

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

SEPTEMBER 8, 1999

+ + + + +

The Board met in Hearing Room 220 South,
441 4th Street, N.W., Washington, D.C., at 9:30
a.m., Sheila Cross Reid, Chairperson, presiding.

PRESENT:

SHEILA CROSS REID	Chairperson
BETTY KING	Vice Chair
JERRY GILREATH	Board Member
ANTHONY HOOD	Zoning Commissioner
ROBERT SOCKWELL	Board Member

STAFF PRESENT:

SHERI M. PRUITT-WILLIAMS	Board Secretary
BEVERLY BAILEY	Office of Zoning
PAUL HART	Office of Zoning
JOHN NYARKU	Office of Zoning
ALAN BERGSTEIN	Office of Corporation
Counsel	

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I.	Minutes	4
II.	Case to be Decided	5

**Application No. 16475 of 403 C Street, N.E.
LLC**

III. Motions:

BZA Case No. 16408	8
BZA Case No. 16409	11
BZA Case No. 16309	20
BZA Case No. 16483	34
BZA Case No. 16455	47
BZA Case No. 16502	51
BZA Case No. 16362	42

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1
2
3 MS. PRUITT-WILLIAMS: Good morning,
4 Madame Chair.

5 CHAIRPERSON REID: Good morning. This
6 begins our September 8th meeting of the Board of
7 Zoning Adjustment. We apologize for the delay this
8 morning.

9 Can you now hear us? We have a brand
10 new system. Can you hear us now? Can you hear me
11 now? Okay, all right. We can -- is this better?
12 All right, let's proceed. We may change the order
13 of -- our agenda this morning -- is Mr. Bosshard
14 here or someone representing Mr. Bosshard present at
15 this time?

16 We're going to take up that case. We
17 were discussing taking up that case first. That's
18 Case No. 16362. No one from that particular case is
19 here yet? The first motion? Okay.

20 MS. KING: Madame Chair, I would also
21 suggest that we move the motion on Case No. 16309 to
22 the -- to immediately after Case 16409 --

23 CHAIRPERSON REID: All right.

24 MS. KING: -- so that we amend the
25 agenda that way.

26 CHAIRPERSON REID: Board members, do you

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1 have any objection to that? Okay.

2 MR. HOOD: Madam Chair, I would like to
3 only add if representatives from bizarre case at a
4 breaking point, if we are able to put in the Phillip
5 Bosshard case in between somewhere, if we can work
6 that in.

7 CHAIRPERSON REID: At any point that you
8 see him come in, if you can just bring it to our
9 attention and we can take it up immediately.

10 MR. HOOD: Okay, thank you, Madame
11 Chair.

12 MS. PRUITT-WILLIAMS: Good morning, and
13 welcome back from a hopefully restful summer. The
14 staff would like to welcome our new Board member,
15 Mr. Sockwell.

16 We look forward to working with you this
17 year in your new term.

18 MR. SOCKWELL: Thank you.

19 MS. PRUITT-WILLIAMS: This is the public
20 hearing -- public meeting agenda for September 8,
21 1999. Before you today, your first item, is the
22 public meeting minutes of July 7, 1999.

23 MS. KING: Madam Chair, I move en bloc
24 the ratification of our public meeting minutes from
25 July 7th and our bench minutes from March 19th.

26 CHAIRPERSON REID: Second.

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1 MR. GILREATH: May 19th.

2 MS. KING: May 19th. Sorry.

3 CHAIRPERSON REID: All right, all in
4 favor?

5 (Chorus of ayes.)

6 Opposed?

7 MS. PRUITT-WILLIAMS: The staff would
8 record the vote as three to zero to approve -- three
9 to zero to two to approve. Motion made by Ms. King,
10 seconded by Mr. Gilreath; Mr. Hood and Mr. Sockwell
11 not voting, not having been presented at the
12 hearings.

13 Next on the agenda is your first case to
14 be decided, and that's application 16475 of 403 C
15 Street, N.E., LLC, pursuant to 11 DCMR 3107.2, for a
16 variance from the maximum allowable floor to area
17 ratio and from the parking requirement under
18 Sections 771.2, 1203.3, 2101.1 for construction of
19 an office building in a Capitol Hill/C-2-A District
20 at premise 403 C Street, N.E. (Square 814, Lot 825).

21 The hearing date was July 21, 1999.
22 Board members present was Ms. Reid, Ms. King and Mr.
23 Hood. The Board, at its decision, concluded that
24 the application would -- submissions from applicants
25 would be -- or rather would be due September 3rd
26 from responses from the applicant by September 8th.

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1 All that information is before you today
2 for a decision.

3 MR. GILREATH: Madame Chair, since I did
4 not participate at that meeting, that's why I'm
5 excusing myself from any participation in this.

6 MS. KING: Madam Chair, it appears from
7 the materials that we were given today, specifically
8 the letter dated September 7th and signed by Pat
9 Brown, that an agreement has been reached between
10 the developer, the PTA and the Capitol Hill -- what
11 is the CHCS, can't remember -- but the --

12 CHAIRPERSON REID: Capitol Hill
13 Restoration Society.

14 MS. KING: Cluster of Schools. No,
15 Capital Hill Cluster of Schools.

16 For one thing, I applaud that. It is
17 always the desire of the BZA to -- that opposing
18 parties work out some kind of an agreement. And it
19 appears to me that we should grant this application
20 and incorporate the agreement signed on the 2nd of
21 September as being an intrinsic part of our order.

22 MR. HOOD: Madam Chair, if I'm in order,
23 Commissioner King, if that's a motion, I'll second
24 it.

25 MS. KING: Thank you.

26 CHAIRPERSON REID: Did you have any

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1 discussion?

2 MR. HOOD: No, I didn't have any
3 discussion. Well, let me just add I, too, applaud
4 the parties for coming to agreement. When I saw the
5 agreement, I thought that was excellent work that
6 they've done and I, too, want to echo the comments
7 of Commissioner King.

8 CHAIRPERSON REID: Yeah, I would also
9 concur with my colleagues. The issues that seem to
10 be a stumbling block to this particular application
11 being approved have now been removed predicated upon
12 the cooperative efforts between the two entities,
13 the applicant and the PTA.

14 And they have come to a meeting of the
15 minds as to how they can "live together." We also
16 had a letter, I should note, that came in as well in
17 opposition from a Mr. Robert and Marva -- is that
18 McCulloch? McCulloch, it looks like.

19 Just for the record, we feel that they
20 have, in fact, indeed met their burden of proof and
21 that they are -- have demonstrated that they're
22 entitled to the relief that they had requested, the
23 variance; and that the adverse impact aspect of it
24 has now been removed, as well as the fact that it
25 does not appear to impair the integrity or intent of
26 the zoning regulations.

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1 MS. KING: Excuse me. We should also
2 note, Madame Chair, that ANC 6A, at a meeting with a
3 quorum being present, voted in favor of this
4 project, and that the Stanton Park Neighborhood
5 Association was also in support.

6 CHAIRPERSON REID: Okay, all right.

7 All in favor?

8 (Chorus of ayes.)

9 Opposed?

10 MS. PRUITT-WILLIAMS: Staff would record
11 the vote as three to zero to two to approve motion
12 made by Ms. King, seconded by Mr. Hood; Mr. Gilreath
13 and Mr. Sockwell not voting, not having been
14 present.

15 The next item on your agenda are
16 motions. The first motion for consideration is BZA
17 Case 16408, George Washington University Law School.

18 Letter dated July 22, 1999 from the law
19 firm of Arnold & Porter representing George
20 Washington University is requesting a modification
21 of an approved plan in the application of George
22 Washington University pursuant to 11 DCMR 3108 for a
23 special exception under Section 210 to allow
24 renovations and additions to an adjacent university
25 building for the use of the law school under
26 approved campus plan for property located in an R-5-

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1 D District at 2003 G Street, N.W. and 700-706 20th
2 Street, N.W. (Square 102, Lot 46).

3 The hearing on this particular case was
4 January 6, 1999 with a bench decision that same day.
5 Final order was January 22nd.

6 Those participating in this case was Ms.
7 Reid, Ms. King and Mr. Gilreath.

8 MS. KING: I'd like to ask staff, we've
9 not heard from the ANC on this case?

10 MS. PRUITT-WILLIAMS: Not in this
11 particular modification. On the original case, the
12 ANC was in favor.

13 MS. KING: What are the -- is there any
14 standard or precedent for what constitutes a
15 modification and what constitutes a substantial
16 addition to plans? Is there any precedent, any
17 standard?

18 MS. PRUITT-WILLIAMS: There are no
19 standards.

20 MS. KING: I mean, this seems to be a
21 significant change in plans to me, but I just
22 wondered if there was any standard that was part of
23 our precedence.

24 MR. GILREATH: Madame Chair, in reading
25 the materials submitted to us on this case, even
26 though there is some significant architectural

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1 change in terms of moving walls around and so forth,
2 I feel, in terms of the general appearance and so
3 forth and creating access to the other classrooms
4 and so forth, that I -- unless there's some kind of
5 standard, I really don't have any problem with this,
6 as long as it meets the Historic Preservation Board
7 review acceptability that --

8 MS. PRUITT-WILLIAMS: Well, it would
9 have -- I mean, that is a separate and concurrent
10 track that would have to --

11 MR. GILREATH: That would be my only
12 concern because from the street it's not going to
13 look differently, and it's really, as I understand
14 it, to increase access to some of the other
15 connecting roads. So in terms of general
16 appearance, I don't have any problem with it.

