is concerned.

2 MR. MOULDEN: Yes, and then also --

3 CHAIRPERSON REID: Is there a time for the meeting?

4 MS. KRESS: Because you're going to handle this as
5 a meeting, this is not a rehearing, you can put it onto either
6 your November meeting or December meeting. I'd probably suggest
7 the December meeting, so that would be December 5, the morning of
8 December 5. So, you would probably want the information in --
9 Sherry, they would want the information in --

10 MS. PRUITT: By Thanksgiving, the Thursday --
11 Thanksgiving week, I'm sorry, I don't have a calendar directly.
12 Here, let me look.

13 MR. MOULDEN: And the information also includes a
14 rational justification for it.

15 MS. PRUITT: Yes, November -- the week of November
16 28, that Monday.

17 MS. KRESS: Okay. And to reiterate, you're looking
18 for both the ANC's response to this as well as the Applicant's
19 explanation of the modifications --

20 MS. PRUITT: Well, the Applicant needs to -

21 MS. KRESS: -- and the reasons why.

22 MS. PRUITT: -- provide a detailed explanation of
23 the request for modification, the reasons why, and then serve that
24 on the ANC, because they initially did not serve the ANC to begin
25 with.

1 MS. KRESS: Okay. Then for the ANC to respond,
2 then I think they need to serve it on the ANC by November 15 so
3 that the ANC can have response time by the 28th --

4 MS. PRUITT: Correct.

5 MS. KRESS: -- to get it into the packages for the
6 December 5 meeting.

7 MS. PRUITT: Madam Chair?

8 CHAIRPERSON REID: Yes.

9 MR. PARSONS: The Applicant will also need to
10 address why he's coming in outside of the six-month rule. In
11 3129, the modification requests are to be made within six months,
12 and he would need to ask for a waiver and show good cause as to
13 why he's outside that time limit. So, that should be part of this
14 written submission.

15 CHAIRPERSON REID: Okay, thank you very much. I do
16 agree with that. We do not have that information before us as
17 well. All right.

18 MS. KRESS: I believe there's a motion from Mr.
19 Moulden.

20 CHAIRPERSON REID: Correct.

21 MS. KRESS: Was there a second?

22 MR. SOCKWELL: I'll second it.

23 CHAIRPERSON REID: All in favor?

24 Opposed?

25 MS. MITTEN: Opposed.

1 MR. HART: Staff will call the vote as five to
2 zero.

3 CHAIRPERSON REID: Four to one.

4 MR. HART: Okay. Staff will call the vote as four
5 to one. Mr. Moulden made the motion; Mr. Sockwell seconded it.
6 Ms. Mitten abstained in opposition.

7 Now, the following dates are noted: The Applicant
8 is to serve the ANC by November 15. Information is due to the
9 Office of Zoning, or into the Board, by November 28 at which the
10 Applicant should explain why -- should give justifications for the
11 modifications that he's requesting.

12 MS. KRESS: And the waiver of the six months.

13 MR. HART: Yes, okay. Thank you.

14 Next case, Madam Chair?

15 CHAIRPERSON REID: Yes, Mr. Hart. Just one moment
16 for Mr. Parsons.

17 You can go ahead and call it.

18 MR. HART: The next case, Madam Chair, is case
19 number 16573, Application of Martin E. Hardy, pursuant to 11 DCMR
20 3103.2, for variances for the construction of two new flats from
21 subsection 402.4 from the maximum floor area into requirements for
22 the structure; 403.2, from the permitted percentage of lot
23 occupancy requirements for a structure; 404.1, from the minimum
24 depth of rear yard requirements, and 406.1, from the minimum width
25 and area of a closed court requirements in a DCOD/R-5-B District

1 at premises 1821 and 1823 Florida Avenue, N.W., Square 2556, Lots
2 808 and 812.

3 A motion for reconsideration by Hanna Association
4 an motion for stay by Lothrop House and Elaine Morris have been
5 submitted to the Board.

6 The case was heard on June 20, 2000; the decision
7 date was July 5, 2000.

8 The Board members were Mr. Sockwell, Ms. Renshaw,
9 Mr. Moulden, Ms. Reid, and Mr. Parsons.

10 The case is before you, Madam Chair.

11 CHAIRPERSON REID: All right. Now, there are two
12 issues here, the reconsideration and then a motion for a stay, so
13 let's take them up individually, the reconsideration first.

14 MS. SANSONE: Madam Chair, with regard to the
15 motion for reconsideration, the Applicant, Martin Hardy submitted
16 an opposition; however, it was filed late, because he was outside
17 of the country at the time. He didn't have a -- he filed it as
18 soon as he returned. So, he is asking the Board to waive the
19 seven-day filing deadline for oppositions to motion for
20 reconsideration to accept his memorandum.

21 CHAIRPERSON REID: All right. I have no problem
22 with that. You want to vote on it or accept by consensus unless
23 there's a --

24 SOCKWELL: I don't have any problem with it.

25 RENSHAW: That's fine.

1 CHAIRPERSON REID: Okay. Then we would accept Mr.
2 Hardy's opposition -- late opposition that was not timely filed.

3 All right. Now, as to the matter of
4 reconsideration, Board members? Discussion?

5 MR. PARSONS: I think the key thing here, Madam
6 Chair, is the fact that the Hanna Association who came forward
7 with this motion brings to us no additional materials,
8 supplemental materials, no new evidence in the case, other than a
9 perfunctory statement, no accusations of specificity on how we
10 failed or what basis upon which to reconsider this. So, I see no
11 basis for reconsideration by the Board.

12 CHAIRPERSON REID: I agree with you. I think that,
13 basically, the assertion is that within the order that the
14 conclusions of law were not based on substantial evidence, that it
15 did not flow vastly from the findings of fact. And that is, as
16 you so indicated, that is basically a matter of opinion or
17 perception or how one interprets it. I did not see where there
18 was a real basis put forth -- on a substantial put forth for the
19 Board to reconsider their decision.

20 And I would second -- did you make a motion?

21 MR. PARSONS: Well, I wasn't going to be that
22 aggressive. It's early in the discussion.

23 CHAIRPERSON REID: All right. Further discussion?

24 Mr. Sockwell?

25 MR. SOCKWELL: I am satisfied with your --

1 CHAIRPERSON REID: Ms. Renshaw?

2 MR. PARSONS: I would move to deny the motion for
3 reconsideration, Madam Chair.

4 CHAIRPERSON REID: All right. I second that.

5 All in favor?

6 Opposed?

7 All right. Now, as to --

8 MR. HART: Staff would call the vote as five to
9 zero to deny the motion for reconsideration.

10 Mr. Parsons made a motion, seconded by Ms. Sheila
11 Cross Reid.

12 CHAIRPERSON REID: As to the issue of the motion
13 for a stay, as we know, there are four criteria for the issuance
14 of a stay, and what to look at is if in fact the criteria has been
15 met. And we can discuss each of them.

16 The first one being are the opponents likely to
17 prevail on the merits of the appeal? What are your thoughts in
18 regard to that particular -- the first one?

19 MR. PARSONS: Well, again, there's no new evidence
20 submitted, so they're arguing with what we had before us. And
21 they're attempting to bring in some additional discussion over the
22 potential value that they were willing to offer Mr. Hardy. And I
23 just, again, cannot see how they would -- how we would come to the
24 conclusion that that particular issue would result in prevailing
25 on the merits.

1 CHAIRPERSON REID: Right. We don't have -- we have
2 no -- that is not something within our privy to even take up or
3 consider the issue as to the amount that was offered and whether
4 or not it was accepted and how it affected the situation
5 economically anyway. So, I would agree that that is not anything
6 that we would even concern ourselves with as the BZA.

7 And the other issue -- any other input?

8 Okay. Second one was will the opponent suffer
9 irreparable harm if the stay is denied? For myself, I did not
10 come to that conclusion that there would be any irreparable harm
11 done. I don't know how the other Board members felt in that
12 regard.

13 MR. PARSONS: Well, they claim that construction
14 noise and dust would cause them irreparable harm, and I think we
15 had a construction management plan associated with it to be
16 sensitive to that.

17 And they also claim that these party walls -- which
18 indeed are not party walls, they're retaining walls holding up
19 earth; they're not traditional party walls that is an adjoining
20 building is my understanding of the word "party wall" -- that
21 those will be stabilized in any event. So, certainly, I don't
22 think anybody would agree that -- I mean disagree that those
23 garages, if demolished, wouldn't be a benefit to the community.

24 CHAIRPERSON REID: Yes, I agree. And I don't think
25 that with regard to the dust and noise, I think that at best that

1 would be temporary during the construction period. And the issue
2 of the blocking of the light and air, I don't think that was borne
3 out in the testimony during the hearing to the extent that it
4 would convince me that that would cause irreparable harm to the
5 neighbors or the abutters of that particular property, that site.

6 Mr. Moulden, did you have any comment?

7 Ms. Renshaw?

8 MR. SOCKWELL: I would just agree with you, Madam
9 Chair.

10 CHAIRPERSON REID: Okay. And then the third one
11 was will the opposing parties be harmed by a stay?

12 Ms. Renshaw, could you speak to that, please?

13 MS. RENSHAW: I did not find anything that would
14 indicate that the opposing parties would be harmed by a stay,
15 Madam Chair.

16 CHAIRPERSON REID: Okay. And anyone else?

17 I would agree with Ms. Renshaw.

18 The last one being, does the public interest favor
19 granting a stay?

20 Mr. Sockwell, did you have feelings toward that
21 one?

22 MR. SOCKWELL: I don't really think so. I don't
23 think that the public would be --

24 CHAIRPERSON REID: The public interest?

25 MR. SOCKWELL: -- interest would be --

1 CHAIRPERSON REID: Harmed?

2 MR. SOCKWELL: -- harmed. No, I do not.

3 CHAIRPERSON REID: Okay. I don't think we need to

4 --

5 MR. PARSONS: Certainly, based on our observations,
6 the A&C, that this deplorable section of the Avenue just needs to
7 be brought up to speed with the rest of the neighborhood, and
8 delaying this further is certainly not in the public interest.

