

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

WEDNESDAY

FEBRUARY 2, 2000

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

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

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.
Marie Sansone, Esq.

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

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WASHINGTON, D.C. 20005-3701

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

2 9:46 a.m.

3 CHAIRPERSON REID: Good morning, Sheila
4 Cross Reid, Chairperson. We now will proceed with
5 the meeting for the Board of Zoning Adjustment for
6 February 2, year 2000.

7 MS. PRUITT: Good morning, Ms. Reid, and
8 I d like to welcome Ms. Renshaw to her first meeting
9 of BZA.

10 Before you today you have a public
11 meeting agenda. Before you, you have the public
12 meeting minutes of January 5th, and you also have the
13 bench meeting minutes for January 5th.

14 We do have a proxy.

15 CHAIRPERSON REID: I have one question
16 regarding okay.

17 Do I hear a motion to accept the minutes?

18 UNIDENTIFIED SPEAKER: I so move.

19 MR. SOCKWELL: Second it.

20 MS. PRUITT: Can she?

21 MR. SOCKWELL: No, she can t, because

22 MS. PRUITT: Right, because you did not

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1 sit for these before.

2 You can vote on the cases, because, in
3 fact, this was board has not at all been involved
4 with these, but these minutes are laid to specifics.

5 CHAIRPERSON REID: Right.

6 MS. PRUITT: It s between you and Mr.
7 Sockwell.

8 MR. SOCKWELL: I move that the minutes be
9 accepted.

10 CHAIRPERSON REID: Second.

11 MS. PRUITT: Call for, I guess, the vote.
12 We have a proxy from Mr. Parsons in the affirmative.

13 CHAIRPERSON REID: Right, right. Okay.

14 MS. PRUITT: Since the three of you, you
15 are both voting, correct?

16 CHAIRPERSON REID: The vote will be
17 Sockwell, me and --

18 MS. PRUITT: Right, but I mean, you ve
19 just done a motion, you have to actually vote on the
20 motion.

21 CHAIRPERSON REID: No, I understand that,
22 what I m asking is, did you say something about the

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1 other two members who were not sitting would be able
2 to vote as well?

3 MS. PRUITT: No.

4 CHAIRPERSON REID: Okay, just the okay,
5 all right.

6 All in favor?

7 MR. SOCKWELL: Aye.

8 CHAIRPERSON REID: Opposed?

9 MS. PRUITT: Staff will report the vote as
10 3-0-2, motion made by Mr. Sockwell, seconded by Ms.
11 Reid, affirmative by Mr. Parsons and Ms. Mitten, and
12 Ms. Renshaw not voting, not being present at the
13 hearing.

14 CHAIRPERSON REID: Okay.

15 MS. PRUITT: Okay.

16 The next item on the agenda are five
17 cases for dismissal. In all cases, we've actually
18 contacted the applicant and the parties involved and
19 requested that they respond in whether or not they'd
20 like to go forward. As of the date we had given
21 them, we've gotten no response, so they are before
22 you for dismissal.

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1 It s Application 16073, 1334 U Street,
2 Application 15989, 199 22nd Street, Application 16288,
3 4909 4th Street, Application 16278, 1900 Kendall
4 Street, N.E. And, the last application is 16508 of
5 901 Butternut Street, N.W.

6 CHAIRPERSON REID: 16508?

7 MS. PRUITT: You should have a revised
8 agenda.

9 CHAIRPERSON REID: 16508, do you have
10 that?

11 MS. RENSHAW: No, I don t.

12 CHAIRPERSON REID: It s not on our agenda.
13 Do you have it, Mr. Sockwell?

14 MR. SOCKWELL: 16508?

15 CHAIRPERSON REID: Add it.

16 MS. PRUITT: It wouldn t be on the agenda
17 that came in your package. You should have before
18 you a revised agenda.

19 CHAIRPERSON REID: No, sorry.

20 MR. SOCKWELL: Oh, here it is, it s in the
21 revised agenda I picked up out front.

22 CHAIRPERSON REID: Oh, okay.

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1 I move that we dismiss these
2 applications, as set forth by Ms. Pruitt, one, two,
3 three, four, five applications that have been put
4 forth to us.

5 Do I hear a second?

6 MS. MITTEN: Second.

7 CHAIRPERSON REID: All in favor?

8 MS. MITTEN: May I ask a question first,
9 Madam Chair, before we vote? It s just an
10 information question.

11 CHAIRPERSON REID: Go ahead.

12 MS. MITTEN: On the 1900 Kendall Street,
13 that was an appeal of a revocation of a certificate
14 of occupancy, does anyone know during that period of
15 appeal, has the certificate of occupancy remained
16 valid?

17 MS. PRUITT: I have no information on
18 that, we can follow through and ask the Zoning
19 Administrator.

20 MS. MITTEN: I d like to know,
21 particularly, since it s a trash transfer station,
22 because it s been going on for some period of time,

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1 and if the certificate of occupancy was valid during
2 the appeal period, I think that would recommend to us
3 that we should be a little more expeditious in
4 wrapping these things up.

