

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

BOARD OF ZONING ADJUSTMENT

SPECIAL PUBLIC MEETIN

TUESDAY
MAY 15, 2001

The hearing came to order at 9:30 a.m. in Suite 220, 441 4th Street, N.W., Washington, D.C. 2001, pursuant to notice, Sheila Cross Reid, Chair, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

Sheila Cross Reid	Chairperson
Susan Morgan Hinton	Board Member
Ann Mohnkern Renshaw	Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Vice Chairperson
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COMMISSION STAFF PRESENT:

Sheri Pruitt	Secretary
Paul Hart	Zoning Specialist
John Nyarku	Zoning Specialist
Beverly Bailey	Office of Zoning
Mary Nagelhout	Corporation Counsel

OTHER AGENCY STAFF PRESENT:

John Fondersmith	Office of Planning
Jennifer Steingasser	Office of Planning

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

10:30 A.M.

CHAIRPERSON REID: This is May 15th Public Meeting of the Board of Zoning Adjustment.

Please call the case that we're going to be discussing this morning.

SECRETARY PRUITT: Good morning, Madam Chair. Before you today you have the decision of application 16702, application of Millennium Georgetown Partnership, LLC, pursuant to 11 DCMR 3103.2 for a variance from the height requirements of Subsection 930.1, and from the FAR limitation of Subsection 931.1 to construct a mixed-use building/structures of residential, hotel and commercial uses in a W-1 District at 3100 South Street, N.W. (Square 1189 in Lot 88).

The hearing was on April 17th and a decision is before you today.

CHAIRPERSON REID: Okay. First of all, I'd like to apologize for the delay this morning. We did have Executive Session in which we discussed this very complicated case because it was just a tremendous amount of information and a lot of various issues that had to be decided on, and not to take it lightly given the fact that at some points it was rather confusing to us as to exactly what the relief was that we were supposed to be giving and, more importantly, the basis for that relief. And as such, what we're going to do is look

1 at specifically the two areas of relief that are being
2 requested. One is in regard to the FAR and, two in regard to
3 the height as it pertains to the Georgetown incinerator. And
4 in each instance we're going to apply the regulations to see
5 specifically how this particular case meets the requirements of
6 the regulations.

7 As to the FAR, Board members let's open the floor
8 for discussion on whether or not we feel that by reason of
9 exceptional narrowness, shallowness or shape or by reason of
10 exceptional topographical conditions or other extraordinary or
11 exceptional situations or conditions of this specific piece of
12 property that the strict application of the regulations adopted
13 by D.C. Code 5414 to 5432 will result in a peculiar and
14 exceptional practical difficulty. So let's address that
15 first.

16 BOARD MEMBER HINTON: Madam Chair, in my review
17 the materials I believe that the most significant condition of
18 the site is the preservation of the historic resources that are
19 on the site and the required provision of open space around
20 them to create an appropriate context. And because of that
21 space that's being taken up on the site, the amount of building
22 space is reduced.

23 CHAIRPERSON REID: Yes.

24 BOARD MEMBER HINTON: And there are other
25 conditions on this site that are contributing to the difficulty

1 in constructing this site, but I think the historic
2 preservation is the most significant that is actually
3 contributing to the need for additional FAR and additional
4 height; that we can consider the topography and the high water
5 table, and the location of the Whitehurst Freeway adjacent to
6 the building. I think those are all contributing, but I think
7 that the most significant is the historic preservation
8 requirements. And those are set forth in the MLA that went
9 along with the property and has been signed.

10 CHAIRPERSON REID: Okay. And then that would
11 then constitute the practical difficulty?

12 BOARD MEMBER HINTON: The practical difficulty
13 then become developing the site to its potential within the
14 zoning regulations. Because if they did not have the historic
15 features on the property, they could build on that area and
16 they could accomplish the space that they need on their site
17 without any variances from the zoning regulations.

18 CHAIRPERSON REID: Okay.

19 BOARD MEMBER HINTON: We have to not only
20 consider the ground area that's being taken up by the
21 incinerator and the other buildings, but also the required
22 views into the site from 31st Street. They have pulled back
23 their new proposed building to allow views into this
24 incinerator stack. And because of that they have not built in
25 those areas, and that is causing the practical difficulty in

1 complying with the regulations as far as height.

2 CHAIRPERSON REID: Okay. So in essence what
3 you're saying is that you feel -- and I would agree with you. I
4 concur that the loss of that FAR basically constitutes the
5 practical difficulty because of the historic preservation and
6 other constraints on the property.

7 What about the aspect of the unusual and unique,
8 Ms. Renshaw?

9 BOARD MEMBER RENSHAW: Well, Madam Chair, I
10 would at this point like to remove the discussion of height --

11 CHAIRPERSON REID: We're not talking about
12 height.

13 BOARD MEMBER RENSHAW: I know. Well, Ms. Hinton
14 mentioned height.

15 CHAIRPERSON REID: She did allude to height, I
16 remember that.

17 BOARD MEMBER RENSHAW: She alluded to height, but
18 I would like to remove it from the discussion that we're having
19 right at this moment.

20 CHAIRPERSON REID: We are going to have two
21 different discussions. One on FAR and the other on height.
22 This first one is exclusively pertaining to the FAR.

23 BOARD MEMBER RENSHAW: On the FAR?

24 Well, I think that the applicant has proven the
25 practical difficulty insofar as the topography of the site. Ms.

1 Hinton mentioned the historic preservation. We have read in
2 the testimony about the flood plain and the soil. And that to
3 me suggests that there should be some relief given to the FAR
4 to construct an additional piece, an additional floor within
5 the building itself, within the building structure.

6 CHAIRPERSON REID: Speak to extraordinary and
7 unique.

8 BOARD MEMBER RENSHAW: Well, the extraordinary --

9 CHAIRPERSON REID: And unusual.

10 BOARD MEMBER RENSHAW: -- and unusual is the fact
11 of where the property is located. And, again, the historic
12 preservation of the building that is certainly the priority in
13 this development.

14 CHAIRPERSON REID: I would agree with that.

15 Mr. Hood, would you like to speak?

16 COMMISSIONER HOOD: I don't think I need to add
17 anything else. I think my colleagues have sufficed for the
18 record as far as the historic nature of the project, the
19 topography. I don't think I can elaborate anymore. And I
20 think I would just be inclined to move approval for that as it
21 is and let the record stand what we have in submittals.

22 CHAIRPERSON REID: Okay. I think that by virtue
23 of the fact that the property was at one time the Old
24 Georgetown Incinerator, that obviously it is, and no one can
25 dispute the fact, that it is a unique and unusual property.

1 And given the constraints of the historic preservation and the
2 fact that the location of the property as well as the
3 topographical aspects of the property that it is unique and
4 unusual.

5 And then the next part of the test is whether or
6 not these conditions would prevent the applicant from being
7 able to comply with the existing zoning regulations. And I
8 think that we've spoken to that, unless there's anything else
9 you wanted to add.

10 And then whether or not there would be a
11 detriment to the neighboring property as a result of the relief
12 being given to the applicant in this regard. And this is to
13 the FAR, any adverse impact that we're aware of.

