

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY,

NOVEMBER 3, 1999

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

BOARD OF ZONING ADJUSTMENT BOARD MEMBERS PRESENT:

SHEILA CROSS REID Chairperson
 JERRY GILREATH
 ROBERT SOCKWELL

ZONING COMMISSION BOARD MEMBERS PRESENT:

ANTHONY HOOD Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHERI PRUITT-WILLIAMS Secretary, BZA
 BEVERLY BAILEY Office of Zoning
 PAUL HART Office of Zoning
 JOHN NYARKU Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

ALAN BERGSTEIN, ESQ.

NEAL R. GROSS
 COURT REPORTERS AND TRANSCRIBERS
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 WASHINGTON, D.C. 20005-3701

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

(9:48 a.m.)

CHAIRPERSON CROSS REID: Good morning. We will now open our November the 3rd meeting of the Board of Zoning Adjustment.

Please pardon the fact that we are starting a little later today. What we're going to be doing is go over this a minute and then cases to be decided are the Appeal No. 16451 and Appeal No. 16452, Waste Management of Maryland, Inc. And we'll then go into executive session to discuss those things and come back with our decision based on our deliberations. And then we'll go into the other items on our agenda.

MS. PRUITT-WILLIAMS: Good morning, Madam Chair.

Before you today are the public minutes of meeting of October 6, 1999.

BOARD MEMBER GILREATH: Madam Chair, I read through the minutes. I did not have any problems with it. So I make a motion we approve them.

BOARD MEMBER HOOD: Madam Chair, before a second, if it's in order, I think Case No. 16505, George Washington University, I'm recorded as seconding the motion and I don't remember ever sitting on the George Washington case. So maybe we need to check the transcript and correct that.

CHAIRPERSON CROSS REID: That's definitely incorrect.

1 BOARD MEMBER HOOD: Right. I'm pretty sure. I
2 don't remember --

3 BOARD MEMBER GILREATH: Madam Chair, it seems to me
4 we should confirm that because if indeed he did and has forgotten
5 about it, we change it's in error. So, check the transcript and
6 if he didn't, of course, find out who did. And if he did, leave
7 those in.

8 CHAIRPERSON CROSS REID: All right.

9 MS. PRUITT-WILLIAMS: So, staff will verify and
10 make whatever changes are required.

11 BOARD MEMBER HOOD: Also, Madam Chair, for the
12 record, 16502, that's another one I have in question.

13 MS. PRUITT-WILLIAMS: In fact, Mr. Hood was not --
14 I do remember he was not here for that.

15 BOARD MEMBER HOOD: So those are the only two I
16 have, Madam Chair.

17 CHAIRPERSON CROSS REID: Right. And so, you second
18 it with that caveat with the --

19 BOARD MEMBER HOOD: With those two corrections.

20 CHAIRPERSON CROSS REID: All right. Thank you.

21 COMMISSIONER GILREATH: Madam Chair, what about
22 September 29th, did we approve those as well?

23 CHAIRPERSON CROSS REID: She's going to.

24 BOARD MEMBER GILREATH: Oh, she's going to announce
25 that, okay.

1 MS. PRUITT-WILLIAMS: We need a vote. Madam Chair,
2 we need a vote. You have a first and second but no vote.

3 CHAIRPERSON CROSS REID: Oh, of course. All in
4 favor?

5 (Whereupon, an oral vote was taken.)

6 CHAIRPERSON CROSS REID: Opposed?

7 (No response.)

8 MS. PRUITT-WILLIAMS: Staff would record the vote
9 as 4 to 0 to approve, motion made by Mr. Gilreath and seconded by
10 Mr. Hood.

11 Next on your agenda is the public hearing minutes
12 of September 29th.

13 CHAIRPERSON CROSS REID: There was just a typo on
14 that on page 1, number 3 under board member -- was asked to
15 provide additional documents. And I think was it a copy of the
16 application to be filed by the, and it doesn't indicate who that
17 is. Make that correction. Other than that --

18 BOARD MEMBER GILREATH: And on the next to the last
19 page, the top of the page, indefinitely I think should spelled
20 with a second I rather than an A. I think it's misspelled. Very
21 top there in bold letters.

22 MS. PRUITT-WILLIAMS: Oh, yes.

23 BOARD MEMBER GILREATH: Indefinitely is misspelled.

24 MS. PRUITT-WILLIAMS: That's why we have spell
25 check.

1 CHAIRPERSON CROSS REID: With those two
2 corrections, I'd move that the minutes be accepted.

3 BOARD MEMBER GILREATH: Madam Chair, I second your
4 motion.

5 CHAIRPERSON CROSS REID: All in favor?

6 (Whereupon, an oral vote was taken.)

7 MS. PRUITT-WILLIAMS: Staff would record the vote
8 as 4 to 0 to approve.

9 BOARD MEMBER HOOD: Madam Chair, I would like to --
10 I did not participate in the September 29th hearing so I would
11 like to be recorded as not voting, not being present.

12 MS. PRUITT-WILLIAMS: Staff would record the vote
13 as 3 to 0 to 1 with Mr. Hood not present, not voting. I mean, 3
14 to 1, excuse me. Mr. Hood present, not voting. Not present, not
15 voting. Excuse me.

16 CHAIRPERSON CROSS REID: All right, we'll now
17 recess and go into an executive session. And we will return
18 within a few minutes. Don't know exactly how long.

19 (Whereupon, the foregoing matter went off the
20 record at 9:53 a.m. and back on the record at 11:18 a.m.)

21 CHAIRPERSON CROSS REID: We will reconvene for the
22 November 3rd meeting of the Board of Zoning Adjustment.

23 MS. PRUITT-WILLIAMS: Good morning, Madam Chair.

24 The first case on your agenda to be decided is
25 Appeal No. 16451 of Waste Management of Maryland, pursuant to 11

1 DCMR 3105 and 3106 from administrative decision of the Zoning
2 Administrator to deny the owner, under Permit 511823, the right to
3 continue the use of premise for carting and hauling terminal or
4 yard processing facility established specifically as a solid waste
5 handling facility for receipt, except to transfer the nature of
6 the business and the nature of the business will remain the same
7 which is a permitted use in a C-M-2 District, all materials not
8 hazardous at 2160 Queens Chapel Road, N.E., Square 4259, Parcels
9 154/72, 154/87, 154/110 and 154/112 and Lot 3.