17 CHAIRPERSON REID: I would agree. I
18 think that, based upon the fact that the -- first of
19 all, we don't have a motion, do we? I would move --

20 MR. GILREATH: Well, you go ahead and
21 move and I'll second it.

22 CHAIRPERSON REID: You make the motion.

23 MR. HOOD: Okay, I move that we accept
24 the applicant's proposal.

25 CHAIRPERSON REID: Okay, I second it.

26 The fact that this is a small infield

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1 building and it's a connecting building, and as well
2 as the fact that it's below grade and it's not
3 included in the gross floor area ratio, I have no
4 problem with it.

5 It does not appear to have any kind of
6 adverse impact, and I don't think that it is
7 inconsistent with their campus plan.

8 MS. KING: Well, absent any opposition
9 from the ANC, which is, I know, very vigilant in
10 that area, I would be in favor of the motion.

11 CHAIRPERSON REID: Any other comments?

12 All in favor?

13 (Chorus of ayes.)

14 Opposed?

15 MS. PRUITT-WILLIAMS: Staff would record
16 the vote as three to zero to two, motion made by Mr.
17 Gilreath, seconded by Ms. Reid; Mr. Hood and Mr.
18 Sockwell not voting, not having been present at the
19 hearing.

20 The next case on your agenda for
21 consideration is BZA Case 16409 of George Washington
22 University parking.

23 Would you like me to read all of this,
24 or do you want to -- I mean, you have several
25 letters. You have a letter from Ms. Miller, a
26 letter from Arter and Hadden, the representative of

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1 the University.

2 CHAIRPERSON REID: Yes, please do.

3 MS. PRUITT-WILLIAMS: Okay, you have a
4 letter first -- the first letter is dated June 29th
5 from Dorothy Miller requesting that the Board
6 rescind or reconsider approved BZA order 16409 for a
7 garage addition at the George Washington University.

8 Second item is a letter dated July 28,
9 1999 from the law firm of Arter and Hadden,
10 representing GW University, stating that the
11 proposed motion should be dismissed as it was
12 untimely filed.

13 Third letter is dated July 21, 1999 from
14 ANC 2A representing the Board -- requesting that the
15 Board rescind or reconsider BZA order 16409 for a
16 garage addition at George Washington University.

17 The final letter dated July 23, 1999
18 from ANC 2A requested that the Board rescind or
19 reconsider approved order -- BZA order 16409, and
20 that Dorothy Miller would represent the ANC's
21 position in this application of George Washington
22 University.

23 The hearing dates, of course, were
24 November 18, 1998, January 5, '99, March 2nd, April
25 7th and April 22nd of '99. Decision date was May
26 19th, and the final day of the order was June 16th.

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1 Those participating in this case were
2 Ms. Reid, Ms. King and Mr. Gilreath and Mr.
3 Franklin. And we do have proxies from Mr. Franklin.

4 This is before you for decision today.

5 CHAIRPERSON REID: Well, in this
6 particular instance, it appears that we have several
7 things that we have to consider. One was the letter
8 from Ms. Miller requesting a rescision of the -- or
9 reconsideration of the BZA No. 16409.

10 And if I'm not mistaken, I think that
11 the problem we had with that is that Mrs. Miller was
12 not a party in the case at the time. And so
13 therefore, we -- it would be inappropriate for us to
14 take that into consideration.

15 The other aspect is the timeliness of
16 the filing even if, in fact, she were a party in the
17 case. And it appears that it was not timely filed.
18 So again, there is something that we would not have
19 the powers to be able to act because it would be,
20 again, inappropriately before us.

21 In regard to the letter dated July 21st
22 from the ANC, this particular letter also was
23 untimely. And as such, in view of the fact that
24 there may have been some type of confusion with this
25 particular case in that it was very convoluted, we
26 would waive the July 21, 1999 ANC 2A letter into the

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1 record at this time.

2 MR. BERGSTEIN: Madame Chairperson, may
3 I just correct one thing? The June 20th letter from
4 Ms. Miller --

5 CHAIRPERSON REID: June 29th or 20th?

6 MR. BERGSTEIN: 29th. I'll have to
7 check, but I believe it was timely, but let me check
8 that.

9 CHAIRPERSON REID: The letter was
10 timely. Okay, I'm sorry.

11 MS. PRUITT-WILLIAMS: It was timely.

12 CHAIRPERSON REID: While timely, the
13 problem we had was that it was not -- she was not a
14 party. So therefore, it would be inappropriately
15 before us.

16 The letter from the ANC is a letter that
17 was not timely filed, is that correct?

18 MR. BERGSTEIN: That's correct.

19 CHAIRPERSON REID: And in that instance,
20 we would waive the rules and allow it to come into
21 the record.

22 MR. BERGSTEIN: Do you want to have a
23 motion on that first and then proceed to the merits,
24 or --

25 CHAIRPERSON REID: Well, the motion that
26 we are actually going to be dealing with is a

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1 composite of the whole submission, is it not?

2 MS. KING: We need to move to waive --
3 to accept the ANC letter of July 21st.

4 CHAIRPERSON REID: Oh, okay. Well, we
5 can vote on it. I had just basically --

6 MS. PRUITT-WILLIAMS: No, you need to
7 vote on it.

8 MS. KING: I move that we do that.

9 MR. GILREATH: I second the motion.

10 CHAIRPERSON REID: Okay, all in favor?

11 (Chorus of ayes.)

12 Opposed? Okay.

13 MS. PRUITT-WILLIAMS: Staff would record
14 a vote as -- I'm sorry, I believe three to zero.

15 MS. KING: Do you have a proxy for Mr. -
16 -

17 MS. PRUITT-WILLIAMS: Yes, I do and --
18 three to four, excuse me, three to four to --

19 MS. KING: Three to four?

20 MS. PRUITT-WILLIAMS: Excuse me, four to
21 approve to waive the motion into the record.

22 MS. KING: Mr. Franklin voted in favor
23 of --

24 MS. PRUITT-WILLIAMS: Yes.

25 MS. KING: -- the waiver?

26 CHAIRPERSON REID: Okay, now the motion

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1 itself.

2 MR. GILREATH: Is this for
3 reconsideration?

4 MS. PRUITT-WILLIAMS: You can take it
5 from reconsideration and then rescind. I would
6 suggest you separate them out or you can do them
7 both ways. It doesn't matter.

8 MS. KING: I'm sorry?

9 MS. PRUITT-WILLIAMS: You have to deal
10 with both issues. You have to deal with either to
11 reconsider the hearing or to rescind the order.
12 They're two separate things, but you need to deal
13 with both of them.

14 CHAIRPERSON REID: Can we deal with both
15 of them at the same time?

16 MS. PRUITT-WILLIAMS: Yes, but you have
17 to address them all.

18 CHAIRPERSON REID: All right, okay.

19 MR. GILREATH: You say rescind the
20 order. I'm not sure what you're saying.

21 MS. PRUITT-WILLIAMS: Pull it back
22 altogether.

23 CHAIRPERSON REID: Nullify the order.

24 MS. PRUITT-WILLIAMS: Nullify the order.

25 MR. GILREATH: The order that we've
26 given, we nullify it? Okay, all right.

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1 MR. BERGSTEIN: Although, I have to
2 point out there's nothing in the rules that speaks
3 of a motion to rescind. We have a motion for -- in
4 terms of post hearing, post decisional motions, you
5 have a motion to rehear and a motion to reconsider.

6 CHAIRPERSON REID: But not to rescind.

7 MR. BERGSTEIN: As implicit within a
8 motion to reconsider is the motion to rescind, but
9 there's nothing in the rules itself that speaks of a
10 motion to rescind.

11 CHAIRPERSON REID: Well, I think it's a
12 matter of semantics. And for us to be correct, then
13 let us just deal specifically with the motion to
14 reconsider.

15 MR. GILREATH: Madame Chair, I feel to
16 reconsider this case, that there should have been
17 substantive and new information on parking.

18 CHAIRPERSON REID: You want to make a
19 move?

20 MR. GILREATH: And Ms. Miller's
21 submission, and she did a lot of thorough homework,
22 and, with all due respect, I feel that really no
23 additional information has been offered, at least to
24 me, that would warrant a reconsideration of my
25 original thinking of this.

26 Therefore, I proffer a motion not to

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1 reconsider --

2 MS. PRUITT-WILLIAMS: Or to deny.

3 MR. GILREATH: Okay, I make a motion
4 that we deny the reconsideration.

5 CHAIRPERSON REID: Okay, I would second
6 that motion. I, in reading the submission also,
7 which is rather exhaustive, I did not find anything
8 material in the submission to cause me to change my
9 original position in regard to this particular case,
10 so I also would concur with you and agree not to
11 reconsider this particular motion.

12 MS. KING: I'm going to concur with
13 this, but I do think that there is an issue which I
14 will -- about parking which I will raise now. And
15 the reason that I ask that case number 16309 be
16 moved up to be heard immediately after the case that
17 we're considering now is because I think my feeling
18 about both of them is the same.

19 It's no secret, because I have said it
20 at public hearings in this room, that I have severe
21 doubts about whether or not GW University is, in
22 fact, at all times maintaining 2,700 -- minimum of
23 2,700 off street parking spaces within the
24 boundaries of their campus plan.

