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

WEDNESDAY JUNE 7, 2000

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The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Robert Sockwell, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

ROBERT N. SOCKWELL	Vice Chairperson
RODNEY MOULDEN	Board Member
ANN RENSHAW	Board Member

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

SHERI PRUITT	Secretary to the BZA
PAUL HART	Office of Zoning
JOHN NYARKU	Office of Zoning

OTHER STAFF PRESENT:

MARIE SANSONE	Office of Corporation Counsel

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(10:18 a.m.)

VICE CHAIRPERSON SOCKWELL: The meeting will please come to order. Good morning, ladies and gentlemen.

This is the June 7, 2000 Public Meeting of the Board of Zoning Adjustment of the District of Columbia. My name is Robert Sockwell, Vice Chairperson.

Joining me today is Rodney Moulden representing the National Capitol Planning Commission, Carol Mitten and Ann Renshaw. This is what happens when the Vice Chair becomes Chair and suddenly can't remember anything. And Carol Mitten represents the Zoning Commission. Copies of today's meeting agenda are available to you. They are located to my left near the door.

All persons planning to testify, either in favor -- that is right, there is no testimony, this is a public meeting. If I might ask staff, is there something I am missing in this? Just a moment. I apologize. This morning we are conducting a public meeting and it would be just mine to state that we would like for you to turn off all beepers and cells phones at this time or set them to vibrate only.

The agenda that you have will be the agenda that we will follow with one slight modification, and that is the Georgetown case will be moved from its position to last because of the size of the other issues that we think can be taken care of fairly quickly and we will work down to that one.

So then I would just recommend that we go forward with any preliminary matters.

MR. HART: Good morning, Mr. Vice Chair and other Board Members. The first item on our agenda this morning is the minutes.

MS. RENSHAW: Mr. Vice Chair, do you want these to be approved as all at once or do you want them taken one by one?

VICE CHAIRPERSON SOCKWELL: I think that we can just approve them all at once if you will read them.

MR. HART: The first are the minutes of May 3 for the Public Hearing -- the first one is the Public Hearing on May 3. The second one is for the Public Hearing of May 10. The third minutes is for the Public Hearing of May 16, and finally May 24, a Public Hearing also.

MS. MITTEN: Mr. Vice Chair? If you are going to take these together, than I am not going to be able to vote on them as a group because I was only present for one of those meetings. And I would also like to suggest a modification in the case of the May 16 minutes before they are voted upon.

VICE CHAIRPERSON SOCKWELL: All right. That is duly noted and we will take the minutes separately. Starting with May 3.

MR. HART: May 3.

MS. RENSHAW: I move approval of the May 3 minutes.

MR. MOULDEN: I second the minutes.

VICE CHAIRPERSON SOCKWELL: Discussion? No discussion. All in favor of approval of the May 3 minutes?

BOARD MEMBERS: Aye.

VICE CHAIRPERSON SOCKWELL: Opposed? Abstentions?

MS. MITTEN: And I did not vote because I was not present.

MS. PRUITT: Staff would record the vote as three to zero to one, motion made by Ms. Renshaw and seconded by Mr. Moulden and Ms. Mitten not voting, not having been present.

MR. HART: Next are the Public Hearing minutes for May 10.

VICE CHAIRPERSON SOCKWELL: I move that the minutes of May 10 be approved.

MS. RENSHAW: Second.

VICE CHAIRPERSON SOCKWELL: Discussion? No discussion. All in favor of approval of the minutes of May 10?

BOARD MEMBERS: Aye.

VICE CHAIRPERSON SOCKWELL: Opposed? Abstentions?

MS. MITTEN: That would be me.

MR. HART: The third minutes are --

MS. PRUITT: Excuse me before we go. Ms. Mitten, you are abstaining from this or not present and not voting.

MS. MITTEN: I am sorry, the last vote you recorded, I thought that I was not voting. But then the last vote you recorded was three to zero to one, and that would -- so then I

thought you were suggesting that I was abstaining. So however you want to characterize it, I think I was not present and not voting.

MS. PRUITT: Right. I had it down as three to approve, zero in opposition and you not voting, not having been present.

MS. MITTEN: Okay. I am sorry, I misunderstood. I thought that you had recorded the vote as three to zero to one on the May 3.

MS. PRUITT: No.

MS. MITTEN: Okay. I agree with that.

MS. PRUITT: So excuse me, so the same would be so for the 10th, correct?

MS. MITTEN: Yes.

MR. HART: For May 16 Public Hearing.

VICE CHAIRPERSON SOCKWELL: Can I get a motion for approval on the May 16?

MS. RENSHAW: I move to approve.

MR. MOULDEN: I second the motion.

VICE CHAIRPERSON SOCKWELL: Discussion?

MS. MITTEN: I have a -- I guess an addition that I would like to suggest, and this is on page 2. The second paragraph under the Georgetown University case. It says, "During preliminary matters, Don Crockett...", and then it should say "on behalf of the Georgetown Residents Alliance..." He only made one motion exclusively on behalf of the Georgetown Residents Alliance,

and that was the first motion.

The second motion was made on behalf of the Georgetown Residents Alliance, the Berleath Citizen's Association, the Cloisters in Georgetown and the Foxhall Community Citizen's Association. So I would just like that to be indicated properly.

VICE CHAIRPERSON SOCKWELL: Any other comments on that? Is staff consistent with --

then I would

MS. RENSHAW: As the maker of the motion, I accept that amendment.

VICE CHAIRPERSON SOCKWELL: Do we have to vote on that?

MS. PRUITT: Yes, please.

VICE CHAIRPERSON SOCKWELL: All in favor of the amendment as proposed by Ms. Mitten?

BOARD MEMBERS: Aye.

MS. PRUITT: Staff would record the vote as four to zero to approve the motion made by Ms. Renshaw and seconded by Mr. Moulden, including the amendment.

MR. HART: Who seconded?

MS. RENSHAW: I think you have to vote on the amendment and then you vote on the motion.