14 And I don't think that even with the testimony
15 that we have been given as well as the submissions that there
16 was a problem as far as adverse impact in regard to parking or
17 traffic, or noise or the like, light or air, or even the view -
18 -

19 BOARD MEMBER HINTON: Right.

20 CHAIRPERSON REID: -- as far as the FAR was
21 concerned.

22 BOARD MEMBER HINTON: I want to be clear, because
23 my understanding of the FAR that we're speaking about now is
24 not the total FAR that was requested, which is 0.4 increase.

25 CHAIRPERSON REID: Yes.

1 BOARD MEMBER HINTON: What we're talking about is
2 the 0.2 increase in FAR that would be fully contained within
3 the existing mass of the matter-of-right building.

4 CHAIRPERSON REID: Right.

5 BOARD MEMBER HINTON: And so I just wanted to be
6 clear.

7 CHAIRPERSON REID: Yes.

8 BOARD MEMBER RENSHAW: Absolutely.

9 CHAIRPERSON REID: And thank you.

10 BOARD MEMBER HINTON: Okay. And that FAR that is
11 completely contained within the mass of the matter-of-right
12 building I believe will not cause a substantial detriment to
13 the public good and would not impact or impair the intent of
14 the zone plan.

15 CHAIRPERSON REID: Okay. Is there a motion?

16 BOARD MEMBER HINTON: From the outside of the
17 building it would not be visible at all.

18 CHAIRPERSON REID: Exactly.

19 Is there a motion?

20 BOARD MEMBER RENSHAW: Mr. Hood, I believe, made
21 the motion, didn't you?

22 COMMISSIONER HOOD: I have, but I don't think it
23 was accepted because I didn't hear a second.

24 BOARD MEMBER RENSHAW: I'll second it.

25 COMMISSIONER HOOD: Okay.

1 BOARD MEMBER HINTON: Would you repeat it, Mr.
2 Hood.

3 COMMISSIONER HOOD: I made a motion that we
4 approve --

5 CHAIRPERSON REID: For the FAR, the .02 FAR --

6 COMMISSIONER HOOD: Hold on one second. I have
7 it somewhere.

8 CHAIRPERSON REID: -- in regards to the area of
9 the site itself.

10 COMMISSIONER HOOD: I had something in front of
11 me at that time when I did that, but I moved on.

12 CHAIRPERSON REID: Okay.

13 COMMISSIONER HOOD: I made a motion -- bear with
14 me one second. I made a motion that we approve the
15 extraordinary and exceptional conditions effecting the site
16 dealing with the historic building, the topography and I also
17 stated that we would let the record stand for itself that was
18 submitted dealing with those particular -- would be
19 extraordinary and exceptional conditions effecting the site.
20 And let the record that we have spoke about prior stand for
21 itself. That was my motion.

22 CHAIRPERSON REID: Okay.

23 BOARD MEMBER RENSHAW: And if we could add to
24 clarify Mrs. Hinton's point about the FAR, the .2 that's fully
25 contained within the mass of the matter-of-right building. Is

1 that correct?

2 BOARD MEMBER HINTON: Correct.

3 COMMISSIONER HOOD: Okay.

4 CHAIRPERSON REID: And also we did have several
5 letters from Office of Planning, from the Department Housing
6 and Community Development and from other persons in support of
7 this application.

8 MR. FONDERSMITH: That's right, Madam Chair and
9 members of the Board. I'll tell you, you're approving the full
10 FAR and just recognizing that part of it will not be visible.

11 CHAIRPERSON REID: No. No.

12 COMMISSIONER HOOD: Madam Chair, let me just say
13 that I think that with all due respect to the Office of
14 Planning, we want to make sure that we run that fine line and
15 understand that we're not affording anyone else the opportunity
16 to comment. We are making our decision, Mr. Fondersmith, and I
17 think that we don't want to tread on thin water.

18 I think we're moving -- the way I understand,
19 Madam Chair, we are moving and we're going to deal with the two
20 issues of what you stated it first. And no disrespect to the
21 Office of Planning, but I want to make sure we're fair in our
22 deliberations. If we hear from OP, then we need to hear from
23 the applicant and from the community. So I want to make sure
24 we stay focused, unless they're going to clarify something that
25 we're doing.

1 Mr. Fondersmith, were you clarifying something
2 for us?

3 MR. FONDERSMITH: I was trying to clarify,
4 although obviously I don't know just where you're going on
5 this.

6 COMMISSIONER HOOD: Well, let me explain where
7 I'm going, Mr. Fondersmith. I know this has happened in the
8 past. If there's a problem with a decision that this Board
9 makes and someone wants to take it to a higher authority, then
10 the first problem that we've already created is that we've
11 allowed one of the parties to help deliberate. And that's just
12 where I am. I was trying to keep it clean.

13 BOARD MEMBER HINTON: Well, I want to make it
14 clear, because I'm not sure it's clear. What we're talking
15 about and looking at with this first motion is not all of the
16 FAR that the applicant asked for. It is part of the FAR.

17 CHAIRPERSON REID: Yes.

18 BOARD MEMBER HINTON: It is the 0.2 part of the
19 FAR that is contained within the matter-of-right building. The
20 other 0.2 FAR we will speak to after we get past this motion.

21 CHAIRPERSON REID: Yes. We've said that now
22 three times. So, I hope that everyone is clear on it.

23 BOARD MEMBER RENSHAW: It is just for the maker
24 of the motion to accept the amendment where I clarified that.
25 So, if Mr. hood would do that, then we can move to the vote.

1 COMMISSIONER HOOD: Ms. Renshaw, anything to make
2 it easy. Yes, I'll accept that amendment.

3 BOARD MEMBER RENSHAW: Thank you.

4 CHAIRPERSON REID: Okay. Then all in favor?

5 ALL: Aye.

6 CHAIRPERSON REID: Opposed? Okay. All right.

7 SECRETARY PRUITT: Excuse me, Madam Chair,
8 before you go on, who seconded it? Ms. Renshaw

9 BOARD MEMBER RENSHAW: Yes.

10 COMMISSIONER HOOD: They just want to know who
11 seconded it.

12 BOARD MEMBER RENSHAW: Oh, I did.

13 BOARD MEMBER HINTON: Will staff record that
14 vote, for the record.

15 CHAIRPERSON REID: Ms. Pruitt.

16 SECRETARY PRUITT: Staff will record the vote as
17 4 to zero to approve the motion to deal with the FAR within the
18 building. Motion made by Mr. Hood, seconded by Ms. Renshaw.

19 CHAIRPERSON REID: Okay. We'll now proceed with
20 the question of the variance for the height.

21 BOARD MEMBER HINTON: And the additional FAR.

22 CHAIRPERSON REID: And the additional FAR, which
23 is the .02. Okay.

24 Now in this regard, Board members, just to start
25 up the discussion, I think that obviously if we are going to

1 stipulate that the first prong of the test in regard to the
2 unusual or exceptional conditions as regards to the property
3 itself due to topography or slope, or the like and also in this
4 instance historic preservation, we would have to also apply the
5 same type of ruling in the second test; that it definitely does
6 meet the first prong of the test. I don't think I have a
7 problem with that, it being the same property, the same
8 situation similarly sited.

