GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY

JANUARY 2, 2001

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein,	Esq.
Marie Samsone,	Esq.

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

AGENDA ITEM	PAGE
BENCH MINUTES FROM DECEMBER 5TH AND 19TH	4
APPLICATION OF CHARLES A. SISSION:	
16521	13
APPLICATION OF EXXON CORPORATION:	
16494	51
ELECTION OF OFFICERS	61

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

(10:02 a.m.)

CHAIRPERSON REID: All right. This is January 2nd, year 2001. Happy New York. The first meeting of the Board of Zoning Adjustment. We'll now proceed with the meeting.

Ms. Pruitt.

MS. PRUITT: Good morning, Madame Chair.

The first item on your agenda today are the bench minutes for December 5th and December 19th. Board members present on the 5th were Reid, Sockwell, Renshaw, Mitten, and Holman, and on the 19th it was Reid, Sockwell, Renshaw, Hood, and Mitten.

CHAIRPERSON REID: Okay.

MS. PRUITT: Would you like to take them individually or as a group? I have a proxy from Ms. --

CHAIRPERSON REID: Wait one second please. Ms. Pruitt, on the minutes for the 5th, for the application for Fort Chaplin Clark, 166350, was not there on that particular hearing.

MS. PRUITT: Okay. We can correct that.

CHAIRPERSON REID: Okay. I want to look over it for one second to make sure.

Okay. Any other comments, corrections, additions, modifications?

(No response.)

CHAIRPERSON REID: Okay.

MS. PRUITT: Madame Chair, I do have from Ms.

Mitten on the December 19th meeting minutes, the last case on the agenda, where it reads that the appellant alleges that the construction of the garage and covered walk connection and unauthorized commercial use does not conform, it was her recollection that that was not the issue. The issue was --

CHAIRPERSON REID: I'm sorry. Which one? I'm not looking at the page.

MS. PRUITT: On page 3.

CHAIRPERSON REID: Page 2 -- page 3 of?

MS. PRUITT: December 19th.

CHAIRPERSON REID: Okay.

MS. PRUITT: Starting at the second paragraph -- I mean second line. Excuse me.

Ms. Mitten, that it wasn't an unauthorized commercial use that was being appealed, but just strictly a building permit so that "unauthorized use" should just be struck.

MS. RENSHAW: Ms. Pruitt, I thought that the Appellant also had touched on unauthorized commercial use.

CHAIRPERSON REID: I thought so, too.

MS. PRUITT: Unfortunately, we're going to have to do some research on that. I was not there at the hearing. So I cannot speak --

CHAIRPERSON REID: Well, if I remember correctly --

MS. PRUITT: -- directly, but I can check the transcript once it comes in.

CHAIRPERSON REID: Yeah. If I remember correctly, that was one of the issues that was raised, and we went into a discussion as to what is, quote, unquote, deemed commercial, and this was an instance where I think this was the Applicant had a home occupancy permit for -- no. Yeah, wasn't that the one that had a home occupancy permit?

MS. PRUITT: Correct. That's my understanding, that there was a home occupancy permit, and it was correctly issued.

CHAIRPERSON REID: But it was something regarding the regulations and what was and whether it was not deemed commercial, and the aspect of the commercial use was addressed that if they had a home occupancy permit.

Now, unauthorized commercial use, where did this wording come from?

MS. PRUITT: I believe that's what staff found or, rather, took notes.

CHAIRPERSON REID: Yeah, because what I'm saying is I think we were trying to determine. It was alleged that the use was commercial, that it would be used for commercial, but it was not established that it was.

MS. RENSHAW: It's whether or not that permit covers work in the garage because it's whether or not the garage addition is attached to the house or a separate building and whether or not that home occupancy permit covers him if he moves

his operation.

CHAIRPERSON REID: What did Ms. Mitten suggest, to take out what?

MS. PRUITT: Just "an authorized commercial use."

CHAIRPERSON REID: And just make it --

MS. PRUITT: "Does not" --

CHAIRPERSON REID: -- "and the use"?

MS. PRUITT: No. Actually just take out "and use," so that it would read, "The Appellant alleges that the construction of the garage and addition and covered connection does not conform to the zoning regulation."

MS. RENSHAW: I would certainly check the record as far as that unauthorized commercial use, whether or not it was discussed.

MR. SOCKWELL: You might want to say "for an unauthorized commercial use" rather than --

CHAIRPERSON REID: Well --

MR. SOCKWELL: -- because the idea was that it was a two-story facility. The second floor was the studio, and the first floor had this double garage door, drove through thing.

CHAIRPERSON REID: Well, couldn't you put "unauthorized" -- in other words, we haven't established whether or not the use was unauthorized or that it was commercial as alleged.

MR. SOCKWELL: Right.

CHAIRPERSON REID: So maybe just what she said, just "and use," and I would say "the use does not conform."

MR. SOCKWELL: Well, remember if the Appellant is alleging that the construction of the garage addition and covered walk did not conform to the zoning regulations --

CHAIRPERSON REID: Wait a minute, wait, wait, wait. You're right. Appellant alleges that the -- okay. Then that's okay. I'm sorry. When you started to read it, we didn't go all the way back. That is the operative word there. So that's fine.

MS. PRUITT: But the corrections that Ms. Mitten wanted are correct, are acceptable?

CHAIRPERSON REID: Well, she wanted to take out.

MS. PRUITT: Right.

CHAIRPERSON REID: Well, no. I would say not because the alleged -- the alleging was germane to --

MS. PRUITT: The Appellant.

CHAIRPERSON REID: Yeah, the Appellant and the unauthorized commercial use. That was something that they alleged. Now, whether or not that's factual we have not established.

MR. SOCKWELL: Maybe you just want to take out the word "unauthorized."

CHAIRPERSON REID: But that's what they alleged. That's what they are alleging.

MR. SOCKWELL: Right. I agree, but --

MR. MOULDEN: Take out the "unauthorized" because the alleged assumes that --

MR. SOCKWELL: The alleged assumes that the commercial use is unauthorized.

MR. MOULDEN: And it comes before the Board to actually prove whether or not it is.

CHAIRPERSON REID: What should it be?

MR. MOULDEN: Take out the "unauthorized" because the alleges --

MR. SOCKWELL: See, unauthorized is actually --

CHAIRPERSON REID: Okay.

MR. MOULDEN: Indicates that it's a possibility.

MR. SOCKWELL: And the Appellant is alleging that a commercial use in this facility does not conform to the regs., but we didn't say that the use was unauthorized.

CHAIRPERSON REID: All right. So Appellant alleges that the garage and covered walk --

MR. SOCKWELL: And commercial use.

CHAIRPERSON REID: And commercial use does not conform. Just take out the word "unauthorized."

MR. SOCKWELL: Yeah.

CHAIRPERSON REID: Okay. Is that what Ms. Mitten had suggested or say both words?

MS. PRUITT: Both words.

CHAIRPERSON REID: Okay. Well, I would go with

what Moulden said. Just take out "unauthorized."

MR. MOULDEN: Yeah, because the "alleges" speaks for the fact that it may or may not be. That's why it was before the Board for us to determine.

CHAIRPERSON REID: Okay. Are you going to move, make that motion with that amendment?

MS. PRUITT: He didn't actually sit on this. I mean, he wasn't there.