MS. PRUITT: The amendment was made -- the motion --

VICE CHAIRPERSON SOCKWELL: The motion was made by

--

MS. PRUITT: By Ms. Renshaw.

MS. RENSHAW: I made the main motion.

MS. MITTEN: Can I just interject? Which is if the person who made the original motion accepts the amendment, then that becomes the -- that becomes an amended motion and you don't have to vote separately on the amendment. So I think we got it.

VICE CHAIRPERSON SOCKWELL: So then we are clear to vote on the minutes themselves.

MS. MITTEN: I believe -- what I was trying to convey is that we did vote on the amended minutes because Ms. Renshaw accepted the amendment that I offered.

VICE CHAIRPERSON SOCKWELL: I see. So --

MS. MITTEN: If she hadn't, then we would have voted on the amendment separately.

VICE CHAIRPERSON SOCKWELL: All right. So the vote then carries for the minutes and the amendment.

MS. PRUITT: It actually becomes one vote. It is an amendment -- it is the motion -- I mean the minutes with the amended -- the motion as amended and accepted by Ms. Renshaw and seconded, I have, by Mr. Moulden. Is that correct? And then the approval is four to zero to approve the amended minutes. So then we are at the last one.

MR. HART: The final minutes are Public Hearing for May 24.

MS. RENSHAW: I so move.

VICE CHAIRPERSON SOCKWELL: Second?

MR. MOULDEN: I second.

VICE CHAIRPERSON SOCKWELL: Discussion? All in favor of the motion if there is no discussion?

BOARD MEMBERS: Aye.

VICE CHAIRPERSON SOCKWELL: Opposed? Abstention?

MS. PRUITT: Staff would record the vote as three to zero to one, motion made by Ms. Renshaw, seconded by Mr. Moulden, Ms. Mitten not voting, not having been present.

VICE CHAIRPERSON SOCKWELL: Any other preliminary matters?

MR. HART: No.

VICE CHAIRPERSON SOCKWELL: Then we would proceed to the first case on the agenda.

MR. HART: The first case on the agenda is Application 16550 of Stacy Hamblin, pursuant to 11 DCMR 3103.2 for a variance from Subsection 2507.2 to allow subdivision and construction of ten single family row dwellings in an R-4 District on an alley lot that does not abut an alley 30-foot or more in width and has from the alley access to a street through an alley or alleys not less than 30 feet in width at Rear-1406 through 1424 Webster Street, N.W. (Square 2699, Lot 64).

The Board issued an order on April 14, 2000 dismissing the application which was on its agenda for February

16, 2000. In a letter to the Director of the Office of Zoning, the applicant requested a rehearing. In a letter dated May 15, 2000, the Secretary to the Board informed the applicant that his request for reconsideration or rehearing of the application would be placed on the Board's June 7, 2000 agenda, at which time the Board would consider his request and determine the appropriate course of action to take. The original hearing date was February 16, 2000. The decision date was February 16, 2000, a bench decision. The Board Members were Ms. Renshaw, Ms. Mitten, Mr. Moulden, Mr. Sockwell and Ms. Reid.

VICE CHAIRPERSON SOCKWELL: That case was dismissed for lack of representation. However, there was no one representing the case either from the applicant or the applicant's designated representative, who was out of the country at the time, but had provided the Board with a request for a continuance. At that time, the Board chose to dismiss the case because there was no one present to represent the issues of the applicant. However, in the letter that the Board has received since that, the agent for the applicant, Mr. Claus Klatt, asserted that the Board was not correct in taking that posture. So what we are going to discuss with regard to that is the merits of reinstating the case. And I would like to get comments from Board Members.

MS. MITTEN: Well, maybe I will just begin by saying -- and I understand this is going to be corrected. But in the order that was published, my vote was listed as being in favor

of the motion to dismiss, and that is -- I did not vote that way. I voted -- I was opposed to the motion to dismiss. And at the time I felt -- and I still feel that based on the practice of the Office of Zoning, when motions or requests for continuances come in, there isn't necessarily the requirement that someone then attend the meeting at which that vote is taken. So I think that the applicant and the applicant's representative were at least led to believe that their request would be granted without them appearing in person.

Now there was an additional issue, which is that the ANC had not been properly notified about this request, and we have had some discussion in the office with staff so far about what can we do procedurally to make sure that such notifications are made in the future so that we don't have a repeat of that. But that doesn't detract, I don't think, from the merit of reinstating this particular case. And I would also note that we have had some correspondence from Council Member Jarvis and we have had correspondence from Pauline Cliffannee Gardner -- I am sure I am mispronouncing that. But the correspondence relates more to the merits of the case as opposed to the merits of reinstating the application. So I would be in favor of reinstating the application.

VICE CHAIRPERSON SOCKWELL: And I think that based on the fact that there was a proper notification of the Board that the applicant was not able to participate on that date that the

Board may have been somewhat hasty in dismissing the case, since there has been some precedent for not actually being present once a motion is filed officially within the proper time period.

UNIDENTIFIED SPEAKER: Can I make a point of inquiry, please?

VICE CHAIRPERSON SOCKWELL: That is not possible in this hearing -- in this meeting. It is a public meeting not a hearing.

UNIDENTIFIED SPEAKER: Can I ask a point of clarification?

VICE CHAIRPERSON SOCKWELL: Points of clarification are not allowed from the audience at this time. The merits of the case were not dealt with at all. It was strictly an issue of whether or not the case should be dismissed because the applicant was not representing himself. And I would be willing personally to reinstate the case with no additional fees required since such had been provided initially. And that would be based upon a motion. And I would move, if there are no other comments -- and there was no one else here on the Board today that was present in that hearing. So I would move to reinstate Case No. 16550 with a date certain for the hearing.

MS. MITTEN: Second.

VICE CHAIRPERSON SOCKWELL: Discussion?

MS. RENSHAW: Just that I am going to stand by my original vote. I had voted to dismiss and I am going to renew that

vote.