9 And in regard to the second prong of the test as
10 it pertains to practical difficulty, now in this instance the
11 regulations stipulate that there has to be demonstrated that
12 there would be caused some practical difficulty that would
13 prevent the applicant from being able to comply with the
14 existing zoning regulations. And I think that the aspect of it
15 as pertains to the loss of some FAR due to the constraints
16 placed upon the property by historic preservation would be
17 apropos in this regard. And I'd like to hear further
18 discussion from other Board members.

19 BOARD MEMBER HINTON: I would agree with that,
20 Madam Chair. I think that because the historic resources that
21 are on the ground level, they are taking up room that is not
22 buildable and the view shed from 31st Street into the site to
23 see the incinerator is taking up buildable space that would be
24 within the zoning regulations but is not being built because of
25 the resources and the requirements of the historic preservation

1 MLA; that that becomes the practical difficulty in complying
2 with the zoning regulations. If they were allowed to build
3 completely within the matter-of-right zoning envelop they would
4 not need to go above it.

5 CHAIRPERSON REID: Exactly. The request to
6 increase the height is, in effect, a means of being able to
7 substitute for the loss of the FAR within the area of the site
8 itself.

9 Any further discussion in that regard? Mr.
10 Renshaw, did you have any comments?

11 BOARD MEMBER RENSHAW: Well, I should state for
12 the record that I have read the complete file, as I as an add
13 on to these negotiations. And I have not been, to date,
14 persuaded from the testimony that the height limitations have
15 to be sacrificed. And I am wanting to get a feeling from this
16 Board of whether or not we have everything in hand that would
17 help us come to a complete and fair decision on this height
18 argument.

19 In other words, we have the matter of the view
20 shed; what more is there to ask of the applicant? Is there
21 something more to ask of the applicant which would help us
22 understand that because of the difficulty of not being able to
23 fully utilize the lower spaces of this property that it would
24 have to -- "it" meaning the applicant -- would have to have
25 additional height on the building?

1 So, Ms. Hinton, I'm going to --

2 CHAIRPERSON REID: No, not yet.

3 BOARD MEMBER RENSHAW: Well, in any case, I am
4 not persuaded right at this point that the increased height is
5 necessary because, again, the applicant has acquired the
6 property as-is and the applicant knew the underlying problems
7 with the property before settling on the property, but went
8 through the process and is now developing this site. And we
9 are now asked to provide some leniency in order for the
10 applicant to be allowed to build. And I am stating right at
11 this point that I am not convinced yet that there is the
12 argument for that.

13 COMMISSIONER HOOD: Madam Chair, can I just ask a
14 question? I just want to ask a question.

15 We're talking about the inner part of the--

16 BOARD MEMBER RENSHAW: No, we're doing the
17 height.

18 COMMISSIONER HOOD: Oh, we're doing the height?

19 BOARD MEMBER RENSHAW: Yes. We've done the inner
20 part.

21 CHAIRPERSON REID: Now specifically about the
22 height. And then that brings us to the third prong of the
23 test, and that is that the relief can be granted provided that
24 the relief can be granted without substantial detriment to the
25 public good and without substantially impairing the intent,

1 purpose and integrity of the zone plan as provided in the
2 zoning regulations and MAP; and therein lies the difficulty in
3 this decision, particularly for this Board member, given the
4 fact that we have received considerable opposition in regard to
5 this height issue.

6 Now the Commission of Fine Arts is opposed and
7 the Old Georgetown Board, the citizens association from
8 Georgetown, have very clearly indicated to us their displeasure
9 with the fact that the height would cause some impairment to
10 the view of the Potomac River as well as the monuments.

11 I'm going read in part, in pertinent part from
12 the letter from J. Carter Brown from the Commission of Fine
13 Arts which he states "Thirty years ago the Commission
14 spearheaded the drive to down zone the industrial waterfront
15 area which, at the time, had a height limit of 90 feet. Two
16 new zones were created with height limits of 60 feet and 40
17 feet. This latter category was applied to sites on the
18 waterfront that were deemed especially critical to preserving
19 the views of the Potomac River and the national monuments.

20 The incinerator project site is on one of the
21 most of these, thus raising the concern of the Commission and
22 the community."

23 Now the ANC, they simply took the position that
24 while they were not opposed to height, they would defer to the
25 Commission of Fine Arts because they felt it was too

1 complicated for them to be able to adequately make a ruling on.

2 So, given the fact that this is a major concern
3 for the community, and that we have received considerable
4 letters of opposition, I think at this point in time we're not
5 prepared to make a decision to grant a variance until such time
6 that we feel we're comfortable with the effect of the height on
7 the neighboring community as well as to the extent it impairs
8 the integrity and intent of the zoning regulations and the
9 zoning MAP.

10 Now, Ms. Hinton, would you like to speak further
11 on that?

12 BOARD MEMBER HINTON: I would. I agree with what
13 you've said, and I think that because concerns have been raised
14 by others, coupled with the fact that our own regulations
15 require that we make the determination about whether this
16 proposal is a substantial detriment to the public good and
17 impairs the intent of the zone plan, that we need more
18 information. Because there's not enough information for us to
19 make that determination.

20 It's clear that the intent of the zone plan in
21 the W-1 zone is to keep buildings low. And I believe that the
22 height set at 40 feet was within -- the Zoning Commission had
23 full knowledge of how building heights are measured. So that
24 does not trouble me so much as, you know, I don't think that
25 when you actually measure this building and it's higher than 40

1 feet, I don't think that that's a problem because the Zoning
2 Commission understands how the buildings are measured.

3 CHAIRPERSON REID: Yes.

4 BOARD MEMBER HINTON: But when we're asked to add
5 another level onto a building through a variance, we need to
6 make sure that we understand how it will effect the view shed
7 down to the river. And so I think that in order for the Board
8 to make that determination, we need to have site line studies
9 and view shed studies done on both the Wisconsin Street right-
10 of-way and 31th Street right-of-way. We need to see what the
11 existing condition is with the matter-of-right building, and
12 then we need to see the building as it is proposed in front of
13 us with the variances.

14 And I would suggest that in order for us to
15 determine whether the proposed setbacks are sufficient, that we
16 would like to see those setbacks pulled back in ten foot
17 increments from the road right-of-ways so that we'll see is
18 what's proposed and then keep cutting that back so we can see
19 what change to the view shed occurs as less and less of that
20 upper level would be provided.

21 I think that's the only way that we'll be able to
22 make the determination of whether there is a detriment to the
23 public good or an impairment to the intention of the zone plan.

24 CHAIRPERSON REID: Thank you, Ms. Hinton. I
25 think that that's very well said, and also what it does is

1 given the voluminous amount of materials that we had to contend
2 with and also the complexity of the case, and particularly
3 deference to the community in this regard, that for us to make
4 a decision -- and also not only that, but I note that even with
5 the opposition, it was not a hostile opposition. That
6 apparently the developer, Mr. Lenier, enjoys a good
7 relationship with the community. And basically to be able to
8 address their concerns that rather than this particular
9 application being just flatly denied, what we're trying to do
10 is proffer an opportunity for there to be some concessions and
11 some compromises to the extent that it would mitigate some of
12 these adverse impacts and the deleterious effect that is now
13 perceived as being a deterrent to the community, as well as to
14 the integrity of the zoning regulations and the impairment of
15 the zoning plan.