9 CHAIRPERSON REID: All right. Then all in -- no.
10 I need a motion on the floor to deny the stay.

11 MR. SOCKWELL: I would move that the stay be
12 denied.

13 MS. RENSHAW: Second.

14 CHAIRPERSON REID: All in favor?

15 Opposed?

16 MR. HART: Staff would call the vote as five to
17 zero to deny the stay.

18 Mr. Sockwell with the motion; Ms. Renshaw seconded.

19 Next case, Madam Chair, 16604, the Appeal of
20 Fairview Heights Neighborhood Association.

21 CHAIRPERSON REID: I think you're skipping one.

22 MR. HART: Okay. Application 16559, the Morris and
23 Gwendolyn Cafritz Foundation/The Field School, pursuant to 11 DCMR
24 3104.1 for a special exception to establish a private school under
25 Section 206 for a maximum for 320 students and a maximum of 74

1 faculty and staff in the R-1-A District at premises 2301 Foxhall
2 Road, N.W., Square 1341, Lots 856, 861, and 879.

3 The Board discussed this application at its March
4 15, March 29, May 10, and July 25, 2000 hearing sessions. The
5 Board completed hearing the case, set a decision date for
6 September 5, 2000, and indicated that the following submissions be
7 made: The results of further dialogue between the Applicant and
8 the parties in opposition, including Sylvia Shugrue; two, written
9 closing argument from the Applicant; three, findings of fact from
10 the Applicant and parties; four, submissions from James Long,
11 Delon Hampton & Associates. Mr. Long is to provide a summary of
12 intersections he has designed in the Washington area.

13 All required submissions were made by the dates
14 specified by the Board at the September 5, 2000 public meeting.
15 There were only three Board members in attendance, and one of the
16 three members indicated that he would have to leave the meeting
17 early, thus losing a quorum. On a vote of three to zero, the
18 Board moved to postpone the meeting until its October 3, 2000
19 public meeting.

20 The Board members were Ms. Reid, Ms. Renshaw, and
21 Mr. Parsons who voted to postpone.

22 The case is before you, Madam Chair.

23 CHAIRPERSON REID: Thank you, Mr. Hart.

24 All right, Board members, discussion, please, or a
25 motion in regard to this particular case.

1 MR. PARSONS: Well, Madam Chairman, this case has
2 consumed a lot of time and energy, especially the citizens. But I
3 think the Field School has gone to extraordinary lengths to
4 accommodate the citizens, the District Department of Public Works,
5 and this Board, and others in the process. And the result here is
6 a project that I think has evolved into one that will be one that
7 I can support.

8 It has taken a long time and a lot of effort, but I
9 feel that we finally have the issue of traffic and access
10 resolved. There are a few conditions, of course, that need to be
11 reinforced to protect some of the neighborhood -- neighboring
12 parties. But I think, in sum, I am ready to support the
13 application and would make a motion to do so.

14 CHAIRPERSON REID: Thank you, Mr. Parsons. I would
15 second the motion. I concur with your comment in regard to the
16 Field School. I think that they met their burden of proof in
17 regard to their application, and as such, the areas that I have
18 caused quite a bit of time and attention from the community as
19 well as from the various entities that are involved in the
20 decisionmaking, such as the Office of Planning, which recommended
21 support, as well as the DCW, who recommended support, as well as
22 the traffic consultant's analysis, which I agree with, I feel that
23 there has been quite a considerable amount of tweaking to try to
24 make this particular school fit in the proposed site.

25 And I feel that given the conditions that have been

1 proposed and which we can go over the conditions separately,
2 because there has been conditions from the Office of Planning,
3 from DCW, from the Applicant, as well as from the National Park
4 Service, and the fact that we've had over 200 letters of support
5 for this application, although we have had some opposition, which
6 we do take their concerns very seriously in order to mitigate any
7 perceived or adverse impact that may evolve as a result of the
8 application being granted to structure them in such a way that
9 they would be the most favorable or in the best interest of the
10 community.

11 I'd just like to add I felt that the School, the
12 Field School, made a very strong case, and I was swayed most
13 favorably by the fact that the impression of the Field School by
14 most everyone who testified, even those who were in opposition,
15 was most favorable. And unlike some of the other cases we have
16 before us, we did not hear any instances where there's students
17 directing themselves other than in a most proper manner at all
18 times. And that is very important.

19 Also, it seems that the Field School actively came
20 to us to address the issues, some of the problems that they had
21 heard about or they had received are occurring and gave solutions
22 to those problems. And, as such, I feel that this is a very
23 worthwhile application for this Board to support.

24 Further discussion?

25 MS. RENSHAW: Madam Chair, Mr. Parsons, I have

1 listened with interest to the motion and your comments. I have a
2 different perspective on this case, and when reviewing the record
3 for today's discussion and vote, what I did was line up the pros
4 and the cons. And, of course, on the cons, that is addressing the
5 adverse impact that has been brought to the BZA's attention.

6 Now, this is a very important piece of property.
7 The Applicant is also a very prestigious, well-liked school with a
8 great reputation. The piece of property is half in a minor
9 watershed, according to the Park Service testimony. Therefore,
10 whoever owns the property must take that into consideration when
11 developing the property.

12 So, therefore, anything having to do with storm
13 water management that was brought to the Board's attention and was
14 advanced as one of the solutions for the site did not really make
15 a mark on me, because, again, whoever owns the property is going
16 to have to manage that storm water runoff. That is a given.

17 So, therefore, on the pro side, before I get into
18 the adverse impact, there has been advanced to us the argument
19 that it's the best use of the site, that the School will be good
20 neighbors, as I'm sure they would be, that they are offering a
21 third lane with a left turn stacking lane, a staggered arrival,
22 prohibiting the parking on the neighborhood streets, closing the
23 northern entrance of the property -- they've made a deal, by the
24 way, with neighbors on, I believe, it's 44th Street not to use
25 that exit/entrance -- parking for about 128 cars and ten buses,

1 and then again the storm water management.

2 But let's look at the adverse impact, and I have
3 not heard the solutions that the Chair has said she has heard and
4 has been convincing to her. I have -- and I have not lost this
5 concern of safety. Foxhall Road is a difficult roadway. It is
6 narrow. Flashing lights will do nothing to curb the speeding or
7 to lessen the danger of that roadway. That's all there is to it.

8 I speak from experience because of where I live, where there is a
9 private school, and where there are flashing lights. And I can
10 speak to the record that flashing lights will mean nothing.

11 Also, I am not the least bit in favor of private
12 traffic lights on public streets. Traffic lights should be at
13 intersections so that it manages the flow of traffic in cross
14 directions, not just given to assist a private party getting in
15 and out of a piece of property.

16 It took, in my neighborhood, ten years to get an
17 important traffic light on an intersection -- at an intersection.

18 It has taken us 15 years, and we're not there yet, to get a
19 traffic light at another crucial location. And yet, we have
20 advanced to the Board a traffic light that is going to be paid for
21 -- I never did hear whether the upkeep would be paid for by the
22 Applicant -- but the Applicant is able to advance the thought of
23 having a private traffic light, and that's what it is, a private
24 traffic light. I don't go for that.

25 And it's not going to help anybody trying to cross

1 at the intersection; in fact, the cars are going to stack up in
2 front of Mrs. Shugrue's property while waiting for that light to
3 change. And then comes the time when the traffic light is not
4 activated, because the students are no longer in the School, and
5 then because of the third lane, it's going to be a neat little
6 area to pass.

7 The congestion will remain on Foxhall Road. Given
8 the number of cars in the city, given the number of streets that
9 are impacted, cars are going to look for any way that they can get
10 downtown fast. And I don't see any less congestion on Foxhall
11 Road because of the treatment of traffic than we have right now.

12 There is the matter of substantial reconfiguration
13 of the roadway, and our testimony supports that, the relocation of
14 utilities. Now, that's a major, major job, and we have had in the
15 city neighbors speaking out against tampering with streets. And
16 yet, here we have an applicant who because of where it has to site
17 the School, we are going to have to have a substantial
18 reconstruction of the roadway. I wonder if that's fair.

19 I also took into account the ANC's feelings on
20 that, because they have to be taken with great weight. They have
21 reservations about the School being sited on the Cafritz property.

22 But one of the most convincing reasons why I cannot
23 endorse this is the impact on Mrs. Shugrue's property, because her
24 property is the key to making the Field School work. There will
25 be enormous pressures on Mrs. Shugrue to sell her piece of

1 property. It is on a corner. It is strategically positioned.

2 Also, take note of the fact that the entrance to
3 the School is now close to her property. So, therefore, Mrs.
4 Shugrue is going to have to put up with the noise and the
5 pollution of all of these cars going in and out of the Field
6 School location. And that simply is not fair. I don't care what
7 the buffer is. Whether you have a wall or you have trees,
8 whatever it is, it's not going to do much to reduce the pollution,
9 which floats above, and the noise.

10 Now, students like to congregate in parking lots,
11 there is no doubt about it, before and after school. So, there
12 will be the impact on her property. But when I talk about the
13 impact, I'm talking about making matters so uncomfortable or
14 making her quality of life disintegrate to such a point that she
15 perhaps gives in to the Field School as a purchaser of her
16 property. And really when you look at the Field School at that
17 location and the butters, I have --

18 CHAIRPERSON REID: Excuse me, excuse me. I just
19 want to interject something. You may continue, but just let me
20 say this: We don't have any testimony before us in regard to the
21 purchase of Mrs. Shugrue's property --

22 MS. RENSHAW: Yes, we do.

23 CHAIRPERSON REID: -- as to whether or not they
24 will or will not -- I don't think that we should really go into
25 that aspect of it.