25 In discussion with people who know more
26 about this than I do, apparently it is possible for

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1 the Advisory Neighborhood Commission 2A to request
2 of the Department of Consumer and Regulatory
3 Affairs, perhaps with the assistance of a variety of
4 council members, that an actual count be maintained
5 or be done immediately of the number of spaces that
6 GW is maintaining within its campus plan boundaries.

7 And that if they are falling below that,
8 that any C of O that has not been issued by DCRA
9 would have to be stopped. You know, I believe that
10 the people in the neighborhood are well aware of,
11 you know, where the parking spaces come and the
12 parking spaces go, but this Board and the office
13 that supports us are not in a position to actually
14 go 'round and make a physical count.

15 That would be the responsibility of the
16 Department of Consumer and Regulatory Affairs. And
17 so I am going to vote to deny this motion, but
18 would, at the same time, encourage ANC 2A to take
19 that -- those steps in order to gather bona fide
20 verification of those 2,700 spaces within the campus
21 boundaries.

22 CHAIRPERSON REID: All in favor?

23 (Chorus of ayes.)

24 Opposed? And we also have a proxy from
25 Mr. Franklin in favor of denying the motion.

26 MS. PRUITT-WILLIAMS: Staff would record

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1 the vote as four to zero to two, motion made by Mr.
2 Gilreath, seconded by Mr. Franklin. I mean, sorry,
3 by Ms. Reid. Proxy from Mr. Franklin and Ms. King
4 to deny, Mr. Sockwell and Mr. Hood not voting, not
5 having been present.

6 Would you like to move onto the second
7 GW case? Is that my understanding?

8 CHAIRPERSON REID: Yes.

9 MS. KING: Yeah, 16309 is the next one.

10 MS. PRUITT-WILLIAMS: Next case 16309,
11 GW University parking. In a letter dated July 26,
12 1999 from Ms. Dorothy Miller requesting that the
13 Board rescind or reopen BZA Order 16309, and a
14 letter dated July 30, 1999 from Mr. Barber
15 representing GW University responding to Ms.
16 Miller's request in the application of GW University
17 pursuant to 11 DCMR 3108 for special exception under
18 Section 210 for further processing of an approved
19 campus plan to continue University parking lot uses
20 in R-5-D and R-5-E Districts at premises 906 23rd
21 Street, 700 through 718 23rd Street, 2301 through
22 2329 G Street, 2200 I Street, 2003 through 2011 H
23 Street, 2030 G Street, 2007 F Street, Squares 40,
24 Lot 36; Square 42, Lot 847; Square 55, Lot 853;
25 Square 101, Lot 60; and Square -- I'm sorry, Lot 60
26 and Lot 877; Square 103, Lots 13, 812, 813, 917 and

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1 819.)

2 The hearing date on this particular case
3 was March 4, 1998, decision the same day. Final
4 date of order is July 14, 1999.

5 This is before you.

6 MR. GILREATH: Well, Madame Chairman, my
7 sentiments and thinking on this appear some to the
8 other. In terms of the accuracy of tabulation of
9 the parking, there's no way of us knowing. I'm
10 willing to say that GW -- we'll take at face value
11 that they will comply and maintain 2,700 parking
12 spaces, and Ms. King's recommendation or
13 encouragement that the ANC require GW to tabulate
14 these and make sure they're complying.

15 MS. KING: No, not GW, DCRA.

16 MR. GILREATH: DCRA. And that I,
17 therefore, recommend that we deny this request, but
18 ask that the ANC require the DCRA to do a count.

19 CHAIRPERSON REID: I again second your
20 motion -- your motion, Mr. Gilreath. I think that
21 this whole issue of how many parking spaces are
22 being provided and where the parking spaces are is
23 something that no one really has a grasp on.

24 And we, in granting the order initially,
25 did it just from the perspective of the proffering
26 by GW to us that these -- that they would comply

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1 with the stipulation in their campus plan, and that
2 is that it would not ever fall below 2,700.

3 And as such, to get into whether or not
4 there is the exact number at any given time is
5 something that is beyond our purview, as well as the
6 fact that we are aware of the fact that they're in
7 the process of making provisions for providing
8 additional parking and trying to diffuse the adverse
9 impact or conceived -- or perceived adverse impact
10 that may come about as a result of their -- the
11 plans that they're implementing.

12 So I second your -- second it.

13 Are there comments?

14 MS. KING: I think the important issue
15 here is that the campus plan specifically states
16 that they will never fall below 2,700 within the
17 campus boundaries and that DCRA needs to look at
18 that.

19 Would it be appropriate, Madame Chair,
20 for us to request that DCRA look into this issue?

21 CHAIRPERSON REID: Well, yeah. Well, I
22 think that -- no, certainly we can do that.
23 Nonetheless, I feel that notwithstanding the fact
24 that even if it does stipulate it within the
25 auspices of the campus plan that the parking spaces
26 are to be maintained on campus, when we had the

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1 hearing as a Board, we agreed that the additional
2 parking spaces that were at the Kennedy Center were
3 --

4 MS. KING: I never voted on anything
5 that authorized that.

6 CHAIRPERSON REID: Ms. King, Ms. King, I
7 am not finished, and I would appreciate it very much
8 if you would not interrupt.

9 MS. KING: Okay, well just -- I want you
10 to keep your facts right.

11 CHAIRPERSON REID: I understand that. I
12 said as a Board we voted --

13 MS. KING: Never.

14 CHAIRPERSON REID: As a Board, we voted
15 that we would accept what was being proffered to us.
16 We did not throw out the part about the Kennedy
17 Center parking lot -- parking that was proffered to
18 us. And we had accepted that this would be a part
19 of the parking solution that was proffered by George
20 Washington University.

21 MS. KING: Never. We never voted on
22 that.

23 MR. GILREATH: Madame Chair, that was my
24 understanding, too, that this was the overall
25 solution.

26 CHAIRPERSON REID: Excuse me, one

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1 second.

2 Ms. Miller, if you continue to be
3 disruptive I think just one more time, I have no
4 choice but to ask you to leave this hearing room.

5 Thank you.

6 MR. GILREATH: That was my
7 understanding, too. I think we have to apply a
8 principle of reasonableness in this. And that, as a
9 temporary solution to provide parking and build this
10 hospital, that if they can work out some kind of
11 temporary arrangement, for us to simply say you
12 can't do this is showing undue inflexibility.

13 And there should be a certain amount of
14 reasonableness in this. I agree that when DCRA,
15 when they do their tabulation, they've got to be
16 very close to that. They've got to show that they
17 can meet this number.

18 And if they can't -- but I think the
19 Kennedy Center parking should be included in that as
20 well because this is a temporary arrangement to
21 accommodate building this hospital.

22 CHAIRPERSON REID: And we know --

23 MS. KING: Madame Chair --

24 CHAIRPERSON REID: Go ahead.

25 MS. KING: The two of you who contend
26 that we voted to authorize the Kennedy Center

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1 parking, which is off campus, to be part of the
2 campus plan 2,700, were all of the parties to the
3 campus plan served with that information?

4 Were they all able to participate in a
5 discussion as to whether that would be acceptable?

6 CHAIRPERSON REID: We voted on the
7 application, and the application included the
8 Kennedy Center parking.

9 MS. KING: But did it include all the
10 parties to the campus plan when the campus plan was
11 enacted ten years ago?

12 CHAIRPERSON REID: I don't understand
13 what you mean by all the parties.

14 MS. KING: I mean, if we're amending --
15 what you're saying is that we voted to amend the
16 campus plan.

17 CHAIRPERSON REID: No, I'm saying that
18 we voted on their application, which included the
19 parking at the Kennedy Center.

20 MS. KING: Which would include an
21 amendment to the campus plan, is what you're saying.

22 CHAIRPERSON REID: No, I'm not. I'm
23 saying we voted on the application, Ms. King, and
24 the application did include the parking at the
25 Kennedy Center.

26 MS. KING: I never voted to include

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1 parking at the Kennedy Center as an amendment to the
2 campus plan, which is what you're saying it is.

3 CHAIRPERSON REID: I did not say that.

4 MS. KING: The campus plan says 2,700
5 parking spaces within the boundaries of the campus
6 plan. Am I correct?

7 CHAIRPERSON REID: Ms. King, we're not
8 going to split hairs. We voted on the application
9 and we did not object to the parking at the Kennedy
10 Center.

11 MS. KING: I did.

12 CHAIRPERSON REID: Be that as it may, at
13 this juncture, we feel that -- I feel that, given
14 the fact that we know that that is a very difficult
15 area as far as parking and traffic is concerned, I
16 think that what the Board wanted to see was that
17 there was being an effort -- an effort was being
18 made to try to, as much as possible, mitigate the
19 adverse impact as far as parking was concerned.

20 And I think that George Washington, in
21 my opinion, in my view, demonstrated to us that that
22 had been adequately taken care of.

23 MR. GILREATH: And I concur fully with
24 that interpretation.

25 CHAIRPERSON REID: Okay, all in favor?

26 (Chorus of ayes.)

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1 MS. KING: Opposed. I am opposed. If
2 you are not going to incorporate into this a request
3 for DCRA to do a count of the purported 2,700
4 parking spaces within the campus plan, I cannot vote
5 to deny this motion.

