GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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WEDNESDAY

SEPTEMBER 8, 1999

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

PRESENT:

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

STAFF PRESENT:

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

I-N-D-E-X

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

(9:59 a.m.)

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

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

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

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

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

CHAIRPERSON REID: All right.

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

CHAIRPERSON REID: Board members, do you

have any objection to that? Okay.

MR. HOOD: Madam Chair, I would like to only add if representatives from bizarre case at a breaking point, if we are able to put in the Phillip Bosshard case in between somewhere, if we can work that in.

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

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

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

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

MR. SOCKWELL: Thank you.

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

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

CHAIRPERSON REID: Second.

MR. GILREATH: May 19th.

MS. KING: May 19th. Sorry.

CHAIRPERSON REID: All right, all in favor?

(Chorus of ayes.)

Opposed?

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

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

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

All that information is before you today for a decision.

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

MS. KING: Madam Chair, it appears from the materials that we were given today, specifically the letter dated September 7th and signed by Pat Brown, that an agreement has been reached between the developer, the PTA and the Capitol Hill -- what is the CHCS, can't remember -- but the --

CHAIRPERSON REID: Capitol Hill Restoration Society.

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

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

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

MS. KING: Thank you.

CHAIRPERSON REID: Did you have any

discussion?

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

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

And they have come to a meeting of the minds as to how they can "live together." We also had a letter, I should note, that came in as well in opposition from a Mr. Robert and Marva -- is that McCulloch? McCulloch, it looks like.

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

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

CHAIRPERSON REID: Okay, all right.

All in favor?

(Chorus of ayes.)

Opposed?

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

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

Letter dated July 22, 1999 from the law form of Arnold & Porter representing George Washington University is requesting a modification of an approved plan in the application of George Washington University pursuant to 11 DCMR 3108 for a special exception under Section 210 to allow renovations and additions to an adjacent university building for the use of the law school under approved campus plan for property located in an R-5-

D District at 2003 G Street, N.W. and 700-706 20th Street, N.W. (Square 102, Lot 46).

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

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

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

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

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

MS. PRUITT-WILLIAMS: There are no standards.

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

MR. GILREATH: Madame Chair, in reading the materials submitted to us on this case, even though there is some significant architectural

change in terms of moving walls around and so forth, I feel, in terms of the general appearance and so forth and creating access to the other classrooms and so forth, that I -- unless there's some kind of standard, I really don't have any problem with this, as long as it meets the Historic Preservation Board review acceptability that --

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

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

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

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

CHAIRPERSON REID: You make the motion.

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

CHAIRPERSON REID: Okay, I second it.

The fact that this is a small infield

building and it's a connecting building, and as well as the fact that it's below grade and it's not included in the gross floor area ratio, I have no problem with it.

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

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

CHAIRPERSON REID: Any other comments?

All in favor?

(Chorus of ayes.)

Opposed?

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

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

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

the University.

CHAIRPERSON REID: Yes, please do.

MS. PRUITT-WILLIAMS: Okay, you have a letter first -- the first letter is dated June 29th from Dorothy Miller requesting that the Board rescind or reconsider approved BZA order 16409 for a garage addition at the George Washington University.

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

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

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

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

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

This is before you for decision today.

CHAIRPERSON REID: Well, in this particular instance, it appears that we have several things that we have to consider. One was the letter from Ms. Miller requesting a recision of the -- or reconsideration of the BZA No. 16409.

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

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

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

record at this time.

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

CHAIRPERSON REID: June 29th or 20th?

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

CHAIRPERSON REID: The letter was timely. Okay, I'm sorry.

MS. PRUITT-WILLIAMS: It was timely.

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

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

MR. BERGSTEIN: That's correct.

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

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

CHAIRPERSON REID: Well, the motion that we are actually going to be dealing with is a

composite of the whole submission, is it not?

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

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

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

MS. KING: I move that we do that.

MR. GILREATH: I second the motion.

CHAIRPERSON REID: Okay, all in favor?

(Chorus of ayes.)

Opposed? Okay.

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

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

MS. PRUITT-WILLIAMS: Yes, I do and -- three to four, excuse me, three to four to --

MS. KING: Three to four?

MS. PRUITT-WILLIAMS: Excuse me, four to approve to waive the motion into the record.

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

MS. PRUITT-WILLIAMS: Yes.

MS. KING: -- the waiver?

CHAIRPERSON REID: Okay, now the motion

itself.

MR. GILREATH: Is this for reconsideration?

MS. PRUITT-WILLIAMS: You can take it from reconsideration and then rescind. I would suggest you separate them out or you can do them both ways. It doesn't matter.