MS. MITTEN: Would you -- Ms. Renshaw, would you just maybe just for the sake of --

MS. RENSHAW: Clarification?

MS. MITTEN: Yes. Just repeat in the context of everything that has happened what is the --

MS. RENSHAW: Yes, I understand the discussion here this morning concerning the procedure notifying the ANC and also the problem with the applicant. But I felt that the discussion of the dismissal was full and complete that day and we felt that there was no reason to continue this case at that time. And I just feel that the merits of the case, while though not outlined at that hearing, were such that we should just dismiss the case. And so, therefore, I am going to renew my vote to dismiss and will so vote.

VICE CHAIRPERSON SOCKWELL: I think that the issue is somewhat modified by the fact that there was some discussion -- while not necessarily needed, there was some discussion of the issues of the case and that the applicant should have contacted the Advisory Neighborhood Commission to prevent them from coming down unnecessarily when the applicant was not planning to be available and was respecting or was requesting a continuance. There was some discussion of the architect and developer meetings with the community, which was really not germane to the motion of dismissal, yet may have influenced the Board in some way. And I

would want to hope that under the circumstance of taking the case as a case unheard that this is merely a continuation of procedures that have been established over a long period of time with the Board regarding whether or not a properly filed motion requires the presence of the applicant or the applicant's representative at the time that the motion is heard. And I would implore Ms. Renshaw to change her vote merely for the sake of continuity with the previous methods by which the Board has acted where the merits of the case are not in question.

MR. MOULDEN: I also agree with the Acting Chair. I originally voted to dismiss this case, but it was merely based on administrative procedures. And I do feel that the applicant should have another chance to express the merits of this case.

VICE CHAIRPERSON SOCKWELL: Any further discussion on this? Then I would move that we -- I didn't make the -- I did not? I did make the motion and it was seconded. Then I will call for the vote on the motion.

MS. MITTEN: Perhaps we could incorporate into the motion what the date certain is.

MS. PRUITT: I was going to say we have -- it looks like based on your schedule the first available date would be October 3. It would be the third case in the afternoon.

VICE CHAIRPERSON SOCKWELL: Well --

MS. MITTEN: Would you -- Mr. Sockwell, would you amend the motion to include October 3 instead of the date certain,

and then we could at least have that clarity?

VICE CHAIRPERSON SOCKWELL: Yes. I would amend the motion that we reinstate Case No. 16550 for hearing on October 3, 2000 in the afternoon.

MS. MITTEN: And I would second that again.

VICE CHAIRPERSON SOCKWELL: All in favor, if there is no further discussion?

MR. MOULDEN: Aye.

MS. MITTEN: Aye.

VICE CHAIRPERSON SOCKWELL: Aye. All opposed?

MS. RENSHAW: Opposed.

MS. PRUITT: Staff would record the vote as four to one to reinstate this application -- excuse me, three to one -- excuse me, three to one to reinstate this application for a hearing date of October 3. Motion made by Mr. Sockwell, seconded by Ms. Mitten, Ms. Renshaw in opposition.

MS. MITTEN: Do we happen to have a proxy from the Chair?

MS. PRUITT: Excuse me, yes, we do. We do have a proxy from Ms. Reid on this particular case and it is also to -- in favor to reinstate.

MS. MITTEN: To reinstate?

MS. PRUITT: Yes. So I can amend this. That is why I had --

MS. MITTEN: Maybe you could just repeat what the

vote is.

MS. PRUITT: Right. We have a proxy from Ms. Reid in favor to reinstate this case. So the vote would be four to one to reinstate. Again, the motion made by Mr. Sockwell, seconded by Ms. Mitten, Mr. Moulden and Ms. Reid in favor to reinstate and Ms. Renshaw in opposition.

VICE CHAIRPERSON SOCKWELL: Then we should call the next case.

MR. HART: Application No. 16407 of the Capital Hill Group, pursuant to 11 DCMR 3108.1. The new Section is 3104.1 for a special exception under Section 359 to establish a healthcare facility with 162 beds, basement through 6th floor, in an R-5-C District at premises 708 Massachusetts Avenue, N.E. This is Square 895, Lot 76.

In BZA Order No. 12407 dated October 21, 1999, the Board granted a special exception to allow an increase in the number of beds for the nursing center from 130 to 162. The Board also required that the applicant provide 276 off-street parking spaces. In a letter dated April 21, 2000, the applicant is requesting a modification of the order to reduce the Board's parking requirement and to reflect that the Square for which the relief was sought was Square 895 and not Square 865. The hearing date was January 6, 1999. The decision date was February 3, 1999. The Board Members at that time were Betty King, Sheila Cross Reid and Jerry Gilreath.

VICE CHAIRPERSON SOCKWELL: I was not present during that time, but I have read the record. It appears that the modest request for additional beds and requisite staff is -- was nothing to look unfavorably toward. The garage apparently at one time not being occupied because it wasn't needed is now expected to be operational at 176 cars with 24 cars on-site. The existing parking would then be 200 with the loss of the lot that is to be sold. It seems to me that there is -- that parking has been a principle issue of the community, in particular the St. James Church was cited in the record as having had issues with regard to the use of parking that had been promised. But from what I can see, there is no adverse impact here and in fact it has been stated in the record in a number of sections that the parking was actually greater than was needed and there was never any question to that. So I don't personally see a reason why we could not modify.

MS. MITTEN: I guess I would just add to that the fact that the requirement based on the number of beds that was approved by the BZA in February of 1999 of 162 beds carries with it a requirement for 162 parking spaces. So this exceeds the requirement and I would agree with Mr. Sockwell that when the discussion occurred in the original hearing about what number of parking spaces was being offered to accompany this increased population, it was really that they were offering as many parking spaces as they had. There was no one that was suggesting that 276

were actually necessary. So I would agree that -- and the fact, I guess, that the ANC, who had been very vocal in the original hearing, has been given notice of this request and has not sent anything in in response. So I think it is fair to conclude that they don't have any issue as well. So I would be in favor of granting this modification.

MS. RENSHAW: I have no problem with that -- with granting the modification.

