

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

DECEMBER 1, 1999

+ + + + +

The meeting was held in the Office of Zoning Hearing Room, Suite 220 South, One Judiciary Square, 441 Fourth Street, N.W., Washington, D.C. 20001, at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
JERRY H. GILREATH	Board Member
KWASI HOLMAN	Commissioner
ANTHONY J. HOOD	Commissioner
JOHN G. PARSONS	Commissioner
ROBERT N. SOCKWELL	Board Member

OFFICE OF ZONING STAFF PRESENT:

PAUL HART	Office of Zoning
SHERI PRUITT	Office of Zoning
JANICE SKIPPER	Office of Corporation Counsel

I-N-D-E-X

I. MINUTES

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10:05 a.m.

CHAIRPERSON REID: Good morning. We will now commence the December 1, 1999 meeting of the Board of Zoning Adjustment. Please pardon our delay this morning. Ms. Pruitt-Williams?

MS. PRUITT-WILLIAMS: Good morning, Madam Chair. The first item before you today are the bench minutes of October 20 and November 10.

MR. GILREATH: Madam Chair, I move that the Board adopt the bench minutes as presented in the material given to us.

CHAIRPERSON REID: Is there a second?

MR. SOCKWELL: I'll second that.

CHAIRPERSON REID: Thank you.

MR. HOOD: Madam Chair, I will not be voting on the bench minutes. I didn't receive a copy.

CHAIRPERSON REID: Did you -- were you -- did somebody --

MR. HOOD: I shouldn't vote on it. I wasn't present.

CHAIRPERSON REID: Oh, okay. All right. All in favor?

BOARD MEMBERS: Aye.

CHAIRPERSON REID: Opposed?

MS. PRUITT-WILLIAMS: I am sorry, Mr. Hood, did you

1 vote on it?

2 MR. HOOD: No, I didn't vote on it. I wasn't
3 present.

4 MS. PRUITT-WILLIAMS: Okay. Staff will record the
5 vote as 3 to 0 to 1. Motion made by Mr. Gilreath and seconded by
6 Mr. Sockwell and Mr. Hood not voting, not being present. The next
7 item on the agenda of cases to be decided is the Appeal of 16451,
8 Appeal of Waste Management of Maryland, and 16452. The hearing
9 dates were -- actually, the hearing dates were September 22, and
10 the decision date -- you did part of the decision November 3.

11 CHAIRPERSON REID: On November 3, we had some
12 discussion and deliberation in regard to the issue of timeliness
13 in regard to this appeal. And we determined that basically
14 although there were circumstances that were rather unusual in this
15 case, nonetheless, there was nothing that prevented the applicant
16 from filing. And as a result of that, since the applicant was not
17 prevented from filing and the fact that he did not -- that the
18 applicant did not file was a matter of choice, we determined that
19 it was untimely. And as such, we felt that having now gone into
20 the Executive Session regarding the merits of the case itself, we
21 felt that once we had determined that the application was
22 untimely, that the matter before us was filed in an untimely
23 manner, that we then would not have any further discussion or
24 deliberation regarding the merits of the case in that it had been
25 ostensibly already decided. Any Board Members have comments?

1 MR. GILREATH: Madam Chair, I certainly agree with
2 what you said. We fully are aware that simply determining the
3 untimeliness of the case without responding to the question of
4 whether or not the Zoning Administrator was within his authority
5 to remand this over to us, this will be left hanging and will have
6 to be dealt with at some later time and some later case. However,
7 considering all aspects of it, we feel that it is appropriate to
8 simply limit our decision to the untimeliness and these other
9 matters would have to be dealt with at some later time.

10 MR. HOOD: Madam Chair, I would just say that I
11 think the record stands for itself. We have already ruled and I
12 think the record speaks for itself.

13 CHAIRPERSON REID: Mr. Sockwell?

14 MR. SOCKWELL: I have no additional comments. I
15 agree with the Chair and other Board Members.

16 CHAIRPERSON REID: Okay. Thank you.

17 MS. PRUITT-WILLIAMS: The next case on the agenda
18 is actually Tudor Place, and Mr. Parsons was the Zoning Commission
19 member who sat on that. He has called us. He is unfortunately
20 between several meetings and is on his way and would like if we
21 could postpone this until he could actually come and comment. He
22 is coming today.