10 The second case associated with this would be
11 Appeal No. 16452 of Waste Management, pursuant to 11 DCMR under
12 3105 and 3106, from administrative decision of the Zoning
13 Administrator to deny the permit under Permit No. 511832, the
14 right to continue -- wait a minute.

15 CHAIRPERSON CROSS REID: 11823.

16 MS. PRUITT-WILLIAMS: Actually, I'm sorry. I'm
17 reading this as it appears to be the exact same -- no, it isn't.
18 I'm sorry. 511823, the right to continue the use of the premises
19 for light manufacturing, processing, fabrication, warehousing of
20 steel products, office and retail construction and industrial
21 supplies, all materials non-hazardous except the name of the
22 transfer business and the nature of the business will remain the
23 same which is permitted in a C-M-2 District. All materials non-
24 hazardous at 2160 Queens Chapel Road, Square 4259, Parcels 154/72,
25 154/87, 154/110, and 154/112, Lot 3.

1 Hearing for this was postponed from July 7th to
2 September 22nd and is here before you for a decision.

3 CHAIRPERSON CROSS REID: What about the motion?

4 MS. PRUITT-WILLIAMS: You have that decision and
5 then you also have the motion from the District of -- We have,
6 actually, a motion that just came in to dismiss.

7 CHAIRPERSON CROSS REID: When you say just came in
8 --

9 MS. PRUITT-WILLIAMS: I mean, it's in. It's come
10 in. You have it in your package.

11 CHAIRPERSON CROSS REID: Dismiss based on?

12 MS. PRUITT-WILLIAMS: Timeliness. And then you
13 have the cases to be decided.

14 CHAIRPERSON CROSS REID: Why don't we take up the
15 issue of timeliness first and then we'll address the other two,
16 the appeals.

17 MS. PRUITT-WILLIAMS: You also, excuse me, have a
18 motion to strike Corporation counsel proposed order. So, you have
19 two motions. That is dated October 21st from Beverage and
20 Diamond.

21 CHAIRPERSON CROSS REID: Let's do timeliness first
22 and then the motion to strike the proposed order from Corporation
23 counsel.

24 BOARD MEMBER GILREATH: Madam Chair, we are
25 rendering a judgment in as to timeliness? This is going to --

1 CHAIRPERSON CROSS REID: That's correct.

2 BOARD MEMBER GILREATH: The other part, this is to
3 come later, then?

4 CHAIRPERSON CROSS REID: Uh huh. The only thing
5 we're dealing with right now is just the timeliness.

6 BOARD MEMBER GILREATH: We met in executive session
7 this morning and went through rather rigorous deliberations. And
8 in my judgment, it was a close call. However, we feel that even
9 though the appellant was acting in good faith with DCRA, that a
10 three year period with all the uncertainty and so forth, that that
11 really exceeds what we feel reasonable time limit. And for this
12 reason, we've therefore, or at least --

13 Shall I make a motion to this effect? Or just give
14 my view at this moment?

15 CHAIRPERSON CROSS REID: You can make a motion.

16 BOARD MEMBER GILREATH: That because of this, I
17 make a motion that we deny the appellant's appeal in this regard.
18 We feel --

19 CHAIRPERSON CROSS REID: The motion.

20 MS. PRUITT-WILLIAMS: The motion is from the
21 District of Columbia to dismiss the appeal filed by Waste
22 Management.

23 BOARD MEMBER GILREATH: So, our motion is to --
24 what about -- I'm not sure what I should say. I support the
25 District of Columbia's motion, or what?

1 CHAIRPERSON CROSS REID: In regard to timeliness.

2 BOARD MEMBER GILREATH: Well, in reviewing an
3 deliberating on this, as I've already stated, that we feel that
4 three years is an excessive period of time. And therefore I make
5 the motion that we support the District's request that the appeal
6 was untimely. And therefore, what, we say it's dismissed or what?
7 That it be dismissed.

8 CHAIRPERSON CROSS REID: I would concur with your
9 position, Mr. Gilreath. Unfortunately, this was a rather
10 convoluted situation in that the applicant, Waste Management, put
11 up a very compelling argument in regard to their relationship with
12 DCRA and the delays that came about as a result of the information
13 that they were receiving and pertaining to this particular case.

14 However, as a board, as a body, the BZA can only
15 act in regard to the regulations. And the regulations require
16 that we consider the aspect of reasonableness. And we took that
17 into consideration and we discussed it in length and felt that a
18 three year period of time, notwithstanding the fact that there
19 were, perhaps, overwhelming arguments and there may have been
20 bases for the delay, there was nothing that prevented Waste
21 Management from filing an appeal at any time.

22 So, notwithstanding the fact that they were -- it
23 was a situation that was ensnared with a lot of bureaucratic red
24 tape, prudence would have dictated that they would comply with
25 existing regulations and they would have gone ahead and filed

1 their appeal in a timely fashion. And three years certainly in
2 anybody's estimation would be unreasonable as well as the fact it
3 would also have us set a precedent in regard to that standard
4 which we would not want to sully future deliberations by making a
5 decision that was imprudent or improper.

6 And I would second your motion.

7 Mr. Sockwell.

8 BOARD MEMBER SOCKWELL: It would seem, to the
9 board, that in the case of Waste Management's delay, that the
10 property itself was in use at the time and that improvements were
11 constantly being made to the property. Therefore, Waste
12 Management would, seems to the board, have expedited the decision
13 that would allow them continued and perpetual use of the property
14 rather than wait as long as they did under the circumstances.

15 CHAIRPERSON CROSS REID: Mr. Hood?

16 COMMISSIONER HOOD: I don't have anything further
17 to add, Madam Chair. I would just ask that we call for the
18 question.