5 MS. PRUITT: Actually, the trash transfers
6 fall in a very bizarre situation, because a lot of
7 these cases, when trash transfers actually came into
8 being there were no actual regulations that dealt
9 directly with trash transfer, and so in, I think,
10 95- 96 the Zoning Commission did a large rulemaking,
11 so a lot of these cases got caught in the interim,
12 and the Zoning Commission, in fact, requested that
13 any applications for special exception for trash
14 transfers be stayed until after they did the
15 rulemaking.

16 The rulemaking came out in 98, and now
17 we are beginning to bring them back, and, in fact,
18 that s what we will be seeing on April 19th. And, in
19 the interim they have sort of a temporary operating
20 permit that allows them to operate legally until all
21 of this has been resolved. And, that s why you ll
22 see a lot of trash transfers with earlier numbers

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1 that came in right at that same time, but sort of got
2 stayed as a result of the process.

3 MS. MITTEN: Well, maybe we can talk about
4 it more. I m prepared to vote, I just am still not
5 quite clear on this situation, but we can talk about
6 that at another time.

7 MS. PRUITT: Okay.

8 CHAIRPERSON REID: All in favor?

9 (Ayes.)

10 CHAIRPERSON REID: Opposed?

11 MS. PRUITT: Staff would record the vote
12 as 4-0 to approve, motion made by Ms. Reid and
13 seconded by Ms. Mitten.

14 CHAIRPERSON REID: Okay.

15 MS. PRUITT: And, that s all on our
16 official agenda.

17 Before you, you do have a calendar of
18 cases scheduled through May and then a performance
19 measures of actually applications processed, heard,
20 cases decided and orders issued.

21 CHAIRPERSON REID: All right.

22 MS. PRUITT: Number of hearings.

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1 CHAIRPERSON REID: Oh, you mean status of
2 cases?

3 MS. PRUITT: Yes.

4 CHAIRPERSON REID: And, where is that?

5 MS. PRUITT: It should be on a paper that
6 says performance measures and a chart.

7 CHAIRPERSON REID: Oh, okay.

8 Oh, this is it?

9 MS. PRUITT: Yes.

10 CHAIRPERSON REID: Oh, my. Usually it s
11 like two or three pages. It has been in the past.
12 So, we are down to just applications processed, 199,
13 198, okay. Applications heard, cases decided, uh-
14 huh, orders issued, considerable increase in orders
15 issued, which is great. Backlog of only 26, of which
16 12 orders to be written starting with 1998.

17 MS. PRUITT: And, actually, of those 12
18 orders they actually date back to, the earliest one
19 is 89. They are denials, but, you know, we have
20 some, like one from 89 to so, they go from 89 to
21 98, the backlog, the 12 that s been carried over.
22 So, some of them have been carried over since 1989.

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1 MR. SOCKWELL: Do some of the applicants
2 die during this time?

3 MS. PRUITT: No, they are all denials, so
4 it didn't infringe upon anybody's rights. From going
5 through the cases, it appeared that they were
6 difficult cases to write, and been ordered,
7 basically, to staff, but since the resources were so
8 short at that time were really focusing on getting
9 orders out that allowed people to not hold up the
10 process. These did not hold up the process, so
11 that's why they

12 MR. SOCKWELL: But, with a ten-year old
13 backlog order, the property could easily have changed
14 hands.

15 MS. PRUITT: Correct.

16 MR. SOCKWELL: And, if that can be
17 determined, can't the order just be vacated? If the
18 property, say, changed hands during the ten-year
19 period, couldn't you vacate the whole decision on the
20 basis of the applicant no longer being

21 MS. PRUITT: No longer being there.

22 MR. SOCKWELL: Yes.

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1 MS. PRUITT: I m not sure, we can
2 certainly research that to find out.

3 MR. SOCKWELL: Because it would save us a
4 lot of effort.

5 CHAIRPERSON REID: Ask Mr. Bergstein,
6 since he s sitting here, if he could respond to that.

7 MR. BERGSTEIN: My name is Allen
8 Bergstein, Assistant Corporation Counsel. We can
9 research the issue, as to whether or not it would be
10 moot with respect to the use of the property, unless
11 the successor purchaser wanted to step into the shoes
12 of the applicant for the purpose of that use. We d
13 have to see.

14 CHAIRPERSON REID: But, these are the
15 denials, right?

16 MR. BERGSTEIN: Yeah, yeah. But, he might
17 still the person might want to appeal the denial,
18 so we d have to investigate that.

19 CHAIRPERSON REID: Yes, because if we
20 could eliminate a few of them, just going to the fact
21 that, you know, the time has so much time has gone
22 by that it might not even be material anymore.

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1 MR. BERGSTEIN: Do we know, we don't know
2 necessarily, that that's occurred, we'd have to
3 research the property records first and see whether
4 or not, in fact, there's been a change of ownership,
5 and then we'd go on and see whether or not, in fact,
6 that moots out the appeal.

7 MR. SOCKWELL: And, that could be done
8 very quickly, I would think, I would hope. I mean,
9 if I can get the information in 15 minutes, I'm sure
10 that BZA can get it in a couple of days.