16 And I think that if we could get some further
17 submission to address those issues and allow us to -- and I
18 would not rule out, perhaps, talking to the citizens
19 association of Georgetown and the Fine Arts Commission to maybe
20 get some feel as to what they felt comfortable with; that
21 perhaps we would then be able to make a more educated decision
22 and one that would help to mitigate concerns and to allow this
23 variance, the relief that's being requested, to be given to the
24 applicant.

25 BOARD MEMBER HINTON: I think what we're talking

1 about --

2 CHAIRPERSON REID: I think, now I'm not saying
3 that we would. I can't say that we would, but I think this is
4 what would for us be able to help us a great deal to get to a
5 meeting of the minds.

6 BOARD MEMBER HINTON: In order to receive that
7 information and give all the parties a chance to receive it and
8 comment it, I think we're talking about an additional public
9 hearing for the very limited scope of looking at the view sheds
10 and considering the additional height of the building. Is that
11 what you're thinking? Rather than taking the information and
12 then let everyone respond in writing?

13 CHAIRPERSON REID: I think that that certainly
14 makes a lot of sense. And I would like to hear Ms. Renshaw,
15 would you please give us your comments?

16 BOARD MEMBER RENSHAW: Thank you, Madam Chair. I
17 was very happy to hear that you are suggesting that the
18 community step back into this matter of the height concerning
19 circulating the material, the site studies, the view studies to
20 the community and the Commission on Fine Arts for their
21 reaction.

22 And to Mrs. Hinton, as far as another public
23 hearing, I support that. I believe that this is such a
24 sensitive matter that we are dealing with that the more the
25 parties can come together in a public forum and air their views

1 before this Board, the better it is for us who have to make the
2 decision; "us" meaning the Board of Zoning Adjustment.

3 So I support the request for a study, a view
4 study, a site line study with setbacks in ten foot increments,
5 that perhaps would help me the most since I have spoken out
6 about my difficulty adjusting to the possibility of a height
7 increase. And I would very much support a public hearing on
8 this matter.

9 Thank you.

10 CHAIRPERSON REID: Mr. Hood?

11 COMMISSIONER HOOD: Yes. Madam Chair, initially
12 when I first came here this morning I was -- and I didn't know
13 if this could be done or not, my plans were to open up
14 discussions to remand or send this to the Zoning Commission. I
15 want to applaud you all's efforts.

16 I think that the site line and the redesign is
17 the way to go in increments of ten. But I also want to ask for
18 clarification, Ms. Hinton. Also in that what you're asking
19 for, are we going to have a projection from up the street?
20 That's also included in what you're asking for?

21 BOARD MEMBER HINTON: Absolutely. I think the
22 whole idea of preserving the view shed is from those higher
23 elevations, sort of from the top of the hill down to the
24 waterfront. And so anything that you would build on the
25 waterfront that would be too high is what would block the views

1 from the top down to the water. So those are the views that
2 we're asking for along those road right-of-ways.

3 COMMISSIONER HOOD: So we would have a projection
4 from Wisconsin and 31st Street?

5 BOARD MEMBER HINTON: Correct.

6 SECRETARY PRUITT: Excuse me, Mrs. Hinton, I was
7 wondering. Do you have a spot specific along Wisconsin, such
8 as at the canal or at the street, or at Wisconsin and M?

9 BOARD MEMBER HINTON: Let me look at a map. Let's
10 try to figure out where that would be. I could think that
11 we're going to need a topo map for that.

12 SECRETARY PRUITT: I don't think we have a topo.
13 We don't. But we can get you a plat at least so you can --

14 COMMISSIONER HOOD: Well, anyway, Madam Chair,
15 let me just say that I support the recommendation that was here
16 and also another public meeting on that scope of just what we
17 were speaking of. Not anything anymore. And I don't think we
18 have to elaborate too much on other things, but just on that
19 scope and I think we can move forward.

20 CHAIRPERSON REID: Well, what would happen would
21 be that once the applicant has determined basically the site
22 lines and also have further meetings with the community, and it
23 would be ideal that if they could then come back to us with
24 something that is agreed upon mutually, that would defuse this
25 issue to the extent that this Board felt satisfied to move

1 forward with granting a variance. If, however, that does not
2 happen and they then submit to us some type of site line that
3 they feel comfortable with but for some reason has not been
4 sanctioned by the community or the Commission of Fine Arts,
5 then we would have to make a decision as to what in fact we
6 felt would be an appropriate setback. Or, in order to be able
7 to obtain the relief that they're requesting, then that
8 decision would be put up on our shoulders to make that decision
9 if in fact they can proffer to us a site line that everyone can
10 live with and that we feel would be satisfactory in order to be
11 able to obtain the variance that they're asking for.

12 COMMISSIONER HOOD: Madam Chair, let me just ask,
13 I know everybody wants a decision and we want to make sure that
14 we make the best decision possible for the interest of the
15 city. But my concern is if we go back that route, the route
16 that you just spoke of, I think we're going to have to
17 readvertise. And also we're probably looking at September,
18 from what I'm being told. And that's quite a considerable
19 amount of time.

20 Is there a faster way? Maybe I can you to ask
21 staff, or however you want to do it. Is there a faster way
22 that maybe we could proceed, we can get the material that we
23 need and then that way we can go ahead and proceed with making
24 a decision expeditiously and not keeping the community,
25 applicant and ourselves waiting until September?

1 CHAIRPERSON REID: That's a very good point, Mr.
2 Hood. I think that if in fact we could get some idea from the
3 community, from -- Ms. Zartman is here. The ANC is -- is the
4 ANC --

5 SECRETARY PRUITT: Madam Chair, may I make a
6 suggestion.

7 CHAIRPERSON REID: Wait. Wait. Is the ANC here
8 today? Okay. So that they could perhaps make a decision as to
9 a special meeting or something.

10 SECRETARY PRUITT: Prior to talking, what I would
11 suggest is that we've handled this in many cases where our next
12 decision meeting will be June 5th.

13 CHAIRPERSON REID: Okay.

14 SECRETARY PRUITT: That's a benchmark to think
15 about.

16 CHAIRPERSON REID: Yes.

17 SECRETARY PRUITT: We can have the applicant get
18 in that information and serve it on the parties, which would be
19 the ANC and COG. And then we allow COG -- excuse me, CAG. I'm
20 getting my acronyms confused here. And the ANC a week to
21 respond, or maybe depending; you could maybe allow a little bit
22 more because the ANCs have a hard time meeting, and they meet
23 once a month, and to accommodate them that way, instead of
24 reopening the record.

25 And then if we can't meet the June 5th deadline in

1 order to accommodate everybody, you can either do a special
2 public meeting before a hearing in June or move it to July. So
3 there are a couple of options.

