

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

JUNE 2, 1999

+ + + + +

The Public Meeting convened in Room 220  
South at 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
BETTY KING	Vice Chair
JERRY GILREATH	Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD	Commissioner
JOHN F. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

John Nyarku, Office of Zoning  
Paul Hart, Office of Zoning  
Beverly Bailey, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.

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CHAIRPERSON REID: Good morning. We'll now begin our June 2nd Public Hearing. Please pardon the delay this morning. After our meeting we'll then go into the -- just the public meeting.

MR. HART: Good morning, Madam Chair, members of the Board. For this public meeting, June 2nd, we have for your consideration, public hearing minutes of June 21st, 1999.

VICE CHAIRPERSON KING: I didn't receive any minutes.

MEMBER GILREATH: Nor did I.

CHAIRPERSON REID: I have the --

VICE CHAIRPERSON KING: I didn't receive any. They weren't sent to me.

MEMBER GILREATH: Oh, I don't know the cases. I didn't receive any minutes either. All I got was these.

CHAIRPERSON REID: I received the minutes. Since the other Board members have not then we just --

VICE CHAIRPERSON KING: If you can provide them to me during lunchtime I'll read them and we can vote on them this afternoon. I didn't receive them in my packet.

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1 CHAIRPERSON REID: Okay.

2 MR. HART: The first case to be decided  
3 this morning is Case No. 16457, Application of Kass  
4 MA, L.L.C., pursuant to 11 DCMR 3108.1 for special  
5 exceptions under Subsections 410 and 2516 to allow  
6 the construction of 33 new single-family detached  
7 dwellings with garages in a theoretical lot  
8 subdivision and 176 luxury garden apartments in the  
9 R-5-A and R-5-B Districts at premises bounded by  
10 Good Hope Road, S.E., between 24th Street, S.E. to  
11 the East and 18th Street, S.E. to the West (Square  
12 5735, Parcels 211/96, 220/31 and Lot 804 and Square  
13 5763, Parcels 219/38).

14 CHAIRPERSON REID: Mr. Hart, do we have  
15 a proxy for Mr. Hood?

16 MR. HART: Yes, we have a proxy for Mr.  
17 Hood.

18 VICE CHAIRPERSON KING: Was he present?

19 CHAIRPERSON REID: Yes, but it -- that's  
20 a mistake.

21 VICE CHAIRPERSON KING: Madam Chair, I  
22 somewhat reluctantly move that we approve this  
23 application. It is troublesome. I think that the  
24 provision of quality housing in that part of the  
25 city is a laudable goal.

26 I'm very concerned about the National

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1 Park Service concerns and I think that we should  
2 make certain when we write the Order that they're --  
3 that the agreement that was entered into between the  
4 Park Service and the developer must be incorporated.

5 CHAIRPERSON REID: Ms. King, I disagree  
6 with that motion. I think that -- you made the  
7 motion, right, so --

8 VICE CHAIRPERSON KING: I did make a  
9 motion.

10 CHAIRPERSON REID: -- let's let that be  
11 first. Is there a second?

12 MEMBER GILREATH: I second the motion,  
13 that I feel the, as I understand it, the applicants  
14 met with the Park Service and the Parks have  
15 indicated certain ameliorations and mitigations and  
16 so forth, and I feel that if those are adhered to  
17 that it will be adequate protection, and I think  
18 that area will benefit from quality housing over  
19 there. And that Anacostia has been bypassed and to  
20 my mind this is a step in the right direction and  
21 certainly is compatible with the intent of zoning  
22 for the area.

23 VICE CHAIRPERSON KING: If I could just  
24 add one thing to my motion, if Mr. Gilreath agrees.  
25 The ANC-8-B has asked that the developers covenant  
26 that they will be the managers of this project for a

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1 minimum of 25 years. And if that is somehow  
2 enforceable and doable I think we should put that in  
3 as a condition.

4 MEMBER GILREATH: I concur with that.

5 CHAIRPERSON REID: I think that I would  
6 not be in agreement with this motion because I feel  
7 that the community came up very strongly opposed to  
8 this type of development, yet Ward 8 certainly does  
9 need revitalization. We all know that and would  
10 like to see that.

11 However, what I have a problem with is  
12 the caliber of the development. They do not want  
13 rental housing. They want single-family  
14 development, single-family homes which is needed  
15 there to try to of course, attract higher income  
16 purchasers and to stabilize that community.

17 And the issues that they raised in  
18 regard to there being just a glut of vacant  
19 apartments as it were, there, that lends itself to  
20 illicit behavior within the community, that as well  
21 as the impact of the traffic, the parking -- and  
22 particularly I was very much impressed with the  
23 testimony by the representative from the National  
24 Park Service, Department of Interior, who raised  
25 grave concerns about the environmental issues with  
26 regard to the water runoff, flora and fauna, the

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1 vista of the Circle Park Ridge.

2 They seemed to be very opposed to this  
3 type development, and then they later softened their  
4 position with a letter with some mitigations that  
5 they had proffered to the developer and they had  
6 agreed to do that.

7 Given the history of that area in regard  
8 to some of the other, what was touted to be luxury  
9 apartments that later ended up being a big  
10 disappointment to the area, I think that whatever we  
11 do we should try to move in such a way that we can  
12 better ensure that the people who live there, the  
13 people who live in that community, can be protected  
14 and that they can expect a higher caliber of living  
15 than what has been imposed upon them in the past.

16 So that's my position. We'll take the  
17 vote unless you have other -- do you have more?

18 VICE CHAIRPERSON KING: I disagree with  
19 you but rather than arguing let's take a vote.

20 MR. HART: Madam Chair, before you  
21 proceed, let me make a correction here. Mr. Hood  
22 submitted a proxy for another case and he was not  
23 involved in this case. He did sit on it but he said  
24 he would be here this morning -- he couldn't make it  
25 this morning. This is after I had reported to you.

26 So since there is no proxy for this case

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1 from him, no vote, but there's another case in which  
2 he did have a proxy.

3 CHAIRPERSON REID: Wait a minute. He  
4 sat on this case but he didn't submit the proxy same  
5 as he did the other one?

