GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY,
OCTOBER 3, 2000

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Vice Chairperson
KWASI HOLMAN	Commissioner
JOHN PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

JERRILY KRESS	Director, Office of Zoning
SHERI PRUITT	Secretary to the Board of Zoning Adjustment
BEVERLEY BAILEY	Office of Zoning
PAUL HART	Office of Zoning

OTHER STAFF PRESENT:

MARY SANSONE Office of Corporation Counsel

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

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(9:48 a.m.)

CHAIRPERSON REID: This is a meeting of the Board of Zoning Adjustment. The meeting will now come to order.

Mr. Hart?

MR. HART: Good morning, Madam Chair, members of the Board.

The first item on your agenda for this public meeting, October 3rd, is the minutes. The first minute is for September 5th public hearing. What is your --

CHAIRPERSON REID: Mr. Hart, I think that what we'd like to do is basically like a consent calendar.

MR. HART: Yes.

CHAIRPERSON REID: So, that you could basically read them all, and then I will have a motion and a second taken in its entirety rather than one at a time.

MS. MITTEN: Madam Chair, the only reason I would suggest that maybe we shouldn't do that is I can only vote on two of them, two sets of minutes, because the other two I wasn't in attendance. So, I can't vote on a block.

CHAIRPERSON REID: All right. Then take two at a time, the two that you were --

MS. MITTEN: I was here for the 13th and the 26th.

CHAIRPERSON REID: Okay.

MR. HART: I will take your two and -- okay. Madam

Chair, we are requesting a vote on the minutes for September 13th public and September 26th public hearing.

MS. MITTEN: I had a -- before -- I'll make a motion for approval, but prior to that I'd like to suggest an addition to the September 26 minutes. On page 4, under Corporation Counsel, there were actually two questions that were put to the Corporation Counsel. So, there's one in addition to the one that's listed.

And the second question has to do with the university practice of transitioning housing from rental to student occupied by giving preference to students. And the question is whether or not that practice is consistent with the Human Rights Act and the Fair Housing Act.

MS. RENSHAW: Repeat that again.

MS. MITTEN: The question to the Corporation Counsel is, is the university's practice of transitioning housing from rental housing to student occupied housing by giving preference to students consistent with the Human Rights Act and the Fair Housing Act?

CHAIRPERSON REID: Isn't that basically the same thing?

MS. MITTEN: No. The issue that's in our minutes has to do with the idea of providing incentives for students to live off campus, which would be considered potentially discriminatory towards the students. And the alternative, or the

second question is, is it a practice that could be potentially discriminatory to non-students?

CHAIRPERSON REID: Okay. That was raised as a question to Corp Counsel in that particular hearing?

MS. MITTEN: Yes, it was, because I raised it.

CHAIRPERSON REID: Oh, okay. Mr. Hart? It was raised, but it was omitted inadvertently from the minutes. All right. So, we're going to amend the minutes to include the other question that was raised by -- the question to Corp Counsel that was raised by Ms. Mitten.

MS. MITTEN: So, with that addition, I would move adoption of the September 13 and September 26, 2000 minutes of the BZA.

MS. RENSHAW: Second.

CHAIRPERSON REID: All in favor?

Opposed?

MR. HART: Staff will record the vote for the September 13 and September 26 minutes public hearing. Motion made by Ms. Mitten and seconded by Ms. Renshaw. The vote is five to zero.

Now, the next minutes I will deal with will be September 19. I'm going to go over the 5th for a particular -- we're waiting on Mr. Holman. Without Mr. Holman for the 5th, we won't have a quorum. So, the minutes for September 19.

MS. KRESS: We only need three for a quorum.

MR. HART: Yes, but, no, the September 5th, only three members are here, and Mr. Holman is coming later.

CHAIRPERSON REID: I thought that he had submitted a proxy.

MR. HART: No, Mr. Hood has submitted a proxy for another day; Mr. Holman hasn't.

CHAIRPERSON REID: He hasn't.

MR. HART: But he's coming later, so we --

MS. KRESS: We should do that for the future. Let's just hold it, yes.

CHAIRPERSON REID: We'll hold it until he comes, and then we'll pick that up.

But for the 19th, Mr. Hart, I didn't receive those minutes.

MR. HART: Those minutes should be in your package.

MS. PRUITT: They should be part of your overall package that looks like this.

CHAIRPERSON REID: I did not --

MR. HART: The complete package has all four --

MS. PRUITT: Mr. Reid?

CHAIRPERSON REID: I understand how it's supposed to look, but I got three in mine.

MS. KRESS: We will get you something. Beverly, could you please get Ms. Reid a copy of these minutes?

CHAIRPERSON REID: Yes, I didn't get this.

MS. KRESS: That's the particular minutes.

CHAIRPERSON REID: Then we'll also hold this one as well.

We'll hold the minutes for the 5th and the 19th until Mr. Holman gets here. Then we can vote on those minutes after he has an opportunity to look over the ones of the 19th that I did not get a copy of.

MR. HART: The next agenda item, Application 16296. This application was filed with the Office of Zoning on September 18, 1997. To date, no further action has been taken by the Applicant. In a letter dated August 23, 2000, the Office of Zoning requested that the Applicant indicate whether there were plans to continue or withdraw the application. The Office further indicated that if a written response is not received by September 15, 2000, the case would be placed on the Board's public meeting agenda for October 3, 2000 with a recommendation that the case be dismissed.

There was no response from the Applicant.

CHAIRPERSON REID: There being no response from the Applicant in regard to this particular case, I would go along with the staff recommendation that this particular case be dismissed.

Can I get a second?

MR. MOULDEN: Second.

CHAIRPERSON REID: Comments?

All in favor?

Opposed?

MR. HART: Staff will call the vote as five to zero to dismiss this case. The motion was made by Mrs. Reid, seconded by Mr. Moulden.

The next case is Application 16407 of the Capitol Hill Group, pursuant to 11 DCMR Subsection 3108.1, which is a new subsection in 3104.1, for a special exception under Section 359 for opening an additional 32 beds in an existing nursing facility at 700 Constitution Avenue, Northeast. This is Square 865, Lot 76.

In a letter dated April 21, 2000, the Applicant requested a modification to condition number 4 of BZA Order Number 16407 and the legal description of the subject site. The requested modification sought to reduce the number of parking spaces provided in condition number 4, from 276 off-street parking spaces to 200 off-street parking spaces and to reflect that the Square for which the relief was sought was Square 895, not Square 865.

At it's public meeting in June, on June 7, 2000, the Board reviewed and discussed the record of the case and the modification request. Accordingly, the Board ordered that the parking space requirement in BZA Order Number 16407 be reduced from 276 spaces to 200, and the legal description of the site be written to reflect Square 895 instead of Square 865. Modification Order Number 16407 was signed September 8, 2000.

In a letter submitted to the Office of Zoning on September 13, 2000, the Advisory Neighborhood Commission 6A submitted a motion for reconsideration of the Modification Order 16407. The ANC attests that on September 7, 2000 at its regular monthly meeting with a quorum present, a motion to request reconsideration of Modification Order Number 16407 was unanimously passed.

The hearing date was June 7 of the Modification Order. The decision date was June 7.

The Board members present at that case was Ms. Mitten, Mr. Sockwell, Mr. Moulden, Ms. Renshaw, the vote to grant, and Ms. Sheila Cross Reid to grant by a proxy vote.

CHAIRPERSON REID: All right, thank you.

Board members, discussion?

MS. MITTEN: Madam Chair?

CHAIRPERSON REID: Yes.

MS. MITTEN: I think that there are several issues that have been raised by the ANC, and the most significant is the issue of notice and their ability to participate in the decision that we made. And I think that every opportunity should be given to them to participate given that it's outside of their -- evidently outside of their control that they weren't given that opportunity to participate.

And there's also some additional information that I think would be relevant to the decision that we made originally

regarding, among other things, the status of the parking garage and the impact of the proposed townhouse development.

Now, the ANC has requested -- they have requested reconsideration, and I would just like to suggest that if we, instead of reconsideration which would really confine us to the record that we have, I'd suggest that we consider having a rehearing so that we could allow additional evidence in including the report of ANC 6A and some additional information regarding the status of the parking garage and some of the other issues related to parking.

So, I would move for a rehearing of this case.

MS. RENSHAW: Second.

CHAIRPERSON REID: Any other discussion?

I have no problem with that. I do agree with my colleague that there are some issues that do need to be addressed with regard to the concerns of the ANC.

So, all in favor?

Opposed?

MR. HART: Staff will call the vote as five to zero for this case to be reheard. The motion was made by Ms. Mitten and seconded by Ms. Renshaw.

The next case before you, Madam Chair and the Board, is --

MS. MITTEN: Could I just interrupt before you proceed? Is it possible to give -- since there are people here, I

assume, that are concerned with this -- is it possible to give the date for the -- or premature? Okay.

MS. KRESS: I'm sorry, we haven't set a date. It will tentatively, because of our current schedule, probably be in February.

MS. MITTEN: Okay. Thank you.

MR. HART: The next application is Application Number 15613, Application of Nidal Sukhtian, as amended, pursuant to 11 DCMR 3107.2, the new section 3103.2, for a variance from the minimum lot occupancy requirement, Section 532, a variance from the minimum area required as residential recreation space, Subsection 533.4, and a variance to allow residential recreation space on a roof deck with dimensions of less than 25 feet, Subsection 533.8, for construction of a four-unit apartment house in an SP-1 District at premises 1622 18th Street, N.W., Square 134, Lot 164.

In a letter dated September 8, 2000, the Applicant requests modification of plans for BZA Order Number 15613. The revised plans reflecting the requested modifications were submitted to the D.C. Department of Consumer and Regulatory Affairs on May 11, 2000.

A letter of opposition, dated September 13, 2000, was filed by Richard B. Nettler, Esquire, on behalf of Drs. Sylvia Tetrault and Harvey Steinberg, owners of the condominium units directly affected by the proposed modification.

The hearing dates on this case were January 22 and June 17, 1992. The decision dates were March 4, April 8, July 29, September 2, and October 7, 1992.

The Board members sitting on this case were Susan Morgan Hinton, Betty King, and Sheila Cross Reid.

This case is before you, Madam Chair.

CHAIRPERSON REID: Okay. Thank you, Mr. Hart.

