GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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WEDNESDAY

MAY 24, 2000

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ROBERT N. SOCKWELL	Vice Chairperson
RODNEY L. MOULDEN	Board Member
ANN RENSHAW	Board Member

ZONING COMMISSION MEMBER PRESENT:

KWASI HOLMAN	Commissioner

OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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

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10:28 a.m.

CHAIRPERSON REID: Good morning. Again, we do apologize for being somewhat delayed this morning, but at least we came back when we said, for a change.

The hearing will please come to order. This is the May 24th public hearing of the Board of Zoning Adjustment, District of Columbia. My name is Sheila Cross Reid, Chairperson. Joining us today is Robert N. Sockwell, Ann Renshaw, representing the National Capital Planning Commission is Rodney Moulden and representing the Zoning Commission is Kwasi Holman.

A copy of today's hearing agenda are available to you. They're located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located at each end of the table in front of us. Before coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for a special exception and variances is statement and witnesses of the applicant and reports including the Office of

Planning, Department of Public Works, et cetera. The report of the Advisory Neighborhood Commission, parties present in support, parties present persons in opposition and closing remarks by the applicant. Cross examination of witnesses permitted by the applicant or parties. The ANC within which the property is located is automatically a party in the case.

The record will be closed at the conclusion of each case except for any materials specifically requested by the Board and the staff will specify at the end of the hearing exactly what is expected. Decisions the Board mades on cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Board requests that persons present aren't engaged with the Board in conversation.

Please turn off all beepers and cell phones at this time, so as not to disrupt these proceedings.

The Board will now consider any preliminary matters. Preliminary matters are those which relate to other cases which should be heard today, such as a request for postponement, continuance or withdrawal, whether proper and adequate notice of

the hearing has been given.

If you are not prepared to go forward with the case today, or if you believe that the Board should not proceed, now is the time to raise such a matter.

Are there any preliminary matters?

Mr. Brown: Yes, Madam Chairman, there is actually, and by way of introduction, my name is Patrick Brown from Greenstein, Delorme and Luchs. I am counsel for Mrs. Mildred Crary, both in the underlying appeal case, the pending application here before us today, and also I represent and filed on behalf of the Spring Valley Wesley Heights Citizens Association an appeal of Mr. Nunley's February 29th Zoning Administrator's decision in this matter.

I have before you two matters I think, resolution favorably, as I believe is mandated, of the first item, my motion to dismiss and/or deny this application with prejudice will moot the second issue, which is the unavailability of both Mrs. Crary this morning and George Watson, who is the president of the Wesley Heights Historical Society and who I fondly refer to as the father of the Westley Heights overlay district.

If I could, I want to refer to this. I

filed the other day with the Board, and these are all attachments to my motion that was filed the other day. This is a late development, but really is kind of indicative of this case where --

CHAIRPERSON REID: All parties in the case have been given copies of the drawings that you have before us.

MR. BROWN: Yes, ma'am.

CHAIRPERSON REID: Okay.

MR. BROWN: And, I assume the applicant received their copy. I have confirmation that it was received and the other copies went out and consistent with the certificate of service on the document.

CHAIRPERSON REID: When you say this is a late development, what specifically are you referring to?

MR. BROWN: Well, we attempted to have a meeting with the Zoning Administrator on the 18th of May, I believe. At that time, although the meeting, at least I was unable to attend the meeting because after 46 minutes waiting for Mr. Johnson, I was unable to continue to wait for him. I don't know when he appeared. But, at that time this information and some of these documents have been enlarged, and I'll point to that, but this information was provided, this new

information, as well as information that's been in the record for awhile. But again, the comparison of the two was only possible when the newly provided information occurred on the 18th.

That we're here today even having this discussion, I think, is all the indictment we need of this application. I don't think the Board has any clearer idea what they're being asked to rule on, what the circumstances are of this property.

You recall, and I provided relevant quotes in my motion, the Board in the earlier underlying appeal made some very detailed findings of fact and conclusions of law. We can't re-litigate that here today. We have to live with it. This is application is clearly not consistent with the Board's order where they made findings of fact and conclusions of law as to the property as it was built. We're not talking speculatively here. This is a property that was, in fact, built and completed, in fact, was built and completed in many respects prior to the permits being issued for it, which was one of the findings of the Board below.

But, we're no closer here today to having before us a clear sense of the nature of this application. It's remedial in nature. The applicant

built this property and now seeks to obtain the Board's approval to keep it as it was built. In that lies the problem that, in fact, we're still having a debate of what was actually built, whether in fact various aspects are properly identified and whether, in fact, the proper zoning relief to keep this property as is, which is, in fact, what this application purports to be, is before us.

If I could, starting with the Board's order. The application here really seeks to ignore that order and the Board made some specific findings, the height of the garage, 16 feet. The applicant says as of May 18th of this year something different. It says that, in fact, the garage and the driveway access is not adequate, based on what was built and what exists there. Specific findings were made, yet that issue is not part of this application.

The front yard set back, which Mr. Nunley found to be a certain amount, is, in fact, confirmed in the May 18th information to be almost twice as large as originally believed, so that the magnitude of that variance is not accurately portrayed. The lot occupancy, which is, in fact, a variance in front of you, it's difficult to tell because the zoning computations prepared by Mr. Nunley feature the wrong

lot width. He is off by over 7 feet, so that's a building block of lot occupancy calculations.

And, then the off street parking issue. Based on some field investigation, I made a claim earlier that, in fact, there was a side yard problem. I was not particularly well-received by my colleagues representing the applicant, but in fact on the day they became aware of my claim to that effect, they handed me information which confirmed the point I was making. And, I would like to go through, because one, I can point out, using these drawings, again, which were produced all by the applicant at various time frames to show that one, they provided inconsistent information throughout, based the application on the original 1998 plans, which the Board went to great length to find fault with and, in fact, have produced evidence which confirms or admits additional violations.

So, if I could, I would just like to briefly --

MS. PRINCE: May I object. We are now getting into a hearing. If Mr. Brown would like to bring these matters up in the course of the hearing, I would have no objection.

MR. PARKER: For the record, Arthur

Parker, Assistant Corporation Counsel.

We are not party to this matter as yet. We've entered an appearance in an appeal that counsel's clients have filed against Mr. Nunley's decision to, as I understand it, transfer this application to the Board.

CHAIRPERSON REID: Yes. We did receive a request from a Ms. Ray to --

MR. PARKER: Right. I'm substituting for Ms. Ray.

CHAIRPERSON REID: Okay.

MR. PARKER: She's on vacation for the next few weeks. Requesting party status, which --

MR. PARKER: Right.

MR. BROWN: Madam Chair, I -- that comes as news to me.

CHAIRPERSON REID: Okay. Wait. One second. There are three different things here. First all let's address Ms. Prince's objection, which I will sustain.

MR. PARKER: And, I was just going to join that objection. Right.

CHAIRPERSON REID: Okay. Before that -- before doing that, however, we have to recognize you as a party, procedurally.

MS. PRUITT: Madam Chair, I believe Mr. Parker is a party in the appeal. Today we are dealing with the application.

MR. PARKER: That's right.

MS. PRUITT: So, it's inappropriate to --

CHAIRPERSON REID: So, you cannot object.

MS. PRUITT: Well, it's inappropriate to deal with him as a party for right now. Yes, we would just go with his response.

CHAIRPERSON REID: Well, that's what I'm trying to ascertain procedurally what is the correct thing to do, because I'm really -- this is, you now --

MS. PRUITT: Procedurally what is before us today is the application.

CHAIRPERSON REID: Just one second. Thank you, Ms. Pruitt. Ms. Sansone.

MS. SANSONE: Madam Chair, the Zoning Administrator is typically not a party in the application matters.

MR. PARKER: All right. Very well.

CHAIRPERSON REID: As such you cannot -- you cannot -- wait, wait, wait. The letter from Ms. Ray requesting -- entering -- they ask to be included or to --

MS. PRUITT: No. She's just stating that

she will be part of the appeal

MR. PARKER: Right.

CHAIRPERSON REID: Okay.

MS. PRUITT: And, that the appeal is not being heard today. All right.

MR. PARKER: And, that's the only purpose for me to be here, is to clarify what my office's role is, if any, here today.