11 MS. RENSHAW: Madam Chair, just a question
12 about this performance measures. On cases decided
13 for '99 and '98, 149 and 112, how many of them were
14 denials?

15 CHAIRPERSON REID: I

16 MS. PRUITT: I did not actually separate
17 approvals, denials, or anything.

18 MS. RENSHAW: Would you do that?

19 MS. PRUITT: Sure.

20 MS. RENSHAW: Thanks.

21 CHAIRPERSON REID: Also, I'd like to see
22 this reflected, since we are showing obviously from

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1 19 we always like to show improvement every year,
2 can we show reflected percentage?

3 MS. PRUITT: I ve not done that in the
4 past, but we can do that.

5 CHAIRPERSON REID: Yeah, that would be
6 good to know, because when questions come up as to,
7 you know, what the BZA is doing, then we can then
8 cite the fact that there s been an X percent increase
9 in cases heard, or the backlog has now decreased. I
10 think that when I first came on the board the backlog
11 was like 100 and something.

12 MS. PRUITT: The only concern I have with
13 the percentage, that s really misleading because you
14 may have heard less cases one year, but they could
15 have been bigger cases with more hearings, such as we
16 have many cases that had multiple hearings, such as
17 the hospital, Metropolitan Bay, which typically the
18 board only has, you know, one hearing a day. The
19 hospital had seven cases, seven hearing days,
20 Metropolitan had three. The National Cathedral had
21 three, that s kind of atypical, but they all counted
22 as one case.

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1 So, my concern with putting the
2 percentage is, unless you it s very hard to
3 segregate the back porch addition, you can do a
4 million of those, and only one big Metropolitan Bay,
5 and even though the percentage would look like you
6 are doing much more work.

7 CHAIRPERSON REID: Kind of skewed.

8 MS. PRUITT: It s very skewed, because
9 it s very hard to determine.

10 But, we can still do the percentages.

11 MR. SOCKWELL: I mean, the only thing we
12 could probably realistically do is relate to the
13 number of meetings in a given year to the number of
14 meetings in another given year.

15 MS. PRUITT: Well, in fact, that s what
16 you can see here, the number of meetings in 99 was
17 27, compared to 17, because you had a lot of special
18 hearings and special public meetings to accommodate
19 the additional cases that you had, and because of the
20 complexity of a lot of them.

21 MR. SOCKWELL: And, I would like to know,
22 since we seem to be getting some responses on these,

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1 the number of cases mediated.

2 MS. PRUITT: One so far.

3 MR. SOCKWELL: Yeah, and we should keep a
4 record of that. Mediation is becoming a method of
5 putting

6 CHAIRPERSON REID: Or, the number of cases
7 that were remanded, that s also important.

8 MS. PRUITT: Well, this year we ve not had
9 any cases remanded.

10 CHAIRPERSON REID: Right, I didn t think
11 so, did we have last year?

12 MS. PRUITT: No.

13 CHAIRPERSON REID: Okay.

14 And, that s also important to know, those
15 that were remanded also, to see number of appeals.

16 MS. RENSHAW: Could I ask another
17 question, Madam Chair? Under backlog, where we ve
18 got 12, do I read this correctly, 12 out of 26 orders
19 are carried over from 98?

20 MS. PRUITT: Correct.

21 MS. RENSHAW: Now, we are now in 2000,
22 were the 12 finished in 99?

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1 MS. PRUITT: No, we re working on them
2 now.

3 MS. RENSHAW: So, we are still working on
4 those. All right.

5 CHAIRPERSON REID: They have to be
6 apparently, they are law cases, they have to be
7 written up.

8 MS. PRUITT: Yeah, a lot of them are
9 denials and appeals cases that have been very
10 difficult and have a lot of legal. In fact, corp
11 counsel is helping us draft quite a few of those, and
12 we are in the process of doing so.

13 MR. SOCKWELL: We have five, and they are
14 all in the phase where I ve gotten the draft orders,
15 and I really do expect them all to be out within the
16 next week or two.

17 MS. PRUITT: And then we ll give them the
18 next bunch.

19 CHAIRPERSON REID: We ve found that
20 wherever we can do a bench decision, summary order,
21 it certainly helps considerably to decrease the
22 backlog, because then you can focus on the backlog,

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1 getting that cleared away, and with the summary
2 orders, that s basically like a template, where you
3 can just put in the information, and, you know, it s
4 pretty straightforward. So, it s always good when we
5 can do that, go to that, rather than having to write
6 a full order.

7 Also, I d like to, while we are talking
8 about performance measures, to again thank the staff
9 for the exceptional work that has been put forth,
10 given the fact that we ve gone through a big
11 renovation. The whole office has been in disarray,
12 but at the same time we ve seen a lot of improvement
13 with the office, the computerization of the office,
14 additional staff, and I think that all these things
15 combined will contribute to us continuing to improve
16 the performance of the BZA.

17 So, for all the staff members who are
18 overworked and underpaid, I d like to personally, on
19 behalf of BZA, thank you for all that you have done,
20 and hopefully we can, in the areas that we still have
21 a few little glitches, improve in those areas as
22 well, so that we can kind of have a well-oiled

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1 machine that we are running up here. I appreciate
2 that.