CHAIRPERSON REID: Oh, he wasn't?

MS. PRUITT: He wasn't. So he's just giving constructive comments.

CHAIRPERSON REID: Okay. Mr. Sockwell?

MR. SOCKWELL: Well, I move that we remove the word "unauthorized" from Line 3, page 3, Paragraph 1 of the minutes of the 19th.

CHAIRPERSON REID: Okay. Let's see. What else?

So then are you also moving approval of the other minutes?

MR. SOCKWELL: Yes.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: And with that I would also include in the motion the approval of the bench minutes of December 5th and the amended bench minutes of the December 19th meeting.

CHAIRPERSON REID: All in favor?

MS. PRUITT: Second? I need a second. We need a

second.

MS. RENSHAW: Second.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. PRUITT: Staff would record the vote as four to zero to approve, motion made by Mr. Sockwell, seconded by Ms. Renshaw, Ms. Reid voting and Carol Mitten by proxy.

The second item on your agenda are cases to be decided. The first case is Application 16521 of Charles Sission, pursuant to 11 DCMR 3103.2, for a variance from the front yard setback requirements under Subsection 1543.4 and from 1543.2, from the allowable percentage of lot occupancy of a dwelling for construction of a front porch, rear addition, and accessory garage in the Wesley Heights Overlay District, R-1, at 3020 43rd Street, N.W., Square 1621, Lot 70.

There were several hearings on this particular case. The first was December 8th in 1999 and then May 3, 16th and 24 of this year, and October 17th, as well as December 5th.

Board members present were Ms. Reid, Sockwell, Renshaw, and Mr. Holman.

The Board deferred the decision to dismiss this case, a motion to dismiss this case until now. So you have that, along with the case, to be decided.

CHAIRPERSON REID: Okay. Board members, let's look at the request for dismissal. I think that in this instance, the aspect of the dismissal was based primarily on the status of the permits that had been issued.

And, now, subsequent to the motion to dismiss being proffered to us, we determined we had new information as regards to the permit, and I think that the Applicant presented to us at one of these hearings -- I don't know which one now -- a permit that basically covered many of the things that were questionable in this particular dismissal that is open for discussion.

Board members?

MR. SOCKWELL: Madame Chair, just basically the remedial permit that was issued to Mr. Sission, which I think was dated September 11th or something like that, October 11th of '99, left -- I mean 2000 -- left merely one element for our discussion and deliberation, and that was the acceptability of the roof, which was placed upon the front porch, that roof which created a nonconforming addition to the front of the house.

And we heard testimony that spoke to the issues with regard to that construction, and I personally have trouble with the issue of the porch and the way the various permits were issued, in the first place.

While I did not, in particular, have a feeling that a roof porch would be less attractive from that standpoint than an unroofed deck; the issue is whether or not the roof should be --

CHAIRPERSON REID: But first we have two votes, first on the dismissal and then on the actual case.

MR. SOCKWELL: Well, on the dismissal part of it, if we're talking strictly about the dismissal.

CHAIRPERSON REID: Un-huh, right now.

MR. SOCKWELL: From my understanding, I don't see a reason to dismiss the case for the reasons that were requested.

CHAIRPERSON REID: All right. Ms. Renshaw, did you have any comments?

MS. RENSHAW: No further comments save that on the dismissal issue I don't see a reason to dismiss. I would like to urge that we expedite this and vote on this motion to dismiss, and I move that we put this on the table immediately.

CHAIRPERSON REID: Are you moving that we -- what's your motion?

MS. RENSHAW: My motion is that we refuse the or set aside the motion to dismiss.

CHAIRPERSON REID: Deny the motion, deny the motion.

MS. RENSHAW: Deny the motion to dismiss.

CHAIRPERSON REID: Okay. All right. A second?

MS. RENSHAW: I will second.

CHAIRPERSON REID: Okay. A second.

All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. PRUITT: Staff would record the vote as three to zero to dismiss, motion made by Ms. Renshaw, seconded by Mr. Sockwell.

CHAIRPERSON REID: Okay. Now --

MS. PRUITT: Next item?

CHAIRPERSON REID: I'm sorry?

MS. PRUITT: I'm sorry.

CHAIRPERSON REID: You were saying?

MS. PRUITT: Go forward. Excuse me. You still have to vote on this case.

CHAIRPERSON REID: That's on this dismissal.

MS. PRUITT: Correct.

CHAIRPERSON REID: On the actual application itself, as it pertains to the variance and the variance basically now dwells with the occupancy for a dwelling for the construction of a front porch, rear addition, and accessory garage, discussion?

Now, Mr. Sockwell, you were expounding on the case.

MR. SOCKWELL: Well, just with regard to the issues that remain, with the only issue that remains, which is the issue of the porch, roof porch. I have trouble with the way this all came about, and I do feel that it is an unfair imposition on us to leave in place the roof on that porch.

CHAIRPERSON REID: Is that all you have to say?

MR. SOCKWELL: At the moment, yes.

CHAIRPERSON REID: Okay. Ms. Renshaw?

MS. RENSHAW: Well, in reading through this voluminous amount of material, and especially Ms. Creary's material that she has presented to the Board, and reflecting on the fact that we are down to one issue now, which is the removal of the roof over the front porch, which in the permit dated 10/11/2000, that is what the permit stated.

I would agree that the roof over the front porch should be removed. I am alarmed that this case has gotten to the point that it's gotten. I am sorry that Mr. Sission has what I feel trespassed on the Wesley Heights Overlay, which is in place for a reason.

And I believe that anyone who lives within that district certainly knows the rules, the ground rules of that overlay, and I do not feel that we should be promoting a variance to allow that roof to continue to be a part of that house.

CHAIRPERSON REID: Let me see a copy of the permit. I don't have mine.

MR. BERGSTEIN: Madame Chairman, I think that in the course of your discussion, at least for those of us who may have the write a decision or draft for you, that you go through the framework of the variance analysis, discussing the issues of the uniqueness of the property, practical difficulties, since this is an area variance, and the zoning regulation issues, so that the

actual tests that the Applicant must meet for an area variance are discussed as part of your vote.

CHAIRPERSON REID: Okay. Just one second.

(Pause in proceedings.)

CHAIRPERSON REID: This case has been around for quite some time, and I just had to kind of get an updating on some of the aspects of it, and it's rather confusing because there have been so many gyrations of it.

And I remember that Mr. Gilreath was the one who had told the Applicant or we turned it down, and then for him to go back through the process, and then to come back for a variance to try to address this problem more efficiently, which is what we have before us.

Now, if I remember correctly, with these permits that were issued, there was a sequence of various mishaps along the way with the D.C. government, DCRA having issued the permits incorrectly in that they were fraught with errors, as I remember. And one of them did not have the arts overlay, the Willie Heights Overlay on the permit, and it just had a lot of errors on it.

And then the Applicant went around and around and around and around, which at one point I think resulted in him going to the Director and talking to the Director and the Director gave a directive for the permits to be issued in a certain way or -- I can't remember -- a stop order be lifted or something, and that was done.

And going on those directions, the applicant proceeded. Then there was a time element as to when the work started and when there was an objection registered by the neighbor, and then there were remedial permits to correct what wasn't supposed to be done in the first place, and then these remedial things came out.