Discussion, Board members, in regard to this particular case before us? If I could get some input.

MS. MITTEN: Madam Chair?

CHAIRPERSON REID: Ms. Mitten?

MS. MITTEN: Well, I think, first off, we have to recognize the fact that the request for modification is deficient in several respects. One is that our rules require that reasons be listed for the requested modification, and there really isn't any reasoning put forward in the request. And the second deficiency is that the ANC was not served, and they are required to be served with the request. So, those are two issues that I think warrant denial of the request for Modification.

I think if the Applicant wants to go forward with this, I would suggest that a rehearing would be in order, given that there seems to be several significant changes proposed.

So, I could make a two-part, or two motions.

CHAIRPERSON REID: Yes. The nature of the request, I agree, the reasons for setting forth to us the reasons why they

felt it was a need for a modification is not evident. One of the issues was the building height being reduced, which should be, of course, less invasive for the community, but then rear yard was increased. And given the fact that there was no notice as required to the ANC, that puts us in kind of a quandary.

Now, I don't know, and I'd like to hear from other Board members as to whether or not if you feel that if we should move forward or either have a rehearing or continue this issue about a modification, giving him time to submit to us a rationale for why the modifications are being requested, and also to give it to time for the ANC to give us its input. That is another way to go with that.

I'd like to hear from my colleagues as to what your thinking is.

MR. MOULDEN: Is there anyone in the audience from the ANC here that --

CHAIRPERSON REID: They can't talk.

MR. MOULDEN: -- to give a report?

CHAIRPERSON REID: They can't talk.

MR. MOULDEN: They can't give -- okay.

CHAIRPERSON REID: Yes, no one from the audience can speak in the meeting.

MR. MOULDEN: Okay. The case here, the modifications seem very minor. The reduction of height and the increase of three-tenths of a foot is very minor. I don't have

any problem with that, but I do have a problem that we don't have any input from the ANC. So, for the sake of time, I would like to get these cases through and done and over with, but we have to allow for the community input.

So, I recommend that we just ask for a continuance until we get that information.

CHAIRPERSON REID: Okay. Mr. Sockwell? No comment?

Ms. Renshaw?

MS. RENSHAW: I would concur with Ms. Mitten's request for a denial and then a rehearing with new information. I think that there is need. There has been a long period of time here. But I would go with that and would second her suggestion if she's made it into a two-part motion.

MS. MITTEN: Well, let me start with -- we'll take it in pieces, and then we'll see where it goes.

MS. RENSHAW: Sure.

MS. MITTEN: I'll move that we deny the request for modification regarding 1622 18th Street.

CHAIRPERSON REID: Ms. Renshaw --

MS. RENSHAW: Second.

CHAIRPERSON REID: Okay. All in favor?

Okay. The motion would fail with a lack of --

MS. PRUITT: I'm sorry, could we actually get a vote again? I wasn't able to catch that.

CHAIRPERSON REID: Okay. I didn't say opposed.

All in favor?

Opposed?

MS. PRUITT: Mr. Sockwell?

MR. SOCKWELL: Abstention.

MR. HART: The staff will call this part of the vote for the request for modification to be denied. The motion was made by Ms. Mitten, seconded by Ms. Renshaw. Mr. Sockwell abstained.

The vote of four to zero to one.

MS. PRUITT: Two to two to one.

CHAIRPERSON REID: No, no. Two in favor, two opposed, and one abstention.

MS. KRESS: So, the motion does not carry.

CHAIRPERSON REID: Would you like to make a motion?

All right, we'll have another motion.

MR. MOULDEN: I'd like to make a motion that we continue this case after receiving information from the ANC on their concern and input for this project.

CHAIRPERSON REID: I think we want to give a time certain for the Applicant to submit to us a rationale for the modification which has been submitted or requested --

MR. MOULDEN: Right.

CHAIRPERSON REID: -- as well as time for the ANC to be able to participate and give us their position as far as

this case is concerned.

MR. MOULDEN: Yes, and then also --

CHAIRPERSON REID: Is there a time for the meeting?

MS. KRESS: Because you're going to handle this as a meeting, this is not a rehearing, you can put it onto either your November meeting or December meeting. I'd probably suggest the December meeting, so that would be December 5, the morning of December 5. So, you would probably want the information in -- Sherry, they would want the information in --

MS. PRUITT: By Thanksgiving, the Thursday -- Thanksgiving week, I'm sorry, I don't have a calendar directly. Here, let me look.

MR. MOULDEN: And the information also includes a rational justification for it.

MS. PRUITT: Yes, November -- the week of November 28, that Monday.

MS. KRESS: Okay. And to reiterate, you're looking for both the ANC's response to this as well as the Applicant's explanation of the modifications --

MS. PRUITT: Well, the Applicant needs to -

MS. KRESS: -- and the reasons why.

MS. PRUITT: -- provide a detailed explanation of the request for modification, the reasons why, and then serve that on the ANC, because they initially did not serve the ANC to begin with.

MS. KRESS: Okay. Then for the ANC to respond, then I think they need to serve it on the ANC by November 15 so that the ANC can have response time by the 28th --

MS. PRUITT: Correct.

MS. KRESS: -- to get it into the packages for the December 5 meeting.

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Yes.

MR. PARSONS: The Applicant will also need to address why he's coming in outside of the six-month rule. In 3129, the modification requests are to be made within six months, and he would need to ask for a waiver and show good cause as to why he's outside that time limit. So, that should be part of this written submission.

CHAIRPERSON REID: Okay, thank you very much. I do agree with that. We do not have that information before us as well. All right.

MS. KRESS: I believe there's a motion from Mr. Moulden.

CHAIRPERSON REID: Correct.

MS. KRESS: Was there a second?

MR. SOCKWELL: I'll second it.

CHAIRPERSON REID: All in favor?

Opposed?

MS. MITTEN: Opposed.

MR. HART: Staff will call the vote as five to zero.

CHAIRPERSON REID: Four to one.

MR. HART: Okay. Staff will call the vote as four to one. Mr. Moulden made the motion; Mr. Sockwell seconded it. Ms. Mitten abstained in opposition.

Now, the following dates are noted: The Applicant is to serve the ANC by November 15. Information is due to the Office of Zoning, or into the Board, by November 28 at which the Applicant should explain why -- should give justifications for the modifications that he's requesting.

MS. KRESS: And the waiver of the six months.

MR. HART: Yes, okay. Thank you.

Next case, Madam Chair?

CHAIRPERSON REID: Yes, Mr. Hart. Just one moment for Mr. Parsons.

You can go ahead and call it.

MR. HART: The next case, Madam Chair, is case number 16573, Application of Martin E. Hardy, pursuant to 11 DCMR 3103.2, for variances for the construction of two new flats from subsection 402.4 from the maximum floor area into requirements for the structure; 403.2, from the permitted percentage of lot occupancy requirements for a structure; 404.1, from the minimum depth of rear yard requirements, and 406.1, from the minimum width and area of a closed court requirements in a DCOD/R-5-B District

at premises 1821 and 1823 Florida Avenue, N.W., Square 2556, Lots 808 and 812.

A motion for reconsideration by Hanna Association an motion for stay by Lothrop House and Elaine Morris have been submitted to the Board.

The case was heard on June 20, 2000; the decision date was July 5, 2000.

The Board members were Mr. Sockwell, Ms. Renshaw, Mr. Moulden, Ms. Reid, and Mr. Parsons.

The case is before you, Madam Chair.

CHAIRPERSON REID: All right. Now, there are two issues here, the reconsideration and then a motion for a stay, so let's take them up individually, the reconsideration first.

MS. SANSONE: Madam Chair, with regard to the motion for reconsideration, the Applicant, Martin Hardy submitted an opposition; however, it was filed late, because he was outside of the country at the time. He didn't have a -- he filed it as soon as he returned. So, he is asking the Board to waive the seven-day filing deadline for oppositions to motion for reconsideration to accept his memorandum.

CHAIRPERSON REID: All right. I have no problem with that. You want to vote on it or accept by consensus unless there's a --

SOCKWELL: I don't have any problem with it.

RENSHAW: That's fine.

CHAIRPERSON REID: Okay. Then we would accept Mr. Hardy's opposition -- late opposition that was not timely filed.

All right. Now, as to the matter of reconsideration, Board members? Discussion?

MR. PARSONS: I think the key thing here, Madam Chair, is the fact that the Hanna Association who came forward with this motion brings to us no additional materials, supplemental materials, no new evidence in the case, other than a perfunctory statement, no accusations of specificity on how we failed or what basis upon which to reconsider this. So, I see no basis for reconsideration by the Board.

CHAIRPERSON REID: I agree with you. I think that, basically, the assertion is that within the order that the conclusions of law were not based on substantial evidence, that it did not flow vastly from the findings of fact. And that is, as you so indicated, that is basically a matter of opinion or perception or how one interprets it. I did not see where there was a real basis put forth -- on a substantial put forth for the Board to reconsider their decision.

And I would second -- did you make a motion?

MR. PARSONS: Well, I wasn't going to be that aggressive. It's early in the discussion.

CHAIRPERSON REID: All right. Further discussion?

Mr. Sockwell?

MR. SOCKWELL: I am satisfied with your --

CHAIRPERSON REID: Ms. Renshaw?

MR. PARSONS: I would move to deny the motion for reconsideration, Madam Chair.

CHAIRPERSON REID: All right. I second that.

All in favor?

Opposed?

All right. Now, as to --

MR. HART: Staff would call the vote as five to zero to deny the motion for reconsideration.

Mr. Parsons made a motion, seconded by Ms. Sheila Cross Reid.

CHAIRPERSON REID: As to the issue of the motion for a stay, as we know, there are four criteria for the issuance of a stay, and what to look at is if in fact the criteria has been met. And we can discuss each of them.

The first one being are the opponents likely to prevail on the merits of the appeal? What are your thoughts in regard to that particular -- the first one?

MR. PARSONS: Well, again, there's no new evidence submitted, so they're arguing with what we had before us. And they're attempting to bring in some additional discussion over the potential value that they were willing to offer Mr. Hardy. And I just, again, cannot see how they would -- how we would come to the conclusion that that particular issue would result in prevailing on the merits.