MR. MOULDEN: I was absent. I wasn't on the Board then. I read the record and I have no problem also.

VICE CHAIRPERSON SOCKWELL: And one thing that I think should be stated is that the use of the facility is far less intense than that of a hospital, which had over 700 employees and other issues that would have made it a much more active and certainly much more intrusive facility into the life of the community around it. If there is no more discussion, then I would want someone to frame a motion for us, please.

MS. MITTEN: I move approval of the modification to the BZA Order that relates to Square 895, Lot 76, the modification being reducing the number of off-street parking spaces from 276 to 200, and changing the designation of the legal -- the legal identification from Square 865 to Square 895.

VICE CHAIRPERSON SOCKWELL: I second that. Any further discussion? All in favor?

BOARD MEMBERS: Aye.

VICE CHAIRPERSON SOCKWELL: Opposed? Abstentions?

MS. PRUITT: Staff would record the vote as five to zero to approve, motion made by Ms. Mitten and seconded by Mr. Sockwell -- yes, Mr. Sockwell. And a proxy vote from Ms. Reid to approve.

MR. HART: The next case is the Application No. 16564 of Jonathan B. Rickert, pursuant to 11 DCMR 3103.2, for a variance for an addition to a single family dwelling under Sections 404.1 and 404.4 from the rear yard set-back requirements to add a 6-foot rear addition in an R-1-A District at premises 6683 32nd Place, N.W. This is in Square 2351, Lot 16.

The Board issued an order dated May 21, 2000 denying the application. In letters to the Board dated May 23 and 25, the applicant requested that the Board reconsider the application and provided additional reasons for this request. The request for reconsideration is now before the Board. The hearing date was April 5. The decision date was April 5. The members were Carol Mitten, Robert Sockwell and Sheila Reid.

VICE CHAIRPERSON SOCKWELL: I would like to state that at that time, the Board felt that the relief sought was not substantiated, and I would want to -- there was limited justification for allowing the relief. I would like to get some comments from my fellow Board Members on their current feelings about that.

MS. MITTEN: I guess -- well, I was at the hearing

and we have two letters from Mr. Rickert that relate to this matter. I guess I will just take them in order because they sort of frame the issue. The first letter relates to -- and this was a variance, an application for a variance. And the first letter that he sent us on April 25 relates to his burden. And in requesting reconsideration from the BZA, that should be based on an error that -- if we were to grant that, then that would be based on an error that we had found in our proceedings as opposed to the fact that the applicant, when given the opportunity, hadn't made his case. So I guess I would reject the -- I would reject the request for reconsideration based on the original application for a variance because, you know, he had the opportunity to make his case and did not succeed in persuading us.

Then we have a follow-up letter from Mr. Rickert on May 23, which relates to the fact that he could have been processed as a special exception, which is certainly available to him, but that would be an alternative application and we would not be able to take that up in the context of reconsideration of the variance application. So I think that what is available to Mr. Rickert going forward would be that he could submit an application for a special exception, if he wanted to go that route. But that would not be -- I don't think there is grounds for us to reconsider his variance application.

MS. RENSHAW: Is that going to require an additional fee?

MS. MITTEN: You would have to ask staff.

MS. RENSHAW: Staff?

MS. PRUITT: Yes, it would.

MS. RENSHAW: This case came before the ANC. I was not here for the vote and the discussion and the presentation by the applicant. But the case did come before the ANC 3G, and I recused myself at that meeting. But I do remember the fact that Mr. Rickert has no opposition from any of his neighbors and presented a very tightly formed case to the ANC and the ANC had absolutely no problem with this, and the problem, of course, is here, not with the ANC. And I would like to -- I would like to urge Mr. Rickert, one way or another, to come back before the Board to present his case as a special exception, if indeed we will not or cannot reconsider this as a variance.

VICE CHAIRPERSON SOCKWELL: Unfortunately for Mr. Rickert, and as stated in his April 25 letter, in fact there are a number of very sound practical, aesthetic and financial reasons for building the addition in the way we propose. That unfortunately does not necessarily mean that they meet the three-prong test with regard to a variance. And since the financial reasons and in some way the practical reasons and most of the aesthetic reasons are beyond the scope of the Board, we have the features of the site and such issues to work with. And I think that perhaps under a special exception application, the burden would be lessened for him. But I would suggest again that the

Board made the proper decision at the time based upon the application that was before it.

MS. RENSHAW: Mr. Rickert is -- the zoning relief was self-certified?

VICE CHAIRPERSON SOCKWELL: I don't have his --

MS. RENSHAW: Yes. All right. And I would like to know if there was any advice given to Mr. Rickert when he handed in his application, when he produced the paperwork -- anything from staff that said I think that this is amiss or more of a special exception than a variance.

MS. PRUITT: With self-certification, Ms. Renshaw, that is actually one of the problems. Staff is not -- we should not be making zoning interpretations. That is the Zoning Administrator's jurisdiction. And when you self-certify, you take the responsibility that you are asking for the correct relief. And if you aren't, then it is your obligation again to come back through the system. So staff does not normally give out that information -- I mean recommendations. Because if it is wrong, then we are held liable.

VICE CHAIRPERSON SOCKWELL: Is there any precedent or reason for allowing him to return to modify his application to a special exception without having him re --

MS. PRUITT: Reapply?

VICE CHAIRPERSON SOCKWELL: Reapply?

MS. PRUITT: That is -- I was asking Mr. Hart to

check with Ms. Sansone. I believe the one caveat or problem is that if you don't allow that, he has to wait a year before he can come back in. And that is what we are having -- we are checking in the regs. Which would just delay his possibility of actually making the addition. So I am pretty sure that is why he is coming in for reconsideration or a rehearing. But I wanted to verify before --

VICE CHAIRPERSON SOCKWELL: So he didn't apply under the wrong section of the zoning ordinance, he just applied under one --

MS. PRUITT: That had a higher burden of proof.

VICE CHAIRPERSON SOCKWELL: Burden of proof.