And then after having gone through all of this hullabaloo, we come here today to determine whether or not we should give a variance based upon a variance of the zoning regulations to allow the application to go forward or to approve the application.

Okay. Now, where I am still grappling with, and I just talked to Mr. Sockwell about it, was the nature of the permit, that the permit that was issued was to remove the roof, but the variance is for us to allow the roof to stay there.

Now, I am of the opinion that citizens who come to governmental entities and become involved with a lot of bureaucratic red tape based upon whatever misunderstanding or incompetencies, what have you, that are a result of governmental and for lack of a better word I'll say "incorrectness" to have to basically be the recipient of that, and then to have to try to correct it and then to have to go through even more red tape and then to come here and then to try to address it further because you go from this department to that department. You know, one hand doesn't know what the other hand is doing, it gets to be

rather convoluted.

Nonetheless, I feel that I have not been convinced even that the roof being there is not detrimental. I've not been convinced that it's detrimental to the community. I'm not convinced that there is an adverse impact.

It seems to me that there was an issue regarding an easement, and that it was at first believed that the easement -- that the property encroached -- that the addition encroached on the easement.

But then it was determined that the easement was a different kind of easement, that it was -- can you help me with this, Mr. Sockwell? That easement --

MS. PRUITT: Madame Chair.

CHAIRPERSON REID: Yes.

MS. PRUITT: My understanding or my recollection, because you're right; it's been a lot of hearings.

CHAIRPERSON REID: Right.

MS. PRUITT: The easement deals with the property in the back of the house.

CHAIRPERSON REID: With the rear of the house.

MS. PRUITT: With the garage.

CHAIRPERSON REID: Right.

MS. RENSHAW: Which we're not.

MS. PRUITT: But we're not. Exactly. So it didn't --

CHAIRPERSON REID: No, but that was part of it. I was just trying to in my mind's eye go though some of the aspects of it, and we found that the easement part was --

MS. PRUITT: But that's not before the Board at all.

CHAIRPERSON REID: Okay. That's right. I forgot. That's --

MS. PRUITT: The only thing you're really looking at is the porch.

CHAIRPERSON REID: I'm sorry. I'm sorry. You're right. You're right. You're right.

MS. PRUITT: It is very --

CHAIRPERSON REID: Yeah, okay. Back to the porch.

MS. PRUITT: So if you could just go through whether or not the porch --

CHAIRPERSON REID: Now, the porch itself. Okay. Here's what we have to look at. One, in this area variance, whether or not there is something unique and unusual about this particular property that would cause a practical difficult to comply with the existing zoning regulations, and when you apply the three-prong test, I think that it was determined obviously that -- and I'm going to have to try to think if it weren't there, right?

MS. PRUITT: Yes. Correct.

CHAIRPERSON REID: So this is -- please.

MR. SOCKWELL: Madame Chair, while you look at that, there are other issues that actually bear upon this, one of which was the fact that in the prehearing statement of the Applicant prior to the May 3rd, 2000 meeting, the front porch was stated on page 9 as an existing porch with the exception of the roof. It was later stated by the adjacent neighbor, Ms. Creary, that in reality the existing front porch was a much smaller porch and that the construction for which we are looking to determine the applicability of a variance to is really a new porch with roof that was constructed with building permits that did not specify exactly what the construction was.

The permit that was issued for a roof originally did not express that the porch was a new porch. We're dealing with a number of issues that have, as far as I'm concerned, to do with the accuracy of documentation and filings, the propriety of the representation before us, and whether or not we're really looking at a roof as was described in the documentation that we were submitted by the Applicant, and whether we're looking at a roof over a large porch that really shouldn't be there in the first place.

It would be one thing if we are looking at a roof over an existing small porch as a variance. It's another thing to legitimize the construction of a very large porch by approving a variance for a roof for that porch

CHAIRPERSON REID: Well, wait a minute.

MR. SOCKWELL: And the issue is this.

CHAIRPERSON REID: But before you --

MR. SOCKWELL: Yes, we're looking at a roof, but it's the animal upon which the roof is located --

CHAIRPERSON REID: Okay, but I thought --

MR. SOCKWELL: -- that determines for me whether or not the roof is a valid variance request.

CHAIRPERSON REID: Okay, but --

MR. SOCKWELL: Because the hardship would have been different had the porch been the existing porch.

CHAIRPERSON REID: Okay. Well, this is what I find confusing, Mr. Sockwell. The porch itself has a legitimate permit now. So we're not dealing with legitimacy of the porch per se; is that not correct?

MR. SOCKWELL: It depends upon how one reads the record. The record could be construed by the documents to have legitimized the porch by the remedial permit that was issued in October having --

CHAIRPERSON REID: But what if that's been done. We have to accept that, don't we?

MR. SOCKWELL: Well, we can or we can't. We do or we don't. I mean as far as I'm concerned, the paper work may appear to be in order, but the construction for which the paper work represents the applications to the government and approvals by the government may not be in order.

CHAIRPERSON REID: Okay, but they told us that we were only to deal with the variance before us and not the other things which now have been legitimized by permit.

MR. SOCKWELL: Right.

CHAIRPERSON REID: Now, let me ask you a question, Ms. Samsone. If, in fact, there's a permit issued for a structure for which -- what I'm grappling with is the roof. Okay? The roof has to go on something. Okay. If there was no permit for the roof, then there would be not a problem.

MR. SOCKWELL: Right.

CHAIRPERSON REID: But if there's a permit for the roof, do we look at it -- for the porch, do we look at it as if it weren't there, as we do with some of these types of cases or if the permit has legitimized it, do we now look at the porch itself as a part of the structure being legitimate?

MS. SAMSONE: Well, Madame Chair, let me just back up. In answering your question, let me just back up a little. Sine this is a variance case, we do, as you said, had to look at is this property unique or unusual or is there something exceptional, and then would that give rise to practical difficulties.

Now, what Mr. Sockwell's discussion would suggest is that the history of this property and the way it was constructed, the previous permits would not supply the exceptional circumstances. That was one of the Applicant's original arguments

in his application, was that the way in which the porch came to be could be considered as supplying a basis for finding the property unusual.

So Mr. Sockwell has advanced an argument that he does not believe that is a legitimate basis for finding a practical difficulty.

CHAIRPERSON REID: That's my question. How do we assess this if, in fact, notwithstanding how it got to be there, okay, once the government has legitimized it; then do we look at it as, you know -- do we look at it as being there or not being there? Do you see where I'm going with this?

Because typically if, in fact, there is a situation where an applicant comes before us to get a variance for something that's already there, we have to look at it as if it's not there and it does not have a permit usually.

But in this instance, this is something that has been legitimized by the government, and so do we look at it as it's there because it has a permit?

MR. SOCKWELL: While you're thinking about that, Ms. Samsone, let me say this. Remember that with the remedial permit, the porch itself becomes a deck because the remedial permit was issued to right a wrong, and that is that a covered structure was built that did not meet the requirements of zoning; that the remedial permit takes away the violation by specifying the removal of the roof. The Applicant is here before us to get a

variance that will allow the roof to stay and, therefore, would nullify the permit to remove the roof.

CHAIRPERSON REID: See, that's what's bothering me, Mr. Sockwell, because -- and in approaching this particular case, it is highly irregular in how we have to look at it because here we have a situation where you're saying, if I understand you correctly, that even though there's a permit in effect for the porch, it is only basically through the variance that the porch is really legitimized because other than that it would be a deck, right?

