

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

SEPTEMBER 8, 1999

+ + + + +

The Board met in Hearing Room 220 South, 441
4th Street, N.W., Washington, D.C., at 9:30 a.m., Sheila Cross
Reid, Chairperson, presiding.

PRESENT:

SHEILA CROSS REID	Chairperson
BETTY KING	Vice Chair
JERRY GILREATH	Board Member
ANTHONY HOOD	Zoning Commissioner
ROBERT SOCKWELL	Board Member

STAFF PRESENT:

SHERI M. PRUITT-WILLIAMS	Board Secretary
BEVERLY BAILEY	Office of Zoning
PAUL HART	Office of Zoning
JOHN NYARKU	Office of Zoning
ALAN BERGSTEIN	Office of Corporation
Counsel	

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

(9:59 a.m.)

MS. PRUITT-WILLIAMS: Good morning, Madame Chair.

CHAIRPERSON REID: Good morning. This begins our September 8th meeting of the Board of Zoning Adjustment. We apologize for the delay this morning.

Can you now hear us? We have a brand new system. Can you hear us now? Can you hear me now? Okay, all right. We can -- is this better? All right, let's proceed. We may change the order of -- our agenda this morning -- is Mr. Bosshard here or someone representing Mr. Bosshard present at this time?

We're going to take up that case. We were discussing taking up that case first. That's Case No. 16362. No one from that particular case is here yet? The first motion? Okay.

MS. KING: Madame Chair, I would also suggest that we move the motion on Case No. 16309 to the -- to immediately after Case 16409 --

CHAIRPERSON REID: All right.

MS. KING: -- so that we amend the agenda that way.

CHAIRPERSON REID: Board members, do you have any objection to that? Okay.

MR. HOOD: Madam Chair, I would like to only

1 add if representatives from bizarre case at a breaking point,
2 if we are able to put in the Phillip Bosshard case in between
3 somewhere, if we can work that in.

4 CHAIRPERSON REID: At any point that you see
5 him come in, if you can just bring it to our attention and we
6 can take it up immediately.

7 MR. HOOD: Okay, thank you, Madame Chair.

8 MS. PRUITT-WILLIAMS: Good morning, and welcome
9 back from a hopefully restful summer. The staff would like to
10 welcome our new Board member, Mr. Sockwell.

11 We look forward to working with you this year
12 in your new term.

13 MR. SOCKWELL: Thank you.

14 MS. PRUITT-WILLIAMS: This is the public
15 hearing -- public meeting agenda for September 8, 1999.
16 Before you today, your first item, is the public meeting
17 minutes of July 7, 1999.

18 MS. KING: Madam Chair, I move en bloc the
19 ratification of our public meeting minutes from July 7th and
20 our bench minutes from March 19th.

21 CHAIRPERSON REID: Second.

22 MR. GILREATH: May 19th.

23 MS. KING: May 19th. Sorry.

24 CHAIRPERSON REID: All right, all in favor?

25 (Chorus of ayes.)

26 Opposed?

1 MS. PRUITT-WILLIAMS: The staff would record
2 the vote as three to zero to approve -- three to zero to two
3 to approve. Motion made by Ms. King, seconded by Mr.
4 Gilreath; Mr. Hood and Mr. Sockwell not voting, not having
5 been presented at the hearings.

6 Next on the agenda is your first case to be
7 decided, and that's application 16475 of 403 C Street, N.E.,
8 LLC, pursuant to 11 DCMR 3107.2, for a variance from the
9 maximum allowable floor to area ratio and from the parking
10 requirement under Sections 771.2, 1203.3, 2101.1 for
11 construction of an office building in a Capitol Hill/C-2-A
12 District at premise 403 C Street, N.E. (Square 814, Lot 825).

13 The hearing date was July 21, 1999. Board
14 members present was Ms. Reid, Ms. King and Mr. Hood. The
15 Board, at its decision, concluded that the application would -
16 - submissions from applicants would be -- or rather would be
17 due September 3rd from responses from the applicant by
18 September 8th.

19 All that information is before you today for a
20 decision.

21 MR. GILREATH: Madame Chair, since I did not
22 participate at that meeting, that's why I'm excusing myself
23 from any participation in this.

24 MS. KING: Madam Chair, it appears from the
25 materials that we were given today, specifically the letter
26 dated September 7th and signed by Pat Brown, that an agreement

1 has been reached between the developer, the PTA and the
2 Capitol Hill -- what is the CHCS, can't remember -- but the --

3 CHAIRPERSON REID: Capitol Hill Restoration
4 Society.

5 MS. KING: Cluster of Schools. No, Capital
6 Hill Cluster of Schools.

7 For one thing, I applaud that. It is always the
8 desire of the BZA to -- that opposing parties work out some
9 kind of an agreement. And it appears to me that we should
10 grant this application and incorporate the agreement signed on
11 the 2nd of September as being an intrinsic part of our order.

12 MR. HOOD: Madam Chair, if I'm in order,
13 Commissioner King, if that's a motion, I'll second it.

14 MS. KING: Thank you.

15 CHAIRPERSON REID: Did you have any discussion?

16 MR. HOOD: No, I didn't have any discussion.
17 Well, let me just add I, too, applaud the parties for coming
18 to agreement. When I saw the agreement, I thought that was
19 excellent work that they've done and I, too, want to echo the
20 comments of Commissioner King.

21 CHAIRPERSON REID: Yeah, I would also concur
22 with my colleagues. The issues that seem to be a stumbling
23 block to this particular application being approved have now
24 been removed predicated upon the cooperative efforts between
25 the two entities, the applicant and the PTA.

26 And they have come to a meeting of the minds as

1 to how they can "live together." We also had a letter, I
2 should note, that came in as well in opposition from a Mr.
3 Robert and Marva -- is that McCulloch? McCulloch, it looks
4 like.

5 Just for the record, we feel that they have, in
6 fact, indeed met their burden of proof and that they are --
7 have demonstrated that they're entitled to the relief that
8 they had requested, the variance; and that the adverse impact
9 aspect of it has now been removed, as well as the fact that it
10 does not appear to impair the integrity or intent of the
11 zoning regulations.

12 MS. KING: Excuse me. We should also note,
13 Madame Chair, that ANC 6A, at a meeting with a quorum being
14 present, voted in favor of this project, and that the Stanton
15 Park Neighborhood Association was also in support.

16 CHAIRPERSON REID: Okay, all right.

17 All in favor?

18 (Chorus of ayes.)

19 Opposed?

20 MS. PRUITT-WILLIAMS: Staff would record the
21 vote as three to zero to two to approve motion made by Ms.
22 King, seconded by Mr. Hood; Mr. Gilreath and Mr. Sockwell not
23 voting, not having been present.

24 The next item on your agenda are motions. The
25 first motion for consideration is BZA Case 16408, George
26 Washington University Law School.

1 Letter dated July 22, 1999 from the law firm of
2 Arnold & Porter representing George Washington University is
3 requesting a modification of an approved plan in the
4 application of George Washington University pursuant to 11
5 DCMR 3108 for a special exception under Section 210 to allow
6 renovations and additions to an adjacent university building
7 for the use of the law school under approved campus plan for
8 property located in an R-5-D District at 2003 G Street, N.W.
9 and 700-706 20th Street, N.W. (Square 102, Lot 46).

10 The hearing on this particular case was January
11 6, 1999 with a bench decision that same day. Final order was
12 January 22nd.

13 Those participating in this case was Ms. Reid,
14 Ms. King and Mr. Gilreath.

15 MS. KING: I'd like to ask staff, we've not
16 heard from the ANC on this case?

17 MS. PRUITT-WILLIAMS: Not in this particular
18 modification. On the original case, the ANC was in favor.

19 MS. KING: What are the -- is there any
20 standard or precedent for what constitutes a modification and
21 what constitutes a substantial addition to plans? Is there
22 any precedent, any standard?

23 MS. PRUITT-WILLIAMS: There are no standards.

24 MS. KING: I mean, this seems to be a
25 significant change in plans to me, but I just wondered if
26 there was any standard that was part of our precedence.

1 MR. GILREATH: Madame Chair, in reading the
2 materials submitted to us on this case, even though there is
3 some significant architectural change in terms of moving walls
4 around and so forth, I feel, in terms of the general
5 appearance and so forth and creating access to the other
6 classrooms and so forth, that I -- unless there's some kind of
7 standard, I really don't have any problem with this, as long
8 as it meets the Historic Preservation Board review
9 acceptability that --

10 MS. PRUITT-WILLIAMS: Well, it would have -- I
11 mean, that is a separate and concurrent track that would have
12 to --

13 MR. GILREATH: That would be my only concern
14 because from the street it's not going to look differently,
15 and it's really, as I understand it, to increase access to
16 some of the other connecting roads. So in terms of general
17 appearance, I don't have any problem with it.

18 CHAIRPERSON REID: I would agree. I think
19 that, based upon the fact that the -- first of all, we don't
20 have a motion, do we? I would move --

21 MR. GILREATH: Well, you go ahead and move and
22 I'll second it.

23 CHAIRPERSON REID: You make the motion.

24 MR. HOOD: Okay, I move that we accept the
25 applicant's proposal.

26 CHAIRPERSON REID: Okay, I second it.

1 The fact that this is a small infield building
2 and it's a connecting building, and as well as the fact that
3 it's below grade and it's not included in the gross floor area
4 ratio, I have no problem with it.

