GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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WEDNESDAY

JULY 5, 2000

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The meeting was held at 9:30 a.m. in the Office of Zoning Hearing Room, Suite 220, 441 Fourth Street, N.W., Washington, D.C., 20001, Sheila Cross Reid, Chair, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

CAROL MITTEN, Commissioner
JOHN PARSONS, Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF CORPORATION COUNSEL :

Alan Bergstein, Esq.
Marie Sansone, Esq.

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9:59 a.m.

CHAIRPERSON REID: Good morning. The meeting of the Board of Zoning Adjustment now come to order.

MS. PRUITT: Good morning, Madam Chair. To accommodate Mr. Parsons time schedule, we re going to sort of reorganize the procedures of what s on our agenda today, and I believe we want to take Application 16573, Application of Martin Hardy, for decision today for you.

This case was heard on January -- June 20, and Board members present was Ms. Reid, Sockwell, Parsons, Renshaw, and Mr. Moulden. Status of the case, there were seven items requested. Those items were provided to you along with draft orders from both the applicant and opponents.

This is now before you for decision.

CHAIRPERSON REID: All right. Note that the items that were requested have been submitted, and I guess the thing is to look further at what we have and determine if, in fact, they are sufficient. Mr. Sockwell, go through the all the inventory just to see the things you had requested. Were you satisfied that they met the -- your approval?

MR. SOCKWELL: It appears that the things that I had requested were submitted. I had maybe one question.

CHAIRPERSON REID: They had submitted everything on this, in their folder, and could you take a look at that? Now, the shadow study, there was plans of the alternate development scheme that was heard at the hearing, and they did show on how that would look. They showed -- they gave a copy of s study shadow that was requested by you, Mr. Sockwell, and since you were the one, can you basically get a read on that, as to -- I think you want them to have a competing company to do the shadow studies and determine -- I guess to analyze both to determine which one or if in fact the one that they submitted was adequate for you?

MR. SOCKWELL: I read the extensive, I guess this is e-mail, interaction between the architect, Mr. Vallen, and his provider of software, and I m comfortable that their conclusions were satisfactory. It does not appear that the alternative scheme presents what I would consider to be unusual year-long hardship on the adjacent properties from the sun and shade standpoint.

CHAIRPERSON REID: All right. The next one was the construction management plan, which we ve

looked over, and basically, some of the issues that were raised on the hearing with regard to the brick work that would be done and where was the mortar and debris, how that will be disposed of or handled, and in there is the master plan, they do adjust that and they talk about the terms, the amount of time being about 12 months, and that the general contractor will take special care with constructing brick walls so as not to disturb the neighbors, which is very important. And any spillage of mortar sand would be, of course, taken care of right away. And that the general contractor owner will cooperate with neighbors in regards to any adverse impact, that the construction will confirm to District of Columbia regulations, which is appropriate, and that the site will be protected so as not to be cluttered. And I think that that is -- that kind of addresses the concerns of the neighbors as far as how that construction was going to be handled. Now there s applicant sent a copy of the floor plan of the adjacent apartment building, at 1822 Vernon, for the --

MS. RENSHAW: Madam Chair.

CHAIRPERSON REID: Yes.

MS. RENSHAW: In regard to the construction management plan, it s usual for the applicant to insert some information as far as work

hours, grievance procedures for the neighbors, trucking, and I don t see that in the construction management plan that s in the binder.

CHAIRPERSON REID: I think, and Mr. Sockwell can help me with this, I think that when applying for the construction permits, do they have to submit that information so as to be in compliance with the City --

MR. SOCKWELL: The City has specified hours for construction under the normal permit process. Anything outside of that would have to be applied for separately.

MS. RENSHAW: But it is not unusual for those ingredients to be part of the order --

CHAIRPERSON REID: Oh, I see --

MS. RENSHAW: of the B.Z.A. --

CHAIRPERSON REID: I see. So you re saying that you d like maybe a copy of what they submit --

MS. RENSHAW: Yes, yes.

CHAIRPERSON REID: And the application be included?

MS. RENSHAW: To be included.

MS. PRUITT: Madam Chair?

CHAIRPERSON REID: Yes, Ms. Pruitt?

MS. PRUITT: I d just say, usually on a project of this size we don t get construction

management plans. This is a single family home, basically.

CHAIRPERSON REID: Well, I think that she s saying --

MS.. PRUITT: Which is why we haven t had a --

CHAIRPERSON REID: Ms. Renshaw s referring to the application itself, I m thinking that there s a form that they have to submit --

MS. RENSHAW: I think that there should be at the very minimal --

CHAIRPERSON REID: form? Okay.

MS. RENSHAW: some information in the B.Z.A. order respective to a grievance procedure should the neighbors have problems with any aspect of the construction. A way to get to the owner of the property and get some remediation for the call.

CHAIRPERSON REID: In other words, you want them to identify liaison persons --

MS. RENSHAW: Absolutely.

CHAIRPERSON REID: construction liaison persons?

