GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY

JANUARY 23, 2001

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:59 a.m., Robert N. Sockwell, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

ROBERT N. SOCKWELL	Chairperson
ANN RENSHAW	Board Member

ZONING COMMISSION MEMBER PRESENT:

HERBERT FRANKLIN	Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF CORPORATION COUNSEL PRESENT:

Marie Sansone,	Esq.

C-O-N-T-E-N-T-S

AGENDA ITEM PAGE

PRELIMINARY MATTERS 4

APPLICATION OF KENNETH WORKMAN, JOSEPH STRAKE, CARL AND ELIZABETH RICHMOND:

16611 ANC-3F 4

PHIL T. FEOLA, ESQ 6

Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8789

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

(9:38 a.m.)

CHAIRPERSON SOCKWELL: The hearing will please come to order. Good morning, ladies and gentlemen. This is the January 23rd, year 2001, public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Robert N. Sockwell, Chairperson. Joining me today is Ann Renshaw, and representing the Zoning Commission is Herbert Franklin.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

Upon coming forward to speak to the board, please give both cards to the reporter, who is sitting to my right. The order of procedure for special exceptions and variances is, one, statement and witnesses of the applicant; two, government reports, including the Office of Planning, and the Department of Public Works, et al.

Three, the report of the Advisory Neighborhood Commission, the ANC. Four, parties or persons in support. Five, parties or persons in opposition; and, six, closing remarks by the applicant.

Cross-examination of witnesses is permitted by the

applicant or parties. The ANC within which the property is located is automatically a party in the case.

The record will be closed at the conclusion of each case, except for any material specifically requested by the Board, and the staff will specify at the end of the hearing exactly what is expected.

The decision of the Board in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons present not engage the Members of the Board in conversation.

Please turn off all beepers and cell phones, or set them to vibrate at this time, so as not to disrupt these proceedings.

The board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as a request for postponement, continuance, or withdrawal, or whether proper and adequate notice of the hearing has been given.

If you are not prepared to go forward with the case today, or if you believe that the Board should not proceed, now is the time to raise such a matter. Does the staff have any preliminary matters?

MS. BAILEY: Good morning, Mr. Chairman, and Members of the Board. I am Beverly Bailey, and yes, we do have a preliminary matter. The only case for this morning is Application

Number 16611, The Burke School, Kenneth Workman, Josef Straka, Carl and Elizabeth Richmond.

The Office of Planning is requesting that that case be continued to another hearing date, and the applicant is in support of that request.

CHAIRPERSON SOCKWELL: Are there representatives of the Burke School here?

MR. FEOLA: Mr. Chairman, for the record, my name is Phil Feola, with Shaw Pittman, counsel to the Edmond Burke School, the applicant in this case.

CHAIRPERSON SOCKWELL: Please proceed.

MR. FEOLA: Well, I think Ms. Bailey explained the school's position. The Office of Planning suggested a continuance would be prudent for a number of reasons. I think the primary reason is that the Department of Public Works hasn't finished its analysis of this particular application.

Traffic, and parking, and circulation, automobile circulation, is the preeminent issue, and we agree that it would not be prudent to move forward without having the Department of Public Works weigh in.

CHAIRPERSON SOCKWELL: Mr. Feola, is there -- well, first, is there anyone from the community here to state their feelings about the postponement request?

MR. KOGAN: Yes, the ANC-3F representative is here.

CHAIRPERSON SOCKWELL: If you can step forward and

have a seat. Mr. Feola, you may stay.

MR. KOGAN: Turn your mike on and identify yourself, please. Thank you.

MR. KOGAN: My name is Phil Kogan, 3635 Vezee Street, Northwest, Washington, D.C. I am an ANC Commissioner of ANC-3F-01.

MS. PERRY: My name is Karen Perry, and I am the ANC Commissioner from 3F-02.

CHAIRPERSON SOCKWELL: All right. Karen Perry?

MS. PERRY: Yes.

CHAIRPERSON SOCKWELL: Would you just express your support or your feelings about the request for postponement, please.

MR. KOGAN: Yes. I think basically the way I understand the facts is that the neighbors, the neighbors in the area surrounding the Burke School met with Mr. Ken Layton of the Department of Public Works, or actually the District Office of Transportation, last Thursday.