CHAIRPERSON REID: Okay. But, what would they --

MR. PARKER: Let me just state for the record. And, to the extent counsel was going to go into an extended fact based presentation, that issue wasn't going to be resolved for me to determine whether I need to be here or not. It seems to me I don't need to be here, because we're not dealing with the appeal.

MS. PRUITT: Correct.

MR. PARKER: And, you know, if he was going to go into an extended presentation, I just wanted to note my objection before that took place.

CHAIRPERSON REID: Okay. All right.

MR. PARKER: Thank you.

MS. SANSONE: Madam Chair --

CHAIRPERSON REID: Please, just one

second, please. Wait one second.

MS. SANSONE: It would be appropriate for the Zoning Administrator or the Corporation Counsel to provide a government report in this case and participate in that manner.

CHAIRPERSON REID: Okay.

MR. BROWN: Madam Chair, could I --

CHAIRPERSON REID: Yes.

MR. BROWN: I think I do need to clarify, the information I provided both in the motion and here on the boards, I think is relevant to the issue, the preliminary issue before and whether in fact this application is in a posture for the Board to even consider it.

CHAIRPERSON REID: Well, Mr. Brown, in your submission, for your motion to dismiss, you've laid out for us very succinctly the basis for your motion and that is what we, in my opinion, should be dealing with here today, only.

MR. BROWN: And, that's what this material is, but I thinking seeing it and clarifying it --

CHAIRPERSON REID: Well, we'll see it, but nonetheless, I think that the objection that's being raised is in regard to your going into, you know, detail at this time. I think that if you just

summarize for us, basically your -- and there is several -- there are several areas to your motion.

MR. BROWN: Yes.

CHAIRPERSON REID: The basis for the motion, and then we will hear from Ms. Prince and then proceed.

MR. BROWN: Okay. Well, I think there are three broad issues. One is whether, in fact, this application is premature in itself, given the fact that the applicant has filed a Court of Appeals challenge to the Board's underlying decision.

CHAIRPERSON REID: Okay. Now, in regard to that. Let's respond to that. Okay? This is one of the things we did discuss and it was our understanding -- Corp Counsel, Ms. Sansone, could you please speak to that in regard to the timeliness of whether or not we can proceed prior to getting the resolution from the Court of Appeals on the appeal that has been submitted to Court of Appeals?

MS. SANSONE: Madam Chair, we believe, the Office of Corporation Counsel, that the applicant can proceed with the application for the variance and special exception relief prior to the Court of Appeals' decision. However, we would be concerned if there are inconsistent positions being taken before

the Board in this application from what is being argued in the Court of Appeals. However, in reviewing Ms. Crary's motion, I do not see any specific listing of arguments or positions that might be inconsistent that would enable us to make a recommendation as to that. However, I do think the question of whether or not there are inconsistent positions being taken by the applicant in the two forums would be important to resolve. And, perhaps Mr. Brown could outline those for us, so that we might know if there is, in fact, inconsistent facts or inconsistent arguments being made.

MR. BROWN: I'm unable to do that, primarily because there has been no briefing in the Court of Appeals matter. The notice of appeal makes some specific allegations to the facts, the law, and whatnot. What I think you see that's before you today is the Board's order in the appeal matter is final and effective. This application, on its face, is inconsistent with the Board's earlier decision. And, the Board's earlier decision is binding until such time as: (1) a stay is issued, which has not occurred, or; (2) the Court of Appeals says differently.

And, in fact, to proceed on an application involving the exact same matter that is inconsistent

with the Board's earlier findings leads us into kind of a quandary of where we are now, where essentially we're being force to re-litigate the appeal decision.

Well, the appeal decision is final. It's effective and the applicant doesn't like it and he's exercising his rights, but not here before the BZA to submit an inconsistent application. So, that's the quandary we're in and the prematurity where it shows and, I think, defeats proceeding on this application at this point.

CHAIRPERSON REID: Okay. Ms. Prince, can you speak to this matter?

MS. PRINCE: Yes. Thank you.

First of all, with respect to the matter in the Court of Appeals, clearly that petition for review had to be filed to preserve my client's right to challenge the original order in the event that we do not prevail in this application. Obviously, in the event that we prevail in this application that entire court case becomes moot and we would like nothing better than for that entire court case to become moot.

But, an applicant has never precluded from securing a variance relief that would render the previous denial moot. And, that is what we would like to do.

We are, in fact, proceeding today pursuant to instructions that we received from the Board of Zoning Adjustment in the decisional meeting on this case. We have the transcript from that proceeding. I've cited it. Mr. Gilreath stated on the record that the applicant had the opportunity to go back and seek a variance; that is precisely what we're doing.

This Board did make a decision, very unfavorable to my client, that the permits had not been issued properly. We went to the Zoning Administrator with all information available to the Zoning Administrator and said, treat us as if we have no permits. What do we need. It was not in our interest to get cited incorrectly. It was not in our interest to not get cited for relief we need. That will put us in a complete quandary. So, we had to be sure that we were asking you for the proper relief.

So, we met with the Zoning Administrator several times, secured a zoning memorandum that is now the basis of an appeal filed by Mr. Brown. We met with the Zoning Administrator again in the meeting that Mr. Brown was not able to stay for. In that meeting the Zoning Administrator once again went through the plans, went through the issues and confirmed that we had applied for the appropriate

relief.

We went one step farther in that meeting. Mr. Brown had repeatedly requested as-built drawings. We had an as-built building plat, but we went one step farther to respond to his request and we had the architect go out and do a field measurement, a registered architect. The original registered architect for the project went out and did field measurements and confirmed all the measurements. To the extent that there were any discrepancies, and there were some, they effected in no way the areas of relief that we're seeking from this Board. And, that is why we're anxious and ready to go forward today.

CHAIRPERSON REID: Are you saying that you do have the finished drawings?

MS. PRINCE: I'm saying that the architect, the architect of record for the project went out to the site and did a field inspection and the findings were shared with the Zoning Administrator and Mr. Brown in the meeting that we had last week. And, I have copies of those findings here with me today.

MR. BROWN: Well, and just for the Board's --

MS. PRINCE: And, Pat filed them.

MR. BROWN: They are here on this board, with the exception of the original surveyor's plat. The problem with that is they try to put their finger in one hole in the dike and create additional problems and we go back to the fundamental issue: You start with the Board's appeal order. It goes in great length and great detail and spines the violations. Absolutely Mr. Sisson has the right to file an application for variance, or whatever else relief, but he's got -- it's incumbent on him to file one consistent with the Board's order. This is not consistent with the Board's order, as I pointed out in my motion in several critical respects.

Additionally, Mr. Nunley, and I don't mean to disparage Mr. Nunley, but he was working with drawings which the applicant has now said were inaccurate. He may have made mistakes. He has told me on several occasions that he did his calculations, and it's obvious from them, that he did them without reference to or relying upon the Board's order in the appeal case.

So, that, you know, we start from something we all agree on, the Board's order in the appeal case. And, we've never gotten beyond that, because this application is inconsistent with it. The

applicant, quite frankly, has provided additional information which highlights and proves that, (1) the information previously thought to be as-built is incorrect, and, (2) has admitted additional violations of the zoning regulations which do not appear in this application.

So, for those reasons and I could take you through them. They are on this board. You know, there are essentially three version of the truth that had been offered. The as-built drawings back from 1998, which the Board repudiated in its order; the surveyor's plat, which was August of '99, which you'll see in the upper right-hand corner; and the May 18th drawings, they don't agree. And, you'll see that most notably in the side yard issue, where, in fact, in the surveyor's plat the garage and the original house, the 1924 house, were shown with the side yard dimension of 6.50 feet. You'll see a line on that drawing showing that. On May 18th the architect provides new information which shows the garage at 4.6 feet from the side yard. Assuming, and I will for the time being and the Board can, assuming that the surveyor's plat is correct, the original house has a side yard of 4.6 feet, which violates the side yard restrictions. It also means that the addition to the rear

constructed, which is shown on the surveyor's plat as 7.87 feet, which in itself would be a violation of the side yard restrictions, is actually closer to 6 feet, so that you've got an even greater violation.

MS. PRINCE: I obviously object to this entire line of discussion. That is not what the letter says from the architect conveying the field measurements.