MS. PRUITT: Correct.

MS. MITTEN: Just for my own clarification, did I just understand you to say that if we do not approve the motion for reconsideration, he has to wait a year before he can apply as a special exception?

MS. PRUITT: That is what I want -- what we are checking. Because we have -- an order has already been issued to deny this.

MS. MITTEN: I see.

MS. PRUITT: And that is what I wanted to verify to be sure.

VICE CHAIRPERSON SOCKWELL: If it is inconsistent with our rules to let him back in switching his desired relief, I

am not sure that we would have to keep him out a year if he is changing the --

MS. PRUITT: Relief?

VICE CHAIRPERSON SOCKWELL: The relief. I think it would be -- I think that he cannot come in if he is seeking the same relief. But if he changes to something else, then he could return as a new application basically. I mean it might mean that it would possibly preclude us doing anything else to assist him in getting back in.

MS. RENSHAW: While they are checking the regulations, I just want to express my feelings about this. Even though it is a self-certification, I feel that whoever is accepting the application from the applicant should review it on-site while the applicant is there and say you are not applying in the proper category.

VICE CHAIRPERSON SOCKWELL: Ms. Renshaw that might be very difficult for us to do. Because in the case of a very simple application that level of scrutiny and shall we say review and assistance is possible. But for some very complicated application, that would not be possible. So I wouldn't want to make that a recommendation.

MS. RENSHAW: But, Mr. Sockwell, here is a very simple application.

VICE CHAIRPERSON SOCKWELL: I know, but if you --

MS. RENSHAW: It came before the ANC as a very

simple application. No problems whatsoever were expressed. And suddenly we find that the applicant has a big problem.

VICE CHAIRPERSON SOCKWELL: I understand. I am just saying that it should not be made a matter of policy.

MS. SANSONE: Mr. Chairman, I believe I have located the section that refers to the one year rule. And it is the Board's Rule 3126.11. And that provides that no -- if an applicant has had their application denied, he cannot bring a new application based on the same facts before the Board for a one-year period. If Mr. Rickert is applying for a special exception, there would be different elements that he would be required to prove and he would be bringing before the Board new facts and different facts. And, therefore, the one year prohibition should not seem to -- would not bar his application earlier than one year.

VICE CHAIRPERSON SOCKWELL: All right. Then I think that what we would do is move -- I would make a motion to deny reconsideration of the variance application No. 16564.

MS. MITTEN: Second.

VICE CHAIRPERSON SOCKWELL: All in favor?

BOARD MEMBERS: Aye.

VICE CHAIRPERSON SOCKWELL: And before Ms. Renshaw votes, I would state that we would communicate to the applicant that he is free to reapply under the special exception regulation with no moratorium on that application. That he is free to

reapply immediately. And would ask staff to consider any options with regard to his fee. But we have already heard the case and I don't think that we have an option on that because the order was issued.

MS. RENSHAW: Just for a point of clarification, Mr. Sockwell. When you said that you would ask staff to reconsider the fee, how does that work?

VICE CHAIRPERSON SOCKWELL: I don't think that actually it can work because the order was issued. The case was fully -- it went through the entire process. Had it been dismissed or perhaps unheard, that would be one thing. But it was heard.

MS. SANSONE: Mr. Chairman, under the rules if the applicant filed that application pursuant to the directions of the Zoning Administrator or Zoning Review Division and it was incorrectly filed, then he can have a refund. But I don't recall in this case if it was self-certified or filed pursuant to a zoning memorandum.

VICE CHAIRPERSON SOCKWELL: All right.

MS. MITTEN: Could you finish taking the vote and then maybe I could say something.

VICE CHAIRPERSON SOCKWELL: Ms. Renshaw's vote is still pending.

MS. RENSHAW: It is up here in the air here. So as I understand it, Mr. Sockwell's motion is to deny consideration of

the variance and to communicate with the applicant that he may file under a special exception with no moratorium. He is free to reapply and we have to drop the part about asking the staff to reconsider the fee.

VICE CHAIRPERSON SOCKWELL: Yes.

MS. RENSHAW: All right, I will vote with it.

VICE CHAIRPERSON SOCKWELL: Thank you.

MS. PRUITT: Staff would record the vote as 4 to 1 to deny the reconsideration. Motion made by Mr. Sockwell, seconded by Ms. Mitten and Ms. Reid in opposition to denying it by proxy.

MS. RENSHAW: Do you include the rest of that language in that?

MS. PRUITT: Yes, I am sorry.

MS. RENSHAW: All right.

MS. MITTEN: I just wanted to clarify something because of the direction that the conversation was taking, which is there was not an error made in Mr. Rickert coming to us with a variance.

VICE CHAIRPERSON SOCKWELL: No.

MS. MITTEN: That was not an error. That was just he had two options --

VICE CHAIRPERSON SOCKWELL: An error in judgment perhaps, but not an error.

MS. MITTEN: Yes, he had two options available and

he chose the more burdensome option. That, you know, unfortunately was --

VICE CHAIRPERSON SOCKWELL: That is one of the pitfalls of self-certification.

MS. MITTEN: Yes. It is just -- it happened. And --

VICE CHAIRPERSON SOCKWELL: He might have been made aware of the fact that there were two options or there was an option to his variance request, but he did not know that at the time.

MS. MITTEN: Right. I just wanted to be clear that that was not a -- that was not an error in the sense that he was coming to us with the wrong request.

VICE CHAIRPERSON SOCKWELL: The next case.

MR. HART: Application No. 16472 of the Holy Christian Missionary Baptist Church For All People, pursuant to 11 DCMR 3107.2, which is a new Section 3103.2, for a variance from the rear yard setback requirement of Section 774.7, and a variance from the number of parking spaces requirement of Section 2101.1, for proposed new construction of a church for an 812 seating in a C-3-A District at premises 4000 Benning Road, N.E., at Square 5081, Lot 52.