6 If you wish to amend your resolution in
7 order to put that request in as part of the motion,
8 I will vote for it.

9 CHAIRPERSON REID: Just one second, one
10 second.

11 The motion on the floor is to deny the
12 motion, and the vote was to -- approval of denial of
13 the motion.

14 MS. KING: Approval of the motion or
15 denial of the motion?

16 CHAIRPERSON REID: To deny the -- to
17 deny the motion or to approve or deny the motion.
18 Either way it is, like the motion fails -- for the
19 motion to fail, and I have voted and Mr. --

20 MS. KING: Well, could you restate the
21 motion? It's just simply to deny with no --
22 nothing, just deny, is that your motion?

23 CHAIRPERSON REID: Yes, yes, it is.

24 MS. KING: Mr. Gilreath, is it your
25 motion?

26 CHAIRPERSON REID: Yes, Ms. King, in all

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1 fairness, you have made it very clear what your
2 position is, and I think that you made your request.
3 I am not --

4 MS. KING: No, I just wanted to know if
5 you had denied my amendment. I mean, if my
6 amendment to the motion to ask -- to officially
7 request a count of GW parking was denied.

8 CHAIRPERSON REID: Well, if you're going
9 to make -- I am making my motion and then it -- I'm
10 not going to include your amendment to my motion not
11 unless -- if you want to make a motion, you're
12 welcome to do that.

13 MS. KING: I would move that we -- that
14 the Board add to the motion to deny a request that -
15 - instructions to the staff to request that DCRA do
16 a count of actual on campus parking within the
17 boundaries of the GW campus plan.

18 MS. PRUITT-WILLIAMS: I believe what we
19 have are two motions right now. It seems that --
20 and this is -- I'm just trying to --

21 MS. KING: No, that is not. I asked to
22 amend the motion.

23 MS. PRUITT-WILLIAMS: And I believe Ms.
24 King said she is not willing to do that -- I mean
25 Ms. Reid.

26 Is that correct?

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1 MS. KING: But it was Mr. Gilreath's
2 motion.

3 MS. PRUITT-WILLIAMS: Oh, Mr. Gilreath,
4 I'm sorry.

5 Then initial motion, have you agreed to
6 amend that? That's my first question. The motion
7 you made, Mr. Gilreath, to deny.

8 MR. GILREATH: That was denied right
9 across the Board. This amendment, if we take a vote
10 on the amendment then --

11 MS. PRUITT-WILLIAMS: You can either
12 agree to amend it or you can go with this motion and
13 then Ms. King can then make a motion to change it
14 that way. That's why I'm just trying to keep it
15 straight.

16 MR. BERGSTEIN: May I just interject one
17 thing for the information of the Board. The order
18 that we're looking at, which is 16309, has a summary
19 of evidence. And one of the things that's in the
20 summary of evidence, at least to just let everybody
21 know that there was this testimony there.

22 And I assume the fact that it's in
23 summary of evidence means that the Board accepted
24 this testimony is that the traffic expert indicates
25 that the university currently provides -- and I
26 guess it's at the time of the hearing -- currently

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1 provides a total of 2,778 parking spaces in all its
2 parking facilities.

3 And I just wanted to point that out to
4 the Board that, at least with respect to this order,
5 there was that testimony of that count.

6 MS. KING: But the motion before us says
7 that that count is not accurate because there are
8 holes in the ground where parking spaces used to be.

9 And so it seems to me that it's only
10 reasonable for us, although we may deny the motion
11 to -- that this is a recurring issue before this
12 Board, and that it would be nice to have somebody
13 other than the paid experts of GW University verify
14 that this information is correct.

15 CHAIRPERSON REID: All right, now may we
16 proceed? Okay.

17 MS. PRUITT-WILLIAMS: Could we restate
18 the motions for the record?

19 MR. GILREATH: I make the motion that we
20 deny the request by the ANC on rescinding our -- and
21 reopening BZA order 16309.

22 CHAIRPERSON REID: I second it.

23 All in favor?

24 (Chorus of ayes.)

25 Do we have a proxy?

26 MS. PRUITT-WILLIAMS: Not on this

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1 particular case. So I'm sorry, could I see a show
2 of hands, all in favor to deny? All in opposition?

3 MS. KING: Me, me.

4 CHAIRPERSON REID: Sheila didn't want to
5 call for my vote. I vote against it.

6 CHAIRPERSON REID: I was going to. All
7 right, so the motion fails.

8 MS. PRUITT-WILLIAMS: Motion fails,
9 correct.

10 MS. KING: Is it in order at this time
11 for me to request that the Board instruct its staff
12 to ask the Department of Consumer and Regulatory
13 Affairs to do an actual on ground count of the
14 number of parking -- viable parking spaces, off
15 street parking spaces, within the campus boundaries
16 of George Washington University?

17 Hello?

18 CHAIRPERSON REID: I don't know how that
19 can be accomplished. What gives me pause, Ms. King,
20 is I can understand that being a request and we can
21 request that, but making it a part of this order, I
22 don't think that we have the --

23 MS. KING: It doesn't --

24 CHAIRPERSON REID: -- power to make them
25 do that.

26 MS. KING: We're not writing an order.

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1 We've just denied a motion. This is another issue.

2 MS. PRUITT-WILLIAMS: The motion failed.
3 You didn't deny it. It failed for lack of vote.

4 MS. KING: Whatever.

5 MS. PRUITT-WILLIAMS: That's different.

6 MS. KING: That motion is now dead.

7 CHAIRPERSON REID: Okay, but my question
8 is can we make them go out there routinely and check
9 -- count the spaces?

10 MS. KING: We can ask a coequal branch
11 of the District Government to do anything. They can
12 do it or not. Sometimes they don't even show up
13 when they're supposed to be testifying before us.

14 But it seems to me that it would be
15 appropriate for us to ask, since this is such a
16 contentious issue, and since -- even though the
17 motion was denied, some evidence has been presented
18 in writing to this body that some of the parking
19 lots are now holes in the ground, that it would be -
20 - since there are so many GW cases, and particularly
21 since GW is about to come before this Board for a
22 revised campus plan, that it seems to me that it
23 would be appropriate for us to ask DCRA to verify
24 that they are, in fact, complying.

25 CHAIRPERSON REID: Okay, I have no
26 problem with that. My only hesitation was I feel

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1 that we were -- we had any power to be able to
2 compel them to go out there and do that.

3 MS. KING: We don't have any power.
4 They can't compel us. We can't compel them. But it
5 seems to me that it is an issue and that we should
6 request DCRA to --

7 CHAIRPERSON REID: I have no problem
8 with that.

9 MS. KING: -- to do that.

10 CHAIRPERSON REID: I would second that.
11 Okay, all in favor of Ms. King's motion?

12 MS. KING: Aye.

13 CHAIRPERSON REID: Aye.

14 MR. GILREATH: Aye.

15 MS. PRUITT-WILLIAMS: Let me get this
16 straight. My understanding is that you would like
17 staff to draft a letter to go to DCRA requesting
18 that they do a count?

19 MS. KING: An on ground count of off
20 street parking within the boundaries of GW. And I
21 hope that the ANC, and perhaps through the medium of
22 the ANC, that various council members will make the
23 same request so that DCRA will do it.

24 MS. PRUITT-WILLIAMS: I believe the next
25 case on our agenda is case number 16483, appeal of
26 the zoning administrator's decision by Basil Gogos.

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1 Letter from Richard Nettler dated June
2 16, 1999 requesting a refund of a filing fee of
3 Basil Gogos pursuant to 11 3105 and 3106 from an
4 administrator decision of the zoning administrator
5 to issue a building permit for a restaurant and
6 carry out.

7 The appellant will be affected by
8 impacts on the property value in the R-3 District at
9 premise 1659 35th Street, N.W. (Square 1291, Lot
10 217). You have information -- you have a letter
11 from Mr. Nettler in your file.

12 CHAIRPERSON REID: Ms. Pruitt-Williams,
13 just before you go into that one, I just have a
14 question. I'm a little confused about the last
15 case. Was not Mr. Franklin involved in that?

16 MS. PRUITT-WILLIAMS: No. That was --
17 the last case on the parking lot --

18 MS. KING: There was that whole -- that
19 was that whole variety of parking lots, remember?

20 CHAIRPERSON REID: Right.

21 MS. KING: We did -- you know, there was
22 a parking lot here and a parking lot there, and we
23 did it only for the periods in the end of the campus
24 plan.

25 CHAIRPERSON REID: Right. But he was
26 not involved in that?

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1 MS. KING: No, he wasn't involved.

2 CHAIRPERSON REID: Okay. For some
3 reason I thought that he did.

4 So do we have any other proxies?

5 MS. PRUITT-WILLIAMS: No.

6 CHAIRPERSON REID: All right, just
7 wanted to make sure we didn't inadvertently leave
8 them out.

9 Okay, continue.

10 MS. PRUITT-WILLIAMS: I'm sorry. Well,
11 the case is before you. You have a letter from Mr.
12 Nettler.

13 CHAIRPERSON REID: Well, you know,
14 unfortunately, when these requests come before us
15 for reduction of -- or to waive the filing fees, we
16 have to claim that we don't have the authority to do
17 that.

18 We do?

19 MS. PRUITT-WILLIAMS: I would suggest to
20 you, if you look at 3308, there are times where the
21 Board does have the authority to waive filing fees
22 under very certain situations.