CHAIRPERSON REID: Okay.

MS. PRINCE: This is based on Mr. Brown's personal site inspection.

CHAIRPERSON REID: Okay.

VICE CHAIRPERSON SOCKWELL: Ms. Prince, understanding that your architect did these dimensions, was he accompanied by a licensed land surveyor who would have been able to determine the exact positioning of the side yard and front and rear yard lot lines or did the architect try to do this as an unprofessional, but worthy attempt to give you proper information?

MS. PRINCE: The architect conducted the inspection with someone from his office. There were two people. I don't believe that a surveyor was involved, although we filed building plats in connection with the permit process.

VICE CHAIRPERSON SOCKWELL: But, the location of side walls of a property and front and rear yard to a building line would not be within the architect's scope of capabilities.

MS. PRINCE: He believed that it was. He believed he was able to determine --

VICE CHAIRPERSON SOCKWELL: But, we all know that as professionals, I mean, you're very well versed in this and I would think that a land surveyor would be the proper person to do that.

MS. PRINCE: We would be happy to leave the record open. We have enough confidence in our findings that we are happy to leave the record open to submit a land surveyor's findings with respect to the dimensions.

VICE CHAIRPERSON SOCKWELL: I believe that a land surveyor's findings would be the only way to deal with the property to property line -- property line to building relationship. No architect is capable of doing that unless he's a licensed land surveyor.

CHAIRPERSON REID: Okay. Thank you Mr. Sockwell.

Mr. Brown, the second point. You said there were three -- there were three points that you

wanted to --?

MR. BROWN: Well, the first is the prematurity in the context of the pending appeal.

The second was, and I think we've discussed it at some length, that in fact the current application is, in large measure, inconsistent, fails to live up to or pursue the violations noted in the Board's appeal order.

And, the third issue is, in fact, that there are additional violations that -- based on information that -- this isn't Pat Brown saying believe me, this is information that the applicant submitted, which we'll deem reliable because they submitted it, that says that there are additional violations.

Mr. Sockwell's point about a land surveyor is very well taken. I asked Mr. Sisson, prior to the appeal case back in July, I believe, of 1998, that we could make a lot of headway if we got an as-built land survey. He has refused to do so, so we're stuck with what we're stuck with, but it's clearly inconsistent with what they've said before and no basis for this Board to proceed and then let the facts catch up with the record.

MS. PRINCE: I'm sorry, who refused to do

a land survey?

MR. BROWN: Mr. Sisson. One of my initial letters to him says, you know, we have serious boundary dispute issues.

CHAIRPERSON REID: Okay. But, the assistant who is -- is saying that she will?

MR. BROWN: Well, but doing that two years later and after an application --

CHAIRPERSON REID: Okay. I understand that, but what we're trying to get clear in our heads is that you're saying that they refused to, but then we just heard the attorney say that they would do it. So, I'm trying to reconcile with what you're saying.

MR. BROWN: And, I welcome the survey. It will help me resolve issues that I think are critical to my client's interest. The problem is we ought to do that before we sit down and decide an application case based on zoning relief to be determined when we get the survey. And while I think this matter ought to be dismissed or denied, an absolute prerequisite to this matter coming back to the Board should, in fact, be that survey, and done by somebody like Lowe Craft Engineers, whose reputation is first class or somebody else that we agree on, would solve a lot of problems that this Board can't answer now and shouldn't proceed

on the application without those answers.

CHAIRPERSON REID: Okay. Thank you very much.

Ms. Prince, did you have anything to add or respond to Mr. Brown?

MS. PRINCE: I would like an opportunity to respond. This whole presentation by Mr. Brown is part of a continuing request for a postponement, dismissal, denial with prejudice. This latest one was served to me, at my office, last night at 5:00 p.m., providing me virtually not time to respond to it. It was anything but timely. It raises the same issues over and over and over again. I have never seen in my 15 years of practice such an incredible attempt to prevent a hearing from happening. I'm used to battles at hearings, but Mr. Brown doesn't want to have a hearing. And, there is a clear reason why he doesn't want to have a hearing. The logic is very clear. Delay and obstruction works only in his client's favor and does cause my client extreme hardship.

He needs to go forward and have a hearing based on the relief that the Zoning Administrator has identified, based on the relief that the Zoning Administration and Edgar Nunley confirmed in a meeting last week, and based on a meeting that was based on

the type of plans that the Zoning Administrator relies upon in issuing memoranda. They don't typically require a land survey to prepare a zoning memorandum.

This case has been pending for months. It was filed months ago, as this Board knows. The hearing was originally scheduled for December 8th. We agreed to postpone it so that we would not be relying on a self-certification. We agreed to postpone to give the Zoning Administrator time to prepare a memorandum. That memorandum was, in fact, prepared and filed with the Board, but instead of going forward on May 3rd we postponed once again to provide Mr. Brown with an opportunity to review the memorandum. He disagrees with it, but he has had an opportunity to review the memorandum since that time.

Then we had a hearing on May 16th, scheduled for May 16th. We jointly agreed to postpone that hearing another 8 days so that we could meet with the Zoning Administrator, a joint meeting involving Mr. Brown, my client and myself. It was very difficult to schedule that meeting due to Mr. Brown's unavailability. When the meeting was finally scheduled, Mr. Brown left unwilling to wait for the Zoning Administrator and it was a long wait, although he did call and say he was en route. I find

interesting that he was concerned about an additional wait, because he has no reservations about spending his client's money to file pleadings at the last minute, as he did last evening.

CHAIRPERSON REID: Ms. Prince, I don't think that that's material to your statement here this morning.

MS. PRINCE: We did make an effort to meet with the Zoning Administrator. We're prepared and indeed anxious to proceed today. We would like a fair and proper hearing based on the memorandum from the Zoning Administrator. Mr. Brown's continuing efforts to request postponement, dismissal and denial without prejudice has been further compounded by an appeal of the memorandum itself. He just appears to be using whatever tactics are available to prevent a hearing from happening. Anything that has been requested, we have given. We were asked to confirm the measurements on the plans, we provided that. Now we're being told that that raises new issues. In fact, it confirmed all the issues to the Zoning Administrator, the proper party for making that decision. And, it confirmed in his mind that we were here seeking the proper relief.

We have no interest in seeking less than the relief that we're required to have to legitimize

the construction that is in place. And, we believe that by proceeding forward today we will be able to get that relief. We're very open to having the record being left open to submit a land survey if the Board believes that that would be helpful.

CHAIRPERSON REID: Thank you. Board member, discussion?

I'm sorry, Mr. Parker, did you wish to have an opportunity to speak here this morning?

MR. PARKER: No. Good morning, again. I came down for the specific reason in anticipation that there might be some discussion including the appeal, in which our office is representing the Zoning Administrator in this proceeding.

CHAIRPERSON REID: Yes.

MR. PARKER: I came down here to state our objection to that, that this proceeding should go on its own. It seems to me that this proceeding, this application proceeding, if you proceed, it's going to deal with the same issues that are in the appeal. And, it would essentially moot out that appeal if you resolve the application on its merits.

CHAIRPERSON REID: Wait a minute.

MR. PARKER: That's the only reason I came down.

CHAIRPERSON REID: Wait a minute. Your appearance here this morning, you're saying is -- let me just be clear.

MR. PARKER: Right.

CHAIRPERSON REID: Is to object to what?

MR. PARKER: It hasn't happened yet. I was anticipating some sort of an effort to combine this recently filed appeal with today's application here.

CHAIRPERSON REID: Um-hum.

MR. PARKER: Okay. It has not happened.

CHAIRPERSON REID: Right.

MR. PARKER: Nobody has moved that forward.

MR. PARKER: That was my only purpose, was to come down and to object to that.

CHAIRPERSON REID: Okay. Okay. I don't think that there was any motion on the floor.

MR. PARKER: And, if there isn't, and if the parties agree that that's not going to be made today, I would ask to be excused.

CHAIRPERSON REID: Okay. If so, I'm not aware of it. I don't know if that was the intention of the parties, either Ms. Prince or Mr. Brown.

MR. BROWN: To hear the appeal case today,

no.

MR. PARKER: Okay. That's all. That was my only purpose.

CHAIRPERSON REID: Okay. All right. Thank you very much.