CHAIRPERSON REID: Right. We don't have -- we have no -- that is not something within our privy to even take up or consider the issue as to the amount that was offered and whether or not it was accepted and how it affected the situation economically anyway. So, I would agree that that is not anything that we would even concern ourselves with as the BZA.

And the other issue -- any other input?

Okay. Second one was will the opponent suffer irreparable harm if the stay is denied? For myself, I did not come to that conclusion that there would be any irreparable harm done. I don't know how the other Board members felt in that regard.

MR. PARSONS: Well, they claim that construction noise and dust would cause them irreparable harm, and I think we had a construction management plan associated with it to be sensitive to that.

And they also claim that these party walls -- which indeed are not party walls, they're retaining walls holding up earth; they're not traditional party walls that is an adjoining building is my understanding of the word "party wall" -- that those will be stabilized in any event. So, certainly, I don't think anybody would agree that -- I mean disagree that those garages, if demolished, wouldn't be a benefit to the community.

CHAIRPERSON REID: Yes, I agree. And I don't think that with regard to the dust and noise, I think that at best that

would be temporary during the construction period. And the issue of the blocking of the light and air, I don't think that was borne out in the testimony during the hearing to the extent that it would convince me that that would cause irreparable harm to the neighbors or the abutters of that particular property, that site.

Mr. Moulden, did you have any comment?

Ms. Renshaw?

MR. SOCKWELL: I would just agree with you, Madam Chair.

CHAIRPERSON REID: Okay. And then the third one was will the opposing parties be harmed by a stay?

Ms. Renshaw, could you speak to that, please?

MS. RENSHAW: I did not find anything that would indicate that the opposing parties would be harmed by a stay, Madam Chair.

CHAIRPERSON REID: Okay. And anyone else?

I would agree with Ms. Renshaw.

The last one being, does the public interest favor granting a stay?

Mr. Sockwell, did you have feelings toward that one?

MR. SOCKWELL: I don't really think so. I don't think that the public would be --

CHAIRPERSON REID: The public interest?

MR. SOCKWELL: -- interest would be --

CHAIRPERSON REID: Harmed?

MR. SOCKWELL: -- harmed. No, I do not.

CHAIRPERSON REID: Okay. I don't think we need to --

MR. PARSONS: Certainly, based on our observations, the A&C, that this deplorable section of the Avenue just needs to be brought up to speed with the rest of the neighborhood, and delaying this further is certainly not in the public interest.

CHAIRPERSON REID: All right. Then all in -- no. I need a motion on the floor to deny the stay.

MR. SOCKWELL: I would move that the stay be denied.

MS. RENSHAW: Second.

CHAIRPERSON REID: All in favor?

Opposed?

MR. HART: Staff would call the vote as five to zero to deny the stay.

Mr. Sockwell with the motion; Ms. Renshaw seconded.

Next case, Madam Chair, 16604, the Appeal of Fairview Heights Neighborhood Association.

CHAIRPERSON REID: I think you're skipping one.

MR. HART: Okay. Application 16559, the Morris and Gwendolyn Cafritz Foundation/The Field School, pursuant to 11 DCMR 3104.1 for a special exception to establish a private school under Section 206 for a maximum for 320 students and a maximum of 74

faculty and staff in the R-1-A District at premises 2301 Foxhall Road, N.W., Square 1341, Lots 856, 861, and 879.

The Board discussed this application at its March 15, March 29, May 10, and July 25, 2000 hearing sessions. The Board completed hearing the case, set a decision date for September 5, 2000, and indicated that the following submissions be made: The results of further dialogue between the Applicant and the parties in opposition, including Sylvia Shugrue; two, written closing argument from the Applicant; three, findings of fact from the Applicant and parties; four, submissions from James Long, Delon Hampton & Associates. Mr. Long is to provide a summary of intersections he has designed in the Washington area.

All required submissions were made by the dates specified by the Board at the September 5, 2000 public meeting. There were only three Board members in attendance, and one of the three members indicated that he would have to leave the meeting early, thus losing a quorum. On a vote of three to zero, the Board moved to postpone the meeting until its October 3, 2000 public meeting.

The Board members were Ms. Reid, Ms. Renshaw, and Mr. Parsons who voted to postpone.

The case is before you, Madam Chair.

CHAIRPERSON REID: Thank you, Mr. Hart.

All right, Board members, discussion, please, or a motion in regard to this particular case.

MR. PARSONS: Well, Madam Chairman, this case has consumed a lot of time and energy, especially the citizens. But I think the Field School has gone to extraordinary lengths to accommodate the citizens, the District Department of Public Works, and this Board, and others in the process. And the result here is a project that I think has evolved into one that will be one that I can support.

It has taken a long time and a lot of effort, but I feel that we finally have the issue of traffic and access resolved. There are a few conditions, of course, that need to be reinforced to protect some of the neighborhood -- neighboring parties. But I think, in sum, I am ready to support the application and would make a motion to do so.

CHAIRPERSON REID: Thank you, Mr. Parsons. I would second the motion. I concur with your comment in regard to the Field School. I think that they met their burden of proof in regard to their application, and as such, the areas that I have caused quite a bit of time and attention from the community as well as from the various entities that are involved in the decisionmaking, such as the Office of Planning, which recommended support, as well as the DCW, who recommended support, as well as the traffic consultant's analysis, which I agree with, I feel that there has been quite a considerable amount of tweaking to try to make this particular school fit in the proposed site.

And I feel that given the conditions that have been

proposed and which we can go over the conditions separately, because there has been conditions from the Office of Planning, from DCW, from the Applicant, as well as from the National Park Service, and the fact that we've had over 200 letters of support for this application, although we have had some opposition, which we do take their concerns very seriously in order to mitigate any perceived or adverse impact that may evolve as a result of the application being granted to structure them in such a way that they would be the most favorable or in the best interest of the community.

I'd just like to add I felt that the School, the Field School, made a very strong case, and I was swayed most favorably by the fact that the impression of the Field School by most everyone who testified, even those who were in opposition, was most favorable. And unlike some of the other cases we have before us, we did not hear any instances where there's students directing themselves other than in a most proper manner at all times. And that is very important.

Also, it seems that the Field School actively came to us to address the issues, some of the problems that they had heard about or they had received are occurring and gave solutions to those problems. And, as such, I feel that this is a very worthwhile application for this Board to support.

Further discussion?

MS. RENSHAW: Madam Chair, Mr. Parsons, I have

listened with interest to the motion and your comments. I have a different perspective on this case, and when reviewing the record for today's discussion and vote, what I did was line up the pros and the cons. And, of course, on the cons, that is addressing the adverse impact that has been brought to the BZA's attention.

Now, this is a very important piece of property. The Applicant is also a very prestigious, well-liked school with a great reputation. The piece of property is half in a minor watershed, according to the Park Service testimony. Therefore, whoever owns the property must take that into consideration when developing the property.

So, therefore, anything having to do with storm water management that was brought to the Board's attention and was advanced as one of the solutions for the site did not really make a mark on me, because, again, whoever owns the property is going to have to manage that storm water runoff. That is a given.

So, therefore, on the pro side, before I get into the adverse impact, there has been advanced to us the argument that it's the best use of the site, that the School will be good neighbors, as I'm sure they would be, that they are offering a third lane with a left turn stacking lane, a staggered arrival, prohibiting the parking on the neighborhood streets, closing the northern entrance of the property -- they've made a deal, by the way, with neighbors on, I believe, it's 44th Street not to use that exit/entrance -- parking for about 128 cars and ten buses,

and then again the storm water management.

But let's look at the adverse impact, and I have not heard the solutions that the Chair has said she has heard and has been convincing to her. I have -- and I have not lost this concern of safety. Foxhall Road is a difficult roadway. It is narrow. Flashing lights will do nothing to curb the speeding or to lessen the danger of that roadway. That's all there is to it. I speak from experience because of where I live, where there is a private school, and where there are flashing lights. And I can speak to the record that flashing lights will mean nothing.

Also, I am not the least bit in favor of private traffic lights on public streets. Traffic lights should be at intersections so that it manages the flow of traffic in cross directions, not just given to assist a private party getting in and out of a piece of property.

It took, in my neighborhood, ten years to get an important traffic light on an intersection -- at an intersection. It has taken us 15 years, and we're not there yet, to get a traffic light at another crucial location. And yet, we have advanced to the Board a traffic light that is going to be paid for -- I never did hear whether the upkeep would be paid for by the Applicant -- but the Applicant is able to advance the thought of having a private traffic light, and that's what it is, a private traffic light. I don't go for that.

And it's not going to help anybody trying to cross

at the intersection; in fact, the cars are going to stack up in front of Mrs. Shugrue's property while waiting for that light to change. And then comes the time when the traffic light is not activated, because the students are no longer in the School, and then because of the third lane, it's going to be a neat little area to pass.

The congestion will remain on Foxhall Road. Given the number of cars in the city, given the number of streets that are impacted, cars are going to look for any way that they can get downtown fast. And I don't see any less congestion on Foxhall Road because of the treatment of traffic than we have right now.

There is the matter of substantial reconfiguration of the roadway, and our testimony supports that, the relocation of utilities. Now, that's a major, major job, and we have had in the city neighbors speaking out against tampering with streets. And yet, here we have an applicant who because of where it has to site the School, we are going to have to have a substantial reconstruction of the roadway. I wonder if that's fair.

I also took into account the ANC's feelings on that, because they have to be taken with great weight. They have reservations about the School being sited on the Cafritz property.

But one of the most convincing reasons why I cannot endorse this is the impact on Mrs. Shugrue's property, because her property is the key to making the Field School work. There will be enormous pressures on Mrs. Shugrue to sell her piece of

property. It is on a corner. It is strategically positioned.

Also, take note of the fact that the entrance to the School is now close to her property. So, therefore, Mrs. Shugrue is going to have to put up with the noise and the pollution of all of these cars going in and out of the Field School location. And that simply is not fair. I don't care what the buffer is. Whether you have a wall or you have trees, whatever it is, it's not going to do much to reduce the pollution, which floats above, and the noise.