19 CHAIRPERSON CROSS REID: All in favor?

20 (Whereupon, an oral vote was taken.)

21 CHAIRPERSON CROSS REID: Opposed?

22 (No response.)

23 MS. PRUITT-WILLIAMS: Staff would record the vote
24 as 5 to 0 to dismiss with motion made by Mr. Gilreath, seconded by
25 Ms. Reid, and proxy from Ms. King.

1 CHAIRPERSON CROSS REID: Now, in regard to
2 deliberations and the decision pertaining to the appeal, the board
3 met in executive session this morning and determined that we need
4 additional time to be able to fairly and adequate give the
5 consideration that this particular case warrants.

6 As we were mulling through the various aspects of
7 the case and the various issues, it became apparent that the time
8 that we were allocating this morning was insufficient. And in
9 order to give the proper due to both sides, we found that it would
10 require that we reschedule for a day where we can reconvene and be
11 able to adequately address each issue so that we could come to a
12 decision that would be in the best interest of all parties. Would
13 be not necessarily in the best of all parties concerned but would
14 be the right and fair decision under the circumstances.

15 So, we have decided that we would make our decision
16 at the next meeting of the board which will be the December, is it
17 1st?

18 COMMISSIONER HOOD: First.

19 CHAIRPERSON CROSS REID: December 1st meeting after
20 having set aside a day for us to meet and to be able to go through
21 fairly all of the issues and the particulars of this particular
22 case, which is a voluminous amount of material. And to rush
23 through it would certainly not be in the best interest of the
24 parties concerned.

25 BOARD MEMBER GILREATH: I concur fully with your

1 observations, Madam Chair. That indeed it is a very complex case
2 and so forth. And that we do need more time to provide a logical
3 rationale for our judgments and so forth, it will take several
4 hours and possibly a whole day. And I think that it's appropriate
5 we do that. Otherwise, we render a very poorly thought out basis
6 for our judgment on this. So, I think the delay and the
7 subsequent meeting is most appropriate.

8 CHAIRPERSON CROSS REID: Go ahead.

9 BOARD MEMBER HOOD: Madam Chair, I also would
10 incur. Due to the convolutedness of this case, I think that it
11 would be wise for us to take more time so we can make the best
12 decision for the interest of the District of Columbia.

13 BOARD MEMBER SOCKWELL: Decisions on these matters
14 do have an effect upon the application of the zoning ordinance for
15 years in the future. And we feel that it is very important that
16 we are positive of the specifics of any decision that we make.

17 CHAIRPERSON CROSS REID: Thank you very much.

18 MS. PRUITT-WILLIAMS: Madam Chair, I would also
19 suggest that you then defer your decision on the motion to strike
20 Corp Counsel's proposed order until that time.

21 CHAIRPERSON CROSS REID: All right. And that,
22 then, will be, decision will be on December the 1st. At which
23 time we will be able to give support to whatever position we take
24 in regard to these particular appeals.

25 BOARD MEMBER HOOD: Madam Chair, may I ask that we

1 make that first on the agenda for cases to be decided.

2 CHAIRPERSON CROSS REID: Certainly.

3 Thank you.

4 MS. PRUITT-WILLIAMS: Your next case to be decided
5 is 16500, pursuant to 11 DCMR 3107.2, for a variance under
6 Subsection 2101.1, for a waiver of the number of required parking
7 spaces from the off street parking to be used by the clinic in an
8 R-5-B district at 2831 Fifteenth Street, N.W., Square 2669, Lot
9 826.

10 The hearing was October 20th. The board requested
11 that the applicant submit a copy of their referenced parking
12 agreement for 30 off street spaces and findings of fact.

13 You have in your files an earlier agreement than
14 one you got today that's actually signed.

15 BOARD MEMBER HOOD: Madam Chair, again for the
16 record, I did not participate in this and I will at the end like
17 to be recorded as not voting, not having participated.

18 CHAIRPERSON CROSS REID: Thank you, Mr. Hood.

19 For the record, I'd just like to first apologize to
20 La Clinica del Pueblo for the delay this morning. Unfortunately,
21 you came behind a very large case that required quite a bit of
22 determination and as a result of that, you were kind of pushed
23 back So, I apologize to you for that.

24 And secondly, I'd like to commend you on the effort
25 that was put forth by yourself as well as the ANC in coming to

1 resolution to the issue regarding the parking. And in my opinion,
2 it's very laudable that you now have proffered to us based on the
3 agreement between each other, the agreement that's signed by Gary
4 Imhoff, secretary, that on behalf of the advisory neighborhood
5 commission, that diffuses the problem in regard to the adverse
6 impact for parking. And that in the agreement, the highlights of
7 which are that you have agreed to obtain 30 off street parking
8 spaces and that you -- in addition to the five that you already
9 have on site, and that you also have agreed to implement measures
10 for a Metrochek program to encourage Metro use by your employees.

11 In addition to that, you've agreed that if in fact
12 there's a problem with the parking, that you would then revisit
13 the situation with the ANC and work out a solution that would be
14 amicable to both entities. And I think that that is great.

15 And I'd like to, then, move that we approve your
16 application.

17 BOARD MEMBER GILREATH: Madam Chair, I would like
18 to second your motion and I would like to say that from the very
19 beginning, we've always had the highest respect and regard for you
20 clinic and so forth. And my only concern was the parking. And I
21 think you've come up with a very admirable solution. I think it's
22 very flexible. And you've worked out the agreement with the
23 neighborhood who is most effected by this.

24 So, I think it's very satisfactory and I commend
25 you for your good effort. And I second the motion.

1 CHAIRPERSON CROSS REID: Mr. Sockwell?

2 BOARD MEMBER SOCKWELL: We certainly have the
3 feeling that the clinic is going to be a major force in the future
4 of quality health care for the population of that area. And we
5 certainly are very pleased that the clinic is willing to work to
6 make sure that the relationship with the community is a strong one
7 of bonding rather than one of passive dislike.