MR. PARKER: Have a good day.

CHAIRPERSON REID: Yes. Okay. Discussion, Board members?

MEMBER RENSHAW: Madam Chair, I'm kind of caught up in a few wires here. If you'll hold on a minute.

Madam Chair, I just wanted to bring the Board's attention that a letter from ANC 3D, dated May 14th. The ANC is not with us this morning. The letter is from the Chair of ANC 3D, Eleanor Roberts Lewis, and she states that they had a regularly scheduled meeting on Monday, May 8, 2000 and Allison Prince, the attorney, and Mr. Sisson were not at that meeting.

And, the Commission voted unanimously, 5-0-0 to confirm its earlier preliminary position that further action by the Board on this application is, in the ANC's opinion, premature for a variety of critical reasons, and Ms. Lewis cites five different reasons and they are as follows: That the Commission does not

have the as-built drawings.

CHAIRPERSON REID: The Commission meaning the Board?

MEMBER RENSHAW: The Commission meaning ANC, Advisory Neighborhood --

CHAIRPERSON REID: The Commission did not have --

MEMBER RENSHAW: The Commission --

CHAIRPERSON REID: The ANC does not have the --

MEMBER RENSHAW: She states that the Commission and apparently the BZA has yet to be provided as-built drawings.

CHAIRPERSON REID: Okay.

MEMBER RENSHAW: Without such drawings the Commission is unable to meaningfully consider the various zoning issues to be resolved in the matter and the Commission is concerned that there not be a repetition of inconsistent, incomplete and misleading building permit applications, which were found in appeal number 16405. And, the Commission goes on to cite the exact and complete nature of zoning violations of the improperly constructed improvements must be identified, based on these as-built drawings that the Commission does not have, before proceeding

with this BZA application.

Number three, that the application is premature based on Mr. Sisson's Court of Appeals challenge; that four, the application must be consistent with the Board's finding of facts and conclusions of law in appeal 16405, and five, that the Commission must be provided complete, timely and accurate information by the applicant in order to make an informed and meaningful review and decision in this case.

And, so the Commission wants to actively participate in this application, as so stated in its letter, but it has not been able to be because it does not have the requested information and it asks the Board to continue the application until such time as the serious procedural and preliminary issues, including the newly filed appeal, are finally resolved and that the Commission has an opportunity to review the final and complete application, including as-built drawings and receive a presentation from Mr. Sisson.

CHAIRPERSON REID: Do they also indicate therein that there was a quorum present and a vote taken on the application?

MEMBER RENSHAW: Yes, indeed. Yes, there was a vote.

CHAIRPERSON REID: Okay.

MEMBER RENSHAW: A vote unanimously take, 5-0-0.

CHAIRPERSON REID: Okay. And, that statement will be afforded the weight to which they are entitled.

Is there anyone from the ANC here this morning? Okay.

Thank you very much, Ms. Renshaw.

All right. Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: One of the things that I have not seen in the applicant's case is sufficient drawings for me to determine, and hopefully if there is something else it just hasn't been submitted, but I haven't found sufficient drawings to be able to determine the extent of the addition, the actual size of that in a mod-occupancy, square footage. The plat which is part of this is heavily annotated, but is difficult to read, perhaps partially because of re-Xeroxing, but I have not seen sufficient information to be able to make an effective judgment of some of the merits of the application.

CHAIRPERSON REID: Okay. Ms. Prince, in regard to the aspect of this case that has been raised by the ANC in regard to an appearance by yourself or

Mr. Sisson --

MS. PRINCE: I'm happy to address that.

CHAIRPERSON REID: Please.

MS. PRINCE: I did talk to Eleanor Roberts in advance of that meeting and after a lengthy discussion she told me that my presence at the meeting would not be beneficial, that the ANC was not going to be taking action on the merits of the application. They were going to be going down this road of continued postponements. She didn't believe that there was anything to be gained by my client in coming to the meeting.

CHAIRPERSON REID: Yet. But there is a request --

MS. PRINCE: And, for that reason we did not go to the meeting.

CHAIRPERSON REID: Okay. But, there is a request for you to make an appearance at the meeting.

MS. PRINCE: We have been to the ANC regarding this property a minimum of 5 times. The ANC --

CHAIRPERSON REID: But, again, I think that they want you to appear again. I think that's what -- the gist of that letter is saying -- Ms. Renshaw.

MEMBER RENSHAW: Yes. That's it. You received a copy of this paper --

MS. PRINCE: Oh, yes, I reviewed the letter and I --

MEMBER RENSHAW: And, did you respond to the letter?

MS. PRINCE: No, I haven't responded to the letter.

MEMBER RENSHAW: Because what they are saying is that they do want you back with Mr. Sisson and they want those as-built drawings. And, it is pretty clear to us that this is a very serious request on the -- it's a vote of the ANC that this is the course of action that they request be taken.

MS. PRINCE: I haven't been invited back to the ANC other than -- I mean, we have the hearing today.

CHAIRPERSON REID: Do you have a copy of that letter?

MS. PRINCE: There wasn't another meeting.

CHAIRPERSON REID: Okay. But, do you have a copy of this letter, Ms. Prince?

MS. PRINCE: I do. I've seen the letter.

CHAIRPERSON REID: All right. Did you glean from the letter that they would like for you to

reappear?

MS. PRINCE: Apparently they would like the as-built drawings, but there was not another meeting between --

CHAIRPERSON REID: No, no. It appears that they have requested or would like for you and Mr. Sisson to appear again. Is that a problem?

MS. PRINCE: That's not a problem, but there was no meeting to go to between the one I was told my presence would not be beneficial and today's hearing.

CHAIRPERSON REID: I understand. No, I understand perfectly what you're saying and thank you for clarifying that for us, because the impression that we had initially was that you had been invited and just did not appear.

MS. PRINCE: It clearly creates that impression.

CHAIRPERSON REID: Yes.

MS. PRINCE: But, I had a lengthy discussion with Ms. Roberts.

CHAIRPERSON REID: Well, I am glad that you are addressing that, because that was a kind of a vague type of thing which would allow one to speculate as to what happened. And, so it's always best to get

things clarified.

MS. PRINCE: Right.

MEMBER RENSHAW: Madam Chair, it would have been helpful if Ms. Prince had issued an memorandum to the Board to that effect and sent a copy to the ANC.

CHAIRPERSON REID: Yes.

MEMBER RENSHAW: And, also request that she be on the agenda at the next monthly meeting if all goes as planned.

MS. PRINCE: It seemed moot since I felt our hearing would be today.

MEMBER RENSHAW: Right. Okay. But, to take action on this is what we would like you to do.

CHAIRPERSON REID: Okay. In regard to this aspect, as it pertains to the drawings, we keep coming back to that. My understanding was that you have now set, and let's reiterate it once more, that the survey, the land survey as plat drawings will be provided --

MS. PRINCE: We will retain --

CHAIRPERSON REID: -- at the meeting, the meeting that -- whatever meeting that you are scheduled to appear for that ANC, that that would be a part of that meeting, your presentation.

MS. PRINCE: We can arrange for the preparation of a survey.

CHAIRPERSON REID: And, the presentation to them, because that seems to be something that they were very concerned about. And, that is the as-built finished drawings, as well as making it obviously available to Mr. Brown and to this Board.

MS. PRINCE: That's fine.

CHAIRPERSON REID: All right.

MR. BROWN: Madam Chair, could I ask that it be a three-dimensional issue, because, quite frankly, the height of the garage is very much in contention. A land surveyor can provide height dimensions that are accurate, and I think that that would be well received by the Board, my client, and the ANC.

CHAIRPERSON REID: I have no problem with that, unless you do.

MS. PRINCE: We had a registered architect measure the height of the garage and I do have those findings for the Board. It's not even a close call, but --

MR. BROWN: Is Mr. Brown's exhibit board, primarily made up of drawings that you provided or were provided through the client -- to your client,

Ms. Prince?

VICE CHAIRPERSON SOCKWELL: I believe you're referring to these two drawings.

MR. BROWN: I'm referring to everything on that board.

MS. PRINCE: These have all been provided by my client. When we asked the architect to do a field inspection and confirm all the measurements, that generated these final three drawings.