Now, students like to congregate in parking lots, there is no doubt about it, before and after school. So, there will be the impact on her property. But when I talk about the impact, I'm talking about making matters so uncomfortable or making her quality of life disintegrate to such a point that she perhaps gives in to the Field School as a purchaser of her property. And really when you look at the Field School at that location and the butters, I have --

CHAIRPERSON REID: Excuse me, excuse me. I just want to interject something. You may continue, but just let me say this: We don't have any testimony before us in regard to the purchase of Mrs. Shugrue's property --

MS. RENSHAW: Yes, we do.

CHAIRPERSON REID: -- as to whether or not they will or will not -- I don't think that we should really go into that aspect of it.

MS. RENSHAW: We had in July the 25th, I believe it was, we had a reference to the Field School attempt to purchase two more properties.

CHAIRPERSON REID: Well, again, I think that we should be very careful about going into whether or not Mrs. Shugrue is being pressured to sell her property, because I don't think that that is a part of this case.

But continue, but I think I would --

MS. RENSHAW: I will continue. I will continue.

CHAIRPERSON REID: -- you'll leave that part alone. Thank you.

MS. RENSHAW: So, I feel that the abutters are going to be the ones most impacted with this School; there is no doubt about it. And, again, I think that there is ample evidence in the -- through the testimony in our files to point to the impact on Mrs. Shugrue's property and the fact that with the noise and the pollution, the entrance so close to her property, that her quality of life is going to deteriorate on that property, and I do not feel that I can support the School locating its school on the Cafritz property.

And I'm sorry about this, because the School, again, has a great reputation, and we want to support schools in our neighborhoods. But this School's location is not the best, in my opinion. A narrow road, one entrance, close to a private property, residential property, introducing safety as a concern to

those who are abutters to the property and those who use the street, the congestion that is going to ensue with the School in that location, because that's a narrow part of the roadway, again, the reconfiguring of the road at public expense, because I mean we'll have to carry on with the roadway improvements after the School pays --

CHAIRPERSON REID: Ms. Renshaw, don't repeat what you've already said.

MS. RENSHAW: Thank you, Madam Chair, but I am just --

CHAIRPERSON REID: Can you wrap, please?

MS. RENSHAW: Yes, of course I can wrap.

CHAIRPERSON REID: Thank you.

MS. RENSHAW: And I haven't quite done so. But those are the points given today to say that I cannot support the Field School's location.

CHAIRPERSON REID: Thank you very much.

Mr. Sockwell?

MR. SOCKWELL: While I understand Ms. Renshaw's concerns about the Field School and the traffic issues are particularly the ones that I think have been the most difficult to resolve or to work through, I would want to start by saying that, and very briefly, that the property owned by Mrs. Shugrue is meaningless, in my belief, to the plans of the Field School. Its location has absolutely no impact on the Field School's needs for

land or utility of its site.

However, the Field School will have some effect on her property based upon its location within that neighborhood, as would any development have effect on the adjacent neighbor's property. However, the principal buildings of the Field School are located remotely from that property, and there is significant buffering to limit direct effects, both in real terms vehicular and in significant terms activities, especially when they would not occur late in the evening.

Going to the traffic issue specifically, I believe that the Field School and the Department of Transportation have made -- and the Department of Public Works have made significant moves to alleviate the potentials of congestion. And with regard to traffic signals being placed to access specific properties, there are instances in Woodley Park and elsewhere in the city where such traffic signals have been installed specifically for that purpose -- Wisconsin Avenue at Fresh Fields or what was called the Whole Foods Market is one particular example paid for by the developer of the Store.

But I believe that the Field School is, again, a particularly difficult project to review simply because it does present a major increase in activity, not so much for the site but for Foxhall Road, which has become a major traffic connector. However, there are times when such changes wind up to be beneficial in the long run, not because they create congestion but

because they slow the flow.

And one of the things that will happen with the Field School is a slowing of the flow, which may result in the diversion of traffic from that residential community's street, which is really a front street of different character than say Dexter or any of the adjacent side streets. It may help to return some of the character back to the street, from Lothburough all the way down to Reservoir. There's a potential of that.

But I do feel that the Field School has been well worked over the coals of this committee -- this Board and the community to the extent that most of the problems have been reduced. Perhaps none of them completely eliminated, but certainly most of the problems have been significantly reduced. And I believe that it is now in a form where its impacts on the community are acceptable.

CHAIRPERSON REID: Thank you, Mr. Sockwell.

Mr. Moulden? Okay.

Just one point of clarification. Ms. Renshaw, you mentioned that the Chair had -- that all of the adverse impacts had been addressed and solved. Let me clarify that, because that's not what I was saying. I was saying that the adverse impacts or the impacts on the community, in my opinion, had bee diffused to a great degree and that the conditions that had been suggested to us through the Office of Planning and National Park Service, as well as the Applicant, could be utilized to mitigate

some of the impact that would be realized by that community.

That being said, is there further discussion?

MR. SOCKWELL: Just one other thing. With regard to storm water management, that's an issue that if the Park Service accepts the solutions and the District accepts the solutions, I don't think that this Board needs to step further into that area.

CHAIRPERSON REID: Thank you, Mr. Sockwell.

All in favor?

Opposed.

MS. RENSHAW: Yes, opposed.

CHAIRPERSON REID: Okay. All right.

MR. HART: Madam Chair, before I call the vote, how are you to handle conditions? Are you going to vote them now or --

MS. KRESS: I think it's the vote, and then they will deal with the conditions. So, it is the vote --

CHAIRPERSON REID: Call the vote.

MS. KRESS: -- with the conditions to be determined.

MR. HART: Okay. Staff will call the vote as four to zero. The motion was made by Mr. Parsons, seconded by Mrs. Reid. Mrs. Renshaw in opposition.

MS. RENSHAW: So, it's four to one.

MR. HART: Four to one, yes.

CHAIRPERSON REID: As to the conditions, Mr. Hart, the Board will impose conditions in regards to this particular case. And what typically do is to go over the conditions and then determine which conditions we are going to propose and have it put as a part of the order.

Now, did we want to --

MS. KRESS: Do you want to discuss them today or would you rather do that at another time? It's up to you.

CHAIRPERSON REID: Well, typically, given in the interest of time, we have given our decision and then deal with the conditions at another time before the order is actually --

MS. KRESS: Issued.

CHAIRPERSON REID: I'm sorry?

MS. KRESS: Issued.

CHAIRPERSON REID: I'm sorry. No, before we actually issue the order, I was just trying to think if we can set another date for working on the conditions. Some of the conditions that we have received, they have been numerous. They come from different entities, and we want to try to --

MS. KRESS: You might mention that the conditions have been compiled from every party -- Corp Counsel --

CHAIRPERSON REID: Yes, Corp Counsel has --

MS. KRESS: -- and all the parties.

CHAIRPERSON REID: -- tried to condense them for us. Nonetheless, what we're going to do is to tweak them better

and to make sure that all the Board members are on the same page as far as the conditions coming from these various entities so that we can come up with one body of conditions that we will attach to the order once it is issued by the BZA.

MS. KRESS: Your next decision date is November 8, if you would like to finalize the conditions at your next meeting.

CHAIRPERSON REID: Do we want to go over the conditions on the dias or do we want to do it in executive session?

MS. KRESS: Whatever you feel like doing.

CHAIRPERSON REID: Board members?

MS. PRUITT: Just for information for warning, you do also have the Georgetown Campus Plan that day.

MS. KRESS: Yes, I am aware of that. This would be conditions --

CHAIRPERSON REID: Well, what we may want to do is ask Corp Counsel again to basically condense them, to make sure that there is no repetitiveness in the conditions and to give us the conditions that -- to identify which agency they came from. And then we can -- we can then -- we don't have to -- it can be submitted in our packages, and then when we have our session, we can just basically say condition number 1, number 2, number 3, making sure that the members of the -- whoever's in the hearing room would also have copies of it, and we could basically facilitate in most expeditiously at that time, if it is the

pleasure of the Board members --

MS. KRESS: What about -- does anyone here have --

MR. SOCKWELL: Yes, I have some.

MS. KRESS: -- some general guidance on the conditions so that we can put them in a final format for you to review?

MS. PRUITT: Actually, in your package, there should be an OP report, the --

MR. MOULDEN: I have a question too. Just for the record, do you think it would be good today for the public information just to generally say what the conditions are based around? Haven't we done that in the past just to give an idea?

CHAIRPERSON REID: There's so many.

MS. KRESS: There's so many, I think that might be cumbersome.

MS. PRUITT: Also in the record, if anyone is interested, this is part of the public record for them to read now.

MR. MOULDEN: Can we say whether this is related to transportation or --

MR. SOCKWELL: Yes, I think we should categorize the conditions.

CHAIRPERSON REID: Oh, sure. The categories for the conditions were basically traffic management --

MR. MOULDEN: Storm water management.

CHAIRPERSON REID: -- storm water management --

MR. MOULDEN: Lighting.

CHAIRPERSON REID: -- noise, parking. The other thing was, as to Mrs. Shugrue's property specifically, there were conditions that I had.

MR. MOULDEN: Buffering issues.

CHAIRPERSON REID: Yes, buffering, landscaping.

MR. PARSONS: I had a couple of specifics I wanted to highlight, I think.

CHAIRPERSON REID: Okay.

MR. PARSONS: There seems to be some debate or difference in these conditions as to whether there's a left turn lane for emergency vehicles at the upper entrance. In one case, it says no use, and the other one says left turn for emergency. It was my understanding it would be for emergencies.

Secondly, I think it would be helpful to include the construction management plan in the conditions, but I would ask the Corporation Counsel to take a look at that to see if it's really enforceable by the Zoning Administrator. I would urge, of course, the Park Service's conditions be included rather than the Applicant -- I think the Applicant stated it as to the satisfaction of the Park Service. I would hope that the Board would include the Park Service's conditions rather than have that more unenforceable condition.

Then there were two exhibits contained in one of

the -- I don't know where I found it, okay, and they look like this. I think they came -- the trouble is we all have too much paper. But this came in, I think, from the opposition. It's showing the regulation fields in comparison for baseball. And I think it's convincing to me that baseball should not be played here. And it shows to me that a well hit baseball into center field is in somebody's living room, living beyond the property. And I think softball is something we should consider.

And I hesitate to bring something like that up at this point, but it's in the record, and it's very obvious to me that 260 feet is not long enough baseball at the high school level. It certainly could be played at elementary, little league level at 260 but not at the high school level. So, I wanted to highlight that for your consideration.