1 MS. RENSHAW: We had in July the 25th, I believe it
2 was, we had a reference to the Field School attempt to purchase
3 two more properties.

4 CHAIRPERSON REID: Well, again, I think that we
5 should be very careful about going into whether or not Mrs.
6 Shugrue is being pressured to sell her property, because I don't
7 think that that is a part of this case.

8 But continue, but I think I would --

9 MS. RENSHAW: I will continue. I will continue.

10 CHAIRPERSON REID: -- you'll leave that part alone.

11 Thank you.

12 MS. RENSHAW: So, I feel that the abutters are
13 going to be the ones most impacted with this School; there is no
14 doubt about it. And, again, I think that there is ample evidence
15 in the -- through the testimony in our files to point to the
16 impact on Mrs. Shugrue's property and the fact that with the noise
17 and the pollution, the entrance so close to her property, that her
18 quality of life is going to deteriorate on that property, and I do
19 not feel that I can support the School locating its school on the
20 Cafritz property.

21 And I'm sorry about this, because the School,
22 again, has a great reputation, and we want to support schools in
23 our neighborhoods. But this School's location is not the best, in
24 my opinion. A narrow road, one entrance, close to a private
25 property, residential property, introducing safety as a concern to

1 those who are abutters to the property and those who use the
2 street, the congestion that is going to ensue with the School in
3 that location, because that's a narrow part of the roadway, again,
4 the reconfiguring of the road at public expense, because I mean
5 we'll have to carry on with the roadway improvements after the
6 School pays --

7 CHAIRPERSON REID: Ms. Renshaw, don't repeat what
8 you've already said.

9 MS. RENSHAW: Thank you, Madam Chair, but I am just
10 --

11 CHAIRPERSON REID: Can you wrap, please?

12 MS. RENSHAW: Yes, of course I can wrap.

13 CHAIRPERSON REID: Thank you.

14 MS. RENSHAW: And I haven't quite done so. But
15 those are the points given today to say that I cannot support the
16 Field School's location.

17 CHAIRPERSON REID: Thank you very much.

18 Mr. Sockwell?

19 MR. SOCKWELL: While I understand Ms. Renshaw's
20 concerns about the Field School and the traffic issues are
21 particularly the ones that I think have been the most difficult to
22 resolve or to work through, I would want to start by saying that,
23 and very briefly, that the property owned by Mrs. Shugrue is
24 meaningless, in my belief, to the plans of the Field School. Its
25 location has absolutely no impact on the Field School's needs for

1 land or utility of its site.

2 However, the Field School will have some effect on
3 her property based upon its location within that neighborhood, as
4 would any development have effect on the adjacent neighbor's
5 property. However, the principal buildings of the Field School
6 are located remotely from that property, and there is significant
7 buffering to limit direct effects, both in real terms vehicular
8 and in significant terms activities, especially when they would
9 not occur late in the evening.

10 Going to the traffic issue specifically, I believe
11 that the Field School and the Department of Transportation have
12 made -- and the Department of Public Works have made significant
13 moves to alleviate the potentials of congestion. And with regard
14 to traffic signals being placed to access specific properties,
15 there are instances in Woodley Park and elsewhere in the city
16 where such traffic signals have been installed specifically for
17 that purpose -- Wisconsin Avenue at Fresh Fields or what was
18 called the Whole Foods Market is one particular example paid for
19 by the developer of the Store.

20 But I believe that the Field School is, again, a
21 particularly difficult project to review simply because it does
22 present a major increase in activity, not so much for the site but
23 for Foxhall Road, which has become a major traffic connector.
24 However, there are times when such changes wind up to be
25 beneficial in the long run, not because they create congestion but

1 because they slow the flow.

2 And one of the things that will happen with the
3 Field School is a slowing of the flow, which may result in the
4 diversion of traffic from that residential community's street,
5 which is really a front street of different character than say
6 Dexter or any of the adjacent side streets. It may help to return
7 some of the character back to the street, from Lothborough all the
8 way down to Reservoir. There's a potential of that.

9 But I do feel that the Field School has been well
10 worked over the coals of this committee -- this Board and the
11 community to the extent that most of the problems have been
12 reduced. Perhaps none of them completely eliminated, but
13 certainly most of the problems have been significantly reduced.
14 And I believe that it is now in a form where its impacts on the
15 community are acceptable.

16 CHAIRPERSON REID: Thank you, Mr. Sockwell.

17 Mr. Moulden? Okay.

18 Just one point of clarification. Ms. Renshaw, you
19 mentioned that the Chair had -- that all of the adverse impacts
20 had been addressed and solved. Let me clarify that, because
21 that's not what I was saying. I was saying that the adverse
22 impacts or the impacts on the community, in my opinion, had been
23 diffused to a great degree and that the conditions that had been
24 suggested to us through the Office of Planning and National Park
25 Service, as well as the Applicant, could be utilized to mitigate

1 some of the impact that would be realized by that community.

2 That being said, is there further discussion?

3 MR. SOCKWELL: Just one other thing. With regard
4 to storm water management, that's an issue that if the Park
5 Service accepts the solutions and the District accepts the
6 solutions, I don't think that this Board needs to step further
7 into that area.

8 CHAIRPERSON REID: Thank you, Mr. Sockwell.

9 All in favor?

10 Opposed.

11 MS. RENSHAW: Yes, opposed.

12 CHAIRPERSON REID: Okay. All right.

13 MR. HART: Madam Chair, before I call the vote, how
14 are you to handle conditions? Are you going to vote them now or
15 --

16 MS. KRESS: I think it's the vote, and then they
17 will deal with the conditions. So, it is the vote --

18 CHAIRPERSON REID: Call the vote.

19 MS. KRESS: -- with the conditions to be
20 determined.

21 MR. HART: Okay. Staff will call the vote as four
22 to zero. The motion was made by Mr. Parsons, seconded by Mrs.
23 Reid. Mrs. Renshaw in opposition.

24 MS. RENSHAW: So, it's four to one.

25 MR. HART: Four to one, yes.

1 CHAIRPERSON REID: As to the conditions, Mr. Hart,
2 the Board will impose conditions in regards to this particular
3 case. And what typically do is to go over the conditions and then
4 determine which conditions we are going to propose and have it put
5 as a part of the order.

6 Now, did we want to --

7 MS. KRESS: Do you want to discuss them today or
8 would you rather do that at another time? It's up to you.

9 CHAIRPERSON REID: Well, typically, given in the
10 interest of time, we have given our decision and then deal with
11 the conditions at another time before the order is actually --

12 MS. KRESS: Issued.

13 CHAIRPERSON REID: I'm sorry?

14 MS. KRESS: Issued.

15 CHAIRPERSON REID: I'm sorry. No, before we
16 actually issue the order, I was just trying to think if we can set
17 another date for working on the conditions. Some of the
18 conditions that we have received, they have been numerous. They
19 come from different entities, and we want to try to --

20 MS. KRESS: You might mention that the conditions
21 have been compiled from every party -- Corp Counsel --

22 CHAIRPERSON REID: Yes, Corp Counsel has --

23 MS. KRESS: -- and all the parties.

24 CHAIRPERSON REID: -- tried to condense them for
25 us. Nonetheless, what we're going to do is to tweak them better

1 and to make sure that all the Board members are on the same page
2 as far as the conditions coming from these various entities so
3 that we can come up with one body of conditions that we will
4 attach to the order once it is issued by the BZA.

5 MS. KRESS: Your next decision date is November 8,
6 if you would like to finalize the conditions at your next meeting.

7 CHAIRPERSON REID: Do we want to go over the
8 conditions on the dias or do we want to do it in executive
9 session?

10 MS. KRESS: Whatever you feel like doing.

11 CHAIRPERSON REID: Board members?

12 MS. PRUITT: Just for information for warning, you
13 do also have the Georgetown Campus Plan that day.

14 MS. KRESS: Yes, I am aware of that. This would be
15 conditions --

16 CHAIRPERSON REID: Well, what we may want to do is
17 ask Corp Counsel again to basically condense them, to make sure
18 that there is no repetitiveness in the conditions and to give us
19 the conditions that -- to identify which agency they came from.
20 And then we can -- we can then -- we don't have to -- it can be
21 submitted in our packages, and then when we have our session, we
22 can just basically say condition number 1, number 2, number 3,
23 making sure that the members of the -- whoever's in the hearing
24 room would also have copies of it, and we could basically
25 facilitate in most expeditiously at that time, if it is the

1 pleasure of the Board members --

2 MS. KRESS: What about -- does anyone here have --

3 MR. SOCKWELL: Yes, I have some.

4 MS. KRESS: -- some general guidance on the
5 conditions so that we can put them in a final format for you to
6 review?

7 MS. PRUITT: Actually, in your package, there
8 should be an OP report, the --

9 MR. MOULDEN: I have a question too. Just for the
10 record, do you think it would be good today for the public
11 information just to generally say what the conditions are based
12 around? Haven't we done that in the past just to give an idea?

13 CHAIRPERSON REID: There's so many.

14 MS. KRESS: There's so many, I think that might be
15 cumbersome.

16 MS. PRUITT: Also in the record, if anyone is
17 interested, this is part of the public record for them to read
18 now.

19 MR. MOULDEN: Can we say whether this is related to
20 transportation or --

21 MR. SOCKWELL: Yes, I think we should categorize
22 the conditions.

23 CHAIRPERSON REID: Oh, sure. The categories for
24 the conditions were basically traffic management --

25 MR. MOULDEN: Storm water management.

1 CHAIRPERSON REID: -- storm water management --

2 MR. MOULDEN: Lighting.

3 CHAIRPERSON REID: -- noise, parking. The other
4 thing was, as to Mrs. Shugrue's property specifically, there were
5 conditions that I had.