23 CHAIRPERSON REID: Who is?

24 MS. PRUITT-WILLIAMS: Mr. Parsons is the Zoning
25 Commission person who sat for Tudor Place.

1 CHAIRPERSON REID: Oh, right. Okay. So he is on
2 his way?

3 MS. PRUITT-WILLIAMS: So he is requesting that we -
4 - yes, wait.

5 CHAIRPERSON REID: All right. So we will just
6 basically table this and then come back with it?

7 MS. PRUITT-WILLIAMS: Until he -- yes.

8 CHAIRPERSON REID: Okay.

9 MS. PRUITT-WILLIAMS: He is actually meeting with
10 the Mayor and he is on his way.

11 CHAIRPERSON REID: Okay. So we will table Tudor
12 Place, Application C-16477 for another Board Member to be able to
13 join us. And we will then go on to 16507.

14 MS. PRUITT-WILLIAMS: Correct. Okay, the next case
15 on the agenda is 16507, Appeal of Watergate West, Incorporated,
16 pursuant to 11 DCMR 3105 and 3106 from the administrative decision
17 of Armando Lourenco, Acting Zoning Administrator, Department of
18 Consumer and Regulatory Affairs, in the issuance of an occupancy
19 permit No. 185776/024273 issued on July 28, 1999 to George
20 Washington University for use of a dormitory housing 388 beds as a
21 matter of right without a need for special exception in an R-5-E
22 District at premise 2601 Virginia Avenue, N.W., Square 6, Lot 825.

23 The hearing date was November 10 of this year. It is before you
24 for a decision.

25 Actually, there is some additional information that

1 the Board requested, which was the applicant's response to the
2 intervener statement, which you should have. The intervener's
3 response to the ANC report, and then proposed findings of fact.

4 CHAIRPERSON REID: All right. Ms. Pruitt, I think
5 that the Board members had -- in regard to this particular case,
6 we were going to go into an Executive Session for a few minutes
7 and then we will resume. So let's recess for about 10 or 15
8 minutes and we will resume.

9 (Whereupon, at 10:12 a.m., the meeting was
10 adjourned for an Executive Session until 10:46 a.m.)

11 CHAIRPERSON REID: Okay. Ms. Pruitt-Williams, we
12 now will resume our morning meeting.

13 MS. PRUITT-WILLIAMS: The next case on your agenda
14 to be decided is Application 16477, the Application of Tudor Place
15 Foundation, Incorporated pursuant to 11 DCMR 3101.1, for a special
16 exception under Section 217 to continue permanently the previously
17 approved operation of a museum by a non-profit organization and to
18 allow the operation of the museum on an adjacent lot within the
19 same square in an R-1-B District at 1644 and 1670 31st Street,
20 N.W., Square 1281, Lots 827 and 830. Hearing dates were
21 originally scheduled for July, which was then postponed to October
22 6. Today is your decision date.

23 The Board requested that the applicant make the
24 following submissions, and they have. Along with both draft
25 orders of findings of fact from both the applicant and I believe

1 the ANC. This is now before you for a decision.

2 MR. GILREATH: Madam Chair, I certainly don't want
3 to speak for John, but I think perhaps he has a particularly
4 special interest in this and he might want to comment first and so
5 forth on this. I will have some comments subsequently, but he
6 might want to start the ball rolling.

7 CHAIRPERSON REID: Sure. The floor is open.

8 MR. PARSONS: Well, I think the progress made by
9 Tudor Place since the hearing, which was not a good experience for
10 any of us, I don't think, to learn of the horror stories that had
11 occurred during certain events. But I think the initiative taken
12 and the amount of materials that were submitted for the record
13 post the hearing show a terrific effort on their part to notify
14 their neighbors and to secure parking in the community, that is,
15 commercial parking in the community and not on-street. They have
16 reduced the number of special events from 15 to 10, and I think we
17 have come a long way since the hearing. So I am ready to make a
18 motion to approve this, but I don't want to get ahead of my
19 colleagues. So I am completely satisfied at this point.