CHAIRPERSON REID: Are you saying that you would advocate softball but not baseball?

MR. PARSONS: I would call softball and little league baseball but not high school.

MR. SOCKWELL: Madam Chair, I don't know that we have enough information on D.C. Public Schools or other schools to compare field sizes to make that decision. I mean I wouldn't want to recommend that they only use whiffle balls, but --

(Laughter)

MR. PARSONS: I realize this is very unusual. They cited the D.C. Schools on this exhibit. If there's some way the

Office of Planning could --

CHAIRPERSON REID: Why don't we check into that --

MR. PARSONS: -- check into that and see if there's validity to it.

CHAIRPERSON REID: -- and get a recommendation as to the feasibility of their having a baseball field there?

MR. PARSONS: At the same time, I assume if baseball was scheduled and it resulted in broken windows in the neighborhood, the School would probably stop such practice. But if it's obvious on the face of it, we ought to respond to that.

CHAIRPERSON REID: The issue -- thank you, Mr. Parsons -- the issue that you raised, and I have that too as in regard to the recommendation by DPW, that the northern entrance not be used other than -- at one point, it said that it would not be used at all, that it be fenced, gated. And then on another part, it said that it should be used only for emergency vehicles. And I wasn't clear, and could someone please clarify that for me if you can? It's a little ambiguous as to what the intent was. I think that's very important, because that was an issue also with the ANC.

MS. KRESS: There has been diversity on this issue, and that's exactly the one major thing I wanted to get direction from you before we as staff continue on and try to work these out. I think there is testimony on several sides on that issue, and I do think that's one that we would look to you for direction from.

CHAIRPERSON REID: You toss the ball back over here. So, you want us to basically make the decision as to whether we will allow or not allow the northern entrance to be used at all?

MS. KRESS: Or just for emergencies.

CHAIRPERSON REID: Well, I thought that -- I don't know, Mrs. Kress, whether or not we are the experts that really have the authority to determine whether or not there should be accessibility for an emergency vehicle at a particular point at the site. I'm not --

MS. PRUITT: Mrs. Reid, I believe one part --

MR. SOCKWELL: The Fire Department.

CHAIRPERSON REID: The Fire Department?

MR. SOCKWELL: Yes, the Fire Department requires certain access, and that's really the key. Generally, the Fire Department wants a straight through loop, in/out.

MS. PRUITT: I believe the question was whether or not it should be gated. I believe the question was that there should be a northern entrance for emergency, but should there be a gate there all the time that when emergency comes someone would have to open it up or would it always be an open entrance only for emergencies?

CHAIRPERSON REID: Okay. That being the case, that would be something that I think we should get the input from the Fire Department or emergency vehicles or something like that.

MS. KRESS: Well, we can answer that, because if it's for -- I'm sorry, I'm sure Board member Sockwell was going to say just what I'm saying.

MR. SOCKWELL: Well, maybe not. I was going to say that generally when gates are provided in private properties, the Fire Department has keys if the gates are locked. If it's a secondary or third response company, then they may not have keys. Whether or not the gate's locked is something that would be an operational issue, but the gate could be closed, and the Fire Department wouldn't have any problem with it, generally speaking, as long as they can get access through it when they need it. If it's locked, they'll knock the lock off; that's guaranteed.

CHAIRPERSON REID: Okay? All right. So, that's one of the things that we will be sure to address as we do conditions.

Any other --

MS. RENSHAW: Number 20 under traffic management where it says that the School shall work with the neighbors to approach --

CHAIRPERSON REID: Number 20 on which document?

MS. RENSHAW: It's page 5, it's the --

CHAIRPERSON REID: Is it the Applicant or DPW or Corporation Counsel?

MS. RENSHAW: It's proposed conditions from Corp Counsel.

CHAIRPERSON REID: Okay, page 5?

MS. RENSHAW: Page 5, number 20, "The School shall work with the neighbors to approach the Department of Public Works." That's a long route into the Department of Public Works. I think it should be the School with the ANC shall approach the Department of Public Works; in other words, move on it. Don't give false hope but to request -- the School can request the ANC to approach the Department of Public Works to give a rundown of traffic calming measures and a date certain when those measures would be installed.

CHAIRPERSON REID: Ms. Renshaw, I think that that is one of the conditions that we will be taking up --

MS. RENSHAW: Tweaking?

CHAIRPERSON REID: -- yes, at the time that we actually go over all the conditions. And then the --

MS. RENSHAW: Well, you were talking about them, so I brought it up at this point.

CHAIRPERSON REID: Well, I think in regard to things that may have been omitted or not included, to make sure that they were included in our conditions when we do take them up to go over each one of them to make sure that what members have satisfactorily inserted whatever they felt needed to be inserted or omitted or modifications or what have you, so that we'll have just one set of conditions rather than all these conditions.

MS. KRESS: And we'll try to have the whole order

drafted with this set of conditions. We will have varying conditions, because we're drawing from four different places or five different places, so there might be some conditions that are absolutely opposed, one to another, for you to choose from as we try to do a summary for you all to review.

CHAIRPERSON REID: Thank you.

MR. MOULDEN: Do we need to set a date to meet again or we will get a draft of these conditions?

MS. KRESS: You will have a draft before your next meeting. It will come out with your package for your November 8 meeting.

CHAIRPERSON REID: Okay. Any further discussion at this time?

All right. Move now, Mr. Hart, I think we have one more issue for this morning? Two more items? Which ones?

MS. KRESS: Did you want to break to have a few minutes.

CHAIRPERSON REID: That's what we're going to determine once we ascertain where we are in the mix of things. We have -- oh, I'm sorry, yes, we do have two other -- now, I'm sorry?

Okay, if the Board members would like, we can break for a few minutes at this point so that we can address some of the issues that we have before us and then come back in about 30 minutes. Is that good? One second, please.

Five minutes and we'll return, no more than ten.

(Whereupon, the foregoing matter went off the record at 11:03 a.m. and went back on the record at 11:25 a.m.)

MR. HART: Madam Chair, Board members, the next item on our agenda is Number 16604, Appeal of the Fairview Heights Neighborhood Association.

But before I read this case, Madam Chair, there is a preliminary matter here. The Corporation Counsel filed their findings of fact late, and they're requesting of waiver for it to be waived into the record.

CHAIRPERSON REID: Unless any of the Board members object, I would allow it to be waived into the record.

MR. HART: Okay. Case 16604, Appeal of Fairview Heights Neighborhood Association, pursuant to 11 DCMR 3105 and 3106, from the administrative decision of the Zoning Administrator, Department of Consumer and Regulatory Affairs in the issuance of a building permit, Number B425220, that was issued on July 16, 1999, to the Sikh Cultural Society to permit the construction of a temple in an R-1-B District at premises 3801 Massachusetts Avenue, N.W., at Square 1816, Lot 45.

CHAIRPERSON REID: All right, thank you.

MR. HART: There's more.

CHAIRPERSON REID: Sorry.

MR. HART: Prior to hearing arguments on the

appeal, the Board discussed three preliminary matters and stated it does not jurisdiction to hear and decide the following issues: One, constitutionality -- the zoning regulations are constitutionally invalid as they favor the establishment of religion; Building Permit Number B425220 --

CHAIRPERSON REID: Mr. Hart, I'm sorry. Could you repeat that and slower?

MR. HART: Okay. About the constitutionality?

CHAIRPERSON REID: Yes.

MR. HART: Okay. The first of the issues, constitutionality. The zoning regulations are constitutionally invalid as they favor the establishment of religion; Building Permit Number B425220 is unlawful.

The vote on this was five to zero. The issue is not within the jurisdiction of the Board's authority to decide. Motion made by Sheila Cross Reid, seconded by Kwasi Holman, Rodney Moulden, Robert Sockwell, and Anne Renshaw to approve.

The second issue was DCRA did not provide proper notification to ANC 3C. The Appellant asserted that the Department of Consumer and Regulatory Affairs did not provide proper notification of the building permit's issuance to the affected ANC 3C, as required by law.

The vote on this was four to one. The issue is not within the jurisdiction of the Board's authority to decide. The motion was made by Ms. Sheila Cross Reid, seconded by Robert

Sockwell, Rodney Moulden, and Kwasi Holman to approve. Anne Renshaw opposed the motion.

The third issue was the inconsistency with the comprehensive plan. The Appellant indicated that the terms of the city's comprehensive plan were violated by the issuance of the permit, which is law and should govern how properties are developed throughout the District of Columbia.

The vote on this issue was four to one. The issue is not within the jurisdiction of the Board's authority to decide. Motion made by Sheila Cross Reid, seconded by Kwasi Holman, Rodney Moulden, and Robert Sockwell to approve. Anne Renshaw opposed the motion.

The parties of the appeal are: Appellant, the Fairview Heights Neighborhood Association, represented by Richard H. Boote; the Intervenor, the Sikh Cultural Society.

The Board heard the facts of the appeal and is scheduled to decide the case at its October 3, 2000 public meeting. The findings of fact are due on September 25, 2000.

The Board members are Sheila Cross Reid, Rodney Moulden, Anne Renshaw, Robert Sockwell, and Kwasi Holman.

The case is before you, Madam Chair.

CHAIRPERSON REID: All right. Board members, I'll open the floor for discussion in this matter. And, basically, just to kind of summarize other than the issues that were raised -- that have been put before us by Mr. Hart that we've already

voted on and decided on as to the constitutionality and also the issue of the proper notice to ANC 3C, what we're looking at is determining whether or not DCRA, or the Zoning Administrator erred in agreeing the certificate of occupancy for this particular site.

And as such, what is before us is to apply the regulations to determine whether or not there has been any violation of the regulations or to determine whether or not we feel that the certificate of occupancy was correctly issued.

MS. PRUITT: Specifically, the Board needs to look at whether or not the building permits were issued in error, and that's the one dealing with the setback requirements --

CHAIRPERSON REID: I'm sorry, I said certificate of occupancy. I meant to say if the building permits were issued in error. Thank you, Mrs. Pruitt, for making that point.

MS. PRUITT: And those building permits that deal with the height restrictions setbacks and the number of parking spaces.