6 MR. HART: No, he said he would be able  
7 to make it --

8 CHAIRPERSON REID: Oh, he thought he  
9 would be here?

10 MR. HART: He thought he would be here  
11 this morning, would be able to make it this morning,  
12 and as such he would not submit a proxy.

13 CHAIRPERSON REID: Okay, well --

14 MR. HART: He knew all that.

15 VICE CHAIRPERSON KING: Is he going to  
16 be here later?

17 MR. HART: He will not for the --

18 VICE CHAIRPERSON KING: But you're  
19 saying we've got a proxy for another case, so he  
20 must not be coming at all.

21 MR. HART: No, there is -- in the  
22 meeting session that we had this morning, the case  
23 we're dealing with now, he said he was reluctant to  
24 submit a proxy for that case and he would not be  
25 here to do anything about it. However, the other  
26 case he was very confident with that because he --

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1 he said he was very comfortable with that and he  
2 submitted a proxy for that case. Now, ask me he's  
3 going to be here today, yes. But that's for later  
4 for the hearing session.

5 MEMBER GILREATH: Madam Chair, can we  
6 hold this in abeyance, the vote, until later when he  
7 appears?

8 VICE CHAIRPERSON KING: You say he's  
9 coming this morning?

10 MR. HART: On this, no.

11 VICE CHAIRPERSON KING: He's coming this  
12 afternoon, okay. That's fine. Let's vote on it  
13 this afternoon.

14 MS. BAILEY: Madam Chair, I just wanted  
15 to ask. The people in the audience who are here  
16 specifically who would be interested in the decision  
17 of that case, can we get an approximate time when  
18 they would be -- is it after one or two so if they  
19 leave they'll know when to come back?

20 MR. HART: The afternoon hearing starts  
21 at one, and that is when I think he would be here,  
22 his arrival.

23 CHAIRPERSON REID: We'll take it up as  
24 the first matter on the afternoon session, so anyone  
25 who's here for that particular case then be here at  
26 one o'clock.

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1 MR. HART: The second case, 16454,  
2 application of Richard Tynes, Jr., pursuant to 11  
3 DCMR 3108.1, for a special exception under Section  
4 802 to continue use of a recycling processing  
5 facility in a C-M-1 District at premises 6130 North  
6 Capitol Street, N.W. (Parcels 135/237 and 135/238  
7 near Square 3374).

8 VICE CHAIRPERSON KING: Madam Chair, I  
9 move that we approve this application for a period  
10 of 15 years or until the present ownership shall  
11 change; whichever comes first.

12 CHAIRPERSON REID: I would agree.  
13 However, we have a proxy from Mr. Hood and he  
14 recommended ten years as a compromise between the 15  
15 that the applicant was asking for and the five years  
16 that ANC --

17 VICE CHAIRPERSON KING: I amend my  
18 motion.

19 CHAIRPERSON REID: Ten years?

20 VICE CHAIRPERSON KING: Ten years -- the  
21 same conditions as in the present order under which  
22 they're operating and for a period of ten years or  
23 until the facility changes ownership, whichever  
24 shall come first.

25 CHAIRPERSON REID: Okay, and I will  
26 second that motion, as well as the fact that we had

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1 requested and have now received a letter from ANC-4-  
2 B, who comes out in strong support of the  
3 application. However, they don't seem to have had a  
4 quorum or to have voted. It's just a letter of  
5 support.

6 MEMBER GILREATH: We heard the  
7 presentation. I heard nothing to indicate that the  
8 applicant's performance in operating that was really  
9 negative. They've done an excellent job and so I  
10 really support this as well.

11 CHAIRPERSON REID: All in favor?

12 (Chorus of ayes.)

13 Opposed?

14 (No response.)

15 MR. HART: The third case of the  
16 morning, application number 16433.

17 CHAIRPERSON REID: You need to record  
18 the vote don't you, Mr. Hart?

19 MR. HART: Staff will record the vote as  
20 three to zero to grant --

21 VICE CHAIRPERSON KING: Four.

22 MR. HART: Four to zero to grant. Mrs.  
23 King, Ms. Reid, Mr. Gilreath, and Mr. Hood by proxy.

24 CHAIRPERSON REID: In favor of; in favor  
25 of the motion.

26 MR. HART: In favor of the motion; to

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1 grant, yes.

2 The next case: Application number  
3 16433, of the Protestant Episcopal Cathedral  
4 Foundation of the District of Columbia, pursuant to  
5 11 DCMR 3108.1, for a special exception under  
6 Section 205 for the construction of an athletic  
7 facility with below-grade parking and to establish  
8 two surface athletic fields to an existing private  
9 school located in an R-1-B District at premises 3500  
10 Woodley Road, N.W. (Square 1944, Lot 25).

11 VICE CHAIRPERSON KING: Madam Chair, I  
12 suggest we wait until Mr. Parsons arrives. He's  
13 currently on his way.

14 CHAIRPERSON REID: I would agree with  
15 that. Mr. Hart, we'll table this one until Mr.  
16 Parsons arrives since he is --

17 VICE CHAIRPERSON KING: And we'll need  
18 to table the next one, too, because I didn't hear  
19 it. You and Jerry and John.

20 CHAIRPERSON REID: Oh, okay. All right.  
21 The 16446, the number D on the Agenda should also be  
22 tabled until Mr. Parsons arrives since Mrs. King was  
23 not present at the time that we had this particular  
24 case.

25 MR. HART: The next case is Appeal 16404  
26 of the Capitol Hill Restoration Society, pursuant to

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1 11 DCMR 3105, from the decision of Gladys Hicks,  
2 Acting Zoning Administrator, to issue Certificate of  
3 Occupancy Permit No. 98-0271 for a Home Occupation  
4 in a CAP/R-4 District at premises 434 New Jersey  
5 Avenue, S.E. (Square 694, Lot 811).

6 VICE CHAIRPERSON KING: Madam Chair, I  
7 move that we deny this appeal. There are distinct  
8 problems with the application as it was presented to  
9 the applicant by DCRA. It seems to presuppose that  
10 he is already the owner and the occupant of the  
11 premises, although his agent testified that -- she  
12 made it clear that he was only a contract buyer at  
13 that time.

