

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

MAY 3, 2000

+ + + + +

The Public Hearing convened in Room 220 South, 441
4th Street, N.W., Washington, D.C. 20001, pursuant to notice at
1:30 p.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

Jerrily R. Kress	Director
Beverly Bailey	Zoning Specialist

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

ALSO PRESENT:

Linda Pelzer

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

<u>AGENDA ITEM</u>	<u>PAGE</u>
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 <u>APPLICATION OF PHILLIP ABRAHAM:</u>	
<u>16579N ANC-2F</u>	36
FRED GREENE	37
1411 K Street, N.W.	
SUITE 503	
WASHINGTON, D.C. 20005	
(302) 393-2515	

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

1:33 p.m.

CHAIRPERSON REID: Good afternoon, ladies and gentlemen. I'm going to go ahead and start reading the opening remarks. We apologize for the delay this afternoon, but we have to wait for a Board Member to come and the other Board Members will be joining me shortly.

The hearing will please come to order. This is the May 3 public hearing of the Board of Zoning Adjustment for the District of Columbia. My name is Sheila Cross Reid, Chairperson.

Joining me today is Robert N. Sockwell, who'll be here in just a couple of minutes, and Rodney Moulden, representing the National Capitol Planning Commission. Also, Ann Renshaw, Board Member, and representing the Zoning Commission is Mr. Anthony Hood.

Copies of today's hearing agenda are available to you. They're located to my left near the door.

All persons planning to testify, either in favor or in opposition, are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forward to speak to the Board, please give both cards to the reporter who is sitting to my right.

The order of procedure for special exception and variances is: 1) statement of witnesses for the applicant, 2) government reports including Office of Planning and Department of Public Works, etc., 3) report of the Advisory Neighborhood

1 Commission, 4) parties of the person in support, 5) parties of the
2 person in opposition, 6) closing remarks by the applicant.

3 Cross examination of witnesses is permitted by the
4 applicant or the parties. The ANC within which the party is
5 located is automatically a party in the case.

6 The record will be closed at the conclusion of each
7 case except for any materials specifically requested by the Board
8 and the staff will specify at the end of the hearing exactly what
9 is expected.

10 The decision of the Board in these contested cases
11 must be based exclusively on the public record. To avoid any
12 appearance to the contrary, the Board requests that persons
13 present not engage Members of the Board in conversation.

14 Please turn off all beepers and cell phones at this
15 time so as not to disrupt these proceedings.

16 The Board will make every effort to conclude the
17 public hearing as near as possible to 6:00 p.m. If the afternoon
18 cases are not completed at 6:00 p.m., the Board will assess
19 whether it can complete the pending case or cases remaining on the
20 agenda.

21 At this time, the Board will consider any
22 preliminary matters. Preliminary matters are those which relate
23 to whether a case will or should be heard today such as requests
24 for postponement, continuance, or withdrawal, or whether proper
25 and adequate notice of the hearing has been given. If you're not

1 prepared to go forward with the case today or if you believe that
2 the Board should not proceed, now is the time to raise such a
3 matter.

4 MS. BAILEY: Madam Chair, staff has some
5 preliminary matters before it's discussed by the applicants, if I
6 may do so.

7 CHAIRPERSON REID: All right.

8 MS. BAILEY: The first preliminary matter is
9 Application No. 16483. That's the Appeal of the Georgetown
10 Homeowner's Alliance. That case has been withdrawn. Is anyone
11 here in the audience associated with 16483, Georgetown Homeowner's
12 Alliance? Ms. Zartman, did you want to say something about that?

13 MS. ZARTMAN: I was simply seeking to confirm our
14 understanding that this case is moved and that the permit has
15 lapsed, is dead; therefore, any appeal of its issuance is moot.

16 CHAIRPERSON REID: All right. Ms. Zartman, you
17 need to give your name and your address.

18 MS. ZARTMAN: My name is Barbara Zartman. I live
19 at 1642 35 Street. I'm both the President of the Georgetown
20 Homeowner's Alliance and the ANC Commissioner for the District.