4 BOARD MEMBER HINTON: Ms. Pruitt --

5 CHAIRPERSON REID: Go ahead.

6 BOARD MEMBER HINTON: May I ask Ms. Pruitt would
7 there be time on the June 5th to have a special public hearing?

8 SECRETARY PRUITT: No. Absolutely no. I'm
9 sorry. We have a very, very full agenda.

10 CHAIRPERSON REID: You know what? I'm sorry, Ms.
11 Hinton, I thought that you were saying -- I was thinking of
12 when you were saying hearing that you meant hearing of the ANC.
13 The ANC and also to CAG.

14 BOARD MEMBER HINTON: No, I think -- I mean, we
15 can try to deal with this with receiving submissions and taking
16 written comments, but in a way I think it might just be quicker
17 for us to have a hearing where the information is presented to
18 everybody and everybody can comment to the Board?

19 CHAIRPERSON REID: Well, that would be impossible
20 then to try -- because it takes 40 days.

21 BOARD MEMBER HINTON: I don't think that we need
22 to -- you would just reopen --

23 BOARD MEMBER RENSHAW: We could recommend only
24 the parties would comment.

25 BOARD MEMBER HINTON: Right. We don't have to

1 advertise.

2 CHAIRPERSON REID: Oh, okay. Okay. That's fine.

3 SECRETARY PRUITT: One way you were talking about
4 letting in the whole community, which that would require
5 readvertisement.

6 CHAIRPERSON REID: Right. Okay.

7 SECRETARY PRUITT: But if it's only the parties,
8 then you reopen it for a specific --

9 CHAIRPERSON REID: Basically a continuation.

10 SECRETARY PRUITT: No, you have to reopen the
11 record because it's closed.

12 CHAIRPERSON REID: We have to open it. All
13 right. Then tell us exactly step-by-step, the procedure so
14 that everyone can be on the same page and understand what we're
15 doing.

16 SECRETARY PRUITT: The Board would reopen the
17 record for information concerning the view shed only.

18 CHAIRPERSON REID: Yes, the height.

19 SECRETARY PRUITT: The view shed.

20 BOARD MEMBER HINTON: How the height will effect
21 the view shed.

22 SECRETARY PRUITT: Correct.

23 CHAIRPERSON REID: Right. To explore the height.

24 SECRETARY PRUITT: But you're asking for
25 information on the view shed, which is from views along

1 Wisconsin and 31st to the river.

2 CHAIRPERSON REID: Right. Right. Ms. Pruitt,
3 nonetheless, there's still in regard to the variance before us
4 in regard to the height, and of course that goes to the view
5 shed. But we just can't not mention the fact that it's for the
6 variance for the height.

7 SECRETARY PRUITT: Right. Okay. To provide the
8 testimony and information on that only open to the parties,
9 which would be the applicant, the ANC and CAG.

10 CHAIRPERSON REID: Right.

11 SECRETARY PRUITT: That's what you -- you would
12 need to devote on that and then you'd find a date.

13 BOARD MEMBER HINTON: Well, the Office of
14 Planning is also a party, right?

15 SECRETARY PRUITT: Excuse me, correct. Thank you.

16 CHAIRPERSON REID: Oh, please, don't forget the
17 Office of Planning. Okay.

18 SECRETARY PRUITT: Now, you're looking for a date
19 to accommodate this?

20 CHAIRPERSON REID: Right. Give us a date.

21 BOARD MEMBER HINTON: What would be the quickest
22 time that we could squeeze it in? Because I think we need to
23 keep in mind that this building is under construction.

24 CHAIRPERSON REID: Right.

25 BOARD MEMBER HINTON: And so I think that we have

1 a responsibility to move as expeditiously as possible.

2 CHAIRPERSON REID: I think that that's the whole
3 idea. I think we're all cognate of that and trying to do so.
4 Thank you, Ms. Hinton.

5 Ms. Pruitt?

6 SECRETARY PRUITT: I'm looking.

7 CHAIRPERSON REID: Okay.

8 SECRETARY PRUITT: I just wanted to let the Board
9 know we have an extremely ambitious schedule up through
10 September. So, it's really difficult to move things around,
11 but we'll find --

12 BOARD MEMBER RENSHAW: While Ms. Pruitt is
13 looking at her schedule, I just want to make clear that in
14 requesting the site line view line study from the applicant and
15 then circulating that material to the parties to include, of
16 course, the ANC, the Office of Planning, the CAG, would that
17 also include the CFA?

18 SECRETARY PRUITT: No. CFA is not a party to
19 this case.

20 CHAIRPERSON REID: They're not a party, but they
21 certainly would receive the --

22 BOARD MEMBER RENSHAW: Well, can we ask CFA to
23 comment?

24 SECRETARY PRUITT: It's my understanding that the
25 CFA is not going to take action until after the Board. We can

1 send them a letter and request that if anything --

2 CHAIRPERSON REID: Well, we can provide them with
3 the submission that comes to us, can we not? The submission
4 that comes to us from the applicant regarding the site line?

5 BOARD MEMBER RENSHAW: And ask for a reaction to
6 the material. What I would like to be able to get from these
7 parties, and others whom we ask to comment, is alternatives. In
8 other words, to find out if the height is not increased, what
9 is that going to do to the project? And then based on the site
10 line view line study as the building is cut back, what are the
11 pluses and minuses to the applicant and to the community. And
12 is there a meeting of the minds? Are we going to find some
13 common agreement here that will then come out of these
14 documents or out of the testimony that the Board can grasp and
15 move ahead with?

16 BOARD MEMBER HINTON: And can I mention the other
17 alternative that we talked about, and none of us being
18 architects we're not sure how viable it is. But if there's a
19 possibility to move some of this additional height or
20 additional FAR in closer to the interior of the site; either
21 around the historic resources -- of course we wouldn't want to
22 compromise anything that's been required. And I'm not sure if
23 that's based as it is designed is exactly what's required or if
24 there's any possibility for maybe realigning some of that
25 space.

1 Clearly our concern and the concern of the
2 community is with the additional floor out near the road right-
3 of-ways because those are the views that are currently
4 existing. So anything the applicant can do to preserve the
5 existing views, I think the Board would be willing to consider.

6 CHAIRPERSON REID: I think that we have
7 appropriately signaled to the applicant what, in fact, where
8 we're going with this. And given the fact that the applicant
9 has some very competent architects that he has engaged, that
10 they would take those things into consideration and try to
11 bring back to us something that would be workable for all
12 concerned, hopefully, to the greatest extent possible.

13 Time, time line, Ms. Pruitt?

14 SECRETARY PRUITT: I believe we can put it on the
15 agenda on July 17th as the first case in the morning. I mean,
16 prior to the public meeting -- public hearing, excuse me.

17 CHAIRPERSON REID: All right. So what time on
18 July 17th?

19 SECRETARY PRUITT: That would be 9:00.

20 CHAIRPERSON REID: 9:00? Okay. Is there any
21 objection to that?

22 BOARD MEMBER RENSHAW: Now, is that going to be a
23 hearing itself? Ms. Pruitt said it would be prior to a public
24 hearing at 9:00.