23 CHAIRPERSON REID: And is this one of
24 them?

25 MS. PRUITT-WILLIAMS: I believe so. I
26 would suggest you read that just to --

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1 MR. BERGSTEIN: It's also in the BZA
2 Act. You're not permitted to charge civic
3 associations, nonprofit civic associations.

4 CHAIRPERSON REID: Oh, you mean that we
5 erred in --

6 MR. BERGSTEIN: What happened here was
7 that a check -- what Mr. Nettler indicated was that,
8 in his absence from the office, a check was
9 inadvertently supplied with the application and he's
10 asking that the check be returned because it was --
11 it should not have been filed with it because the
12 BZA is not permitted to charge for appeals from this
13 type of association, assuming that you agree that
14 this is the type of association that falls within
15 the act and the regulation.

16 MR. GILREATH: Well, can we ask counsel.
17 In your judgement, do you feel this
18 falls under the nonprofit civic association --

19 MS. KING: Anything that's a 501 C3 is.

20 CHAIRPERSON REID: We've had other
21 requests for nonprofit organizations.

22 MS. PRUITT-WILLIAMS: Nonprofit is
23 different than a civic association.

24 CHAIRPERSON REID: Explain to me what
25 the difference is because I know that we've had
26 nonprofit organizations come before us and ask for a

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1 waiver and we weren't able to give it to them. So
2 how is this different?

3 MS. KING: Madame Chair, I would like to
4 know more about this. I mean, I'm a former resident
5 of Georgetown, and the major civic association there
6 is the CAG, the Civic Association of Georgetown.
7 I've not heard of this. Is this something new?

8 Do we know anything about this
9 organization?

10 CHAIRPERSON REID: I've not heard of
11 them before.

12 MS. PRUITT-WILLIAMS: Actually, I did a
13 little bit of research. It is my understanding that
14 this office has waived the fees -- filing fee on
15 this particular -- for this particular client in the
16 past.

17 CHAIRPERSON REID: But I don't
18 understand. Why is it for this -- why are we
19 authorized to waive the fee for this organization --

20 MS. PRUITT-WILLIAMS: Because it's --

21 CHAIRPERSON REID: -- and not for the
22 other nonprofit organizations?

23 MS. PRUITT-WILLIAMS: Because it's
24 considered a civic association. It's not nonprofit.
25 It's a civic.

26 CHAIRPERSON REID: I asked for

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1 clarification.

2 MS. PRUITT-WILLIAMS: Of why it's
3 considered civic and not --

4 CHAIRPERSON REID: No, why civic. I
5 mean, are we saying then that --

6 MS. PRUITT-WILLIAMS: That's what the
7 regs state.

8 CHAIRPERSON REID: No, no.

9 MR. BERGSTEIN: Madame Chair, I don't
10 have it before me, but I looked at it yesterday.
11 No, I actually looked at the Zoning Act. The
12 section that established BZA specifically indicated
13 that BZA may not charge for appeals for nonprofit
14 civic associations.

15 You need two things. You need a civic
16 association and it must be nonprofit. I'm not
17 saying that this information is sufficient, but that
18 is the reason. It's not even a waiver. You're not
19 permitted, under any circumstances, if someone meets
20 those requirements, to be charged for an appeal.

21 CHAIRPERSON REID: So in this instance,
22 the check was proffered to us inadvertently?

23 MR. BERGSTEIN: That's the
24 representation.

25 CHAIRPERSON REID: So we didn't -- we
26 didn't charge them a fee, they just gave us the

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1 money, and now they want it back. Is that what's
2 happening here?

3 MR. BERGSTEIN: Yes.

4 MS. PRUITT-WILLIAMS: An individual who
5 is not used to dealing with it brought the
6 application in.

7 MR. BERGSTEIN: But, in essence, if you
8 accept the fee, you've charged them.

9 MS. PRUITT-WILLIAMS: Right.

10 CHAIRPERSON REID: So it was a mistake.

11 MR. BERGSTEIN: It was a mistake, yes.
12 Well, that's what they're claiming. Now, you can
13 agree with -- you could still say it wasn't a
14 mistake because, in fact, I don't -- we don't
15 recognize this to be a nonprofit civic association
16 and we're glad that you gave us the money because
17 you owe it to us, but the question is whether or not
18 you agree that this is a nonprofit civic
19 association.

20 CHAIRPERSON REID: Do we just take it on
21 face value, Ms. Pruitt-Williams, that this is, in
22 fact, the situation here, or do they -- should they,
23 in asking for a refund, provide us with evidence
24 that (1) they're a recognized civic association and
25 (2) that they are, in fact, nonprofit?

26 MS. PRUITT-WILLIAMS: I mean, that's

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1 your call, Ms. Reid. That's the Board's call.

2 MS. KING: But you say that there is a

3 precedent. We have --

4 MS. PRUITT-WILLIAMS: In the past, yes.

5 MS. KING: -- we have refused to accept

6 money from them in the past?

7 MS. PRUITT-WILLIAMS: Oh, in the past,

8 we have not -- yeah, we have considered them a civic

9 association.

10 CHAIRPERSON REID: This same --

11 MS. PRUITT-WILLIAMS: Yes.

12 MS. KING: This same organization?

13 MS. PRUITT-WILLIAMS: Yes.

14 MS. KING: I move that we return the

15 money.

16 CHAIRPERSON REID: I second it.

17 All in favor?

18 (Chorus of ayes.)

19 Opposed?

20 MS. KING: May I suggest, Madame Chair,

21 that Mr. Hood is here and that we now take up the

22 Bosshard case. If they're not here at quarter to

23 11:00, they're probably not coming.

24 MS. PRUITT-WILLIAMS: Excuse me, may I

25 get the vote again?

26 MS. KING: Oh, sorry.

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1 CHAIRPERSON REID: Three to zero.

2 MS. PRUITT-WILLIAMS: Could I have the
3 maker of the move?

4 MS. KING: I moved --

5 CHAIRPERSON REID: And I seconded.

6 MS. KING: -- and Sheila seconded. We
7 all three voted.

8 CHAIRPERSON REID: Is he here? Mr.
9 Bosshard here?

10 MS. PRUITT-WILLIAMS: Thank you, I'm
11 sorry. We'd like to move on to the Bosshard case,
12 is that correct?

13 MS. KING: If we may.

14 MS. PRUITT-WILLIAMS: Next case is
15 16362, Philippe Bosshard. Letter dated August 8th
16 and August 9, 1999 of Allan I. Mendelsohn requesting
17 a reconsideration of certain aspects of BZA Order on
18 application of Philippe Bosshard, pursuant to 11
19 DCMR Section 3107.2 for a variance to allow an
20 addition to an existing nonconforming structure (11
21 DCMR Subsection 2001.3) and a variance from the
22 minimum side yard set back requirement (Subsection
23 405.9) to allow the construction of a dormer
24 addition to an existing nonconforming single-family
25 row dwelling in an R-1-B District at 3312 Cathedral
26 Avenue (Square 2118, Lot 38).

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1 This has had a long hearing history
2 starting in July 8, 1998, October 21, '98 and
3 January 20th of 1999.

4 MR. BERGSTEIN: Madame Chair, if I just
5 may be of assistance. This is again an instance
6 where the petition for reconsideration was late
7 filed. So, in terms of considering this item,
8 you'll first need to waive your rules to permit
9 acceptance of a late filed motion for
10 reconsideration, and that it should have been
11 received in the office on August 9th.

12 It's dated stamped August 13th, although
13 dated August 9th.

14 MS. KING: Further than that, he says
15 that he's going to appeal the decision presumably to
16 the Court of Appeals. I mean, do the two things run
17 concurrently?

18 MR. BERGSTEIN: Once and again, because
19 this wasn't timely and given the date of the
20 decision, this entire matter may well be moot
21 because he had 30 days from the date of the final
22 decision to file a petition for review to the Court
23 of Appeals and only a timely petition for review
24 would stay that.

25 But even if a party files a motion for
26 reconsideration and then files a petition for

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1 review, I believe that our office advises the court
2 that a motion for reconsideration, if it's timely,
3 is pending.

4 And at that point, generally the Court
5 of Appeals dismisses the appeal pending the Board's
6 determination or the motion of reconsideration. And
7 then the issuance of -- is there's a denial, the
8 issuance of denial starts the clock running again
9 for the appeal.

10 MR. GILREATH: Madame Chair, since the
11 submission -- the request for reconsideration was
12 untimely, and secondly, the argument presented in
13 the letter did not offer any kind of illumination to
14 me of additional substantive material that would
15 cause me to reconsider, therefore I recommend that -
16 - or make a motion we deny the request for
17 reconsideration.

18 MS. KING: I would second that. And I
19 would also point out that his point about Mr.
20 McKinnon having been a party is not correct, that
21 the record has been checked and that Mr. McKinnon
22 was denied party status because he applied for it
23 midway through the hearing.

24 So I would concur that this motion
25 should be denied.

26 MS. PRUITT-WILLIAMS: I would also just

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1 interject that this motion was not served on the
2 current applicant, and that's another issue that --
3 I mean, --

4 CHAIRPERSON REID: The owner.

5 MS. PRUITT-WILLIAMS: -- the owner has
6 been -- the owner of the building has changed since
7 this order, and so this particular motion for
8 reconsideration or motion has not been served on the
9 new owner of the premises.

