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

JUNE 2, 1999

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The Public Meeting convened in Room 220 South at 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
BETTY KING	Vice Chair
JERRY GILREATH	Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD	Commissioner
JOHN F. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

John Nyarku, Office of Zoning
Paul Hart, Office of Zoning
Beverly Bailey, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.

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

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

(10:07 a.m.)

CHAIRPERSON REID: Good morning. We'll now begin our June 2nd Public Hearing. Please pardon the delay this morning. After our meeting we'll then go into the -- just the public meeting.

MR. HART: Good morning, Madam Chair, members of the Board. For this public meeting, June 2nd, we have for your consideration, public hearing minutes of June 21st, 1999.

VICE CHAIRPERSON KING: I didn't receive any minutes.

MEMBER GILREATH: Nor did I.

CHAIRPERSON REID: I have the --

VICE CHAIRPERSON KING: I didn't receive any. They weren't sent to me.

MEMBER GILREATH: Oh, I don't know the cases. I didn't receive any minutes either. All I got was these.

CHAIRPERSON REID: I received the minutes. Since the other Board members have not then we just --

VICE CHAIRPERSON KING: If you can provide them to me during lunchtime I'll read them and we can vote on them this afternoon. I didn't receive them in my packet.

CHAIRPERSON REID: Okay.

MR. HART: The first case to be decided this morning is Case No. 16457, Application of Kass MA, L.L.C., pursuant to 11 DCMR 3108.1 for special exceptions under Subsections 410 and 2516 to allow the construction of 33 new single-family detached dwellings with garages in a theoretical lot subdivision and 176 luxury garden apartments in the R-5-A and R-5-B Districts at premises bounded by Good Hope Road, S.E., between 24th Street, S.E. to the East and 18th Street, S.E. to the West (Square 5735, Parcels 211/96, 220/31 and Lot 804 and Square 5763, Parcels 219/38).

CHAIRPERSON REID: Mr. Hart, do we have a proxy for Mr. Hood?

MR. HART: Yes, we have a proxy for Mr. Hood.

VICE CHAIRPERSON KING: Was he present?

CHAIRPERSON REID: Yes, but it -- that's a mistake.

VICE CHAIRPERSON KING: Madam Chair, I somewhat reluctantly move that we approve this application. It is troublesome. I think that the provision of quality housing in that part of the city is a laudable goal.

I'm very concerned about the National

Park Service concerns and I think that we should make certain when we write the Order that they're -- that the agreement that was entered into between the Park Service and the developer must be incorporated.

CHAIRPERSON REID: Ms. King, I disagree with that motion. I think that -- you made the motion, right, so --

VICE CHAIRPERSON KING: I did make a motion.

CHAIRPERSON REID: -- let's let that be first. Is there a second?

MEMBER GILREATH: I second the motion, that I feel the, as I understand it, the applicants met with the Park Service and the Parks have indicated certain ameliorations and mitigations and so forth, and I feel that if those are adhered to that it will be adequate protection, and I think that area will benefit from quality housing over there. And that Anacostia has been bypassed and to my mind this is a step in the right direction and certainly is compatible with the intent of zoning for the area.

VICE CHAIRPERSON KING: If I could just add one thing to my motion, if Mr. Gilreath agrees. The ANC-8-B has asked that the developers covenant that they will be the managers of this project for a

minimum of 25 years. And if that is somehow enforceable and doable I think we should put that in as a condition.

MEMBER GILREATH: I concur with that.

CHAIRPERSON REID: I think that I would not be in agreement with this motion because I feel that the community came up very strongly opposed to this type of development, yet Ward 8 certainly does need revitalization. We all know that and would like to see that.

However, what I have a problem with is the caliber of the development. They do not want rental housing. They want single-family development, single-family homes which is needed there to try to of course, attract higher income purchasers and to stabilize that community.

And the issues that they raised in regard to there being just a glut of vacant apartments as it were, there, that lends itself to illicit behavior within the community, that as well as the impact of the traffic, the parking -- and particularly I was very much impressed with the testimony by the representative from the National Park Service, Department of Interior, who raised grave concerns about the environmental issues with regard to the water runoff, flora and fauna, the

vista of the Circle Park Ridge.

They seemed to be very opposed to this type development, and then they later softened their position with a letter with some mitigations that they had proffered to the developer and they had agreed to do that.

Given the history of that area in regard to some of the other, what was touted to be luxury apartments that later ended up being a big disappointment to the area, I think that whatever we do we should try to move in such a way that we can better ensure that the people who live there, the people who live in that community, can be protected and that they can expect a higher caliber of living than what has been imposed upon them in the past.

So that's my position. We'll take the vote unless you have other -- do you have more?

VICE CHAIRPERSON KING: I disagree with you but rather than arguing let's take a vote.

MR. HART: Madam Chair, before you proceed, let me make a correction here. Mr. Hood submitted a proxy for another case and he was not involved in this case. He did sit on it but he said he would be here this morning -- he couldn't make it this morning. This is after I had reported to you.