I was at that meeting on Thursday, the 18th, and we spoke with Mr. Layton. He expressed agreement with the objections that we had laid out for the project. We had also laid those objections out to the applicant.

Mr. Layton told us that he would prepare a report on either Thursday night or Friday morning, and get it circulated through his department, and that that report would recommend to

the Office of Planning that the application be disapproved.

MR. FEOLA: I am going to object to this. This is testimony from the ANC Commissioner on DPW's decision in this case.

CHAIRPERSON SOCKWELL: I understand that. This is really strictly to discuss your representation and the community's position on it.

MR. KOGAN: Well, I think these facts are important. My understanding is that the Office of Planning is proposing some sort of mediation, where the ANC would go into mediation because of this postponement.

So the postponement and the things that happen after the postponement are directly tied and connected.

CHAIRPERSON SOCKWELL: But the idea is to express to this board that you are in support of a postponement on the basis that you believe that a postponement may result in positive conclusions, and a potential reduction of objections or at least the satisfaction of the community that certain issues revolving around this case will be satisfied.

And that you will be able to come to some conclusion, some positive conclusions, on some issues as a result of this postponement.

MR. KOGAN: So basically you want me to cut my remarks short.

CHAIRPERSON SOCKWELL: Yes.

MR. KOGAN: So let me give you the bottom line here. The bottom line is that we feel -- well, that the ANC, and I think the community, we have not had a responsive from OP at the staff level.

We had not had a response from OP until we got Kathy Patterson involved at the executive level. And we are not feeling very positive that we are going to get a response. And I am not saying agreement.

I am saying a response, some indication that those people in those agencies have heard the points that we have laid out, and have agreed to build that into their report. Not to produce a report that agrees with us, but to at least weigh and balance what we are presenting.

And so while we are not going to object to the request for a postponement, we would want to get on the record that we feel that if the OP and the applicant feel they are going to use that period of time of the postponement to do whatever they are going to do, we are not sure that quite works for us based on our past experience.

CHAIRPERSON SOCKWELL: Understanding that, and the Board has absolutely no position other than that which helps to make a hearing or a case go more smoothly and be more coordinated between the applicant and those around the applicant's property, in terms of satisfying issues that have been raised or will be raised.

So it is our belief that if the community is for more time, and that the potential is that more time will give the sides an opportunity to come together on some of the issues, then that is what I am asking for.

And I think you have told me that without stating one way or the other that there will be a positive result, that more time would be more beneficial than not beneficial.

COMMISSIONER FRANKLIN: Mr. Chair, I am hearing Mr. Kogan, and he is saying that he is not objecting to a continuance.

CHAIRPERSON SOCKWELL: Right. And usually a lack of objection means that there is some positive potential.

COMMISSIONER FRANKLIN: But he is not at this point willing to say that the extra time will necessarily lead --

CHAIRPERSON SOCKWELL: I did not say he was optimistic.

COMMISSIONER FRANKLIN: I would like to move, Mr. Chairman, that we continue the hearing since we don't have the OP report and DPW report to a date certain, and I suggest the 10th of April.

CHAIRPERSON SOCKWELL: Okay.

BOARD MEMBER RENSHAW: Mr. Chairman, I will second that, but I would like to just take a moment to ask Mr. Kogan or Ms. Perry when ANC-3F's next ANC meeting is, and will you be able to have enough time to air the Office of Planning's report, and the DPW's report, and any response from the applicant?

MS. PERRY: Our next meeting that we could consider this case -- well, we have an April meeting, but that it is not until April 16th. So in order for us to see any revisions, or take it up again, we would need to do that at our March meeting.

In which case we would ask that the applicant, and OP, and everybody, have stuff ready for us at least two weeks prior to our meeting so that we could circulate it, and come up with discussions, and see what was going on.

Which means that we are talking about a March date of around March 5th that we would need everything for.

CHAIRPERSON SOCKWELL: So your meeting is March 16th?

MS. PERRY: Our meeting is March 16th.

MR. KOGAN: I believe it is the 16th. I don't have a calendar, but it is the third Monday.

MS. PERRY: It is the third Monday of the month. Our April meeting would be too late for an April 10th deadline. Right now what we have been experiencing is getting the reports less or maybe a week before our meeting.

CHAIRPERSON SOCKWELL: So March 16th would be a Friday.