10 MS. KING: But our order hasn't been
11 served on them either?

12 MS. PRUITT-WILLIAMS: No, we served it
13 on the attorney that we had of record, and we only
14 found out yesterday that that attorney is no longer
15 associated with the case. We have not received
16 anything in writing stating that it had been -- that
17 the property had been sold, nor that the attorney
18 was no longer representing the owner.

19 MS. KING: Well, I mean, therefore I
20 don't think the fact that it wasn't -- that Mr.
21 Mendelsohn's letter wasn't served on the present
22 owner is a valid reason. I think the other reasons
23 that we've discussed are valid reasons, but that is
24 not since we ourselves didn't know until yesterday
25 that there was a new owner of the property.

26 But I still move -- I join Mr. Gilreath

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1 in moving to deny.

2 MR. BERGSTEIN: Just for the sake of
3 clarity, if you're going to not do a separate motion
4 on waiver but use the untimeliness as one of the
5 grounds for denying it, you should either -- either
6 when you vote on this motion, the Board members
7 should understand that you're agreeing to both
8 grounds unless you want to take it separately.

9 If you move not to waive the time, then
10 there is really no necessity to go to the second
11 motion. Though you can, if you want to state on the
12 record that you would have denied it substantively
13 even if timely, but I just want you to understand if
14 you're going to do one single motion on both
15 grounds, (a), it's untimely, (b), it substantively
16 has no merit, that everybody should agree that those
17 are the -- that the motion should be stated as such
18 so that the order can reflect both that there was a
19 denial of a waiver and then, in essence, an
20 alternative that, even if timely, the motion has no
21 substantive merit to it.

22 MR. GILREATH: Do you want me to revise
23 my motion then?

24 MS. KING: What he said. Just say what
25 he said.

26 MR. GILREATH: What counsel said.

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(Laughter.)

CHAIRPERSON REID: Okay, this has been moved and seconded.

All in favor?

(Chorus of ayes.)

Opposed?

MS. PRUITT-WILLIAMS: Staff would record the vote as three to zero to two, motion made by Mr. Gilreath, seconded by Ms. King; Mr. Hood and Mr. Sockwell not voting, not having been present.

MS. KING: Mr. Hood is present.

MS. PRUITT-WILLIAMS: I'm sorry.

MR. HOOD: Yeah, I voted.

MS. PRUITT-WILLIAMS: I didn't hear you.

MR. HOOD: I did vote.

MS. PRUITT-WILLIAMS: So it's four --

MR. HOOD: Four, right.

MS. PRUITT-WILLIAMS: -- four, zero, one. Excuse me.

MS. KING: Four, zero, and Mr. Sockwell not participating.

MS. PRUITT-WILLIAMS: Four, zero, one.

MS. KING: Okay.

CHAIRPERSON REID: Okay, I think we have one --

MS. PRUITT-WILLIAMS: The next case, I

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1 believe, on their agenda is -- we go back to the
2 Amoco Oil Company. We've missed two cases. Amoco
3 and Jubilee House, I believe, are the last two cases
4 for us to deal with.

5 Case No. 16455, Amoco Oil Company.
6 Letter dated August 19, 1999 from Commissioner Marie
7 Whitfield of ANC 1-A09 requesting that the Board
8 reconsider its decision on an application of Amoco
9 Oil Company pursuant to 11 DCMR 3108.1 for special
10 exception under Subsection 726.1 to enlarge an
11 existing gasoline station to include sales of motor
12 vehicle fuel in a C-2-A District at 3426 Georgia
13 Avenue, N.W. (Square 2894, Lot 906).

14 This hearing date was July 21st.
15 Decision was July 21st. Date of final order was
16 August 11th. Those participating in the case was
17 Ms. King, Mr. Hood, Mr. Reid.

18 MR. GILREATH: Misprint because I did
19 not participate in this particular case.

20 CHAIRPERSON REID: We have a letter in
21 this case that -- from Mr. Brown, attorney for the
22 applicant in this case. And basically what he
23 contends in this letter is that the service was not
24 provided of the motion -- the motion -- service of
25 the motion was not provided to the applicant or his
26 counsel.

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1 And then he goes on further to contend
2 that Ms. Whitfield, who actually is the person who
3 is requesting reconsideration, was not a party in
4 the case. So my position would be that this motion
5 is inappropriately before us.

6 Any other comments, staff or colleagues?

7 MR. HOOD: Madame Chair, we will recall
8 at the hearing I brought up the -- I mentioned about
9 the bays. And I don't know if it was -- my
10 recollection leaves me at the moment, but I don't
11 know if it was brought up to us about the bays, but
12 I know of some existing other circumstances where
13 bays are also being taken out, and that was one of
14 my reasonings for asking that particular question.

15 My concern is when they went to the ANC
16 -- and I'm not speaking out of turn -- this is the -
17 - Ms. Whitfield is the chair of -- I mean the SMD
18 chairperson in which the establishment is in. My
19 concern is if the presentation to them was like it
20 was to us, then I have some concerns.

21 MS. KING: Was she -- I wonder, was
22 Marie Whitfield an ANC for this single member
23 district at the time of this case? No -- oh, yes,
24 she was. Yeah, because the election was last year.

25 I mean, the fact that she didn't receive
26 notice personally, although the ANC was noticed -- I

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1 mean, she probably doesn't live within 200 feet.

2 MS. PRUITT-WILLIAMS: Exactly, Ms. King.
3 We noticed the ANC and anybody within 200 feet. So
4 unless she was, she would not have been personally
5 noticed.

6 MS. KING: Right.

7 MS. PRUITT-WILLIAMS: And that's our
8 typical policy and has been forever.

9 MS. KING: Right.

10 MR. HOOD: But still, it's the ANC
11 commissioner.

12 MS. PRUITT-WILLIAMS: But the ANC was
13 noticed, and I did verify that, so it was. It's in
14 the record that they received notice on that.

15 MS. KING: And our order says that the
16 ANC did not submit a written statement, but
17 indicated informally its support of the application
18 through the Board staff. Who is the staff member?

19 John. And you talked to? They were not
20 talking about giving great weight or quorum or
21 official meeting or anything?

22 MR. NYARKU: No, the chairman indicated
23 that a letter was going to be written, but that was
24 not done. But there was not a position to this
25 application at the ANC at the presentation that the
26 attorney, attorney Brown, gave at the ANC meeting at

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1 that time.

2 MS. PRUITT-WILLIAMS: I also checked the
3 file and there was no authorization for Ms.
4 Whitfield to represent the ANC as a whole.

5 MS. KING: I think that we should deny
6 this.

7 CHAIRPERSON REID: Is that your motion?

8 MS. KING: Yes, I move to deny this
9 motion.

10 MR. HOOD: I second it.

11 CHAIRPERSON REID: All in favor?

12 (Chorus of ayes.)

13 Opposed?

14 MS. PRUITT-WILLIAMS: Staff would record
15 the vote as three to zero to two, motion made by Ms.
16 King, seconded by Mr. Hood; Mr. Gilreath and Mr.
17 Sockwell not voting, not having been present.

18 I believe the last item on our agenda
19 today is Jubilee Housing, and that's BZA Case No.
20 16502. Letter dated July 21, 1999 from the firm of
21 Wilkes, Artis, representing the applicant, is
22 requesting a waiver of the filing fee for
23 application for Jubilee Housing, Inc. for the
24 permission to continue to operate a previously
25 approved child development center at 1740 Euclid
26 Street, N.W.

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1 This application as approved by BZA
2 Order 14923. And this is scheduled for hearing on
3 October 20th of this year. You have a letter from
4 the applicant in your file.

5 MR. GILREATH: It says it's a nonprofit
6 organization. Is it a civic association? If it's
7 not, then --

8 CHAIRPERSON REID: In the letter it says
9 that the owner of the subject property, Jubilee
10 Housing, is a nonprofit organization created for
11 civic purposes.

12 MS. KING: Not the same. Not a civic
13 organization.

14 CHAIRPERSON REID: I'm wondering, why
15 did they not --

16 MS. PRUITT-WILLIAMS: And unfortunately,
17 the regs don't give you -- I mean, if you look under
18 3308.4, it just says civic association. It doesn't
19 give you any definition or any explanation.

20 CHAIRPERSON REID: Well, if it says
21 created for civic purposes, isn't that the same?

22 MS. KING: No, it's not.

23 CHAIRPERSON REID: How not?

24 MS. KING: Because every -- I mean,
25 every nonprofit is created for civic. Every
26 nonprofit is created for civic purposes.

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1 CHAIRPERSON REID: Well, this is what I
2 was asking in the previous order. How do you
3 ascertain what's civic?

4 MS. KING: A civic association is -- I
5 mean, it's kind of like we don't charge the ANCs
6 when they file a motion or something like that. I
7 think that the law would probably -- the
8 legislation, which probably predates the creation of
9 the Advisory Neighborhood Commissions, anticipates a
10 voice for the community in determining what will
11 happen in its backyard.

12 And that, you know, Jubilee Housing is a
13 wonderful thing, but it is not a civic association
14 or a citizens association.

15 MR. BERGSTEIN: If I just say, the regs,
16 which, in slightly different language than the
17 statute, does use a phrase "created for civic
18 purposes," they actually track --

19 CHAIRPERSON REID: They looked at that
20 verbiage from the regulations.

21 MR. BERGSTEIN: That's correct.

22 CHAIRPERSON REID: So how can we do one
23 and not the other? We're at a catch 22 here.

24 MS. PRUITT-WILLIAMS: I mean, that's the
25 Board's determination, too.

26 CHAIRPERSON REID: I would move then

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1 that we waive the fees for Case No. 16502, Jubilee
2 House.