25 SECRETARY PRUITT: That's what I need to get

1 clear. I'm not sure where you actually have stood on this. So
2 you want to reopen the record to receive new testimony?

3 BOARD MEMBER RENSHAW: Only on what we have to
4 make a decision about.

5 SECRETARY PRUITT: And only to the parties that
6 have been identified?

7 BOARD MEMBER RENSHAW: Only to the parties with
8 some comment requested from the CFA.

9 SECRETARY PRUITT: So staff will write a letter
10 requesting.

11 BOARD MEMBER HINTON: I don't know if that -- I'm
12 very concerned about that. If we open it up beyond the
13 parties, that really concerns me.

14 CHAIRPERSON REID: I think the parties. I think
15 that --

16 BOARD MEMBER HINTON: Just the parties.

17 CHAIRPERSON REID: -- I would ask only for the
18 parties to be able to respond. But in addition to that I would
19 not rule out -- we could request that it be given to CFA and
20 that they respond. But, that's not -- they're not really a
21 part in this proceeding.

22 BOARD MEMBER HINTON: Then you would have to make
23 -- then you would have to allow --

24 CHAIRPERSON REID: If you choose not, then we
25 don't -- but, you know, but we would expect something from the

1 parties.

2 SECRETARY PRUITT: Madam Chair, if you do that,
3 then you have to allow all participating parties and the
4 applicant to respond to CFA, because this is new information
5 that has never been looked at.

6 CHAIRPERSON REID: Okay. I didn't rule that out.
7 The CFA -- basically we're putting the CFA in a quasi-party
8 status.

9 SECRETARY PRUITT: Which is problematic, I
10 believe. I mean, they weren't part of the earlier proceedings.

11 Their status has not been challenged or the applicant --

12 CHAIRPERSON REID: But, Ms. Pruitt -- Ms. Pruitt,
13 I think that that is a decision that this Board can make.
14 Because I think that the CFA is in a special category and that
15 that the position that they're taking has a bearing on the
16 decision that we make.

17 COMMISSIONER HOOD: Madam Chair, permit me to say
18 --

19 BOARD MEMBER HINTON: But they're not even -- I'm
20 sorry. You go ahead.

21 COMMISSIONER HOOD: I yield.

22 BOARD MEMBER HINTON: CFA is not one of the
23 parties, and I think that from what we have from CFA we can
24 understand what their concern. With the information that we're
25 receiving, we'll be able to make a decision as to whether their

1 concerns can be taken care of or cannot be. And I think we're
2 the ones that have to weigh that.

3 As much as we could hope that CFA would give us a
4 more definitive answer, I don't believe that that's going to
5 happen. And I think it might be inappropriate. That really
6 this decision is one for the Board to hear what the concerns
7 are, to look at the information and to make a decision.

8 We're going to have information from the parties
9 to which we give weight. CFA is not one of the parties. And I
10 think just the appearance that we're trying to do something
11 special for them indicates that we're giving them a great
12 weight in our deliberations, and I think that that's not
13 proper.

14 CHAIRPERSON REID: I don't think so. And I don't
15 see a problem with having the information that that's submitted
16 by the applicant also given to the CFA. I see no problem with
17 that. We're not as if we're asking -- Ms. Renshaw did ask that
18 they comment on it. And if they do or they don't, I don't
19 think that that matters. I think that the fact of the matter is
20 that if we want to see that they receive the new information, I
21 see nothing wrong with it. I can see nothing at all wrong with
22 that and nothing inappropriate about that.

23 BOARD MEMBER HINTON: Well, because there are
24 other people that have commented on the record that are not
25 parties. And my concern is that we are letting one entity get

1 another chance to comment on revised drawings when we're not
2 letting other entities like the Old Georgetown Board. There
3 are just persons in the record that have commented, and we
4 wouldn't be giving them an opportunity to comment. That's my
5 concern.

6 If we keep the line just parties, then that's a
7 very clean line. When you give one nonparty the opportunity to
8 comment, it's hard to justify why you didn't let all the other
9 nonparties have an opportunity.

10 BOARD MEMBER RENSHAW: However, Madam Chair, if
11 we have a public hearing on this matter, then wouldn't it be
12 reasonable to have those who have been a part of the case up to
13 this point who have participated in the case up to this point,
14 including the CFA, to have an opportunity to come before the
15 Board or write a letter?

16 BOARD MEMBER HINTON: That's what we were saying.
17 If we do that, then we need to give public notice.

18 BOARD MEMBER RENSHAW: All right.

19 BOARD MEMBER HINTON: And then it needs to be the
20 40 days. I personally don't believe that that's necessary.

21 COMMISSIONER HOOD: Let me just say, I agree with
22 Ms. Hinton. We set ourselves -- I get very nervous when I hear
23 about hybrid PUDs and quasi-parties because I can assume you
24 that two weeks from now you'll look up and you'll have someone
25 wanting quasi-party status. And I think we need to be very

1 cautious with how we proceed. I think we're going to narrow
2 the scope, we need to deal parties. If we're going to
3 readvertise, everyone is inclusive. So that's my opinion.

4 CHAIRPERSON REID: Okay. Okay. I'm convinced.
5 I'm convinced. Your point's well taken; that that may open up
6 a whole new cans of worms, and we definitely don't want that.
7 And I think you for pointing that out to me.

8 I would go along with just having the parties
9 involved be served and to let it go along those lines and not
10 make it any more complicated than what it needs to be. I would
11 agree.

12 BOARD MEMBER RENSHAW: I would just like to ask
13 if one of the parties were to write to the CFA and share the
14 information, and ask for a response in writing that is then
15 attached to the party's submission, can that be done?

16 CHAIRPERSON REID: If they want to.

17 COMMISSIONER HOOD: Yes, that's --

18 BOARD MEMBER HINTON: No, no, no.

19 CHAIRPERSON REID: Okay. All right. Wait, wait,
20 wait, wait.

21 BOARD MEMBER HINTON: No.

22 CHAIRPERSON REID: What are you saying?

23 BOARD MEMBER HINTON: No. No, because that's
24 letting information from a nonparty come in. I think we can --

25 BOARD MEMBER RENSHAW: But it's coming through a

1 party?

2 BOARD MEMBER HINTON: But then what if the
3 applicant gets a 100 --

4 BOARD MEMBER RENSHAW: And it's shared with
5 everyone.

6 BOARD MEMBER HINTON: -- different people to
7 comment on their revised drawings? Do we let that come in.

8 BOARD MEMBER RENSHAW: Perhaps we could ask Corp
9 Counsel for a reaction.

10 COMMISSIONER HOOD: Sure, because we can always
11 call for a vote.

12 MS. NAGELHOUT: Madam Chair, I would agree with
13 the views expressed by Mrs. Hinton and Mr. Hood; it's either
14 limited to the parties or it's open.

15 CHAIRPERSON REID: No, no. We scaled that
16 hurdle. The next hurdle was in regard to whether or not Mrs.
17 Renshaw requested or suggested that whether parties --

18 BOARD MEMBER RENSHAW: I asked whether it would
19 be.

20 ARBITRATOR MCKAY: -- allow the CFA to be able to
21 review it and have their comments attached to the comments that
22 came from the party.