3 Ms. Pruitt, has there been any other
4 discussion about the training, because we have two
5 new board members, and we also have new members on
6 the Zoning Commission, and it is very important that
7 there be adequate training so that they become
8 familiar with the procedures and processes, and
9 administrative procedures, protocol, Robert s Rules
10 of Order, what have you.

11 MS. PRUITT: Yes, in fact, Ms. Kress, and
12 Sarah and myself, we ve been working on and also
13 Mr. Nyambi, been working on putting the training
14 manual together, and Sarah actually has a book that s
15 in process that should be available.

16 Not last Saturday, but the Saturday
17 before last, we had a forum here in the office for
18 the ANC Assembly, sort of giving them an overview on
19 what the Office of Zoning did, and then we
20 specifically we focused on BZA, since mostly ANCs
21 are really functioning with the BZA.

22 I believe Ms. Renshaw was here.

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MS. RENSHAW: Yes, I was.

MS. PRUITT: Yes, and I thought it was a pretty successful meeting. We had a Power Point presentation, and then there was a Q&A session afterwards that helped bring out a lot of the issues that the ANCs have, and where misunderstanding was coming along. So, we are also looking to do more of those out to the ANCs individually.

CHAIRPERSON REID: In addition to the board member training.

MS. PRUITT: Correct, right, so it s a sort of a training on the public side and the board members.

CHAIRPERSON REID: Right, and in addition to that, the training of the staff.

MS. PRUITT: The staff will be definitely included.

CHAIRPERSON REID: Right, because the staff needs to be on the same page with us, and we should all try to obtain a oneness as far as the BZA is concerned, because sometimes, even the interpretation of a variance and a special exception,

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1 still sometimes there is some debate, there should
2 not be. It should be like straightforward, there
3 should be a definition, whether or not you can do
4 conditions, you can't do conditions, where is the
5 test, so that, you know, everyone is together on
6 that, and the board I'm sorry, the staff is very
7 attuned to it, so that they can support and assist us
8 wherever possible, as efficiently as possible.
9 That's what we are going to try to attain.

10 Okay. The other thing I had was joint
11 meetings. We said we were going to try to have them
12 quarterly, of the BZA and the Zoning Commission, and
13 we have not had one in, oh, I can't remember the last
14 time we had one, and I think that's very important,
15 particularly, since we have so many new members, we
16 need to kind of sit down and discuss issues that are
17 germane to both entities, and how we can together
18 bring about positive change or improvements or
19 whatever we need to do.

20 MS. PRUITT: I've talked to Ms. Kress
21 about that, and I'm sure she'll be in touch.
22 Alberto, I guess, will be contacting zoning

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1 commissioners, and we can sort of determine what
2 days, what s a good day. Do you have any usually
3 the Zoning Commission meets on Monday afternoons, the
4 second Monday of the month, and traditionally they
5 have either met before or after a Zoning Commission
6 meeting. So, I don t know how that works with the
7 board members, but that s how it has been in the
8 past. We haven t had any recently.

9 CHAIRPERSON REID: I think that as soon as
10 we can, because there are some issues that we really
11 need to discuss.

12 MS. PRUITT: Do you have a list that we
13 can that at least put an agenda together of the
14 issues? I mean, not right now, but if you have some
15

16 CHAIRPERSON REID: Sure, I can, and also
17 other board members as well. Mr. Sockwell, do you
18 have any items that you d like to have on the agenda,
19 or Ms. Mitten?

20 MR. SOCKWELL: For joint meetings?

21 CHAIRPERSON REID: Yes, things that have
22 come up, you know, and we say, well, we need to send

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1 that to the Zoning Commission. One things would be,
2 perhaps, the issue well, has it been clarified
3 about paying a fee by non-profits?

4 MR. SOCKWELL: No, that hasn't, and that's
5 one issue.

6 CHAIRPERSON REID: Now, Mr. Bergstein has
7 given you his, like kind of like a read on it, and
8 that didn't

9 MR. BERGSTEIN: I think we have something
10 a little bit more elaborate coming your way.

11 CHAIRPERSON REID: Okay.

12 MR. BERGSTEIN: On that issue.

13 CHAIRPERSON REID: Okay, because we needed
14 to address it, and there were some other things,
15 that's the only thing that comes to mind right now,
16 but we can form later an agenda of things that you
17 can think of that we could kind of work together on.

18 All right. Now

19 MR. SOCKWELL: The comprehensive plan
20 implications on issues would be another.

21 CHAIRPERSON REID: Okay, and also I know
22 that Mr. Parsons had an issue regarding and I don't

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1 know if that also includes NCPC, the proliferation of
2 embassies in certain neighborhoods.

3 MS. PRUITT: That letter is gone, is
4 it s actually being drafted, Ms. Kress is reviewing
5 it now, and it will be coming over shortly.

6 CHAIRPERSON REID: Okay.

7 MS. PRUITT: But, I did talk to Mr.
8 Gilreath, and it appears that NCPC won t be getting
9 to the foreign missions until the end of this year.