So since there is no proxy for this case

from him, no vote, but there's another case in which he did have a proxy.

CHAIRPERSON REID: Wait a minute. He sat on this case but he didn't submit the proxy same as he did the other one?

MR. HART: No, he said he would be able to make it --

CHAIRPERSON REID: Oh, he thought he would be here?

MR. HART: He thought he would be here this morning, would be able to make it this morning, and as such he would not submit a proxy.

CHAIRPERSON REID: Okay, well --

MR. HART: He knew all that.

VICE CHAIRPERSON KING: Is he going to be here later?

MR. HART: He will not for the --

VICE CHAIRPERSON KING: But you're saying we've got a proxy for another case, so he must not be coming at all.

MR. HART: No, there is -- in the meeting session that we had this morning, the case we're dealing with now, he said he was reluctant to submit a proxy for that case and he would not be here to do anything about it. However, the other case he was very confident with that because he --

he said he was very comfortable with that and he submitted a proxy for that case. Now, ask me he's going to be here today, yes. But that's for later for the hearing session.

MEMBER GILREATH: Madam Chair, can we hold this in abeyance, the vote, until later when he appears?

VICE CHAIRPERSON KING: You say he's coming this morning?

MR. HART: On this, no.

VICE CHAIRPERSON KING: He's coming this afternoon, okay. That's fine. Let's vote on it this afternoon.

MS. BAILEY: Madam Chair, I just wanted to ask. The people in the audience who are here specifically who would be interested in the decision of that case, can we get an approximate time when they would be -- is it after one or two so if they leave they'll know when to come back?

MR. HART: The afternoon hearing starts at one, and that is when I think he would be here, his arrival.

CHAIRPERSON REID: We'll take it up as the first matter on the afternoon session, so anyone who's here for that particular case then be here at one o'clock.

MR. HART: The second case, 16454, application of Richard Tynes, Jr., pursuant to 11 DCMR 3108.1, for a special exception under Section 802 to continue use of a recycling processing facility in a C-M-1 District at premises 6130 North Capitol Street, N.W. (Parcels 135/237 and 135/238 near Square 3374).

VICE CHAIRPERSON KING: Madam Chair, I move that we approve this application for a period of 15 years or until the present ownership shall change; whichever comes first.

CHAIRPERSON REID: I would agree. However, we have a proxy from Mr. Hood and he recommended ten years as a compromise between the 15 that the applicant was asking for and the five years that ANC --

VICE CHAIRPERSON KING: I amend my motion.

CHAIRPERSON REID: Ten years?

VICE CHAIRPERSON KING: Ten years -- the same conditions as in the present order under which they're operating and for a period of ten years or until the facility changes ownership, whichever shall come first.

CHAIRPERSON REID: Okay, and I will second that motion, as well as the fact that we had

requested and have now received a letter from ANC-4-B, who comes out in strong support of the application. However, they don't seem to have had a quorum or to have voted. It's just a letter of support.

MEMBER GILREATH: We heard the presentation. I heard nothing to indicate that the applicant's performance in operating that was really negative. They've done an excellent job and so I really support this as well.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

Opposed?

(No response.)

MR. HART: The third case of the morning, application number 16433.

CHAIRPERSON REID: You need to record the vote don't you, Mr. Hart?

MR. HART: Staff will record the vote as three to zero to grant --

VICE CHAIRPERSON KING: Four.

MR. HART: Four to zero to grant. Mrs. King, Ms. Reid, Mr. Gilreath, and Mr. Hood by proxy.

CHAIRPERSON REID: In favor of; in favor of the motion.

MR. HART: In favor of the motion; to

grant, yes.

The next case: Application number 16433, of the Protestant Episcopal Cathedral Foundation of the District of Columbia, pursuant to 11 DCMR 3108.1, for a special exception under Section 205 for the construction of an athletic facility with below-grade parking and to establish two surface athletic fields to an existing private school located in an R-1-B District at premises 3500 Woodley Road, N.W. (Square 1944, Lot 25).

VICE CHAIRPERSON KING: Madam Chair, I suggest we wait until Mr. Parsons arrives. He's currently on his way.

CHAIRPERSON REID: I would agree with that. Mr. Hart, we'll table this one until Mr. Parsons arrives since he is --

VICE CHAIRPERSON KING: And we'll need to table the next one, too, because I didn't hear it. You and Jerry and John.

CHAIRPERSON REID: Oh, okay. All right. The 16446, the number D on the Agenda should also be tabled until Mr. Parsons arrives since Mrs. King was not present at the time that we had this particular case.

MR. HART: The next case is Appeal 16404 of the Capitol Hill Restoration Society, pursuant to

11 DCMR 3105, from the decision of Gladys Hicks, Acting Zoning Administrator, to issue Certificate of Occupancy Permit No. 98-0271 for a Home Occupation in a CAP/R-4 District at premises 434 New Jersey Avenue, S.E. (Square 694, Lot 811).