MS. RENSHAW: Construction liaison person. And the hours that person will be available.

CHAIRPERSON REID: Okay. I don t think

that that would be a problem to identify such a person. I m looking at the applicant, and they re nodding their head. I have no problem with that unless another. Do the board members have any objection?

MR. SOCKWELL: No, you might also ask for stated hours and days of construction.

MS. PRUITT: Well, we should actually discuss that and determine that now. If you re going to vote on the order, it s should be part of the order you need to identify this now --

CHAIRPERSON REID: Could you -- at this -- maybe Ms. Hicks could just give you -- give you a note with that information so that we ll -- we can --

MS. PRUITT: If they have that. Like I said, we ve never asked for this on a single-family house before.

CHAIRPERSON REID: Nevertheless, if Ms. Renshaw wants it, Ms. Hicks, well, perhaps you could give her --

MR. SOCKWELL: This is, in effect, not a single family house, because it s a two-unit --

MS. PRUITT: It s a two-family flat. It is a townhouse.

CHAIRPERSON REID: Just give the hours of construction so we know what you plan to do as well as

a liaison person who would be the contact person for the community, and if there are any problems.

MS. HICKS: Okay. Mr. Vallen --

CHAIRPERSON REID: But you can t speak to us.

MS. HICKS: Oh, Okay.

CHAIRPERSON REID: You have to give the information. Just write it there and give it to Mrs. Pruitt. You can just tell her, but you can t speak directly to the Board.

MR. SOCKWELL: Madam Chair, would we -- would we also request whether or not they intend to construct on the weekends and therefore have a broad picture of what their construction impact would be.

CHAIRPERSON REID: I think they re getting that -- getting it now. But while they re doing that --

MR. SOCKWELL: Days and times, that they expect to be under construction.

CHAIRPERSON REID: And the construction liaison person.

MR. SOCKWELL: And the construction liaison person.

CHAIRPERSON REID: Okay. For right now, so that the -- was it you that requested the floor plan of

the adjacent apartment building, Mr. Sockwell?

MR. SOCKWELL: No.

CHAIRPERSON REID: Who requested that?

MR. SOCKWELL: I don t think it was me. I know I asked about the plat of the subdivision. I asked about the shadow studies. It was requested. Let s see.

CHAIRPERSON REID: Nonetheless, for whatever reason, they submitted it, and we have it. And could you look at it, Mr. Sockwell, since you are our resident architect, and determine whether or not you feel that they are appropriate. I can sense that would be the only thing that would be required. I don t remember the request being made, quite frankly --

MR. PARSONS: I do. It was my recollection they had it here as an exhibit, and maybe that they just took --

MR. SOCKWELL: Their previous exhibit was not a complete floor plan of the areas that were being discussed as having impact, or would be impacted by the building.

CHAIRPERSON REID: Okay.

MR. PARSONS: It was important because the exhibit was being used for the opposition to show where their units were.

CHAIRPERSON REID: Okay. Oh, you mean --

MS. RENSHAW: Madam Chair --

CHAIRPERSON REID: Is that what it was for, to show how the sun hits the units in the building behind the --

MR. SOCKWELL: That to some --

CHAIRPERSON REID: Okay, I see now --

MR. SOCKWELL: degree in the relationship of units to impact.

CHAIRPERSON REID: Okay, that s right --

MR. SOCKWELL: some on the front of building and some on the side.

CHAIRPERSON REID: because seeing some of the units were, like, on the back side, and what have you. Okay.

MR. SOCKWELL: Configuration issues.

MS. RENSHAW: Madam Chair.

CHAIRPERSON REID: Yes.

MS. RENSHAW: One other matter, that the final design of these two units should show the space, the off-street space, to store trash receptacles between pickups?

CHAIRPERSON REID: It does.

MS. RENSHAW: Okay. Thank you.

CHAIRPERSON REID: All right, then.

MR. SOCKWELL: One question of the applicant. I compared the -- Oh, no, I guess I can t question the applicant. Sorry. Yes, I ll make the statement.

I compared the original design to the alternate design, and it is my assumption that in the alternate design the -- what now becomes more of a real studio unit as opposed to a senior-junior bedroom -- well, actually, it s more than a junior bedroom unit -- is sufficiently sized to meet the needs of the applicant as a viable unit, and that was something I can t ask them, but I d make that assumption because they provided it this way, but it is significantly different from --

CHAIRPERSON REID: Thank you, Mr. Sockwell. And the other thing was, on regard to a question of Corp counsel, addressing the issue of whether the applicant created a self-imposed practical difficulty back in buying the lot. And that was -- it was raised because it was -- it was addressed because it there was an issue raised with regard to the standard for practical difficulty in a area variance, and Corp counsel has held that -- and for the parties, says in light of the fact the circumstances of this case include that the combination of two lots does not bar

variance relief. The applicant is seeking an area variance, which is judged under the practical difficulty standard, and that standard is -- does not have any relevance to -- or should not be judged in regard to the -- let me rephrase that. The parking regard -- the parking garage is not relevant to determination of the practical difficulty in this instance. And, as such, does not preclude him from -- would not bar him from variance relief.