MS. KING: I'm sorry?

MS. PRUITT-WILLIAMS: You have to deal with both issues. You have to deal with either to reconsider the hearing or to rescind the order. They're two separate things, but you need to deal with both of them.

CHAIRPERSON REID: Can we deal with both of them at the same time?

MS. PRUITT-WILLIAMS: Yes, but you have to address them all.

CHAIRPERSON REID: All right, okay.

MR. GILREATH: You say rescind the order. I'm not sure what you're saying.

MS. PRUITT-WILLIAMS: Pull it back altogether.

CHAIRPERSON REID: Nullify the order.

MS. PRUITT-WILLIAMS: Nullify the order.

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

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

CHAIRPERSON REID: But not to rescind.

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

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

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

CHAIRPERSON REID: You want to make a move?

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

Therefore, I proffer a motion not to

reconsider --

MS. PRUITT-WILLIAMS: Or to deny.

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

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

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

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

In discussion with people who know more about this than I do, apparently it is possible for

the Advisory Neighborhood Commission 2A to request of the Department of Consumer and Regulatory Affairs, perhaps with the assistance of a variety of council members, that an actual count be maintained or be done immediately of the number of spaces that GW is maintaining within its campus plan boundaries.

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

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

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

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

MS. PRUITT-WILLIAMS: Staff would record

the vote as four to zero to two, motion made by Mr. Gilreath, seconded by Mr. Franklin. I mean, sorry, by Ms. Reid. Proxy from Mr. Franklin and Ms. King to deny, Mr. Sockwell and Mr. Hood not voting, not having been present.

Would you like to move onto the second GW case? Is that my understanding?

CHAIRPERSON REID: Yes.

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

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

819.)

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

This is before you.

MR. GILREATH: Well, Madame Chairman, my sentiments and thinking on this appear some to the other. In terms of the accuracy of tabulation of the parking, there's no way of us knowing. I'm willing to say that GW -- we'll take at face value that they will comply and maintain 2,700 parking spaces, and Ms. King's recommendation or encouragement that the ANC require GW to tabulate these and make sure they're complying.

MS. KING: No, not GW, DCRA.

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

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

And we, in granting the order initially, did it just from the perspective of the proffering by GW to us that these -- that they would comply

with the stipulation in their campus plan, and that is that it would not ever fall below 2,700.

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

So I second your -- second it.

Are there comments?

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

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

CHAIRPERSON REID: Well, yeah. Well, I think that -- no, certainly we can do that. Nonetheless, I feel that notwithstanding the fact that even if it does stipulate it within the auspices of the campus plan that the parking spaces are to be maintained on campus, when we had the

hearing as a Board, we agreed that the additional parking spaces that were at the Kennedy Center were --

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

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

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

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

MS. KING: Never.

CHAIRPERSON REID: As a Board, we voted that we would accept what was being proffered to us. We did not throw out the part about the Kennedy Center parking lot -- parking that was proffered to us. And we had accepted that this would be a part of the parking solution that was proffered by George Washington University.

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

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

CHAIRPERSON REID: Excuse me, one

second.

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

Thank you.

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

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

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

CHAIRPERSON REID: And we know --

MS. KING: Madame Chair --

CHAIRPERSON REID: Go ahead.

MS. KING: The two of you who contend that we voted to authorize the Kennedy Center

parking, which is off campus, to be part of the campus plan 2,700, were all of the parties to the campus plan served with that information?

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

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

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

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

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

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

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

CHAIRPERSON REID: No, I'm not. I'm saying we voted on the application, Ms. King, and the application did include the parking at the Kennedy Center.

MS. KING: I never voted to include

parking at the Kennedy Center as an amendment to the campus plan, which is what you're saying it is.

CHAIRPERSON REID: I did not say that.

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

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

MS. KING: I did.

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

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

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

CHAIRPERSON REID: Okay, all in favor?

(Chorus of ayes.)

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

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

CHAIRPERSON REID: Just one second, one second.

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

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

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

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

CHAIRPERSON REID: Yes, yes, it is.

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

CHAIRPERSON REID: Yes, Ms. King, in all

fairness, you have made it very clear what your position is, and I think that you made your request. I am not --

MS. KING: No, I just wanted to know if you had denied my amendment. I mean, if my amendment to the motion to ask -- to officially request a count of GW parking was denied.

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

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

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

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

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

Is that correct?

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

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

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

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

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

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

And I assume the fact that it's in summary of evidence means that the Board accepted this testimony is that the traffic expert indicates that the university currently provides -- and I guess it's at the time of the hearing -- currently

provides a total of 2,778 parking spaces in all its parking facilities.