21 MS. WALLS: Good afternoon. Brenda Walls,
22 Assistant Corporation Counsel, on behalf of the District of
23 Columbia. I'm here on behalf of the District. It is, or was, my
24 understanding that this appeal is going to be withdrawn.

25 CHAIRPERSON REID: Mr. Johnson.

1 MR. JOHNSON: Thank you, Madam Chair. I'm Michael
2 Johnson, Zoning Administrator, and I'm also in concurrence that
3 this issue is basically a moot point. I've been in discussions
4 and in close contact with Ms. Zartman over the last several months
5 about this issue and, in summary, the permit has expired.
6 Thereby, no basis to move this or have this issue considered any
7 further.

8 CHAIRPERSON REID: Thank you, Mr. Johnson.
9 Typically in instances where a case is withdrawn, there is no
10 action that's required by the Board. So we will just accept your
11 presentation to us as such and that will be that. Thank you.

12 VICE CHAIRPERSON SOCKWELL: Mr. Johnson, for the
13 record, would you state whether or not any work had been done on
14 the permit that was issued.

15 MR. JOHNSON: Mr. Sockwell, if you can just define
16 what you mean by work.

17 VICE CHAIRPERSON SOCKWELL: You said the permit had
18 expired.

19 MR. JOHNSON: Yes. Okay. I see what you're
20 saying. Yes. No work had been commenced on the building within
21 the time frame that the permit was issued and the required time to
22 do some work on it. No work was undertaken.

23 VICE CHAIRPERSON SOCKWELL: Thank you.

24 CHAIRPERSON REID: Thank you very much. Did you
25 have further comment?

1 MS. WALLS: Is this matter dismissed in light of
2 the withdrawal?

3 CHAIRPERSON REID: Yes. Well, it's withdrawn so, in
4 essence, there is nothing for us to act on so, in effect, it's the
5 same.

6 MS. WALLS: Thank you.

7 CHAIRPERSON REID: Usually with a dismissal, we do
8 take a vote. There's a motion and a vote taken, but in that it is
9 not before us to take action on, it's just a matter of procedure
10 for it to be withdrawn by the persons who are applying. Thank you
11 very much.

12 MS. WALLS: Thank you.

13 MS. BAILEY: The next matter, Members of the Board,
14 is Application No. 16570 of Bertha Tucker, Tucker's Day Care
15 Center. While Ms. Tucker comes up, Madam Chair, she's represented
16 by counsel and the counsel had a conflict in his schedule and so
17 Ms. Tucker's counsel is requesting that the hearing on her
18 application be postponed to a later date. We are recommending
19 June 20. You may have a seat, ma'am.

20 MS. TUCKER: I'm Bertha Tucker, the owner of
21 Tucker's Day Care Center at 3215 11th Place, S.E., Washington,
22 D.C.

23 CHAIRPERSON REID: Are you just identifying
24 yourself? Okay. Counsel is speaking for you.

25 MR. SIMS: I'm Melvin Sims. I'm with the ANC from

1 Ward 8.

2 CHAIRPERSON REID: I'm sorry. Okay. I thought
3 that you were the attorney.

4 CHAIRPERSON REID: Ms. Tucker, you're requesting
5 that the case be postponed and June 20 is okay with you?

6 MS. TUCKER: Fine.

7 CHAIRPERSON REID: Sir.

8 MR. SIMS: My position in this case, I had asked
9 the Director of Zoning Adjustment for an extension on this case
10 because we wasn't properly notified, and she informed us that we
11 had plenty of time to submit our information to the Board and
12 proceed on. I'm here today to do that. Needless to say that I'm
13 not a D.C. employee. I'm not paid for my employment that I'm
14 missing today so, if possible, I would like to proceed because
15 they wouldn't give us an extension. I don't think it's fair that
16 this case should not proceed because someone had other
17 commitments.