MS. PERRY: Yes. Well, I don't have my calendar.

MR. KOGAN: So the following Monday.

CHAIRPERSON SOCKWELL: The third Monday would be

the 19th.

MS. PERRY: Okay. Thank you.

MR. KOGAN: That's it. You've got it.

MR. FEOLA: Mr. Chairman, Phil Feola for the record. So April 17th is the hearing date; is that correct?

MS. PRUITT: April 17th has already got a case.

MR. FEOLA: Well, I guess I am trying to figure out how Ms. Perry got to April 10th.

MS. PRUITT: Well, that is the first available date.

MR. FEOLA: So April 10th is a hearing date?

MS. PRUITT: That's correct.

MR. FEOLA: That's what I am trying to find out.

MS. PRUITT: That's correct. I'm sorry, we are going to the first available.

MR. FEOLA: This is the first that I heard of the April 10th hearing date.

MS. PERRY: And I think what we would ask then if this project is going to be redesigned, or new traffic plans, that the ANC would have a chance to review it and stuff, and have the material early enough for our March meeting.

CHAIRPERSON SOCKWELL: So you are saying that March 5th, which would be two weeks in advance, is the minimum amount of time that is necessary for you to mobilize?

MS. PERRY: I think so, because we have to

reproduce these big reports, and meeting with all the constituents, and get a meeting together. The neighbors have a traffic consultant, and there are two sets of lawyers involved. So it takes a lot of coordination.

MR. KOGAN: And if there are questions back to the applicant if there are things in the report that are not clear, that gives us some time to have some dialogue if that is needed.

CHAIRPERSON SOCKWELL: Well, we are not in a position to make the decision on how the applicant responds to you, but does the applicant's attorney feel that there is any problem with meeting their schedule for at least --

MR. FEOLA: Well, no, sir. I mean, as far as the applicant is concerned, we have filed our plan. We are waiting for a reaction from the Office of Planning and the Department of Public Works.

So depending on when that reaction happens, we may have to adjust that plan to accommodate an issue, in which case we will do it as quickly as we can.

So if DPW doesn't get its report out until March 4th, we may have trouble meeting the ANC's March 5th date. That is our only reservation at this point.

CHAIRPERSON SOCKWELL: Well, I am sure that if you are within a day or so, it is not going to be a deal breaker.

MR. FEOLA: But we can respond fairly quickly is my point.

CHAIRPERSON SOCKWELL: All right. Thank you. Now, we have a motion on the floor to postpone to April 10th, and that has been seconded by Ms. Renshaw. Is there any discussion?

BOARD MEMBER RENSHAW: Just to ask that we communicate with the Office of Planning and DPW to make sure both agencies understand that we would request this information in hand by March 5th in order to satisfy the needs of ANC-3F, and we trust that that date will be honored.

CHAIRPERSON SOCKWELL: I don't see any problem with that. All in favor of the postponement say aye?

(A chorus of ayes.)

CHAIRPERSON SOCKWELL: Opposed?

(No audible response.)

CHAIRPERSON SOCKWELL: Then this case has been hereby postponed to the date certain of April 10th. Will that -- that is an all day, and so --

MS. PRUITT: It will be the first case in the morning. I don't know if we will put on anything else with it, but it will definitely be the first one.

MR. KOGAN: So that will be at 9:30?

CHAIRPERSON SOCKWELL: Yes.

MR. FEOLA: Mr. Chairman, Phil Feola for the record. An additional preliminary matter. I just heard Mr. Kogan suggest that some of the neighbors in opposition have a traffic expert. I think it would be helpful for this board to see that

report as well sometime in advance of the April 10th meeting.

CHAIRPERSON SOCKWELL: I would agree that the board should have every document that is being passed among you.

MS. PRUITT: Mr. Chair, do you have a time certain for that? I mean, if we are having a hearing on April 10th, do you want it so that it can go out in your package?

CHAIRPERSON SOCKWELL: Yes.

MS. PRUITT: So that would mean that we would like to have it in the office by the 4th of April if that is possible.

CHAIRPERSON SOCKWELL: I assume that you can't speak for the community on this?

MS. PERRY: No.

MR. KOGAN: What was the question?

MS. PRUITT: If you could get us any information that you wanted the board to consider for the April 10th meeting by the 4th of April.