10 CHAIRPERSON REID: Oh, really?

11 MS. PRUITT: Right, so, I mean, while it s
12 good for us to get it over there, they will not be
13 getting to look at it for a while, and they are the
14 ones who promulgate the rules in reference to foreign
15 missions.

16 CHAIRPERSON REID: Okay, and I know also
17 that Ms. Kress had mentioned to me a problem with the
18 self-certification.

19 MS. PRUITT: Yes, and we are actually
20 continually meeting with the office, DCRA, because
21 from our end we are finding that they just don t
22 work. They cause more problems than they were

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1 originally designed to solve.

2 CHAIRPERSON REID: Right.

3 MS. PRUITT: So, we are trying to, one,
4 revise the form so it s as clear as possible to those
5 who are self-certifying, what they are doing, what
6 their responsibilities are, and what the liability is
7 associated with it.

8 CHAIRPERSON REID: Sure, sure.

9 MS. PRUITT: Because right now, people are
10 a little fuzzy on it.

11 CHAIRPERSON REID: They are very fuzzy.

12 MS. PRUITT: And, it ends up making the
13 Office of Zoning the interpreter of the regs, which
14 is the Zoning Administrator s position.

15 CHAIRPERSON REID: Right.

16 MS. PRUITT: Because we have to interpret
17 what they are looking for, and if this is the correct
18 zone, and we just don t have the staff or time to do
19 that.

20 CHAIRPERSON REID: Okay. Well, I know
21 that was one of the issues, and also the signature,
22 there s a signature line that I understand is being

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1 reworked, because the signature line from the Zoning
2 Administrator only signifies the fact that they have
3 not seen it.

4 MS. PRUITT: Right, and, I mean, we are
5 still we have that ongoing problem now, which is,
6 the Zoning Administrator s office won t sign it, they
7 come here, we send them back, and it s sort of a, you
8 know, people getting them back and forth.

9 CHAIRPERSON REID: Well then, my
10 understanding was that that was going to be taken
11 off, because if performance in itself is indicative
12 of the fact that it has not been signed by the Zoning
13 Administrator, so that s a moot point.

14 MS. PRUITT: That s one of the things

15 CHAIRPERSON REID: We can go back and
16 forth with that.

17 MS. PRUITT: and, in fact, you will
18 probably still see some self-certs on the old form
19 that aren t signed, because people just the Zoning
20 Administrator s office just will not do so, and it s
21 sort of unfair for us to keep sending them back for
22 something that

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CHAIRPERSON REID: Sure, sure.

MS. PRUITT: says, well, we re not looking at them anyway.

CHAIRPERSON REID: Yeah, so we need to tweak that and get it as tight as possible, because also there are obviously opportunities for for those persons who can see loopholes in the system and be able to use it to their benefit.

Okay, are there any other issues that other board members would like to raise?

MR. SOCKWELL: None that are in our direct purview, unfortunately.

CHAIRPERSON REID: All right.

I also would like to take this opportunity to welcome our newest board member, Ms. Renshaw. What s your first name?

MS. RENSHAW: Anne.

CHAIRPERSON REID: Anne Renshaw, who is a representative from Ward 3.

MS. RENSHAW: Ward 3, uh-huh.

CHAIRPERSON REID: Who, this is her first time sitting with us, and I also will introduce you

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1 again when we have the hearing this afternoon.

2 You are very lucky today, Anne, because
3 I mean, Ms. Renshaw, because today this is an
4 exceptionally short meeting, and we are getting to
5 adjourn this right now, and we are out of here, so we
6 have, you know, time in between. But, usually it
7 goes, you know, it can go anywhere to, you know,
8 11:00-12:00.

9 MS. RENSHAW: In the daytime, of course.

10 CHAIRPERSON REID: Yes.

11 We ve been fortunate that our hearings
12 have not been long and laborious, as it had been at
13 one time, where you were here until 9:00-10:00 at
14 night. Usually, usually, and I just put this in
15 quotes, we are out of here about 6:00. 7:00 is the
16 exception. I don t think we were here ever past 7:00
17 last year, were we?

18 MR. SOCKWELL: Yeah, we were here until
19 9:00 on something.

20 CHAIRPERSON REID: Which case was that?
21 Maybe once?

22 MR. SOCKWELL: Yeah.

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1 CHAIRPERSON REID: Yeah, maybe one time.
2 MS. PRUITT: Mr. Sockwell didn't sit for
3 the hospital.
4 CHAIRPERSON REID: He did not?
5 MS. PRUITT: No. He wasn't on the board
6 at that time, Ms. King was still here. And then,
7 well, actually, that spot
8 CHAIRPERSON REID: Was it 9:00 last year?
9 MS. PRUITT: On the hospital, yes, that
10 MR. SOCKWELL: And, another one we were
11 here until 9:00.
12 MS. PRUITT: Right.
13 CHAIRPERSON REID: Okay, well
14 MS. PRUITT: You were just having so much
15 fun, time past so quickly.
16 CHAIRPERSON REID: No, I don't ever
17 remember being here until 10:00.
18 MS. RENSHAW: Madam Chair, could I ask a
19 question about testimony from applicants and those
20 who are coming to question the application? Do we
21 have a time limit on their discussion?
22 CHAIRPERSON REID: For cases that are

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1 highly contested, we have a lot of opposition, if
2 it s just two or three persons it s okay, but if we
3 have a lot of people, then we try to limit it to two
4 minutes per if it s a single person, and, what is
5 it, five minutes for ANC?