8 Thank you.

9 CHAIRPERSON CROSS REID: All in favor?

10 (Whereupon, an oral vote was taken.)

11 CHAIRPERSON CROSS REID: Opposed?

12 (No response.)

13 MS. PRUITT-WILLIAMS: Staff would record the vote
14 as 3 to 0 to 1 to approve. Motion made by Ms. Reid, seconded by
15 Mr. Gilreath. Mr. Hood not present, not voting.

16 The next item on your agenda is a motion of
17 Application 16505, The George Washington University - Mount Vernon
18 Campus, pursuant to 11 DCMR 3108.1 under Section 210, for the
19 approval of an updated master plan and further processing to allow
20 the construction of an addition to Somers Hall to provide for
21 additional dormitory space, construction of a softball field on
22 the southeast corner of the campus, and the reconstruction of the
23 existing tennis courts to include underground storage, athletic
24 support space, and parking, Square 1374 and Lot 850.

25 You have a motion before you. Actually, this has

1 been a kind of ongoing process and today you're going to deal with
2 the motion, the section of the motion, that dealt with the
3 environmental review and also --

4 CHAIRPERSON CROSS REID: Repeat that? Repeat that,
5 I'm sorry, Ms. Pruitt-Williams. I was distracted a little bit.
6 What was the last thing you said?

7 MS. PRUITT-WILLIAMS: This has been an ongoing
8 process. Today you are going to decide on the issue of the
9 environmental review, whether or not, based on the motion
10 submitted by the neighborhood alliance. And also, though they are
11 not a party, they have requested party status, you may want to
12 deal with that first before you then move on to the motion.

13 You have all that information in your package.

14 BOARD MEMBER GILREATH: Madam Chair, I have a
15 pretty forthright judgment on this, but if you and Mr. Sockwell
16 want to elaborate and so forth, I can hold off on the motion.

17 CHAIRPERSON CROSS REID: Go ahead.

18 BOARD MEMBER GILREATH: Well, I am willing to
19 concede that there's a sufficient basis or the interest involved,
20 their zone interest, that I think it's reasonable and appropriate
21 to grant them party status.

22 CHAIRPERSON CROSS REID: To the Neighborhood
23 Alliance?

24 BOARD MEMBER GILREATH: The Neighborhood Alliance.
25 However, I feel having the benefit of Corporation Counsel's view

1 and --

2 CHAIRPERSON CROSS REID: Let's take one at a time.

3 BOARD MEMBER GILREATH: Okay, one at a time. Okay.

4 CHAIRPERSON CROSS REID: Yes. So, continue with
5 that, with the motion for the party status.

6 BOARD MEMBER GILREATH: I make a motion that we --
7 their zone of interest is sufficient that in this particular
8 instance I think we should grant them party status.

9 CHAIRPERSON CROSS REID: I would concur with you,
10 Mr. Gilreath. I feel that due to their position of standing in
11 the community, they are qualified for that, to be granted the
12 status of -- granted party status.

13 Anything, Mr. Sockwell?

14 BOARD MEMBER SOCKWELL: I have no comment.

15 CHAIRPERSON CROSS REID: Did that get a second?

16 BOARD MEMBER SOCKWELL: Second.

17 CHAIRPERSON CROSS REID: All right, all in favor?

18 (Whereupon, an oral vote was taken.)

19 CHAIRPERSON CROSS REID: Opposed?

20 (No response.)

21 MS. PRUITT-WILLIAMS: Staff would record the vote
22 as 3 to 0 to grant party status to the Neighborhood Alliance. The
23 motion made by Mr. Gilreath, seconded by Mr. Sockwell.

24 CHAIRPERSON CROSS REID: All right. Now, the next
25 issue was the motion for -- in regard to the environmental review

1 process. And we have discussed this matter and feel very strongly
2 that it's not an issue that is applicable to the proceedings of
3 the BZA. We have had similar motions in the past as recently as I
4 think during the summer in which there was discussion about the
5 intervention of the environmental impact process and the BZA
6 process. And it was determined that there is -- we have
7 consistently taken the position that there -- that is simply not
8 within our purview. It's a different process.

9 And we would, therefore, I would, move that we --
10 I'm sorry. How is the motion worded?

11 MS. PRUITT-WILLIAMS: I might have to read it for
12 you.

13 BOARD MEMBER SOCKWELL: Ms. Pruitt, I believe it's-
14 - what's left of the motion is a motion to initiate DCEPA
15 environmental review process.

16 MS. PRUITT-WILLIAMS: Thank you.

17 CHAIRPERSON CROSS REID: A motion to --

18 MS. PRUITT-WILLIAMS: Initiate.

19 CHAIRPERSON CROSS REID: Initiate.

20 MS. PRUITT-WILLIAMS: The DCEPA.

21 CHAIRPERSON CROSS REID: I move that we deny the
22 motion to initiate predicated on the fact that we don't have the
23 authority to do so.

24 BOARD MEMBER GILREATH: Madam Chair, I second your
25 motion. And I'd like to say that I read the allowance document as

1 to the basis, their legal document and so forth, I've read through
2 very carefully. I read our Corporation Counsel's views. My
3 judgment, as a result of my own analysis, my own thinking, and I
4 feel that when you weigh all of the precedent and all of the
5 evidence, and so forth, that it's not appropriate for this body to
6 initiate the environmental documentation. That other bodies
7 within the D.C. Government are the appropriate ones and we really
8 should not be involved in that.

9 CHAIRPERSON CROSS REID: Did you have any comments,
10 Mr. Sockwell?

11 BOARD MEMBER SOCKWELL: Only that the environmental
12 process occurs under different circumstances within the overall
13 review of a project. And would not occur, would not even be
14 considered, for initiation at the time that the Board of Zoning
15 Adjustment would be hearing such cases.

16 CHAIRPERSON CROSS REID: You seconded it?

17 All in favor?

18 (Whereupon, an oral vote was taken.)

19 CHAIRPERSON CROSS REID: Opposed?

20 (No response.)