18 CHAIRPERSON REID: Who are you saying that would
19 not give you a continuance?

20 MR. SIMS: Ms. Kress, the Director of Zoning. She
21 wrote me a letter saying that this case couldn't be extended
22 because we had ample time to submit testimony to the Board and
23 that --

24 CHAIRPERSON REID: Well, is that true?

25 MR. SIMS: I don't think it was true. We had to

1 accelerate public meetings and notify Ms. Tucker of our
2 proceedings. It was a rush/rush thing for us.

3 CHAIRPERSON REID: In other words, you had the
4 necessary time for you to be able to convene a meeting of your ANC
5 and for a vote to be taken before the hearing in order for you to
6 be able to submit a report seven days prior to the hearing. Are
7 you saying you were not afforded that amount of time?

8 MR. SIMS: Procedurally, we wasn't in possession of
9 the necessary time to do it in a timely manner and accountable
10 manner whereas we just had a public meeting and we had to rush and
11 have another meeting to bring this to the community for their
12 input.

13 CHAIRPERSON REID: So you did meet and you did --

14 MR. SIMS: Yes, we did but it was a rush/rush
15 thing. The essence of the whole problem is that they didn't
16 notify this Commission at all. They notified an --

17 CHAIRPERSON REID: Who is "they"?

18 MR. SIMS: The Board of Zoning. They didn't send
19 us a notice.

20 COMMISSIONER HOOD: Excuse me, Madam Chair, if I
21 can just ask. Mr. Sims, you said 8C?

22 MR. SIMS: 8E. A notice was sent to 8C and that's
23 how we found out about it. In the interim, we started receiving
24 phone calls from people in the community.

25 CHAIRPERSON REID: Okay. You're saying that--

1 MR. SIMS: The notice was sent to 8C.

2 CHAIRPERSON REID: And the affected ANC is 8E.

3 MR. SIMS: Yes.

4 COMMISSIONER HOOD: Madam Chair, we have in the
5 file that the notice was sent to 8E, C and A.

6 CHAIRPERSON REID: Yes. Have you recently updated
7 your address because it may be that it was sent to a wrong address
8 or something because here in our records it's indicated that you
9 were noticed on the 16th of March.

10 MR. SIMS: We have moved to a new location, but we
11 still get mail at both locations. Our first location is the
12 Frebehok School, and we do check our mail there.

13 CHAIRPERSON REID: When you moved to your new
14 location, did you update the Zoning Office?

15 MR. SIMS: No, we did not.

16 CHAIRPERSON REID: Well then, probably that was
17 part of the reason why you didn't receive the notice that you
18 expected to receive. Nonetheless, what we have to determine now
19 is Ms. Tucker, through her attorney, has requested that it be
20 continued because of the fact that she doesn't have representation
21 here today to be able to proceed. I'd like to get comments from
22 the other Board Members in this regard.

23 VICE CHAIRPERSON SOCKWELL: Mr. Sims, were you
24 notified prior to this meeting that Ms. Tucker was seeking a
25 postponement of the case?

1 MR. SIMS: I was notified yesterday at 12:50 via
2 telephone.

3 CHAIRPERSON REID: So you were notified.

4 COMMISSIONER HOOD: Madam Chair, I just wanted to
5 ask Ms. Tucker. Ms. Tucker, if we proceeded, would you be able to
6 present your case without counsel?

7 MS. TUCKER: No.

8 COMMISSIONER HOOD: Mr. Sims, you were notified
9 yesterday at 12:50?

10 MR. SIMS: Yes, sir.

11 VICE CHAIRPERSON SOCKWELL: So if I might add to
12 this. Mr. Sims, if you were notified yesterday at 12:50 and you
13 had an opportunity not to present yourself here today, that would
14 have prevented you from losing any time from your office, would it
15 not?