23 MS. NAGELHOUT: I don't see a huge distinction
24 there.

25 CHAIRPERSON REID: Okay.

1 BOARD MEMBER RENSHAW: That would work?

2 MS. NAGELHOUT: You're trying to do indirectly
3 what you can't really do directly.

4 CHAIRPERSON REID: Okay. Well, Mrs. Renshaw, you
5 tried.

6 BOARD MEMBER RENSHAW: I tried because I think
7 that the reaction of the CFA is vital. And I am disappointed
8 that there is no way for the CFA, which has a great influence
9 on this matter, to be excluded from the deliberations. And I
10 had looked forward in trying to make a determination on the
11 case to have the input from the CFA. And I wish there were a
12 way that it could be included.

13 CHAIRPERSON REID: Well, I think that what I'm
14 hearing is, notwithstanding the fact that we cannot allow them
15 to give us a new submission, that predicated upon what we do
16 have I think it's pretty clear where they're going and what
17 they're looking for, and what they'd like to see. And with
18 that in mind we could certainly take that in consideration in
19 our deliberations.

20 BOARD MEMBER RENSHAW: Yes, we can resurrect the
21 material that the CFA has provided --

22 CHAIRPERSON REID: Yes.

23 BOARD MEMBER RENSHAW: -- up to this point and
24 make sure that we review it in open session. That we can do.

25 CHAIRPERSON REID: Okay. I think that that could

1 work for us.

2 I'm sorry. May I help -- yes

3 MS. RUSTAD ZIGNER: Yes. Jeannine Rustad Zigner,
4 Robins, Kaplan, Miller and Ciresi for the applicant.

5 Just a brief comment about the date of July 17th.

6 If that is in fact the date, if there is no decision by that
7 date, construction will have to stop. So if there's a
8 possibility of getting an earlier date, we would appreciate
9 that.

10 MS. NAGELHOUT: May I suggest, Madam Chair, in
11 order to really nail down this date, we need to know what the
12 applicant could have these exhibits ready.

13 MS. RUSTAD ZIGNER: They can be ready in one week.

14 MS. NAGELHOUT: One week from today?

15 MS. RUSTAD ZIGNER: For the 22nd.

16 MS. NAGELHOUT: What is that?

17 MS. RUSTAD ZIGNER: May 22nd.

18 CHAIRPERSON REID: Okay. Ms. Pruitt is not here?

19 MR. HART: She's gone to check on some deeds.

20 She'll be back.

21 CHAIRPERSON REID: Okay. All right. We'll see.

22 MS. RUSTAD ZIGNER: Is there any possibility with
23 the Board members to do something on other than a Tuesday,
24 since it sounds like our Tuesdays our booked.

25 COMMISSIONER HOOD: And I was just going to ask

1 if we could do something a day that I would be here, but anyway
2 --

3 MS. RUSTAD ZIGNER: A day that you won't be here?

4 COMMISSIONER HOOD: That I will be here. I can
5 accommodate you with that. June the 19th was, I think, the next
6 time. They wanted something before --

7 CHAIRPERSON REID: June 19th?

8 COMMISSIONER HOOD: Before the problem is,
9 accordingly to staff, we have a very hectic schedule. But
10 depending upon how we move --

11 CHAIRPERSON REID: Right.

12 COMMISSIONER HOOD: And I don't think it's that
13 illumines that where we can't see --

14 CHAIRPERSON REID: I have no problems moving it
15 up. And if, in fact, we have the information that we need to
16 have, it should not take too long to be able to dispose of this
17 particular case.

18 BOARD MEMBER HINTON: What about, Mr. Hood,
19 you're here on Monday --

20 CHAIRPERSON REID: The 19th of June.

21 BOARD MEMBER HINTON: Is that the Zoning
22 Commission meeting?

23 COMMISSIONER HOOD: On Monday? No, the 19th is
24 the next time I think I'm supposed to sit on the BZA.

25 BOARD MEMBER HINTON: June 19th?

1 COMMISSIONER HOOD: June 19th.

2 CHAIRPERSON REID: Mr. Hart, on that date perhaps
3 we could have a 8:00 -- 9:00 meeting?

4 MR. HART: Madam Chair, if the Board chooses to,
5 that day we have three cases, and I don't see why we can't do
6 that. But I suggest that we start maybe 8:30/9:00.

7 CHAIRPERSON REID: 9:00.

8 MR. HART: 9:00?

9 BOARD MEMBER HINTON: 8:30.

10 CHAIRPERSON REID: I have no problem with being
11 here at 8:30, but I was just thinking in regard of all the
12 other persons who are involved with this case being here at
13 8:30. 8:30 is fine with me if it can work.

14 BOARD MEMBER HINTON: Yes.

15 CHAIRPERSON REID: It can work?

16 BOARD MEMBER HINTON: We shall, yes.

17 CHAIRPERSON REID: Does anyone have any objection
18 to 8:30? Okay.

19 BOARD MEMBER RENSHAW: What date?

20 CHAIRPERSON REID: The 19th.

21 COMMISSIONER HOOD: The 19th.

22 MR. HART: No, if we're going to do it at 8:30.
23 we have to come in here prepared to start, you know, the
24 session at 8:30. Because, as I say, we have three, four, five
25 cases on the schedule ready to start at 9:30. And if we can do

1 this at all, then 8:30 would work.

2 BOARD MEMBER HINTON: That should work.

3 CHAIRPERSON REID: Okay. So, can you reiterate
4 that? All right.

5 MR. HART: June 19th at 8:30. Okay.

6 COMMISSIONER HOOD: We do have another case, BPM,
7 I wanted to make sure that we --

8 BOARD MEMBER RENSHAW: And Salvation Army.

9 CHAIRPERSON REID: On that date?

10 COMMISSIONER HOOD: Yes. Salvation Army as well.

11 CHAIRPERSON REID: Okay. Yes. Now also, staff,
12 specify what we're doing on that date.

13 SECRETARY PRUITT: It's my understanding that the
14 applicant will present and serve on all parties view sheds on
15 Wisconsin and on 31st, and I would suggest that they be done at
16 20 foot increments from K to Wisconsin. I mean from K to M
17 Street.

18 BOARD MEMBER HINTON: Ten foot.

19 SECRETARY PRUITT: No, that's the building
20 setback. I'm talking about where they take the view shed from.

21 CHAIRPERSON REID: Okay. Is that what you were
22 saying, Ms. Hinton?

23 BOARD MEMBER HINTON: Yes.

24 CHAIRPERSON REID: Okay.

25 SECRETARY PRUITT: So the view shed will be taken

1 every 20 feet up Wisconsin and up 31st. And the buildings will
2 be set back at 10 foot increments. So, we'll get a lot of
3 information.

4 That is to be served on the parties. And that
5 you're reopening the record on June 19th for additional
6 testimony from parties only on that specific aspect.

7 CHAIRPERSON REID: Right.

8 SECRETARY PRUITT: And the time would be at 8:30.

9 BOARD MEMBER RENSHAW: Now, is it clear whether
10 or not we are voting at that meeting? In other words, we
11 receive the testimony and are we voting that day?