VICE CHAIRPERSON SOCKWELL: The drawing that is shown as the garage plan, Ms. Prince. No, not the section, the plan, the top center, that. That would have been much more appropriate had it had dimensions of the square itself, of the garage shape itself. By the same token, the house is presented as a block but isn't dimensioned to show the difference between the existing house and the addition to the house. So, the drawings leave a lot to be desired.

It's very difficult to make judgments when you don't have enough information. As well, the plat, which is heavily annotated and apparently is signed by someone from Architectural Design Associates, all that gibberish on there should have been either re-stated so that it was clear, or something, because it's very difficult to read that.

I mean, we're being asked to evaluate information, some of which is very unclear. Let me say, if it was done to give us information, each element should have been indicated as to what it is, elements removed, elements added so that this became a working document. Now, I really do know what I'm looking at, but I would challenge some of my fellow Board members to understand this drawing.

MS. PRINCE: The reason why it was done this way, just to explain, is we had the working drawings that were done to construct the addition.

VICE CHAIRPERSON SOCKWELL: Yes.

MS. PRINCE: We were repeatedly asked to produce as-built drawings. Rather than have an entire new set of documents produced, we had an architect confirm the dimensions on the working drawings. So, the only drawings that were generated were the three simple sketches that did, in fact, provide information that was not on the working drawings.

The working drawings contained an elevation of the garage taken from the alley elevation, when for zoning purposes the relevant dimension is the elevation from the house. So, that was an important piece of information that wasn't included in the original set of drawings and we

concede that.

The garage dimensions are not indicated because we stand by the dimensions shown on the plat. The architect said they were correct. However, the setback was not correct. So, we provided that information.

The same with respect to the porch.

VICE CHAIRPERSON SOCKWELL: If a surveyor does work, he will show or should show any easement information that might be pertinent. He would show accurately the relationship between true side lot lines and rear lot lines and buildings and front lot lines as well. The architect just isn't normally able to do that. I mean, we can do it as a -- we can come close but if we don't know for sure, we might be using a reference point that is incorrect just based on the location of some site feature. And, that's why the civil survey is the only appropriate mythology for providing the kinds of information we need for side and front and rear lot lines.

CHAIRPERSON REID: Thank you very much, Mr. Sockwell. Mr. Holman, did you have any comments or questions?

COMMISSIONER HOLMAN: No. I think I would be prepared to proceed with the motion when you felt

you were ready.

CHAIRPERSON REID: Okay. You can go ahead, if you would like.

COMMISSIONER HOLMAN: All right. I guess in light of the discussion, even though it's been clarified by Ms. Prince in terms of the ANC issue, that still concerns me somewhat and I would like to see that resolved. So, I guess we propose that we consider a brief continuance so that the ANC can have the opportunity to consider the issues and give us their opinion.

CHAIRPERSON REID: Okay. Ms. Sockwell.

VICE CHAIRPERSON SOCKWELL: Just to add to Mr. Holman. The ANC has given great weight by the Board of Zoning Adjustment and to eliminate that opportunity I think would be something that we should not do with our charge.

CHAIRPERSON REID: Okay. Also, the issue of the letter from the Zoning Administrator as to the type of relief, that there is some question about that.

MS. PRUITT: Excuse me, Madam Chair.

CHAIRPERSON REID: Yes.

MS. PRUITT: Could we handle this one motion to continue first and do them separate motions,

because we found in the past when we jumbled them all up the transcripts get very confusing.

CHAIRPERSON REID: Do what?

MS. PRUITT: Well, right now, Mr. Holman, my understanding, has made a motion to continue this hearing.

CHAIRPERSON REID: Yes.

MS. PRUITT: Can we finish that off before you go to --

CHAIRPERSON REID: Well, what I was making was in relation to that motion.

MS. PRUITT: Was it additional information that may be required? Is that what you were going to --

CHAIRPERSON REID: Exactly.

MS. PRUITT: Okay. I would just suggest we do it separately, but --

CHAIRPERSON REID: The basis for the continuation, as posed by Mr. Holman, being one aspect of it, however, there were additional elements to that thought that spoke to the need for the continuation as well. Just one second please. All right. Yes, I thought that that -- are you saying, Ms. Pruitt, that that should not be brought up at this time?

MS. PRUITT: I think it's just -- in the

past, when you go back to look at our transcripts, when we jumble a lot of information or a lot of issues in one, it often gets confusing, even with reading the transcription, exactly what the Board if requesting. So, I thought if we just did it --

CHAIRPERSON REID: So, just take the motion and then --

MS. PRUITT: And, then go back and tell -- and say is the motion passes for a continuance, then indicate what you want.

CHAIRPERSON REID: Okay. All right. I second it. All in favor -- any further discussion.

MS. PRUITT: I'm sorry. I thought Mr. Sockwell seconded it. I just want to make sure I have it straight.

CHAIRPERSON REID: Did you?

VICE CHAIRPERSON SOCKWELL: No, actually, I --

CHAIRPERSON REID: He did not.

VICE CHAIRPERSON SOCKWELL: I hadn't, but I will.

CHAIRPERSON REID: All right. The motion was made by Mr. Holman, seconded by Mrs. Reid. And, if there is no further discussion I will ask for the vote.

MEMBER RENSHAW: Aye.

VICE CHAIRPERSON SOCKWELL: Aye.

MEMBER MOULDEN: Aye.

MEMBER HOLMAN: Aye.

CHAIRPERSON REID: Aye. Any opposed?

MS. PRUITT: Staff will record the vote as 5 to 0 to continue. We need to set a date now, I would suggest and then we can go into what --

CHAIRPERSON REID: All right. What's available?

MS. PRUITT: Unfortunately --

MR. BROWN: Madam Chair, this may double back into some of the issues. Surveyors are hard people to get out in the field. They're very busy. The survey is a critical issue for everybody.

CHAIRPERSON REID: How long does it take?

MR. BROWN: Receiving that, getting to the ANC and then coordinating it with their schedule, are things that we need to be aware of, because to have this matter go back to the ANC prior to the survey and the -- and what we hope is an agreeable as-built --

CHAIRPERSON REID: Well, what's a reasonable time frame, Mr. Brown, can you suggest?

MR. BROWN: I don't know.

MEMBER RENSHAW: Well, the ANC will be

meeting next month. It will be meeting about the 8th or so of June.

MR. BROWN: I think it's Monday the 5th.

MEMBER RENSHAW: Monday, the 5th.

MR. BROWN: But, I mean, unless Allison is a miracle worker, the ability to get a survey prepared in the kind of detail that Mr. Sockwell and I think everybody expects, between now and then is, I think, slim to none.

MS. PRUITT: Well, first I would like to state, you all have your meeting and building schedule before you. Please refer to that. Unless you want to do a hearing in August, there is no room until October, because you have also talked to me about the level of cases that we have on. We have very full agendas.

CHAIRPERSON REID: I don't, for myself, that is a recess month and I -- that's completely absorbed for me. I cannot.

MS. PRUITT: I'm just letting you know what the options are.

CHAIRPERSON REID: Okay.

MS. PRUITT: Particularly if you look at the hearing schedule as what has been determined.

CHAIRPERSON REID: That's for me, unless

other Board members want to meet in August.

VICE CHAIRPERSON SOCKWELL: I'm not looking forward to it.

MEMBER RENSHAW: No.

CHAIRPERSON REID: Okay. So, we can't -- they are consistent not to meet in August, so the next time is when?

MS. PRUITT: October.

CHAIRPERSON REID: October what?

MS. PRUITT: 3rd.

CHAIRPERSON REID: Ms. Prince.

MS. PRINCE: That obviously causes extreme prejudice to my client. The case has been postponed four times. I would like to remind the Board that at the last postponement the whole idea was to provide the ANC with an opportunity to take up the merits of the application at its meeting in May. They elected not to take up the application, based on the merits, because they had fallen into the same pattern that Mr. Brown is in to avoid the merits and postpone and postpone and postpone.

VICE CHAIRPERSON SOCKWELL: Ms. Prince, I think one of the reasons that postponement is considered here is because we don't have enough information. If I don't have enough information, I

don't want to hear the case.

MS. PRINCE: I'm simply asking you to consider if in anyway possible a date prior to October. Perhaps another hearing will be rescheduled.