5 It does not appear to have any kind of adverse
6 impact, and I don't think that it is inconsistent with their
7 campus plan.

8 MS. KING: Well, absent any opposition from the
9 ANC, which is, I know, very vigilant in that area, I would be
10 in favor of the motion.

11 CHAIRPERSON REID: Any other comments?

12 All in favor?

13 (Chorus of ayes.)

14 Opposed?

15 MS. PRUITT-WILLIAMS: Staff would record the
16 vote as three to zero to two, motion made by Mr. Gilreath,
17 seconded by Ms. Reid; Mr. Hood and Mr. Sockwell not voting,
18 not having been present at the hearing.

19 The next case on your agenda for consideration
20 is BZA Case 16409 of George Washington University parking.

21 Would you like me to read all of this, or do
22 you want to -- I mean, you have several letters. You have a
23 letter from Ms. Miller, a letter from Arter and Hadden, the
24 representative of the University.

25 CHAIRPERSON REID: Yes, please do.

26 MS. PRUITT-WILLIAMS: Okay, you have a letter

1 first -- the first letter is dated June 29th from Dorothy
2 Miller requesting that the Board rescind or reconsider
3 approved BZA order 16409 for a garage addition at the George
4 Washington University.

5 Second item is a letter dated July 28, 1999
6 from the law firm of Arter and Hadden, representing GW
7 University, stating that the proposed motion should be
8 dismissed as it was untimely filed.

9 Third letter is dated July 21, 1999 from ANC 2A
10 representing the Board -- requesting that the Board rescind or
11 reconsider BZA order 16409 for a garage addition at George
12 Washington University.

13 The final letter dated July 23, 1999 from ANC
14 2A requested that the Board rescind or reconsider approved
15 order -- BZA order 16409, and that Dorothy Miller would
16 represent the ANC's position in this application of George
17 Washington University.

18 The hearing dates, of course, were November 18,
19 1998, January 5, '99, March 2nd, April 7th and April 22nd of
20 '99. Decision date was May 19th, and the final day of the
21 order was June 16th.

22 Those participating in this case were Ms. Reid,
23 Ms. King and Mr. Gilreath and Mr. Franklin. And we do have
24 proxies from Mr. Franklin.

25 This is before you for decision today.

26 CHAIRPERSON REID: Well, in this particular

1 instance, it appears that we have several things that we have
2 to consider. One was the letter from Ms. Miller requesting a
3 recision of the -- or reconsideration of the BZA No. 16409.

4 And if I'm not mistaken, I think that the
5 problem we had with that is that Mrs. Miller was not a party
6 in the case at the time. And so therefore, we -- it would be
7 inappropriate for us to take that into consideration.

8 The other aspect is the timeliness of the
9 filing even if, in fact, she were a party in the case. And it
10 appears that it was not timely filed. So again, there is
11 something that we would not have the powers to be able to act
12 because it would be, again, inappropriately before us.

13 In regard to the letter dated July 21st from
14 the ANC, this particular letter also was untimely. And as
15 such, in view of the fact that there may have been some type
16 of confusion with this particular case in that it was very
17 convoluted, we would waive the July 21, 1999 ANC 2A letter
18 into the record at this time.

19 MR. BERGSTEIN: Madame Chairperson, may I just
20 correct one thing? The June 20th letter from Ms. Miller --

21 CHAIRPERSON REID: June 29th or 20th?

22 MR. BERGSTEIN: 29th. I'll have to check, but
23 I believe it was timely, but let me check that.

24 CHAIRPERSON REID: The letter was timely.

25 Okay, I'm sorry.

26 MS. PRUITT-WILLIAMS: It was timely.

1 CHAIRPERSON REID: While timely, the problem we
2 had was that it was not -- she was not a party. So therefore,
3 it would be inappropriately before us.

4 The letter from the ANC is a letter that was
5 not timely filed, is that correct?

6 MR. BERGSTEIN: That's correct.

7 CHAIRPERSON REID: And in that instance, we
8 would waive the rules and allow it to come into the record.

9 MR. BERGSTEIN: Do you want to have a motion on
10 that first and then proceed to the merits, or --

11 CHAIRPERSON REID: Well, the motion that we are
12 actually going to be dealing with is a composite of the whole
13 submission, is it not?

14 MS. KING: We need to move to waive -- to
15 accept the ANC letter of July 21st.

16 CHAIRPERSON REID: Oh, okay. Well, we can vote
17 on it. I had just basically --

18 MS. PRUITT-WILLIAMS: No, you need to vote on
19 it.

20 MS. KING: I move that we do that.

21 MR. GILREATH: I second the motion.

22 CHAIRPERSON REID: Okay, all in favor?

23 (Chorus of ayes.)

24 Opposed? Okay.

25 MS. PRUITT-WILLIAMS: Staff would record a vote
26 as -- I'm sorry, I believe three to zero.

1 MS. KING: Do you have a proxy for Mr. --

2 MS. PRUITT-WILLIAMS: Yes, I do and -- three to

3 four, excuse me, three to four to --

4 MS. KING: Three to four?

5 MS. PRUITT-WILLIAMS: Excuse me, four to

6 approve to waive the motion into the record.

7 MS. KING: Mr. Franklin voted in favor of --

8 MS. PRUITT-WILLIAMS: Yes.

9 MS. KING: -- the waiver?

10 CHAIRPERSON REID: Okay, now the motion itself.

11 MR. GILREATH: Is this for reconsideration?

12 MS. PRUITT-WILLIAMS: You can take it from

13 reconsideration and then rescind. I would suggest you

14 separate them out or you can do them both ways. It doesn't

15 matter.

16 MS. KING: I'm sorry?

17 MS. PRUITT-WILLIAMS: You have to deal with

18 both issues. You have to deal with either to reconsider the

19 hearing or to rescind the order. They're two separate things,

20 but you need to deal with both of them.

21 CHAIRPERSON REID: Can we deal with both of

22 them at the same time?

23 MS. PRUITT-WILLIAMS: Yes, but you have to

24 address them all.

25 CHAIRPERSON REID: All right, okay.

26 MR. GILREATH: You say rescind the order. I'm

1 not sure what you're saying.

2 MS. PRUITT-WILLIAMS: Pull it back altogether.

3 CHAIRPERSON REID: Nullify the order.

4 MS. PRUITT-WILLIAMS: Nullify the order.

5 MR. GILREATH: The order that we've given, we
6 nullify it? Okay, all right.

7 MR. BERGSTEIN: Although, I have to point out
8 there's nothing in the rules that speaks of a motion to
9 rescind. We have a motion for -- in terms of post hearing,
10 post decisional motions, you have a motion to rehear and a
11 motion to reconsider.

12 CHAIRPERSON REID: But not to rescind.

13 MR. BERGSTEIN: As implicit within a motion to
14 reconsider is the motion to rescind, but there's nothing in
15 the rules itself that speaks of a motion to rescind.

16 CHAIRPERSON REID: Well, I think it's a matter
17 of semantics. And for us to be correct, then let us just deal
18 specifically with the motion to reconsider.

19 MR. GILREATH: Madame Chair, I feel to
20 reconsider this case, that there should have been substantive
21 and new information on parking.

22 CHAIRPERSON REID: You want to make a move?

23 MR. GILREATH: And Ms. Miller's submission, and
24 she did a lot of thorough homework, and, with all due respect,
25 I feel that really no additional information has been offered,
26 at least to me, that would warrant a reconsideration of my

1 original thinking of this.

2 Therefore, I proffer a motion not to reconsider

3 --

4 MS. PRUITT-WILLIAMS: Or to deny.

5 MR. GILREATH: Okay, I make a motion that we
6 deny the reconsideration.

7 CHAIRPERSON REID: Okay, I would second that
8 motion. I, in reading the submission also, which is rather
9 exhaustive, I did not find anything material in the submission
10 to cause me to change my original position in regard to this
11 particular case, so I also would concur with you and agree not
12 to reconsider this particular motion.

13 MS. KING: I'm going to concur with this, but I
14 do think that there is an issue which I will -- about parking
15 which I will raise now. And the reason that I ask that case
16 number 16309 be moved up to be heard immediately after the
17 case that we're considering now is because I think my feeling
18 about both of them is the same.

19 It's no secret, because I have said it at
20 public hearings in this room, that I have severe doubts about
21 whether or not GW University is, in fact, at all times
22 maintaining 2,700 -- minimum of 2,700 off street parking
23 spaces within the boundaries of their campus plan.

24 In discussion with people who know more about
25 this than I do, apparently it is possible for the Advisory
26 Neighborhood Commission 2A to request of the Department of

1 Consumer and Regulatory Affairs, perhaps with the assistance
2 of a variety of council members, that an actual count be
3 maintained or be done immediately of the number of spaces that
4 GW is maintaining within its campus plan boundaries.