12 SECRETARY PRUITT: That's the Board's choice. I
13 mean, based on --

14 CHAIRPERSON REID: They asked for a bench
15 decision and we feel that we can vote.

16 BOARD MEMBER RENSHAW: All right.

17 CHAIRPERSON REID: I see no reason why we could
18 not vote.

19 BOARD MEMBER RENSHAW: Thank you.

20 SECRETARY PRUITT: See, this is not actually a
21 hearing. You're just reopening the record for new testimony.
22 And there could be some discussion, but it's not -- you know,
23 so you're actually still in a deliberation phase.

24 BOARD MEMBER RENSHAW: Okay. All right.

25 CHAIRPERSON REID: Okay.

1 SECRETARY PRUITT: Madam Chair, we also need to
2 establish the times for the submissions to be in.

3 CHAIRPERSON REID: Okay.

4 SECRETARY PRUITT: Since there will be testimony
5 taken and it's on the 19th, if the applicant can serve by the
6 11th of -- I'm on the wrong month. Hold on.

7 BOARD MEMBER HINTON: Ms. Pruitt, while you were
8 out of the room the applicant indicated they could have the
9 drawings completed by May 22nd. So why don't we maybe give them
10 a couple of extra days just in case something goes wrong, but
11 then I think the service could be shortly after the 22nd. To
12 give the parties until then.

13 MS. RUSTAD ZIGNER: If I may interject. With the
14 20 foot increments, more time will be needed than if it was --

15 SECRETARY PRUITT: Just one. Why don't we say
16 June 1st?

17 MS. RUSTAD ZIGNER: June 1st would work.

18 CHAIRPERSON REID: Okay. Is that it? All right.

19
20 MS. ZARTMAN: Is CAG to provide any response or
21 anything prior? I'm seeing a yes and a no.

22 SECRETARY PRUITT: Once the applicant has served
23 on you --

24 MS. ZARTMAN: Right.

25 SECRETARY PRUITT: -- the new site plan, then

1 they do have an opportunity to respond to it, we have a date
2 line.

3 BOARD MEMBER HINTON: Well, that's where it's
4 getting confusing, Madam Chair. If we weren't taking in public
5 testimony, then they would have a time to respond. But since
6 you're opening up the record and going to allow them to
7 testify, you don't necessarily need to have a date to respond
8 on that date.

9 CHAIRPERSON REID: They can respond on that date.

10 BOARD MEMBER HINTON: Right.

11 CHAIRPERSON REID: Okay. Well, if prior to that
12 date if they do, they want to submit something in writing?

13 MS. ZARTMAN: Of course, yes.

14 CHAIRPERSON REID: If you wanted to submit
15 something in writing and as well as testify on that date, you
16 can do so.

17 SECRETARY PRUITT: But there's no deadline for
18 you in the normal process. We haven't established one.

19 CHAIRPERSON REID: But isn't it within a week
20 before the hearing so that we can receive the information that
21 they submit to us in our packages?

22 SECRETARY PRUITT: It is not required. We do ask
23 for this. But as I said, this is sort of a totally different
24 animal.

25 CHAIRPERSON REID: It would be good if you could,

1 because that gives us an opportunity to have read over what
2 you've submitted prior to your testimony on that date.

3 MS. ZARTMAN: And I just want to clarify,
4 allowing the Commission of Fine Arts to testify, I understand
5 has been ruled against. Is there anything that precludes our
6 submitting expert testimony?

7 CHAIRPERSON REID: Ms. Nagelhout?

8 MS. NAGELHOUT: Offhand I couldn't think of any
9 reason why not. It's the party's testimony, sponsored by the
10 party.

11 MS. ZARTMAN: Right. Just wanted to clarify
12 that.

13 CHAIRPERSON REID: So if they could?

14 MS. NAGELHOUT: Yes, I guess they could.

15 COMMISSIONER HOOD: Madam Chair, I guess the
16 reasons why she saw a yes there and a no there is probably the
17 same reason I'm -- so now we're having -- I believe we're
18 having a hearing? Is that --

19 CHAIRPERSON REID: No. No. If we have the
20 additional testimony, basically we're -- this, I would agree,
21 it is rather confusing because it is departure from what we
22 normally do. But in this instance we've decided to do that
23 because of the complexity of this particular case.

24 Now, what Mrs. Zartman is asking is when she
25 testifies could she present an expert witness. And I'm

1 assuming that she's alluding to this. She asked (a) if she
2 chooses to.

3 MS. ZARTMAN: No. Actually I was not thinking of
4 --

5 CHAIRPERSON REID: Okay. I'm sorry. Okay.

6 COMMISSIONER HOOD: Yes, I understand Ms.
7 Zartman's question. That wasn't my question. I understand
8 exactly what Ms. Zartman wants.

9 My concern is is this one of those quasi-
10 hearings?

11 CHAIRPERSON REID: No.

12 BOARD MEMBER RENSHAW: Yes. Because here it is.
13 It is a hearing.

14 BOARD MEMBER HINTON: I don't think it's a quasi-
15 hearing. I think it's a hearing. It is an additional hearing
16 for a very limited scope.

17 CHAIRPERSON REID: Yes. Just on that --

18 COMMISSIONER HOOD: Okay. So we can do that
19 without readvertising.

20 CHAIRPERSON REID: Only on that very --

21 BOARD MEMBER RENSHAW: On the third prong?

22 CHAIRPERSON REID: I'm sorry.

23 BOARD MEMBER RENSHAW: On the third prong?

24 CHAIRPERSON REID: That's it. In regard to this
25 particular variance with the height. That's it, nothing more.

1 COMMISSIONER HOOD: Okay.

2 SECRETARY PRUITT: And just to be clear, it's
3 only on the designated parties, so we're not taking in
4 testimony from the general public.

5 CHAIRPERSON REID: Right. Oh, no. No, just the
6 parties. Okay?

7 Now, are we all sufficiently confused enough?
8 Okay.

9 SECRETARY PRUITT: Madam Chair, just for
10 clarification, one more time.

11 If the applicant -- if we have the decision or
12 the hearing on the 19th, you'd like responses from the parties
13 by June 12th?

14 CHAIRPERSON REID: Would like to.

15 SECRETARY PRUITT: And the applicant will serve
16 the parties by June 1st.

17 CHAIRPERSON REID: Okay.

18 SECRETARY PRUITT: And we will be reopening
19 record at 9:00 for additional testimony on this particular
20 case?

21 CHAIRPERSON REID: Exactly.

22 BOARD MEMBER HINTON: 8:30.

23 CHAIRPERSON REID: 8:30.

24 SECRETARY PRUITT: 8:30?

25 CHAIRPERSON REID: Changed to 8:30.

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SECRETARY PRUITT: Okay. 8:30.

CHAIRPERSON REID: Okay? All right. There's no more questions. Then I think that we have concluded. The special public meeting for May 15th is now concluded. Thank you very much.

(Whereupon, the Special Public Meeting was concluded and adjourned at 11:32 a.m.)