16 MR. SIMS: No. #1, I felt that it wasn't an
17 official form of notification. #2, I work for the federal
18 government and at the agency I work for, you have to put in for
19 your leave ahead of time. So I had already proceeded to do that.

20 VICE CHAIRPERSON SOCKWELL: But the agency would
21 not allow you to opt against taking the leave once you have
22 specified that you're going to take it?

23 MR. SIMS: Probably so, but I wasn't comfortable by
24 not appearing because of the way that I was notified. No
25 reflection on that, but I just didn't feel comfortable not coming.

1 CHAIRPERSON REID: I think that obviously if the
2 applicant is not prepared to go forward and her attorney has
3 requested in writing a continuance that typically we don't not
4 allow at least one continuance on the part of the applicant. I
5 have no problem with doing so unless there's any objection from
6 any of the Board Members.

7 BOARD MEMBER RENSHAW: I just wanted to ask Mr.
8 Sims. Did you submit a letter for the file of your ANC's
9 determination on this case based on the hearings that you had, the
10 meetings with Ms. Tucker?

11 MR. SIMS: Would you repeat that. I didn't
12 understand.

13 BOARD MEMBER RENSHAW: Did you submit a letter to
14 the BZA which detailed your ANC's judgment on the case?

15 MR. SIMS: Yes, I did.

16 BOARD MEMBER RENSHAW: Thank you. And the letter
17 is dated? Your letter is dated?

18 MR. SIMS: It's dated May 3.

19 BOARD MEMBER RENSHAW: May 3. Thank you.

20 MR. SIMS: Which is the day of the hearing.

21 BOARD MEMBER RENSHAW: We don't have it.

22 CHAIRPERSON REID: You mean today?

23 MR. SIMS: Yes.

24 CHAIRPERSON REID: You have a letter that you
25 submitted to us from the ANC today?

1 BOARD MEMBER RENSCHAW: Because we don't seem to
2 have that letter in our file.

3 CHAIRPERSON REID: You have to, first of all,
4 request a waiver for it to be admitted.

5 BOARD MEMBER RENSCHAW: Mr. Sims had submitted a
6 letter dated March 20 that is in the file to bring to our
7 attention that the BZA failed to properly notify 8E and single
8 member district 8E02 of the action on Case 16570, and he is
9 requesting that the ANC be properly notified and all scheduled
10 actions be rescheduled in order to give the affected neighborhood
11 an opportunity to offer comments and to appear in a public meeting
12 with ANC-8E.

13 CHAIRPERSON REID: Oh, no. This is the letter.

14 BOARD MEMBER RENSCHAW: No, that's not the May 3
15 letter. That's a March 20 letter.

16 CHAIRPERSON REID: Oh, okay. She has that letter.

17 MR. SIMS: I have the letter. I'm not a
18 professional at this, but I just had it. It was stamped down in
19 the office.

20 CHAIRPERSON REID: The only thing I'm saying is
21 that you have to request a waiver for it to be accepted into the
22 record. But to waive the time limit, you're supposed to be in
23 seven days prior to the hearing, sir. Would you like to request
24 that?

25 MR. SIMS: I don't follow you.

1 CHAIRPERSON REID: The request that the rules be
2 waived to allow your letter to come into the record because it's
3 supposed to be in seven days prior to today's hearing.

4 MR. SIMS: And we made that deadline.

5 CHAIRPERSON REID: No. You said that the letter
6 came in today.

7 BOARD MEMBER MOULDEN: We dated the letter May 3
8 because that's the date of the hearing that we had it stamped in
9 the office on -- our records show that everyone was notified, but
10 it was sent to the wrong address. Correct?

11 CHAIRPERSON REID: We assume that. They didn't see
12 it, but we sent it out. They said they didn't receive it, and
13 they had moved their office.