20 CHAIRPERSON REID: I would second that motion. I
21 felt that the -- in the hearing, it was made very clear to us --
22 and also, Tudor Place even agreed themselves that they had not
23 been "good neighbors", and they had not really put forth their
24 best effort to try to ameliorate some of the negative impacts or
25 the adverse impact that was occurring there as a result of the

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1 operation of Tudor House, which even we found objectionable. I
2 think that the conditions that have been set forth in the proposed
3 findings or the proposed order in regard to the hours of
4 operation, the tours, the size of the group -- just to kind of
5 pull out some of the things -- that the functions shall end no
6 later than 10:30 p.m. and that there should be no amplified noise
7 or amplified music in that neighborhood. The issue regarding the
8 parking -- and that was a huge issue because of the fact that it
9 was felt that the valet parking attendants were taking up spaces
10 in the community and Tudor Place is now -- I saw letters, but I
11 didn't see necessarily agreements with other venues to have the
12 cars parked specifically in those places and taking them off the
13 streets. And I would want to see added to that under the
14 conditions for parking that the attendants -- well, if they are
15 not parking in the street, I guess we can assume that they will
16 not be posting those "No Parking" signs, which was very
17 objectionable to the neighborhood. That that would not happen any
18 longer. And with that, I would recommend that we go -- that we
19 approve this application.

20 They also suggested a period of three years. I am
21 not sure if -- I have some hesitation about that. Maybe we can
22 have some discussion about that particular condition. I would say
23 two years, given the fact that there was so much overwhelming
24 protest with the adverse impact. I would like to have them come
25 back. If they are given an opportunity to continue to operate, I

1 would like to have them come back sooner so that we can reassess
2 how they have performed. I would not like -- if they are not doing
3 -- remember that part of the problem before was the fact that they
4 were not performing in accordance with what they had promised in
5 the first place. And then they came before us and they had all
6 this opposition. So I would say two years to kind of keep them on
7 alert and keep them on their toes to make sure that they are doing
8 as they are supposed to or they are keeping with what they had
9 proposed to us as to how they were going to conduct that
10 operation.

11 MR. GILREATH: Madam Chair, I think in many
12 instances five years was a normal time, and they agreed to three.

13 I am not sure that from my point of view that cutting it short an
14 additional year -- I think three years in my judgment is
15 sufficient. It gives them reasonable time to implement this. Two
16 years I think is cutting it a little bit close.

17 But in more general terms, as I heard the case or
18 one of the participants, I felt parking was the overwhelming
19 problem and obviously there were some -- for lack of a better term
20 -- I guess outrageous practices. I feel that this agreement shows
21 good faith that they are going to make every effort with the
22 arrangement of off-site parking and so forth. That has been
23 resolved. I think the other major issue was the noise, and as I
24 understand the agreement, there will be no amplified sound and so
25 forth. And reducing the number of major events from 15 to 10 I

1 think is a good faith effort. And in reading the material, I think
2 that much of the community is in agreement.

3 So I think that both parties should be committed,
4 the community and the others. Because this is a fine historic
5 building. And for us to take actions that would reduce the
6 effectiveness of this building or even jeopardize its existence
7 would be a very gross misaction on our part. So I think it is a
8 good agreement and I am in full support that we approve it.

9 CHAIRPERSON REID: For the three years?

10 MR. GILREATH: I support three years rather than
11 two.

12 CHAIRPERSON REID: Okay. And Mr. Parsons, how did
13 you feel about the term?

14 MR. PARSONS: I agree. Three years is -- if we
15 reduced it to two, I think they would have to be back before us
16 with an application halfway through the second season. I am not
17 sure that that is a fair test.

18 CHAIRPERSON REID: Okay.

19 MR. PARSONS: Two seasons of these 10 events is
20 probably enough to see if they are performing and then they would
21 be back for us during that third season for an application.

22 I am not sure what you mean by a stronger
23 commitment on parking or maybe I misunderstood it. It appears as
24 though they have identified about 600 spaces that are available to
25 them.

1 CHAIRPERSON REID: No. That is just exactly what I
2 was saying, that they have. I didn't see an agreement. I saw
3 letters from property owners or parking garages stipulating that
4 they would make the space available. The point I was making was
5 that I did not see an agreement per se between them with two
6 entities signing a contract or an agreement. It was simply a
7 letter saying that they would do this.

8 MR. PARSONS: Right.

9 CHAIRPERSON REID: They would allow the parking.

10 MR. PARSONS: But you are not suggesting that we
11 hold the record open for a contract.

12 CHAIRPERSON REID: No, no. I have no problem with
13 that. I felt that they had made sufficient progress in that
14 regard and the letter is acceptable to me.

15 MR. PARSONS: All right. Then I would move the
16 approval of this application with the conditions contained in the
17 draft order prepared by the applicant.

18 CHAIRPERSON REID: And do we want to speak to the
19 aspect of it as to allow the operation of the museum on an
20 adjacent lot within the same square? Because that was also raised
21 as an issue.