VICE CHAIRPERSON KING: Madam Chair, I move that we deny this appeal. There are distinct problems with the application as it was presented to the applicant by DCRA. It seems to presuppose that he is already the owner and the occupant of the premises, although his agent testified that -- she made it clear that he was only a contract buyer at that time.

Whether or not he was entitled to a Home Occupancy Permit as a contract buyer is a very gray issue. The fact is however, that he is now the owner/occupant operating a home business out of his home at that address, and that we should deny this appeal since he is not entitled to as a matter of right, to that Home Occupancy Permit.

The question as to whether or not Mr. Fields is in fact, living there most of the time, which is the benchmark for whether or not it is his principal residence, is an enforcement issue. And if DCRA finds on evidence that he is not living there most of the time, then the permit can be

revoked.

But he has, as a matter of right as an owner/occupant, if he testifies that he is spending most of his time there he is entitled to have a Home Occupancy Permit.

MEMBER GILREATH: I concur with that. I'm wondering if somehow for future cases like this, that there can be some kind of clarification. I don't know whether it would be that the Zoning Administrator could research this. We need a determination whether or not you have to be a home occupier; you have to occupy the premises before you can apply.

And because the uncertainty it brings to this, I think we should -- I concur we should deny the appeal. But I think that there should be some kind of clarification for future cases similar to this.

VICE CHAIRPERSON KING: Or certainly that the application does not at any point say, are you now the owner/occupant of the premises for which you are applying for a permit and if you're not, don't bother to apply.

That is a very gray area and I would recommend to DCRA that they clarify that and perhaps work with the Office of the Corporation Counsel to

figure out how they can clarify their form and determine whether or not it is possible for someone to verify their ability to have a Home Occupancy Permit prior to actually concluding the purchase of a property in the District of Columbia.

But the fact is that I think that as of today Mr. Field, if he is spending most of his time in the District of Columbia, is entitled to a Home Occupancy Permit.

CHAIRPERSON REID: I would agree with you both. I think that the application is ambiguous and it's difficult to ascertain what its ultimate intent is. The assumption in my opinion, is that you are either living in or you own the property -- you are either living in it as the owner or you are the tenant. It is not -- it's very (unintelligible) as to the status of a contract purchaser.

However I also feel that there was -- the way the application was filled out -- it was not properly filled out because there are questions about the current address of Mr. Fields as well as his home telephone number, and the issue as to whether his -- the owner or renter or other is not circled.

And given the fact that it seems to be many inconsistencies, in all fairness to Mr. Fields,

give him the benefit of the doubt and deny the appeal. And also given the fact that the -- not withstanding what was the situation at the time that the application was filed, that is now the remedy and we know that he is now in actually the residence there at the property.

And because the regulations are solid as to a definition of primary residence, then it's left to our discretion to determine if in fact, we are convinced that he is using the facility as his principal residence.

And again, I would not want to hold the application up because we're not sure of that. It seems that it's a very gray area. And I'd also feel comfortable with the fact that if in fact, it is ascertained that he is not -- that is not his principal residence, then DCRA would have to step in as an enforcement entity in that regard.

So with that in mind, is there a second?

MEMBER GILREATH: I second.

CHAIRPERSON REID: There's a second to the motion. All in favor?

(Chorus of ayes.)

Opposed?

MR. HART: The staff would record the vote as three to zero: Mrs. King, Mr. Gilreath,

Mrs. Reid, to deny.

VICE CHAIRPERSON KING: Did Mr. Clarens give you a proxy for this?

MR. HART: No, he did not.

CHAIRPERSON REID: Okay, next?

MR. HART: Next is a motion. Case 16027 from the Adas Israel Hebrew Congregation, pursuant to 11 DCMR 3108.1, for a special exception under Section 206 to increase an existing private school from 38 to 185 children and 10 to 25 staff on the second floor in an R-5-A District at premises 2850 Quebec Street, N.W. (Square 2225, Lot 11).

The Adas Israel Hebrew Congregation is hereby requesting the Board of Zoning Adjustment to extend the use of the Summary Order on this application so that they can continue the use for the duration of the school's academic period. The school intends to relocate from the site entirely no later than June of the year 2000.

Since this is such a short period of time the applicant would like to remain there until the final move. However, the Order expiration date of the existing Order is for February 17, the year 2000.

VICE CHAIRPERSON KING: Madam Chair, this seems to be a very non-controversial, very

sensible solution to their problem and I move that we grant the -- what are we granting, the --

CHAIRPERSON REID: Extension.

VICE CHAIRPERSON KING: -- the extension to June of the year 2000.

MEMBER GILREATH: I second the motion. I concur with that. I think it would be unreasonable for us to deny that, so I'm fully in support of this.

CHAIRPERSON REID: I agree. I see no reasons to take an adverse position. All in favor?

(Chorus of ayes.)

Opposed?

(No response.)

MR. HART: The staff will report the vote as three to zero, Mrs. King, Mr. Gilreath, Mrs. Reid, to grant the extension requested by this motion.