14 BOARD MEMBER MOULDEN: The applicant is not
15 prepared.

16 CHAIRPERSON REID: Correct.

17 BOARD MEMBER MOULDEN: Wants a postponement.

18 BOARD MEMBER MOULDEN: Since our documents do show
19 that we made an attempt to at least notify them, we can only go by
20 what our records reflect.

21 CHAIRPERSON REID: True.

22 BOARD MEMBER MOULDEN: So I'd like to make a motion
23 that we move forward with the postponement.

24 BOARD MEMBER RENSHAW: Do you need a second in
25 order to further discuss that?

1 CHAIRPERSON REID: We can just do it since there's
2 an objection to the postponement.

3 COMMISSIONER HOOD: I don't think we need a motion.
4 I would rather do it. Madam Chair, I just wanted to add. Mr.
5 Sims made a statement, and I've been over here looking for it. I
6 think, I've always thought in the past it's been the purview of
7 this Board to decide whether or not we move forward. I think you
8 asked for an extension of some time. You said Ms. Kress made that
9 decision.

10 MR. SIMS: Yes.

11 COMMISSIONER HOOD: Could I see a copy of that
12 letter or do we have that in our files and I'm just overlooking it
13 because we have quite a few different letters, because I think
14 that's the purview of the Board.

15 CHAIRPERSON REID: He was raising the issue that he
16 didn't think that they had been noticed, but they have been
17 noticed. What is your current address?

18 MR. SIMS: Our current address is 8907 Avenue.

19 CHAIRPERSON REID: This is on a letter that came to
20 us, but the address that the letter went out to was apparently the
21 previous address.

22 VICE CHAIRPERSON SOCKWELL: Mr. Sims, how long has
23 it been since you were at the previous address?

24 MR. SIMS: It would be 12 months next week.

25 VICE CHAIRPERSON SOCKWELL: Okay. So your

1 forwarding has not yet expired. It would normally expire in, I
2 think, a year. Don't they give you a year in forwarding?

3 BOARD MEMBER RENSHAW: Just for clarification. Mr.
4 Sims, you wrote the BZA on the 20th saying that you wanted to be
5 notified about the meetings. Now, did the BZA send you back any
6 materials after March 20?

7 MR. SIMS: Yes, they did.

8 BOARD MEMBER RENSHAW: They did.

9 MR. SIMS: Denying my request.

10 BOARD MEMBER RENSHAW: And the date of Ms. Kress's
11 letter to you was?

12 MR. SIMS: I don't have a copy of it.

13 CHAIRPERSON REID: We need to move forward with
14 this particular issue. I think that we have all agreed that, due
15 to the fact that the applicant does not have counsel present and
16 has requested in writing through counsel a continuance, that we
17 would allow a one time continuance of this case, and the date that
18 was proposed was June 20, and Mr. Sims, would that be acceptable
19 to you as an alternate date for the hearing to take place?

20 MR. SIMS: I have no other choice but to accept it.

21 CHAIRPERSON REID: Okay. Thank you. Thank you
22 very much. So the staff will record the date of continuation.

23 BOARD MEMBER RENSHAW: And we would request that
24 the ANC letter be distributed to the Board Members so that we have
25 adequate time to review it.

1 MR. SIMS: Do you have a copy of my testimony? I
2 filed that also on the 24th of April.

3 CHAIRPERSON REID: Well, everything that you have
4 submitted so far has been put into the record. We do have that.

5 MR. SIMS: May I withdraw the documentation that I
6 gave you on the testimony because I discovered some errors in the
7 letter that we submitted, and give you a corrected copy.

8 CHAIRPERSON REID: You can work with staff and
9 basically if there's something that you want to amend or correct,
10 they will assist you with that.

11 MR. SIMS: Great. Thank you very much.

12 MS. BAILEY: I just want to make sure that Mr. Sims
13 and Ms. Tucker know that no additional notice will be sent. This
14 is the only notification you'll have of the changed hearing date.