There was an argument that was raised with court cases put to us by the opposition, and we have determined from Corp counsel, and the gist of it is, there was some confusion as to the application of the court cases in regard to this particular case and the understanding of the application of standard that would be applied for practical difficulty, and, as such, this issue about the garage in the lot does not have any relevance.

Okay. All right, were there any other questions, comments, discussions, in regard to this particular case?

All right, can I get a motion?

MR. SOCKWELL: I would move that we approve the new two-unit building based upon the alternate floor plan arrangement.

MS. RENSHAW: Second.

MR. MOULDEN: Question. Do we know the hours before we approve this?

CHAIRPERSON REID: Do we have those, Ms. Pruitt?

MS. PRUITT: Yes. The hours of construction would be -- would comply with the District, which would be 7 to 5 p.m. Monday through Friday, and 8 to 5 on the weekends, with Mr. Hardy or Vallen being contact persons.

MR. MOULDEN: What is weekends? Saturday and Sunday?

MS. PRUITT: Yes.

MR. MOULDEN: Do construction work on Sunday?

MS. RENSHAW: Can we -- can we limit that to Saturday only? And in fairness to the neighbors, I think Saturday ought to be a half day.

CHAIRPERSON REID: Well that s -- we can t --

MS. RENSHAW: Can we do that?

CHAIRPERSON REID: If the code allows it, we can t -- right, you know, we can t usurp the code.

MS. RENSHAW: It can be worked into the arrangement, and perhaps the applicant would want to --

MS. PRUITT: We can request it but you can t make it a -- a condition is different than a request.

MS. RENSHAW: Could we request it, then, because perhaps the applicant and the neighbors would want to enter into some kind of agreement for weekend work?

MS. PRUITT: It can be part of the order, but not a condition, because a condition is enforceable, whereas if you re just requesting we can write it in as a request that there be no weekend work or weekend work will end by noon, is that what you re requesting?

MR. SOCKWELL: I m not sure what the Saturday -- I m not positive whether the Saturday work schedule has to be done separately or not, as a request. But I am concerned that 8 a.m. on Sunday should not be any earlier than 9 a.m.

MS. RENSHAW: I don t think there should be any work on Sunday --

MR. SOCKWELL: Sunday, Sunday.

MS. RENSHAW: and I hope that the applicant would be understanding if the neighborhood issues at least one day of rest.

MS. SANSONE: Madam Chair.

CHAIRPERSON REID: Sunday, and that s -- I m sorry, who s speaking?

MS. SANSONE: Madam Chair, I d just like to point out in the variance cases that any conditions we put in the order are limited to those that would run with the land, not with a particular developer or his construction business or project here.

We can include the discussion of these appropriate requirements and requests in the order, but we should not make them a condition to the variance.

MR. SOCKWELL: I guess, then, I would just rather, if we cannot condition the order in that sense, I would place in the record and perhaps in the order a statement that the liaison would be expected to respond to neighbors issues with regard to weekend construction.

MS. RENSHAW: That s acceptable.

CHAIRPERSON REID: I think that that would take care of it. Okay.

All right, then. I also feel that the applicant has met his burden of proof in regard to the variance and demonstrates there would be a practical difficulty in complying with the District Zoning regulations and that there would not be any adverse impact and does not impair the integrity of the Zoning

regulations from that. Okay, and as such, all in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. PRUITT: Staff will record the vote as five to zero to approve. Motion made by Mr. Sockwell, seconded by Ms. Renshaw.

(John Parsons exits.)

MS. PRUITT: Okay, the next item on the -- well, now that Mr. Parsons is gone, do you want to go back to the regular sequence?

CHAIRPERSON REID: Yes, we can.

MS. PRUITT: Okay. The first item on your agenda are the public hearing --

CHAIRPERSON REID: I m sorry, Ms. Mitten was supposed to come back in.

MS. PRUITT: Yes, we need to get Ms. Mitten.

CHAIRPERSON REID: Mr. Bergstein, Mr. Bergstein. Could you please ask Ms. Mitten to come in please. Thank you.

(Carol Mitten enters.)

CHAIRPERSON REID: All right, Ms. Pruitt.

MS. PRUITT: Good morning, Madam Chair.

Before you there are the Public Hearing Minutes for June 7th, 13th, and 20th.

CHAIRPERSON REID: All right. Was there any question, Mr. Sockwell and Ms. Renshaw? Were there any questions with regard to the Public Hearing Minutes?

MS. PRUITT: No, there s not.

CHAIRPERSON REID: Did you just read it for June 7th?

MS. PRUITT: No, I read it for all three.

CHAIRPERSON REID: Okay, I m sorry. I was talking, but if there are any questions or corrections or anything with regard to the minutes, then we can --

MS. PRUITT: Vote on them en block.

CHAIRPERSON REID: vote them en block. Okay, motion, please. Or, I move that we accept the minutes as presented to us.