MR. KOGAN: Yes, I would very much like to be able to do that.

MS. PERRY: Unfortunately, it is very hard for us as the ANC to commit the neighborhood.

CHAIRPERSON SOCKWELL: I understand.

MS. PERRY: They are working on a minimal budget. We will do the best that they can.

CHAIRPERSON SOCKWELL: I think that we can make a request, can we not, Ms. Pruitt, for documents?

MS. PRUITT: Yes. Well, I'm sorry, I'm not following you.

CHAIRPERSON SOCKWELL: The traffic report is not the ANC's responsibility. It is obviously another community, or it is a community organization other than the ANC, and that's what I am saying.

If that traffic report is being produced, and will be submitted to the applicant, then it should be submitted to us. But we will have to request it, because I don't think there is anyone here officially representing that part of the community.

MS. WISEMAN: No, we are here.

CHAIRPERSON SOCKWELL: Will someone who is authorized to speak for the community step forward to represent whether or not you are preparing a traffic study, and whether or not that is going to be made available to the Board.

MR. KOGAN: I think I would say that this case now, and this is our third continuance, and I think what is driving these continuances are the late submissions from the applicant.

Now, what I wanted to have for you today had we had a hearing would have been a full ANC report. And I did provide you one in November, a rather detailed report.

And I was going to have to work on that report this weekend because of the way that the submission came to us on January 11th. We had to meet on January 16th, and a meeting on the 23rd.

And that's why Commissioner Perry here is talking about March 5th. And I think what we are saying is that if we could get materials from the applicant in a timely manner so that we could conduct our business -- you know, we need 7 days public notice, and we have to go through our steps.

CHAIRPERSON SOCKWELL: I understand. Sure.

MR. KOGAN: And if we can do that, and have all of their material in hand, and then make sure that we have responded to their proposal, and that their submission has been made, then sure, we will be ready on April 4th.

CHAIRPERSON SOCKWELL: I understand that it is a timing issue, and I understand that.

MR. FEOLA: Mr. Chairman, I am going to object to the characterization that the materials got to the ANC late. These materials were given to the ANC before Christmas.

They were officially given as part of the pre-hearing submission on January 11th, well in advance of the two week deadline that this board sets by its rules.

There is nothing new in that submission that Mr. Kogan didn't see before the holidays, and actually before the November hearing here. So I just want to lay to rest the characterization that the applicant has been late.

CHAIRPERSON SOCKWELL: All right.

MR. FEOLA: Who has been late has been the Department of Public Works, which we have no control over.

CHAIRPERSON SOCKWELL: All right. I am willing to accept that statement. If anyone --

MR. KOGAN: And I think I haver to respond, because the ANC -- I would not recommend that the ANC vote on a draft report, which is basically what I had, some faxed materials.

CHAIRPERSON SOCKWELL: Okay. Well, anyway, you will come together on the issues, and the items that will be submitted among you, and to the board, and then we will receive those, whatever is ready hopefully in the time period that has been requested, within that time period, if everything comes together.

MS. PERRY: Yes, if everything comes together, I think we can make that commitment. And my building -- even though I am going to take off my ANC hat for a minute and speak for the community, at least as far as Van Ness, which has requested party status.

There is approximately -- well, you know, how many people have applied for party status, and so there is no one spokesman here for that group. It has been working as a coalition.

But I am sure that as soon as they can do it that they would be happy to provide the traffic report to the Board. But I think that we also need to say -- and I am not as the ANC now, but as a resident of the neighborhood -- that we have heard that part of the reason for this postponement was that the Office

of Planning did not like the traffic report.

And that now there is a chance that they might shift the burden of the traffic from Upton Street to Van Ness Street and do that. And if that is the case, then the neighborhood would need more time to put together a whole new traffic report, because they were prepared to go forth today.

And we are very disappointed by OP's request for a continuance. They had not been consulted.

CHAIRPERSON SOCKWELL: Okay. Well, it is obvious that there are going to be some extenuating circumstances that will determine whether or not we get reports or timely reports from anyone, and we will just have to work within that understanding.

MS. PERRY: But I can assure you that the community will respond as quickly as they can, because that is what they have always tried to do.

CHAIRPERSON SOCKWELL: All right. Well, I appreciate that. I think the Board can accept that. If anyone from the community has something to say from the audience, if you would select a spokesperson who can come up and identify yourself.