5 And that if they are falling below that, that
6 any C of O that has not been issued by DCRA would have to be
7 stopped. You know, I believe that the people in the
8 neighborhood are well aware of, you know, where the parking
9 spaces come and the parking spaces go, but this Board and the
10 office that supports us are not in a position to actually go
11 'round and make a physical count.

12 That would be the responsibility of the
13 Department of Consumer and Regulatory Affairs. And so I am
14 going to vote to deny this motion, but would, at the same
15 time, encourage ANC 2A to take that -- those steps in order to
16 gather bona fide verification of those 2,700 spaces within the
17 campus boundaries.

18 CHAIRPERSON REID: All in favor?

19 (Chorus of ayes.)

20 Opposed? And we also have a proxy from Mr.
21 Franklin in favor of denying the motion.

22 MS. PRUITT-WILLIAMS: Staff would record the
23 vote as four to zero to two, motion made by Mr. Gilreath,
24 seconded by Mr. Franklin. I mean, sorry, by Ms. Reid. Proxy
25 from Mr. Franklin and Ms. King to deny, Mr. Sockwell and Mr.
26 Hood not voting, not having been present.

1 Would you like to move onto the second GW case?

2 Is that my understanding?

3 CHAIRPERSON REID: Yes.

4 MS. KING: Yeah, 16309 is the next one.

5 MS. PRUITT-WILLIAMS: Next case 16309, GW
6 University parking. In a letter dated July 26, 1999 from Ms.
7 Dorothy Miller requesting that the Board rescind or reopen BZA
8 Order 16309, and a letter dated July 30, 1999 from Mr. Barber
9 representing GW University responding to Ms. Miller's request
10 in the application of GW University pursuant to 11 DCMR 3108
11 for special exception under Section 210 for further processing
12 of an approved campus plan to continue University parking lot
13 uses in R-5-D and R-5-E Districts at premises 906 23rd Street,
14 700 through 718 23rd Street, 2301 through 2329 G Street, 2200
15 I Street, 2003 through 2011 H Street, 2030 G Street, 2007 F
16 Street, Squares 40, Lot 36; Square 42, Lot 847; Square 55, Lot
17 853; Square 101, Lot 60; and Square -- I'm sorry, Lot 60 and
18 Lot 877; Square 103, Lots 13, 812, 813, 917 and 819.)

19 The hearing date on this particular case was
20 March 4, 1998, decision the same day. Final date of order is
21 July 14, 1999.

22 This is before you.

23 MR. GILREATH: Well, Madame Chairman, my
24 sentiments and thinking on this appear some to the other. In
25 terms of the accuracy of tabulation of the parking, there's no
26 way of us knowing. I'm willing to say that GW -- we'll take

1 at face value that they will comply and maintain 2,700 parking
2 spaces, and Ms. King's recommendation or encouragement that
3 the ANC require GW to tabulate these and make sure they're
4 complying.

5 MS. KING: No, not GW, DCRA.

6 MR. GILREATH: DCRA. And that I, therefore,
7 recommend that we deny this request, but ask that the ANC
8 require the DCRA to do a count.

9 CHAIRPERSON REID: I again second your motion -
10 - your motion, Mr. Gilreath. I think that this whole issue of
11 how many parking spaces are being provided and where the
12 parking spaces are is something that no one really has a grasp
13 on.

14 And we, in granting the order initially, did it
15 just from the perspective of the proffering by GW to us that
16 these -- that they would comply with the stipulation in their
17 campus plan, and that is that it would not ever fall below
18 2,700.

19 And as such, to get into whether or not there
20 is the exact number at any given time is something that is
21 beyond our purview, as well as the fact that we are aware of
22 the fact that they're in the process of making provisions for
23 providing additional parking and trying to diffuse the adverse
24 impact or conceived -- or perceived adverse impact that may
25 come about as a result of their -- the plans that they're
26 implementing.

1 So I second your -- second it.

2 Are there comments?

3 MS. KING: I think the important issue here is
4 that the campus plan specifically states that they will never
5 fall below 2,700 within the campus boundaries and that DCRA
6 needs to look at that.

7 Would it be appropriate, Madame Chair, for us
8 to request that DCRA look into this issue?

9 CHAIRPERSON REID: Well, yeah. Well, I think
10 that -- no, certainly we can do that. Nonetheless, I feel
11 that notwithstanding the fact that even if it does stipulate
12 it within the auspices of the campus plan that the parking
13 spaces are to be maintained on campus, when we had the hearing
14 as a Board, we agreed that the additional parking spaces that
15 were at the Kennedy Center were --

16 MS. KING: I never voted on anything that
17 authorized that.

18 CHAIRPERSON REID: Ms. King, Ms. King, I am not
19 finished, and I would appreciate it very much if you would not
20 interrupt.

21 MS. KING: Okay, well just -- I want you to
22 keep your facts right.

23 CHAIRPERSON REID: I understand that. I said
24 as a Board we voted --

25 MS. KING: Never.

26 CHAIRPERSON REID: As a Board, we voted that we

1 would accept what was being proffered to us. We did not throw
2 out the part about the Kennedy Center parking lot -- parking
3 that was proffered to us. And we had accepted that this would
4 be a part of the parking solution that was proffered by George
5 Washington University.

6 MS. KING: Never. We never voted on that.

7 MR. GILREATH: Madame Chair, that was my
8 understanding, too, that this was the overall solution.

9 CHAIRPERSON REID: Excuse me, one second.

10 Ms. Miller, if you continue to be disruptive I
11 think just one more time, I have no choice but to ask you to
12 leave this hearing room.

13 Thank you.

14 MR. GILREATH: That was my understanding, too.
15 I think we have to apply a principle of reasonableness in
16 this. And that, as a temporary solution to provide parking
17 and build this hospital, that if they can work out some kind
18 of temporary arrangement, for us to simply say you can't do
19 this is showing undue inflexibility.

20 And there should be a certain amount of
21 reasonableness in this. I agree that when DCRA, when they do
22 their tabulation, they've got to be very close to that.
23 They've got to show that they can meet this number.

24 And if they can't -- but I think the Kennedy
25 Center parking should be included in that as well because this
26 is a temporary arrangement to accommodate building this

1 hospital.

2 CHAIRPERSON REID: And we know --

3 MS. KING: Madame Chair --

4 CHAIRPERSON REID: Go ahead.

5 MS. KING: The two of you who contend that we
6 voted to authorize the Kennedy Center parking, which is off
7 campus, to be part of the campus plan 2,700, were all of the
8 parties to the campus plan served with that information?

9 Were they all able to participate in a
10 discussion as to whether that would be acceptable?

11 CHAIRPERSON REID: We voted on the application,
12 and the application included the Kennedy Center parking.

13 MS. KING: But did it include all the parties
14 to the campus plan when the campus plan was enacted ten years
15 ago?

16 CHAIRPERSON REID: I don't understand what you
17 mean by all the parties.

18 MS. KING: I mean, if we're amending -- what
19 you're saying is that we voted to amend the campus plan.

20 CHAIRPERSON REID: No, I'm saying that we voted
21 on their application, which included the parking at the
22 Kennedy Center.

23 MS. KING: Which would include an amendment to
24 the campus plan, is what you're saying.

25 CHAIRPERSON REID: No, I'm not. I'm saying we
26 voted on the application, Ms. King, and the application did

1 include the parking at the Kennedy Center.

2 MS. KING: I never voted to include parking at
3 the Kennedy Center as an amendment to the campus plan, which
4 is what you're saying it is.

5 CHAIRPERSON REID: I did not say that.

6 MS. KING: The campus plan says 2,700 parking
7 spaces within the boundaries of the campus plan. Am I
8 correct?

9 CHAIRPERSON REID: Ms. King, we're not going to
10 split hairs. We voted on the application and we did not
11 object to the parking at the Kennedy Center.

12 MS. KING: I did.

13 CHAIRPERSON REID: Be that as it may, at this
14 juncture, we feel that -- I feel that, given the fact that we
15 know that that is a very difficult area as far as parking and
16 traffic is concerned, I think that what the Board wanted to
17 see was that there was being an effort -- an effort was being
18 made to try to, as much as possible, mitigate the adverse
19 impact as far as parking was concerned.

20 And I think that George Washington, in my
21 opinion, in my view, demonstrated to us that that had been
22 adequately taken care of.

23 MR. GILREATH: And I concur fully with that
24 interpretation.

25 CHAIRPERSON REID: Okay, all in favor?

26 (Chorus of ayes.)

1 MS. KING: Opposed. I am opposed. If you are
2 not going to incorporate into this a request for DCRA to do a
3 count of the purported 2,700 parking spaces within the campus
4 plan, I cannot vote to deny this motion.

5 If you wish to amend your resolution in order
6 to put that request in as part of the motion, I will vote for
7 it.

8 CHAIRPERSON REID: Just one second, one second.

9 The motion on the floor is to deny the motion,
10 and the vote was to -- approval of denial of the motion.

11 MS. KING: Approval of the motion or denial of
12 the motion?

13 CHAIRPERSON REID: To deny the -- to deny the
14 motion or to approve or deny the motion. Either way it is,
15 like the motion fails -- for the motion to fail, and I have
16 voted and Mr. --

17 MS. KING: Well, could you restate the motion?
18 It's just simply to deny with no -- nothing, just deny, is
19 that your motion?