6 MR. MOULDEN: Buffering issues.

7 CHAIRPERSON REID: Yes, buffering, landscaping.

8 MR. PARSONS: I had a couple of specifics I wanted
9 to highlight, I think.

10 CHAIRPERSON REID: Okay.

11 MR. PARSONS: There seems to be some debate or
12 difference in these conditions as to whether there's a left turn
13 lane for emergency vehicles at the upper entrance. In one case,
14 it says no use, and the other one says left turn for emergency.
15 It was my understanding it would be for emergencies.

16 Secondly, I think it would be helpful to include
17 the construction management plan in the conditions, but I would
18 ask the Corporation Counsel to take a look at that to see if it's
19 really enforceable by the Zoning Administrator. I would urge, of
20 course, the Park Service's conditions be included rather than the
21 Applicant -- I think the Applicant stated it as to the
22 satisfaction of the Park Service. I would hope that the Board
23 would include the Park Service's conditions rather than have that
24 more unenforceable condition.

25 Then there were two exhibits contained in one of

1 the -- I don't know where I found it, okay, and they look like
2 this. I think they came -- the trouble is we all have too much
3 paper. But this came in, I think, from the opposition. It's
4 showing the regulation fields in comparison for baseball. And I
5 think it's convincing to me that baseball should not be played
6 here. And it shows to me that a well hit baseball into center
7 field is in somebody's living room, living beyond the property.
8 And I think softball is something we should consider.

9 And I hesitate to bring something like that up at
10 this point, but it's in the record, and it's very obvious to me
11 that 260 feet is not long enough baseball at the high school
12 level. It certainly could be played at elementary, little league
13 level at 260 but not at the high school level. So, I wanted to
14 highlight that for your consideration.

15 CHAIRPERSON REID: Are you saying that you would
16 advocate softball but not baseball?

17 MR. PARSONS: I would call softball and little
18 league baseball but not high school.

19 MR. SOCKWELL: Madam Chair, I don't know that we
20 have enough information on D.C. Public Schools or other schools to
21 compare field sizes to make that decision. I mean I wouldn't want
22 to recommend that they only use whiffle balls, but --

23 (Laughter)

24 MR. PARSONS: I realize this is very unusual. They
25 cited the D.C. Schools on this exhibit. If there's some way the

1 Office of Planning could --

2 CHAIRPERSON REID: Why don't we check into that --

3 MR. PARSONS: -- check into that and see if there's
4 validity to it.

5 CHAIRPERSON REID: -- and get a recommendation as
6 to the feasibility of their having a baseball field there?

7 MR. PARSONS: At the same time, I assume if
8 baseball was scheduled and it resulted in broken windows in the
9 neighborhood, the School would probably stop such practice. But
10 if it's obvious on the face of it, we ought to respond to that.

11 CHAIRPERSON REID: The issue -- thank you, Mr.
12 Parsons -- the issue that you raised, and I have that too as in
13 regard to the recommendation by DPW, that the northern entrance
14 not be used other than -- at one point, it said that it would not
15 be used at all, that it be fenced, gated. And then on another
16 part, it said that it should be used only for emergency vehicles.

17 And I wasn't clear, and could someone please clarify that for me
18 if you can? It's a little ambiguous as to what the intent was. I
19 think that's very important, because that was an issue also with
20 the ANC.

21 MS. KRESS: There has been diversity on this issue,
22 and that's exactly the one major thing I wanted to get direction
23 from you before we as staff continue on and try to work these out.

24 I think there is testimony on several sides on that issue, and I
25 do think that's one that we would look to you for direction from.

1 CHAIRPERSON REID: You toss the ball back over
2 here. So, you want us to basically make the decision as to
3 whether we will allow or not allow the northern entrance to be
4 used at all?

5 MS. KRESS: Or just for emergencies.

6 CHAIRPERSON REID: Well, I thought that -- I don't
7 know, Mrs. Kress, whether or not we are the experts that really
8 have the authority to determine whether or not there should be
9 accessibility for an emergency vehicle at a particular point at
10 the site. I'm not --

11 MS. PRUITT: Mrs. Reid, I believe one part --

12 MR. SOCKWELL: The Fire Department.

13 CHAIRPERSON REID: The Fire Department?

14 MR. SOCKWELL: Yes, the Fire Department requires
15 certain access, and that's really the key. Generally, the Fire
16 Department wants a straight through loop, in/out.

17 MS. PRUITT: I believe the question was whether or
18 not it should be gated. I believe the question was that there
19 should be a northern entrance for emergency, but should there be a
20 gate there all the time that when emergency comes someone would
21 have to open it up or would it always be an open entrance only for
22 emergencies?

23 CHAIRPERSON REID: Okay. That being the case, that
24 would be something that I think we should get the input from the
25 Fire Department or emergency vehicles or something like that.

1 MS. KRESS: Well, we can answer that, because if
2 it's for -- I'm sorry, I'm sure Board member Sockwell was going to
3 say just what I'm saying.

4 MR. SOCKWELL: Well, maybe not. I was going to say
5 that generally when gates are provided in private properties, the
6 Fire Department has keys if the gates are locked. If it's a
7 secondary or third response company, then they may not have keys.

8 Whether or not the gate's locked is something that would be an
9 operational issue, but the gate could be closed, and the Fire
10 Department wouldn't have any problem with it, generally speaking,
11 as long as they can get access through it when they need it. If
12 it's locked, they'll knock the lock off; that's guaranteed.

13 CHAIRPERSON REID: Okay? All right. So, that's
14 one of the things that we will be sure to address as we do
15 conditions.

16 Any other --

17 MS. RENSHAW: Number 20 under traffic management
18 where it says that the School shall work with the neighbors to
19 approach --

20 CHAIRPERSON REID: Number 20 on which document?

21 MS. RENSHAW: It's page 5, it's the --

22 CHAIRPERSON REID: Is it the Applicant or DPW or
23 Corporation Counsel?

24 MS. RENSHAW: It's proposed conditions from Corp
25 Counsel.

1 CHAIRPERSON REID: Okay, page 5?

2 MS. RENSHAW: Page 5, number 20, "The School shall
3 work with the neighbors to approach the Department of Public
4 Works." That's a long route into the Department of Public Works.

5 I think it should be the School with the ANC shall approach the
6 Department of Public Works; in other words, move on it. Don't
7 give false hope but to request -- the School can request the ANC
8 to approach the Department of Public Works to give a rundown of
9 traffic calming measures and a date certain when those measures
10 would be installed.

11 CHAIRPERSON REID: Ms. Renshaw, I think that that
12 is one of the conditions that we will be taking up --

13 MS. RENSHAW: Tweaking?

14 CHAIRPERSON REID: -- yes, at the time that we
15 actually go over all the conditions. And then the --

16 MS. RENSHAW: Well, you were talking about them, so
17 I brought it up at this point.

18 CHAIRPERSON REID: Well, I think in regard to
19 things that may have been omitted or not included, to make sure
20 that they were included in our conditions when we do take them up
21 to go over each one of them to make sure that what members have
22 satisfactorily inserted whatever they felt needed to be inserted
23 or omitted or modifications or what have you, so that we'll have
24 just one set of conditions rather than all these conditions.

25 MS. KRESS: And we'll try to have the whole order

1 drafted with this set of conditions. We will have varying
2 conditions, because we're drawing from four different places or
3 five different places, so there might be some conditions that are
4 absolutely opposed, one to another, for you to choose from as we
5 try to do a summary for you all to review.

6 CHAIRPERSON REID: Thank you.

7 MR. MOULDEN: Do we need to set a date to meet
8 again or we will get a draft of these conditions?

9 MS. KRESS: You will have a draft before your next
10 meeting. It will come out with your package for your November 8
11 meeting.

12 CHAIRPERSON REID: Okay. Any further discussion at
13 this time?

14 All right. Move now, Mr. Hart, I think we have one
15 more issue for this morning? Two more items? Which ones?

16 MS. KRESS: Did you want to break to have a few
17 minutes.

18 CHAIRPERSON REID: That's what we're going to
19 determine once we ascertain where we are in the mix of things. We
20 have -- oh, I'm sorry, yes, we do have two other -- now, I'm
21 sorry?

22 Okay, if the Board members would like, we can break
23 for a few minutes at this point so that we can address some of the
24 issues that we have before us and then come back in about 30
25 minutes. Is that good? One second, please.

1 Five minutes and we'll return, no more than ten.

2 (Whereupon, the foregoing matter went off

3 the record at 11:03 a.m. and went back on

4 the record at 11:25 a.m.)

5 MR. HART: Madam Chair, Board members, the next
6 item on our agenda is Number 16604, Appeal of the Fairview Heights
7 Neighborhood Association.

8 But before I read this case, Madam Chair, there is
9 a preliminary matter here. The Corporation Counsel filed their
10 findings of fact late, and they're requesting of waiver for it to
11 be waived into the record.

12 CHAIRPERSON REID: Unless any of the Board members
13 object, I would allow it to be waived into the record.

14 MR. HART: Okay. Case 16604, Appeal of Fairview
15 Heights Neighborhood Association, pursuant to 11 DCMR 3105 and
16 3106, from the administrative decision of the Zoning
17 Administrator, Department of Consumer and Regulatory Affairs in
18 the issuance of a building permit, Number B425220, that was issued
19 on July 16, 1999, to the Sikh Cultural Society to permit the
20 construction of a temple in an R-1-B District at premises 3801
21 Massachusetts Avenue, N.W., at Square 1816, Lot 45.