21 MS. PRUITT-WILLIAMS: I believe the vote is 3 to 0
22 to approve. And Mr. Hood, are you abstaining?

23 BOARD MEMBER HOOD: Right. I did not participate.

24 MS. PRUITT-WILLIAMS: So, it would be 3 to 0 to 1
25 to deny with Mr. Hood abstaining.

1 You also have, sort of as a housekeeping, even
2 though you've granted party status, there's a motion filed by
3 Wilkes, Artis in opposition to granting party status and we just
4 need to clean that up. I guess it's sort of moot but --

5 MR. BERGSTEIN: I think it is, Ms. Pruitt. I think
6 that --

7 MS. PRUITT-WILLIAMS: So, we don't have to do
8 anything with it?

9 MR. BERGSTEIN: I think when they voted to grant
10 the request for party status, with the understanding that there
11 was an opposition. So, by granting the motion, that the
12 opposition was considered. But the vote was to deny -- to grant
13 party status, that was the motion.

14 MS. PRUITT-WILLIAMS: Great.

15 Then the only other thing you might want to discuss
16 is because this is going to be a very big hearing, is sort of
17 establishing time frames now so that the people can gear their
18 testimony to the time frames and we can have an orderly and
19 productive hearing.

20 CHAIRPERSON CROSS REID: Let's reiterate for
21 everyone's edification. We set two dates for the hearing. That
22 would be November the 17th --

23 MS. PRUITT-WILLIAMS: Actually, I think you may
24 have too many mikes on up there.

25 CHAIRPERSON CROSS REID: November the 17th?

1 MS. PRUITT-WILLIAMS: Right. The first hearing,
2 just sort of to recap. The first hearing is November the 17th.
3 On that day, the applicant will give their presentation. There
4 will be a hearing report from the Office of Planning. The ANCs
5 can go forward and all governmental agencies.

6 And at that point, the opposition will have the --
7 Of course, the opposition -- parties will be able to cross
8 examine. And then on the 15th of December, because the
9 Neighborhood Alliance has stated that they would not be able to
10 get their expert witnesses in time for the 17th, the first thing
11 they would be able to do would be to cross examine the applicant
12 with their expert witnesses based on testimony on the 17th because
13 they weren't there. And then we would go on with the hearing from
14 there with the parties in support and parties in opposition, and
15 then testimony.

16 CHAIRPERSON CROSS REID: If I'm not mistaken, the
17 applicant has requested two hours for --

18 MS. PRUITT-WILLIAMS: I have talked informally to
19 both sides and asked them what they thought would be their time
20 frames. And that's what I got from the applicant, yes.

21 CHAIRPERSON CROSS REID: Well, in the interest of
22 fairness, I think that if the applicant is the one who actually
23 has the burden of proof of making their case, then we would grant
24 them two hours and give equal time to the opposition.

25 MS. PRUITT-WILLIAMS: The opposition has asked for

1 -- has indicated to me that it would take them longer, four hours,
2 to put on their case. I'm just passing information on.

3 CHAIRPERSON CROSS REID: We have to be --

4 UNIDENTIFIED PERSON: I think we could reduce that
5 --

6 CHAIRPERSON CROSS REID: Excuse me, sir. You can't
7 talk from the audience.

8 CHAIRPERSON CROSS REID: Thank you, Ms. Pruitt-
9 Williams. And we do -- we've already taken that in consideration.

10 Unless the -- typically the greater amount of time goes to the
11 applicant because they have the greater burden of making their
12 case. So, I think that it would not be unfair to grant the
13 opposition equal time.

14 And parties in the case would be, then, given -- is
15 it five minutes? Ten minutes?

16 MS. PRUITT-WILLIAMS: Oppositions, that time would
17 be for all parties and they would, then, have to determine how
18 they would divvy it up. But right now we only have one party.

19 CHAIRPERSON CROSS REID: So, the two hours would be
20 the segment for the opposition, whoever and however they may
21 determine, or decide --

22 MS. PRUITT-WILLIAMS: Parties only.

23 CHAIRPERSON CROSS REID: The opposition parties?

24 MS. PRUITT-WILLIAMS: Correct.

25 CHAIRPERSON CROSS REID: However they want to divvy

1 that up, that's fine.

2 MS. PRUITT-WILLIAMS: With the understanding it
3 right now, we only have one request for party status but others
4 could come in.

5 CHAIRPERSON CROSS REID: All right. And then you
6 could also --

7 MS. PRUITT-WILLIAMS: I mean, these are general
8 time frames which, of course, you can extend or compress depending
9 upon what comes in and what is happening --

10 CHAIRPERSON CROSS REID: I would hope not because
11 we -- I think that we established party status at the last session
12 when we --

13 MS. PRUITT-WILLIAMS: This is the first -- I mean,
14 we really have never opened up the hearing. That's been part of
15 it. And the board's rules, when this was advertised, did not
16 require anyone to request party status in advance of the hearing.
17 So, people --

18 CHAIRPERSON CROSS REID: All right. Well,
19 hopefully there will not be. And then that's just my point.

20 MS. PRUITT-WILLIAMS: Hopefully there will not be
21 but with the understanding that there may be --

22 CHAIRPERSON CROSS REID: Because --

23 MS. PRUITT-WILLIAMS: -- additional people coming
24 in.

25 CHAIRPERSON CROSS REID: -- if someone comes in on

1 that day and requests party status, and if they are found to have
2 the standing for party status, somehow they have to caucus with
3 all the rest of the opposition and be within that two hour time
4 frame, correct?

5 MS. PRUITT-WILLIAMS: That is how the Zoning
6 Commission has traditionally done it.

7 CHAIRPERSON CROSS REID: Well, hopefully that won't
8 happen.

9 MS. PRUITT-WILLIAMS: And as to party status, if
10 requests come in, I will certainly, because when we get them, we
11 get phone numbers and stuff, call them and let them know.

12 CHAIRPERSON CROSS REID: All right. Two hours for
13 the applicant and two hours for the opposition. And then for
14 individual testimony --

15 MS. PRUITT-WILLIAMS: Typically, and this is just
16 going on guidelines based from the Zoning Commission,
17 organizations are given five minutes, individuals three.