CHAIRPERSON REID: What would you suggest?

MS. PRINCE: We would make ourself available any date.

CHAIRPERSON REID: No, no. I mean what month?

MS. PRINCE: Okay. We will get a survey done in a week if we need to. I'll take that challenge.

CHAIRPERSON REID: So, again, as I remember it, there is another case, an unrelated case, that you had some -- there was some concern about your vacation time in July, was there not?

MS. PRINCE: Right. I'll have to have someone else handle it.

MEMBER RENSHAW: But, Madam Chair, we have to remember --

MS. PRINCE: Whatever date is available.

CHAIRPERSON REID: Just a moment, please. One at a time.

MEMBER RENSHAW: Madam Chair.

CHAIRPERSON REID: Yes.

MEMBER RENSHAW: We have to remember that this has got to go back before the ANC, so its schedule has to be considered.

CHAIRPERSON REID: Certain. Okay. Mr. Brown.

MR. BROWN: Well, and also, I suspect it may make sense to take this back to Mr. Johnson and Mr. Nunley as well, because they've been equally handicapped with the lack of information. I certainly haven't had a chance to meet with them jointly. If I can help matters, and I've got three myself, my client, Ms. Crary, and George Watson, one of my expert witnesses, and based on the dates Ms. Pruitt gave me yesterday, I've gone through and the earliest I can get all three of those people on -- in one place here before the Board, between now and the October time frame you're saying, is I believe the earliest would be September 19th or the 26th. And, that would be based --

CHAIRPERSON REID: Why would it take you that long?

MR. BROWN: Because --

CHAIRPERSON REID: This is May.

MR. BROWN: Well, because -- and again, I've gone through all the dates and between my

activities, Mr. Watson's activities and Ms. Crary's activities and travel, the period from the middle of July through the middle of September she's out of the country.

CHAIRPERSON REID: From what date?

MR. BROWN: From the middle of July to the middle of September. Her estimated return date from abroad is the 15th of --

CHAIRPERSON REID: Now, heretofore she has not -- has she --

MS. PRINCE: She has not attended most or all of the hearings.

MR. BROWN: She was here on the 3rd.

CHAIRPERSON REID: She was here?

MR. BROWN: Yes, she was.

CHAIRPERSON REID: So, you're saying that she desires to be at attendance at the hearing, for the next time.

MR. BROWN: Absolutely. Absolutely.

CHAIRPERSON REID: Okay.

MR. BROWN: Absolute.

MS. PRINCE: Ms. Crary did not participate, however, in the hearings involving the appeal.

CHAIRPERSON REID: I did not think that --

he said that she was here.

MS. PRINCE: On the appeal.

CHAIRPERSON REID: He didn't say she participated.

MR. BROWN: The appeal is old news. I mean, Ms. Crary wanted to, but, again, that matter --

CHAIRPERSON REID: Okay. All right. Let's go now to looking at the possibility of June, late June or early July.

MS. PRINCE: We'll take any date.

MS. PRUITT: Excuse me, Madam Chair. Please look -- refer to this. You have six and seven cases on each day. It's very full. You have Georgetown campus plan in June.

MR. BROWN: Madam Chair, as I've said before, I've gone in a three person matrix and I can't get my people together until that September time frame at the earliest.

MS. PRUITT: And, the only date I could absolutely see, because we just got a letter indicating that Dunbarton Oaks would like a continuance.

CHAIRPERSON REID: When is Dunbarton Oaks?

MS. PRUITT: On June 20th. I haven't gotten a letter. I got a verbal confirmation, but I

need to get a letter to really confirm that.

MS. PRINCE: This is Dunbarton Oaks?

MS. PRUITT: Yes.

MS. PRINCE: That will be postponed. That's the only place I can see, because given everything else the schedule, unfortunately, is just very tight.

MR. BROWN: And, that's not an available date for either myself or Mrs. Crary. You know, I've got the dates she's going to be in Georgia, at that time period.

CHAIRPERSON REID: Wait, wait, wait. Mr. Brown.

VICE CHAIRPERSON SOCKWELL: Mr. Brown, your client is subject to the convenience of the others involved and this Board. Just because your client wants to be out of the country, needs to be in Georgia, does not mean this case cannot go forward. If your client cannot be available on a reasonable date, then we'll go without her.

MR. BROWN: Well, I think --

VICE CHAIRPERSON SOCKWELL: And, you won't have a choice.

MR. BROWN: I understand your point. I take exception to it.

VICE CHAIRPERSON SOCKWELL: That's acceptable.

MR. BROWN: Also, if you look at the 20th date, I think that does not -- that sets us up for another problem because the level of information being requested, that's has got to go -- be provided to and go to the ANC and then the suggestion that I think is well-taken --

CHAIRPERSON REID: Mr. Brown. Mr. Brown, okay, let's operate under the auspices of reasonableness.

MR. BROWN: I'm trying to.

CHAIRPERSON REID: Now, for one thing your client has -- you say that your client cannot appear late July into September. So, that's a two month period of time, which we are conceding to. Okay. However, in deference to the Board as well as Mr. Sisson and his attorney, Ms. Prince, then we have to try to come to some type of resolution as to a date. Now, the June 20th date appears to be becoming available, because one of the other cases is being continued. Now, as I understand it, what has to happen is that the ANC is meeting -- what date was that, the 8th of June?

MR. BROWN: I think they're meeting the

5th, I believe.

CHAIRPERSON REID: The 5th of June.

MEMBER RENSHAW: Isn't it the second Monday. They meet on the second Monday of the month.

MR. BROWN: Is it the second. I thought it was the first.

MEMBER RENSHAW: Well, if they met on the 8th --

CHAIRPERSON REID: Nonetheless, that gives the ANC time for a meeting. One, what they've asked for is an appearance by Ms. Prince and Mr. Sisson, as well as the drawings. Now, the question becomes, can the drawing be obtained between now and then?

MS. PRINCE: Yes.

VICE CHAIRPERSON SOCKWELL: Madam Chair, may I --

CHAIRPERSON REID: Wait. Excuse me one second.

VICE CHAIRPERSON SOCKWELL: It's very important.

CHAIRPERSON REID: Before the ANC, to be presented to the ANC, can that be accomplished?

MS. PRINCE: We will take all action necessary to procure an as-built survey prior to that time.

CHAIRPERSON REID: Okay. Because I know, being in the real estate business myself, that sometimes if you need things in a certain amount of time, then you just have to make the necessary arrangements and sometimes you may have to pay additional fees in order to get it done. But, if this is what this whole thing is going to be driven by, then I would be prepared to recommend, based upon Mr. Holman's motion, that it be on June the 20th, all other things considered.

Yes, Mr. Sockwell.

VICE CHAIRPERSON SOCKWELL: Madam Chair, because we wanted to leave the month of August open for sort of a Board recess.

CHAIRPERSON REID: It's a recess month.

VICE CHAIRPERSON SOCKWELL: It seems to be that because the first two available dates in August are the first or the second, we could do the meeting August 1st or August 2 and not incumber the month of August.

CHAIRPERSON REID: Mr. Brown, he says that Ms. Crary wants to be there.

VICE CHAIRPERSON SOCKWELL: Okay.

CHAIRPERSON REID: And, she's not going to be in the country.

VICE CHAIRPERSON SOCKWELL: Right. So, she's leaving when?

CHAIRPERSON REID: The last two weeks of July until September.

VICE CHAIRPERSON SOCKWELL: Okay. Never mind then.

MR. BROWN: We face that same problem. I've got to tell you and I'm not -- and I understand, but I'm not very happy about June 20th, because she's purchased tickets to go to Georgia.

CHAIRPERSON REID: Oh, okay. Okay. Well, not withstanding that, I would like to be here and I won't be able to be here for that date in August. So, the June 20th date I would recommend to be the date that we move the continuance to.

MR. BROWN: Yes. We can do the time. All right. Fine.

CHAIRPERSON REID: All right.

MR. BROWN: Madam Chair, I understand that, but that gives me great concern because of my client.

CHAIRPERSON REID: We understand that.

MR. BROWN: She's either got to forfeit her --

CHAIRPERSON REID: We've already given --

we've already given your client all of August, the last part of July and most of September. And, that's the best we can do, Mr. Brown. I'm sorry.