MS. SMOLEK: Good morning. My name is Jodie Smolek, and I am at 2945 Upton Street, and I have requested party status at the hearing. And I would just like to go on record that I have been very involved in the community with both meetings with DPW, or the Division of Transportation, as well as the Office of

Planning, and with their council member, Kathy Patterson.

And it is just distressing, in a sense, with the time frame. As of last Thursday, we were under the understanding that there was an outline of a negative report from DOT, and that was sent to planning.

And then I received a call from Friday from Planning saying that they were asking for a continuance because of this traffic situation. So I would just like to go on record with having the meetings and putting together the traffic survey, and raising the funds, that there is a serious issue here.

And our concern is with the Office of Planning. We know that we met with them more than a week ago prior to the seven day deadline. So I believe that a report could have been completed.

However, like I said, there is a serious concern with the traffic and the circulation, and so I would just like to go on record with that.

CHAIRPERSON SOCKWELL: All right. Thank you. All right. Then -- oh, yes, please.

MS. WISEMAN: I am Julie Wiseman, and I also requested party status. I am at 2932 Upton Street, and I am right down the street from the school, and I have sort of been the liaison for the neighborhood to try to obtain materials so that we can work together.

And I just wanted to say that although I can't

speak on behalf of the neighborhood because we have all tried to come together and work cooperatively with the school, but we have different factions on different streets, and all over, and so I am not empowered to speak for them.

But I will say that we will do our best to try and get something out as long as we get materials in a timely fashion from the applicant, which has not happened as frequently as we would like.

CHAIRPERSON SOCKWELL: Well, let's leave the "has not happened" in the past, and away from this, because this is --

MS. WISEMAN: Right, and let's move forward, and if we get them in a timely manner, we will then turn around and try to get them out in a timely fashion.

CHAIRPERSON SOCKWELL: And the Board will appreciate all your efforts in that respect.

MS. WISEMAN: Okay.

CHAIRPERSON SOCKWELL: All right. I think that we have covered this, and I thank all of you for being here, and we will look to see you smiling and happy -- no placards -- on the 10th of April in the morning.

That being the only item of business on the morning --

MS. BAILEY: Mr. Chairman, can I please call the vote on this?

CHAIRPERSON SOCKWELL: Oh, yes, I'm sorry.

MS. BAILEY: The motion to postpone the hearing until April 10th, the motion was made by Mr. Franklin, and seconded by Mrs. Renshaw; Mr. Sockwell to approve, and Ms. Reid has voted to approve by proxy.

Mr. Chairman, I just want to recap some of the dates that were established here today. March 19th is when the ANC is to meet to consider the application.

April 10th is the next hearing on this application. OP's report is due to the Office of Zoning seven days prior to the April 10th hearing. And, Mr. Chairman, would you want to set April 2nd as a deadline for when all materials that haven't --

MS. PRUITT: April 4th.

CHAIRPERSON SOCKWELL: April 4th.

MS. BAILEY: Yes, April 4th for all materials to come in that I haven't indicated.

CHAIRPERSON SOCKWELL: Yes, that's fine.

MR. KOGAN: Does that make April 4th the effect date for Planning; is that what I just heard?

MS. BAILEY: The Office of Planning, their report, is due seven days prior to the Office of Zoning. Now, you may want to get their report prior to that seven days.

MR. KOGAN: Okay. And the seven days would be April --

CHAIRPERSON SOCKWELL: Seven days is April 4th.

MS. PRUITT: April 3rd.

MS. BAILEY: April 3rd.

CHAIRPERSON SOCKWELL: Okay.

BOARD MEMBER RENSHAW: But I had requested that this Board notify OP and DPW that ANC-3F really needs this material, this information, by March 5th. So if we could put that in a letter, please.

CHAIRPERSON SOCKWELL: I think everybody is now aware of the implications of not putting their nose to the wheel on this to get it done, because this request for postponement having come from the Office of Planning, puts the onus on the Office of Planning to move forward in a very expeditious manner.

MR. KOGAN: All right.

CHAIRPERSON SOCKWELL: Okay. Is that it?

MS. BAILEY: That's it.

CHAIRPERSON SOCKWELL: All right. That concludes the morning session.

(Whereupon, the hearing was concluded at 10:03 a.m.)