MR. SOCKWELL: With a certain limitation, yes. The problem is that I don't believe that anywhere in the record there is a permit for the porch. I believe that the porch has been construed as existing, and that the roof has been construed as new.

CHAIRPERSON REID: No, no, no, no, no, no. This is where we were before.

MR. SOCKWELL: Yeah, but let me finish.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: The issues are more cloudy. It's a little bit more unique situation than we normally have because we usually have an existing structure that has been built illegally, and we have or the owner and applicant has been cited for the illegal construction, prompting the owner to approach the Board for relief.

With that relief, the nonconforming or illegal structure will either be legitimized or by our actions we may allow modification that will solve the problem or we could deny and leave the resolution to DCRA through their police powers.

Now, in this situation, the porch was initially construed as existing. The roof, by the way the permits state, is considered as new and not legal, and the permit which, in fact, was the remedial permit with regard to the roof actually never spoke to the porch itself at all.

CHAIRPERSON REID: Let me see that. Let me see it again. Ms. Renshaw --

MR. SOCKWELL: So the issue of hardship, I think, would be based upon the fact that if we were looking at the original porch as an existing situation which had been modified by an illegal roof, then there might be a different hardship to be assessed than the hardship imposed upon a much larger porch or deck, as it might be called, without a roof or much larger structure that, in fact, is in itself a major construction improvement to the house.

Therefore, where is the hardship? The hardship is in how we construe the impact on the owner, and the hardship to me of owning a much larger, more functional deck than was original is not the same as the hardship of owning a little porch that you put a roof on that you didn't get a permit for because the issues have been clouded by the fact that this appears really not to be the

same porch that would have been an existing porch if the permits and everything else really lined up.

But there's a hole in the process, and the hole is that the porch appears and certainly from testimony is not the original porch, although no permit representing the issue of the porch has been issued, except the remedial permit that requires the removal of the roof.

The porch has always been an invisible item that was part of construction going on with the house, but never was specified within any of the permits as being part of the construction, but the way the city has handled it, they have left us with a roof on a porch. The reality is that we have been left with a big porch as opposed to the porch that we should really be looking at.

But it's the city's responsibility to issue the proper permits and to review the drawings and the construction, and at this point I believe that the word "hardship" could be applied only if we were looking at the original, much smaller porch.

I mean if you have a wading pool, and you want a hardship to allow -- you say you need to cover it from the sun, and that's your legal pool, that's fine. I might consider that more simply than if you have a huge swimming pool that you built that nobody really knows is there because it's supposed to be a wading pool, and you want a roof on it, and you're telling me that

you have hardship, but there's somewhere a hole in the process that lets me know that this pool really shouldn't be this big pool. It should be a wading pool.

And I'm saying that the word "hardship" cannot be applied equally to this condition and the previous condition which has been changed.

CHAIRPERSON REID: Well, Mr. Sockwell --

MR. SOCKWELL: And it leaves the word "hardship," and what is hardship?

CHAIRPERSON REID: Well, first of all, remember now --

MR. SOCKWELL: In this case.

CHAIRPERSON REID: Yeah. Remember how a use variance is the variance that pertains to hardship. Area variance is a practical difficulty.

MR. SOCKWELL: Well, a practical difficulty negative impacts what --

CHAIRPERSON REID: Yeah, practical difficulty is a little earlier than that hardship because use variance is a more difficult burden. However, what I'm trying to look for is the aspect of fairness.

MR. SOCKWELL: So am I.

CHAIRPERSON REID: Yeah. If, in fact, this larger porch has been -- did you just say that there was no permit for the larger porch?

MS. RENSHAW: We can't fine it.

MR. SOCKWELL: We have not seen --

CHAIRPERSON REID: Because I thought that that was -- I thought the whole thing seemed like it emanated from the fact that, one, there was a permit for a roof over a porch that wasn't there or something like that. There was something backwards about the permitting process, and then they had to go back and correct it.

MS. RENSHAW: There was a permit dated 10/5/98 to build a new porch roof as per plans.

CHAIRPERSON REID: Okay, but in order to have --

MS. RENSHAW: Which stated also on the permit "porch in place," period.

MR. SOCKWELL: Existing.

CHAIRPERSON REID: Oh, okay. All right. Now, stop right there. But there wasn't.

MR. SOCKWELL: There was, but it wasn't what we are looking at.

MS. RENSHAW: It was oversized.

MR. SOCKWELL: Yeah, it wasn't --

MS. RENSHAW: It was an oversized porch. Moreover, it trespassed on --

CHAIRPERSON REID: Which porch?

MS. RENSHAW: -- the requirements of the Wesley Heights Overlay.

CHAIRPERSON REID: Okay. Which porch was the oversized porch? Was that the one that was on the first permit for the roof?

MR. SOCKWELL: When the roof permit was issued, it was issued as a roof over an existing porch. The existing porch that was roofed over was not left entirely its original size. It was expanded, and the roof was built to cover the entire porch, which was --

CHAIRPERSON REID: Which was expanded without the permit.

MR. SOCKWELL: Yeah. The porch was expanded as the roof was built. There is no documentation in DCRA's permit record submitted to us anyway that speaks to the fact that the porch that received the roof permit isn't the porch that was originally there or shall we say that the completed construction -- there's nothing that says it's completed construction included enlarging the porch.

But it has been testified to that the porch that exists today that is roofed over is much larger than the original porch prior to the construction.

CHAIRPERSON REID: Okay. Now, isn't this why we asked for the survey?

MR. SOCKWELL: Well, what we got --

CHAIRPERSON REID: To show us dimensions and all of that?

MR. SOCKWELL: Yeah. What we got deals only with the existing condition as has been brought before the Board, but what it doesn't do is explain the dimensional differences between the original porch and the new porch because the original porch has never been shown to us. The only porch that we've seen is the porch that we're dealing with, and the issue that I'm raising which is a little bit difficult without a certain amount of evidence other than testimony from Ms. Creary's side -- the thing is that what we don't have is something that shows the original porch before any construction took place.

But we do know that there is a large roof over a large porch which even in its dimensions and shape tends not to -- it doesn't appear to be the type of configuration that would have existed on the house before, but here, again, we don't have proof one way or the other. We have testimony. We don't have documentation to support the testimony.

But we don't have testimony to refute Ms. Creary's testimony either.

CHAIRPERSON REID: Okay. Now, then my other question, Mr. Sockwell, is in regard to lot occupancy, once the roof is there, once the porch is there --

MR. SOCKWELL: Without a roof, there is no lot occupancy issue because the height of the porch does not exceed four feet above grade.

CHAIRPERSON REID: Okay, okay.

MR. SOCKWELL: With the roof, the porch becomes the --

CHAIRPERSON REID: That's where it kicks in.

MR. SOCKWELL: -- issue. Unfortunately, the issue of the existence of the porch as it appears in our documentation is something that is just slightly outside of what we can deal with, and therefore, what I'm saying is that, in brief, we have a big porch where we should have had a little porch. We have a roof over a big porch, and the question is: since we have no control over the porch itself, do we exercise our powers to grant relief for the roof which will, in effect, legitimize a construction that far exceeded what should have existed there and what should exist there today?