MR. MOULDEN: Second.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Aye. Opposed?

(No response.)

MS. PRUITT: Staff would record the vote as four to one to approve motion made by Ms. Reid, seconded by Mr. Moulden, Ms. Mitten not voting, not

having been present. Okay.

CHAIRPERSON REID: All right.

MS. PRUITT: Okay, the first case to be decided is Application 16472, of Holy Christian Missionary Baptist Church for all People.

This was actually before you last -- it actually went out for exceptions a while ago. It was before you last month, and the Board requested that a decision be postponed pending their ability to read the file.

We have sent you the file, and now it s up before you for decision.

CHAIRPERSON REID: All right. This was -- there are a couple things we need to discuss with this. This was gone out for exception, and there were no -- there were no objections to this particular case. Nonetheless -- I m sorry?

MS. PRUITT: None received.

CHAIRPERSON REID: None received. Okay. And, typically, what we do is look at the proposed order and look at whether or not there are any objections, and if there aren t, usually we move forward.

However, in this instance, I think Ms. Mitten has some comments, and we may do it a little

differently to take into consideration some of her observations. Ms. Mitten.

MS. MITTEN: I had a couple things that I wanted to suggest that are either corrections or clarifications. Should I just walk through them?

CHAIRPERSON REID: Yes, please.

MS. MITTEN: All right. On page 2 of the proposed order, paragraph number 4.

CHAIRPERSON REID: Page 2, paragraph number -- which page?

MS. MITTEN: Page 2.

CHAIRPERSON REID: Page 2? Okay.

MS. MITTEN: Paragraph number 4. The third sentence says the Zoning Administrator has the authority to waive the 8" rear yard setback requirement. It s that the Zoning Administrator has the authority to waive 8" of the rear yard setback requirement that -- the setback requirement is 12' 8". The Zoning Administrator has the authority to waive 8" of that. That s what they re requesting. So it s not an 8" setback requirement. So I think that s a clarification worth making.

CHAIRPERSON REID: Okay.

MS. MITTEN: I ll read the sentence the way I think it should read.

CHAIRPERSON REID: Right.

MS. MITTEN: The Zoning Administrator has the authority to waive 8" of the rear yard setback requirement.

Then, the next paragraph down, the applicant requested variance relief from the onsite parking requirement for 66 spaces. It says at 75 percent, which is what the applicant had written, but it s really 80 percent. Do the math, it s 80 percent.

CHAIRPERSON REID: Okay, I think that what we ll need to do is to check that and determine if, in fact, the calculations are correct and make whatever necessary adjustments needed.

MS. MITTEN: All right. I have one more.

CHAIRPERSON REID: Same page, fourth -- one, two, three, four, the fifth paragraph, the last sentence in regard to the calculation for expense of the parking -- onsite parking requirement. Right here. The applicant.

MS. MITTEN: Okay. And then I have one more. And this is on page 6. Second paragraph.

CHAIRPERSON REID: Page 6.

MS. MITTEN: It s sort of a long -- there s a number of sentences that lead up to the final sentence, as such, the applicant has a self-imposed

practical difficulty. But that s not -- all of the preceding sentences do not lead up to that conclusion.

CHAIRPERSON REID: I m sorry, which paragraph?

MS. MITTEN: I m in the second paragraph on page 6.

CHAIRPERSON REID. Okay.

MS. MITTEN: I think that rather than say as such, the introductory clause should say, because the size of the building is within the discretion of the applicant, the applicant has a self-imposed practical difficulty.

CHAIRPERSON REID: All right, starting with, as such ?

MS. MITTEN: Substituting for as such.

CHAIRPERSON REID: And place -- put what instead?

MS. MITTEN: Because the size of the building is within the discretion of the applicant, the applicant has a self-imposed practical difficulty. All the other preceding sentences don t -- are not the basis for --

CHAIRPERSON REID: They re not the conclusion for --

MS. MITTEN: Right.

CHAIRPERSON REID: for the premises that they had.

MS. MITTEN: Correct.

CHAIRPERSON REID: Oh, I see. Okay.

MS. MITTEN: Right.

CHAIRPERSON REID: Now, with that being the case going through it, then I think that we would then have to send it back out again to the parties to reflect the changes of the Board, or what? Or do we have to -- are these just basic grammatical or --

MS. MITTEN: These are very minor, some clarifications.

CHAIRPERSON REID: So, it was not a major departure, just some basic grammatical kind of syntactical type of changes, corrections. So, okay.

MS. PRUITT: Would the Board like to see this once more before we send it out? Would you like to see this once more with the corrections in there before we send it out?

CHAIRPERSON REID: Do you wish to see it again?

MS. MITTEN: I m confident that once you make those changes it will be fine.

MS. PRUITT: Okay.

CHAIRPERSON REID: Okay, now wait a minute.

The -- this will take me one second, I m looking at my files. Okay.