20 CHAIRPERSON REID: Yes, yes, it is.

21 MS. KING: Mr. Gilreath, is it your motion?

22 CHAIRPERSON REID: Yes, Ms. King, in all
23 fairness, you have made it very clear what your position is,
24 and I think that you made your request. I am not --

25 MS. KING: No, I just wanted to know if you had
26 denied my amendment. I mean, if my amendment to the motion to

1 ask -- to officially request a count of GW parking was denied.

2 CHAIRPERSON REID: Well, if you're going to
3 make -- I am making my motion and then it -- I'm not going to
4 include your amendment to my motion not unless -- if you want
5 to make a motion, you're welcome to do that.

6 MS. KING: I would move that we -- that the
7 Board add to the motion to deny a request that -- instructions
8 to the staff to request that DCRA do a count of actual on
9 campus parking within the boundaries of the GW campus plan.

10 MS. PRUITT-WILLIAMS: I believe what we have
11 are two motions right now. It seems that -- and this is --
12 I'm just trying to --

13 MS. KING: No, that is not. I asked to amend
14 the motion.

15 MS. PRUITT-WILLIAMS: And I believe Ms. King
16 said she is not willing to do that -- I mean Ms. Reid.

17 Is that correct?

18 MS. KING: But it was Mr. Gilreath's motion.

19 MS. PRUITT-WILLIAMS: Oh, Mr. Gilreath, I'm
20 sorry.

21 Then initial motion, have you agreed to amend
22 that? That's my first question. The motion you made, Mr.
23 Gilreath, to deny.

24 MR. GILREATH: That was denied right across the
25 Board. This amendment, if we take a vote on the amendment
26 then --

1 MS. PRUITT-WILLIAMS: You can either agree to
2 amend it or you can go with this motion and then Ms. King can
3 then make a motion to change it that way. That's why I'm just
4 trying to keep it straight.

5 MR. BERGSTEIN: May I just interject one thing
6 for the information of the Board. The order that we're
7 looking at, which is 16309, has a summary of evidence. And
8 one of the things that's in the summary of evidence, at least
9 to just let everybody know that there was this testimony
10 there.

11 And I assume the fact that it's in summary of
12 evidence means that the Board accepted this testimony is that
13 the traffic expert indicates that the university currently
14 provides -- and I guess it's at the time of the hearing --
15 currently provides a total of 2,778 parking spaces in all its
16 parking facilities.

17 And I just wanted to point that out to the
18 Board that, at least with respect to this order, there was
19 that testimony of that count.

20 MS. KING: But the motion before us says that
21 that count is not accurate because there are holes in the
22 ground where parking spaces used to be. And so it
23 seems to me that it's only reasonable for us, although we may
24 deny the motion to -- that this is a recurring issue before
25 this Board, and that it would be nice to have somebody other
26 than the paid experts of GW University verify that this

1 information is correct.

2 CHAIRPERSON REID: All right, now may we
3 proceed? Okay.

4 MS. PRUITT-WILLIAMS: Could we restate the
5 motions for the record?

6 MR. GILREATH: I make the motion that we deny
7 the request by the ANC on rescinding our -- and reopening BZA
8 order 16309.

9 CHAIRPERSON REID: I second it.

10 All in favor?

11 (Chorus of ayes.)

12 Do we have a proxy?

13 MS. PRUITT-WILLIAMS: Not on this particular
14 case. So I'm sorry, could I see a show of hands, all in favor
15 to deny? All in opposition?

16 MS. KING: Me, me.

17 CHAIRPERSON REID: Sheila didn't want to call
18 for my vote. I vote against it.

19 CHAIRPERSON REID: I was going to. All right,
20 so the motion fails.

21 MS. PRUITT-WILLIAMS: Motion fails, correct.

22 MS. KING: Is it in order at this time for me
23 to request that the Board instruct its staff to ask the
24 Department of Consumer and Regulatory Affairs to do an actual
25 on ground count of the number of parking -- viable parking
26 spaces, off street parking spaces, within the campus

1 boundaries of George Washington University?

2 Hello?

3 CHAIRPERSON REID: I don't know how that can be
4 accomplished. What gives me pause, Ms. King, is I can
5 understand that being a request and we can request that, but
6 making it a part of this order, I don't think that we have the
7 --

8 MS. KING: It doesn't --

9 CHAIRPERSON REID: -- power to make them do
10 that.

11 MS. KING: We're not writing an order. We've
12 just denied a motion. This is another issue.

13 MS. PRUITT-WILLIAMS: The motion failed. You
14 didn't deny it. It failed for lack of vote.

15 MS. KING: Whatever.

16 MS. PRUITT-WILLIAMS: That's different.

17 MS. KING: That motion is now dead.

18 CHAIRPERSON REID: Okay, but my question is can
19 we make them go out there routinely and check -- count the
20 spaces?

21 MS. KING: We can ask a coequal branch of the
22 District Government to do anything. They can do it or not.
23 Sometimes they don't even show up when they're supposed to be
24 testifying before us.

25 But it seems to me that it would be appropriate
26 for us to ask, since this is such a contentious issue, and

1 since -- even though the motion was denied, some evidence has
2 been presented in writing to this body that some of the
3 parking lots are now holes in the ground, that it would be --
4 since there are so many GW cases, and particularly since GW is
5 about to come before this Board for a revised campus plan,
6 that it seems to me that it would be appropriate for us to ask
7 DCRA to verify that they are, in fact, complying.

8 CHAIRPERSON REID: Okay, I have no problem with
9 that. My only hesitation was I feel that we were -- we had
10 any power to be able to compel them to go out there and do
11 that.

12 MS. KING: We don't have any power. They can't
13 compel us. We can't compel them. But it seems to me that it
14 is an issue and that we should request DCRA to --

15 CHAIRPERSON REID: I have no problem with that.

16 MS. KING: -- to do that.

17 CHAIRPERSON REID: I would second that.

18 Okay, all in favor of Ms. King's motion?

19 MS. KING: Aye.

20 CHAIRPERSON REID: Aye.

21 MR. GILREATH: Aye.

22 MS. PRUITT-WILLIAMS: Let me get this straight.

23 My understanding is that you would like staff to draft a
24 letter to go to DCRA requesting that they do a count?

25 MS. KING: An on ground count of off street
26 parking within the boundaries of GW. And I hope that the ANC,

1 and perhaps through the medium of the ANC, that various
2 council members will make the same request so that DCRA will
3 do it.

4 MS. PRUITT-WILLIAMS: I believe the next case
5 on our agenda is case number 16483, appeal of the zoning
6 administrator's decision by Basil Gogos.

7 Letter from Richard Nettler dated June 16, 1999
8 requesting a refund of a filing fee of Basil Gogos pursuant to
9 11 3105 and 3106 from an administrator decision of the zoning
10 administrator to issue a building permit for a restaurant and
11 carry out.

12 The appellant will be affected by impacts on
13 the property value in the R-3 District at premise 1659 35th
14 Street, N.W. (Square 1291, Lot 217). You have information --
15 you have a letter from Mr. Nettler in your file.

16 CHAIRPERSON REID: Ms. Pruitt-Williams, just
17 before you go into that one, I just have a question. I'm a
18 little confused about the last case. Was not Mr. Franklin
19 involved in that?

20 MS. PRUITT-WILLIAMS: No. That was -- the last
21 case on the parking lot --

22 MS. KING: There was that whole -- that was
23 that whole variety of parking lots, remember?

24 CHAIRPERSON REID: Right.

25 MS. KING: We did -- you know, there was a
26 parking lot here and a parking lot there, and we did it only

1 for the periods in the end of the campus plan.

2 CHAIRPERSON REID: Right. But he was not
3 involved in that?

4 MS. KING: No, he wasn't involved.

5 CHAIRPERSON REID: Okay. For some reason I
6 thought that he did.

7 So do we have any other proxies?

8 MS. PRUITT-WILLIAMS: No.

9 CHAIRPERSON REID: All right, just wanted to
10 make sure we didn't inadvertently leave them out.

11 Okay, continue.

12 MS. PRUITT-WILLIAMS: I'm sorry. Well, the
13 case is before you. You have a letter from Mr. Nettler.

14 CHAIRPERSON REID: Well, you know,
15 unfortunately, when these requests come before us for
16 reduction of -- or to waive the filing fees, we have to claim
17 that we don't have the authority to do that.

18 We do?

19 MS. PRUITT-WILLIAMS: I would suggest to you,
20 if you look at 3308, there are times where the Board does have
21 the authority to waive filing fees under very certain
22 situations.

23 CHAIRPERSON REID: And is this one of them?

24 MS. PRUITT-WILLIAMS: I believe so. I would
25 suggest you read that just to --

26 MR. BERGSTEIN: It's also in the BZA Act.

1 You're not permitted to charge civic associations, nonprofit
2 civic associations.

3 CHAIRPERSON REID: Oh, you mean that we erred
4 in --

5 MR. BERGSTEIN: What happened here was that a
6 check -- what Mr. Nettler indicated was that, in his absence
7 from the office, a check was inadvertently supplied with the
8 application and he's asking that the check be returned because
9 it was -- it should not have been filed with it because the
10 BZA is not permitted to charge for appeals from this type of
11 association, assuming that you agree that this is the type of
12 association that falls within the act and the regulation.