The attached proposed draft order was sent out for exceptions in April of 2000. There has been no response from the parties. It is now being presented to the Board for its review

prior to being issued. The hearing date was July 21, 1999, and the decision date was July 21, 1999. The Board Members at that hearing were John Parsons, Betty King and Sheila Cross Reid.

VICE CHAIRPERSON SOCKWELL: I would like to make a statement about this. We have discussed this at some length and it is, I believe, the posture of the Board as a whole that because none of us participated in this particular Public Hearing, none of us sitting here, and because there is information that we would like to review prior to making a decision on this order, we would like to postpone the decision until a date certain in July at which time we will all have been able to review the entire file. And I would so move, if you -- if staff can give us a date.

MS. PRUITT: We could actually defer your decision to the July 5 meeting. That would be your first available time to hear this.

VICE CHAIRPERSON SOCKWELL: Then I --

MS. PRUITT: And in-between then, we can copy the file and get it to everyone.

VICE CHAIRPERSON SOCKWELL: Then I move that Application No. 16472, Holy Christian Missionary Baptist Church For All People order decision be deferred until the July 5 meeting -- morning or afternoon?

MS. PRUITT: Morning.

VICE CHAIRPERSON SOCKWELL: Morning session.

MS. RENSHAW: Second.

VICE CHAIRPERSON SOCKWELL: Discussion? Barring any discussion, vote. All in favor?

BOARD MEMBERS: Aye.

VICE CHAIRPERSON SOCKWELL: Opposed? Abstentions?

MS. PRUITT: Staff would record the vote as four to one to defer action on this particular case until July 5, once staff can send the written record to everyone. Motion made by Mr. Sockwell, seconded by Ms. Renshaw. Ms. Reid in favor of approving or sending out the exceptions now. So she is in opposition to denial.

MS. MITTEN: It is not denial, it is deferring.

MS. PRUITT: Excuse me, opposition to deferral. Thank you. Thank you.

VICE CHAIRPERSON SOCKWELL: So that makes it four to one.

MS. PRUITT: Yes. I thought that is what I said. I am sorry if I didn't.

VICE CHAIRPERSON SOCKWELL: No, I am sorry. No, I am not saying that you didn't.

MS. PRUITT: Oh, okay. Yes, four to one.

MR. HART: Case 16348, Application of the District of Columbia Redevelopment Land Agency on behalf of the Rite Aid Corporation, pursuant to DCMR 3107.2, new Section 3103.2, for a variance from the off-site parking requirements of Section 2101 for the construction of a retail/office building in a C-3-A

District at the premises 3031 14th Street, N.W., Square 2849, Lot 108.

In a letter dated May 26, 2000, the applicant is requesting modification of this order to waive the six-month time period and to apply the off-street parking variance for the use of the second floor by a public charter school property. The hearing date was June 3. The decision date was June 3. The Board Members are Sheila Cross Reid, Betty King and Maurice Foushee.

VICE CHAIRPERSON SOCKWELL: I would ask my fellow Board Members for some discussion on this one.

MS. MITTEN: Well, I guess I will start off, which is that the core of what is being requested is that the variance for the off-street parking requirements that was originally granted for a retail office building be modified to reflect a retail/school building. And the -- I guess the notion that is driving the six-month time period and the waiver of a request for the six-month time period is based on a modification of plans, which I would suggest that this is not necessarily a modification of plans, but a modification of use. So that we really don't need to take up the issue related to the six-month time period. Rather, we need to decide whether we think a modification of the variance is in order. And I would suggest that it is because the original variance was for contemplated office use on the second floor, which would necessitate a variance of 17 parking spaces. The proposed charter school use requires only 12 parking spaces.

So I think that that is the modification that I would put forward.

VICE CHAIRPERSON SOCKWELL: The way this would want to be framed, I think, would be that we would change the wording of the order or suggest a change in the wording of the order to be inclusive of the requested use and -- the originally requested use and any uses of a lesser intensity that would include by definition the change to an educational use with the lowered parking requirement. I think that would be the simplest way because we have given a more generous parking variance and therefore somewhat similar to the way the zoning ordinance is cumulative, we would make this cumulative in reverse to include those uses which would require a less liberal waiver of parking requirements.

MS. MITTEN: I would endorse that.

MS. RENSHAW: Are you making a motion, Mr. Sockwell?

VICE CHAIRPERSON SOCKWELL: Yes. My motion would be to modify the Order No. --

MS. RENSHAW: 16348.

VICE CHAIRPERSON SOCKWELL: Yes, 16348 to state a variance from the off-site parking requirements of Section 2101 for construction of a retail office building or less intensive uses in a C-3-A District at the premises 3031 14th Street, N.W.

MS. MITTEN: How about or less intensive uses permitted by right.

VICE CHAIRPERSON SOCKWELL: Permitted by right. That is very good. And the six-month issue, we won't have to deal with.

MS. MITTEN: I will second that motion.

VICE CHAIRPERSON SOCKWELL: Does staff have that pretty much down? Any discussion further? Then I would call for the vote. All in favor?

BOARD MEMBERS: Aye.

VICE CHAIRPERSON SOCKWELL: Opposed? Abstentions?

MS. PRUITT: Staff would record the vote as five to zero to approve the modification as amended by Mr. Sockwell. Motion made by Mr Sockwell, seconded by Ms. Mitten. Approval proxy from Ms. Reid.

VICE CHAIRPERSON SOCKWELL: Next case?

MR. HART: The next case is 16565, the Application of Georgetown University, pursuant to 3104.1 for a special exception under Section 210 for further processing of an approved campus plan to permit a minor addition to the existing St. Mary's Hall building, renovate entrances to the building and redesignate the use category of the building from residential to mixed use in an R-3 District at premises 37th and O Streets, N.W. This is on Square 1321, Lot 1. The hearing date was May 24. The decision date -- well, it is today, a proposed decision date. The Board Members were Sheila Cross Reid, Robert Sockwell, Ann Renshaw, Roger Moulden and Carol Mitten.