The second motion, 16273, a motion for a modification of approved plans to allow for a one-story addition to the southern side of the existing two-story carriage house on the Lab School campus. The Lab School requires a waiver from Subsection 3335.3 of the Zoning Regulations which states that a request for modification of plans must be filed within six months of the date of the final order.

Approving the original application BZA Order No. 16273 was issued by the Board on February 24, 1998. Therefore, the 6-month period has expired in Application No. 16273 of the Lab School of Washington and George and Georgette Amouri, pursuant to 11 DCMR 3108.1, for a special exception under Section 206 to allow an addition to an existing private school and an increase in the maximum enrollment from 250 students to 310 students in an R-1-B District at premises 4759 Reservoir Road, N.W. (Square 1372; Lots 19, 20, and 24).

VICE CHAIRPERSON KING: Madam Chair, I find that this is not a modification of approved plans. There was no mention of the carriage house in any of the hearings or our Order early-on. I'm sympathetic to the Lab School's desire to add this facility in the most economical way possible.

And I would move that we deny the motion but that if they reapply for a special exception expeditiously -- basically with all of the information that they've already given us but that they reapply in the proper form -- and it needs to be advertised for 40 days, therefore probably the earliest we could take it up would be our second meeting in July, which is what date, Paul? Does it work out if they --

MR. HART: The 7th of July.

VICE CHAIRPERSON KING: Is the first one, so the second one would be the 21st of July.

MR. HART: The 21st, yes. The first meeting in July will be the 7th, the --

VICE CHAIRPERSON KING: Second would be the 21st?

MR. HART: Yes, that's a hearing date.

VICE CHAIRPERSON KING: Yes, I understand that, but this is for a hearing.

MR. HART: Okay, the 21st.

VICE CHAIRPERSON KING: This is not a meeting. It would be reapplication.

MR. HART: The 21st.

VICE CHAIRPERSON KING: Publication for 40 days and then we would try and schedule it for the 21st of July. And if there's not a lot of opposition to it, as there was not a lot of opposition to the original plans, why we could perhaps give them a bench decision. I understand that they're building this summer and so forth, but I don't see that this, Madam Chair, is a modification of approved plans; it's a new plan.

CHAIRPERSON REID: Exactly. If you go to what the modification consists of, and I don't think one would think that would be a small or

negligible addition to the existing plans. But in this instance, because it is a one-story addition, then you have to go to adverse impact, be held at neighboring communities so therefore the special exception I think would be to correct the request in this particular case.

MEMBER GILREATH: Ms. King, is that a formal motion that she --

VICE CHAIRPERSON KING: That was a motion to deny the motion.

MEMBER GILREATH: I second the motion and I think it's basically a procedural matter here. I think when it comes back in, at least from what I've seen, I don't think we'll have any problems. But I think that it's reasonable that they comply with proper procedure. So I second the motion.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

Opposed?

(No response.)

MR. HART: The staff would record the vote as three to zero to deny the motion: Mrs. King, Mr. Gilreath, and Mrs. Reid.

The next case under Other Matters is Application No. 15875 of George Basiliko, pursuant to 11 DCMR 3107.2 and 3108.1, for a variance from

the off-street parking requirements (Subsection 2101.1) or, in the alternative, a special exception under Section 2108 to reduce the number of parking spaces required for non-residential uses to allow a public hall -- 300 seats on the first floor in a C-M-2 District at premises 1350 Okie Street, N.E. (Square 4038, Parcel 142/103).

The Order in this case is an Order denying the waiver of the 10-day filing requirement for a Motion for Rehearing. The proposed Order was sent out for exceptions; the exceptions were due in March. No exceptions were filed.

VICE CHAIRPERSON KING: Do we have to take some action on this now?

CHAIRPERSON REID: No, that's basically for our information. And we note that we have seen it and that we've acknowledged it, and that's about all we have to do in that regard. Is that right, Mr. Hart?

MR. HART: That's right.

VICE CHAIRPERSON KING: Madam Chair, could I ask that we withdraw for an executive session to discuss the cases that Mr. --

CHAIRPERSON REID: I think we can do that in the form of a motion, Mrs. King.

VICE CHAIRPERSON KING: Okay, I move

that we withdraw to executive session.

MEMBER GILREATH: I second the motion.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Mr. Parsons, there's a motion on the floor that we withdraw to an executive session to discuss the National Cathedral case.

COMMISSIONER PARSONS: Aye.

CHAIRPERSON REID: All opposed?

(No response.)

Okay. We are going to go into executive session and we will come out and then make a determination on the record as to the position of the Board in regard to the National Cathedral case.

(Whereupon, the foregoing matter went off the record at 10:37 a.m. and went back on the record at 11:17 a.m.)

CHAIRPERSON REID: In regard to the National Cathedral case.

VICE-CHAIRPERSON KING: I have a motion, Madam Chair. It is my opinion that the Protestant Episcopal Cathedral Foundation has met their burden of proof and I move that we grant this application; and that, as conditions, we attach to our order the most recent resolution of the Advisory Neighborhood

Commission and the most recent agreement between the Foundation and the Cleveland Park Citizens Association.