18 CHAIRPERSON CROSS REID: Individuals three minutes
19 and organizations, five minutes. And we'll keep the time. The
20 time will be kept by the reporter and by Ms. Pruitt-Williams so
21 that we can have a silent, efficient, hearing proceedings and be
22 able to take in consideration all the various elements of both
23 sides. And to have the input from the community with the
24 allocation of those two days for that particular hearing.

25 I think that that is more than generous and I think

1 that both sides are so notified so that the date of the hearings,
2 we will not get into any unduly lengthy cross examinations. The
3 cross examination should also be efficient, get to the point.
4 Sometimes we've had experiences with the cross examination going
5 on and on, and on, and the attorney asking about ten questions to
6 set up an answer for one question. So, I ask that in this
7 instance, you go straight to the point so we don't have to try to
8 garner what your point is and I don't have to continuously say get
9 to the point or you asked that question, or what have you.
10 Please. And then that way we can get through it fairly quickly.
11 Not quickly but in a reasonable amount of time.

12 BOARD MEMBER GILREATH: Madam Chair, I'm sure it
13 will not apply at this instance. But in the past there have been
14 cases where cross examination, I felt that the questioner was less
15 than civil and certainly it's appropriate to ask substantive
16 questions for the point and so forth. But as a general policy of
17 this board is we expect a certain degree of decor admissibility in
18 the cross examination.

19 CHAIRPERSON CROSS REID: That's a very good point.
20 And also in the cross examination it did not -- if it is not
21 within the auspices of the testimony, you cannot question and you
22 cannot make statements during the cross examination segment.

23 Did you have any other comments?

24 Thank you.

25 MS. PRUITT-WILLIAMS: The next item on your agenda

1 is Application 16455 of Amoco Oil Company, pursuant to 11 DCMR
2 3108.1 and subsection 726.1 for special exception to enlarge an
3 existing gasoline station to include a sales of motor vehicle fuel
4 in a C-2-A District at 3426 Georgia Avenue, N.W., Square 2894, Lot
5 906.

6 The original hearing for this was July 21st with a
7 bench decision. However, corrected summary order was issued on
8 September 24th and you have a letter from the ANC asking that it
9 be -- requesting reconsideration.

10 BOARD MEMBER HOOD: Madam Chair, if I may comment
11 on this. I did participate in this case. And I think the
12 transcript will show that my concern was whether or not the
13 presentation was given the same to us the same way it was given to
14 the ANCs. And from the information I see in front of me, I was
15 going in the right direction. Apparently -- I feel that
16 apparently the information that was given to us, some of it, must
17 have apparently been withheld from the community. And I had
18 problems then, even though I voted for it, and apparently my
19 premonition was correct. And from what I'm seeing here in this
20 response to us this morning.

21 CHAIRPERSON CROSS REID: Mr. Hood, could you
22 elaborate more on that?

23 BOARD MEMBER HOOD: Well, if you remember, and I
24 don't want to recite the transcript, but I think one of my
25 questions and some of the questions I heard, was the presentation

1 about the garage closing because it seemed to be a unanimous
2 support. At least, that was the presentation that was given to us
3 that the community was in support of everything that was going on
4 with Amoco.

5 And from what I'm seeing here, the operator, and I
6 have some questions about that, and which we would have to reopen
7 the case so some of these questions could be answered. But, the
8 presentation, apparently, that we received was not the
9 presentation that was given to the ANCs as well as the community.

10 MS. PRUITT-WILLIAMS: And they're asking you to
11 reconsider this.

12 BOARD MEMBER HOOD: And also, Madam Chair, if I may
13 ask. I'm not going to necessarily say that we erred but I will
14 say that we, because of the information we had, we -- John, one of
15 the staff members, and I can't pronounce his last name. I don't
16 dare mess that up. But because of the unanimous support that we
17 as a board believed that was given, that we just kind of asked him
18 because we knew he was in the ANC. And that came back to haunt us
19 because they're saying that he participated and he was not
20 authorized.

21 So, I see some errors here. I think I will be in
22 support or reopening this so we can get all the information and
23 let them do a presentation, which I believe they've already done,
24 to the community. So that everybody has the same information and
25 we can make a well informed decision. We acted upon the

1 information we had at the time which was not accurate.

2 CHAIRPERSON CROSS REID: Well, certainly the part
3 regarding John Nyarku participating and being a zoning office
4 employee should have been disclosed. It was not disclosed, was
5 it?

6 MS. PRUITT-WILLIAMS: Yes, it was. He should have
7 recused himself from both ends of the process.

8 CHAIRPERSON CROSS REID: Did he make a disclosure?

9 MS. PRUITT-WILLIAMS: Yes. It's on the record.

10 BOARD MEMBER HOOD: Yes, he did.

11 CHAIRPERSON CROSS REID: I just don't recall.

12 BOARD MEMBER HOOD: And that's why I say I don't
13 want to recite the transcript because my memory may fail me, too.
14 But I just believe -- I'm not going to say, again, that we erred.
15 But I just think we need to revisit.

16 CHAIRPERSON CROSS REID: By virtue of the fact,
17 alone, Mr. Hood, that the ANC is asking for reconsideration
18 predicated upon some indiscrepancies, I mean some discrepancies --

19 MS. PRUITT-WILLIAMS: And it's also new information
20 which is one of the criteria for reconsideration. You have
21 information today that you did not have at the hearing.

22 CHAIRPERSON CROSS REID: And the fact that Mr. Hood
23 has some qualms about this particular case, typically we don't
24 reconsider. But under these circumstances, perhaps we would
25 probably it would be better if we erred, to err on the side of

1 caution. And to take another look at what we're dealing with
2 here.

3 How do you feel about it, Mr. Gilreath?

4 BOARD MEMBER GILREATH: Madam Chair, this meeting
5 of this case was held at the July meeting. As I recall, that was
6 the meeting, that was the only meeting I missed during the last
7 calendar year. But, I was not here even though my name is down.
8 I have no recollection of this case, so I really exempt myself
9 from any consideration.