22 CHAIRPERSON REID: All right, thank you.

23 MR. HART: There's more.

24 CHAIRPERSON REID: Sorry.

25 MR. HART: Prior to hearing arguments on the

1 appeal, the Board discussed three preliminary matters and stated
2 it does not jurisdiction to hear and decide the following issues:

3 One, constitutionality -- the zoning regulations are
4 constitutionally invalid as they favor the establishment of
5 religion; Building Permit Number B425220 --

6 CHAIRPERSON REID: Mr. Hart, I'm sorry. Could you
7 repeat that and slower?

8 MR. HART: Okay. About the constitutionality?

9 CHAIRPERSON REID: Yes.

10 MR. HART: Okay. The first of the issues,
11 constitutionality. The zoning regulations are constitutionally
12 invalid as they favor the establishment of religion; Building
13 Permit Number B425220 is unlawful.

14 The vote on this was five to zero. The issue is
15 not within the jurisdiction of the Board's authority to decide.
16 Motion made by Sheila Cross Reid, seconded by Kwasi Holman, Rodney
17 Moulden, Robert Sockwell, and Anne Renshaw to approve.

18 The second issue was DCRA did not provide proper
19 notification to ANC 3C. The Appellant asserted that the
20 Department of Consumer and Regulatory Affairs did not provide
21 proper notification of the building permit's issuance to the
22 affected ANC 3C, as required by law.

23 The vote on this was four to one. The issue is not
24 within the jurisdiction of the Board's authority to decide. The
25 motion was made by Ms. Sheila Cross Reid, seconded by Robert

1 Sockwell, Rodney Moulden, and Kwasi Holman to approve. Anne
2 Renshaw opposed the motion.

3 The third issue was the inconsistency with the
4 comprehensive plan. The Appellant indicated that the terms of the
5 city's comprehensive plan were violated by the issuance of the
6 permit, which is law and should govern how properties are
7 developed throughout the District of Columbia.

8 The vote on this issue was four to one. The issue
9 is not within the jurisdiction of the Board's authority to decide.

10 Motion made by Sheila Cross Reid, seconded by Kwasi Holman,
11 Rodney Moulden, and Robert Sockwell to approve. Anne Renshaw
12 opposed the motion.

13 The parties of the appeal are: Appellant, the
14 Fairview Heights Neighborhood Association, represented by Richard
15 H. Boote; the Intervenor, the Sikh Cultural Society.

16 The Board heard the facts of the appeal and is
17 scheduled to decide the case at its October 3, 2000 public
18 meeting. The findings of fact are due on September 25, 2000.

19 The Board members are Sheila Cross Reid, Rodney
20 Moulden, Anne Renshaw, Robert Sockwell, and Kwasi Holman.

21 The case is before you, Madam Chair.

22 CHAIRPERSON REID: All right. Board members, I'll
23 open the floor for discussion in this matter. And, basically,
24 just to kind of summarize other than the issues that were raised
25 -- that have been put before us by Mr. Hart that we've already

1 voted on and decided on as to the constitutionality and also the
2 issue of the proper notice to ANC 3C, what we're looking at is
3 determining whether or not DCRA, or the Zoning Administrator erred
4 in agreeing the certificate of occupancy for this particular site.

5 And as such, what is before us is to apply the
6 regulations to determine whether or not there has been any
7 violation of the regulations or to determine whether or not we
8 feel that the certificate of occupancy was correctly issued.

9 MS. PRUITT: Specifically, the Board needs to look
10 at whether or not the building permits were issued in error, and
11 that's the one dealing with the setback requirements --

12 CHAIRPERSON REID: I'm sorry, I said certificate of
13 occupancy. I meant to say if the building permits were issued in
14 error. Thank you, Mrs. Pruitt, for making that point.

15 MS. PRUITT: And those building permits that deal
16 with the height restrictions setbacks and the number of parking
17 spaces.

18 CHAIRPERSON REID: So, discussion, Mr. Sockwell?
19 Could I ask you to --

20 MR. SOCKWELL: As far as I'm concerned, I believe
21 that the Sikh Temple met its requirements. While I would not be
22 unwilling to say that the Sikh Temple by its appearance and mass
23 is different from the character of the rest of the neighborhood,
24 it appeared to have met the requirements of law. And on that
25 basis, I see no reason to revisit the issue.

1 CHAIRPERSON REID: Is there a motion?

2 MR. SOCKWELL: I move that the appeal be denied.

3 MR. HOLMAN: I second that motion.

4 CHAIRPERSON REID: All right. No other discussion
5 is made. Do we have a second?

6 MR. HOLMAN: I seconded the motion.

7 CHAIRPERSON REID: I said any discussion.

8 MR. HOLMAN: No, I would concur with Mr. Sockwell's
9 observations.

10 CHAIRPERSON REID: Okay. Mrs. Renshaw?

11 MS. RENSHAW: Yes. While it appears that the
12 Temple has met its requirement of law, I was really hoping today
13 when we came to our meeting, that there would have been an out of
14 BZA settlement on this case; in other words, some kind of an
15 accommodation between the Temple and the neighbors to allow for
16 more green space and less mass, especially on that eastern side,
17 which would translate into a better fit in this residential
18 neighborhood.

19 We have found out in Northwest Washington that
20 buildings flush with the sidewalk or almost flush with the
21 sidewalk aren't very people friendly. And I point to the
22 redevelopment in the Friendship Heights area on the D.C. side
23 where a massive amount of money has gone into making a building
24 much more street friendly.

25 And here we are in a residential neighborhood where

1 there is so much mass in relationship to the homes, the
2 residential character, that it does throw the balance off. And,
3 therefore, I am very sorry that those officials from the Sikh
4 Temple cannot or would not be willing, it sounds like, to go back
5 to the neighborhood and renegotiate some kind of a better fit for
6 the neighborhood.

7 CHAIRPERSON REID: Mrs. Renshaw, question.

8 MS. RENSHAW: Yes.

9 CHAIRPERSON REID: Did they so indicate that they
10 were unwilling to meet with the neighborhood?

11 MS. RENSHAW: As my notes reflect, the Sikh Temple
12 officials have met with the ANC and reviewed the plans with them,
13 but there was nothing that came out of that that spoke to the fact
14 that they were willing to change the structure; in other words,
15 more green space, less mass, perhaps moving those stairs leading
16 up to the front of the Temple back a bit, which was a bone of
17 contention with the neighborhood.

18 CHAIRPERSON REID: Well, that's what I'm trying to
19 ascertain. Did they basically refuse or did they just say they
20 would not. I understand that there was no closure, but --

21 MS. RENSHAW: There was no closure, that's just it.

22 We do not have anything that said they would do this.

23 CHAIRPERSON REID: I was trying to determine
24 whether or not there was the possibility of us putting any
25 conditions to try to encourage --

1 MS. RENSHAW: And it can't be.

2 CHAIRPERSON REID: Yes, we can't do that.

3 MS. RENSHAW: Well, just to --

4 CHAIRPERSON REID: You might want to suggest still
5 -- I mean it doesn't prevent you from suggesting that in the --
6 just to bring about a type of meeting of the minds, in the
7 interest of the community relationship perhaps, they may consider
8 doing some of the things that you're mentioning. Not all but
9 maybe some at least to try to encourage some of the adverse impact
10 that the community is raising in opposition.

11 CHAIRPERSON REID: And I just want to also point
12 out that the neighborhood does have a right to be concerned about
13 the parking for a 270-congregation or building to that number. To
14 have so few parking spaces on-site is a problem, and there's going
15 to be a definite impact on the neighborhood. And we, the BZA,
16 have to recognize that.

17 But, again, I would suggest, I would concur with
18 the Chair, that if we could suggest to the Temple officials that
19 there be some custom tailoring to ease this Temple into the
20 neighborhood, changes might be for the better. There might be a
21 better accommodation, a better understanding, a better harmony in
22 the neighborhood if this were to take place.

23 MR. SOCKWELL: If I might say this, and I realize
24 that my position is based on what I believe the BZA's
25 responsibilities are under the zoning ordinance and nothing more,

1 the architecture of Sikh temples is a fairly unique and unusual
2 architecture by American standards. And the location of this
3 facility within this neighborhood is almost impossible to be
4 placed unobtrusively within the context of the other properties.
5 It is not a Lutheran church, it is not a Catholic church, it
6 doesn't have the more traditional architectural appearance, and
7 yet it meets the requirements of law.

8 I don't know how much the Sikhs could do to modify
9 the design. It's, again, an issue of utility of what one builds
10 -- cost effectiveness, et cetera. I do wish that the rear yard
11 had landscaping that would somewhat buffer the hard edge of this
12 very large structure against the block of 38th Street. However, I
13 do not know that at this point they could make such changes
14 effectively and still achieve the goal of housing their
15 congregation.

16 But, again, it's not my belief that it is within
17 the Board's authority to force modifications on something that
18 appears to meet the test of the law. But it is going to be a
19 difficult element to absorb within the context of the existing
20 community.

21 MS. RENSHAW: We did not talk about forcing. We
22 understand what we can and cannot do, but we can suggest, and that
23 is what the Chair recommended, and I support that.

24 CHAIRPERSON REID: You know, your points well
25 taken, both Ms. Renshaw and Mr. Sockwell. However, Ms. Sansone, I

1 do have a question in regard to one of the recommendations or
2 suggestions made by Ms. Renshaw as to not exceeding the authority
3 of what's in the purview of the Board, and that is in regard to
4 the parking spaces. If in fact we determine that an applicant, or
5 an intervenor in this particular case, is well within compliance
6 with the parking regulations in the number of parking spaces that
7 they are providing, then would it be inappropriate for us to
8 suggest that they try to have more?

9 MS. KRESS: They have met the -- I believe you have
10 decided they have met the letter of the law. I believe you are
11 absolutely correct where you are right now in that you're making
12 suggestions. They're building this as a matter of right, and
13 you're deciding whether they're doing it according to the code.

14 CHAIRPERSON REID: No, my question, Ms. Kress, was
15 if in fact they are in compliance, should we as a Board or can we
16 as a Board suggest that they exceed what is required of them by
17 adding additional parking spaces?