15 MR. SIMS: Okay. Thank you very much.

16 CHAIRPERSON REID: Thank you.

17 MS. BAILEY: The next preliminary matter, Madam
18 Chair, is Application No. 16572 of the Comprehensive Center for
19 Renewal. The applicant has requested that the application be
20 withdrawn, and there's a letter in your file with that request.

21 CHAIRPERSON REID: Is there anyone here today that
22 is affiliated with that particular case, 16572? All right. Then
23 as we did before, Board Members, we can acknowledge the fact that
24 it has been withdrawn unless there is any further comment. Thank
25 you.

1 MS. BAILEY: The last preliminary matter that staff
2 has is Application No. 16542. That's the Georgetown Flea Market
3 and its companion appeal case 17535. We just wanted to clarify
4 for the record that the hearing on the application and appeal,
5 those hearings will be held on June 7.

6 CHAIRPERSON REID: Okay. How do we come to that
7 date? Was there a request for continuance to that date?

8 MS. BAILEY: It's been a long story, Madam Chair.

9 MS. PELZER: What happened, these cases were
10 originally scheduled for June 7 but inadvertently we kind of got
11 turned around and added them on today's agenda.

12 CHAIRPERSON REID: So basically you're saying you
13 just want to correct the agenda due to the fact that it was not
14 supposed to be included in today's agenda.

15 MS. PELZER: Exactly.

16 CHAIRPERSON REID: May we acknowledge that, as
17 well? Is there any questions or any comments, discussion? All
18 right. Does that conclude the preliminary matters?

19 MS. BAILEY: That I have. I think Mr. Brown has a
20 preliminary matter.

21 MR. BROWN: Good afternoon, Madam Chair, Members of
22 the Board. My name is Patrick Brown from Greenstein, Delorme and
23 Lux. I am counsel and have been in the underlying appeal case as
24 well as this application for Ms. Mildred Crary, who is the
25 immediately adjacent property owner to the subject property owned

1 by Mr. Sisson.

2 There are actually, I believe, two separate but
3 directly related preliminary matters. The first, ANC-3D has
4 written to the Board indicating that they did not receive a copy
5 of the revised application by Mr. Sisson nor did they receive
6 notice from the Board in this matter of the hearing date.
7 Attached to our letter was an envelope showing that the original
8 notice dated March 16 was mis-addressed and then did not arrive at
9 the ANC after it was returned and correctly addressed until after
10 they had held their April 10 meeting. So they have not had an
11 opportunity or notice of this application being revised and moving
12 forward in a timely manner.

13 Also, and this is where it relates both to the ANC
14 and to my client and my motion, the ANC, which is automatically a
15 party to these actions, as I said, didn't receive the revised
16 application nor did they receive the applicant's pre-hearing
17 statement. The same is true for myself. Back in November and
18 then in December I requested on behalf of my client party status,
19 was treated as a party by the Board, was in fact, as I've provided
20 some additional documents, treated as a party by opposing counsel,
21 Maureen Dwyer. You'll see that the letter, November 24, which I
22 provided where she indicated that she was not prepared to go
23 forward.

24 In the December hearing, both the ANC and myself as
25 counsel for Ms. Crary and parties in the action were provided

1 copies of that. To my dismay, when the revised application was
2 filed, Ms. Dwyer did not send a copy to the ANC, did not send a
3 copy to me. You'll see an email from myself indicating I asked
4 her for one for myself and for the ANC. I got no response and
5 certainly no action.

6 I had to spend my client's money to send somebody
7 down here and get the revised application, and it would indicate
8 there -- you'll see that it's attached -- that the staff had
9 scheduled the matter initially for June 20. Based on the
10 information we had, both in this document, which my client paid to
11 obtain, and discussions with staff, that was the original date we
12 were working on.

13 No further notice came from the applicant, either
14 direct response or in keeping with their requirement to provide
15 copies of all filings to parties. The ANC being automatically one
16 as well as myself having been granted that status back in
17 December.