CHAIRPERSON REID: Okay. Then maybe we can take this approach, Mr. Sockwell and Ms. Renshaw. Mr. Bergstein has suggested to us why don't we just apply the regulation. Let's apply the test, and just notwithstanding these other things, let's look at it and see, number one, if, in fact -- and, Ms. Samsone, the answer to the question about whether or not we look at this if it has a permit -- well, see, that's why I'm confused because Mr. Sockwell says there's no permit for the porch, for the larger porch.

MS. SAMSONE: Madame Chair, I think for purposes of applying the test, I'm not sure it really makes a difference. The discussion of the permit, which Mr. Sockwell has articulated very

clearly, goes to the issue of the practical difficulty. Is there a legitimate practical difficulty?

But it doesn't really affect the -- the first question is: is the property unique? It doesn't really impact on the uniqueness of the property.

CHAIRPERSON REID: Well, I mean -- what did you say? It does not?

The existence of the -- well, my thinking was if, in fact, the porch wasn't there, the configuration either looking at the aspect of it being something inherent in the land itself may have an impact on whether or not the configuration is unique, as if it wasn't there; that's what I was thinking, or does that matter?

MS. SAMSONE: Well, following along Mr. Sockwell's analysis, he is suggesting that because of the way in which it came to be there, it should not be counted in treating this as a unique property; that the circumstances of the permitting history, the fact that there doesn't appear to be a permit that authorizes construction of this new porch; that that should not then be used to provide a basis for granting the variance, for finding that the three elements are met.

So I think the answer to your question is no, that the Board should look at this property as though the porch were not there and consider, you know, is the property unique or exceptional. Is there a practical difficulty? Is there

impairment of the zoning regulations? Is there substantial detriment to the public?

CHAIRPERSON REID: Okay.

MR. BERGSTEIN: Madame Chair, could I just jump in for a second?

CHAIRPERSON REID: Yes.

MR. BERGSTEIN: You could have a scenario, I believe, where the porch in another application would not have been here. For example, the porch assume for a moment is matter of right construction. You can have a person who wanted to build a very large porch with a very large roof, and who would come to the Board and self-certify a variance for the roof before they even submitted the plans for the porch because they would first need to get the relief that was required because they wanted to build a large roof.

CHAIRPERSON REID: And that would exceed the matter of right.

MR. BERGSTEIN: Right. Because if someone went to build a porch like this with no roof, that would be matter of right, and they would never have to come here. I'm assuming that's true.

CHAIRPERSON REID: Okay.

MR. BERGSTEIN: If somebody before they built anything wanted to build a large porch with a large roof, they could under our rules without even applying for the building

permit for the porch itself seek the variance they would need for the roof itself.

CHAIRPERSON REID: Oh, okay.

MR. BERGSTEIN: And you would be required under those circumstances to judge whether or not the relief should be granted based upon the test which you have and, therefore, whether or not the porch was or was not built or was or was not approved, and those circumstances would have no relevance because you're permitted to self-certify to the Board now without going through the referral process.

So as you think about this, you should understand that you could have a scenario before you where you'd have these exact same circumstances in terms of dimension, but you would have no roof -- I'm sorry -- no porch, but you would have a self-certification for zoning relief, and then would your analysis be different?

I think, therefore, that whether or not a porch does or does not exist, was or was not applied for may not have any relevance because, again, your rules allow for a person to seek self-certification on the zoning relief alone, and in those circumstances you would be required to assume they probably would get the permit for the porch because it's a matter of right.

But then the question is: should they get that zoning relief that's required because they're adding a porch to the structure.

CHAIRPERSON REID: Thank you.

That really helps me a lot because I was trying to -- I was grappling with, you know, the permit for the roof or applying for a permit for the roof before constructing the porch, and that kind of clarified things for me. Thank you.

Good. Ms. Renshaw.

MS. RENSHAW: Yes. I wanted to ask Mr. Bergstein about this business of a porch being a matter of right. When the porch in this case seems to step on the Wesley Heights Overlay District, in other words, that that is more restrictive than the R-1-A zoning, and we have it in our record that the front yard requirement is not a requirement under R-1-A. Rather, it's a special requirement of the Wesley Heights Overlay.

And if, indeed, that porch extends into the front yard by several feet more than is allowed, I would like to hear your thought about that.

MR. BERGSTEIN: Ms. Samsone will address that.

MS. SAMSONE: Yes, Ms. Renshaw. I believe, I mean, you're correct. The variances that are requested here are from the Wesley Heights Overlay district requirements, and they have more stringent requirements for porches, but I think Mr. Bergstein's analysis is still correct. It's just that the Applicant is here asking for that relief.

And what's driving this is it's the roof that's adding to the lot occupancy under the regulations.

CHAIRPERSON REID: Okay. Just one second.

MS. RENSHAW: But, therefore, we are not really sure that that porch is matter of right if, indeed, it exceeds the Wesley Heights Overlay District requirements.

MR. BERGSTEIN: Well, what I -- maybe you ought to add more technically to this than I would, but if you have a variance for one thing and there is another structure that's also going to be required to support that structure, your variance for the one structure does not necessarily grant the total relief unless it's requested, and if there was another part of this property that required separate relief, if that was true for the porch, your variance here, if you granted it, unless it's expressly stated in the application, would not also grant the variance for the underlying structure, nor would I think you'd be required to grant that relief if it came to you subsequently unless the factors were identical, and I don't know if that's true.

But in order to build a structure, you might need several forms of zoning relief. If one type of relief is sought and not the others, that doesn't mean that you have by virtue of granting that one zoning relief allowed the Zoning Administrator to grant all the others that might be necessitated just as a matter of engineering.

So that's how I would look at it, that each relief comes to you separately as the choice of the applicant or the

decision of the Zoning Administrator in terms of how it's referred, but the fact that when you're looking at a project and you see that there might be other types of zoning relief that might be necessary, the fact that you've granted one doesn't mean that all others would follow from that because each request for zoning relief has to be adjudged separately based upon the factors that are presented as you judge it against the applicable law.

MS. SAMSONE: Although let me just add to that. In this case, when it was initiated, the Zoning Administrator had prepared a memorandum identifying the two parts of the regulation that he believed variance relief were necessary from.

And those would be the two regulations that are before the Board. One is the lot occupancy, and then the other is the front yard setback.

Subsequently there was a survey, and then after the survey, there was even the October 1st so-called remedial building permit. So presumably the Zoning Administrator did not change his mind and identify different or additional types of relief because all we have is the original memorandum identifying the two, the front yard setback and the lot occupancy.

So without anything further from the Zoning Administrator, those are the two items before the Board.

CHAIRPERSON REID: Okay. All right. Then applying the test and looking at the property, can we establish whether or not the property is unique?

Now, from looking on the map, it appears that --

(The Board conferred.)

CHAIRPERSON REID: Just a moment.

(The Board conferred.)

MS. PRUITT: Excuse me, Madame Chair. Would you like to adjourn for a child and go into --

CHAIRPERSON REID: No.

MS. PRUITT: Okay.

CHAIRPERSON REID: We're okay. Thanks.

(The Board conferred.)

CHAIRPERSON REID: We'll take a five-minute recess.

(Whereupon, the foregoing matter went off the record at 11:05 a.m. and went back on the record at 12:07 a.m.)