So basically, if we want to vote on this, on the proposed order with the - amended proposed order -- amend the proposed order with the changes, as reflected -- as indicated by Ms. Mitten, to deny. I said, we re going to basically vote on the proposed order with the changes, as indicated by Ms. Mitten, the proposed order to deny.

MS. PRUITT: I m sorry. This is -- you re voting whether or not to accept this exception or not, not to deny it.

MR. SOCKWELL: We re voting to approve.

MS. PRUITT: To approve this exception.

MS. SANSONE: The Board is voting to approve the order as drafted by staff.

CHAIRPERSON REID: But the order is to deny, right?

MS. SANSONE: That s correct. Okay, yes.

MR. SOCKWELL: We re voting to approve --

MS. SANSONE: Okay, an order to deny --

MR. SOCKWELL: an order denying --

CHAIRPERSON REID: Okay, okay. We re voting to approve the proposed order to deny.

MR. SOCKWELL: That is correct.

CHAIRPERSON REID: We re voting on. Okay. I don t want to confuse any more.

MR. SOCKWELL: We re approving the language of the order to deny.

CHAIRPERSON REID: Okay. All in favor?

MS. PRUITT: I m sorry, who made a motion? I don t remember a motion being made.

MS. RENSHAW: Mrs. Reid made the --

MR. SOCKWELL: Motion to approve the language of the order to deny.

MS. PRUITT: And seconded?

MS. RENSHAW: Second.

MR. SOCKWELL: I ll second it.

MS. RENSHAW: I seconded.

CHAIRPERSON REID: We have two seconds. We have two seconds now.

MR. SOCKWELL: We have two seconds to do this.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. PRUITT: Staff will record the vote as five to zero to approve the order to deny based on the changes by Ms. Mitten. Motion made by Ms. Reid,

seconded by Ms. Renshaw.

Could you excuse me for one minute, please?

Next case on the agenda is Application 16492, Rock of Salvation, pursuant to 11 DCMR 3103.2 for a variance from section 206, for parking requirements in an R-2 District at 5582 Jay Street, N.E., Square 5214, Lot 54. This application was filed -- an incomplete application was filed on June 22, of 99, on the 25th of this month -- excuse me, it was on May 25th. The office sent out a letter to the applicant requesting the status of it, and requested that we receive something back in writing by the 15th.

As of this date, we ve had no return of information.

CHAIRPERSON REID: Did you receive any response from the letter that you sent out on the 25th?

MS. PRUITT: That s what I said, we did not.

CHAIRPERSON REID: Okay. This applicant is also requesting, it should be in your file, a refund of his application fee, too.

I think that, since we haven t heard from them, except for the request for the -- I guess they don t want it to go forward.

MS. PRUITT: Well, actually, the

letter dated, or stamped, on June 13th, talks about -- he does talk about he wants to -- he s not going to be able to go forward and at that time is requesting that his --

CHAIRPERSON REID: Now wait a minute. I m a little confused. I thought that -- oh, this something --

MS. RENSHAW: May I ask staff what is meant by a hold check? Do you have a category? Does the B.Z.A. have a category?

MS. PRUITT: No, not really.

MS. RENSHAW: So it s understood that any --

MS. PRUITT: It s understood that the Board -- that the staff does not have the authority to waive fees, that is a Board decision, and that if the Board should -- the Board may not choose to waive your fee, so if you give us a check, and they choose not to, the check will be deposited. It is at your risk that you then submit it to us with the understanding that we don t -- the staff does not have the authority and the Board does not necessarily have -- will not necessarily waive your fee.

MR. SOCKWELL: When was the check submitted?

MS. PRUITT: It probably was submitted in the very beginning, back in -- well, it had to be submitted when the application came in, which was on June 20 -- a year ago.

MR. SOCKWELL: And was the check deposited?

MS. PRUITT: I believe it was, sir.

MR. SOCKWELL: If it wasn t deposited, the likelihood is that it s not good.

MS. PRUITT: After 90 days or so, or 120 days, usually.

MR. SOCKWELL: 120, 180, six months. It depends upon the bank.

CHAIRPERSON REID: Correction, I was asking had we received the funds --

MR. SOCKWELL: Depends upon whether there s money in their account, as well.

CHAIRPERSON REID: That was -- that was -- because I had not -- remember, I was saying I got the things late and I hadn t seen that letter. But, I think we should dismiss it, and that -- it concerns me because they say the check that was a hold check. Now, do we know whether or not -- it sounds like maybe they submitted it to a staff member, may have said it, oh, we ll hold it until you re certain whether or not you

need the process --

MS. PRUITT: since I have been here, the policy has always been to, you know, to hold the check, but also, if you re going to go forward with an application, that the check -- probably it will be cashed, and that the Board will then make the determination on whether or not a refund --

MR. BERGSTEIN: Was anything -- Excuse me, I m sorry, I need to jump in --

CHAIRPERSON REID: Yes.