CHAIRPERSON REID: Second?

COMMISSIONER PARSONS: Second.

MEMBER GILREATH: I'd like to make a comment that I commend all of the parties involved and certainly the National Cathedral Foundation. This facility, part of it could have been put above ground and would've impacted the foes and I think by working with the citizens -- and the citizens made a very important input I think, of citizens litigation and I take satisfaction, to my mind, seeing the democratic process working effectively.

The Cathedral gets, to me, a legitimate much needed athletic facility and the citizens receive reasonable protection for their properties nearby and so forth. So I fully support it.

CHAIRPERSON REID: Thank you.

Mr. Parsons.

COMMISSIONER PARSONS: I would like to associate myself with Mr. Gilreath's remarks and it's an extraordinary case and a very difficult project. I think the school has gone to extraordinary ends to mitigate the impacts of the facility and more importantly, I guess, is how they

have mitigated the impacts of its usage.

In their agreement, the agreements that they've struck, which I think was potentially obnoxious quality of the facility was the after hours use and that has been restricted to the point that I think the community should be comforted with the lesser impact on them.

CHAIRPERSON REID: I too, feel that this was a very difficult case and that, given the fact that in the best of worlds you have opposing interests, but the impression that I got from this particular community which was very impressive to me was that, not withstanding the fact that there were problems and that there were differences of opinion, they had the desire to try to work together to try to mitigate as much as possible some of the adverse impact.

And even with the testimony -- in my experience, you see sometimes in these kinds of contested cases a lot of acrimonious testimony. In this instance I saw none. I saw where the community loved the community where they lived, the neighborhood, and the National Cathedral did all that they could to try to reach out to them and to listen to what their concerns were and to work with them and to mitigate, where possible, the adverse

impact that they had acknowledged themselves that was evident within this case.

So therefore, I commend the community and the National Cathedral for the immense effort that they put forth in getting to some type of resolution of the issues in the case and to bring to us an agreement that we could work with and that we could utilize to try to -- in granting approval of this case, granting also, some -- giving some comfort to the community through the aspects of the conditions to mitigate much of the adverse impact.

All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MR. HART: Madam Chair, who seconded? Who was the second?

VICE CHAIRPERSON KING: Mr. Parsons.

MR. HART: Okay. Staff will report the vote as four-to-zero to grant with conditions: Mrs. King, Mr. Parsons, Mr. Gilreath and Miss Reid.

The next case, Application No. 16446 of DRM and Associates, Inc., pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 205 to allow a child development center for 50 children, infant through 12 years and 9 staff, and a

variance from the off-street parking requirements (Subsection 2101.1) in an R-4 District at premises 728 F Street, N.E. (Square 981, Lot 49).

VICE CHAIRPERSON KING: I can't participate in this because I was not here.

CHAIRPERSON REID: What's the number?

MR. HART: It's 16446. It has here that the status was granted from the bench. The bench agreed to give an opinion today pending certain requirements, which was a proposed Order which the applicant had the option of giving us a new Order or going with the Order that was with this case. He chose to submit a new Order.

CHAIRPERSON REID: Okay.

COMMISSIONER PARSONS: That is before us marked "Received 4/16/99"?

MR. HART: That's correct, yes. And the package should have a copy of the old Order.

CHAIRPERSON REID: I would recommend approval of this application. I feel that the applicant has met his burden of proof under Section 206 of the regulations. This would also include approval with the following conditions.

Now, the conditions that were in the original Order and the positions that are proffered in his proposed Order are greatly curtailed. And

when I looked at it, it appears to me that the reason was that many of the items that had been outlined in the original order had already been accomplished.

For example, the providing of a solid or baffled wood fence around the deck area, and the trash coverage, and the community liaison program. The assumption is that these things have already been done so that they don't have to be reiterated in the second Order, or the extension Order.

Is that correct, Mr. Hart?

MR. HART: I hear your assumption, Madam Chair, but it would seem to me that some of the conditions in the first Order are ongoing conditions and it should be repeated in the second Order to make sure -- to keep them honest, really.

CHAIRPERSON REID: Oh, okay.

MR. HART: Like where it says the liaison situation, the trash situation.

CHAIRPERSON REID: All right, then. I have no problem with including within this particular Order the same conditions that were in the first Order for the purposes of continuity, I suppose. I don't have to read the variance conditions, do I?

MR. HART: No, you don't.

CHAIRPERSON REID: Okay. And they basically remain the same except for the amount of time. I think he asked for five years, Mr. Hart?

MR. HART: Yes, I think he asked for five.

CHAIRPERSON REID: I have no problem with granting him the five years for the term. So he asked for 15 years.

MEMBER GILREATH: Yes, that might be a little much; 15 years.

CHAIRPERSON REID: I can go along with ten. What do you think --

MEMBER GILREATH: Does he have a good track record for these first five years?