CHAIRPERSON REID: So, discussion, Mr. Sockwell? Could I ask you to --

MR. SOCKWELL: As far as I'm concerned, I believe that the Sikh Temple met its requirements. While I would not be unwilling to say that the Sikh Temple by its appearance and mass is different from the character of the rest of the neighborhood, it appeared to have met the requirements of law. And on that basis, I see no reason to revisit the issue.

CHAIRPERSON REID: Is there a motion?

MR. SOCKWELL: I move that the appeal be denied.

MR. HOLMAN: I second that motion.

CHAIRPERSON REID: All right. No other discussion is made. Do we have a second?

MR. HOLMAN: I seconded the motion.

CHAIRPERSON REID: I said any discussion.

MR. HOLMAN: No, I would concur with Mr. Sockwell's observations.

CHAIRPERSON REID: Okay. Mrs. Renshaw?

MS. RENSHAW: Yes. While it appears that the Temple has met its requirement of law, I was really hoping today when we came to our meeting, that there would have been an out of BZA settlement on this case; in other words, some kind of an accommodation between the Temple and the neighbors to allow for more green space and less mass, especially on that eastern side, which would translate into a better fit in this residential neighborhood.

We have found out in Northwest Washington that buildings flush with the sidewalk or almost flush with the sidewalk aren't very people friendly. And I point to the redevelopment in the Friendship Heights area on the D.C. side where a massive amount of money has gone into making a building much more street friendly.

And here we are in a residential neighborhood where

there is so much mass in relationship to the homes, the residential character, that it does throw the balance off. And, therefore, I am very sorry that those officials from the Sikh Temple cannot or would not be willing, it sounds like, to go back to the neighborhood and renegotiate some kind of a better fit for the neighborhood.

CHAIRPERSON REID: Mrs. Renshaw, question.

MS. RENSHAW: Yes.

CHAIRPERSON REID: Did they so indicate that they were unwilling to meet with the neighborhood?

MS. RENSHAW: As my notes reflect, the Sikh Temple officials have met with the ANC and reviewed the plans with them, but there was nothing that came out of that that spoke to the fact that they were willing to change the structure; in other words, more green space, less mass, perhaps moving those stairs leading up to the front of the Temple back a bit, which was a bone of contention with the neighborhood.

CHAIRPERSON REID: Well, that's what I'm trying to ascertain. Did they basically refuse or did they just say they would not. I understand that there was no closure, but --

MS. RENSHAW: There was no closure, that's just it. We do not have anything that said they would do this.

CHAIRPERSON REID: I was trying to determine whether or not there was the possibility of us putting any conditions to try to encourage --

MS. RENSHAW: And it can't be.

CHAIRPERSON REID: Yes, we can't do that.

MS. RENSHAW: Well, just to --

CHAIRPERSON REID: You might want to suggest still -- I mean it doesn't prevent you from suggesting that in the -- just to bring about a type of meeting of the minds, in the interest of the community relationship perhaps, they may consider doing some of the things that you're mentioning. Not all but maybe some at least to try to encourage some of the adverse impact that the community is raising in opposition.

CHAIRPERSON REID: And I just want to also point out that the neighborhood does have a right to be concerned about the parking for a 270-congregation or building to that number. To have so few parking spaces on-site is a problem, and there's going to be a definite impact on the neighborhood. And we, the BZA, have to recognize that.

But, again, I would suggest, I would concur with the Chair, that if we could suggest to the Temple officials that there be some custom tailoring to ease this Temple into the neighborhood, changes might be for the better. There might be a better accommodation, a better understanding, a better harmony in the neighborhood if this were to take place.

MR. SOCKWELL: If I might say this, and I realize that my position is based on what I believe the BZA's responsibilities are under the zoning ordinance and nothing more,

the architecture of Sikh temples is a fairly unique and unusual architecture by American standards. And the location of this facility within this neighborhood is almost impossible to be placed unobtrusively within the context of the other properties. It is not a Lutheran church, it is not a Catholic church, it doesn't have the more traditional architectural appearance, and yet it meets the requirements of law.

I don't know how much the Sikhs could do to modify the design. It's, again, an issue of utility of what one builds -- cost effectiveness, et cetera. I do wish that the rear yard had landscaping that would somewhat buffer the hard edge of this very large structure against the block of 38th Street. However, I do not know that at this point they could make such changes effectively and still achieve the goal of housing their congregation.

But, again, it's not my belief that it is within the Board's authority to force modifications on something that appears to meet the test of the law. But it is going to be a difficult element to absorb within the context of the existing community.

MS. RENSHAW: We did not talk about forcing. We understand what we can and cannot do, but we can suggest, and that is what the Chair recommended, and I support that.

CHAIRPERSON REID: You know, your points well taken, both Ms. Renshaw and Mr. Sockwell. However, Ms. Sansone, I

do have a question in regard to one of the recommendations or suggestions made by Ms. Renshaw as to not exceeding the authority of what's in the purview of the Board, and that is in regard to the parking spaces. If in fact we determine that an applicant, or an intervenor in this particular case, is well within compliance with the parking regulations in the number of parking spaces that they are providing, then would it be inappropriate for us to suggest that they try to have more?

MS. KRESS: They have met the -- I believe you have decided they have met the letter of the law. I believe you are absolutely correct where you are right now in that you're making suggestions. They're building this as a matter of right, and you're deciding whether they're doing it according to the code.

CHAIRPERSON REID: No, my question, Ms. Kress, was if in fact they are in compliance, should we as a Board or can we as a Board suggest that they exceed what is required of them by adding additional parking spaces?

MS. KRESS: You can suggest, but the appeal is basically to say whether it meets the law or not.

CHAIRPERSON REID: No, we understand that, and I think we all agree that they do. But I think Ms. Renshaw was trying to establish some wiggle room wherein there seems to be a greater need for more parking -- that was the impression that you got -- and to suggest that they try to just better accommodate the community or by --

MR. SOCKWELL: Madam Chair, you're just saying for the record we would --

CHAIRPERSON REID: For the public.

MR. SOCKWELL: For the public, right, we would request that the Temple provide more on-site amenities to reduce the impact of its congregation's parking.

CHAIRPERSON REID: In general.

MR. SOCKWELL: In general, in the community.

CHAIRPERSON REID: But now, Ms. Renshaw, are you saying that this is something that's a given that it's inadequate, in your opinion, or are you saying that if in fact it is determined later that it is not adequate enough? They seem to feel that it was.

MS. RENSHAW: I feel that the number of parking spaces is inadequate given the size of the congregation.

CHAIRPERSON REID: But remember now, the number of parking spaces is --

MS. RENSHAW: A formula.

CHAIRPERSON REID: -- a formula used by DCRA determined for every institution --

MS. RENSHAW: I understand.

CHAIRPERSON REID: -- a hospital or every building permit -- the number of parking spaces that are required, because this is what they have determined is appropriate or adequate. Only point I'm making, Ms. Renshaw, is that if in fact you feel

that it's not, then I would just ask you to defend that position.

MS. RENSHAW: I feel that it is not adequate, because the 26 or 27 spaces will never absorb this congregation. There is going to be substantial spillover into the neighborhood streets. There is no way around it. And for this formula to work, you're going to either have to cut back on the congregation or ask everybody to walk.

MR. MOULDEN: Madam Chair, I think we should be careful as to how we make our recommendations over and above what the legal and the zoning requirements are. I think when we recommend something over and above that, it has to be something that's agreed upon in a mutual way with other agencies that may be involved and the community. We can't just arbitrarily just make statements without justification on our part too.

With that in mind, I think this proposal meets all the regulations, and it's just a matter of us making a decision right now. Anything after the fact, that's something that has to be negotiated with the community and not with this Board.

CHAIRPERSON REID: Yes, well, I --

MS. RENSHAW: We are, in a sense, urging further negotiations with the community. That was the point of all of this discussion, to just touch on various areas where there can be and should be more dialogue with the community.

MS. KRESS: And perhaps that could be even done as a letter that accompanies the order, the appeal, from this Board,

whatever you decide on. Then you as a Board could write a letter encouraging this kind of dialogue.

MR. MOULDEN: Yes, but we can't be arbitrary about this. We have to base it on some precedent, some more implicit facts. It can't be just because we want it; want it because of what reason? It will impact the immediate parking in the neighborhood on the street? I mean you're asking for overflow parking now. You have to be more specific and more detailed in how you ask for that information.

MS. SANSONE: Madam Chair, another aspect of this is that if the Board feels the zoning regulations are not sufficient, the appropriate thing would be to write to the Zoning Commission and ask them to look into that particular aspect of the schedule of parking spaces and revisit whether it really is an appropriate regulation.

But there wouldn't seem to be any way, being that this is a matter of right development, it doesn't appear there would be any way to require spaces above the schedule in the order. But a suggestion would be -- the letter Ms. Kress was talking about would be fine.

CHAIRPERSON REID: Ms. Sansone, I think that your point's very well taken, and that's my initial question to you, because I know that the authority of the BZA does not exceed what is set forth in the regulations. And it is enforced supposedly through DCRA. And that's the point that I -- I didn't want us to

get into any trouble even with a suggestion of an issue, an item that would be in excess of what we really can do, which is within our authority.

So, I think that, Ms. Renshaw, with your suggestions, and some of them are well taken, I think that the parking needs -- the request for additional parking may be modified somewhat so that perhaps we can or you might want to add or send a letter suggesting that there be greater cooperation with and greater modification or some modification that would be in the interest of the community -- the best interest of the relationship with the community without specifying particularly increased parking.

MS. RENSHAW: Thank you. You have drafted the letter well.

CHAIRPERSON REID: Okay. Thank you very much.

MR. SOCKWELL: Madam Chair?

CHAIRPERSON REID: Yes.

MR. SOCKWELL: Madam Chair, there is one item that, since were on this, that I wanted to make sure was clear. The seating requirement for this facility was set based on the number of -- I mean the parking requirement was set based on the number of seats, which I think there are 270 seats, so that would be 27 parking spaces.

CHAIRPERSON REID: That's right, exactly.

MR. SOCKWELL: Now, the question that may not have

been raised in the hearing was whether or not the seats were fixed.

CHAIRPERSON REID: Can you elaborate on that a little bit?

MR. SOCKWELL: In the zoning ordinance, Section 2101.1, the capacity based on occupancy is based on fixed seating. However, if the seats are not fixed, each seven square feet of usable space for seating or each 18 inches of bench, if benches are provided, shall be considered one seat. So, there might be a rationale for looking at the seating capacity based on square footage as opposed to fixed seating.