6 MS. PRUITT: I don t have my regs with me,
7 but the new regs that were out in October actually
8 have time limits established in them, and I don t
9 remember the cite to mention it right now.

10 MR. BERGSTEIN: There s a max 60 minutes.

11 CHAIRPERSON REID: For putting on a case?

12 MR. BERGSTEIN: For

13 CHAIRPERSON REID: The applicant and the
14 opposition?

15 MR. BERGSTEIN: yes.

16 MS. PRUITT: Yes. And then, 15 minutes
17 for parties.

18 MR. BERGSTEIN: But, the rules also
19 contemplate a waiver, and don t include the ANC.

20 MS. PRUITT: Right.

21 CHAIRPERSON REID: Okay.

22 MS. PRUITT: ANCs and government officials

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1 or agencies have no time constraints.

2 CHAIRPERSON REID: They don t?

3 MS. PRUITT: No.

4 MS. RENSHAW: Okay.

5 So, you are saying that it is 60 minutes,
6 the ball park figure, to put on a case, the
7 applicants and those who comment against.

8 MS. PRUITT: Right.

9 MS. RENSHAW: Okay.

10 MR. BERGSTEIN: Exclusive of cross
11 examination. In other words, you don t count a cross
12 against an applicant or an opponent s time to present
13 their case. So, the 60 minutes is pure testimony.

14 CHAIRPERSON REID: Repeat that.

15 MR. BERGSTEIN: In other words, the 60
16 minute period is a time that s permitted by an
17 applicant or by the opposing party to present their
18 case.

19 CHAIRPERSON REID: Oh, I see.

20 MR. BERGSTEIN: If someone gets into a
21 cross examination, that is not part of the
22 applicant s case.

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1 CHAIRPERSON REID: Now, that s where
2 that part of it is where the problems lie, because
3 you don t have control over it, although we try very
4 hard to make sure that they keep the questioning
5 germane to the testimony. Invariably, and you all
6 know how that goes when they go outside of the area
7 that they are supposed to be dealing in, or the cross
8 examination is exceptionally laborious, and, you
9 know, we ll try to contain that, but it s very
10 difficult to do if there is no time limit set.

11 So, I don t know why there was not
12 anything put there, because that aspect of it can go
13 on all day.

14 MR. BERGSTEIN: Well, I think that, and I
15 wasn t involved in the policy determination, but
16 normally cross examination is an inherent part of due
17 process, and it s up to the parties and to the bench
18 to narrow, to repeat, to not allow repetitious
19 irrelevant cross examinations.

20 But, if a cross examination is relevant,
21 particularly, when there s multiple parties who may
22 have different interests they want to pursue, then

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1 the need to pose narrow, relevant questions is part
2 of the Administrative Procedures Act, and I think it
3 would be difficult to put time limitations on it.

4 CHAIRPERSON REID: I don t have a problem
5 with that, and I think that that is a very important
6 part of the proceedings, because from that cross
7 examination we are able to obtain information we
8 would not otherwise get often times, but sometimes
9 when we ve had a big case, where the cross
10 examination has gone in excess of an hour and a half,
11 two hours, two and a half hours, then I have to then
12 say to the attorney or whoever is doing the cross
13 examination, that you ve now taken this amount of
14 time, can you, you know, wrap, because, you know,
15 that could go on and on, and on.

16 And, I don t know if you are saying that
17 the time, there s no requisite amount of time that
18 they have, nonetheless, they can receive from the
19 dias some probing, or some pushing, or some influence
20 to try to not take all day with it.

21 MR. BERGSTEIN: Well, I ve heard judges
22 say, wrap it up, and to me as well. So, the bench

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1 has a lot of discretion, but I think the main tool is
2 making sure that the questions posed are not
3 argumentative, are relevant, don't repeat questions
4 that were asked by other parties, and are germane to
5 the relate to the testimony that was given, and not
6 to some other point that's trying to be made.

7 And, I think that if those rules are
8 adhered to, then cross can be fairly narrow and
9 fairly efficient.

10 CHAIRPERSON REID: Yes, I think that also,
11 that's one aspect of the training that we need to
12 make sure we have, because to me cross examination is
13 a peculiar animal, and if done efficiently you can
14 get through it, but if you are not aware of the
15 rules germane to cross examination, then it can get
16 out of hand. And, I think that that's important that
17 the board members all be aware of the rules, so that
18 we can, each one of us can make sure that it's done
19 adequately and is done efficiently, so that we can,
20 you know, get through it as quickly as possible.

21 MS. SANSONE: Madam Chair, can I interject
22 something here?

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CHAIRPERSON REID: Sure.