CHAIRPERSON REID: There was some opposition -- I think it was the single member District of the ANC that came forward, that they -- if I'm not mistaken -- they were satisfied with his mitigating impact through the conditions.

MEMBER GILREATH: Well, assuming a reasonable track record I concede ten years. I could live with that.

MR. HART: Madam Chair, the neighbors or community problem that he had you recall, was dealing with a parking lot that was allegedly 12 blocks away -- what he was doing there -- and

they're trying to use that in this case and the Board indicated that that was irrelevant in this case.

CHAIRPERSON REID: Was irrelevant?

MR. HART: Yes, to what he's asking here.

CHAIRPERSON REID: Right. Mr. Parsons?

COMMISSIONER PARSONS: Well, that was my recollection. The predominance of the testimony had to do with something that wasn't taken care of in another community. I agree with you that 15 years is excessive and if the practice of the Board -- and I'm not too familiar with it -- in this case is ten years then that seems reasonable.

CHAIRPERSON REID: Okay, all in favor?

(Chorus of ayes.)

Opposed?

(No response.)

COMMISSIONER PARSONS: I don't think you really had a motion and a second.

MR. HART: Yes, we didn't.

CHAIRPERSON REID: I move that we approve the Order.

COMMISSIONER PARSONS: Yes, I don't think anybody seconded it. So Mr. Gilreath --

MEMBER GILREATH: I second the motion.

CHAIRPERSON REID: Okay, thanks.

MR. HART: The staff will record the vote as three to zero to grant with conditions: Mrs. Reid, Mr. Gilreath, Mr. Parsons.

CHAIRPERSON REID: We have just one more and that's the -- did we do --

VICE CHAIRPERSON KING: I have read the bench minutes and I'm ready to vote on those.

CHAIRPERSON REID: Okay, and Mr. Gilreath has to leave us. All right, and then --

VICE CHAIRPERSON KING: We did everything except KASS --

MR. HART: Mr. Hood is coming early for that.

CHAIRPERSON REID: Number 16027?

MR. HART: That's the Adas Hebrew Congregation, as you --

CHAIRPERSON REID: We extended the Summary Order. Okay.

VICE CHAIRPERSON KING: I move the minutes on block for --

CHAIRPERSON REID: Wait. Mr. Gilreath, have you read it? Mr. Gilreath has not had a --

MEMBER GILREATH: Are these the minutes here?

CHAIRPERSON REID: Yes. Why don't we

just give him a couple of minutes so we can just close this out.

MEMBER GILREATH: Okay, I'm ready to go.

VICE CHAIRPERSON KING: Madam Chair, I move the bench minutes on block for April 21st, May 5th, and May 26th.

MEMBER GILREATH: I second it. Do you want to talk --

CHAIRPERSON REID: Yes, I had a question in regard to the sui sponte aspects of the minutes for April 21st, with regard to the case for 16426, and I wanted to find out where were we on this particular process?

VICE CHAIRPERSON KING: I would argue that -- I mean, it's a fact that Angel said that, and I would move that we vote on the minutes and then inquire as to the present status of whether or not he has tried to impose his minority opinion on the three of us.

CHAIRPERSON REID: Well, be that as it may, I'd like to get a response.

MR. HART: Mr. Clarens has filed this sui sponte to the Zoning Commission where he's requesting or has requested, a reversal of the Board's decision. This was done within the indicated necessary ten days as the date of the

decision. He made it in under that deadline and it is now in the hands of the Zoning Commission.

What I cannot answer is if there is a specific time now on the Zoning Commission for them to respond. I would think so because you're dealing with an applicant's Order. I cannot respond to how the Zoning Commission --

CHAIRPERSON REID: Does Mr. Parsons know?

MR. HART: Mr. Parsons might know.

CHAIRPERSON REID: In the interest of sui sponte review by the Zoning Commission, what is the timeframe for that to take place?

COMMISSIONER PARSONS: Having only occurred once in the last -- how many years?

VICE CHAIRPERSON KING: Fifty or 60, John?

COMMISSIONER PARSONS: In 1977 is when I joined this panel. I can recall only one sui sponte review, and that at --

VICE CHAIRPERSON KING: Well, Angel has filed one against the three of us and we were just curious as to what happens now.

CHAIRPERSON REID: Yes, ten days to file; he did that. And then it goes to the Zoning Commission.

COMMISSIONER PARSONS: Now, that was before the Zoning Commission at its last meeting and I had to leave early. And I think it was -- as I recall, what they did is to -- it was for our information at that meeting. And I presume then, it will come before us for the next meeting -- but I'm not sure of that -- for a decision as to what to do.

But to say --

MR. HART: In that case then the next step for me as BZA is to talk to the Zoning Commission staff and find out what happened. I wasn't aware that the Board had taken it up yet -- the Zoning Commission had taken it up yet. I knew it was submitted to them but I didn't know it had come up on the agenda already.

COMMISSIONER PARSONS: It came up on the agenda as information; that is, something that had been submitted. And I'm fairly certain when I left that they were not going to deal with it that day.