3 MS. KING: Okay, now so we're -- our
4 policy for the last year or so, since I've been on,
5 is to say -- the first time we have said yes to
6 waiving fees is the case that we did earlier this
7 morning. So we are now opening the door for every
8 501(c)(3) to have a waiver of fees.

9 CHAIRPERSON REID: That was my
10 contention earlier, and I was trying to get arms
11 around the definition of civic. And I said is there
12 some type of verification that we would have to
13 require -- to be able to get a waiver, and they said
14 well, let's just go on face value, they've gotten it
15 before.

16 But based upon the earlier vote, there's
17 no way that we could deny this.

18 MS. KING: Every clinic, ever hospital,
19 every public health --

20 CHAIRPERSON REID: Let's not go there.

21 MS. KING: Well, no, that's true.

22 CHAIRPERSON REID: We've already done
23 it. We can't go back and redo that vote we had this
24 morning.

25 MS. KING: No, but that is a citizens
26 organization to protect their neighborhood.

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1 CHAIRPERSON REID: Sure, I understand
2 that. But if we are going to go by the regulations
3 which they have lifted this verbiage from for civic
4 purposes, how can we not?

5 MR. BERGSTEIN: The question is whether
6 or not you want to inquire more than just somebody
7 reciting the regulations back to you. If you don't
8 feel -- there's two things. First, you could -- if
9 you don't feel that there's enough information in
10 this letter to help you understand whether or not
11 they are an association created for civic purposes,
12 then, rather than granting the waiver, you can ask
13 them to provide further information.

14 At the same time, you can ask them to
15 elucidate for you what the Zoning Act of 1938 and
16 the regulations, assuming that there's something in
17 the rule making proceeding that created this, meant
18 by that.

19 We could also look and see if we could
20 find the legislative history for that section to see
21 if there's any discussion of what Congress had in
22 mind in terms of civic association to give you some
23 guidance.

24 But the question is whether or not the
25 information provided to you in this letter gives you
26 a comfort that, in fact, this falls within that

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1 category. And if not, you can ask for further
2 information to explain why they do.

3 CHAIRPERSON REID: All right, well, did
4 you say the zoning regulations of 1938?

5 MR. BERGSTEIN: The civic association
6 language and the mandate that you not charge civic
7 association comes from the Zoning Act of 1938,
8 Section 8, which establishes the BZA. Under the
9 section that talked about --

10 CHAIRPERSON REID: Okay.

11 MR. BERGSTEIN: -- fees and appeals at
12 the end, it says "the BZA may not charge."

13 MS. KING: Which predates the Advisory
14 Neighborhood Commission.

15 MR. BERGSTEIN: The rules recited back
16 that language I believe in a slightly modified way,
17 and also added to other exceptions. But with
18 respect to this one, the legislative history back in
19 '38 may or may not explain what Congress had in mind
20 when it put in that language.

21 But you can also request this applicant
22 to explain to you why it believes (a) it's a civic
23 association within the meaning of the regulations if
24 you don't feel that what they have provided to you
25 is sufficient to give you comfort.

26 MR. GILREATH: I think for the applicant

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1 to simply say that they're a nonprofit association
2 created for civic purposes, that is insufficient.
3 So, in the future, I think an applicant needs to
4 give us more information.

5 CHAIRPERSON REID: Well, they're
6 represented by Allison Prince and Richard Neal,
7 Urban Planner. Prince being the attorney, I'm sure
8 that they can come up with something that is more
9 definitive or more convincing to us for the waiver.

10 But I don't understand why it wasn't
11 requested earlier.

12 MS. KING: But Madame Chair, I warn you
13 that every 501(c)(3) has to be for civic purposes.
14 So if you're going to take a broad interpretation of
15 that, every university, every college, every
16 hospital, every clinic, every -- every 501(c) -- I
17 mean, you need to be very careful about going --

18 CHAIRPERSON REID: I understand.

19 MS. KING: -- to every 501(c)(3).

20 CHAIRPERSON REID: Your point's well
21 taken.

22 MR. GILREATH: Will the counsel do some
23 research and tell us what this provision is and give
24 us your interpretation of what you think a civic
25 association consists of, or someone will do that for
26 us?

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1 MR. BERGSTEIN: I'd be glad to try to
2 locate it. When you go back, it's not always --
3 it's somewhere on microfiche. But yeah, we can --

4 CHAIRPERSON REID: In their grant -- the
5 granting of the 501(c)(3) designation as a
6 nonprofit, does it so stipulate there what, in fact,
7 the purpose -- don't they have to have the bylaws
8 and, you know, they have to be established
9 predicated upon the submission of certain
10 information?

11 MR. BERGSTEIN: Well, again, if you were
12 satisfied that if they're incorporating documents
13 indicated -- lists them as a civic association or an
14 association established for civic purposes, and you
15 were willing to take that representation in their
16 documents as being persuasive to you, you could.

17 But what I'm hearing from the Board is
18 that you -- that this issue has raised a question in
19 your mind what is meant by a civic association. And
20 the fact that someone may call themselves a civic
21 association in their incorporating documents may be
22 persuasive in that they had no motivation for
23 misstating what they were, so you may give credence
24 to that.

25 CHAIRPERSON REID: Well, we don't want
26 to open up a maelstrom of applications, nonprofit

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1 applications asking for fees to be waived.

2 MR. BERGSTEIN: I may also point out
3 that, in the other case, I believe what was
4 persuasive to the Board was the fact -- at least the
5 representation that this was a -- that the other
6 association had previously been allowed to waive its
7 fees, so the Board, in essence, was giving its past
8 precedence some weight.

9 And that's not the situation that's
10 being represented here.

11 CHAIRPERSON REID: Yeah, but the fact of
12 the matter was, even when the previous case had been
13 granted a waiver before, was that correct?

14 MS. KING: Well, I'm about to move, as
15 someone who voted in favor of that motion, that we
16 reopen it. But let's deal with this first.

17 MR. HOOD: Madame Chair, may I
18 interject? One thing that the Board of Zoning
19 Adjustment may want to do is petition the Zoning
20 Commission, if I'm in order, to may be revisit that
21 regulation and deal with it accordingly, right.

22 CHAIRPERSON REID: Make it clear because
23 --

24 MR. HOOD: Just a suggestion.

25 CHAIRPERSON REID: -- we're really in
26 dangerous waters here if we don't proceed correctly.

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1 Obviously we have a precedent of us having done it
2 for one and not the other, and we can't really
3 clearly --if we're not clearly able to defend that
4 position, that's going to cause a lot of problems.

5 MS. PRUITT-WILLIAMS: Madame Chair, may
6 I make a suggestion that, for this particular case,
7 you defer action. The hearing is going to come up.
8 We haven't deposited checks, so we can still hold on
9 to it. We're not going to cause financial problems
10 --

11 CHAIRPERSON REID: Okay, I'm sorry.

12 MS. PRUITT-WILLIAMS: We're not going to
13 cause us to go into some type of financial problems
14 on this particular case because we've held the check
15 for right now. And let corporation counsel do some
16 research and request the applicant to provide you
17 with some more information, and you can make a
18 decision at your next meeting --

19 CHAIRPERSON REID: Okay.

20 MS. PRUITT-WILLIAMS: -- if we have the
21 information then. It still doesn't throw them off
22 of their hearing track and --

23 CHAIRPERSON REID: What about the
24 earlier --

25 MS. PRUITT-WILLIAMS: I'm only dealing
26 with this one for right now. Then you can go back

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1 to the earlier one.

2 MS. KING: Let's vote on this one and
3 then I have a solution for the earlier one.

4 CHAIRPERSON REID: Okay.

5 MS. PRUITT-WILLIAMS: So you can vote to
6 defer action and request --

7 CHAIRPERSON REID: Sure.

8 MS. PRUITT-WILLIAMS: -- additional
9 information.

10 MS. KING: From both the corporation
11 counsel and from the applicant?

12 MS. PRUITT-WILLIAMS: And the applicant.

13 MS. KING: I so move.

14 MR. GILREATH: I second the motion.

15 CHAIRPERSON REID: All in favor?

16 (Chorus of ayes.)

17 Opposed?

18 MS. PRUITT-WILLIAMS: Staff would record
19 the vote as five -- Mr. Sockwell, did you vote on
20 this?

21 MR. SOCKWELL: I'll vote on it, yes.

22 MS. PRUITT-WILLIAMS: Five to zero to
23 defer and request additional information.

24 MR. HOOD: For clarification, I wasn't
25 voting on this. I was just making a suggestion.

26 MS. PRUITT-WILLIAMS: You can if you'd

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1 like.

2 MR. HOOD: I can vote on it?

3 MS. PRUITT-WILLIAMS: Yes.

4 MS. KING: Yeah, we can all five vote.

5 MS. PRUITT-WILLIAMS: All of you can
6 vote.

7 MR. HOOD: Oh, okay, sure.

8 MS. KING: Madame Chair, I would like,
9 as a person who voted in favor of motion -- the
10 motion on application 16483, I would like to move to
11 reopen this issue, if I may.

12 CHAIRPERSON REID: Yes, I second.

13 All in favor?

14 (Chorus of ayes.)