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

MS. KING: But the motion before us says that that count is not accurate because there are holes in the ground where parking spaces used to be.

And so it seems to me that it's only reasonable for us, although we may deny the motion to -- that this is a recurring issue before this Board, and that it would be nice to have somebody other than the paid experts of GW University verify that this information is correct.

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

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

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

CHAIRPERSON REID: I second it.

All in favor?

(Chorus of ayes.)

Do we have a proxy?

MS. PRUITT-WILLIAMS: Not on this

particular case. So I'm sorry, could I see a show of hands, all in favor to deny? All in opposition?

MS. KING: Me, me.

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

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

MS. PRUITT-WILLIAMS: Motion fails, correct.

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

Hello?

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

MS. KING: It doesn't --

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

MS. KING: We're not writing an order.

We've just denied a motion. This is another issue.

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

MS. KING: Whatever.

MS. PRUITT-WILLIAMS: That's different.

MS. KING: That motion is now dead.

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

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

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

CHAIRPERSON REID: Okay, I have no problem with that. My only hesitation was I feel

that we were -- we had any power to be able to compel them to go out there and do that.

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

CHAIRPERSON REID: I have no problem with that.

MS. KING: -- to do that.

CHAIRPERSON REID: I would second that.

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

MS. KING: Aye.

CHAIRPERSON REID: Aye.

MR. GILREATH: Aye.

MS. PRUITT-WILLIAMS: Let me get this straight. My understanding is that you would like staff to draft a letter to go to DCRA requesting that they do a count?

MS. KING: An on ground count of off street parking within the boundaries of GW. And I hope that the ANC, and perhaps through the medium of the ANC, that various council members will make the same request so that DCRA will do it.

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

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

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

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

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

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

CHAIRPERSON REID: Right.

MS. KING: We did -- you know, there was a parking lot here and a parking lot there, and we did it only for the periods in the end of the campus plan.

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

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

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

So do we have any other proxies?

MS. PRUITT-WILLIAMS: No.

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

Okay, continue.

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

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

We do?

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

CHAIRPERSON REID: And is this one of them?

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

MR. BERGSTEIN: It's also in the BZA Act. You're not permitted to charge civic associations, nonprofit civic associations.

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

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

MR. GILREATH: Well, can we ask counsel.

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

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

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

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

CHAIRPERSON REID: Explain to me what the difference is because I know that we've had nonprofit organizations come before us and ask for a

waiver and we weren't able to give it to them. So how is this different?

MS. KING: Madame Chair, I would like to know more about this. I mean, I'm a former resident of Georgetown, and the major civic association there is the CAG, the Civic Association of Georgetown. I've not heard of this. Is this something new?

Do we know anything about this organization?

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

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

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

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

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

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

CHAIRPERSON REID: I asked for

clarification.

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

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

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

CHAIRPERSON REID: No, no.

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

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

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

MR. BERGSTEIN: That's the representation.

CHAIRPERSON REID: So we didn't -- we didn't charge them a fee, they just gave us the

money, and now they want it back. Is that what's happening here?

MR. BERGSTEIN: Yes.

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

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

MS. PRUITT-WILLIAMS: Right.

CHAIRPERSON REID: So it was a mistake.

MR. BERGSTEIN: It was a mistake, yes. Well, that's what they're claiming. Now, you can agree with -- you could still say it wasn't a mistake because, in fact, I don't -- we don't recognize this to be a nonprofit civic association and we're glad that you gave us the money because you owe it to us, but the question is whether or not you agree that this is a nonprofit civic association.

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

MS. PRUITT-WILLIAMS: I mean, that's

your call, Ms. Reid. That's the Board's call.

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

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

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

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

CHAIRPERSON REID: This same --

MS. PRUITT-WILLIAMS: Yes.

MS. KING: This same organization?

MS. PRUITT-WILLIAMS: Yes.

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

CHAIRPERSON REID: I second it.

All in favor?

(Chorus of ayes.)

Opposed?

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

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

MS. KING: Oh, sorry.

CHAIRPERSON REID: Three to zero.

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

MS. KING: I moved --

CHAIRPERSON REID: And I seconded.

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

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

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

MS. KING: If we may.

MS. PRUITT-WILLIAMS: Next case is 16362, Philippe Bosshard. Letter dated August 8th and August 9, 1999 of Allan I. Mendelsohn requesting a reconsideration of certain aspects of BZA Order on application of Philippe Bosshard, pursuant to 11 DCMR Section 3107.2 for a variance to allow an addition to an existing nonconforming structure (11 DCMR Subsection 2001.3) and a variance from the minimum side yard set back requirement (Subsection 405.9) to allow the construction of a dormer addition to an existing nonconforming single-family row dwelling in an R-1-B District at 3312 Cathedral Avenue (Square 2118, Lot 38).