MR. BERGSTEIN: I have a regulation here. It's Section 3103. It says that no decision or Order -- which would be the written final Order under the rules -- shall take effect until ten days after having become final pursuant to (unintelligible) those procedures final written Order. Within a 10-day period the Zoning Commission

may, sui sponte, determine to review any Order or decision of the Board.

And then there's the process that's laid out. So there appears to be a 10-day period from the written Order. Has there been a written Order?

MR. HART: The 10-day period that Mr. Clarens quoted was from the date of the decision. An Order has not been written. He was aware of ten days but he indicated to me that it was from the time of the decision and not the date of the Order.

CHAIRPERSON REID: In all fairness to the applicant, I think we need to try to bring some closure into this particular case. What is it correct? Is it ten days after the Order and the Order has not been written yet?

MR. BERGSTEIN: I'm sorry Madam Chairperson. An order of the BZA be final upon service to the parties.

CHAIRPERSON REID: And then ten days after that service is when --

MR. BERGSTEIN: Yes.

CHAIRPERSON REID: See now it's been done in the inverse because Mr. Parsons said it's already been put on the agenda for the Zoning Commission. An Order hasn't been written.

MR. BERGSTEIN: Well, that may be

something that needs to be considered elsewhere, in terms of whether or not that's appropriate under the rules. And I won't say it is or isn't at this point.

CHAIRPERSON REID: All right, well --

MR. BERGSTEIN: It may at most, be premature.

CHAIRPERSON REID: Okay, well then we'll find out what in fact, the procedure is.

COMMISSIONER PARSONS: To look for precedent as to how long it takes, it's just not there.

MR. BERGSTEIN: Just for clarification, Section 331.6 says, "For the purpose of this chapter a decision or Order of the Board is final upon filing in the record and service upon the parties". And that's what's referred back to in 3301.3. Ten days after having become final; within that 10-day period the Zoning Commission has sui sponte determined to review any Order.

CHAIRPERSON REID: When you review --

VICE CHAIRPERSON KING: In the meantime --

CHAIRPERSON REID: -- activities -- if I may --

MR. BERGSTEIN: No, and in essence it

sounds --

CHAIRPERSON REID: When you review -- if I may. When you review, is that then based on any of the record?

COMMISSIONER PARSONS: It can be done that way or a hearing can be conducted, as I recall.

CHAIRPERSON REID: If you have a hearing are we supposed to be present there?

MR. BERGSTEIN: The whole process is laid out and perhaps maybe -- you may wish to review this section and I think it would elucidate what your issues are -- if you want to discuss them now.

CHAIRPERSON REID: Okay.

MEMBER GILREATH: I have no problem here (inaudible) legitimate (inaudible). But we took the best information we had and made the best judgment we could make, and I'd be glad to tell the Zoning Commission that.

COMMISSIONER PARSONS: You look forward to such testimony.

MEMBER GILREATH: If I have too. I don't look forward to it but I'm prepared to go with --

VICE CHAIRPERSON KING: Give them hell, Jerry.

CHAIRPERSON REID: Do we vote? Did we

put in to vote?

VICE CHAIRPERSON KING: Nobody even seconded my motion.

MEMBER GILREATH: I second the motion.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

Opposed?

(No response.)

Now we will adjourn the meeting for -- the June 2nd meeting for our BZA.

MR. HART: The staff will record the vote three to zero to accept the minutes: Mrs. King, Mr. Gilreath, and Ms. Reid.

(Whereupon, the foregoing matter went off the record at 11:40 a.m. and went back on the record at 1:13 p.m.)

CHAIRPERSON REID: We will continue the morning's meeting and then we'll go into the afternoon session.

In regard to the case number 16457, Kass MA, we had some discussion earlier about this particular development. And we had a motion -- did you second the motion?

MEMBER GILREATH: Yes, I did.

VICE CHAIRPERSON KING: I withdraw my motion.

CHAIRPERSON REID: We now have the motion withdrawn so we can start over again. I'd like to move that we not approve this application. I feel that the environmental impact testimony and mission by the National Park Service, Department of Interior, that spoke to the adverse impact environmentally of this particular development on the surrounding community and related to the run-off, the drainage, the destruction of the flora and fauna there, as well as the vista being compromised.

In addition, the opposition of Fairline Neighborhood Association has submitted to us their testimony and for their written submission that the development would not be completely without adverse impact into the community as far as the traffic, parking, as well as the quality of life; and that they did not feel that this type of development would be suitable for what the community is desirous of -- that is, single-family housing.

For that reason, I would like to move that we not approve the application.

COMMISSIONER HOOD: Madam Chair, with that I will second that with the fact that the comprehensive plan insists upon single-family dwellings within that area. And I would also add that the comprehensive plan is a plan, and the

people who live in that area who are most affected, also have input into that plan.

And I think due to that nature -- and I hate to vote against that because of a single-family piece which I thought was excellent -- but I think one of the concerns that I know that I had was the density of apartments which, you know, quite a few apartments in that area and the density of the complexes would be an adverse impact.