22 MR. PARSONS: You mean the second house? The Dower
23 House?

24 CHAIRPERSON REID: Yes.

25 MR. PARSONS: Yes. I have no objection to that.

1 CHAIRPERSON REID: Yes. So that is a part of it.
2 We are also approving the Dower House as well.

3 MR. PARSONS: Right. Correct. I am glad you
4 mentioned that, yes.

5 CHAIRPERSON REID: Okay. All in favor?

6 BOARD MEMBERS: Aye.

7 CHAIRPERSON REID: Opposed?

8 MR. PARSONS: I am not sure technically we had a
9 second to that. But --

10 CHAIRPERSON REID: I seconded.

11 MR. GILREATH: She seconded it.

12 MS. PRUITT-WILLIAMS: Staff will record the vote as
13 3 to 0 to 1. Motion made by Mr. Parsons, seconded by Ms. Reid,
14 and Mr. Sockwell not voting, not having been present at the
15 hearing.

16 CHAIRPERSON REID: Okay. Next?

17 MS. PRUITT-WILLIAMS: Actually, you are resuming
18 your deliberations on Case 16507, the Appeal of Watergate West.

19 CHAIRPERSON REID: Okay. Board Members, would you
20 like to -- the floor is open for discussion or a motion. This is
21 not working?

22 MR. GILREATH: This isn't working.

23 CHAIRPERSON REID: Can you hear me in the back --
24 all the way in the back? Can you hear all the way in the back?

25 MR. GILREATH: This is the Watergate case?

1 CHAIRPERSON REID: Yes.

2 MR. GILREATH: Well, as one Board Member having
3 listened to the testimony and read the material, I came across no
4 regulation or reasonable interpretation that says that placing any
5 kind of activity, including overflow students off campus, is
6 proscribed in the campus plan. I see nothing that proscribes that
7 and because any other owner could -- say some private school could
8 purchase this and place their students there, and to say GW is
9 separate and has to be put in a different category I think is
10 incorrect. And, therefore, my judgment is -- and I am fully
11 comfortable with the decision I have reached. I feel this is
12 properly a matter of right.

13 CHAIRPERSON REID: Are you making a motion?

14 MR. GILREATH: And I will make a motion to that
15 effect, yes.

16 CHAIRPERSON REID: To approve the application?

17 MR. GILREATH: To deny it. It is an appeal, isn't
18 it?

19 CHAIRPERSON REID: Oh, I am sorry. Your motion is
20 to deny the appeal?

21 MR. GILREATH: Yes.

22 CHAIRPERSON REID: Okay.

23 MR. GILREATH: So I make a motion that we deny the
24 appeal.

25 CHAIRPERSON REID: Okay.

1 MR. HOLMAN: I second the motion.

2 CHAIRPERSON REID: Okay. Discussion?

3 MR. HOLMAN: I likewise was persuaded that this is
4 certainly one of those contentious issues that has a lot of
5 concern by the community and the University. But my reading of
6 the regulations basically squares with the position of the Zoning
7 Administrator that as the regulations are currently constituted,
8 this kind of use by a university is a matter of right use.
9 Therefore, I don't see -- and I have seen other examples of how
10 the Zoning Administrator has ruled consistently in this regard and
11 I have read the comprehensive plan and I have read the zoning
12 regulations and I am persuaded that we should deny the appeal and
13 that other issues, whatever their validity may be, are more
14 properly discussed in either a case at the Zoning Commission
15 regarding changing what the permitted uses are in those zones or
16 within that campus plan discussion.

17 CHAIRPERSON REID: Thank you, Mr. Holman. Mr.
18 Sockwell?

19 MR. SOCKWELL: In my opinion, the zoning ordinance,
20 especially in its more recent revisions, is attempting to maintain
21 a certain control over universities that have specific campus
22 plans. It is my feeling that the ordinance does not go far enough
23 in defining the university expansions that might occur off-campus
24 and requirements that would restrict such. It is my feeling,
25 having read the comprehensive plan, the latest amendments and

1 different versions of the zoning ordinance, that there might be a
2 reason not to see this building as a free and clear matter of
3 right structure for the particular university that has a campus
4 plan in force. As well, I do believe that there are objectionable
5 issues or objectionable conditions that might be created by a
6 facility of this size changing from its previous use to a
7 dormitory. Therefore, I am not in agreement that this is the most
8 appropriate use for the structure.