14 Whether or not he was entitled to a Home  
15 Occupancy Permit as a contract buyer is a very gray  
16 issue. The fact is however, that he is now the  
17 owner/occupant operating a home business out of his  
18 home at that address, and that we should deny this  
19 appeal since he is not entitled to as a matter of  
20 right, to that Home Occupancy Permit.

21 The question as to whether or not Mr.  
22 Fields is in fact, living there most of the time,  
23 which is the benchmark for whether or not it is his  
24 principal residence, is an enforcement issue. And  
25 if DCRA finds on evidence that he is not living  
26 there most of the time, then the permit can be

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1       revoked.

2                   But he has, as a matter of right as an  
3 owner/occupant, if he testifies that he is spending  
4 most of his time there he is entitled to have a Home  
5 Occupancy Permit.

6                   MEMBER GILREATH: I concur with that.  
7 I'm wondering if somehow for future cases like this,  
8 that there can be some kind of clarification. I  
9 don't know whether it would be that the Zoning  
10 Administrator could research this. We need a  
11 determination whether or not you have to be a home  
12 occupier; you have to occupy the premises before you  
13 can apply.

14                   And because the uncertainty it brings to  
15 this, I think we should -- I concur we should deny  
16 the appeal. But I think that there should be some  
17 kind of clarification for future cases similar to  
18 this.

19                   VICE CHAIRPERSON KING: Or certainly  
20 that the application does not at any point say, are  
21 you now the owner/occupant of the premises for which  
22 you are applying for a permit and if you're not,  
23 don't bother to apply.

24                   That is a very gray area and I would  
25 recommend to DCRA that they clarify that and perhaps  
26 work with the Office of the Corporation Counsel to

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1 figure out how they can clarify their form and  
2 determine whether or not it is possible for someone  
3 to verify their ability to have a Home Occupancy  
4 Permit prior to actually concluding the purchase of  
5 a property in the District of Columbia.

6 But the fact is that I think that as of  
7 today Mr. Field, if he is spending most of his time  
8 in the District of Columbia, is entitled to a Home  
9 Occupancy Permit.

10 CHAIRPERSON REID: I would agree with  
11 you both. I think that the application is ambiguous  
12 and it's difficult to ascertain what its ultimate  
13 intent is. The assumption in my opinion, is that  
14 you are either living in or you own the property --  
15 you are either living in it as the owner or you are  
16 the tenant. It is not -- it's very (unintelligible)  
17 as to the status of a contract purchaser.

18 However I also feel that there was --  
19 the way the application was filled out -- it was not  
20 properly filled out because there are questions  
21 about the current address of Mr. Fields as well as  
22 his home telephone number, and the issue as to  
23 whether his -- the owner or renter or other is not  
24 circled.

25 And given the fact that it seems to be  
26 many inconsistencies, in all fairness to Mr. Fields,

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1 give him the benefit of the doubt and deny the  
2 appeal. And also given the fact that the -- not  
3 withstanding what was the situation at the time that  
4 the application was filed, that is now the remedy  
5 and we know that he is now in actually the residence  
6 there at the property.

7 And because the regulations are solid as  
8 to a definition of primary residence, then it's left  
9 to our discretion to determine if in fact, we are  
10 convinced that he is using the facility as his  
11 principal residence.

12 And again, I would not want to hold the  
13 application up because we're not sure of that. It  
14 seems that it's a very gray area. And I'd also feel  
15 comfortable with the fact that if in fact, it is  
16 ascertained that he is not -- that is not his  
17 principal residence, then DCRA would have to step in  
18 as an enforcement entity in that regard.

19 So with that in mind, is there a second?

20 MEMBER GILREATH: I second.

21 CHAIRPERSON REID: There's a second to  
22 the motion. All in favor?

23 (Chorus of ayes.)

24 Opposed?

25 MR. HART: The staff would record the  
26 vote as three to zero: Mrs. King, Mr. Gilreath,

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1 Mrs. Reid, to deny.

2 VICE CHAIRPERSON KING: Did Mr. Clarens  
3 give you a proxy for this?

4 MR. HART: No, he did not.

5 CHAIRPERSON REID: Okay, next?

6 MR. HART: Next is a motion. Case 16027  
7 from the Adas Israel Hebrew Congregation, pursuant  
8 to 11 DCMR 3108.1, for a special exception under  
9 Section 206 to increase an existing private school  
10 from 38 to 185 children and 10 to 25 staff on the  
11 second floor in an R-5-A District at premises 2850  
12 Quebec Street, N.W. (Square 2225, Lot 11).

13 The Adas Israel Hebrew Congregation is  
14 hereby requesting the Board of Zoning Adjustment to  
15 extend the use of the Summary Order on this  
16 application so that they can continue the use for  
17 the duration of the school's academic period. The  
18 school intends to relocate from the site entirely no  
19 later than June of the year 2000.

20 Since this is such a short period of  
21 time the applicant would like to remain there until  
22 the final move. However, the Order expiration date  
23 of the existing Order is for February 17, the year  
24 2000.

25 VICE CHAIRPERSON KING: Madam Chair,  
26 this seems to be a very non-controversial, very

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1 sensible solution to their problem and I move that  
2 we grant the -- what are we granting, the --

3 CHAIRPERSON REID: Extension.

4 VICE CHAIRPERSON KING: -- the extension  
5 to June of the year 2000.

6 MEMBER GILREATH: I second the motion.  
7 I concur with that. I think it would be  
8 unreasonable for us to deny that, so I'm fully in  
9 support of this.

10 CHAIRPERSON REID: I agree. I see no  
11 reasons to take an adverse position. All in favor?

12 (Chorus of ayes.)

13 Opposed?

14 (No response.)

15 MR. HART: The staff will report the  
16 vote as three to zero, Mrs. King, Mr. Gilreath, Mrs.  
17 Reid, to grant the extension requested by this  
18 motion.

19 The second motion, 16273, a motion for a  
20 modification of approved plans to allow for a one-  
21 story addition to the southern side of the existing  
22 two-story carriage house on the Lab School campus.  
23 The Lab School requires a waiver from Subsection  
24 3335.3 of the Zoning Regulations which states that a  
25 request for modification of plans must be filed  
26 within six months of the date of the final order.