18 MS. KRESS: You can suggest, but the appeal is
19 basically to say whether it meets the law or not.

20 CHAIRPERSON REID: No, we understand that, and I
21 think we all agree that they do. But I think Ms. Renshaw was
22 trying to establish some wiggle room wherein there seems to be a
23 greater need for more parking -- that was the impression that you
24 got -- and to suggest that they try to just better accommodate the
25 community or by --

1 MR. SOCKWELL: Madam Chair, you're just saying for
2 the record we would --

3 CHAIRPERSON REID: For the public.

4 MR. SOCKWELL: For the public, right, we would
5 request that the Temple provide more on-site amenities to reduce
6 the impact of its congregation's parking.

7 CHAIRPERSON REID: In general.

8 MR. SOCKWELL: In general, in the community.

9 CHAIRPERSON REID: But now, Ms. Renshaw, are you
10 saying that this is something that's a given that it's inadequate,
11 in your opinion, or are you saying that if in fact it is
12 determined later that it is not adequate enough? They seem to
13 feel that it was.

14 MS. RENSHAW: I feel that the number of parking
15 spaces is inadequate given the size of the congregation.

16 CHAIRPERSON REID: But remember now, the number of
17 parking spaces is --

18 MS. RENSHAW: A formula.

19 CHAIRPERSON REID: -- a formula used by DCRA
20 determined for every institution --

21 MS. RENSHAW: I understand.

22 CHAIRPERSON REID: -- a hospital or every building
23 permit -- the number of parking spaces that are required, because
24 this is what they have determined is appropriate or adequate.
25 Only point I'm making, Ms. Renshaw, is that if in fact you feel

1 that it's not, then I would just ask you to defend that position.

2 MS. RENSHAW: I feel that it is not adequate,
3 because the 26 or 27 spaces will never absorb this congregation.
4 There is going to be substantial spillover into the neighborhood
5 streets. There is no way around it. And for this formula to
6 work, you're going to either have to cut back on the congregation
7 or ask everybody to walk.

8 MR. MOULDEN: Madam Chair, I think we should be
9 careful as to how we make our recommendations over and above what
10 the legal and the zoning requirements are. I think when we
11 recommend something over and above that, it has to be something
12 that's agreed upon in a mutual way with other agencies that may be
13 involved and the community. We can't just arbitrarily just make
14 statements without justification on our part too.

15 With that in mind, I think this proposal meets all
16 the regulations, and it's just a matter of us making a decision
17 right now. Anything after the fact, that's something that has to
18 be negotiated with the community and not with this Board.

19 CHAIRPERSON REID: Yes, well, I --

20 MS. RENSHAW: We are, in a sense, urging further
21 negotiations with the community. That was the point of all of
22 this discussion, to just touch on various areas where there can be
23 and should be more dialogue with the community.

24 MS. KRESS: And perhaps that could be even done as
25 a letter that accompanies the order, the appeal, from this Board,

1 whatever you decide on. Then you as a Board could write a letter
2 encouraging this kind of dialogue.

3 MR. MOULDEN: Yes, but we can't be arbitrary about
4 this. We have to base it on some precedent, some more implicit
5 facts. It can't be just because we want it; want it because of
6 what reason? It will impact the immediate parking in the
7 neighborhood on the street? I mean you're asking for overflow
8 parking now. You have to be more specific and more detailed in
9 how you ask for that information.

10 MS. SANSONE: Madam Chair, another aspect of this
11 is that if the Board feels the zoning regulations are not
12 sufficient, the appropriate thing would be to write to the Zoning
13 Commission and ask them to look into that particular aspect of the
14 schedule of parking spaces and revisit whether it really is an
15 appropriate regulation.

16 But there wouldn't seem to be any way, being that
17 this is a matter of right development, it doesn't appear there
18 would be any way to require spaces above the schedule in the
19 order. But a suggestion would be -- the letter Ms. Kress was
20 talking about would be fine.

21 CHAIRPERSON REID: Ms. Sansone, I think that your
22 point's very well taken, and that's my initial question to you,
23 because I know that the authority of the BZA does not exceed what
24 is set forth in the regulations. And it is enforced supposedly
25 through DCRA. And that's the point that I -- I didn't want us to

1 get into any trouble even with a suggestion of an issue, an item
2 that would be in excess of what we really can do, which is within
3 our authority.

4 So, I think that, Ms. Renshaw, with your
5 suggestions, and some of them are well taken, I think that the
6 parking needs -- the request for additional parking may be
7 modified somewhat so that perhaps we can or you might want to add
8 or send a letter suggesting that there be greater cooperation with
9 and greater modification or some modification that would be in the
10 interest of the community -- the best interest of the relationship
11 with the community without specifying particularly increased
12 parking.

13 MS. RENSHAW: Thank you. You have drafted the
14 letter well.

15 CHAIRPERSON REID: Okay. Thank you very much.

16 MR. SOCKWELL: Madam Chair?

17 CHAIRPERSON REID: Yes.

18 MR. SOCKWELL: Madam Chair, there is one item that,
19 since were on this, that I wanted to make sure was clear. The
20 seating requirement for this facility was set based on the number
21 of -- I mean the parking requirement was set based on the number
22 of seats, which I think there are 270 seats, so that would be 27
23 parking spaces.

24 CHAIRPERSON REID: That's right, exactly.

25 MR. SOCKWELL: Now, the question that may not have

1 been raised in the hearing was whether or not the seats were
2 fixed.

3 CHAIRPERSON REID: Can you elaborate on that a
4 little bit?

5 MR. SOCKWELL: In the zoning ordinance, Section
6 2101.1, the capacity based on occupancy is based on fixed seating.

7 However, if the seats are not fixed, each seven square feet of
8 usable space for seating or each 18 inches of bench, if benches
9 are provided, shall be considered one seat. So, there might be a
10 rationale for looking at the seating capacity based on square
11 footage as opposed to fixed seating.

12 CHAIRPERSON REID: Would that require more?

13 MR. SOCKWELL: That might require more seating to
14 be provided.

15 CHAIRPERSON REID: Okay. But, Mr. Sockwell, you
16 now are complicating the issue a little bit more, because --

17 MR. SOCKWELL: Well, the issue was brought up --

18 CHAIRPERSON REID: Now the question is why didn't
19 --

20 MS. PRUITT: Excuse me, Madam Chair?

21 CHAIRPERSON REID: -- DCRA use that -- apply that
22 particular formula than the other?

23 MR. SOCKWELL: The drawings that they supplied do
24 not state whether the seats are fixed or not, and no seating plan
25 was part of the filing documents. I apologize for not seeing it.

1 MS. PRUITT: I do believe, though, at the hearing,
2 and I will go back and check the testimony for you, because when
3 Mr. Hart and I reviewed this case, that was one of the questions
4 we asked, how did they determine seating.

5 CHAIRPERSON REID: How did the Zoning
6 Administrator?

7 MS. PRUITT: How did, yes, DCRA, and I believe
8 there's some testimony in the transcript from Mr. Bellow, but I'd
9 have to go back and check that.

10 CHAIRPERSON REID: Okay.

11 MR. SOCKWELL: But if fixed seating is provided in
12 a facility, the fixed seating plan has to be filed with the city,
13 because that is a determination of exit lane aisle -- or exit
14 aisle width for the purpose of fire safety. And since no seating
15 plan appeared in our documents, it might be possible --

16 MS. PRUITT: I don't know if they filed it with
17 DCRA, I don't know.

18 MR. SOCKWELL: -- that no seating plan appeared in
19 their documents. If not, then one could revert back to seven
20 square feet of sanctuary space and require the parking to match
21 that. That's the only reason I brought it up.

22 MS. PRUITT: No, I understand. I do remember this
23 being discussed. I can't remember exactly what. I can, if you'd
24 like, go back and research the transcript to find it.

25 MR. SOCKWELL: I would recommend that we continue

1 this appeal pending additional information, do you mind?

2 CHAIRPERSON REID: Well, I think --

3 MR. SOCKWELL: Because we don't know --

4 MR. HOLMAN: Madam Chair, if I may. I think it's
5 our responsibility as Board members to, when we're raising issues,
6 to be clear that -- this is clearly the kind of issue that should
7 have been discussed at the hearing.

8 MR. SOCKWELL: It is.

9 MR. HOLMAN: Let me -- please. I think that we
10 should be careful to not raise issues at a decision point and seek
11 information that we probably needed to have previously. We have a
12 motion before us, and with all due respect, I'd like to call the
13 question.

14 CHAIRPERSON REID: Is there a second?

15 MR. HOLMAN: Yes, I seconded the motion.

16 CHAIRPERSON REID: All right. Wait a minute, let's
17 go back. The motion was made by Mr. Sockwell and seconded by Mr.
18 Holman. Now, can we just move ahead with the vote?

19 All in favor?

20 Opposed?

21 MR. SOCKWELL: I'm going to abstain.

22 CHAIRPERSON REID: Ms. Renshaw, did you vote?

23 MS. RENSHAW: Abstain.

24 MR. SOCKWELL: I'm going to abstain from my own
25 motion.

1 MS. RENSHAW: I'm abstaining.

2 MS. PRUITT: You can't do that.

3 MR. SOCKWELL: I can't? Well, then I'll be opposed
4 to my own motion.

5 CHAIRPERSON REID: Well, no, no, no, no, Mr.
6 Sockwell.

7 MS. PRUITT: I believe the vote is Mr. Holman,
8 Moulden and Reid in favor, Mr. Sockwell abstaining, and Ms.
9 Renshaw in opposition.

10 MR. SOCKWELL: Well, let me do it this way: I
11 think it would be more appropriate if I withdraw my motion.

12 MS. KRESS: Not once the motion's on the table.

13 MR. SOCKWELL: I can't, can't withdraw the motion?

14 MS. KRESS: You cannot do that. If you want to
15 make another motion now at this point to try to overturn the
16 motion that's been passed, but the motion is on the table, and it
17 is now legitimately passed.