9 CHAIRPERSON REID: Thank you, Mr. Sockwell. I
10 concur with my colleagues, Mr. Gilreath and Mr. Holman, in this
11 regard. I feel that, number one, we don't have before us a
12 further processing of a campus plan. And as such, I feel that we
13 should approach this from the standpoint of it being like any
14 other application that is before us. And that being said, it
15 would then be a matter of right use of this particular facility
16 and within the appropriate zoning district. And as to the
17 comprehensive plan aspect of it, I feel that the Zoning
18 Administrator, in defending his decision, pointed out to us that
19 the decision was made taking into account the comprehensive plan
20 as to what the specific desires or what the intention of the
21 comprehensive plan was. And having not been inconsistent with
22 that comprehensive plan. And as such, I felt that I would also
23 vote to deny the appeal on those bases. All right. All in favor
24 of denying the appeal?

25 BOARD MEMBERS: Aye.

1 CHAIRPERSON REID: Opposed?

2 BOARD MEMBERS: Nay.

3 MS. PRUITT-WILLIAMS: Staff would record the vote
4 as 3 to 1 to deny. Motion made by Mr. Gilreath and seconded by
5 Mr. Holman.

6 The last item on your agenda is a motion. BZA Case
7 number 16417. In a letter dated November 19 from the Law Firm of
8 Wilkes, Artis, Hedrick & Lane requesting withdrawal of this
9 application and a refund of the application fee. This case was
10 originally scheduled for January 20, 1999. It was then postponed
11 to May 5. And then at the applicant's request, it was postponed
12 to October 13. And then again at the applicant's request, it was
13 postponed to -- it was supposed to be on next week. However, in
14 the interim, they have now requested that it be withdrawn and that
15 their application fee be returned.

16 CHAIRPERSON REID: Ms. Pruitt, is that typically
17 what is done in an instance where they withdraw the case before it
18 is actually heard?

19 MS. PRUITT-WILLIAMS: It is hard to -- I mean, this
20 is -- this is a little difficult because in one sense staff has
21 devoted an awful lot of time. Each time this has gone out, we
22 have re-noticed it. For one thing, we don't have the budget
23 authority to return money. The BZA has the authority to refund,
24 but there is not a line item in our budget that allows us to do
25 that. So it is very difficult. You could still approve it and

1 then the applicant would have to figure out how to get the money
2 from someone else, because it can't come directly out of our
3 budget.

4 CHAIRPERSON REID: Well I know that typically we
5 don't waive fees.

6 MS. PRUITT-WILLIAMS: Correct.

7 CHAIRPERSON REID: However, in a situation like
8 this where someone has -- and I did not even see them proffer to
9 us a reason why they were withdrawing.

10 MS. PRUITT-WILLIAMS: No.

11 CHAIRPERSON REID: They just withdrew. And a
12 withdrawal within itself does not automatically deem them in a
13 position to have their money refunded?

14 MS. PRUITT-WILLIAMS: No. I mean, that is a
15 judgment call on the Board. There is nothing in the regs or a
16 policy that states that if you withdraw, we give you back -- your
17 fee is refunded.

18 CHAIRPERSON REID: What is the purpose of the fees?

19 MS. PRUITT-WILLIAMS: It is actually the processing
20 -- the work that actually goes into the hearing process.

21 CHAIRPERSON REID: Well, if I am not mistaken -- I
22 don't have it right in front of me -- but wasn't it \$4,000.00?

23 MS. PRUITT-WILLIAMS: Yes, it was a pretty hefty
24 fee.

25 CHAIRPERSON REID: Yes, so can we justify a fee of

1 that nature?

2 MS. PRUITT-WILLIAMS: That is how the BZA -- the
3 BZA set up this fee structure. And that is based on the fee
4 structure the BZA set up. And with the relief they were
5 requesting, that is what they had to pay.

6 CHAIRPERSON REID: It is a non-profit --

7 MS. PRUITT-WILLIAMS: It doesn't matter that they
8 are non-profit. It would have been -- you know, anyone requesting
9 this type of relief, profit or non-profit, would still have the
10 same fee.

11 MR. SOCKWELL: Madam Chair --

12 CHAIRPERSON REID: But we don't have a policy? We
13 do not have a set policy? Perhaps that should be taken up by the
14 Zoning Commission -- a set policy as to situations where an
15 application is filed and is later withdrawn. I think that that
16 should be -- personally, I think that that should be handled a
17 little differently from a fee that is paid and that was processed
18 right on through to the approval or denial of an application. I
19 don't know how this should be handled quite frankly.