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

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

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

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

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

But even if a party files a motion for reconsideration and then files a petition for

review, I believe that our office advises the court that a motion for reconsideration, if it's timely, is pending.

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

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

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

So I would concur that this motion should be denied.

MS. PRUITT-WILLIAMS: I would also just

interject that this motion was not served on the current applicant, and that's another issue that -- I mean, --

CHAIRPERSON REID: The owner.

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

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

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

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

But I still move -- I join Mr. Gilreath

in moving to deny.

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

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

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

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

MR. GILREATH: What counsel said.

(Laughter.)

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

All in favor?

(Chorus of ayes.)

Opposed?

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

MS. KING: Mr. Hood is present.

MS. PRUITT-WILLIAMS: I'm sorry.

MR. HOOD: Yeah, I voted.

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

MR. HOOD: I did vote.

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

MR. HOOD: Four, right.

MS. PRUITT-WILLIAMS: -- four, zero, one. Excuse me.

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

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

MS. KING: Okay.

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

MS. PRUITT-WILLIAMS: The next case, I

believe, on their agenda is -- we go back to the Amoco Oil Company. We've missed two cases. Amoco and Jubilee House, I believe, are the last two cases for us to deal with.

Case No. 16455, Amoco Oil Company. Letter dated August 19, 1999 from Commissioner Marie Whitfield of ANC 1-A09 requesting that the Board reconsider its decision on an application of Amoco Oil Company pursuant to 11 DCMR 3108.1 for special exception under Subsection 726.1 to enlarge an existing gasoline station to include sales of motor vehicle fuel in a C-2-A District at 3426 Georgia Avenue, N.W. (Square 2894, Lot 906).

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

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

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

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

Any other comments, staff or colleagues?

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

My concern is when they went to the ANC -- and I'm not speaking out of turn -- this is the -- Ms. Whitfield is the chair of -- I mean the SMD chairperson in which the establishment is in. My concern is if the presentation to them was like it was to us, then I have some concerns.

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

I mean, the fact that she didn't receive notice personally, although the ANC was noticed -- I

mean, she probably doesn't live within 200 feet.

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

MS. KING: Right.

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

MS. KING: Right.

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

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

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

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

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

that time.

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

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

CHAIRPERSON REID: Is that your motion?

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

MR. HOOD: I second it.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

Opposed?

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

I believe the last item on our agenda today is Jubilee Housing, and that's BZA Case No. 16502. Letter dated July 21, 1999 from the firm of Wilkes, Artis, representing the applicant, is requesting a waiver of the filing fee for application for Jubilee Housing, Inc. for the permission to continue to operate a previously approved child development center at 1740 Euclid Street, N.W.

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

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

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

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

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

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

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

MS. KING: No, it's not.

CHAIRPERSON REID: How not?

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

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

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

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

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

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

MR. BERGSTEIN: That's correct.

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

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

CHAIRPERSON REID: I would move then

that we waive the fees for Case No. 16502, Jubilee House.

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

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

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

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

CHAIRPERSON REID: Let's not go there.

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

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

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

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

MR. BERGSTEIN: The question is whether or not you want to inquire more than just somebody reciting the regulations back to you. If you don't feel -- there's two things. First, you could -- if you don't feel that there's enough information in this letter to help you understand whether or not they are an association created for civic purposes, then, rather than granting the waiver, you can ask them to provide further information.

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

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

But the question is whether or not the information provided to you in this letter gives you a comfort that, in fact, this falls within that

category. And if not, you can ask for further information to explain why they do.

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

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

CHAIRPERSON REID: Okay.

MR. BERGSTEIN: -- fees and appeals at the end, it says "the BZA may not charge."

MS. KING: Which predates the Advisory Neighborhood Commission.

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

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

MR. GILREATH: I think for the applicant

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

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

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

MS. KING: But Madame Chair, I warn you that every 501(c)(3) has to be for civic purposes. So if you're going to take a broad interpretation of that, every university, every college, every hospital, every clinic, every -- every 501(c) -- I mean, you need to be very careful about going --

CHAIRPERSON REID: I understand.

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

CHAIRPERSON REID: Your point's well taken.

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

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

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

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

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

CHAIRPERSON REID: Well, we don't want to open up a maelstrom of applications, nonprofit

applications asking for fees to be waived.

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

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

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

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

MR. HOOD: Madame Chair, may I interject? One thing that the Board of Zoning Adjustment may want to do is petition the Zoning Commission, if I'm in order, to may be revisit that regulation and deal with it accordingly, right.