15 Opposed?

16 MS. KING: I would like us to follow the
17 same pattern that we did with the Jubilee Housing
18 case, and I'll tell you why. I think -- we're
19 talking about 1938, which is -- I can't remember my
20 history, but it's 25 or 27 or something years before
21 the establishment -- or 45 or 47 years before the
22 establishment of the Advisory Neighborhood
23 Commissions.

24 I think that it's likely that
25 corporation counsel, if they can find the
26 legislative history on this legislation, will find

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1 that it was a desire for the neighbors to be able to
2 form a civic association in order to advocate for
3 their neighborhood as the Advisory Neighborhood
4 Commissions do now, and that it was not intended to
5 be a larger umbrella than that.

6 But I think we need to know more about
7 this Georgetown Homeowners Alliance and what it --
8 you know, what its membership is and what its
9 purposes are and so forth.

10 CHAIRPERSON REID: So you'd like to
11 defer this one as well?

12 MS. KING: I would like to reopen the
13 case, rescind our earlier approval of the motion and
14 ask for the same --

15 CHAIRPERSON REID: Mr. Bergstein,
16 procedurally, is this being done correctly? How can
17 you rescind an earlier motion? I just want to be --

18 MS. KING: It's a motion.

19 MR. BERGSTEIN: Well, you're at the same
20 -- it's never come up before, but you're at the same
21 proceeding and it's a public hearing. And although
22 the persons may have left or not left, there's
23 really no requirement that the people be here at the
24 time that you make the decision since they're not
25 actually permitted to speak to you.

26 It's more that they can observe your

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1 decision making, which ultimately will be in the
2 form of a written order anyway. So I don't see any
3 prejudice to the Board during the course of the same
4 publicly advertised meeting to determine to change
5 its -- not change its position, but, in essence, to
6 withdraw, rescind its decision and instead to seek
7 further clarification of the grounds for the relief
8 from the applicant.

9 CHAIRPERSON REID: There is no problem
10 with a Board member making a motion for
11 reconsideration, is there?

12 MR. BERGSTEIN: The only mention of
13 reconsideration is the final decision. And, in
14 essence, because this thing isn't even final yet,
15 nothing's really final until you issue an order.

16 CHAIRPERSON REID: Oh, okay.

17 MR. BERGSTEIN: This is sort of -- well,
18 this is an interim application. But there would
19 still be some sort of, I would hope, written
20 indication that this has been done, that a motion's
21 been granted. And it's really at that, in a filing,
22 that it becomes truly final.

23 So I think that -- I see no reason why
24 you wouldn't have the flexibility to do this. You
25 would certainly have the flexibility to do it before
26 you filed anything in writing. So I think that you

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1 could, at this point, make a motion to withdraw the
2 earlier decision and, instead, seek the additional
3 information that you're requesting.

4 CHAIRPERSON REID: So the correct
5 wording would be for her to withdraw -- or move to
6 withdraw her --

7 MR. BERGSTEIN: Or that the Board
8 withdraws its earlier decision.

9 MS. KING: We've already voted on that,
10 haven't we?

11 MR. BERGSTEIN: Yeah, you did vote on
12 it, that a motion -- you withdraw your earlier
13 action on that agenda item and instead --

14 CHAIRPERSON REID: Move to defer.

15 MR. BERGSTEIN: Right.

16 CHAIRPERSON REID: Okay, that's two
17 different motions?

18 MR. BERGSTEIN: It would be a motion --
19 well, you can combine it.

20 MS. KING: Well, you've already voted to
21 reopen the issue, so we've done that.

22 CHAIRPERSON REID: I'm referring to the
23 wording specifically.

24 MR. BERGSTEIN: I would say that you
25 would move both to withdraw your earlier action on
26 agenda item whatever this is and instead request

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1 further clarification or elaboration from the
2 application as to why they are an association
3 created for civic purposes within the meaning of the
4 regulation; and further, to request the Office of
5 Corporation Counsel to provide information to you
6 about the meaning of the term civic association
7 within both the Zoning Act and the regulations.

8 MS. KING: My motion is what he just
9 said.

10 (Laughter.)

11 MR. GILREATH: Second the motion.

12 CHAIRPERSON REID: All in favor?

13 (Chorus of ayes.)

14 Opposed? Okay, that cleans that up
15 because --

16 MS. PRUITT-WILLIAMS: Excuse me.

17 CHAIRPERSON REID: Yeah, sure, go ahead.

18 MS. PRUITT-WILLIAMS: I just wanted to
19 record the vote. Could I get all the -- did
20 everyone vote this time? Everyone can vote on this
21 one, too, so that's why I'm making sure. Okay, so
22 it's five to zero to withdraw earlier action and
23 request deferral and additional information, motion
24 made by Ms. King, seconded by Mr. Gilreath.

25 CHAIRPERSON REID: I think we're
26 fortunate that that second case came right up on the

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1 tail of the other case rather than it being a couple
2 of months down the line and then it would be very
3 difficult to go back and to recover.

4 I think that's the best approach to --
5 that's the best procedure for us to take the high
6 road with that and to get additional information
7 before we make an erroneous decision.

8 MS. KING: And it seems to me that
9 earlier on we talked about asking the Zoning
10 Commission to look into the whole -- this whole sort
11 of precedent of waiving fees and stuff. And you
12 know, if it hasn't been done or isn't in the
13 pipeline, I suggest that we do it.

14 CHAIRPERSON REID: And give us specific
15 guidelines as to when it is appropriate for us to
16 waive fees and define very clearly that very
17 nebulous terms, civic association or civic.

18 Okay.

19 MS. PRUITT-WILLIAMS: We have one more
20 item on the agenda that I believe we can either
21 delete or -- you've dealt with it in executive
22 session, so you can either just --

23 CHAIRPERSON REID: Ms. Pruitt-Williams,
24 again please forgive me. I forgot to mention that
25 since the persons who were involved in that -- the
26 earlier case are not here right now, I'd like to ask

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1 staff to be sure to contact them to let them know
2 that there has been a change in that decision.

3 MS. PRUITT-WILLIAMS: Oh, you mean on
4 both the Jubilee Housing and the --

5 CHAIRPERSON REID: No, no; not Jubilee,
6 on the earlier --

7 MS. PRUITT-WILLIAMS: Mr. Gogos?

8 MS. KING: I didn't see Mr. Nettler here
9 or anybody from his office.

10 CHAIRPERSON REID: Nobody's here from
11 that particular --

12 MS. KING: I don't believe so.

13 MS. PRUITT-WILLIAMS: Well, we'd have to
14 actually contact -- exactly, contact Mr. Nettler,
15 the representative, and then Wilkes, Artis, so we
16 would do that through a letter.

17 CHAIRPERSON REID: Okay, thank you. And
18 as you were saying?

19 MS. PRUITT-WILLIAMS: We have one last
20 case on there, Mr. Moreland, which was addressed in
21 executive session. I just wanted to bring that --
22 since it's on the agenda, to let the audience know
23 that it has already been addressed.

24 And you can either deal with it now and
25 just say that you --

26 MS. KING: We decided to make the minor

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1 modification.

2 CHAIRPERSON REID: Do we need to vote?

3 MS. PRUITT-WILLIAMS: No, I just wanted
4 to --

5 CHAIRPERSON REID: Thank you.

6 And also, before we close, I'd just like
7 to welcome our newest Board member, Mr. Sockwell.
8 First day that he's sitting with us, and we look to
9 have a very long and gratuitous relationship with
10 him on our board.

11 Welcome.

12 MR. SOCKWELL: Thank you very much.

13 CHAIRPERSON REID: And also I'd like to
14 welcome our new zoning director, Ms. Jerrily Kress,
15 who is not -- she was floating around here. But we
16 certainly are very pleased to have Jerrily come to
17 take over the position of zoning administrator.

18 And we've already seen quite a few very
19 positive changes taking place, and also those that
20 are in the process of taking place. So we feel that
21 it's going to certainly bolster our performance, as
22 well as having now a full Board -- do we not -- a
23 full Board to be able to serve the public as
24 adequately and as efficiently as possible.

25 Thank you.

26 And I'd like to also -- last but not

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1 least -- thank the staff for their dedication and
2 commitment and the work that they have performed
3 under rather challenging circumstances. I'd like to
4 thank them very much for all that they have done and
5 wish to ask their continued support and commitment
6 and help assisting us in providing the best possible
7 services for the Board of Zoning Adjustment.

8 MR. HOOD: Madame Chair, I, too, concur
9 with your comments.

10 MR. GILREATH: I'd like to express my
11 personal delight. We now have a new system and
12 hopefully the audience can hear us.

13 (Laughter.)

14 MS. KING: Oh, yes, that's wonderful.

15 MS. PRUITT-WILLIAMS: This is actually
16 just the beginning. We have more coming. But we
17 were very adamant in making sure that the audio-
18 visual people at least had the audio push in for us.
19 We are also going to be videotaping.

20 We have the capacity to videotape
21 eventually.

22 CHAIRPERSON REID: Oh, okay, great.

23 MS. PRUITT-WILLIAMS: That's coming.
24 But at least they can hear us now and we have
25 transcripts, so that was our first goal.

26 CHAIRPERSON REID: Thank you.

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All right, so that concludes this morning's meeting.

MS. KING: And we adjourn until what? What time are we back this afternoon?

CHAIRPERSON REID: Well, we're in at 1:00. (Whereupon, the proceedings were adjourned at 1:16 p.m.)