MR. BERGSTEIN: because this matter is actually looking close to litigation before the Zoning Commission. Our office advised the Zoning Commission that once a check is deposited, it does not have the authority, appropriation authority, to refund. Refund authority is very specific in the D.C. Code, and only a few agencies have the actual authority to refund. And that case involved a PUD. The filing fee was $100,000. It was withdrawn because of zoning relief was granted through a rule making the requested refund of the check, and the Zoning Commission ruled that it did not have the authority to refund. I think the appeal on that was eventually withdrawn before the Court of Appeals, but I want the B.Z.A. to be aware that our office has advised the Zoning Commission that once a

check is deposited, the Zoning Commission and B.Z.A. do not have the -- unless there s specific appropriations for you to refund, you don t have the authority to refund.

MS. PRUITT: And at this time, we don t.

MR. BERGSTEIN: The D.C. treasurer can, by the way, and that s, just to go full circle. If an applicant believes that they paid for something that they did not receive, the D.C. treasurer does have general appropriated authority to make that refund. And you can write on behalf of the applicant to do that. But you don t have the express authority to do that yourself.

CHAIRPERSON REID: Mr. Bergstein, that s regardless as to whether or not the application itself was ever actually processed or not?

MR. BERGSTEIN: That s correct.

CHAIRPERSON REID: It doesn t matter?

MR. BERGSTEIN: That s correct.

CHAIRPERSON REID: Okay.

MR. BERGSTEIN: Because the fees are based upon estimated cost, not upon actual costs. You don t go through each application to see how much work you ve done and then decide whether or not you refund, but the real basis is, even if you wanted to do it, you can t

do it. For example, with parking tickets for DMV, they do refunds by writing to the D.C. Treasurer saying that the person s entitled to the refund, but the Department of Motor Vehicles does not make the refund itself. It s the D.C. Treasurer that makes the refund because they re the only one with appropriate authority to do it. And that s how it has to be done.

CHAIRPERSON REID: Okay. Well, that, then, answers the question, then. Then motion to dismiss without a refund.

MS. RENSHAW: Aye. Second.

MR. SOCKWELL: Maybe the language of the motion should be, motion to dismiss, B.Z.A. not empowered to refund filing fee, so that it s not misread as our decision not to refund the money, but it s read as our inability to refund the money based upon our procedures and rules.

MR. BERGSTEIN: I can provide the citations to the actual order of the Zoning Commission that would address this issue fully if that would be helpful.

CHAIRPERSON REID: Thank you. All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. PRUITT: Staff would report the vote as five to zero to deny, or to dismiss, motion made by Mrs. Reid, seconded by Mrs. Renshaw, and to include the language as to the authority of the B.Z.A. to not refund money.

Okay. The next item on your agenda is a Motion of Application 16556, Application of Jewish Primary Day School of the Nation s Capital. Hearing dates were March 15th and 21st, decision date was April 15th. The order was issued on June 15th. Board members present were Ms. Reid, Sockwell, Parsons, Renshaw, and Moulden.

A motion dated -- excuse me. You received a motion dated June 23, from Cornish Hitchcock on behalf of the Shepherd/Colonial Village Neighborhood Alliance requesting that the Board stay the effectiveness of the order issued on June 15th.

Then you received also a motion in opposition to the request for stay from Wilkes Artis, or, rather, the applicant s attorneys for JPDS.

CHAIRPERSON REID: All right. In this instance, we didn t see a proposed order in regard to this motion to stay from Corp counsel. And, basically, we ve been instructed that the criteria concerning

these issues are based on -- there are four criteria in citing a motion to stay, and go over those, but prior to that I d like to discuss the issue of standing as it pertains to the procedure.

And I d like one of the -- one of the Board members to discuss that aspect of it and then we ll go into the other parts of it. Ms. Renshaw, would you like to? I draft you, but I wanted to have more discussion.

MS. RENSHAW: All right. We discussed about the proper procedure here, and the criteria for issuing a stay. There were four points that we should consider.

First of all is the --

CHAIRPERSON REID: Excuse me. Before we go into that, I want the Board members to discuss this, the issue of standing whether or not the Alliance, the Shepherd Park Colonial village Neighborhood Alliance, has standing, in order to request a stay or to appeal in the first place.

MS. RENSHAW: It is my understanding that the Alliance does have standing to bring a stay request to the B.Z.A..

CHAIRPERSON REID: Okay, and that s based upon any affected or grieved party that feels that they

are -- a person or entity that feels that they are adversely impacted upon irrespective as to whether or not they had --

MS. RENSHAW: It may appeal to the Board.

CHAIRPERSON REID: Okay. Whether or not they had party status.

MS. RENSHAW: Exactly.

CHAIRPERSON REID: First to the Board, and then after they make that determination that, yes, they do have standing, then we go to the criteria for deciding whether or not the -- whether or not the Board can grant a stay or not or will grant a stay or not.

Okay. Now, let s go over -- let s take each one. The first one is, Is the Alliance likely to avail on the merge of this appeal, and that s spelled out for us but, now, that, Ms. Renshaw, if you would handle that aspect.

MS. RENSHAW: Yes, so that was the first point --

CHAIRPERSON REID: Number one.