MS. SANSONE: I think there s two things I d like to suggest. One is, I mean, and it s all, unfortunately, on the presider, or quite a bit of the responsibility is on the presider, but I think what happens sometimes is, there s some a fair amount of latitude in the cross examination questions that s given, until it becomes going on until it has gone on too long, instead of imposing a discipline from the outset of the cross examination. And so, that s on the presider to impose that discipline at the beginning of the cross examination.

And then the other thing I think would be for the presider to advise anyone conducting cross examination that there is not an unlimited time and that they should prioritize and make sure that they deal with their most important issues first, and not just the order that someone testified in, so that they are sure that they don t get blocked out of asking the questions that are most important to them.

CHAIRPERSON REID: That s a good point, and it s not just the chairperson who can do that,

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1 any board member can interject suggestions, or, you
2 know, to give instructions that are pertinent that
3 may not have been for example, I may not have said
4 a certain whatever it is that needs to be said, and
5 you can do that, as well as the fact that often it
6 has occurred that in the cross examination, and
7 attorneys know, I mean, they are well trained,
8 however, they are attorneys, so if they can get away
9 with going outside of the limits or the realms of the
10 limitations, they will try to do that, and they ll
11 ask a question and it may be not germane to the
12 testimony today, where you may pick it up quicker
13 than I do, or you may pick it up, you say, no, no,
14 that s not germane to what we have here today. And
15 then, basically, it is a joint effort by the whole
16 board to make sure that this is what I m trying to
17 achieve, us working together as a unified body, to
18 make sure that it s done as proficiently and
19 efficiently as possible, for the benefit of the
20 public.

21 MS. SANSONE: Great.

22 Madam Chair, I ve located the rule on

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1 cross examination, and just for reference, it s
2 3117.4, and it does state that, Nothing herein shall
3 prohibit the board from placing reasonable
4 restrictions on cross examination, including time
5 limits and limitations on the scope of cross
6 examination by the applicant or appellant, or by any
7 person or party in support or in opposition.

8 CHAIRPERSON REID: That covers what Allen
9 just said.

10 MR. BERGSTEIN: Well, actually, it s
11 better, because it was so inconsistent, what I said,
12 so I m glad Ms. Sansone had the rules.

13 CHAIRPERSON REID: The new regulations, is
14 that the new regulations? Because, in the past I had
15 well, we try not to put a lot of time constraints
16 on cross examination, we just ask them, how long do
17 you think it will take, and then they ll tell us, and
18 then if it exceeds that amount then we tell them, oh,
19 you said it would only be an hour, now it s two
20 hours, or now it s an hour and a half, how much
21 longer do you need. And then, sometimes they ll say,
22 oh, well, Madam Chair, I just need I just have a

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1 couple more questions, something like that, and then
2 I ll allow them to go ahead.

3 But, as long as we have some latitude in
4 being able to, you know, somehow put them on alert
5 that they can t just take an unended amount of time
6 to ask their questions, and they know what they are
7 trying to get out. Sometimes the attorney will
8 ramble, and ask 50 questions to get to one point, and
9 we re like, well, what s your point, get to the
10 point, you know, rather than just going straight to
11 the point, that kind of thing that we want to try to
12 clean up.

13 MS. PRUITT: Madam Chair, I would like to
14 find out if it s possible that the applicants give us
15 copies of what they are displaying at the meeting. In
16 other words, a lot of time is taken up putting big
17 things on easels, and then the audience can t see
18 what we are looking at, because they are not
19 positioned on the wall, and it would save a lot of
20 time if we had those reduced and put in our packets
21 ahead of time, so that we would know what visuals
22 they are going to be discussing.

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1 CHAIRPERSON REID: Well, usually they are.

2 MS. PRUITT: Well, sometimes they are not.

3 CHAIRPERSON REID: Let me finish. There
4 are a couple of things that you are saying. One
5 thing is that, usually, for the most part, they give
6 us pictures of what they are displaying, or their
7 architectural renderings, whatever, and when the case
8 is being called, or they know their case is coming up
9 next, without us saying it, usually they go out,
10 because these are people who are with the law firms
11 and they know, they know the procedure, they set
12 their easels up before it starts, before the hearing
13 starts, their case starts.

14 And, I agree with you that often the way
15 that they set up, it is to the back of the people in
16 the hearing room, rather than setting it up so that
17 it s kind tricky to get that angle so that we can see
18 it and that the audience can see it as well, but, if
19 there is a toss up as to who can see it, then it s
20 more important that we see it. But, for the most
21 part, they try to sometimes if there is a specific
22 questions that comes up from someone who is in

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1 opposition or support about the particular case, then
2 I will tell that or ask that person, or any of us
3 can ask that person, to come up to the front so that
4 they can be able to see what is being shown to the
5 board, so that they can get a clarification on what,
6 in fact, they are asking.

7 MS. MITTEN: Madam Chair?

8 CHAIRPERSON REID: Yes.

9 MS. MITTEN: Isn't it also the case that
10 when they introduce these larger exhibits in hearing
11 that those become part of the record, and someone
12 could come the office at a later time

13 CHAIRPERSON REID: Sure.

14 MS. MITTEN: and examine those in more
15 detail?

16 CHAIRPERSON REID: Sure, they do. I mean,
17 what they give us, I know that we have to keep, but
18 when they have those exhibits, do they also become
19 part of the record?