CHAIRPERSON REID: All right. Now, sorry that this took so long. However, as you can appreciate, the Board has been given a case that is extremely complicated, and as such, we did not want to inadvertently make the wrong decision predicated upon us not having looked at every nook and cranny of this particular case.

And there were some questions that we had that we were trying to get resolved as to the procedure, DCRA, and as to the request that is being -- the relief that's being requested, and if in fact what is before us is sufficient for us to be able to make the decision that we need to make today.

And after having a little side bar discussion, we determined that there are still some questions that are glaring to us, and in order for us to make a decision that would be fair to all parties concerned, such as the issue of the front porch and whether or not there was, whether or not there should be a permit for the front porch, or if, in fact, there is additional zoning relief that would be necessary for the front porch, but then allow us to make a decision as to the roof because there are two schools of thought, that a roof can be applied for without a permit or the zoning relief for a porch in certain circumstances.

And then, on the other hand, for our edification, it appears that this Board would feel more comfortable with having the Zoning Administrator make a determination as to whether or not there is relief required for the porch prior to us making a decision as to whether or not we can grant a variance for the roof to cover this said porch, if that makes any sense. I hope you followed that.

Comments, other Board members?

MR. SOCKWELL: Yes, Madame Chair. I believe that the existence of the Wesley Heights Overlay District and its restrictions that could apply to porches and other structures in front yard would, in fact, apply to this porch if, in fact, this porch is a new construction as opposed to an existing one, and it would apply in a different way than for either case.

The roof itself being requested for the porch is,

therefore either an extension of a nonconforming element or it's an extension itself as a change to a conforming element.

So we need some information from the Zoning Administrator, and we need to see any evidence of the existence of a building permit that allowed the porch that we have been reviewing to be constructed if, in fact, it is not the existing porch of the existing house, and if, in fact, it was constructed in the same time period as other modifications to the existing structure.

Then the permit which was the remedial permit that was issued for the removal of a roof would then, in fact, be either the removal of a roof of the existing porch or would become the removal of a roof for a porch that was built without a permit or if a permit becomes issued, then the entire construction becomes a single element to be ruled upon.

MS. RENSHAW: Madame Chair, I would like to request that in our communique with the Zoning Administrator that we ask the Zoning Administrator to reflect on the Wesley Heights Overlay in regard to the porch and the projection of the porch and also the projection of the roof so that we can reflect in an open session on the Wesley Heights requirements as it refers back to this case.

It's very important that we not set a new precedent here by stepping on the Wesley Heights Overlay requirements as they are now set down.

MR. SOCKWELL: If I might add, we would want or I would want the Zoning Administrator to give us a set of measurements and calculations of the specific relief required if the porch, in fact, needs relief from the Wesley Heights Overlay District requirements for front yard setbacks and a clear calculation of the area of the porch.

CHAIRPERSON REID: Okay. Now, do we need to do some form of a motion?

Okay. I would move that we remand the or request from the Zoning Administrator further clarification as to the zoning relief that would be required, if necessary, for the porch, as well as the measurements as Mr. Sockwell indicated, another survey that would reflect exactly what we're dealing with, and also the information that has been requested by Ms. Renshaw in regard to -- can you reiterate that briefly?

MS. PRUITT: Wesley Heights Overlay.

MS. RENSHAW: The Wesley Heights Overlay.

CHAIRPERSON REID: Okay, all right. Is there a second?

MR. SOCKWELL: Second.

CHAIRPERSON REID: Okay. All in favor?

(Chorus of ayes.)

MS. PRUITT: Staff would record the vote as three to zero to send a letter requesting some additional information from the ZA, and to defer the decision on this case until that

information has come in.

CHAIRPERSON REID: Right, and then at that time, predicated upon what we get from the Zoning Administrator, we will then --

MS. PRUITT: Determine if you need additional hearing.

CHAIRPERSON REID: Exactly, on that particular issue.

And we would like to request, Ms. Pruitt, that if, in fact, there is an additional hearing set or hearing date set for the porch variance, relief for the porch, then it be scheduled on the same day as the hearing -- the appeal that is germane to this particular case.

MS. PRUITT: Okay.

CHAIRPERSON REID: As well. Both on the same day.

MS. PRUITT: Okay.

CHAIRPERSON REID: Thank you.

MS. PRUITT: Next case? The last case of the morning is a motion for modification, Application 16494 of Exxon Corporation, pursuant to 11 DCMR 3108.1, the new Section 3104.2, for a special exception under Section 706 to allow the expansion of a gasoline service station with convenience store in the C-2-A district at 5515 South Dakota Avenue, Square 3760, Lot 812 and 814.

The hearing on this case was October 13th, 1999,

with a bench decision on October 13th, 1999, and the order was issued on November 2nd.

Board members present were Ms. Reid, Sockwell, and Gilreath.

In a letter dated December 21st from the firm of Wilkes Artis on behalf of Exxon, the modification is requesting -- Wilkes Artis is requesting a modification of plans for the BZA order pursuant to 3129. The revised plans include a modest increase in the convenience store, a new single light Exxon pole ID sign, an additional parking space, the reduction of a northernmost driveway, and the relocation of a telephone.

CHAIRPERSON REID: Okay. Board members, I remember this case well, and we had some consternation as to how this particular application we approve would affect the neighboring community in regard to trash, noise, traffic, and the lottery tickets. Mr. Sockwell had brought that issue up as far as people coming back and forth and there would be additional traffic.

However, what I found most glaring was the fact that I did not see in my file, unless I missed something, any opposition to this motion.

MS. PRUITT: And, in fact, on the summary order. We were able to get a summary order because there was no opposition at the hearing.

CHAIRPERSON REID: Yeah, and there was no ANC response --

MS. PRUITT: Correct.

CHAIRPERSON REID: -- to this motion. So we're assuming that they have no problem with it, and the request for the increase of the convenience store and a single pole ID sign I have no problem with. I think it's rather modest. There does not appear to cause any additional problems there, and it seems that they have been heretofore good neighbors. If they were not, I think that we would probably have heard from them by now.

So any further discussion?

MS. RENSHAW: Yes. Madame Chair, I wanted to ask how tall this sign is, and I take it that it's a lighted sign.

MS. PRUITT: Yes, but that is not before the Board. That is not being --

MS. RENSHAW: How tall?

MS. PRUITT: That's not before the Board. It's only --

MS. RENSHAW: It isn't before the Board? It should be.

CHAIRPERSON REID: Mr. Sockwell?

MR. SOCKWELL: Yes, just a second.

Yes, Madame Chair, there were just a couple of things that I have -- excuse me.

Madame Chair, there were just a couple of things that I have looked at with regard to the Amoco (sic) application.

CHAIRPERSON REID: You mean Exxon.

MR. SOCKWELL: I mean Exxon. Pardon me. Exxon-Mobile as it is now called.

The request for the reduction of the driveway from 50 feet to 40 feet did not seem to be a problem. I was interested in how they appeared to get nine parking spaces in approximately the same area as they had shown eight parking spaces without changing the dimensions of said parking spaces, but apparently there's no one here to represent that.

CHAIRPERSON REID: But they have to comply with the parking regulations for --

MR. SOCKWELL: They do. They do.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: The sign as being lower was not a problem. The style of the sign did not bother me.