VICE CHAIRPERSON SOCKWELL: Mr. Brown, your client paid for the BZA process, I assume. Georgia is a very inexpensive round trip, really is very expensive round trip. If it is more important for her to be in Georgia, with the expenses to date, than to be here, then she will be in Georgia. I can certainly understand her being out of the country and not wanting to come back, but I don't think that George should be our problem.

CHAIRPERSON REID: Mr. Brown, we -- notwithstanding that and also just -- I think that we don't have to get into who is going to fool with what, the fact of the matter is that that is the best date that we can come up and anything that your client can do to be here, or as has happened previously, you represent her, as you always do, as you usually do and very adequately, I might add.

MR. BROWN: Thank you, Madam Chair.

CHAIRPERSON REID: All right. Now --

MS. PRUITT: Madam Chair, I was just going to say it's June 20th in the afternoon. It will be the last case on the agenda. There are two others

before you in the after. So, it will be the third case.

CHAIRPERSON REID: Okay. Thank you very much, Ms. Pruitt. Okay. Now in regard to the continuance, what I was saying earlier, there was some question as to the relief that was put forth to us by the Zoning Administrator and we had some discussion about that and the consensus, I think at that time, was that we would ask the Zoning Administrator -- thee was some request for an appeal of that decision or some request -- and the appeal could not be an appeal without us having the issue -- the appeal could not take place until after the fact. And, this is a request for before we make a decision or hear the case. And, as such we then have to determine whether or not we could ask the Zoning Administrator to revisit the relief that he's requesting and give us a more definitive final letter of relief. Was that correct? Is that what we decided?

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

MS. SANSONE: Madam Chair, I don't think I'm going to be very helpful. I don't recall if -- I think we can clearly go back to the Zoning Administrator and get an additional memorandum or

additional report, even request him to be present if needed, to present that report.

CHAIRPERSON REID: And, to be questioned if there is a --

MS. SANSONE: Yes. Yes. Or one of the parties could also ask the Zoning Administrator to be present as a witness. That would also work.

CHAIRPERSON REID: Okay.

MS. PRUITT: Madam Chair, staff can write a letter to the Zoning Administrator asking him to explain how he got the zoning relief that is coming in reference to the previous appeal.

CHAIRPERSON REID: Yes. Because there was -- now --

MS. PRUITT: Because it may not mean -- it may change, it may not, but at least you would understand the logic as to how they got there.

CHAIRPERSON REID: Two things --

MR. BROWN: Shouldn't he have access, he being the Zoning Administrator, have access to this as-built survey?

CHAIRPERSON REID: Yes, he would.

MR. BROWN: I'm just --

CHAIRPERSON REID: Remember, earlier we said when we were talking about the as-built survey

being submitted, that all the parties and the Board and the Zoning Administrator, if I didn't, let me state it now. Everyone who needs to have it, have it so that when we do have a hearing it will be with all the appropriate information that we need to have in order to make a decision. Also --

MEMBER RENSHAW: Madam Chair.

CHAIRPERSON REID: Just one second. Let me finish this thought.

MR. BROWN: Can I -- can I interject something here?

CHAIRPERSON REID: Just one second. I have three people trying to talk to me at the same time. In fact, just let me just finish this one thought. In regard to the relief that's being requested, there has been some question as to whether or not additional relief should be requested and whether or not the relief that has been submitted to us thus far is reflective of the situation that we're going to be dealing with at the hearing.

Now, if in fact the Zoning Administrator sends up back basically the same thing and it is not agreed upon, then at some point after the hearing then there can be an appeal filed, correct?

MS. PRUITT: Once a decision has been

rendered.

CHAIRPERSON REID: That's what I mean, after the hearing and the decision has bene rendered, then -- that's the only point that there can be an appeal. Okay. All right. That's what I wanted to be clear on.

MR. BROWN: Madam Chair, can I just --

CHAIRPERSON REID: Just one second. Ms. Sockwell, was it for you --

VICE CHAIRPERSON SOCKWELL: No.

CHAIRPERSON REID: Mr. Holman.

MEMBER HOLMAN: No. It was --

CHAIRPERSON REID: Ms. Renshaw.

MEMBER RENSHAW: Yes. Yes, I did.

CHAIRPERSON REID: Okay.

MEMBER RENSHAW: I wanted to suggest that the Zoning Administrator be invited to attend our meeting.

CHAIRPERSON REID: Yes. Yes. I think so.

MEMBER RENSHAW: In order to answer questions that the Board may have.

CHAIRPERSON REID: Yes. We said that. Yes.

MS. PRUITT: In fact, he was invited today, and he said he was going to try.

CHAIRPERSON REID: Okay.

MS. PRUITT: We'll include that in the letter, the time and date and everything.

CHAIRPERSON REID: We've had that problem before and quite frankly since that relief that he's requesting -- is recommending is so important, I don't think that -- I think that we have to have him to be able to question.

MS. PRUITT: I agree, Madam Chair. We will send a letter urging him. I mean, we don't have subpoena power, so we will do everything we can to urge them and encourage them to come.

CHAIRPERSON REID: Okay. Does he have to be here or can it be someone who is familiar with the case, who is handling the case there at DZRA?

MS. PRUITT: Madam Chair, it could be the individual that's handling the case and is familiar.

CHAIRPERSON REID: Either he or a representative.

MS. PRUITT: Okay.

CHAIRPERSON REID: All right. Now, Mr. Brown, I'm sorry.

VICE CHAIRPERSON SOCKWELL: Madam Chair, I'm not too sure when the ANC meets. It's either the 5th or the 12th. If it's the 12th and I just looked

at my schedule, I wasn't thinking of this, I'm going to be away that day. I'm going to be -- and one, I think you ought --

CHAIRPERSON REID: On what day are you going to be away?

MR. BROWN: The day -- the next ANC meeting on the --

CHAIRPERSON REID: Did they ask that you attend, too? Well --

PARTICIPANT: It's best that he does.

MR. BROWN: I'm Mrs. Crary's counsel and they're expecting to hear a presentation from us. Now, we may be wrong on the date. I can call and, with the Board's permission I can call right this second and find out when that date is.

CHAIRPERSON REID: Well, why don't we ask staff to call? Can we find out when the ANC meetings?

MS. PRUITT: We can call. I'm not sure if we'll be able to find out. Offices aren't manned 24 hours -- I mean, they don't have --

CHAIRPERSON REID: Well, we'll do the best we can.

MS. PRUITT: We can do that.

MR. BROWN: I have a number that I think --

MEMBER RENSHAW: Yes. Also, you can check with Elections and Ethics. They keep an updated list of ANC meeting dates and places, and that's here in this building on this floor.

CHAIRPERSON REID: Okay. Now, if in fact that's a problem, is it possible for the ANC to have a -- given the circumstances, do you think they would be amenable to having a special meeting or something in order to accommodate.

MEMBER RENSHAW: The ANC can always be requested to have a special meeting, but it's up to the ANC commissioners to decide whether it's going to be a yes or no. But, we could make the request.

CHAIRPERSON REID: Mr. Brown, is it possible for you to have someone to represent you there at the meeting that can handle it?

MR. BROWN: I have other people. I don't work by myself, but I've been involved in this case for now two years and I don't feel comfortable sending anybody else.

CHAIRPERSON REID: I understand that, but if in fact, what we can do to accommodate you is to ask, if it is on that date, that the ANC consider having a special meeting and if they cannot do that, then the only other thing that I can think of is for

you to have someone represent you at the meeting.

MR. BROWN: In fairness, I know we're trying to do the best we can, but now the Board is asking, in circumstances beyond all our control, asking my client to take two major hits. And, I just don't think it's fair.

CHAIRPERSON REID: No, not -- that's not true. That's not true. In the first place we don't know what the date is. And, secondly, we're asking the ANC if there is a date to consider having a special meeting. That's what we're doing. We don't know yet, so before you can complain about, let's see what we're dealing with. We don't know.