CHAIRPERSON REID: Make it clear because --

MR. HOOD: Just a suggestion.

CHAIRPERSON REID: -- we're really in dangerous waters here if we don't proceed correctly.

Obviously we have a precedent of us having done it for one and not the other, and we can't really clearly --if we're not clearly able to defend that position, that's going to cause a lot of problems.

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

CHAIRPERSON REID: Okay, I'm sorry.

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

CHAIRPERSON REID: Okay.

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

CHAIRPERSON REID: What about the earlier --

MS. PRUITT-WILLIAMS: I'm only dealing with this one for right now. Then you can go back

to the earlier one.

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

CHAIRPERSON REID: Okay.

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

CHAIRPERSON REID: Sure.

MS. PRUITT-WILLIAMS: -- additional information.

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

MS. PRUITT-WILLIAMS: And the applicant.

MS. KING: I so move.

MR. GILREATH: I second the motion.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

Opposed?

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

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

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

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

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

like.

MR. HOOD: I can vote on it?

MS. PRUITT-WILLIAMS: Yes.

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

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

MR. HOOD: Oh, okay, sure.

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

CHAIRPERSON REID: Yes, I second.

All in favor?

(Chorus of ayes.)

Opposed?

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

I think that it's likely that corporation counsel, if they can find the legislative history on this legislation, will find

that it was a desire for the neighbors to be able to form a civic association in order to advocate for their neighborhood as the Advisory Neighborhood Commissions do now, and that it was not intended to be a larger umbrella than that.

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

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

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

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

MS. KING: It's a motion.

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

It's more that they can observe your

decision making, which ultimately will be in the form of a written order anyway. So I don't see any prejudice to the Board during the course of the same publicly advertised meeting to determine to change its -- not change its position, but, in essence, to withdraw, rescind its decision and instead to seek further clarification of the grounds for the relief from the applicant.

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

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

CHAIRPERSON REID: Oh, okay.

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

So I think that -- I see no reason why you wouldn't have the flexibility to do this. You would certainly have the flexibility to do it before you filed anything in writing. So I think that you

could, at this point, make a motion to withdraw the earlier decision and, instead, seek the additional information that you're requesting.

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

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

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

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

CHAIRPERSON REID: Move to defer.

MR. BERGSTEIN: Right.

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

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

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

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

MR. BERGSTEIN: I would say that you would move both to withdraw your earlier action on agenda item whatever this is and instead request

further clarification or elaboration from the application as to why they are an association created for civic purposes within the meaning of the regulation; and further, to request the Office of Corporation Counsel to provide information to you about the meaning of the term civic association within both the Zoning Act and the regulations.

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

(Laughter.)

MR. GILREATH: Second the motion.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

Opposed? Okay, that cleans that up because --

MS. PRUITT-WILLIAMS: Excuse me.

CHAIRPERSON REID: Yeah, sure, go ahead.

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

CHAIRPERSON REID: I think we're fortunate that that second case came right up on the

tail of the other case rather than it being a couple of months down the line and then it would be very difficult to go back and to recover.

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

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

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

Okay.

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

CHAIRPERSON REID: Ms. Pruitt-Williams, again please forgive me. I forgot to mention that since the persons who were involved in that -- the earlier case are not here right now, I'd like to ask

staff to be sure to contact them to let them know that there has been a change in that decision.

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

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

MS. PRUITT-WILLIAMS: Mr. Gogos?

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

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

MS. KING: I don't believe so.

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

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

MS. PRUITT-WILLIAMS: We have one last case on there, Mr. Moreland, which was addressed in executive session. I just wanted to bring that -- since it's on the agenda, to let the audience know that it has already been addressed.

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

MS. KING: We decided to make the minor

modification.

CHAIRPERSON REID: Do we need to vote?

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

CHAIRPERSON REID: Thank you.

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

Welcome.

MR. SOCKWELL: Thank you very much.

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

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

Thank you.

And I'd like to also -- last but not

least -- thank the staff for their dedication and commitment and the work that they have performed under rather challenging circumstances. I'd like to thank them very much for all that they have done and wish to ask their continued support and commitment and help assisting us in providing the best possible services for the Board of Zoning Adjustment.

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

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

(Laughter.)

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

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

We have the capacity to videotape eventually.

CHAIRPERSON REID: Oh, okay, great.

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

CHAIRPERSON REID: Thank you.

All right, so that concludes this morning's meeting.

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

CHAIRPERSON REID: Well, we're in at 1:00. (Whereupon, the proceedings were adjourned at 1:16 p.m.)