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1                    Approving the original application BZA  
2                    Order No. 16273 was issued by the Board on February  
3                    24, 1998. Therefore, the 6-month period has expired  
4                    in Application No. 16273 of the Lab School of  
5                    Washington and George and Georgette Amouri, pursuant  
6                    to 11 DCMR 3108.1, for a special exception under  
7                    Section 206 to allow an addition to an existing  
8                    private school and an increase in the maximum  
9                    enrollment from 250 students to 310 students in an  
10                   R-1-B District at premises 4759 Reservoir Road, N.W.  
11                   (Square 1372; Lots 19, 20, and 24).

12                   VICE CHAIRPERSON KING: Madam Chair, I  
13                   find that this is not a modification of approved  
14                   plans. There was no mention of the carriage house  
15                   in any of the hearings or our Order early-on. I'm  
16                   sympathetic to the Lab School's desire to add this  
17                   facility in the most economical way possible.

18                   And I would move that we deny the motion  
19                   but that if they reapply for a special exception  
20                   expeditiously -- basically with all of the  
21                   information that they've already given us but that  
22                   they reapply in the proper form -- and it needs to  
23                   be advertised for 40 days, therefore probably the  
24                   earliest we could take it up would be our second  
25                   meeting in July, which is what date, Paul? Does it  
26                   work out if they --

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1 MR. HART: The 7th of July.

2 VICE CHAIRPERSON KING: Is the first  
3 one, so the second one would be the 21st of July.

4 MR. HART: The 21st, yes. The first  
5 meeting in July will be the 7th, the --

6 VICE CHAIRPERSON KING: Second would be  
7 the 21st?

8 MR. HART: Yes, that's a hearing date.

9 VICE CHAIRPERSON KING: Yes, I  
10 understand that, but this is for a hearing.

11 MR. HART: Okay, the 21st.

12 VICE CHAIRPERSON KING: This is not a  
13 meeting. It would be reapplication.

14 MR. HART: The 21st.

15 VICE CHAIRPERSON KING: Publication for  
16 40 days and then we would try and schedule it for  
17 the 21st of July. And if there's not a lot of  
18 opposition to it, as there was not a lot of  
19 opposition to the original plans, why we could  
20 perhaps give them a bench decision. I understand  
21 that they're building this summer and so forth, but  
22 I don't see that this, Madam Chair, is a  
23 modification of approved plans; it's a new plan.

24 CHAIRPERSON REID: Exactly. If you go  
25 to what the modification consists of, and I don't  
26 think one would think that would be a small or

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1 negligible addition to the existing plans. But in  
2 this instance, because it is a one-story addition,  
3 then you have to go to adverse impact, be held at  
4 neighboring communities so therefore the special  
5 exception I think would be to correct the request in  
6 this particular case.

7 MEMBER GILREATH: Ms. King, is that a  
8 formal motion that she --

9 VICE CHAIRPERSON KING: That was a  
10 motion to deny the motion.

11 MEMBER GILREATH: I second the motion  
12 and I think it's basically a procedural matter here.  
13 I think when it comes back in, at least from what  
14 I've seen, I don't think we'll have any problems.  
15 But I think that it's reasonable that they comply  
16 with proper procedure. So I second the motion.

17 CHAIRPERSON REID: All in favor?

18 (Chorus of ayes.)

19 Opposed?

20 (No response.)

21 MR. HART: The staff would record the  
22 vote as three to zero to deny the motion: Mrs.  
23 King, Mr. Gilreath, and Mrs. Reid.

24 The next case under Other Matters is  
25 Application No. 15875 of George Basiliko, pursuant  
26 to 11 DCMR 3107.2 and 3108.1, for a variance from

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1 the off-street parking requirements (Subsection  
2 2101.1) or, in the alternative, a special exception  
3 under Section 2108 to reduce the number of parking  
4 spaces required for non-residential uses to allow a  
5 public hall -- 300 seats on the first floor in a C-  
6 M-2 District at premises 1350 Okie Street, N.E.  
7 (Square 4038, Parcel 142/103).

8 The Order in this case is an Order  
9 denying the waiver of the 10-day filing requirement  
10 for a Motion for Rehearing. The proposed Order was  
11 sent out for exceptions; the exceptions were due in  
12 March. No exceptions were filed.

13 VICE CHAIRPERSON KING: Do we have to  
14 take some action on this now?

15 CHAIRPERSON REID: No, that's basically  
16 for our information. And we note that we have seen  
17 it and that we've acknowledged it, and that's about  
18 all we have to do in that regard. Is that right,  
19 Mr. Hart?

20 MR. HART: That's right.

21 VICE CHAIRPERSON KING: Madam Chair,  
22 could I ask that we withdraw for an executive  
23 session to discuss the cases that Mr. --

24 CHAIRPERSON REID: I think we can do  
25 that in the form of a motion, Mrs. King.

26 VICE CHAIRPERSON KING: Okay, I move

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1 that we withdraw to executive session.

2 MEMBER GILREATH: I second the motion.

3 CHAIRPERSON REID: All in favor?

4 (Chorus of ayes.)

5 CHAIRPERSON REID: Mr. Parsons, there's  
6 a motion on the floor that we withdraw to an  
7 executive session to discuss the National Cathedral  
8 case.

9 COMMISSIONER PARSONS: Aye.

10 CHAIRPERSON REID: All opposed?

11 (No response.)

12 Okay. We are going to go into executive  
13 session and we will come out and then make a  
14 determination on the record as to the position of  
15 the Board in regard to the National Cathedral case.

16 (Whereupon, the foregoing matter went  
17 off the record at 10:37 a.m. and went back on the  
18 record at 11:17 a.m.)

19 CHAIRPERSON REID: In regard to the  
20 National Cathedral case.

21 VICE-CHAIRPERSON KING: I have a motion,  
22 Madam Chair. It is my opinion that the Protestant  
23 Episcopal Cathedral Foundation has met their burden  
24 of proof and I move that we grant this application;  
25 and that, as conditions, we attach to our order the  
26 most recent resolution of the Advisory Neighborhood

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1 Commission and the most recent agreement between the  
2 Foundation and the Cleveland Park Citizens  
3 Association.