10 BOARD MEMBER HOOD: Madam Chair, I think I stood in
11 that day for Mr. Gilreath.

12 CHAIRPERSON CROSS REID: Oh, well, then Mr.
13 Sockwell did not, either. So, we don't have -- How do we do that
14 because we don't have a quorum to be able to vote on it?

15 Did Ms. King submit a proxy?

16 MS. PRUITT-WILLIAMS: Yes, she did.

17 CHAIRPERSON CROSS REID: She did?

18 MS. PRUITT-WILLIAMS: Yes. To reconsider.

19 CHAIRPERSON CROSS REID: To reconsider? Okay.

20 BOARD MEMBER SOCKWELL: Madam Chair, in the absence
21 of my involvement with the original case, would it be
22 inappropriate for me to respond at all to this document with my --

23 CHAIRPERSON CROSS REID: Yes. At this point, yes,
24 but we would like for you to read the record so that when it's
25 reconsidered you'd have both parts.

1 MS. PRUITT-WILLIAMS: So, you will enter the same
2 thing for Mr. Gilreath.

3 CHAIRPERSON CROSS REID: Mr. Sockwell will read the
4 record.

5 MS. PRUITT-WILLIAMS: And Mr. Gilreath.

6 CHAIRPERSON CROSS REID: And Mr. Gilreath. And
7 then we'll take it up at a subsequent hearing.

8 No, not yet. We haven't voted on it yet, but we're
9 just kind of making the decision. We're kind of discussing it.

10 So, we are -- You going to make the motion?

11 BOARD MEMBER HOOD: Yes, I'll make a motion that we
12 reconsider BZA Application No. 16455, at the date-- have we
13 decided a date?

14 MS. PRUITT-WILLIAMS: No, I'd have to go back and I
15 would notice. So, we would notice them.

16 BOARD MEMBER HOOD: At the date determine also if
17 Mr. Sockwell and Mr. Gilreath will read the record, and we all get
18 the information so we can all have the same information in front
19 of us and make a well informed decision.

20 BOARD MEMBER GILREATH: Madam Chair, can I
21 participate in the vote on this, then?

22 CHAIRPERSON CROSS REID: No.

23 BOARD MEMBER GILREATH: All right.

24 CHAIRPERSON CROSS REID: I'll second that.

25 BOARD MEMBER GILREATH: You have Ms. King. The

1 three of you.

2 CHAIRPERSON CROSS REID: Yes. I'll second. And,
3 all in favor?

4 (Whereupon, an oral vote was taken.)

5 MS. PRUITT-WILLIAMS: Staff would record the vote
6 as 3 to 0 to 2 to reconsider with Mr. Gilreath and Mr. Sockwell
7 not present, not voting. Not voting not being present, excuse me.

8 CHAIRPERSON CROSS REID: I understand all the polls
9 but --

10 Now this --

11 MS. PRUITT-WILLIAMS: The last item on your agenda
12 is a letter dated October 26th -- 28th, excuse me, from --

13 CHAIRPERSON CROSS REID: What he's asking, a Mr.
14 Gerrig? Major Gerrig.

15 BOARD MEMBER GILREATH: That would be Gerrig, I
16 believe. Either Gerrig or --

17 CHAIRPERSON CROSS REID: Major Gerrig.

18 BOARD MEMBER GILREATH: It's spelled Gerrig.

19 CHAIRPERSON CROSS REID: -- has requested --
20 basically he has voiced dissatisfaction with the fact that he had
21 been here well past the hours of 9 to 3 in which the agenda was --
22 had specified the case that -- regarding Jubilee Housing would
23 have been. 9 to 12, the time that Jubilee Housing was supposed to
24 be scheduled. And he's asking that he be given the opportunity to
25 submit -- that we reopen the case and he be allowed to submit a

1 formal letter detailing his issues, one. And, two, that he be
2 identified as a party.

3 Now, I have no problem -- well, let me ask you, Ms.
4 Pruitt-Williams --

5 BOARD MEMBER GILREATH: Madam Chair, I thought we
6 left the record open for this very purpose, did we not?

7 MS. PRUITT-WILLIAMS: No, in fact that was one of
8 the issues. He left a letter requesting that the record be left
9 open, explaining that he could not make it because of work
10 conflicts or of other issues that he had to address. And he
11 wanted to testify in person but given the time, he was not able.

12 You all discussed this and determined that because
13 he didn't tell you what his opposition issues were, that you
14 weren't going to leave the record open.

15 BOARD MEMBER GILREATH: I recall now.

16 CHAIRPERSON CROSS REID: When is it going to be
17 decided?

18 MS. PRUITT-WILLIAMS: It's been decided. That's
19 part of the problem. I mean --

20 CHAIRPERSON CROSS REID: So, that's what I'm
21 saying, what record is he referring to being left open?

22 MS. PRUITT-WILLIAMS: Well, he asked that the
23 record be left open prior to it being started. Now he's asking
24 that it be reopened so that his information can be added.

25 CHAIRPERSON CROSS REID: So, the question that he's

1 -- the question of being granted party status becomes moot at this
2 point, doesn't it?

3 I'm sorry?

4 Yes, I mean, we can't do that.

5 BOARD MEMBER SOCKWELL: The matter has already been
6 decided. There's been a final decision in the record?

7 MS. PRUITT-WILLIAMS: Yes. Yes. His issue is --
8 Yes, it was a bench decision that day. His issue is that he
9 requested that he -- because he -- he could not stay to testify
10 because of other issues. And the larger issue for him is that the
11 process didn't allow for him to let the board know that he had to
12 leave and he was here at a reasonable time. And unfortunately,
13 the board took much longer. It was the second case on the morning
14 agenda and they didn't get to it until about 2:30 or 3:00, well
15 beyond the specified sort of time frame for the hearing of this
16 case.