So with that, I will second the motion.

CHAIRPERSON REID: Mr. Gilreath?

MEMBER GILREATH: Well, I'm going to be against this, though. I feel that in any kind of community that is vital and economically viable and so forth, you have to have a mixture of incomes and so forth; people of different backgrounds. And I think this development has the potential of bringing in a little bit of a different economic level there, and these people within the community can work up to that and occupy those.

And for a section of the city that needs economic help and so forth, in my judgment I think it's a mistake to turn this down. And as such, I will be voting against the motion.

CHAIRPERSON REID: Ms. King?

VICE CHAIRPERSON KING: Well, my gravest

concern is adverse impact on the National Park Service land. And Mr. Hood, I think the issue is difficult on the single-family because the single-family houses are in Ward 6 where the comprehensive plan does call for them to be.

But it is a very intense use of the land when you come to the part where there are 176 units of multi-family dwelling. I find this a very troubling case, frankly. And I probably will -- I'm torn between voting to deny and voting to abstain. But let's continue the discussion if there are any other points that anyone wishes to make.

MEMBER GILREATH: I can elaborate on the impacts on the Stanton Park; that other development has occurred along Rock Creek Park and other parklands, and to my mind, as long as reasonable and appropriate mitigation can be accomplished, there's nothing inappropriate about allowing certain types of development adjacent to parkland.

So to me, that would not be a basis for --

VICE CHAIRPERSON KING: Well, the people from the National Park Service seem to be deeply concerned about the wetlands, and I don't think it's an analogous situation at Rock Creek Park because the development that occurs on the fringes of Rock

Creek Park is so much elevated above the creek that I don't know that it's analogous.

MEMBER GILREATH: Well as I understand it, there's some kind of major fill over it. It's going to come from Metro or whatever its origin is. Apparently it is not receptive to growing plants and so forth and so to simply not allow anything there, you're still going to get some adverse impact. You can always argue, we'll leave the rest of it which grows effectively; fine, let this continue.

But my understanding is in this agreement with the Park Service, or at least the recommendation, that they would take measures to try to correct this fill area and the lack of the fertility of that particular portion, so there would be some improvement there.

CHAIRPERSON REID: Also, I think that the ANC representative has sent a letter and also testified to their position, and that was that they wanted to have single-family housing because what they feared, the adverse impact would be ultimately in allowing development of this nature and that at this time they did not feel that going forward with additional rental housing would be suitable or in their best interest because of the fact that there were several blocks of boarded-up rental housing

there already, and that had contributed to blight and to illicit activities within the area. That was a grave concern.

MEMBER GILREATH: Well, this boarded-up rental housing though, are those gated communities? If they're comparable it seems to me it's a logical argument, but if this is a unique kind of development over there where it's gated and controlled, to me that suggests there could be some evidence it could succeed, rather than say it's doomed to failure.

CHAIRPERSON REID: No, it's -- and I think that the idea of the gated community was well taken and I think that was good. However, it's still a sidewall development, it's very dense, and it's rental housing rather than single-family detached homes; so single-family even, townhouses. And that's what the problem here to be.

And with regard to the gated aspect of it, there has been experience of that nature before, that does not necessarily solve the solution to the problems in that community.

MEMBER GILREATH: Well, if Anacostia can somehow have a policy in saying, any future residential development has to be single-family houses, wouldn't that effectively limit a major

portion of the population? They say, we cannot afford a single-family home but we can afford a nice apartment?

CHAIRPERSON REID: I don't think that that's the issue. I think that the issue is that again, there's a considerable amount, significant amount of apartments there now that are boarded up, and that what they were saying is that they would like to see those houses be revitalized or renovated; brought back into the market, rather than build more rental houses -- a glut apparently in their opinion -- a glut of rental properties there.

MEMBER GILREATH: Well, and you think turning this down is going to encourage the refurbishing of these buildings and what-have-you? If we turn this down is this going to have a positive effect? Are there going to be more single-family houses and so forth over there? If we turn it down what's going to be the positive effect on the community?

CHAIRPERSON REID: Well, I can't speak to what --

COMMISSIONER HOOD: I think we're getting into speculation.

CHAIRPERSON REID: Yes.

COMMISSIONER HOOD: I mean, I think we

need to stick with the regulations and then climb for the special session and we just need to move forward.

MEMBER GILREATH: Okay, well I, you know, I said what I think about it and I will vote against the motion.

CHAIRPERSON REID: Okay. All in favor, aye?

(Chorus of ayes.)

All opposed?

MEMBER GILREATH: No.

MR. HART: The staff will record the vote as three to one to deny: Mrs. Reid, Mr. Hood, Ms. King to deny; Mr. Gilreath against the motion to deny.

CHAIRPERSON REID: This is the end of the June 2nd meeting and we'll now go into the afternoon hearing.

(Whereupon, the public meeting was concluded at 1:25 p.m.)