VICE CHAIRPERSON SOCKWELL: This particular case has again been discussed and heard with a great deal of thought placed on the overall impacts and immediate impacts of any action that takes place within the campus under the existing campus plan. The modest additions to the St. Mary's Hall I believe to be without question a very simple matter to review, understand and accept. However, the issue of housing is one of the principle issues by which the community measures the responsiveness of universities to their surroundings. And the loss of housing which exists currently, although unused, is a significant issue for consideration in context with the university's commitment to providing a 100 percent on-campus undergraduate housing capability. The units at St. Mary's Hall were committed to housing some time ago while taken off line. Unless this Board removes that commitment to housing, they must eventually be brought back on line or left fallow. My feeling is that without having an idea of the university's future commitment to housing before us, it was proper for the university to bring the proposal to the Board. But I do not feel that it is proper for the Board to make a decision on housing to be removed at this time because the schedule of providing the level of housing that the university is committed to has been modified considerably, partially by the loss of the cogeneration facility project and other unknown issues which may come forward shortly. And it is my belief that while I am fully in support of aesthetic and functional modifications to

the building, i.e., the additions, I am very much concerned that to pull the plug on over 200 units of housing without having an idea what may come forth in the immediate future with regard to the future housing commitment of the university would be a blind shot in the dark that I am unwilling to take.

MS. MITTEN: If I could maybe just frame it a little bit differently, but I think I am in general agreement with Mr. Sockwell. Which is what was brought before us was a further processing under an existing campus plan. And I have labored in my mind to understand where does further processing leave off and amending an existing plan take over. And I think what you are describing, Mr. Sockwell, in terms of this sort of global impact that permanently removing the units -- the housing units that were in St. Mary's, the 217 beds, that is a global issue. And to me the campus plan, that is what it is meant to embody are these global issues to set forth the expectations -- to set forth the vision for the campus for the period during which it is valid. And I think what is clear is that based on the 1990 campus plan, the expectation was at a minimum there would be 216 dormitory beds at St. Mary's. So given that we have not been asked to amend the 1990 campus plan in the context of this request, I would agree that if we -- I would be unwilling to endorse the renovation of St. Mary's Hall that would lead to permanent elimination of the dormitory beds. I think that goes beyond the scope of what was put before us. And like you, I think approving the minor addition and

the request to renovate the entrances, I think that is appropriately within the scope of the existing campus plan and I would endorse that. But I think to go further is really beyond -- that would be a campus plan amendment and we had not dealt with those global issues.

MS. RENSHAW: I agree with Ms. Mitten and with Mr. Sockwell. I would not be in favor of removing any housing overlay designation on St. Mary's Hall. I don't have any problem whatsoever with these minor improvements to St. Mary's Hall, including bringing the spaces up to ADA and building code requirements, the minor addition at the front and the side entrances of the building and the exterior work to replace windows and improve the site landscaping. But I will not be voting for anything that would change the designation and remove the housing overlay. Because as Mr. Sockwell and Ms. Mitten have both so well articulated, that is a modification to the campus plan as I see it. There is a problem with making sure that the students are housed on campus. That is what the community wants. And we do not want to remove beds or the potential for beds when we have not faced the new campus plan. And I agree with Ms. Mitten that it would be a very serious modification of the existing 1990 campus plan were we to vote to change this designation.

VICE CHAIRPERSON SOCKWELL: Well -- and before Mr. -- well, I can wait. Go ahead.

MR. MOULDEN: I also agree that student housing is

a major factor of any university or college campus around the country. Where and how you house the students is very important to location of programs and facilities. While it is also important to have incidental uses or accessory uses or related uses on campus too, but I think the most important thing here is to keep the housing centralized. Adequate housing on campus, I think, is a major goal and should remain a major goal. However, other incidental uses and other programs related to student education should be reviewed a little more carefully as the campus plan is updated, amended and approved.

VICE CHAIRPERSON SOCKWELL: I think one of the issues that we have to take into consideration is the fact that as the -- if the housing overlay at St. Mary's Hall is removed, it also precludes the addition or potential addition of 200 additional units of housing at that location. So in reality, we may be removing the opportunity for 417 units of housing to exist as opposed to just the 217 that are already there. And that puts a great deal of burden on the university to come up with alternative locations for housing and meet its commitment, which has not changed, I am sure, with regard to the provision of 100 percent undergrad housing on campus. And the timing of that would all be to some degree our responsibility if we remove existing housing prematurely. And I am very concerned that we not do anything that would make it more difficult for the university to fully reach its goal.

MS. MITTEN: I guess I would just like to maybe -- I agree with you, but I would just like to say that I think it is a process issue, which is -- you know, what you are stating is sort of thematic, but it is a big issue. And it is bigger than this case I guess is how I would like to describe it. And so all of those issues would have to be fleshed out in a much larger context than we were provided in this application related to St. Mary's. So I don't disagree with you, I just wanted to maybe give a little bit different take on it. And I would make a motion, if you are ready for that. And I would suggest that we do this in two parts, just for clarity. So that maybe I will begin by making a motion of the things that we want to vote in favor of and then the things that we want to vote to deny. So don't think I am done just because I have made one motion. Okay? It is not the end.

So I would move that we permit the minor addition to the existing St. Mary's Hall building of 427 square feet and permit renovation of the building entrances as proposed.

VICE CHAIRPERSON SOCKWELL: I would second that motion. Any discussion?

MR. MOULDEN: Will these require separate votes?

VICE CHAIRPERSON SOCKWELL: Yes.

MS. MITTEN: Well, this is one motion, unless you have a reason to separate the two issues.

VICE CHAIRPERSON SOCKWELL: Yes, this is one motion. Because that would be one construction contract or one

element.

MS. RENSHAW: Ms. Mitten, are you going to put into your motion the interior renovation to bring all interior spaces to current ADA and building code requirements, including a new stair and elevators?

VICE CHAIRPERSON SOCKWELL: Some of that might have been predicated on where we go with other motions. But we can certainly make that accepted. We can put that into the motion because it is not ours to choose the what-if's.