13 MR. GILREATH: Well, can we ask counsel.

14 In your judgement, do you feel this falls under
15 the nonprofit civic association --

16 MS. KING: Anything that's a 501 C3 is.

17 CHAIRPERSON REID: We've had other requests for
18 nonprofit organizations.

19 MS. PRUITT-WILLIAMS: Nonprofit is different
20 than a civic association.

21 CHAIRPERSON REID: Explain to me what the
22 difference is because I know that we've had nonprofit
23 organizations come before us and ask for a waiver and we
24 weren't able to give it to them. So how is this different?

25 MS. KING: Madame Chair, I would like to know
26 more about this. I mean, I'm a former resident of Georgetown,

1 and the major civic association there is the CAG, the Civic
2 Association of Georgetown. I've not heard of this. Is this
3 something new?

4 Do we know anything about this organization?

5 CHAIRPERSON REID: I've not heard of them
6 before.

7 MS. PRUITT-WILLIAMS: Actually, I did a little
8 bit of research. It is my understanding that this office has
9 waived the fees -- filing fee on this particular -- for this
10 particular client in the past.

11 CHAIRPERSON REID: But I don't understand. Why
12 is it for this -- why are we authorized to waive the fee for
13 this organization --

14 MS. PRUITT-WILLIAMS: Because it's --

15 CHAIRPERSON REID: -- and not for the other
16 nonprofit organizations?

17 MS. PRUITT-WILLIAMS: Because it's considered a
18 civic association. It's not nonprofit. It's a civic.

19 CHAIRPERSON REID: I asked for clarification.

20 MS. PRUITT-WILLIAMS: Of why it's considered
21 civic and not --

22 CHAIRPERSON REID: No, why civic. I mean, are
23 we saying then that --

24 MS. PRUITT-WILLIAMS: That's what the regs
25 state.

26 CHAIRPERSON REID: No, no.

1 MR. BERGSTEIN: Madame Chair, I don't have it
2 before me, but I looked at it yesterday. No, I actually
3 looked at the Zoning Act. The section that established BZA
4 specifically indicated that BZA may not charge for appeals for
5 nonprofit civic associations.

6 You need two things. You need a civic
7 association and it must be nonprofit. I'm not saying that
8 this information is sufficient, but that is the reason. It's
9 not even a waiver. You're not permitted, under any
10 circumstances, if someone meets those requirements, to be
11 charged for an appeal.

12 CHAIRPERSON REID: So in this instance, the
13 check was proffered to us inadvertently?

14 MR. BERGSTEIN: That's the representation.

15 CHAIRPERSON REID: So we didn't -- we didn't
16 charge them a fee, they just gave us the money, and now they
17 want it back. Is that what's happening here?

18 MR. BERGSTEIN: Yes.

19 MS. PRUITT-WILLIAMS: An individual who is not
20 used to dealing with it brought the application in.

21 MR. BERGSTEIN: But, in essence, if you accept
22 the fee, you've charged them.

23 MS. PRUITT-WILLIAMS: Right.

24 CHAIRPERSON REID: So it was a mistake.

25 MR. BERGSTEIN: It was a mistake, yes. Well,
26 that's what they're claiming. Now, you can agree with -- you

1 could still say it wasn't a mistake because, in fact, I don't
2 -- we don't recognize this to be a nonprofit civic association
3 and we're glad that you gave us the money because you owe it
4 to us, but the question is whether or not you agree that this
5 is a nonprofit civic association.

6 CHAIRPERSON REID: Do we just take it on face
7 value, Ms. Pruitt-Williams, that this is, in fact, the
8 situation here, or do they -- should they, in asking for a
9 refund, provide us with evidence that (1) they're a recognized
10 civic association and (2) that they are, in fact, nonprofit?

11 MS. PRUITT-WILLIAMS: I mean, that's your call,
12 Ms. Reid. That's the Board's call.

13 MS. KING: But you say that there is a
14 precedent. We have --

15 MS. PRUITT-WILLIAMS: In the past, yes.

16 MS. KING: -- we have refused to accept money
17 from them in the past?

18 MS. PRUITT-WILLIAMS: Oh, in the past, we have
19 not -- yeah, we have considered them a civic association.

20 CHAIRPERSON REID: This same --

21 MS. PRUITT-WILLIAMS: Yes.

22 MS. KING: This same organization?

23 MS. PRUITT-WILLIAMS: Yes.

24 MS. KING: I move that we return the money.

25 CHAIRPERSON REID: I second it.

26 All in favor?

1 (Chorus of ayes.)

2 Opposed?

3 MS. KING: May I suggest, Madame Chair, that
4 Mr. Hood is here and that we now take up the Bosshard case.
5 If they're not here at quarter to 11:00, they're probably not
6 coming.

7 MS. PRUITT-WILLIAMS: Excuse me, may I get the
8 vote again?

9 MS. KING: Oh, sorry.

10 CHAIRPERSON REID: Three to zero.

11 MS. PRUITT-WILLIAMS: Could I have the maker of
12 the move?

13 MS. KING: I moved --

14 CHAIRPERSON REID: And I seconded.

15 MS. KING: -- and Sheila seconded. We all
16 three voted.

17 CHAIRPERSON REID: Is he here? Mr. Bosshard
18 here?

19 MS. PRUITT-WILLIAMS: Thank you, I'm sorry.
20 We'd like to move on to the Bosshard case, is that correct?

21 MS. KING: If we may.

22 MS. PRUITT-WILLIAMS: Next case is 16362,
23 Philippe Bosshard. Letter dated August 8th and August 9, 1999
24 of Allan I. Mendelsohn requesting a reconsideration of certain
25 aspects of BZA Order on application of Philippe Bosshard,
26 pursuant to 11 DCMR Section 3107.2 for a variance to allow an

1 addition to an existing nonconforming structure (11 DCMR
2 Subsection 2001.3) and a variance from the minimum side yard
3 set back requirement (Subsection 405.9) to allow the
4 construction of a dormer addition to an existing nonconforming
5 single-family row dwelling in an R-1-B District at 3312
6 Cathedral Avenue (Square 2118, Lot 38).

7 This has had a long hearing history starting in
8 July 8, 1998, October 21, '98 and January 20th of 1999.

9 MR. BERGSTEIN: Madame Chair, if I just may be
10 of assistance. This is again an instance where the petition
11 for reconsideration was late filed. So, in terms of
12 considering this item, you'll first need to waive your rules
13 to permit acceptance of a late filed motion for
14 reconsideration, and that it should have been received in the
15 office on August 9th.

16 It's dated stamped August 13th, although dated
17 August 9th.

18 MS. KING: Further than that, he says that he's
19 going to appeal the decision presumably to the Court of
20 Appeals. I mean, do the two things run concurrently?

21 MR. BERGSTEIN: Once and again, because this
22 wasn't timely and given the date of the decision, this entire
23 matter may well be moot because he had 30 days from the date
24 of the final decision to file a petition for review to the
25 Court of Appeals and only a timely petition for review would
26 stay that.

1 But even if a party files a motion for
2 reconsideration and then files a petition for review, I
3 believe that our office advises the court that a motion for
4 reconsideration, if it's timely, is pending.

5 And at that point, generally the Court of
6 Appeals dismisses the appeal pending the Board's determination
7 or the motion of reconsideration. And then the issuance of --
8 is there's a denial, the issuance of denial starts the clock
9 running again for the appeal.

10 MR. GILREATH: Madame Chair, since the
11 submission -- the request for reconsideration was untimely,
12 and secondly, the argument presented in the letter did not
13 offer any kind of illumination to me of additional substantive
14 material that would cause me to reconsider, therefore I
15 recommend that -- or make a motion we deny the request for
16 reconsideration.

17 MS. KING: I would second that. And I would
18 also point out that his point about Mr. McKinnon having been a
19 party is not correct, that the record has been checked and
20 that Mr. McKinnon was denied party status because he applied
21 for it midway through the hearing.

22 So I would concur that this motion should be
23 denied.

24 MS. PRUITT-WILLIAMS: I would also just
25 interject that this motion was not served on the current
26 applicant, and that's another issue that -- I mean, --

1 CHAIRPERSON REID: The owner.

2 MS. PRUITT-WILLIAMS: -- the owner has been --
3 the owner of the building has changed since this order, and so
4 this particular motion for reconsideration or motion has not
5 been served on the new owner of the premises.

6 MS. KING: But our order hasn't been served on
7 them either?

8 MS. PRUITT-WILLIAMS: No, we served it on the
9 attorney that we had of record, and we only found out
10 yesterday that that attorney is no longer associated with the
11 case. We have not received anything in writing stating that
12 it had been -- that the property had been sold, nor that the
13 attorney was no longer representing the owner.