MS. RENSHAW: That s number one. And number two is whether the Alliance will suffer irreparable injury if the stay --

CHAIRPERSON REID: The stay was number one.

MS. RENSHAW: Stay -- all right.

CHAIRPERSON REID: You can discuss number one for me, please. Four, I believe.

MS. RENSHAW: All right, well --

CHAIRPERSON REID: On that one, from the second page of the report from Mr. -- would you like one from Mr. Bergstein? He goes to the -- or is that --

MS. RENSHAW: I think that that would be the best idea. Mr. Bergstein.

CHAIRPERSON REID: Page three of three.

MR. BERGSTEIN: Well, I m going to ask Ms. Sansone, but just to make it clear this was an order that was drafted by my office at the request of the Office of Zoning, and it was drafted as a denial of the stay, and if Ms. Sansone would just paraphrase what the order contains, and then you can discuss it. But that s what we vote for here, Madam Chair.

CHAIRPERSON REID: That s fine.

MS SANSONE: Thank you, Madam Chair, the first criteria that is before the Board for decision is, as we already noted, is the Alliance likely to prevail upon their merits when it gets into the Court of Appeals, and if we go back to the motion that was filed by the Alliance, it essentially raises about five issues, most of which boil down to whether the Board s

decision and order in this case contain sufficient findings of fact and conclusions of law to support its decision to grant the special exception for the one-year period.

Specifically, the Alliance is concerned whether the findings and conclusions are sufficient for traffic and parking, whether the Board was correct in allowing JPDS to defer some of the technical issues relating to the parking plan, to the building permit, and the CFO stage of the proceeding, whether the Board had given great weight to the ANC s objections regarding the parking plan, whether there was sufficient factual findings and conclusions in the order to support the conditions that the Board imposed to mitigate any adverse affects of the school, and whether the conditions were adequate to protect the neighborhood from objectionable impacts.

So, in order to address these types of arguments, is the Alliance likely to prevail with them, the Board should consider whether its decision and order went through sufficient detail in examining the evidence and in providing findings on all the contested issues.

If the Board feels that its decision and order was sufficient in that regard, then you should

conclude that the Alliance is not likely to prevail on appeal.

In the proposed order that we drafted, we suggest that given the detail through which the order reviewed all the information on traffic and parking that that should be sufficient to support the Board s decision and all the conditions that were imposed in the Board s order.

But that s what s being called for in this first question of, is the Alliance likely to prevail on appeal ?

CHAIRPERSON REID: And also in regard to the aspect of it, number two, that pertain to, has the Board erred in allowing JPDS to demonstrate tentative plans for the parking place requirement, I think that we should emphasize the fact that those issues are pertaining to technical zoning aspects of the case, are those that we don t have purview in, and that we leave that to DCRA to make those determinations.

Basically, we, our, a body, is charged with making decisions based on the merits of the case as they pertain to whether or not they should receive the release that they re requesting, either a special exception or a variance.

Okay, now. To number two, will the

alliance suffer irreparable injury if the stay is denied. Mr. Sockwell, do you want to speak to that one?

MR. SOCKWELL: With regard to irreparable damage, it s my belief that the Alliance could not suffer irreparable damage in a conditioned order that has a one-year life span, nonrenewable, with the protections that were built in by the Board s deliberations in this case and the, at this point, promise of the applicant to abide by those elements of the order which were placed there specifically to protect the community from adverse impacts of their temporary stay in the facility.

CHAIRPERSON REID: I think that the operative word here is temporary. And that the order was granted for a one-year term, and, as such, we don t deem that there is anything that would be permanent or irreversible during that time frame. And we have imposed conditions to mitigate the adverse impact that would be imposed within that time frame. So, we feel that as far as that motion is concerned, that we do -- we have analyzed that and feel that that is our determination that there would not irreparable harm.

Now, as to number three. Will the opposing parties be harmed by a stay? Will the opposing parties

be harmed by a stay? Would you like to speak to that one, Mr. Moulden? Or do you want me to?

Okay. I ll speak to that one. And that is, the JPDS had indicated to us that they were operating under very, very tight time frames and, as such, for them to be able to move forward with their school within a timely manner, the school year, if in fact, we were to impose a stay, then that would have -- would impose harm on JPDS because they would not be able to start the school year. And then the whole order would be moot, so I think that here s no question about -- no question as to whether or not the opposing party would be harmed.

The last one is does the public interest favor granting a stay, and Ms. Renshaw, I ask you to respond to that one.

MS. RENSHAW: Yes. It is in the public interest for a school, a private school, to be encouraged to remain in the district. We felt that that was the case and there was -- it would not be in the public s interest, we felt, to at this point grant a stay for the Alliance.

Madam Chair, I also want to point out in number two that where we talked about the irreparable injury, that we did require the applicant to submit the

lease and that lease had to be included with the B.Z.A. order, so that further strengthens the B.Z.A. s position in protecting the neighborhood.