4 CHAIRPERSON REID: Second?

5 COMMISSIONER PARSONS: Second.

6 MEMBER GILREATH: I'd like to make a  
7 comment that I commend all of the parties involved  
8 and certainly the National Cathedral Foundation.  
9 This facility, part of it could have been put above  
10 ground and would've impacted the foes and I think by  
11 working with the citizens -- and the citizens made a  
12 very important input I think, of citizens litigation  
13 and I take satisfaction, to my mind, seeing the  
14 democratic process working effectively.

15 The Cathedral gets, to me, a legitimate  
16 much needed athletic facility and the citizens  
17 receive reasonable protection for their properties  
18 nearby and so forth. So I fully support it.

19 CHAIRPERSON REID: Thank you.

20 Mr. Parsons.

21 COMMISSIONER PARSONS: I would like to  
22 associate myself with Mr. Gilreath's remarks and  
23 it's an extraordinary case and a very difficult  
24 project. I think the school has gone to  
25 extraordinary ends to mitigate the impacts of the  
26 facility and more importantly, I guess, is how they

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1 have mitigated the impacts of its usage.

2 In their agreement, the agreements that  
3 they've struck, which I think was potentially  
4 obnoxious quality of the facility was the after  
5 hours use and that has been restricted to the point  
6 that I think the community should be comforted with  
7 the lesser impact on them.

8 CHAIRPERSON REID: I too, feel that this  
9 was a very difficult case and that, given the fact  
10 that in the best of worlds you have opposing  
11 interests, but the impression that I got from this  
12 particular community which was very impressive to me  
13 was that, notwithstanding the fact that there were  
14 problems and that there were differences of opinion,  
15 they had the desire to try to work together to try  
16 to mitigate as much as possible some of the adverse  
17 impact.

18 And even with the testimony -- in my  
19 experience, you see sometimes in these kinds of  
20 contested cases a lot of acrimonious testimony. In  
21 this instance I saw none. I saw where the community  
22 loved the community where they lived, the  
23 neighborhood, and the National Cathedral did all  
24 that they could to try to reach out to them and to  
25 listen to what their concerns were and to work with  
26 them and to mitigate, where possible, the adverse

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1 impact that they had acknowledged themselves that  
2 was evident within this case.

3 So therefore, I commend the community  
4 and the National Cathedral for the immense effort  
5 that they put forth in getting to some type of  
6 resolution of the issues in the case and to bring to  
7 us an agreement that we could work with and that we  
8 could utilize to try to -- in granting approval of  
9 this case, granting also, some -- giving some  
10 comfort to the community through the aspects of the  
11 conditions to mitigate much of the adverse impact.

12 All in favor?

13 (Chorus of ayes.)

14 CHAIRPERSON REID: Opposed?

15 (No response.)

16 MR. HART: Madam Chair, who seconded?  
17 Who was the second?

18 VICE CHAIRPERSON KING: Mr. Parsons.

19 MR. HART: Okay. Staff will report the  
20 vote as four-to-zero to grant with conditions: Mrs.  
21 King, Mr. Parsons, Mr. Gilreath and Miss Reid.

22 The next case, Application No. 16446 of  
23 DRM and Associates, Inc., pursuant to 11 DCMR 3108.1  
24 and 3107.2, for a special exception under Section  
25 205 to allow a child development center for 50  
26 children, infant through 12 years and 9 staff, and a

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1 variance from the off-street parking requirements  
2 (Subsection 2101.1) in an R-4 District at premises  
3 728 F Street, N.E. (Square 981, Lot 49).

4 VICE CHAIRPERSON KING: I can't  
5 participate in this because I was not here.

6 CHAIRPERSON REID: What's the number?

7 MR. HART: It's 16446. It has here that  
8 the status was granted from the bench. The bench  
9 agreed to give an opinion today pending certain  
10 requirements, which was a proposed Order which the  
11 applicant had the option of giving us a new Order or  
12 going with the Order that was with this case. He  
13 chose to submit a new Order.

14 CHAIRPERSON REID: Okay.

15 COMMISSIONER PARSONS: That is before us  
16 marked "Received 4/16/99"?

17 MR. HART: That's correct, yes. And the  
18 package should have a copy of the old Order.

19 CHAIRPERSON REID: I would recommend  
20 approval of this application. I feel that the  
21 applicant has met his burden of proof under Section  
22 206 of the regulations. This would also include  
23 approval with the following conditions.

24 Now, the conditions that were in the  
25 original Order and the positions that are proffered  
26 in his proposed Order are greatly curtailed. And

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1 when I looked at it, it appears to me that the  
2 reason was that many of the items that had been  
3 outlined in the original order had already been  
4 accomplished.

5 For example, the providing of a solid or  
6 baffled wood fence around the deck area, and the  
7 trash coverage, and the community liaison program.  
8 The assumption is that these things have already  
9 been done so that they don't have to be reiterated  
10 in the second Order, or the extension Order.

11 Is that correct, Mr. Hart?

12 MR. HART: I hear your assumption, Madam  
13 Chair, but it would seem to me that some of the  
14 conditions in the first Order are ongoing conditions  
15 and it should be repeated in the second Order to  
16 make sure -- to keep them honest, really.

17 CHAIRPERSON REID: Oh, okay.

18 MR. HART: Like where it says the  
19 liaison situation, the trash situation.

20 CHAIRPERSON REID: All right, then. I  
21 have no problem with including within this  
22 particular Order the same conditions that were in  
23 the first Order for the purposes of continuity, I  
24 suppose. I don't have to read the variance  
25 conditions, do I?

26 MR. HART: No, you don't.

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1 CHAIRPERSON REID: Okay. And they  
2 basically remain the same except for the amount of  
3 time. I think he asked for five years, Mr. Hart?

4 MR. HART: Yes, I think he asked for  
5 five.

6 CHAIRPERSON REID: I have no problem  
7 with granting him the five years for the term. So  
8 he asked for 15 years.

9 MEMBER GILREATH: Yes, that might be a  
10 little much; 15 years.

11 CHAIRPERSON REID: I can go along with  
12 ten. What do you think --

13 MEMBER GILREATH: Does he have a good  
14 track record for these first five years?

15 CHAIRPERSON REID: There was some  
16 opposition -- I think it was the single member  
17 District of the ANC that came forward, that they --  
18 if I'm not mistaken -- they were satisfied with his  
19 mitigating impact through the conditions.