20 MR. SOCKWELL: Madam Chair, in the Building and
21 Land Regulation Administration, the DCRA, there are procedures for
22 refunds of filing fees when permits have not been issued. There
23 are other refund possibilities I think after permits have been
24 issued if there has been no work or something like that. It seems
25 that in this case that if the processing was limited to receiving

1 and cataloguing the application and noticing the property and
2 adjacent property owners -- if there is a minimum cost that can be
3 established, then perhaps a refund less expenses can be authorized
4 with a fixed expense established. But then again, the fees vary
5 across the Board based upon the applicant and the type of
6 application. With a large sum of money such as has been put
7 forth, it seems a bit unreasonable not to be able to refund some
8 of the money, but there needs to be a policy regardless. And if
9 there is no policy stated, then the request is as valid as any
10 other request made of this Board.

11 MS. PRUITT-WILLIAMS: I will say you recently had
12 within the last six months this request from a withdrawal from
13 another applicant that was denied.

14 CHAIRPERSON REID: You said we had a --

15 MS. PRUITT-WILLIAMS: They withdrew the application
16 and they requested the fee back and you denied it.

17 CHAIRPERSON REID: Who was that? I don't remember
18 that.

19 MR. SOCKWELL: I remember it. Had they been to
20 hearing?

21 MS. PRUITT-WILLIAMS: No.

22 MR. SOCKWELL: They had not been to hearing.

23 MS. PRUITT-WILLIAMS: No. No. They had only been
24 noticed once. This was an application that they -- they came in
25 two different ways. They came in as a modification to an existing

1 project and if that did not come through, they had also applied
2 for special exception. They were covering their choices both ways.

3 You modified the plan, so therefore the special exception was no
4 longer needed and so they withdrew their application.

5 MR. SOCKWELL: Okay. Then I would suggest that we
6 may not have a procedure for refunding but that a procedure needs
7 to be developed immediately, probably based upon requests for
8 withdrawals that precede notification of adjacent property owners
9 and the kinds of things that we do. There has to be a cut-off
10 date for such, and it should be specific.

11 MS. SKIPPER: I would -- Madam Chair, if I might.
12 I would just like to point out that under your fee structure in 33
13 -- well, what was 3381.4, it specifically says when you can make a
14 refund. I don't know --

15 CHAIRPERSON REID: What does it say?

16 MS. SKIPPER: It says that the Board may authorize
17 the refund of all or a portion of the filing fee if it finds that
18 the application was incorrectly filed at the direction of the
19 Zoning Regulations Division of the Department of Consumer and
20 Regulatory Affairs. So I think Mr. Sockwell is correct that there
21 may not be an enunciated procedure.

22 CHAIRPERSON REID: Okay.

23 MR. GILREATH: Perhaps -- I think the present
24 regulation, though, says it can be the fault of the Zoning
25 Commission. If we are at fault --

1 MS. PRUITT-WILLIAMS: Zoning Administrator.

2 MR. GILREATH: Administrator -- there should be
3 reimbursement to be considered. I kind of -- if the Zoning
4 Administration did everything that was required and so forth, I
5 don't know whether or not they should be reimbursed. And
6 secondly, it seems to me that even for them to have any weight
7 whatsoever, they have got to give us a strong recommendation as to
8 why they discontinued this. If there is a good reason -- perhaps
9 the applicant passed away. But to just simply say -- it has been
10 to us twice, right?

11 MS. PRUITT-WILLIAMS: It has been to us four times.

12 MR. GILREATH: Four times. To my mind, I do not
13 feel that they would be entitled to any kind of reimbursement.

14 MR. SOCKWELL: If I might add, Madam Chair. My
15 feeling on the filing fees is that because the filing fees are
16 based on the size of the project, that you can't take \$10,000.00
17 from one guy and \$2,000.00 from another and \$500.00 from someone
18 else and \$25.00 or \$250.00 from someone else and say, well, we are
19 going to keep all of this money because the volume of -- because
20 we just don't give back fees. The point is that the amount of
21 effort for the case may not vary as much based on size as it may
22 based on complexity or the amount of contention that is involved,
23 and there should be a policy, now that I think about it, that
24 probably refunds all fees over a certain amount under certain
25 circumstances. Because you just can't keep that kind of money and

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1 be fair.