The elevations, and that is the views shown in page 3 of 3 of the architectural submission showing the on-the-run design, which has been adapted from Mobile Oil Corporation's standard, is a more compatible look to the residential community in that the hipped roof is a typical roof design of the houses, and the singled look would probably be more appropriate, more attractive than the more what I would call a highway design or whatnot of the previous structure.

As well, the size of the pump island canopies is slightly less in all dimensions, and its height is an inch lower. There has been a change in the location of the fuel pumps with

the new design, but I didn't find that to be a problem.

I just looked at all of the things that were being done to see if there was a reason that what they were asking for might have a negative impact.

CHAIRPERSON REID: If not they --

MR. SOCKWELL: The only thing that bothered me was a statement that was made, which was that this should be granted simply because the company-wide design for Exxon-Mobile is the -- would not be as easily implemented if we didn't allow the change.

I just didn't like the way that was stated. The support for this is not whether or not Exxon-Mobile does a same station design all over the country. It's whether or not the station design for the particular neighborhood is appropriate.

So with that in mind, I don't have any objection to the requested changes.

MS. RENSHAW: Madame Chair, the business of the ANC being so nonresponsive, and you had mentioned that you had had some worry about that at the time of the hearing.

CHAIRPERSON REID: No, I didn't.

MR. SOCKWELL: I did.

MS. RENSHAW: You did. All right.

MR. SOCKWELL: I questioned --

CHAIRPERSON REID: They didn't have a problem.

MS. RENSHAW: That's right. It was Mr. Sockwell.

CHAIRPERSON REID: Yes. That particular site had

been vacant for some time.

MR. SOCKWELL: It's not vacant.

CHAIRPERSON REID: No, it had been. No, no, let me finish.

In that there had been -- before the Exxon station had been a veterinary clinic there, and it had been vacant.

MR. SOCKWELL: No, no, not --

MS. RENSHAW: Yeah, but that store part was the veterinary part.

MR. SOCKWELL: If I might say the portion --

CHAIRPERSON REID: Okay.

MR. SOCKWELL: -- the portion that's being acquired, which is to the north of the existing Exxon station, has been at various times a fast food restaurant of one or two types and most recently was a veterinary clinic that closed.

CHAIRPERSON REID: Right, and then it was closed. It was just --

MR. SOCKWELL: Yeah, that particular portion of the site.

CHAIRPERSON REID: And in that area -- let me finish my thought -- in that area we know that there is a fair amount of drug activity in those vacant buildings and what have you. So I think that the ANC by not coming to voice an objection was pleased to have something going in there to kind of help to revitalize that little -- it's right on the corner of South

Capitol and Riggs Road, and --

MR. SOCKWELL: No, actually it's further down. It's -- what's it? I can't think of the street, but it's below Riggs Road. It actually is across the street from a public building.

MS. PRUITT: A school.

MR. SOCKWELL: A school.

CHAIRPERSON REID: That is a junior high school.

MS. PRUITT: Yes.

MR. SOCKWELL: It's not --

CHAIRPERSON REID: Yeah.

MR. SOCKWELL: Is that first building -- that building isn't Bacchus. That building is a library.

CHAIRPERSON REID: No, no. It's Bacchus where you first come down that --

MR. SOCKWELL: Bacchus is a block away or a half a block down the street because there's a public building, and then there are houses, and I thought Bacchus was in the next block, and then north --

CHAIRPERSON REID: Is it?

MR. SOCKWELL: Yeah. My parents live over there.

CHAIRPERSON REID: Oh, okay. Well, then you know. Excuse me. I thought that Bacchus was right there beside it.

MR. SOCKWELL: Yeah, and then east of it, up the hill is all residential.

CHAIRPERSON REID: Oh, okay.

MR. SOCKWELL: But there is an independent public building on the corner directly to the south of the subject site, and then next to that building are residences to the next corner, and then there's the junior high school.

CHAIRPERSON REID: Okay. Then can we have a motion so we can dispose of this particular case?

MR. SOCKWELL: I move that we accept the changes to --

CHAIRPERSON REID: The modification.

MR. SOCKWELL: -- the modifications to BZA Order No. --

CHAIRPERSON REID: One, six, four, nine, four.

MR. SOCKWELL: -- 16494 as being in substantial compliance with the issued order and not a detrimental or negative effect to the previous criteria approved.

CHAIRPERSON REID: Okay. Second?

All in favor?

MS. SAMSONE: Madame Chair, there's a need to waive the six-month rule in this case.

MR. SOCKWELL: Oh, that's right, and I move that we waive the six-month rule, which is stated in the zoning or in BZA procedures, that no changes to an issued order may be requested after six months from the date that the order was issued.

CHAIRPERSON REID: Okay. All in favor.

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. PRUITT: Staff would record the vote as three to zero to grant the modification and the six-month waiver, motion made by Mr. Sockwell, seconded by Ms. Reid.

The last item on your agenda is election of officers.

CHAIRPERSON REID: Board members, I think that based on the fact that Mr. Moulden has had to leave and --

MS. PRUITT: I'm sorry. He did proxy a vote.

CHAIRPERSON REID: Yeah, I know.

MS. PRUITT: Okay.

CHAIRPERSON REID: And that we don't have a Zoning Commissioner representative here that we sort of determine deferring the election until the next meeting.

MS. PRUITT: The next meeting, February?

CHAIRPERSON REID: The next meeting date.

MR. SOCKWELL: The next meeting is not in February, is it?

MS. PRUITT: Yes, meeting. That's why I asked.

MR. SOCKWELL: Oh, meeting.

MS. PRUITT: Yes, that's why I asked, just like February.

MS. RENSHAW: But we have a quorum here. We could

take care of this.

MS. PRUITT: You need to -- well, yeah, that is your choice. You could. That's up to you all to decide.

MR. SOCKWELL: Yeah, I -- who moved?

CHAIRPERSON REID: I moved.

MS. RENSHAW: Wait. Nobody did.

CHAIRPERSON REID: I did. I moved.

MR. SOCKWELL: She moved.

CHAIRPERSON REID: I moved that we --

MR. SOCKWELL: I'll second it. I'll second.

MS. RENSHAW: You're seconding to defer?

MR. SOCKWELL: To defer.

MS. RENSHAW: I'm not voting to defer. I'm voting against deferring.

CHAIRPERSON REID: Okay. All in favor?

MR. SOCKWELL: Discussion?

CHAIRPERSON REID: Oh, I thought you did discuss. I'm sorry. Go ahead, go ahead.

MR. SOCKWELL: I believe that if we defer to a time when we've had a chance to discuss any of the specifics, there may be -- if we defer it till the next meeting, which will be in February, it might make it more simplified to vote on the positions, the officers because --

CHAIRPERSON REID: And also status.

MR. SOCKWELL: -- and status issues should have

been satisfied by that time. That's why I would recommend the deferral only.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Thank you.

CHAIRPERSON REID: All right. All in favor?

(Chorus of ayes.)

MS. RENSHAW: Against. I'm against deferring.

MS. PRUITT: Staff would record the vote as two to one to defer.

CHAIRPERSON REID: Have you got a proxy?

MS. PRUITT: Yes, actually. The motion fails then. Mr. Moulden has a vote for today, he wanted for today.

MS. RENSHAW: That's what I thought.

CHAIRPERSON REID: Okay.

(The Board conferred.)