CHAIRPERSON REID: Would that require more?

MR. SOCKWELL: That might require more seating to be provided.

CHAIRPERSON REID: Okay. But, Mr. Sockwell, you now are complicating the issue a little bit more, because --

MR. SOCKWELL: Well, the issue was brought up --

CHAIRPERSON REID: Now the question is why didn't --

MS. PRUITT: Excuse me, Madam Chair?

CHAIRPERSON REID: -- DCRA use that -- apply that particular formula than the other?

MR. SOCKWELL: The drawings that they supplied do not state whether the seats are fixed or not, and no seating plan was part of the filing documents. I apologize for not seeing it.

MS. PRUITT: I do believe, though, at the hearing, and I will go back and check the testimony for you, because when Mr. Hart and I reviewed this case, that was one of the questions we asked, how did they determine seating.

CHAIRPERSON REID: How did the Zoning Administrator?

MS. PRUITT: How did, yes, DCRA, and I believe there's some testimony in the transcript from Mr. Bellow, but I'd have to go back and check that.

CHAIRPERSON REID: Okay.

MR. SOCKWELL: But if fixed seating is provided in a facility, the fixed seating plan has to be filed with the city, because that is a determination of exit lane aisle -- or exit aisle width for the purpose of fire safety. And since no seating plan appeared in our documents, it might be possible --

MS. PRUITT: I don't know if they filed it with DCRA, I don't know.

MR. SOCKWELL: -- that no seating plan appeared in their documents. If not, then one could revert back to seven square feet of sanctuary space and require the parking to match that. That's the only reason I brought it up.

MS. PRUITT: No, I understand. I do remember this being discussed. I can't remember exactly what. I can, if you'd like, go back and research the transcript to find it.

MR. SOCKWELL: I would recommend that we continue

this appeal pending additional information, do you mind?

CHAIRPERSON REID: Well, I think --

MR. SOCKWELL: Because we don't know --

MR. HOLMAN: Madam Chair, if I may. I think it's our responsibility as Board members to, when we're raising issues, to be clear that -- this is clearly the kind of issue that should have been discussed at the hearing.

MR. SOCKWELL: It is.

MR. HOLMAN: Let me -- please. I think that we should be careful to not raise issues at a decision point and seek information that we probably needed to have previously. We have a motion before us, and with all due respect, I'd like to call the question.

CHAIRPERSON REID: Is there a second?

MR. HOLMAN: Yes, I seconded the motion.

CHAIRPERSON REID: All right. Wait a minute, let's go back. The motion was made by Mr. Sockwell and seconded by Mr. Holman. Now, can we just move ahead with the vote?

All in favor?

Opposed?

MR. SOCKWELL: I'm going to abstain.

CHAIRPERSON REID: Ms. Renshaw, did you vote?

MS. RENSHAW: Abstain.

MR. SOCKWELL: I'm going to abstain from my own motion.

MS. RENSHAW: I'm abstaining.

MS. PRUITT: You can't do that.

MR. SOCKWELL: I can't? Well, then I'll be opposed to my own motion.

CHAIRPERSON REID: Well, no, no, no, no, Mr. Sockwell.

MS. PRUITT: I believe the vote is Mr. Holman, Moulden and Reid in favor, Mr. Sockwell abstaining, and Ms. Renshaw in opposition.

MR. SOCKWELL: Well, let me do it this way: I think it would be more appropriate if I withdraw my motion.

MS. KRESS: Not once the motion's on the table.

MR. SOCKWELL: I can't, can't withdraw the motion?

MS. KRESS: You cannot do that. If you want to make another motion now at this point to try to overturn the motion that's been passed, but the motion is on the table, and it is now legitimately passed.

MR. SOCKWELL: All right. Okay.

MS. PRUITT: And that vote again is three, one, one. Three in favor, one in opposition, and one abstention.

CHAIRPERSON REID: Specify who voted which way, please.

MS. PRUITT: The three in favor, Mr. Holman, Mr. Moulden, Ms. Reid; Mr. Sockwell in abstention and Mrs. Renshaw in opposition.

CHAIRPERSON REID: Is that correct?

MR. SOCKWELL: That is correct.

MS. PRUITT: And that was a motion to deny the appeal.

MS. KRESS: And I believe that also still includes the letter that was being discussed that would be drafted for your review as soon as we can by the Board members to accompany the decision of this appeal and request the cooperation of the Sikh Temple with the community and reevaluate some issues.

CHAIRPERSON REID: Okay. Thank you very much.

Our last case for the morning, Mr. Hart? Item, last item for our consideration.

MR. HART: Application 16531 of Father Flanagan's Boys Town of Washington, pursuant to 11 DCMR 3104.1, for a special exception for the construction of four residential care buildings under Section 303, each housing no more than six persons and an addition to an administrative building, or in the alternative, the construction of four residential care building units, each housing not more than six persons and the conversion of the existing residential unit into administrative use in the R-2 District at premises 4801 Sargent Road, N.E., Square 3977, Lot 811.

The Board indicated that the Applicant needed to address specific concerns prior to the Board making a decision. The Board delayed making its decision for six months to afford the Applicant and residents time to resolve community concerns. At

the end of six months, the Applicant and Advisory Neighborhood Commission 5A are to inform the Board how the outstanding issues have been resolved.

The issues to be worked on are: First, water run-off -- all storm water run-off controls not directly associated with the proposed new construction must be installed and operating; noise abatement -- the Applicant shall take measures to reduce noise from the emergency generator and the cooling tower; community liaison program -- the Applicant shall establish and convene an Advisory Liaison Committee to meet at least twice prior to the September 20, 2000 report deadline. The meeting shall be scheduled to afford the Community Liaison Committee a meaningful opportunity to report to the ANC, which will then provide the ANC's report to the Board. Next the security plan -- the Applicant is to develop a security plan. This initiative is to be coordinated with ANC 5A and the Commander of the area's police precinct.

The Applicant and ANC 5A are each to submit a report to the Board by September 20 verifying that the above conditions have been met. The Board will make a decision on the application at its October 3 public meeting.

The hearing dates on this case were January 19, 2000 and February 23, 2000.

The Board members sitting were Mrs. Sheila Cross Reid, Anne Renshaw, and Robert Sockwell.

The case is before you, Madam Chair.

CHAIRPERSON REID: Okay. Board members, as you might recall in this particular case when we heard it, we had our first meeting to deliberate and then decided that it would be better to not make a decision at that time but rather to continue it until a date certain, which is today, October 3, so that we could give Boys Town an opportunity to comply with some of the major issues, some of the issues that we felt were very significant.

And what we have before us is a matter of, given the information that has been submitted to us in response to our request, whether or not these issues have been sufficiently mitigated to the point that we feel that we can move on with approval or if we feel that they have not.

As such, I now open the floor for discussion as to each of the issues. And Mr. Hart summarized them for us, but specifically they are water run-off, noise abatement, community liaison program, and the security plan.

Discussion?

All right, I'll start off with discussion.

I'd recommend approval of the application, Board members, and the reason why is this: This is one of those difficult cases that we have to make a decision on, and we don't like to, but the fact of the matter is you have community interests and their concerns pitted against those of a public

entity or an institution. And given the fact that we know that we have to have in our city churches and institutions and schools and what have you, at the same time, we have to look at how the entity will impact the quality of life of the persons who are abutting or live in that particular community.

And out of the hearing, which was a very long and exhaustive hearing, it was determined that the major issues were the water run-off, so let me start with that. My understanding from the Applicant, represented by Shaw Pittman, I think it was -- who's the attorney?

MR. HART: Feola.

CHAIRPERSON REID: Who? Feola, Mr. Feola -- was that they have moved to address their water run-off problem with the construction of a retaining wall and a stream along the edge of the Boys Town property. Now, I'm going to address both the concern of Advisory Neighborhood Commission, which we have to afford the great weight to, their position, and also looking at and compare and contrast as I go through this.

Now, from the ANC letter, Timothy Thomas, it was determined that they felt that the controls were not installed and operating. Nonetheless, from the Applicant, we have determined that they had applied for a building permit, and they have a building permit number to authorize the construction of the retaining wall, and that it is in the process of being -- it's going through the processes, and is such that they have every

intention to have this done, which I feel is -- in my opinion, I feel that that is adequate that they have taken the necessary steps to try to address the issue.

The other one, number two, the noise abatement. Again, the ANC states that there is still some noise coming from the emergency generator and cooling tower. And, again, from the Applicant in Feola's letter it's being proffered that to mitigate the noise that there has been an attempt to -- or their in the process of obtaining a building permit that would close existing emergency generator and a sound attenuation shed, which is, in my opinion, again adequate for what our requests specified.

Now, in regard to community liaison, that was a problem, because that flew in the face of the issue I had, the lack of compliance with the previous order in which there was supposed to have been a community liaison already established, and it had not been until it came almost time for them to come before this Board, which unfortunately Applicants often do. Nonetheless, from that time, it's indicated that there has been 12 -- that the liaison has met 12 times to address the issues and that they also have submitted to copies of the minutes as evidence of that attempt and that there will be continued involvement through the community liaison with Boys Town on a regularly scheduled basis through the year, which I think is very important.

The other and last issue was in regard to the safety, or the security. This is a very kind of difficult issue

because of the, I think, perception of the persons who reside there, and I don't know the exact term that you use for the young men who live on the premises. I asked about this so I could have an understanding myself as to whether or not these young men were juvenile delinquents or criminals or hoodlums or if they in fact were the type of young men who would wreak havoc on the neighborhood with all kinds of criminal activities.

And I remember hearing through my life that it was a more place for boys who had problems or were undesirable or who had been abandoned or who had issues as far as their family structure was concerned, and this was a refuge to give them so that they could have some semblance of a normal life, not mentioning the fact that -- not overlooking the fact that along with that type of situation comes emotional problems or adjustment problems and the like. But I didn't feel it was the type of entity that required bars or lockdown, because this was not a prison or entity where kids were being punished.

And as such, I thought that more attention to the security was in order, and this is what I wanted to see. And from what I garnered was, from the information submitted to us, that there was an increase in the monitoring of the youth, the intervention staff training of facilities equipment. And the staff would be more sensitive to the whereabouts of the kids, and it had a plan in place in case there was any kind of abscondance -- and I hate to use that word, but that's what they used in the

information to us -- but in case they kind of disappeared, didn't show up.