17 And therefore, he was not able to testify in
18 person. And because he wanted to testify in person, and he ran
19 out of time, he did not have the time to actually put down all of
20 his thoughts, and wanted to leave the record open so he could
21 leave a formal letter.

22 BOARD MEMBER SOCKWELL: Has a written decision been
23 issued?

24 MS. PRUITT-WILLIAMS: It hasn't been issued. No,
25 it has not been issued.

1 Unfortunately, I think if one mike is on, we've got
2 to turn the rest of them off or else we're going to squeak. So,
3 if there are any --

4 MR. BERGSTEIN: I'm just concerned, board members,
5 that since you've already voted on it, it's almost as if, even
6 though there hasn't been a formal written decision, it's almost as
7 he's asking for reconsideration. Because if you add something to
8 the record after you voted on it, then you have to do something
9 with that because your vote didn't include everything on the
10 record. So, you'd have to reopen your vote to deal with the fact
11 that you've opened the record because you've added something in.

12 So, it adds a wrinkle to it that you've already
13 voted. I think you'd almost have to revote to show that you took
14 into account what he provided you. Or find that there is no need
15 to do that because what he provided you didn't make any
16 difference. I mean, there is a change here between a record
17 that's closed and then reopened before a vote and then a record
18 that's opened after a decision has been made. So, it's something
19 you'll need to consider in terms of this request.

20 CHAIRPERSON CROSS REID: The problem I have with
21 this particular request is that, one, notwithstanding the fact
22 that the case is closed and we've already voted on it, the
23 gentleman who submitted the letter, Mr. Gerrig, was here that day
24 and at that time he had an opportunity to submit whatever his
25 position was. He submitted a letter. The first paragraph, which

1 is a lengthy paragraph, basically spoke to his background. And
2 the second paragraph asks that the case be left open.

3 Now, I'm of the opinion that on that particular
4 day, the letter he submitted could have easily have cited what his
5 opposition was, what his issues were. My name is Major Gerrig. I
6 am a neighbor of the subject property. And I object for the
7 following reasons, 1, 2, 3, 4.

8 MS. PRUITT-WILLIAMS: You actually have a copy of
9 his original letter in your file, too.

10 CHAIRPERSON CROSS REID: I'm referring to that, Ms.
11 Pruitt-Williams. Thank you.

12 And he did not do that. So, therefore, we did not
13 have the benefit of whatever his opposition was. So, I don't
14 think that we're obligated to reconsider or reopen this particular
15 case when he was here and had the opportunity to submit to us that
16 day a letter citing what his objection was.

17 And that should have been the purpose of the letter
18 that he submitted to us. That's my position.

19 BOARD MEMBER GILREATH: Well, Madam Chair, I recall
20 that this was a well documented case and my thinking was at the
21 time that we had sufficient information. And the letter he
22 submitted to us, as you say, was irrelevant as to -- he gave no
23 indication of his concerns and I think perhaps I had voiced the
24 view that it was -- the case was so well documented, I felt I had
25 adequate information to provide an informed judgment in the

1 matter. And that his letter that he wrote was inadequate and for
2 us to hold this open for him, to me, placed undue burden on us.

3 So, I feel no great need for us, and Corporation
4 Counsel, if they say we're getting into legal difficulties.
5 Otherwise I don't feel that we need to reopen anything in this
6 matter.

7 BOARD MEMBER SOCKWELL: I think that it is
8 certainly understandable that one who is not a professional
9 lawyer, not that I know that he is or isn't, might state in
10 emphatic terms and intent to testify without having provided a
11 substantive background on his testimony.

12 But at the same time, we are held to the same
13 standard of being forced to expend more time than we might wish
14 based on the circumstances that evolve at one of these hearings.

15 The other thing is that in his letter requesting
16 that he be given an opportunity, this more recent typed letter,
17 he, again, does not indicate the nature of his dissatisfaction
18 and/or the nature of his opposition statements to come -- to bring
19 to us. So, we are once again asked to respond to something that
20 we have absolutely no basis in fact for judging.

21 So, I don't see a reason why we would go to the
22 extraordinary method of actually vacating a decision to open the
23 record to bring him back in and therefore requiring the -- all the
24 parties to return to respond.

25 CHAIRPERSON CROSS REID: Or bringing him back in,

1 or even to allow him to submit the letter.

2 BOARD MEMBER SOCKWELL: Yes, or even to allow him
3 to submit the letter because a letter would be of no value if a
4 decision has already been rendered. That it has.

5 So, his interest in being a good citizen is
6 certainly appreciated, but his ability to respond on this case has
7 past.

8 CHAIRPERSON CROSS REID: So, could that be a motion
9 because he -- this is just for FYI, because he definitely was not
10 a party in the case. So, is that just for our information?

11 BOARD MEMBER SOCKWELL: I could move.

12 CHAIRPERSON CROSS REID: You could only move --
13 only can make a motion is a party and --

14 MS. PRUITT-WILLIAMS: That's why it's under
15 correspondence.

16 CHAIRPERSON CROSS REID: All right. Well, I think
17 that pretty much covers our position on it. Perhaps staff can
18 draft a nicely worded letter to clarify for him exactly what
19 happened. And get it to him so that he can better understand the
20 position we took.

21 BOARD MEMBER SOCKWELL: And, Madam Chair, I would
22 suggest that the letter express the fact that his situation is not
23 unique in the circumstance of such hearings. And that there was
24 certainly no intent to prejudice but that the support for the
25 organization was overwhelming and he never submitted any

1 information, not that it's relevant at this point. But there was
2 never any understanding of what his objections were.

3 CHAIRPERSON CROSS REID: That's right. And that --

4 BOARD MEMBER SOCKWELL: And that's at the
5 beginning. And when he submitted his first correspondence,
6 handwritten, he did not give any compelling reason why we should
7 hold open the record for his future response. In fact, he gave no
8 reason at all.

9 CHAIRPERSON CROSS REID: All right. So, that
10 concludes this morning's session of the BZA, to be reconvened at
11 1:00 for the hearing.

12 (Whereupon, at 12:09 p.m., the commission meeting
13 was concluded.)
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