2 CHAIRPERSON REID: You know what, I would agree
3 with that. But I think what we need to do --

4 MR. SOCKWELL: But we don't have a policy.

5 CHAIRPERSON REID: Yes. I think what we need to do
6 is to table this or not make a decision on this today and take it
7 under further consideration and to get further input before we did
8 make a decision. And to determine if, in fact, there may be some
9 compromise. And I would like to get -- as Mr. Gilreath indicated -
10 - from the applicant some explanation as to what is the basis for
11 the withdrawal and the request for refund.

12 MS. PRUITT-WILLIAMS: Okay. So they actually -- the
13 hearing is scheduled for next week, so they will not -- there will
14 be no hearing for this. Because whether or not you refund the
15 fee, they are withdrawing the project period.

16 CHAIRPERSON REID: Well, yes. And we don't have to
17 move on the request for withdrawal, do we?

18 MS. PRUITT-WILLIAMS: No, not technically. I mean,
19 it would help. But you just note that you understand that it has
20 been withdrawn and really the motion would be on whether to refund
21 the money or not.

22 CHAIRPERSON REID: Okay. Well, we will note that
23 it has been withdrawn and I would --

24 MS. PRUITT-WILLIAMS: Do you want to defer this
25 until January?

1 CHAIRPERSON REID: I would like to defer it until
2 January before we can make a decision as to what to do. And in
3 the interim, ask that they proffer to us the basis for their
4 withdrawal.

5 MR. SOCKWELL: I might add, if I may, Madam Chair,
6 that counsel has stated that the policy relates to the Zoning
7 Administrator's error in sending applications forward. And that,
8 of course, would be a reason for refunding money because the money
9 shouldn't have been paid in the first place because the applicant
10 was misled to apply to the Board. In the case of many of our
11 applicants, the choice is not to use the Zoning Administrator and
12 to come directly with outside legal counsel for the relief
13 requested determinations. On that basis, there is no policy and
14 on the basis of anyone who is here under any circumstances other
15 than an error, there is no policy. So we have to look at specifics
16 and where the policy should apply and where it shouldn't.

17 CHAIRPERSON REID: Yes, this was a little bit more
18 complicated in that I recall that this applicant came to us -- and
19 I think that they self-certified initially.

20 MS. PRUITT-WILLIAMS: Initially, you are correct.

21 CHAIRPERSON REID: And when they came before us --
22 I think that was before your coming on board --

23 MS. PRUITT-WILLIAMS: This was in January.

24 CHAIRPERSON REID: Yes, Mr. Sockwell. We
25 determined that the relief that they were requesting was an

1 addition of another floor on that building on Chapin Street?

2 MS. PRUITT-WILLIAMS: I don't remember the
3 specifics.

4 CHAIRPERSON REID: I do. Because I know the
5 building.

6 MS. PRUITT-WILLIAMS: But there was -- yes, they
7 first came to us self-certified, and there were lots of flaws in
8 the self-certification.

9 CHAIRPERSON REID: And we sent them
10 back --

11 MS. PRUITT-WILLIAMS: And you suggested that they
12 then retain legal counsel and then go back through the process.

13 CHAIRPERSON REID: Yes, we sent them back to retain
14 legal counsel because what they were coming to -- and, you know,
15 also let's understand that often people come before this Board and
16 they don't have a clue as to the procedures and what they are
17 supposed to do and how to present their cases. And this was a case
18 like that. The request or the relief they were asking for was
19 insufficient for what they were actually going to do. And as
20 such, we recommended that they retain counsel and that they have
21 their application put together appropriately to come before us to
22 request the relief that they were asking for. They went back and
23 they did that. And it seems to me that they came back again. And
24 when they came back again, they still weren't ready? Was that
25 what it was?

1 MS. PRUITT-WILLIAMS: Correct. That is what I
2 said. There has been quite a bit of discussion on this particular
3 case.

4 CHAIRPERSON REID: They may have -- and I am just
5 speculating because they didn't give us any rationale as to why
6 they withdrew -- but I am speculating that perhaps they determined
7 that perhaps what they were trying to do was inappropriate for
8 that zoning district or that building and they actually could not
9 do that. Again, I don't know. So I think it is very important
10 that they tell us what the basis for the withdrawal is, and that
11 might give us some light as to what we are doing. Do you remember
12 that case, Mr. Gilreath?