In other words, we had requirement of evidence that the applicant had signed a one-year lease only to the dates that we specified.

CHAIRPERSON REID: And also, I don t -- I don t know specifically how we did it, but we did talk in terms of there not being - we re told that we proffered to JPDS that they not come back to us within a year, after a year, and ask for an extension.

That was the understanding that we garnered from the hearing that we had and also what the expectation would be if we were to grant the order.

Is there any further discussion on this particular motion?

MR. SOCKWELL: If only just to state that, I believe that the Board was very careful in its deliberations to review and try to look very carefully at the community s issues and to try to respond to them as effectively as possible by putting the onus on the Jewish Primary Day School to meet what we felt were the most rigorous potential conditions of negative effects with a coordinated and well-supervised and well-staffed approach to controlling, primarily, the traffic

activities to be generated by the activity of the school.

And without being able to say 100 percent that everything will be managed exactly as expected, we feel that we have approached the situation fairly for both sides, and that the order as written was an effective response.

CHAIRPERSON REID: Thank you. Would you make the motion?

MR. SOCKWELL: I would move therefore that we deny consideration of the motion to stay the B.Z.A. order on Case No. 16556.

CHAIRPERSON REID: Is it okay to say, deny consideration ?

MR. SOCKWELL: Deny the motion.

CHAIRPERSON REID: Deny the motion. Okay.

MS. RENSHAW: And I second.

CHAIRPERSON REID: Okay. All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed:

(No response.)

MS. PRUITT: Staff would record the vote as five to zero to one, with a proxy from Mr. Parsons, and Ms. Mitten, not present, not having voting -- not voting, not having been present. Excuse me.

PARTICIPANT: Ms. Mitten.

MS. PRUITT: One more case that I overlooked inadvertently, which is a dismissal, and that s Application 16522 of Thomas Swarm. This is another case that was filed on October 8th of 99. On May 25th of this year we sent out a letter, and we did not receive any response for this.

This is now, again, before you for dismissal.

CHAIRPERSON REID: Which one?

MS. PRUITT: This should have come in your new package. Application 16522. Thomas Swarm.

CHAIRPERSON REID. Oh, yes, okay. That s not on the agenda?

MS. PRUITT: It s on your revised agenda.

CHAIRPERSON REID: I don t have the revised one. I don t have the revised agenda.

MS. PRUITT: It s in your new package.

CHAIRPERSON REID: I just remembered, I didn t get the mail.

MS. PRUITT: You didn t get to look at it this morning, but it s in there.

CHAIRPERSON REID: All right, so, let s see.

Okay, you said that we have not heard back

from him? So, all right, I think this is pretty straightforward, Board Members. May I have a motion?

MS. MITTEN: I move for dismissal of Case No. 16522.

MR. MOULDEN: I second.

CHAIRPERSON REID: All in favor?

(Chorus of ayes.)

CHAIRPERSON REID: Opposed?

(No response.)

MS. PRUITT: Staff will record the vote as five to zero to dismiss this case. Motion made by Ms. Mitten and seconded by Mr. Moulden.

And basically, the last thing on the agenda is really just a report, or just to report back to you. You were tentatively scheduled to vote on Application 16578 today, but the applicant withdrew its request, so I just wanted to provide you with that information to bring some closure.

CHAIRPERSON REID: In that particular one, Ms. Pruitt, the hearing date, you said July 7th, it was June 7th.

MS. PRUITT: June 7th, correct. And you were slated to make a decision today, but they withdrew the application, so just so you can close out the records, or just --

MR. SOCKWELL: It seems strange that they withdrew the application because they were only being requested to provide proof that the parking could not work on their property. And that they could provide 18 spaces within a reasonable distance of their property. There must have been some other very significant underlying issues with that project.

CHAIRPERSON REID: All right, now, did you -- did you call 16492? I don t know why I m not -- which one was that? Was that the letter?

MS. PRUITT: Rock of Salvation. That was the -- 16492 was the dismissal with the request for refund.

CHAIRPERSON REID: Okay. The one -- the one, okay. I see. I see that. That was the one that --

PARTICIPANT: Holy Christian was heard.

CHAIRPERSON REID: we dismissed and didn t give them their refund. Okay.

All right. Was that the last one?

MS. PRUITT: Correct.

CHAIRPERSON REID: We re finished? We finished in an hour. That s great. Wow. This is record-setting. Yes, okay. So then, I wish we could start now. We have two hours now to start the one --

we should start the afternoon session at 12.

MS. RENSHAW: But they won t be here until --

CHAIRPERSON REID: No, I know. And we can t. We can t, because, you know, the agenda, the notice has been advertised for 1:00.

MR. SOCKWELL: Have we --

MS. RENSHAW: Adjourned?

MR. SOCKWELL: Adjourned?

CHAIRPERSON REID: No. We re just talking. Okay, all right, then. That concludes the morning session for the B.Z.A. meeting for July 5th. Thank you very much.

(Whereupon, the Board of Zoning Adjustment Public Meeting was concluded at 10:54 a.m.)