And if in fact that happened, then my concern was, was there a danger to the community? Did we have instances where there had been criminal activities or had there been juvenile delinquency problems that came as a result of the institute being there. And I don't think, and someone could correct me, I don't think that we saw that so much as just problems with the mere existence of the boys in the community at any time. And I think that we had to look at that and in all fairness determine if in fact there was a great need for a large amount of security, which I didn't think that was necessary.

We did get a police report of when the police had been called to the facility, which is similarly, roughly three or four times a month. But this was basically, it seemed to me, in the most recent months a matter of a missing persons. And my understanding from the testimony was that if a young man was not at a certain place within a prescribed period of time, and I can't remember exactly what that was, that they immediately called the police. That was one of their rules, they had to do that.

So, the fact that you see all these missing persons reports, that does not necessarily indicate that there was a missing person per se. It may have just been the matter of them being late for wherever they were supposed to show at a given time, and the rules require that there be a police record, that

they called the police.

But I didn't see in this police report a lot -- yes, there were a couple of instances or a few instances of juvenile activity, I think a couple of assaults, but not anything that I would necessarily feel would require the kind of security that would be indicative of them being criminals or hoodlums or juvenile delinquents.

MS. RENSHAW: Madam Chair, we discussed at our previous meeting --

CHAIRPERSON REID: Excuse me, could I get a second on my motion?

MR. MOULDEN: What was that?

CHAIRPERSON REID: Oh, God. My motion was to approve the application, and I'd like to get a second on my motion.

MR. MOULDEN: I second.

CHAIRPERSON REID: And then a discussion. Thank you.

MS. RENSHAW: Yes, Madam Chair, I recall when we met back in April that we talked about, under security, having a better tracking system for these young people, and I would like to suggest that that be included in the security plan conditions.

CHAIRPERSON REID: Okay.

MS. PRUITT: Excuse me. Ms. Renshaw, do you want them to submit something in addition to the draft security plan

that's been submitted that's part of the record?

MS. RENSHAW: Since we don't have anything that addresses that, the answer is yes.

MS. PRUITT: What would you like? We need to be a little bit more --

MS. KRESS: Perhaps we can draft it. It's such a late time to ask them to draft something. Perhaps we could draft it.

CHAIRPERSON REID: No. Okay, now, they have included in the security program, and I quote from what was submitted by Mr. Feola, "In the event that a youth leaves the facility without permission, a graduated process of action will occur." And then he then lays out what will occur. "Immediately staff will initiate campus sweeps and notify all staff members of the abscondance." And then he goes on to -- this the system that is in place.

MS. RENSHAW: But I was suggesting is to have some kind of a plan whereby they know the movements of these young people as long as they are on the -- at the Boys Town facility.

MS. PRUITT: In excess to this.

MS. RENSHAW: In excess to that.

MS. PRUITT: Okay.

MS. RENSHAW: I recall at our hearing we had information concerning the use of basketball. They would be playing basketball in the community, my remembering the right

application, and I think I am. But in any case, to know where those students are, not just when they --

CHAIRPERSON REID: When they disappear?

MS. RENSHAW: -- when they disappear but to know where they are going --

CHAIRPERSON REID: You mean a schedule?

MS. RENSHAW: -- to have a tracking system, a schedule.

CHAIRPERSON REID: Well, tracking is --

MS. RENSHAW: To know where they are.

CHAIRPERSON REID: Maybe tracking is a little strong. However, I would think that they certainly would have to have a schedule as to each student and where they are in the course of the day, from the time they get up in the morning to -- a schedule as to where they're supposed to be at given times. So, this would be the basis by which they would be able to detect if in fact someone were missing or not in the place at a given time.

So, what you're saying is that you'd like to see a daily schedule for, and I guess they have them in categories or classes as to how they are supervised during the course of the day. I would think that that would be something that they'd already have in place --

MS. RENSHAW: And it would not be a burden to respond to the Board.

CHAIRPERSON REID: Yes, just submit to us prior to

the order being issued.

Now, Ms. Kress just gave me a document that says --

MS. PRUITT: This is the document that was in your file that I've asked --

CHAIRPERSON REID: "Monitoring of the youth central to the success that many Girls and Boys Town children have enjoyed and key to the Girls and Boys Town model. There are two components: Building relationships and teaching social skills. To this end, staff are available in the case of evening hours -- "

MS. KRESS: "Monitoring occurs as follows: During each da, da, da --"

CHAIRPERSON REID: Oh, okay, "Monitoring occurs as follows," then we do have a breakdown as to how the students are monitored. I think, however, Ms. Renshaw asked for, and I don't think that it would overly burdensome to submit to her, for the record, a schedule as to the during the course of day and night what activities the various classes are engaged in.

MS. KRESS: And I think we don't need to ask that from them. I think we can just write that, if you so desire, as one of the conditions.

CHAIRPERSON REID: Conditions in what?

MS. KRESS: If this is approved, I think that it can be handled as a clarification in one of the conditions about the monitoring.

CHAIRPERSON REID: I'm not following that, Ms.

Kress. Are you saying that a condition that they give us a schedule or a condition -- what would be the condition?

MS. KRESS: I'd like to have an opportunity to work that out for you all to approve, but something to the point of asking them to create and maintain schedules.

CHAIRPERSON REID: But I think that they -- my understanding is that in any institutional type of setting or school there has to be in place a schedule so that they would be able to monitor and to be determine if someone's missing, so that's already established. And I think that what Ms. Renshaw just wants them to submit it before the order is submitted on the issue. Is that right?

MS. RENSHAW: But previously one of the issues with the community was the fact that some of these young people were out in the community, and the School didn't know where they were. And we are asking here that we have something in place, in writing, that tightens up the monitoring, the supervision of the students. We have this security plan draft dated September 2000, and all we're asking is a clarification of the monitoring that would just doubly reinforce what they have stated in this, say on page, I guess it's page 2 of this draft.

CHAIRPERSON REID: Okay. Let's not beat that to death. Can we just ask that they submit the schedule of the classes and where the students are supposed to be during the course of a 24-hour period, and I think that would suffice.

MR. SOCKWELL: If any clarification -- Madam Chair, if any clarification of the daily routine would be helpful, then perhaps that is what Ms. Renshaw is looking for. But on page 4, the Shaw Pittman letter, in the fifth paragraph and sixth paragraph, it stated rounds of the security people or the staff during the night and physically going to the room every 15 minutes and things. Those are all pretty well stated here.

If there's anything else, one thing we must remember, these are not inmates. This is not a prison facility, and we should not, on this Board, require a more stringent restrictive program than would be consistent with the type of environment that Boys Town is trying to create for these youth. Yet, we should make sure that Boys Town has an effective program for monitoring the youths' activities and locations. But, again, I restate that this is not a prison facility, and they are not inmates.

MS. RENSHAW: We are aware of that, Mr. Sockwell. It's just to give some comfort to the neighborhood that the security plan has been tightened considerably and will benefit both the Boys Town residence and the community.

CHAIRPERSON REID: Thank you.

All in favor?

Opposed?

I think that it should be with the conditions that have been set forth in the responses to our requirements, and

those are the conditions that the plan for -- the security plan, the water run-off, the noise abatement, and community liaison program should all be incorporated as conditions to be implemented as a part of this order. Are there any others the Board members may have, they wish to include in this order?

Thank you very much.

MR. HART: The staff will call the vote as five to zero. Motion by Mrs. Reid, Mr. Moulden.

Madam Chair, before you conclude this, one thing we need to deal with the minutes.

CHAIRPERSON REID: With the conditions.

MR. HART: With the conditions.

CHAIRPERSON REID: All right. Go ahead with the minutes.

MR. HART: Yes. The meeting Board vote for the minutes for September 5 and September the 19th.

CHAIRPERSON REID: Okay. Any discussion about those minutes?

Mr. Holman, you were present for --

MR. HOLMAN: I was present at the hearing but not the initial consideration of the vote, I believe.

CHAIRPERSON REID: No, you were not -- we held off taking the vote till you arrived.

MR. HOLMAN: Oh, I appreciate that.

CHAIRPERSON REID: All right. All in favor?

Opposed?

MR. HART: Who --

MS. PRUITT: Who made the motion to approve and second it? The people voting on this were Mrs. Reid, Renshaw, and Holman.

MR. HART: Who made the motion?

CHAIRPERSON REID: Mr. Moulden seconded it. Motion made by Mr. Holman, seconded by Mr. Moulden.

MR. HART: Okay.

CHAIRPERSON REID: Okay.

MR. HART: Madam Chair, Mr. Moulden --

CHAIRPERSON REID: Yes, all four of those before that were laid forth in the field as commissioned to us were supposed to be included in that.

MR. HART: There are three members here on that. So, we need someone to second it.

CHAIRPERSON REID: Second.

MS. KRESS: Does that clean up the 5th? Now, how about the 29th?

MR. HART: That cleans up the 5th. Now, the 19th, we need a vote for the 19th.

Mr. Holman, you were here. You can vote on this.

MR. HOLMAN: Yes. I vote in the affirmative.

CHAIRPERSON REID: I move that we approve the minutes for the 19th.

MS. RENSHAW: Second.

CHAIRPERSON REID: All in favor?

MS. PRUITT: Madam Chair, you weren't here either. The people who attended the 19th were Mr. Sockwell, Ms. Renshaw, Mr. Moulden, and Mr. Hood.

MS. RENSHAW: I so move -- I move.

MR. SOCKWELL: I second.

MS. RENSHAW: I vote.

MR. SOCKWELL: All in favor?

MR. HART: On that, Ms. Renshaw moved, Mr. Sockwell seconded, and Mr. Hood, by proxy vote, support, yes.

That ends it.

CHAIRPERSON REID: That's the end of it?

MR. HART: Yes, Madam Chair.

CHAIRPERSON REID: All right. Then we will adjourn the meeting for today. We will return at one o'clock, approximately, for the afternoon session. And to the Board members, remember we have executive session during lunch. Thank you.

(Whereupon, the Board of Zoning Adjustment Public Meeting was concluded at 12:19 p.m.)