14 MS. KING: Well, I mean, therefore I don't
15 think the fact that it wasn't -- that Mr. Mendelsohn's letter
16 wasn't served on the present owner is a valid reason. I think
17 the other reasons that we've discussed are valid reasons, but
18 that is not since we ourselves didn't know until yesterday
19 that there was a new owner of the property.

20 But I still move -- I join Mr. Gilreath in
21 moving to deny.

22 MR. BERGSTEIN: Just for the sake of clarity,
23 if you're going to not do a separate motion on waiver but use
24 the untimeliness as one of the grounds for denying it, you
25 should either -- either when you vote on this motion, the
26 Board members should understand that you're agreeing to both

1 grounds unless you want to take it separately.

2 If you move not to waive the time, then there
3 is really no necessity to go to the second motion. Though you
4 can, if you want to state on the record that you would have
5 denied it substantively even if timely, but I just want you to
6 understand if you're going to do one single motion on both
7 grounds, (a), it's untimely, (b), it substantively has no
8 merit, that everybody should agree that those are the -- that
9 the motion should be stated as such so that the order can
10 reflect both that there was a denial of a waiver and then, in
11 essence, an alternative that, even if timely, the motion has
12 no substantive merit to it.

13 MR. GILREATH: Do you want me to revise my
14 motion then?

15 MS. KING: What he said. Just say what he
16 said.

17 MR. GILREATH: What counsel said.

18 (Laughter.)

19 CHAIRPERSON REID: Okay, this has been moved
20 and seconded.

21 All in favor?

22 (Chorus of ayes.)

23 Opposed?

24 MS. PRUITT-WILLIAMS: Staff would record the
25 vote as three to zero to two, motion made by Mr. Gilreath,
26 seconded by Ms. King; Mr. Hood and Mr. Sockwell not voting,

1 not having been present.

2 MS. KING: Mr. Hood is present.

3 MS. PRUITT-WILLIAMS: I'm sorry.

4 MR. HOOD: Yeah, I voted.

5 MS. PRUITT-WILLIAMS: I didn't hear you.

6 MR. HOOD: I did vote.

7 MS. PRUITT-WILLIAMS: So it's four --

8 MR. HOOD: Four, right.

9 MS. PRUITT-WILLIAMS: -- four, zero, one.

10 Excuse me.

11 MS. KING: Four, zero, and Mr. Sockwell not
12 participating.

13 MS. PRUITT-WILLIAMS: Four, zero, one.

14 MS. KING: Okay.

15 CHAIRPERSON REID: Okay, I think we have one --

16 MS. PRUITT-WILLIAMS: The next case, I believe,
17 on their agenda is -- we go back to the Amoco Oil Company.
18 We've missed two cases. Amoco and Jubilee House, I believe,
19 are the last two cases for us to deal with.

20 Case No. 16455, Amoco Oil Company. Letter
21 dated August 19, 1999 from Commissioner Marie Whitfield of ANC
22 1-A09 requesting that the Board reconsider its decision on an
23 application of Amoco Oil Company pursuant to 11 DCMR 3108.1
24 for special exception under Subsection 726.1 to enlarge an
25 existing gasoline station to include sales of motor vehicle
26 fuel in a C-2-A District at 3426 Georgia Avenue, N.W. (Square

1 2894, Lot 906).

2 This hearing date was July 21st. Decision was
3 July 21st. Date of final order was August 11th. Those
4 participating in the case was Ms. King, Mr. Hood, Mr. Reid.

5 MR. GILREATH: Misprint because I did not
6 participate in this particular case.

7 CHAIRPERSON REID: We have a letter in this
8 case that -- from Mr. Brown, attorney for the applicant in
9 this case. And basically what he contends in this letter is
10 that the service was not provided of the motion -- the motion
11 -- service of the motion was not provided to the applicant or
12 his counsel.

13 And then he goes on further to contend that Ms.
14 Whitfield, who actually is the person who is requesting
15 reconsideration, was not a party in the case. So my position
16 would be that this motion is inappropriately before us.

17 Any other comments, staff or colleagues?

18 MR. HOOD: Madame Chair, we will recall at the
19 hearing I brought up the -- I mentioned about the bays. And I
20 don't know if it was -- my recollection leaves me at the
21 moment, but I don't know if it was brought up to us about the
22 bays, but I know of some existing other circumstances where
23 bays are also being taken out, and that was one of my
24 reasonings for asking that particular question.

25 My concern is when they went to the ANC -- and
26 I'm not speaking out of turn -- this is the -- Ms. Whitfield

1 is the chair of -- I mean the SMD chairperson in which the
2 establishment is in. My concern is if the presentation to
3 them was like it was to us, then I have some concerns.

4 MS. KING: Was she -- I wonder, was Marie
5 Whitfield an ANC for this single member district at the time
6 of this case? No -- oh, yes, she was. Yeah, because the
7 election was last year.

8 I mean, the fact that she didn't receive notice
9 personally, although the ANC was noticed -- I mean, she
10 probably doesn't live within 200 feet.

11 MS. PRUITT-WILLIAMS: Exactly, Ms. King. We
12 noticed the ANC and anybody within 200 feet. So unless she
13 was, she would not have been personally noticed.

14 MS. KING: Right.

15 MS. PRUITT-WILLIAMS: And that's our typical
16 policy and has been forever.

17 MS. KING: Right.

18 MR. HOOD: But still, it's the ANC
19 commissioner.

20 MS. PRUITT-WILLIAMS: But the ANC was noticed,
21 and I did verify that, so it was. It's in the record that
22 they received notice on that.

23 MS. KING: And our order says that the ANC did
24 not submit a written statement, but indicated informally its
25 support of the application through the Board staff. Who is
26 the staff member?

1 John. And you talked to? They were not
2 talking about giving great weight or quorum or official
3 meeting or anything?

4 MR. NYARKU: No, the chairman indicated that a
5 letter was going to be written, but that was not done. But
6 there was not a position to this application at the ANC at the
7 presentation that the attorney, attorney Brown, gave at the
8 ANC meeting at that time.

9 MS. PRUITT-WILLIAMS: I also checked the file
10 and there was no authorization for Ms. Whitfield to represent
11 the ANC as a whole.

12 MS. KING: I think that we should deny this.

13 CHAIRPERSON REID: Is that your motion?

14 MS. KING: Yes, I move to deny this motion.

15 MR. HOOD: I second it.

16 CHAIRPERSON REID: All in favor?

17 (Chorus of ayes.)

18 Opposed?

19 MS. PRUITT-WILLIAMS: Staff would record the
20 vote as three to zero to two, motion made by Ms. King,
21 seconded by Mr. Hood; Mr. Gilreath and Mr. Sockwell not
22 voting, not having been present.

23 I believe the last item on our agenda today is
24 Jubilee Housing, and that's BZA Case No. 16502. Letter dated
25 July 21, 1999 from the firm of Wilkes, Artis, representing the
26 applicant, is requesting a waiver of the filing fee for

1 application for Jubilee Housing, Inc. for the permission to
2 continue to operate a previously approved child development
3 center at 1740 Euclid Street, N.W.

4 This application as approved by BZA Order
5 14923. And this is scheduled for hearing on October 20th of
6 this year. You have a letter from the applicant in your file.

7 MR. GILREATH: It says it's a nonprofit
8 organization. Is it a civic association? If it's not, then -
9 -

10 CHAIRPERSON REID: In the letter it says that
11 the owner of the subject property, Jubilee Housing, is a
12 nonprofit organization created for civic purposes.

13 MS. KING: Not the same. Not a civic
14 organization.

15 CHAIRPERSON REID: I'm wondering, why did they
16 not --

17 MS. PRUITT-WILLIAMS: And unfortunately, the
18 regs don't give you -- I mean, if you look under 3308.4, it
19 just says civic association. It doesn't give you any
20 definition or any explanation.

21 CHAIRPERSON REID: Well, if it says created for
22 civic purposes, isn't that the same?

23 MS. KING: No, it's not.

24 CHAIRPERSON REID: How not?

25 MS. KING: Because every -- I mean, every
26 nonprofit is created for civic. Every nonprofit is created

1 for civic purposes.

2 CHAIRPERSON REID: Well, this is what I was
3 asking in the previous order. How do you ascertain what's
4 civic?

5 MS. KING: A civic association is -- I mean,
6 it's kind of like we don't charge the ANCs when they file a
7 motion or something like that. I think that the law would
8 probably -- the legislation, which probably predates the
9 creation of the Advisory Neighborhood Commissions, anticipates
10 a voice for the community in determining what will happen in
11 its backyard.

12 And that, you know, Jubilee Housing is a
13 wonderful thing, but it is not a civic association or a
14 citizens association.

15 MR. BERGSTEIN: If I just say, the regs, which,
16 in slightly different language than the statute, does use a
17 phrase "created for civic purposes," they actually track --

18 CHAIRPERSON REID: They looked at that verbiage
19 from the regulations.

20 MR. BERGSTEIN: That's correct.

21 CHAIRPERSON REID: So how can we do one and not
22 the other? We're at a catch 22 here.

23 MS. PRUITT-WILLIAMS: I mean, that's the
24 Board's determination, too.

25 CHAIRPERSON REID: I would move then that we
26 waive the fees for Case No. 16502, Jubilee House.

1 MS. KING: Okay, now so we're -- our policy for
2 the last year or so, since I've been on, is to say -- the
3 first time we have said yes to waiving fees is the case that
4 we did earlier this morning. So we are now opening the door
5 for every 501(c)(3) to have a waiver of fees.