20 MEMBER GILREATH: Well, assuming a  
21 reasonable track record I concede ten years. I  
22 could live with that.

23 MR. HART: Madam Chair, the neighbors or  
24 community problem that he had you recall, was  
25 dealing with a parking lot that was allegedly 12  
26 blocks away -- what he was doing there -- and

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1 they're trying to use that in this case and the  
2 Board indicated that that was irrelevant in this  
3 case.

4 CHAIRPERSON REID: Was irrelevant?

5 MR. HART: Yes, to what he's asking  
6 here.

7 CHAIRPERSON REID: Right. Mr. Parsons?

8 COMMISSIONER PARSONS: Well, that was my  
9 recollection. The predominance of the testimony had  
10 to do with something that wasn't taken care of in  
11 another community. I agree with you that 15 years  
12 is excessive and if the practice of the Board -- and  
13 I'm not too familiar with it -- in this case is ten  
14 years then that seems reasonable.

15 CHAIRPERSON REID: Okay, all in favor?

16 (Chorus of ayes.)

17 Opposed?

18 (No response.)

19 COMMISSIONER PARSONS: I don't think you  
20 really had a motion and a second.

21 MR. HART: Yes, we didn't.

22 CHAIRPERSON REID: I move that we  
23 approve the Order.

24 COMMISSIONER PARSONS: Yes, I don't  
25 think anybody seconded it. So Mr. Gilreath --

26 MEMBER GILREATH: I second the motion.

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1 CHAIRPERSON REID: Okay, thanks.

2 MR. HART: The staff will record the  
3 vote as three to zero to grant with conditions:  
4 Mrs. Reid, Mr. Gilreath, Mr. Parsons.

5 CHAIRPERSON REID: We have just one more  
6 and that's the -- did we do --

7 VICE CHAIRPERSON KING: I have read the  
8 bench minutes and I'm ready to vote on those.

9 CHAIRPERSON REID: Okay, and Mr.  
10 Gilreath has to leave us. All right, and then --

11 VICE CHAIRPERSON KING: We did  
12 everything except KASS --

13 MR. HART: Mr. Hood is coming early for  
14 that.

15 CHAIRPERSON REID: Number 16027?

16 MR. HART: That's the Adas Hebrew  
17 Congregation, as you --

18 CHAIRPERSON REID: We extended the  
19 Summary Order. Okay.

20 VICE CHAIRPERSON KING: I move the  
21 minutes on block for --

22 CHAIRPERSON REID: Wait. Mr. Gilreath,  
23 have you read it? Mr. Gilreath has not had a --

24 MEMBER GILREATH: Are these the minutes  
25 here?

26 CHAIRPERSON REID: Yes. Why don't we

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1 just give him a couple of minutes so we can just  
2 close this out.

3 MEMBER GILREATH: Okay, I'm ready to go.

4 VICE CHAIRPERSON KING: Madam Chair, I  
5 move the bench minutes on block for April 21st, May  
6 5th, and May 26th.

7 MEMBER GILREATH: I second it. Do you  
8 want to talk --

9 CHAIRPERSON REID: Yes, I had a question  
10 in regard to the sui sponte aspects of the minutes  
11 for April 21st, with regard to the case for 16426,  
12 and I wanted to find out where were we on this  
13 particular process?

14 VICE CHAIRPERSON KING: I would argue  
15 that -- I mean, it's a fact that Angel said that,  
16 and I would move that we vote on the minutes and  
17 then inquire as to the present status of whether or  
18 not he has tried to impose his minority opinion on  
19 the three of us.

20 CHAIRPERSON REID: Well, be that as it  
21 may, I'd like to get a response.

22 MR. HART: Mr. Clarens has filed this  
23 sui sponte to the Zoning Commission where he's  
24 requesting or has requested, a reversal of the  
25 Board's decision. This was done within the  
26 indicated necessary ten days as the date of the

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1 decision. He made it in under that deadline and it  
2 is now in the hands of the Zoning Commission.

3 What I cannot answer is if there is a  
4 specific time now on the Zoning Commission for them  
5 to respond. I would think so because you're dealing  
6 with an applicant's Order. I cannot respond to how  
7 the Zoning Commission --

8 CHAIRPERSON REID: Does Mr. Parsons  
9 know?

10 MR. HART: Mr. Parsons might know.

11 CHAIRPERSON REID: In the interest of  
12 sui sponte review by the Zoning Commission, what is  
13 the timeframe for that to take place?

14 COMMISSIONER PARSONS: Having only  
15 occurred once in the last -- how many years?

16 VICE CHAIRPERSON KING: Fifty or 60,  
17 John?

18 COMMISSIONER PARSONS: In 1977 is when I  
19 joined this panel. I can recall only one sui sponte  
20 review, and that at --

21 VICE CHAIRPERSON KING: Well, Angel has  
22 filed one against the three of us and we were just  
23 curious as to what happens now.

24 CHAIRPERSON REID: Yes, ten days to  
25 file; he did that. And then it goes to the Zoning  
26 Commission.

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1                   COMMISSIONER PARSONS: Now, that was  
2 before the Zoning Commission at its last meeting and  
3 I had to leave early. And I think it was -- as I  
4 recall, what they did is to -- it was for our  
5 information at that meeting. And I presume then, it  
6 will come before us for the next meeting -- but I'm  
7 not sure of that -- for a decision as to what to do.

8                   But to say --

9                   MR. HART: In that case then the next  
10 step for me as BZA is to talk to the Zoning  
11 Commission staff and find out what happened. I  
12 wasn't aware that the Board had taken it up yet --  
13 the Zoning Commission had taken it up yet. I knew  
14 it was submitted to them but I didn't know it had  
15 come up on the agenda already.

16                   COMMISSIONER PARSONS: It came up on the  
17 agenda as information; that is, something that had  
18 been submitted. And I'm fairly certain when I left  
19 that they were not going to deal with it that day.