18 MR. SOCKWELL: All right. Okay.

19 MS. PRUITT: And that vote again is three, one,
20 one. Three in favor, one in opposition, and one abstention.

21 CHAIRPERSON REID: Specify who voted which way,
22 please.

23 MS. PRUITT: The three in favor, Mr. Holman, Mr.
24 Moulden, Ms. Reid; Mr. Sockwell in abstention and Mrs. Renshaw in
25 opposition.

1 CHAIRPERSON REID: Is that correct?

2 MR. SOCKWELL: That is correct.

3 MS. PRUITT: And that was a motion to deny the
4 appeal.

5 MS. KRESS: And I believe that also still includes
6 the letter that was being discussed that would be drafted for your
7 review as soon as we can by the Board members to accompany the
8 decision of this appeal and request the cooperation of the Sikh
9 Temple with the community and reevaluate some issues.

10 CHAIRPERSON REID: Okay. Thank you very much.

11 Our last case for the morning, Mr. Hart? Item,
12 last item for our consideration.

13 MR. HART: Application 16531 of Father Flanagan's
14 Boys Town of Washington, pursuant to 11 DCMR 3104.1, for a special
15 exception for the construction of four residential care buildings
16 under Section 303, each housing no more than six persons and an
17 addition to an administrative building, or in the alternative, the
18 construction of four residential care building units, each housing
19 not more than six persons and the conversion of the existing
20 residential unit into administrative use in the R-2 District at
21 premises 4801 Sargent Road, N.E., Square 3977, Lot 811.

22 The Board indicated that the Applicant needed to
23 address specific concerns prior to the Board making a decision.
24 The Board delayed making its decision for six months to afford the
25 Applicant and residents time to resolve community concerns. At

1 the end of six months, the Applicant and Advisory Neighborhood
2 Commission 5A are to inform the Board how the outstanding issues
3 have been resolved.

4 The issues to be worked on are: First, water run-
5 off -- all storm water run-off controls not directly associated
6 with the proposed new construction must be installed and
7 operating; noise abatement -- the Applicant shall take measures to
8 reduce noise from the emergency generator and the cooling tower;
9 community liaison program -- the Applicant shall establish and
10 convene an Advisory Liaison Committee to meet at least twice prior
11 to the September 20, 2000 report deadline. The meeting shall be
12 scheduled to afford the Community Liaison Committee a meaningful
13 opportunity to report to the ANC, which will then provide the
14 ANC's report to the Board. Next the security plan -- the
15 Applicant is to develop a security plan. This initiative is to be
16 coordinated with ANC 5A and the Commander of the area's police
17 precinct.

18 The Applicant and ANC 5A are each to submit a
19 report to the Board by September 20 verifying that the above
20 conditions have been met. The Board will make a decision on the
21 application at its October 3 public meeting.

22 The hearing dates on this case were January 19,
23 2000 and February 23, 2000.

24 The Board members sitting were Mrs. Sheila Cross
25 Reid, Anne Renshaw, and Robert Sockwell.

1 The case is before you, Madam Chair.

2 CHAIRPERSON REID: Okay. Board members, as you
3 might recall in this particular case when we heard it, we had our
4 first meeting to deliberate and then decided that it would be
5 better to not make a decision at that time but rather to continue
6 it until a date certain, which is today, October 3, so that we
7 could give Boys Town an opportunity to comply with some of the
8 major issues, some of the issues that we felt were very
9 significant.

10 And what we have before us is a matter of, given
11 the information that has been submitted to us in response to our
12 request, whether or not these issues have been sufficiently
13 mitigated to the point that we feel that we can move on with
14 approval or if we feel that they have not.

15 As such, I now open the floor for discussion as to
16 each of the issues. And Mr. Hart summarized them for us, but
17 specifically they are water run-off, noise abatement, community
18 liaison program, and the security plan.

19 Discussion?

20 All right, I'll start off with discussion.

21 I'd recommend approval of the application, Board
22 members, and the reason why is this: This is one of those
23 difficult cases that we have to make a decision on, and we don't
24 like to, but the fact of the matter is you have community
25 interests and their concerns pitted against those of a public

1 entity or an institution. And given the fact that we know that we
2 have to have in our city churches and institutions and schools and
3 what have you, at the same time, we have to look at how the entity
4 will impact the quality of life of the persons who are abutting or
5 live in that particular community.

6 And out of the hearing, which was a very long and
7 exhaustive hearing, it was determined that the major issues were
8 the water run-off, so let me start with that. My understanding
9 from the Applicant, represented by Shaw Pittman, I think it was --
10 who's the attorney?

11 MR. HART: Feola.

12 CHAIRPERSON REID: Who? Feola, Mr. Feola -- was
13 that they have moved to address their water run-off problem with
14 the construction of a retaining wall and a stream along the edge
15 of the Boys Town property. Now, I'm going to address both the
16 concern of Advisory Neighborhood Commission, which we have to
17 afford the great weight to, their position, and also looking at
18 and compare and contrast as I go through this.

19 Now, from the ANC letter, Timothy Thomas, it was
20 determined that they felt that the controls were not installed and
21 operating. Nonetheless, from the Applicant, we have determined
22 that they had applied for a building permit, and they have a
23 building permit number to authorize the construction of the
24 retaining wall, and that it is in the process of being -- it's
25 going through the processes, and is such that they have every

1 intention to have this done, which I feel is -- in my opinion, I
2 feel that that is adequate that they have taken the necessary
3 steps to try to address the issue.

4 The other one, number two, the noise abatement.
5 Again, the ANC states that there is still some noise coming from
6 the emergency generator and cooling tower. And, again, from the
7 Applicant in Feola's letter it's being proffered that to mitigate
8 the noise that there has been an attempt to -- or their in the
9 process of obtaining a building permit that would close existing
10 emergency generator and a sound attenuation shed, which is, in my
11 opinion, again adequate for what our requests specified.

12 Now, in regard to community liaison, that was a
13 problem, because that flew in the face of the issue I had, the
14 lack of compliance with the previous order in which there was
15 supposed to have been a community liaison already established, and
16 it had not been until it came almost time for them to come before
17 this Board, which unfortunately Applicants often do. Nonetheless,
18 from that time, it's indicated that there has been 12 -- that the
19 liaison has met 12 times to address the issues and that they also
20 have submitted to copies of the minutes as evidence of that
21 attempt and that there will be continued involvement through the
22 community liaison with Boys Town on a regularly scheduled basis
23 through the year, which I think is very important.

24 The other and last issue was in regard to the
25 safety, or the security. This is a very kind of difficult issue

1 because of the, I think, perception of the persons who reside
2 there, and I don't know the exact term that you use for the young
3 men who live on the premises. I asked about this so I could have
4 an understanding myself as to whether or not these young men were
5 juvenile delinquents or criminals or hoodlums or if they in fact
6 were the type of young men who would wreak havoc on the
7 neighborhood with all kinds of criminal activities.

8 And I remember hearing through my life that it was
9 a more place for boys who had problems or were undesirable or who
10 had been abandoned or who had issues as far as their family
11 structure was concerned, and this was a refuge to give them so
12 that they could have some semblance of a normal life, not
13 mentioning the fact that -- not overlooking the fact that along
14 with that type of situation comes emotional problems or adjustment
15 problems and the like. But I didn't feel it was the type of
16 entity that required bars or lockdown, because this was not a
17 prison or entity where kids were being punished.

18 And as such, I thought that more attention to the
19 security was in order, and this is what I wanted to see. And from
20 what I garnered was, from the information submitted to us, that
21 there was an increase in the monitoring of the youth, the
22 intervention staff training of facilities equipment. And the
23 staff would be more sensitive to the whereabouts of the kids, and
24 it had a plan in place in case there was any kind of abscondance
25 -- and I hate to use that word, but that's what they used in the

1 information to us -- but in case they kind of disappeared, didn't
2 show up.

3 And if in fact that happened, then my concern was,
4 was there a danger to the community? Did we have instances where
5 there had been criminal activities or had there been juvenile
6 delinquency problems that came as a result of the institute being
7 there. And I don't think, and someone could correct me, I don't
8 think that we saw that so much as just problems with the mere
9 existence of the boys in the community at any time. And I think
10 that we had to look at that and in all fairness determine if in
11 fact there was a great need for a large amount of security, which
12 I didn't think that was necessary.

13 We did get a police report of when the police had
14 been called to the facility, which is similarly, roughly three or
15 four times a month. But this was basically, it seemed to me, in
16 the most recent months a matter of a missing persons. And my
17 understanding from the testimony was that if a young man was not
18 at a certain place within a prescribed period of time, and I can't
19 remember exactly what that was, that they immediately called the
20 police. That was one of their rules, they had to do that.

21 So, the fact that you see all these missing persons
22 reports, that does not necessarily indicate that there was a
23 missing person per se. It may have just been the matter of them
24 being late for wherever they were supposed to show at a given
25 time, and the rules require that there be a police record, that

1 they called the police.

2 But I didn't see in this police report a lot --
3 yes, there were a couple of instances or a few instances of
4 juvenile activity, I think a couple of assaults, but not anything
5 that I would necessarily feel would require the kind of security
6 that would be indicative of them being criminals or hoodlums or
7 juvenile delinquents.

8 MS. RENSHAW: Madam Chair, we discussed at our
9 previous meeting --

10 CHAIRPERSON REID: Excuse me, could I get a second
11 on my motion?

12 MR. MOULDEN: What was that?

13 CHAIRPERSON REID: Oh, God. My motion was to
14 approve the application, and I'd like to get a second on my
15 motion.

16 MR. MOULDEN: I second.

17 CHAIRPERSON REID: And then a discussion. Thank
18 you.

19 MS. RENSHAW: Yes, Madam Chair, I recall when we
20 met back in April that we talked about, under security, having a
21 better tracking system for these young people, and I would like to
22 suggest that that be included in the security plan conditions.