6 CHAIRPERSON REID: That was my contention
7 earlier, and I was trying to get arms around the definition of
8 civic. And I said is there some type of verification that we
9 would have to require -- to be able to get a waiver, and they
10 said well, let's just go on face value, they've gotten it
11 before.

12 But based upon the earlier vote, there's no way
13 that we could deny this.

14 MS. KING: Every clinic, ever hospital, every
15 public health --

16 CHAIRPERSON REID: Let's not go there.

17 MS. KING: Well, no, that's true.

18 CHAIRPERSON REID: We've already done it. We
19 can't go back and redo that vote we had this morning.

20 MS. KING: No, but that is a citizens
21 organization to protect their neighborhood.

22 CHAIRPERSON REID: Sure, I understand that.
23 But if we are going to go by the regulations which they have
24 lifted this verbiage from for civic purposes, how can we not?

25 MR. BERGSTEIN: The question is whether or not
26 you want to inquire more than just somebody reciting the

1 regulations back to you. If you don't feel -- there's two
2 things. First, you could -- if you don't feel that there's
3 enough information in this letter to help you understand
4 whether or not they are an association created for civic
5 purposes, then, rather than granting the waiver, you can ask
6 them to provide further information.

7 At the same time, you can ask them to elucidate
8 for you what the Zoning Act of 1938 and the regulations,
9 assuming that there's something in the rule making proceeding
10 that created this, meant by that.

11 We could also look and see if we could find the
12 legislative history for that section to see if there's any
13 discussion of what Congress had in mind in terms of civic
14 association to give you some guidance.

15 But the question is whether or not the
16 information provided to you in this letter gives you a comfort
17 that, in fact, this falls within that category. And if not,
18 you can ask for further information to explain why they do.

19 CHAIRPERSON REID: All right, well, did you say
20 the zoning regulations of 1938?

21 MR. BERGSTEIN: The civic association language
22 and the mandate that you not charge civic association comes
23 from the Zoning Act of 1938, Section 8, which establishes the
24 BZA. Under the section that talked about --

25 CHAIRPERSON REID: Okay.

26 MR. BERGSTEIN: -- fees and appeals at the

1 end, it says "the BZA may not charge."

2 MS. KING: Which predates the Advisory
3 Neighborhood Commission.

4 MR. BERGSTEIN: The rules recited back that
5 language I believe in a slightly modified way, and also added
6 to other exceptions. But with respect to this one, the
7 legislative history back in '38 may or may not explain what
8 Congress had in mind when it put in that language.

9 But you can also request this applicant to
10 explain to you why it believes (a) it's a civic association
11 within the meaning of the regulations if you don't feel that
12 what they have provided to you is sufficient to give you
13 comfort.

14 MR. GILREATH: I think for the applicant to
15 simply say that they're a nonprofit association created for
16 civic purposes, that is insufficient. So, in the future, I
17 think an applicant needs to give us more information.

18 CHAIRPERSON REID: Well, they're represented by
19 Allison Prince and Richard Neal, Urban Planner. Prince being
20 the attorney, I'm sure that they can come up with something
21 that is more definitive or more convincing to us for the
22 waiver.

23 But I don't understand why it wasn't requested
24 earlier.

25 MS. KING: But Madame Chair, I warn you that
26 every 501(c)(3) has to be for civic purposes. So if you're

1 going to take a broad interpretation of that, every
2 university, every college, every hospital, every clinic, every
3 -- every 501(c) -- I mean, you need to be very careful about
4 going --

5 CHAIRPERSON REID: I understand.

6 MS. KING: -- to every 501(c)(3).

7 CHAIRPERSON REID: Your point's well taken.

8 MR. GILREATH: Will the counsel do some
9 research and tell us what this provision is and give us your
10 interpretation of what you think a civic association consists
11 of, or someone will do that for us?

12 MR. BERGSTEIN: I'd be glad to try to locate
13 it. When you go back, it's not always -- it's somewhere on
14 microfiche. But yeah, we can --

15 CHAIRPERSON REID: In their grant -- the
16 granting of the 501(c)(3) designation as a nonprofit, does it
17 so stipulate there what, in fact, the purpose -- don't they
18 have to have the bylaws and, you know, they have to be
19 established predicated upon the submission of certain
20 information?

21 MR. BERGSTEIN: Well, again, if you were
22 satisfied that if they're incorporating documents indicated --
23 lists them as a civic association or an association
24 established for civic purposes, and you were willing to take
25 that representation in their documents as being persuasive to
26 you, you could.

1 But what I'm hearing from the Board is that you
2 -- that this issue has raised a question in your mind what is
3 meant by a civic association. And the fact that someone may
4 call themselves a civic association in their incorporating
5 documents may be persuasive in that they had no motivation for
6 misstating what they were, so you may give credence to that.

7 CHAIRPERSON REID: Well, we don't want to open
8 up a maelstrom of applications, nonprofit applications asking
9 for fees to be waived.

10 MR. BERGSTEIN: I may also point out that, in
11 the other case, I believe what was persuasive to the Board was
12 the fact -- at least the representation that this was a --
13 that the other association had previously been allowed to
14 waive its fees, so the Board, in essence, was giving its past
15 precedence some weight.

16 And that's not the situation that's being
17 represented here.

18 CHAIRPERSON REID: Yeah, but the fact of the
19 matter was, even when the previous case had been granted a
20 waiver before, was that correct?

21 MS. KING: Well, I'm about to move, as someone
22 who voted in favor of that motion, that we reopen it. But
23 let's deal with this first.

24 MR. HOOD: Madame Chair, may I interject? One
25 thing that the Board of Zoning Adjustment may want to do is
26 petition the Zoning Commission, if I'm in order, to may be

1 revisit that regulation and deal with it accordingly, right.

2 CHAIRPERSON REID: Make it clear because --

3 MR. HOOD: Just a suggestion.

4 CHAIRPERSON REID: -- we're really in dangerous
5 waters here if we don't proceed correctly. Obviously we have
6 a precedent of us having done it for one and not the other,
7 and we can't really clearly --if we're not clearly able to
8 defend that position, that's going to cause a lot of problems.

9 MS. PRUITT-WILLIAMS: Madame Chair, may I make
10 a suggestion that, for this particular case, you defer action.
11 The hearing is going to come up. We haven't deposited checks,
12 so we can still hold on to it. We're not going to cause
13 financial problems --

14 CHAIRPERSON REID: Okay, I'm sorry.

15 MS. PRUITT-WILLIAMS: We're not going to cause
16 us to go into some type of financial problems on this
17 particular case because we've held the check for right now.
18 And let corporation counsel do some research and request the
19 applicant to provide you with some more information, and you
20 can make a decision at your next meeting --

21 CHAIRPERSON REID: Okay.

22 MS. PRUITT-WILLIAMS: -- if we have the
23 information then. It still doesn't throw them off of their
24 hearing track and --

25 CHAIRPERSON REID: What about the earlier --

26 MS. PRUITT-WILLIAMS: I'm only dealing with

1 this one for right now. Then you can go back to the earlier
2 one.

3 MS. KING: Let's vote on this one and then I
4 have a solution for the earlier one.

5 CHAIRPERSON REID: Okay.

6 MS. PRUITT-WILLIAMS: So you can vote to defer
7 action and request --

8 CHAIRPERSON REID: Sure.

9 MS. PRUITT-WILLIAMS: -- additional
10 information.

11 MS. KING: From both the corporation counsel
12 and from the applicant?

13 MS. PRUITT-WILLIAMS: And the applicant.

14 MS. KING: I so move.

15 MR. GILREATH: I second the motion.

16 CHAIRPERSON REID: All in favor?

17 (Chorus of ayes.)

18 Opposed?

19 MS. PRUITT-WILLIAMS: Staff would record the
20 vote as five -- Mr. Sockwell, did you vote on this?

21 MR. SOCKWELL: I'll vote on it, yes.

22 MS. PRUITT-WILLIAMS: Five to zero to defer and
23 request additional information.

24 MR. HOOD: For clarification, I wasn't voting
25 on this. I was just making a suggestion.

26 MS. PRUITT-WILLIAMS: You can if you'd like.

1 MR. HOOD: I can vote on it?

2 MS. PRUITT-WILLIAMS: Yes.

3 MS. KING: Yeah, we can all five vote.

4 MS. PRUITT-WILLIAMS: All of you can vote.

5 MR. HOOD: Oh, okay, sure.

6 MS. KING: Madame Chair, I would like, as a
7 person who voted in favor of motion -- the motion on
8 application 16483, I would like to move to reopen this issue,
9 if I may.

10 CHAIRPERSON REID: Yes, I second.

11 All in favor?

12 (Chorus of ayes.)