20                   MR. BERGSTEIN: I have a regulation  
21 here. It's Section 3103. It says that no decision  
22 or Order -- which would be the written final Order  
23 under the rules -- shall take effect until ten days  
24 after having become final pursuant to  
25 (unintelligible) those procedures final written  
26 Order. Within a 10-day period the Zoning Commission

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1 may, sui sponte, determine to review any Order or  
2 decision of the Board.

3 And then there's the process that's laid  
4 out. So there appears to be a 10-day period from  
5 the written Order. Has there been a written Order?

6 MR. HART: The 10-day period that Mr.  
7 Clarens quoted was from the date of the decision.  
8 An Order has not been written. He was aware of ten  
9 days but he indicated to me that it was from the  
10 time of the decision and not the date of the Order.

11 CHAIRPERSON REID: In all fairness to  
12 the applicant, I think we need to try to bring some  
13 closure into this particular case. What is it  
14 correct? Is it ten days after the Order and the  
15 Order has not been written yet?

16 MR. BERGSTEIN: I'm sorry Madam  
17 Chairperson. An order of the BZA be final upon  
18 service to the parties.

19 CHAIRPERSON REID: And then ten days  
20 after that service is when --

21 MR. BERGSTEIN: Yes.

22 CHAIRPERSON REID: See now it's been  
23 done in the inverse because Mr. Parsons said it's  
24 already been put on the agenda for the Zoning  
25 Commission. An Order hasn't been written.

26 MR. BERGSTEIN: Well, that may be

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1 something that needs to be considered elsewhere, in  
2 terms of whether or not that's appropriate under the  
3 rules. And I won't say it is or isn't at this  
4 point.

5 CHAIRPERSON REID: All right, well --

6 MR. BERGSTEIN: It may at most, be  
7 premature.

8 CHAIRPERSON REID: Okay, well then we'll  
9 find out what in fact, the procedure is.

10 COMMISSIONER PARSONS: To look for  
11 precedent as to how long it takes, it's just not  
12 there.

13 MR. BERGSTEIN: Just for clarification,  
14 Section 331.6 says, "For the purpose of this chapter  
15 a decision or Order of the Board is final upon  
16 filing in the record and service upon the parties".  
17 And that's what's referred back to in 3301.3. Ten  
18 days after having become final; within that 10-day  
19 period the Zoning Commission has sui sponte  
20 determined to review any Order.

21 CHAIRPERSON REID: When you review --

22 VICE CHAIRPERSON KING: In the meantime

23 --

24 CHAIRPERSON REID: -- activities -- if I  
25 may --

26 MR. BERGSTEIN: No, and in essence it

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1 sounds --

2 CHAIRPERSON REID: When you review -- if  
3 I may. When you review, is that then based on any  
4 of the record?

5 COMMISSIONER PARSONS: It can be done  
6 that way or a hearing can be conducted, as I recall.

7 CHAIRPERSON REID: If you have a hearing  
8 are we supposed to be present there?

9 MR. BERGSTEIN: The whole process is  
10 laid out and perhaps maybe -- you may wish to review  
11 this section and I think it would elucidate what  
12 your issues are -- if you want to discuss them now.

13 CHAIRPERSON REID: Okay.

14 MEMBER GILREATH: I have no problem here  
15 (inaudible) legitimate (inaudible). But we took the  
16 best information we had and made the best judgment  
17 we could make, and I'd be glad to tell the Zoning  
18 Commission that.

19 COMMISSIONER PARSONS: You look forward  
20 to such testimony.

21 MEMBER GILREATH: If I have too. I  
22 don't look forward to it but I'm prepared to go with  
23 --

24 VICE CHAIRPERSON KING: Give them hell,  
25 Jerry.

26 CHAIRPERSON REID: Do we vote? Did we

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1 put in to vote?

2 VICE CHAIRPERSON KING: Nobody even  
3 seconded my motion.

4 MEMBER GILREATH: I second the motion.

5 CHAIRPERSON REID: All in favor?

6 (Chorus of ayes.)

7 Opposed?

8 (No response.)

9 Now we will adjourn the meeting for --  
10 the June 2nd meeting for our BZA.

11 MR. HART: The staff will record the  
12 vote three to zero to accept the minutes: Mrs.  
13 King, Mr. Gilreath, and Ms. Reid.

14 (Whereupon, the foregoing matter went  
15 off the record at 11:40 a.m. and went back on the  
16 record at 1:13 p.m.)

17 CHAIRPERSON REID: We will continue the  
18 morning's meeting and then we'll go into the  
19 afternoon session.

20 In regard to the case number 16457, Kass  
21 MA, we had some discussion earlier about this  
22 particular development. And we had a motion -- did  
23 you second the motion?

24 MEMBER GILREATH: Yes, I did.

25 VICE CHAIRPERSON KING: I withdraw my  
26 motion.

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1 CHAIRPERSON REID: We now have the  
2 motion withdrawn so we can start over again. I'd  
3 like to move that we not approve this application.  
4 I feel that the environmental impact testimony and  
5 mission by the National Park Service, Department of  
6 Interior, that spoke to the adverse impact  
7 environmentally of this particular development on  
8 the surrounding community and related to the run-  
9 off, the drainage, the destruction of the flora and  
10 fauna there, as well as the vista being compromised.

11 In addition, the opposition of Fairline  
12 Neighborhood Association has submitted to us their  
13 testimony and for their written submission that the  
14 development would not be completely without adverse  
15 impact into the community as far as the traffic,  
16 parking, as well as the quality of life; and that  
17 they did not feel that this type of development  
18 would be suitable for what the community is desirous  
19 of -- that is, single-family housing.

20 For that reason, I would like to move  
21 that we not approve the application.

22 COMMISSIONER HOOD: Madam Chair, with  
23 that I will second that with the fact that the  
24 comprehensive plan insists upon single-family  
25 dwellings within that area. And I would also add  
26 that the comprehensive plan is a plan, and the

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1 people who live in that area who are most affected,  
2 also have input into that plan.

3 And I think due to that nature -- and I  
4 hate to vote against that because of a single-family  
5 piece which I thought was excellent -- but I think  
6 one of the concerns that I know that I had was the  
7 density of apartments which, you know, quite a few  
8 apartments in that area and the density of the  
9 complexes would be an adverse impact.