MS. MITTEN: Here is what I would suggest on that. Can we take this step-by-step and let's deal with this step? Then we will deal with the next step. And then if you want to bring that in, we will just have -- we will be real clear about what we are voting on. Okay?

MS. RENSHAW: That is fine.

VICE CHAIRPERSON SOCKWELL: All right. On the first motion, do you want to restate it? Or are you --

MS. MITTEN: I can.

VICE CHAIRPERSON SOCKWELL: I would appreciate it.

MS. MITTEN: Okay. I move that we permit the minor addition to the existing St. Mary's Hall building of 427 square feet and that we permit renovation of the building entrances as proposed.

VICE CHAIRPERSON SOCKWELL: All right. And that was seconded by me. Did I do that?

MS. MITTEN: Yes.

VICE CHAIRPERSON SOCKWELL: Yes, I did. Okay. No more discussion? All in favor?

BOARD MEMBERS: Aye.

MS. PRUITT: Staff would record the vote as five to zero to approve. Motion made by Ms. Mitten, seconded by Mr. Sockwell and with a proxy to approve from Ms. Reid.

MS. MITTEN: Okay. Can I go with the next one now?

VICE CHAIRPERSON SOCKWELL: You may.

MS. MITTEN: Okay. I move that we deny the applicant's request to redesignate the use category of St. Mary's Hall and that we deny their request to permit renovation of St. Mary's Hall that would permanently eliminate dormitory beds on that site as contemplated in the 1990 campus plan.

MR. MOULDEN: Don't you think you might want to make it more specific -- the specific use category that --

MS. MITTEN: Okay.

MR. MOULDEN: Was it office or --

MS. MITTEN: Let me just look and I will get the exact.

MR. MOULDEN: Deny the mixed use category.

VICE CHAIRPERSON SOCKWELL: Well, extension of the -- well, you see, it is in a mixed use category now. But do you want them --

MS. MITTEN: The existing designation is for

educational mixed use.

MR. MOULDEN: Right. Okay.

VICE CHAIRPERSON SOCKWELL: And what you want to do is you can relate it directly to the 216 units if you want to do it that way. That way it doesn't do anything but address the housing that is existing.

MR. MOULDEN: Right.

MS. MITTEN: Okay. How about this as a modification. I had said to redesignate the -- deny the request to redesignate the use category, and I will suggest a modification that it say to redesignate the existing educational mixed use use category, if I can say use twice in a row. Okay, well you try something. How about the existing use category. I don't --

VICE CHAIRPERSON SOCKWELL: That is fine.

MS. MITTEN: Okay.

MS. PRUITT: Excuse me, just for clarification?

VICE CHAIRPERSON SOCKWELL: Please.

MS. PRUITT: Your Motion is to deny the request to rededicate --

MS. MITTEN: Redesignate.

MS. PRUITT: Redesignate --

MR. MOULDEN: The existing --

MS. MITTEN: The existing use category.

MS. PRUITT: Okay.

MS. MITTEN: And then there is a second part. Do

you have the second part?

MS. PRUITT: The previous motion?

MS. MITTEN: No.

MS. PRUITT: That is why I would like for you --

MS. MITTEN: Okay, part one.

VICE CHAIRPERSON SOCKWELL: Let's not -- I don't want to deal with the word category because category, I think, gets us -- I think you want to deny redesignation of the existing uses.

MS. MITTEN: All right. I was just taking the words out of the request.

VICE CHAIRPERSON SOCKWELL: All right. Okay. That is fine. Go ahead. That is good.

MS. MITTEN: All right. I will -- this is the whole motion again. To deny the request to redesignate the existing use category for St. Mary's Hall and to deny the request to permit renovation of St. Mary's Hall that would permanently eliminate dormitory beds on that site as contemplated in the 1990 campus plan. That is not worded that well because elimination is not what was contemplated. I think I need to rearrange something. Do you know what I mean?

VICE CHAIRPERSON SOCKWELL: To deny permission to renovate the hall and to permanently remove --

MS. RENSHAW: To permanently remove the housing overlay?

VICE CHAIRPERSON SOCKWELL: The existing house.

MS. MITTEN: I just wanted to make reference to the 1990 campus plan and maybe that is not necessary. We could just --

VICE CHAIRPERSON SOCKWELL: Yes, I mean it is under -- it is being processed under the 1990 campus plan.

MS. MITTEN: Right. So let's just take that out and then I will be happy.

MS. RENSHAW: All right. So how does it read?

MS. MITTEN: Okay. To deny the request to redesignate the existing use category for St. Mary's Hall and to deny the request to permit renovation of St. Mary's Hall that would permanently eliminate dormitory beds on that site.

MS. RENSHAW: That site. Okay. Second.

VICE CHAIRPERSON SOCKWELL: Any more discussion? Ready for the vote. All in favor?

BOARD MEMBERS: Aye.

MS. PRUITT: Staff would record the vote as four to one. Motion made by Ms. Mitten, seconded by Ms. Renshaw. Ms. Reid in opposition. She would actually approve the application by proxy.

MS. RENSHAW: Okay.

VICE CHAIRPERSON SOCKWELL: All right. Now, Ms. Renshaw, you wanted to talk about that other issue. And if it is not bound in, then we will just make it as a separate motion.

MS. RENSHAW: Well, there are two things.

Actually, the Office of Planning report had extracted or enumerated rather two things. Interior renovation to bring all interior spaces up to current ADA and building code requirements including new stair and elevators. And then another one, exterior work to replace windows and improve the site landscaping.

VICE CHAIRPERSON SOCKWELL: Those probably don't require Board action.

MS. RENSHAW: Okay.

VICE CHAIRPERSON SOCKWELL: Those are strictly building code and permit issues to be handled independently -- normally.

MS. RENSHAW: All right.

VICE CHAIRPERSON SOCKWELL: Are there any other motions with regard to this? Then I would say that we have completed the agenda for the morning session. The hearing is therefore adjourned.

(Whereupon, at 11:44 a.m., the public meeting was concluded.)