MR. BROWN: Okay. All right. I still think in -- and I've got to say this and in all respect to Mr. Sockwell, my client is the 75 year old woman who has lived in her house for 30 plus years. And, her only -- that's her only offense in this matter. And, I think she's suffered quite remarkably in this matter. So, I think the balance of sympathy should more go to her than to anybody else. And, so I just put that out. I will find out immediately on the ANC meeting. That does raise a problem for me. And, again, we're trying to force something and I think we're going to have problems at various levels, so I'm

concerned.

CHAIRPERSON REID: Okay, Mr. Brown. We appreciate that. Thank you very much for your comment.

So, that's what we're going to try to do, is to have the meeting for June the 20th and we're going to try to work with the ANC. If that's a problem as far as the June 12th meeting is -- their June 12th meeting is concerned. The continuation also would be predicated upon talking Mr. Nunley or Mr. Johnson.

MS. PRUITT: As far as Mr. Johnson, I don't know who actually did the calculations.

CHAIRPERSON REID: Okay. To try to get some clarification. Just a second. Okay. There was a recording that -- staff just talked to the ANC and determined that there was a recording that came on that said that the next ANC meeting was Monday, June the 12th. So, with that being the case then, Ms. Pruitt, we can then talk to them about the situation and ask if they can have a special meeting.

And, Mr. Brown, is that the only day you would be out of town?

MR. BROWN: No. I'm leaving I think the 10th and I'm coming back the 14th.

CHAIRPERSON REID: Okay. So --

MEMBER RENSHAW: Can you fly back for the 12th?

MR. BROWN: I'm going to be in Florida with my soon to be seven year old. No, I don't think that's -- my marriage and my relationship with my daughter -- and, that's --

MS. PRINCE: I have an idea, a creative idea.

CHAIRPERSON REID: All right.

MS. PRINCE: I am so confident of the ANC's decision on this matter that I will agree that we will postpone the June 20th meeting if Pat's client comes out the wrong way at the ANC meeting. If his failure to attend to the ANC meeting --

CHAIRPERSON REID: Now, repeat that again. Now, what were you saying?

MS. PRINCE: We will postpone our June 20th hearing.

CHAIRPERSON REID: Okay.

MS. PRINCE: If the ANC supports the application.

CHAIRPERSON REID: Okay.

MS. PRINCE: I believe so strongly that Mr. Brown's presence at that meeting will not change

the outcome. That I am very willing --

CHAIRPERSON REID: Okay. Is that acceptable?

MR. BROWN: No, it's not. I mean, that's -- we're playing -- we're not playing a game and I think it's unfair to my client and so --

MS. PRINCE: Do you want the ANC to have a chance to consider it? I'm available. I'll make myself available. I'm confident that Pat has done a very good job with the ANC and the ANC will agree with his client's position. And, I'll take the risk that they're going to change their mind and if they do, we will postpone.

CHAIRPERSON REID: Okay. Well --

MR. BROWN: I think we've gone too --

CHAIRPERSON REID: Okay. All right. Mr. Brown, I think what we need to do is to bring some closure to this whole issue and keep the June 20th meeting date and try to work out some way your appearance at that June 12th meeting, obviously you can't, so that particular meeting, perhaps a staff member can, if they're not able to have a special meeting. And, that's all we can do. And, with that let's just kind of move on with this, because we can beat this to death.

Okay. Now, the other thing I was going to say is we were moving to the ANC -- I'm sorry, the Zoning Administrator, be it Mr. Johnson or Mr. Nunley or someone who is familiar with this case to appear and to discuss with us the type of relief that's necessary and to question them and I want to also reiterate that -- I'm glad that Ms. Prince brought this up, that at the appeal Mr. Gilreath had instructed his client to seek a variance. And, that's very important to note. And, I do remember him saying that, you know, we -- well, then if we deny this particular appeal, then the other recourse available would be to seek the relief through the regular channels.

Now, the other thing that we had to deal with was the dismissal. The vote was for a continuation, but also we had a motion to dismiss. And, that particular motion we had some discussion about -- okay. I'm sorry. Excuse me. Before we go to dismissal and, not only that, but also I want you to keep --

VICE CHAIRPERSON SOCKWELL: I wanted to request that we get copies of the plans, any plans that were submitted with any of the five building permits, which we do have copies of, because that will

establish the base line under which the building permits were issued, which I don't have sufficient data on.

CHAIRPERSON REID: Now --

MS. PRUITT: Mr. Sockwell, I guess I'm a little confused because the building permits, the ones that were issued, are --

CHAIRPERSON REID: We denied, but we did not --

MS. PRUITT: Well, but, they're not part of this application.

CHAIRPERSON REID: Right.

VICE CHAIRPERSON SOCKWELL: Well, they're in -- they're in the case folder.

CHAIRPERSON REID: But, that would be confusing --

MS. PRUITT: That was just background information, but it really --

VICE CHAIRPERSON SOCKWELL: Well, the plans would then be background information.

CHAIRPERSON REID: This is like starting anew.

MS. PRUITT: Right. Exactly. This is like starting -- what type -- as Ms. Prince said, what type of relief would I need to get if I were to build

this house today, this way.

VICE CHAIRPERSON SOCKWELL: True.

MS. PRUITT: And, that's what you really need to be focusing on.

VICE CHAIRPERSON SOCKWELL: Well, I will be.

MS. PRUITT: Okay. I just wanted to be clear that we're not -- we really shouldn't be bringing in a lot of old stuff from the appeal.

CHAIRPERSON REID: Well, no, I agree. I don't think that we need those, because I think that would further confuse -- well, it would confuse me, anyway, as to --

VICE CHAIRPERSON SOCKWELL: Well, I apologize. I don't think that I would be confused by it anymore than I would be confused by the plat information or anything else.

CHAIRPERSON REID: But, what you want to be assessing at this point, Mr. Sockwell, is the merits of the application for the relief that is being asked for and as such I remember those other plans, were those plans to be built, some of them?

MS. PRUITT: Well, it's really just not relevant to this particular case. That's the bottom line.

VICE CHAIRPERSON SOCKWELL: Well, I can understand your not understanding why it would be relevant to me, but --

MS. PRUITT: Well, Mr. Sockwell, I'm an architect, too, so I think I do understand that. But, you need to base it on what's before the Board today.

CHAIRPERSON REID: Aren't they -- isn't it in the file? Isn't it in the file?

MS. PRUITT: Yes, there is, the appeals file, that you're more than welcome to look at.

VICE CHAIRPERSON SOCKWELL: So, we won't get into the fact -- we won't start getting into whose licensed and who isn't and all that other kinds of things?

CHAIRPERSON REID: And, moving right along, the last thing we want to deal with is the dismissal.

Mr. Sockwell, can you speak to that, according to our discussion?

VICE CHAIRPERSON SOCKWELL: Yes. With regard to the dismissal, I believe that we should not rule on the motion to dismiss at this time, that we should wait until we have all the information in hand for the case that will be presented on June 20th and then I would feel more confident in correctly ruling

on the motion at that time.

CHAIRPERSON REID: The preliminary matter.

VICE CHAIRPERSON SOCKWELL: As a preliminary matter.

MS. PRINCE: I'm not sure where we left off though on the old drawings, whether I am to submit those or not.

VICE CHAIRPERSON SOCKWELL: All right.

CHAIRPERSON REID: He will review the file himself.

VICE CHAIRPERSON SOCKWELL: Yes. If they're in the file then --

CHAIRPERSON REID: Yes.

VICE CHAIRPERSON SOCKWELL: They're already in the file, okay.

CHAIRPERSON REID: So, is there a motion?

VICE CHAIRPERSON SOCKWELL: I move that we table the motion for -- postpone acting on the motion for a dismissal until June 20th, at which time we will do it as a preliminary matter.

CHAIRPERSON REID: Okay.

MEMBER RENSHAW: Second.

CHAIRPERSON REID: Okay. All in favor.

PARTICIPANTS: Aye, by all.

CHAIRPERSON REID: Opposed.

MS. PRUITT: Staff will record the vote as 5 to 0 to defer the decision on the dismissal until June 20th, a motion made by Mr. Sockwell and seconded by Ms. Renshaw.

CHAIRPERSON REID: Okay. Are there any other questions, comments, discussions? If not, then that will conclude this morning's hearing. Thank you very much.

MR. BROWN: Thank you very much.

MS. PRINCE: Thank you.

(Whereupon, the hearing was concluded at 11:48 a.m.)