10 So with that, I will second the motion.

11 CHAIRPERSON REID: Mr. Gilreath?

12 MEMBER GILREATH: Well, I'm going to be  
13 against this, though. I feel that in any kind of  
14 community that is vital and economically viable and  
15 so forth, you have to have a mixture of incomes and  
16 so forth; people of different backgrounds. And I  
17 think this development has the potential of bringing  
18 in a little bit of a different economic level there,  
19 and these people within the community can work up to  
20 that and occupy those.

21 And for a section of the city that needs  
22 economic help and so forth, in my judgment I think  
23 it's a mistake to turn this down. And as such, I  
24 will be voting against the motion.

25 CHAIRPERSON REID: Ms. King?

26 VICE CHAIRPERSON KING: Well, my gravest

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1 concern is adverse impact on the National Park  
2 Service land. And Mr. Hood, I think the issue is  
3 difficult on the single-family because the single-  
4 family houses are in Ward 6 where the comprehensive  
5 plan does call for them to be.

6 But it is a very intense use of the land  
7 when you come to the part where there are 176 units  
8 of multi-family dwelling. I find this a very  
9 troubling case, frankly. And I probably will -- I'm  
10 torn between voting to deny and voting to abstain.  
11 But let's continue the discussion if there are any  
12 other points that anyone wishes to make.

13 MEMBER GILREATH: I can elaborate on the  
14 impacts on the Stanton Park; that other development  
15 has occurred along Rock Creek Park and other  
16 parklands, and to my mind, as long as reasonable and  
17 appropriate mitigation can be accomplished, there's  
18 nothing inappropriate about allowing certain types  
19 of development adjacent to parkland.

20 So to me, that would not be a basis for  
21 --

22 VICE CHAIRPERSON KING: Well, the people  
23 from the National Park Service seem to be deeply  
24 concerned about the wetlands, and I don't think it's  
25 an analogous situation at Rock Creek Park because  
26 the development that occurs on the fringes of Rock

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1 Creek Park is so much elevated above the creek that  
2 I don't know that it's analogous.

3 MEMBER GILREATH: Well as I understand  
4 it, there's some kind of major fill over it. It's  
5 going to come from Metro or whatever its origin is.  
6 Apparently it is not receptive to growing plants and  
7 so forth and so to simply not allow anything there,  
8 you're still going to get some adverse impact. You  
9 can always argue, we'll leave the rest of it which  
10 grows effectively; fine, let this continue.

11 But my understanding is in this  
12 agreement with the Park Service, or at least the  
13 recommendation, that they would take measures to try  
14 to correct this fill area and the lack of the  
15 fertility of that particular portion, so there would  
16 be some improvement there.

17 CHAIRPERSON REID: Also, I think that  
18 the ANC representative has sent a letter and also  
19 testified to their position, and that was that they  
20 wanted to have single-family housing because what  
21 they feared, the adverse impact would be ultimately  
22 in allowing development of this nature and that at  
23 this time they did not feel that going forward with  
24 additional rental housing would be suitable or in  
25 their best interest because of the fact that there  
26 were several blocks of boarded-up rental housing

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1       there already, and that had contributed to blight  
2       and to illicit activities within the area. That was  
3       a grave concern.

4                   MEMBER GILREATH: Well, this boarded-up  
5       rental housing though, are those gated communities?  
6       If they're comparable it seems to me it's a logical  
7       argument, but if this is a unique kind of  
8       development over there where it's gated and  
9       controlled, to me that suggests there could be some  
10      evidence it could succeed, rather than say it's  
11      doomed to failure.

12                   CHAIRPERSON REID: No, it's -- and I  
13      think that the idea of the gated community was well  
14      taken and I think that was good. However, it's  
15      still a sidewall development, it's very dense, and  
16      it's rental housing rather than single-family  
17      detached homes; so single-family even, townhouses.  
18      And that's what the problem here to be.

19                   And with regard to the gated aspect of  
20      it, there has been experience of that nature before,  
21      that does not necessarily solve the solution to the  
22      problems in that community.

23                   MEMBER GILREATH: Well, if Anacostia can  
24      somehow have a policy in saying, any future  
25      residential development has to be single-family  
26      houses, wouldn't that effectively limit a major

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1 portion of the population? They say, we cannot  
2 afford a single-family home but we can afford a nice  
3 apartment?

4 CHAIRPERSON REID: I don't think that  
5 that's the issue. I think that the issue is that  
6 again, there's a considerable amount, significant  
7 amount of apartments there now that are boarded up,  
8 and that what they were saying is that they would  
9 like to see those houses be revitalized or  
10 renovated; brought back into the market, rather than  
11 build more rental houses -- a glut apparently in  
12 their opinion -- a glut of rental properties there.

13 MEMBER GILREATH: Well, and you think  
14 turning this down is going to encourage the  
15 refurbishing of these buildings and what-have-you?  
16 If we turn this down is this going to have a  
17 positive effect? Are there going to be more single-  
18 family houses and so forth over there? If we turn  
19 it down what's going to be the positive effect on  
20 the community?

21 CHAIRPERSON REID: Well, I can't speak  
22 to what --

23 COMMISSIONER HOOD: I think we're  
24 getting into speculation.

25 CHAIRPERSON REID: Yes.

26 COMMISSIONER HOOD: I mean, I think we

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1 need to stick with the regulations and then climb  
2 for the special session and we just need to move  
3 forward.

4 MEMBER GILREATH: Okay, well I, you  
5 know, I said what I think about it and I will vote  
6 against the motion.

7 CHAIRPERSON REID: Okay. All in favor,  
8 aye?

9 (Chorus of ayes.)

10 All opposed?

11 MEMBER GILREATH: No.

12 MR. HART: The staff will record the  
13 vote as three to one to deny: Mrs. Reid, Mr. Hood,  
14 Ms. King to deny; Mr. Gilreath against the motion to  
15 deny.

16 CHAIRPERSON REID: This is the end of  
17 the June 2nd meeting and we'll now go into the  
18 afternoon hearing.

19 (Whereupon, the public meeting was  
20 concluded at 1:25 p.m.)

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