23 CHAIRPERSON REID: Okay.

24 MS. PRUITT: Excuse me. Ms. Renshaw, do you want
25 them to submit something in addition to the draft security plan

1 that's been submitted that's part of the record?

2 MS. RENSHAW: Since we don't have anything that
3 addresses that, the answer is yes.

4 MS. PRUITT: What would you like? We need to be a
5 little bit more --

6 MS. KRESS: Perhaps we can draft it. It's such a
7 late time to ask them to draft something. Perhaps we could draft
8 it.

9 CHAIRPERSON REID: No. Okay, now, they have
10 included in the security program, and I quote from what was
11 submitted by Mr. Feola, "In the event that a youth leaves the
12 facility without permission, a graduated process of action will
13 occur." And then he then lays out what will occur. "Immediately
14 staff will initiate campus sweeps and notify all staff members of
15 the abscondance." And then he goes on to -- this the system that
16 is in place.

17 MS. RENSHAW: But I was suggesting is to have some
18 kind of a plan whereby they know the movements of these young
19 people as long as they are on the -- at the Boys Town facility.

20 MS. PRUITT: In excess to this.

21 MS. RENSHAW: In excess to that.

22 MS. PRUITT: Okay.

23 MS. RENSHAW: I recall at our hearing we had
24 information concerning the use of basketball. They would be
25 playing basketball in the community, my remembering the right

1 application, and I think I am. But in any case, to know where
2 those students are, not just when they --

3 CHAIRPERSON REID: When they disappear?

4 MS. RENSHAW: -- when they disappear but to know
5 where they are going --

6 CHAIRPERSON REID: You mean a schedule?

7 MS. RENSHAW: -- to have a tracking system, a
8 schedule.

9 CHAIRPERSON REID: Well, tracking is --

10 MS. RENSHAW: To know where they are.

11 CHAIRPERSON REID: Maybe tracking is a little
12 strong. However, I would think that they certainly would have to
13 have a schedule as to each student and where they are in the
14 course of the day, from the time they get up in the morning to --
15 a schedule as to where they're supposed to be at given times. So,
16 this would be the basis by which they would be able to detect if
17 in fact someone were missing or not in the place at a given time.

18 So, what you're saying is that you'd like to see a
19 daily schedule for, and I guess they have them in categories or
20 classes as to how they are supervised during the course of the
21 day. I would think that that would be something that they'd
22 already have in place --

23 MS. RENSHAW: And it would not be a burden to
24 respond to the Board.

25 CHAIRPERSON REID: Yes, just submit to us prior to

1 the order being issued.

2 Now, Ms. Kress just gave me a document that says --

3 MS. PRUITT: This is the document that was in your
4 file that I've asked --

5 CHAIRPERSON REID: "Monitoring of the youth central
6 to the success that many Girls and Boys Town children have enjoyed
7 and key to the Girls and Boys Town model. There are two
8 components: Building relationships and teaching social skills.
9 To this end, staff are available in the case of evening hours -- "

10 MS. KRESS: "Monitoring occurs as follows: During
11 each da, da, da --"

12 CHAIRPERSON REID: Oh, okay, "Monitoring occurs as
13 follows," then we do have a breakdown as to how the students are
14 monitored. I think, however, Ms. Renshaw asked for, and I don't
15 think that it would overly burdensome to submit to her, for the
16 record, a schedule as to the during the course of day and night
17 what activities the various classes are engaged in.

18 MS. KRESS: And I think we don't need to ask that
19 from them. I think we can just write that, if you so desire, as
20 one of the conditions.

21 CHAIRPERSON REID: Conditions in what?

22 MS. KRESS: If this is approved, I think that it
23 can be handled as a clarification in one of the conditions about
24 the monitoring.

25 CHAIRPERSON REID: I'm not following that, Ms.

1 Kress. Are you saying that a condition that they give us a
2 schedule or a condition -- what would be the condition?

3 MS. KRESS: I'd like to have an opportunity to work
4 that out for you all to approve, but something to the point of
5 asking them to create and maintain schedules.

6 CHAIRPERSON REID: But I think that they -- my
7 understanding is that in any institutional type of setting or
8 school there has to be in place a schedule so that they would be
9 able to monitor and to be determine if someone's missing, so
10 that's already established. And I think that what Ms. Renshaw
11 just wants them to submit it before the order is submitted on the
12 issue. Is that right?

13 MS. RENSHAW: But previously one of the issues with
14 the community was the fact that some of these young people were
15 out in the community, and the School didn't know where they were.

16 And we are asking here that we have something in place, in
17 writing, that tightens up the monitoring, the supervision of the
18 students. We have this security plan draft dated September 2000,
19 and all we're asking is a clarification of the monitoring that
20 would just doubly reinforce what they have stated in this, say on
21 page, I guess it's page 2 of this draft.

22 CHAIRPERSON REID: Okay. Let's not beat that to
23 death. Can we just ask that they submit the schedule of the
24 classes and where the students are supposed to be during the
25 course of a 24-hour period, and I think that would suffice.

1 MR. SOCKWELL: If any clarification -- Madam Chair,
2 if any clarification of the daily routine would be helpful, then
3 perhaps that is what Ms. Renshaw is looking for. But on page 4,
4 the Shaw Pittman letter, in the fifth paragraph and sixth
5 paragraph, it stated rounds of the security people or the staff
6 during the night and physically going to the room every 15 minutes
7 and things. Those are all pretty well stated here.

8 If there's anything else, one thing we must
9 remember, these are not inmates. This is not a prison facility,
10 and we should not, on this Board, require a more stringent
11 restrictive program than would be consistent with the type of
12 environment that Boys Town is trying to create for these youth.
13 Yet, we should make sure that Boys Town has an effective program
14 for monitoring the youths' activities and locations. But, again,
15 I restate that this is not a prison facility, and they are not
16 inmates.

17 MS. RENSHAW: We are aware of that, Mr. Sockwell.
18 It's just to give some comfort to the neighborhood that the
19 security plan has been tightened considerably and will benefit
20 both the Boys Town residence and the community.

21 CHAIRPERSON REID: Thank you.

22 All in favor?

23 Opposed?

24 I think that it should be with the conditions that
25 have been set forth in the responses to our requirements, and

1 those are the conditions that the plan for -- the security plan,
2 the water run-off, the noise abatement, and community liaison
3 program should all be incorporated as conditions to be implemented
4 as a part of this order. Are there any others the Board members
5 may have, they wish to include in this order?

6 Thank you very much.

7 MR. HART: The staff will call the vote as five to
8 zero. Motion by Mrs. Reid, Mr. Moulden.

9 Madam Chair, before you conclude this, one thing we
10 need to deal with the minutes.

11 CHAIRPERSON REID: With the conditions.

12 MR. HART: With the conditions.

13 CHAIRPERSON REID: All right. Go ahead with the
14 minutes.

15 MR. HART: Yes. The meeting Board vote for the
16 minutes for September 5 and September the 19th.

17 CHAIRPERSON REID: Okay. Any discussion about
18 those minutes?

19 Mr. Holman, you were present for --

20 MR. HOLMAN: I was present at the hearing but not
21 the initial consideration of the vote, I believe.

22 CHAIRPERSON REID: No, you were not -- we held off
23 taking the vote till you arrived.

24 MR. HOLMAN: Oh, I appreciate that.

25 CHAIRPERSON REID: All right. All in favor?

1 Opposed?

2 MR. HART: Who --

3 MS. PRUITT: Who made the motion to approve and
4 second it? The people voting on this were Mrs. Reid, Renshaw, and
5 Holman.

6 MR. HART: Who made the motion?

7 CHAIRPERSON REID: Mr. Moulden seconded it. Motion
8 made by Mr. Holman, seconded by Mr. Moulden.

9 MR. HART: Okay.

10 CHAIRPERSON REID: Okay.

11 MR. HART: Madam Chair, Mr. Moulden --

12 CHAIRPERSON REID: Yes, all four of those before
13 that were laid forth in the field as commissioned to us were
14 supposed to be included in that.

15 MR. HART: There are three members here on that.
16 So, we need someone to second it.

17 CHAIRPERSON REID: Second.

18 MS. KRESS: Does that clean up the 5th? Now, how
19 about the 29th?

20 MR. HART: That cleans up the 5th. Now, the 19th,
21 we need a vote for the 19th.

22 Mr. Holman, you were here. You can vote on this.

23 MR. HOLMAN: Yes. I vote in the affirmative.

24 CHAIRPERSON REID: I move that we approve the
25 minutes for the 19th.

1 MS. RENSHAW: Second.

2 CHAIRPERSON REID: All in favor?

3 MS. PRUITT: Madam Chair, you weren't here either.

4 The people who attended the 19th were Mr. Sockwell, Ms. Renshaw,
5 Mr. Moulden, and Mr. Hood.

6 MS. RENSHAW: I so move -- I move.

7 MR. SOCKWELL: I second.

8 MS. RENSHAW: I vote.

9 MR. SOCKWELL: All in favor?

10 MR. HART: On that, Ms. Renshaw moved, Mr. Sockwell
11 seconded, and Mr. Hood, by proxy vote, support, yes.

12 That ends it.

13 CHAIRPERSON REID: That's the end of it?

14 MR. HART: Yes, Madam Chair.

15 CHAIRPERSON REID: All right. Then we will adjourn
16 the meeting for today. We will return at one o'clock,
17 approximately, for the afternoon session. And to the Board
18 members, remember we have executive session during lunch. Thank
19 you.

20 (Whereupon, the Board of Zoning Adjustment Public
21 Meeting was concluded at 12:19 p.m.)

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