13 MR. GILREATH: Vaguely. But I think any kind of a
14 policy for reimbursement that where the Zoning Administrator there
15 has been some kind of fault or dereliction or just simple mistakes
16 -- that if the onus is on the Zoning Administrator, one can make
17 the argument that there should be some kind of reimbursement. But
18 other than that, if any kind of policy is developed, I think that
19 you would have to crank in -- it should include the time and the
20 staff time and so forth. Say if a person paid X amount of dollars
21 for the fee and it was processed and they withdrew it, you need to
22 calculate how much staff time was used. So if they pay \$2,000.00
23 and we say at least a minimum of say \$1,000.00 of staff time was
24 used, then he would only get \$1,000.00 back. This stuff should be
25 studied, I think.

1 CHAIRPERSON REID: Yes, yes. Some kind of scale or
2 something.

3 MR. GILREATH: And see how we might develop it.

4 MR. SOCKWELL: You see, the only problem that we
5 have is that there is probably no direct line of transition of
6 money through the Office of Zoning that is taken in. It goes
7 directly to the D.C. Treasurer and goes in the general fund and
8 gets reallocated as such. And it is very difficult when you can't
9 establish an hourly rate or an hourly cost that is recoverable to
10 the Agency.

11 MS. PRUITT-WILLIAMS: Right. And in fact, as I
12 said, we don't have the budget authority to even refund it. There
13 is not a line item that says refund contingency. So that if you
14 approve the refund, the applicant would still have to go to the
15 general Treasury or through the Mayor to get their refund.

16 CHAIRPERSON REID: And unfortunately, when an
17 applicant elects to go the route of self-certification --

18 MS. PRUITT-WILLIAMS: They take that responsibility
19 on. That is the whole idea.

20 CHAIRPERSON REID: That is what it is supposed to
21 be based upon. They take that risk. I think that we also have to
22 look at that. They do take a risk. Because when they came before
23 us, the relief that they were requesting was just inappropriate.
24 And as a result of that, they have been all around. I don't know
25 if they spent money to retain counsel or what. I think they did

1 have a lawyer when they came back the next time. But this is just
2 an unfortunate situation, and I just prefer not to rule on it
3 today and to get more information and do so at the next regularly
4 scheduled meeting. How do the other Board Members feel about
5 that?

6 MR. GILREATH: I agree with that. And do we have
7 the resources where someone could perhaps take a look at this
8 problem and say there is nothing we can do or yes we can -- you
9 can recommend A and B or what have you? Is this something that
10 could be resolvable or is it just something that we just can't do
11 much about?

12 MS. PRUITT-WILLIAMS: This has been an ongoing
13 problem, and a lot of it is tracking down with Corp Counsel the
14 authority the Board has versus what the Zoning Commission has
15 versus I guess how we -- what say we have over our fee structure?
16 Right now in staff time we do not have the resources to do
17 exhaustive research right now. We can work with Corp Counsel to
18 get at least some citations and some understandings of where the
19 authority lays. And if it delegated to the Board through the
20 Mayor and things of that nature. So that there is a clear
21 understanding of who can set the fees, when they can be set and
22 what restrictions that you have.

23 MR. GILREATH: What would be useful is if we could
24 kind of have some kind of understanding of whether or not we have
25 any authority at all. Because this keeps coming up and if there

1 is nothing we can do, there is no point in taking these things up.

2 MS. PRUITT-WILLIAMS: It is different because you
3 have the authority to do so, but then you have a budget authority
4 which is separate and very different.

5 MR. SOCKWELL: We may wish to look at application
6 fees for things like HPRP and other reviews.

7 MS. PRUITT-WILLIAMS: If there is any type of
8 refund policy.

9 MR. SOCKWELL: If there is a refund policy that
10 could be basically adopted or modified for our purposes.

11 CHAIRPERSON REID: And for the record -- I am
12 sorry, the request came through their attorney.

13 MS. PRUITT-WILLIAMS: Yes.

14 CHAIRPERSON REID: Mr. Glasgow from Wilkes and
15 Artis.

16 MS. PRUITT-WILLIAMS: Yes.

17 CHAIRPERSON REID: So they have retained counsel.

18 MS. PRUITT-WILLIAMS: Yes, they retained counsel
19 after the January 20 meeting or hearing.

20 CHAIRPERSON REID: Okay. Well, we will just defer
21 that until the next meeting. Is that the last thing on the
22 agenda?

23 MS. PRUITT-WILLIAMS: Yes, ma'am.

24 CHAIRPERSON REID: Okay. Then this meeting for
25 December 1, 1999 is adjourned.

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(Whereupon, at 11:22 a.m., the meeting was
adjourned.)

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