20 MS. PRUITT: They become part of the
21 record or else they give us reduced copies of it, so
22 that

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1 CHAIRPERSON REID: Or, if they don t if
2 they don t have reduced copies, they have to give us
3 whatever they have on those boards.

4 Really, I didn t know we had all that
5 storage room for all that stuff.

6 MS. PRUITT: We don t keep them forever,
7 because we don t have the storage room.

8 MS. RENSHAW: When do they give you
9 reduced copies?

10 MS. PRUITT: We usually request them.
11 Most of the time, if there s a fairly detailed
12 presentation, it s part of the submission package,
13 and the applicant can then also supplement their
14 submission package like 14 days prior to the hearing.

15 But, they also have the right to keep
16 the record is open, and that s one of the problems,
17 an inherent problem with leaving the record open
18 until the hearing, because things come in all the
19 time. We get things the night before the hearing
20 that we are trying to get to you for the next day,
21 and it doesn t give any no one has the advantage of
22 having sort of a stop time to make sure everybody is

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1 on the same page at the same time, and then opening
2 up the hearing again.

3 So, that s something that was discussed
4 last year during the regulatory reform, as part of
5 the new regs, and there actually was not consensus on
6 how to they could not come to an agreement as to
7 whether or not to sort of stay the record for a
8 while, or else require that all information be in
9 seven days in advance, nothing happened, and so at
10 this point it s still as it was originally designed,
11 that information can come in until the record closes.

12 MS. RENSHAW: Well, if information is
13 coming in at the last moment, and they are walking in
14 with large boards, I would urge that we require that
15 they walk in with reduced copies also, so that we can
16 hear what they are referring to, and we have a sheet
17 in front of us, it s exhibit number whatever.

18 MR. BERGSTEIN: And, actually, that s one
19 of the problems that happens in these hearings, is
20 that parties will come in with these large exhibits
21 and not mark them, and then they ll say, well, we are
22 looking at this picture over here, we are looking at

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1 this picture over there, but when you look at the
2 record, the Court of Appeals or whoever will have no
3 idea what s being referred to unless there s
4 something singular about the picture, and it be very
5 useful if these things were premarked and referred
6 to, not as the big picture, the little picture, but
7 as the actual exhibit number.

8 What the Superior Court does, and this is
9 a very formal process, but the parties are required
10 before the hearing begins to create exhibit books,
11 and the other party gets an exhibit book, the judge
12 gets an exhibit book, and the clerk gets an exhibit
13 book, and so when they say, we are now going to look
14 at exhibit whatever, you turn to the tab, and
15 everybody is turning to the same tab, and that s
16 where it is.

17 But, again, that s not a process that s
18 been built into this process, but that s one way to
19 handle oversizes like that, is to require that at
20 least the applicant, because we don t really know who
21 the other parties are, except automatic parties,
22 until the hearing begins and party status is granted,

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1 but at least require the applicant and known parties
2 to, if they are going to provide exhibits or offer
3 exhibits, to produce them in a book with tabs that
4 are numbered with the exhibit numbers, and then
5 submit the requisite copies so that the
6 commissioners, and the stenographer, and staff would
7 have it. But, that is a very, very expensive process
8 to do that.

9 MR. SOCKWELL: Yes, let me remind all
10 present that we are a panel dealing with citizen
11 issues, as well as with the issues of those well-
12 financed and well-advised development clients and
13 commercial clients. We cannot make procedures that
14 would put the individual citizen at a disadvantage
15 under any circumstance. We have to be very loose
16 with the way we interpret what we think is proper, to
17 allow everyone equal access.

18 CHAIRPERSON REID: I think your point is
19 well taken, Mr. Sockwell, because I have some grave
20 concerns about persons who don t have the benefit of,
21 or the financial capability, to hire an attorney, who
22 come here at a grave disadvantage to try to put on

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1 the case and try to sometimes they come in and they
2 don t even know what a variance is, much less the
3 three-prong test as to how to make their case. And,
4 I want to work with both the Zoning Commission and
5 the BZA to try to see what we can do to overcome that
6 deficit. That s a serious deficit.

7 MS. RENSHAW: Madam Chair, I want to make
8 it very clear that I am referring to any applicant
9 who is bringing in large boards, in other words, we
10 are not saying that it has to be done by all parties,
11 but if you are bringing in a large exhibit, it is
12 only right to bring in the reduced copies at the same
13 time. And, that is not an expense, I think, that
14 would break the bank.

15 CHAIRPERSON REID: I think we all agree
16 with that, and I think Ms. Pruitt-Williams said, or
17 Mr. Bergstein said, that there is an exhibit book
18 that usually accompanies those big displays. Yes,
19 definitely.

20 Okay, are we done? All right, this then
21 concludes our meeting for February 2nd, year 2000.

22 (Whereupon, the meeting was concluded at

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10:28 a.m.)

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