MR. BERGSTEIN: We need to explore the issue of whether or not you need a full majority of the Board to take an action of this kind, which is procedural, as opposed to the requirement of three members to vote on --

CHAIRPERSON REID: I'm sorry. We were talking. I'm sorry. Can you repeat that? Go ahead.

MR. BERGSTEIN: If the issue, and we're thinking about this at the moment, if the issue is whether or not you need -- well, the motion before you is whether or not to defer a vote. The fact that Mr. Moulden has actually cast a vote doesn't mean

he's against the motion.

MS. PRUITT: No, for both because I just --

MR. BERGSTEIN: Oh, he actually voted for that?

MS. PRUITT: Right. He voted for a person and also to have the election today.

MR. BERGSTEIN: He affirmatively voted for that.

MS. PRUITT: Yes.

MR. BERGSTEIN: Oh, all right. I was not aware of that.

MS. PRUITT: Yes, that's the proxy.

MR. BERGSTEIN: Okay. I'm sorry.

MS. PRUITT: I asked him about that.

MR. BERGSTEIN: Okay.

MR. SOCKWELL: Then, Madame Chair, if the motion has failed, then we have no choice but to take the matter up.

CHAIRPERSON REID: Okay.

MS. RENSHAW: So are we moving candidates?

MR. SOCKWELL: I guess we are moving candidates.

MS. RENSHAW: We are moving candidates. I'll move a candidate.

It's tough on a small board such as the BZA to single out one individual for the chairmanship over another individual when everyone is of equal and stellar value, but at this case, I would like to nominate for Chairman of the BZA Robert Sockwell, and would put his name in on the table, on the floor.

CHAIRPERSON REID: I'd second it.

MR. SOCKWELL: And I accept the nomination.

CHAIRPERSON REID: All right. All in favor?

(Chorus of ayes.)

MS. PRUITT: It's four to zero. Staff would record the vote as four to zero to approve Mr. Sockwell as chair, motion made by Ms. Renshaw, seconded by Ms. Reid, and a proxy from Mr. Moulden.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: Well, thank you very much.

MS. PRUITT: You have to do Vice Chair.

MR. SOCKWELL: Yeah, we have to do Vice Chair.

MS. RENSHAW: So it's up to you to.

MR. SOCKWELL: I as member of the Board for this period of time feel that the position of Vice Chair would be well filled by either of my stellar colleagues, but I think that it would be most effective at this time to nominate Sheila Cross Reid to be Vice Chair because of her extreme knowledge and experience with this Board and her ability to support the Chairperson in any circumstance that might arise.

MS. RENSHAW: I second.

Call the vote.

MR. SOCKWELL: I call for the vote. All in favor?

(Chorus of ayes.)

MS. PRUITT: I'm sorry?

CHAIRPERSON REID: I said aye.

MS. PRUITT: Staff would the record the vote as three to zero for election of Ms. Sheila Cross Reid as Vice Chair, motion made by Robert Sockwell, seconded by Ms. Renshaw, and we do not have a proxy on this particular one.

CHAIRPERSON REID: Oh, you didn't get the Vice. Okay.

All right. Mr. Sockwell, I'd like to congratulate you. I think from the time that you've been on this Board, you certainly have been an asset, and that given the fact that you have now garnered quite a bit of experience, that you will be able to guide this Board most effectively, and I will give you my wholehearted support and will, you know, assist you in any way I can.

MR. SOCKWELL: Thank you very much, Madame Vice Chair.

MS. RENSHAW: And a tribute to both of these fine individuals who have an enormously difficult task to move these various applications through the hearing process.

As a new member, the newest member of the Board of Zoning Adjustment, I can appreciate the homework that is done by these individuals to be ready for a case, and I am amazed and in full admiration of their abilities to handle the complex issues that are before the Board.

And so I'm delighted to be a part of this panel and

to serve with these very fine individuals, Sheila Cross Reid and Robert Sockwell.

CHAIRPERSON REID: Thank you.

MR. SOCKWELL: And I would like to state unequivocally that my experience sitting to the left of the Chairperson, Sheila Cross Reid, has been a very, very important one for me because of her understanding and knowledge of the process, procedures, and her sensitivity to the community and to the issues at hand.

And I believe that with Sheila Cross Reid's extensive experience in fielding the tough questions and dealing with the very difficult and often complex issues, she has shown me the light that I need in order to understand more fully and more effectively the duties of the chairperson and those responsibilities which are not always as apparent just by what's written in the book.

And to that, I want to say that it has been a pleasure to serve under Sheila Cross Reid, and it will be a pleasure to be next to her. Hopefully she'll sit in my seat and keep it warm while I'm sitting in the one that she has just vacated.

Thank you.

CHAIRPERSON REID: Thank you very much.

And as always, I very much appreciate your comments and your support, but all of this would not have been possible, of

course, without the staff and the stellar job that they have done, particularly in the last -- and I've seen them grow -- over the last three years under the guidance of Jerrily Kress, who has just done a terrific job in completely revamping the Zoning Office and bringing in the computerization that we need and redesigning it and making the various hearings and the meetings go more efficiently.

And for the input of the staff, Sheri Pruitt. Even though she has had some challenges, she has been able to hang.

Unfortunately Paul Hart is not here, but Paul and the great job that he has done.

MS. RENSHAW: And Beverly.

CHAIRPERSON REID: Beverly, who has stepped to the plate this year, last year, and taken on more responsibility and assisted us.

John Nyarku, and also let's not forget Corp. Counsel over there.

MS. RENSHAW: That's right.

CHAIRPERSON REID: Alan, although we don't always agree with him, but he certainly --

(Laughter.)

CHAIRPERSON REID: He certainly straightens us out.

And Marie, who has just done an incredible job, and she's there for us, and sometimes she always really surprises me when, you know, she's sitting there, and all of a sudden we pop a

question over there, and she is right on point, and we really appreciate that.

And if there's anyone that I haven't mentioned, like Mary and Ms. Booth, Kathy, Betty, Naomi -- did I pronounce it right? -- Naomi Sara, the whole staff. I just want to give my heartfelt appreciation for all that you have done and the way that we have grown together. I really appreciate that.

MR. SOCKWELL: And a salute to our newest member, Anne Renshaw, who has brought forth at every situation the need for us to be concerned, as always, with the community viewpoint, with the people who represent for the Advisory Neighborhood Commissions, the historic boards and commissions within the community, the neighborhood groups that are the mainstay of the community process, those which Anne Renshaw knows so well and has articulated the position and need for us to consider in the most eloquent of terms.

So to work with Sheila Cross Reid and Anne Renshaw is going to be a great pleasure, as it has been, and all of the other support people from the Zoning Commission, from the National Capitol Planning Commission, from the National Park Service --

CHAIRPERSON REID: Office of Planning.

MR. SOCKWELL: -- Office of Planning, all of the people --

CHAIRPERSON REID: DPW, DZRA, everybody.

MR. SOCKWELL: And on those rare occasions where we

do have the Foreign Missions Board of Zoning Adjustment hearings, it will be a pleasure as well.

Thank you.

CHAIRPERSON REID: Thank you very much.

And with that I'll close the meeting with putting the gavel down and ceremoniously passing it over.

MR. SOCKWELL: Thank you.

(Whereupon, at 12:39 p.m., the public meeting was concluded.)