13 Opposed?

14 MS. KING: I would like us to follow the same
15 pattern that we did with the Jubilee Housing case, and I'll
16 tell you why. I think -- we're talking about 1938, which is -
17 - I can't remember my history, but it's 25 or 27 or something
18 years before the establishment -- or 45 or 47 years before the
19 establishment of the Advisory Neighborhood Commissions.

20 I think that it's likely that corporation
21 counsel, if they can find the legislative history on this
22 legislation, will find that it was a desire for the neighbors
23 to be able to form a civic association in order to advocate
24 for their neighborhood as the Advisory Neighborhood
25 Commissions do now, and that it was not intended to be a
26 larger umbrella than that.

1 But I think we need to know more about this
2 Georgetown Homeowners Alliance and what it -- you know, what
3 its membership is and what its purposes are and so forth.

4 CHAIRPERSON REID: So you'd like to defer this
5 one as well?

6 MS. KING: I would like to reopen the case,
7 rescind our earlier approval of the motion and ask for the
8 same --

9 CHAIRPERSON REID: Mr. Bergstein, procedurally,
10 is this being done correctly? How can you rescind an earlier
11 motion? I just want to be --

12 MS. KING: It's a motion.

13 MR. BERGSTEIN: Well, you're at the same --
14 it's never come up before, but you're at the same proceeding
15 and it's a public hearing. And although the persons may have
16 left or not left, there's really no requirement that the
17 people be here at the time that you make the decision since
18 they're not actually permitted to speak to you.

19 It's more that they can observe your decision
20 making, which ultimately will be in the form of a written
21 order anyway. So I don't see any prejudice to the Board
22 during the course of the same publicly advertised meeting to
23 determine to change its -- not change its position, but, in
24 essence, to withdraw, rescind its decision and instead to seek
25 further clarification of the grounds for the relief from the
26 applicant.

1 CHAIRPERSON REID: There is no problem with a
2 Board member making a motion for reconsideration, is there?

3 MR. BERGSTEIN: The only mention of
4 reconsideration is the final decision. And, in essence,
5 because this thing isn't even final yet, nothing's really
6 final until you issue an order.

7 CHAIRPERSON REID: Oh, okay.

8 MR. BERGSTEIN: This is sort of -- well, this
9 is an interim application. But there would still be some sort
10 of, I would hope, written indication that this has been done,
11 that a motion's been granted. And it's really at that, in a
12 filing, that it becomes truly final.

13 So I think that -- I see no reason why you
14 wouldn't have the flexibility to do this. You would certainly
15 have the flexibility to do it before you filed anything in
16 writing. So I think that you could, at this point, make a
17 motion to withdraw the earlier decision and, instead, seek the
18 additional information that you're requesting.

19 CHAIRPERSON REID: So the correct wording would
20 be for her to withdraw -- or move to withdraw her --

21 MR. BERGSTEIN: Or that the Board withdraws its
22 earlier decision.

23 MS. KING: We've already voted on that,
24 haven't we?

25 MR. BERGSTEIN: Yeah, you did vote on it, that
26 a motion -- you withdraw your earlier action on that agenda

1 item and instead --

2 CHAIRPERSON REID: Move to defer.

3 MR. BERGSTEIN: Right.

4 CHAIRPERSON REID: Okay, that's two different
5 motions?

6 MR. BERGSTEIN: It would be a motion -- well,
7 you can combine it.

8 MS. KING: Well, you've already voted to reopen
9 the issue, so we've done that.

10 CHAIRPERSON REID: I'm referring to the wording
11 specifically.

12 MR. BERGSTEIN: I would say that you would move
13 both to withdraw your earlier action on agenda item whatever
14 this is and instead request further clarification or
15 elaboration from the application as to why they are an
16 association created for civic purposes within the meaning of
17 the regulation; and further, to request the Office of
18 Corporation Counsel to provide information to you about the
19 meaning of the term civic association within both the Zoning
20 Act and the regulations.

21 MS. KING: My motion is what he just said.

22 (Laughter.)

23 MR. GILREATH: Second the motion.

24 CHAIRPERSON REID: All in favor?

25 (Chorus of ayes.)

26 Opposed? Okay, that cleans that up because --

1 MS. PRUITT-WILLIAMS: Excuse me.

2 CHAIRPERSON REID: Yeah, sure, go ahead.

3 MS. PRUITT-WILLIAMS: I just wanted to record
4 the vote. Could I get all the -- did everyone vote this time?
5 Everyone can vote on this one, too, so that's why I'm making
6 sure. Okay, so it's five to zero to withdraw earlier action
7 and request deferral and additional information, motion made
8 by Ms. King, seconded by Mr. Gilreath.

9 CHAIRPERSON REID: I think we're fortunate that
10 that second case came right up on the tail of the other case
11 rather than it being a couple of months down the line and then
12 it would be very difficult to go back and to recover.

13 I think that's the best approach to -- that's
14 the best procedure for us to take the high road with that and
15 to get additional information before we make an erroneous
16 decision.

17 MS. KING: And it seems to me that earlier on
18 we talked about asking the Zoning Commission to look into the
19 whole -- this whole sort of precedent of waiving fees and
20 stuff. And you know, if it hasn't been done or isn't in the
21 pipeline, I suggest that we do it.

22 CHAIRPERSON REID: And give us specific
23 guidelines as to when it is appropriate for us to waive fees
24 and define very clearly that very nebulous terms, civic
25 association or civic.

26 Okay.

1 MS. PRUITT-WILLIAMS: We have one more item on
2 the agenda that I believe we can either delete or -- you've
3 dealt with it in executive session, so you can either just --

4 CHAIRPERSON REID: Ms. Pruitt-Williams, again
5 please forgive me. I forgot to mention that since the persons
6 who were involved in that -- the earlier case are not here
7 right now, I'd like to ask staff to be sure to contact them to
8 let them know that there has been a change in that decision.

9 MS. PRUITT-WILLIAMS: Oh, you mean on both the
10 Jubilee Housing and the --

11 CHAIRPERSON REID: No, no; not Jubilee, on the
12 earlier --

13 MS. PRUITT-WILLIAMS: Mr. Gogos?

14 MS. KING: I didn't see Mr. Nettler here or
15 anybody from his office.

16 CHAIRPERSON REID: Nobody's here from that
17 particular --

18 MS. KING: I don't believe so.

19 MS. PRUITT-WILLIAMS: Well, we'd have to
20 actually contact -- exactly, contact Mr. Nettler, the
21 representative, and then Wilkes, Artis, so we would do that
22 through a letter.

23 CHAIRPERSON REID: Okay, thank you. And as you
24 were saying?

25 MS. PRUITT-WILLIAMS: We have one last case on
26 there, Mr. Moreland, which was addressed in executive session.

1 I just wanted to bring that -- since it's on the agenda, to
2 let the audience know that it has already been addressed.

3 And you can either deal with it now and just
4 say that you --

5 MS. KING: We decided to make the minor
6 modification.

7 CHAIRPERSON REID: Do we need to vote?

8 MS. PRUITT-WILLIAMS: No, I just wanted to --

9 CHAIRPERSON REID: Thank you.

10 And also, before we close, I'd just like to
11 welcome our newest Board member, Mr. Sockwell. First day that
12 he's sitting with us, and we look to have a very long and
13 gratuitous relationship with him on our board.

14 Welcome.

15 MR. SOCKWELL: Thank you very much.

16 CHAIRPERSON REID: And also I'd like to welcome
17 our new zoning director, Ms. Jerrily Kress, who is not -- she
18 was floating around here. But we certainly are very pleased
19 to have Jerrily come to take over the position of zoning
20 administrator.

21 And we've already seen quite a few very
22 positive changes taking place, and also those that are in the
23 process of taking place. So we feel that it's going to
24 certainly bolster our performance, as well as having now a
25 full Board -- do we not -- a full Board to be able to serve
26 the public as adequately and as efficiently as possible.

1 Thank you.

2 And I'd like to also -- last but not least --
3 thank the staff for their dedication and commitment and the
4 work that they have performed under rather challenging
5 circumstances. I'd like to thank them very much for all that
6 they have done and wish to ask their continued support and
7 commitment and help assisting us in providing the best
8 possible services for the Board of Zoning Adjustment.

9 MR. HOOD: Madame Chair, I, too, concur with
10 your comments.

11 MR. GILREATH: I'd like to express my personal
12 delight. We now have a new system and hopefully the audience
13 can hear us.

14 (Laughter.)

15 MS. KING: Oh, yes, that's wonderful.

16 MS. PRUITT-WILLIAMS: This is actually just the
17 beginning. We have more coming. But we were very adamant in
18 making sure that the audio-visual people at least had the
19 audio push in for us. We are also going to be videotaping.

20 We have the capacity to videotape eventually.

21 CHAIRPERSON REID: Oh, okay, great.

22 MS. PRUITT-WILLIAMS: That's coming. But at
23 least they can hear us now and we have transcripts, so that
24 was our first goal.

25 CHAIRPERSON REID: Thank you.

26 All right, so that concludes this morning's

1 meeting.

2 MS. KING: And we adjourn until what? What
3 time are we back this afternoon?

4 CHAIRPERSON REID: Well, we're in at 1:00.

5 (Whereupon, the proceedings were adjourned at 1:16
6 p.m.)

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