18 So at a minimum, as to the ANC, the matter should
19 be continued. This is the second visit to the Board that I've
20 made on behalf of my client, and I ask that the matter be
21 dismissed. The situation we're in now where the matter is clearly
22 not ripe to go forward is such that it warrants dismissal. It's
23 the applicant's burden. It's the applicant's burden to comply
24 with the rules.

25 In fairness to Dallas Prince, who's here, a long-

1 time colleague and friend of mine, her predecessor, Ms. Dwyer,
2 knows the rules and chose not to follow the rules and has tried to
3 pull and end run on the ANC, on my client and, quite frankly, on
4 the Board. She was given the benefit of the doubt, as you recall,
5 in December. She doesn't deserve the benefit of the doubt. It's
6 created a hardship to my client who's now here for the second time
7 where there's no substantive action appropriate in the case, and I
8 think the matter ought to be dismissed.

9 CHAIRPERSON REID: Okay, Mr. Brown. Let me just
10 try to make sure that we're all clear about what you're
11 requesting. You're requesting not a postponement but a dismissal.

12 MR. BROWN: My first preference, and I think it's
13 warranted under these, quite frankly, egregious circumstances, is
14 a dismissal. At a minimum, a continuance. I quite frankly do not
15 have, even after informing Ms. Dwyer in the letter that went to
16 the Board and she was given a copy, I do not have a copy of the
17 pre-hearing statement and so, at a minimum, we're not prepared to
18 go forward as a matter of fairness.

19 CHAIRPERSON REID: Okay.

20 MR. BROWN: But I think, again, the conduct, and
21 we're talking about an experienced BZA litigant, Ms. Dwyer, and
22 she ought to be held accountable for failing to comply with the
23 rules that are clearly set forth. So I think that's appropriate
24 in this matter.

25 CHAIRPERSON REID: Ms. Prince.

1 MS. PRINCE: Good afternoon.

2 CHAIRPERSON REID: Good afternoon.

3 MS. PRINCE: Good afternoon, Members of the Board.

4 Alison Prince with Wilkes Artis. I'm here today on behalf of Mr.
5 Charles Sisson, and I am covering for my colleague, Maureen Dwyer,
6 who is in California at a convention. I obviously have several
7 comments about Mr. Brown's version of affairs.

8 As this Board is aware, this case has a long
9 history that many of you are familiar with. Initially, an appeal
10 was filed of my client's building permits for the expansion of his
11 house, and that appeal was considered by this Board in numerous
12 public hearings in 1999. The final order revoking my client's
13 permit was dated December 28th of '99. The appeal was considered
14 by ANC-3D in numerous separate meetings. Both the ANC and Mr.
15 Brown are extremely familiar with the property and its history.

16 My client's application to seek variance relief to
17 address the zoning deficiencies with the house was filed October
18 7th of 1999. As the correspondence demonstrates and as Mr. Brown
19 admits, both he and the ANC were aware of that application. In
20 fact, by letter dated November 23rd, Mr. Brown requested party
21 status on behalf of his client. The Board has never acted on that
22 request in this application.

23 In addition, ANC-3D, by letter dated November 30,
24 1999, expressed its opposition to any variance or special
25 exception application stating that granting a variance or other

1 zoning relief could set a dangerous precedent, particularly
2 involving an after the fact approval of improvements without the
3 proper permits. So the ANC has, in fact, stated a position on
4 this request.

5 I'm hard-pressed to understand the reason for
6 further delay of this matter. The hearing was originally
7 scheduled for December 8th but was postponed in order to provide
8 time to allow for the Zoning Administrator's preparation of an
9 official memorandum. The original application had been filed with
10 a self-certification, and Mr. Brown and the ANC expressed concern
11 about that and requested that we secure an official zoning
12 memorandum. There was also interest in awaiting the issuance of
13 the actual order granting the appeal and revoking my client's
14 permits. That order was, in fact, issued in December.

15 Mr. Brown and the ANC knew that the hearing would
16 be rescheduled and knew that we were awaiting the preparation of a
17 memorandum from the Zoning Administrator. ANC-3D was provided
18 with timely notice -- in fact, 47 days notice -- of this hearing,
19 today's hearing, in the *D.C. Register* issue March 17, 2000. As
20 the Board is aware, all ANCs are provided with copies of the *D.C.*
21 *Register*. Due to an error in the mailing of the notice, ANC-3D
22 received its copy of the notice from the BZA three weeks prior to
23 the hearing rather than the required 30 days.

24 Nonetheless, the ANC should not have been surprised by the
25 notice. The case had been pending since October. The ANC is

1 highly familiar with the property, as I said, and is on record as
2 opposing any variance or special exception application to rectify
3 the situation.

4 I find it outrageous that Mr. Brown suggests that
5 there is an obligation on an applicant to serve a pre-hearing
6 statement on anyone. Only the Board is entitled to the pre-
7 hearing statement. Mr. Brown is well familiar with the location
8 of the Zoning Office and was entirely capable of coming down and
9 xeroxing a copy of the application and a copy of the pre-hearing
10 statement. He's very familiar with the procedures of this Board,
11 and he is familiar with the fact that the rules do not require
12 service of the pre-hearing statement on anyone but the Board.

13 Further, he would like to believe that his client
14 is a party, but his client is not yet a party in this application.

15 His client requested party status on November 23rd, but the Board
16 has not acted on that request.

17 It would seem reasonable to leave the record open
18 after today's hearing to allow an opportunity for ANC-3D to submit
19 any additional comments if the ANC so chooses. In that way, we
20 would have the opportunity to proceed with the hearing today and
21 bring this long, complex, and difficult matter to closure. Yet it
22 will ensure that the ANC has yet another opportunity to submit its
23 views on this application.

24 To suggest dismissal of this application is also
25 outrageous. The appeal that was granted by this Board resulted in

1 the revocation of five permits allowing the construction that
2 currently exists that were issued in connection with the
3 construction that exists on my client's property. In deciding
4 this appeal, then Board Member Gilreath specifically noted that
5 the city had made grievous errors in issuing the permits, that the
6 client showed no ill will, and that a variance option would be
7 available to the client to rectify the situation.

8 That is exactly what my client has done. He has
9 pursued the option that the Board laid out to him in its
10 decisional meeting on the appeal. His only interest is rectifying
11 this situation, setting things in order, and we would like to
12 proceed forward with the hearing today. We're fully prepared to
13 go forward today, and we would appreciate the Board's
14 consideration of the case today. Thank you.

15 MR. BROWN: Madam Chair, could I briefly respond?

16 CHAIRPERSON REID: Yes.

17 MR. BROWN: I think the facts of the application --
18 I don't want to re-litigate the appeal
19 -- are such that an initial application was filed. My client and
20 the ANC entered their appearance in the case, were granted party
21 status. That application was determined by the applicant not to
22 be appropriate to go forward, having self-certified the original
23 application. So any involvement in this case that has occurred,
24 both by the ANC or my client in the pervious matters, where we
25 were in fact, when the Board met, recognized as a party. Mr.

1 Tummons from Wilkes Artis was here that day. And a rather lengthy
2 discussion on the record with the Board having to do with the
3 continuance granted there.

4 It's a very different application than was
5 originally filed. The relief is different, substantially
6 different, and Ms. Dwyer -- and if you look at her November 24th
7 letter, recognized and I think established, quite frankly, the
8 required and professional pattern that the ANC, which is
9 automatically a party, and myself, who by long experience, you
10 know I represent Ms. Crary. She established the standard which
11 then she chose not to follow in the subsequent dealings. So I
12 think, not only is a continuance appropriate, but dismissal is
13 appropriate, and we ought to proceed on that basis.

14 MS. PRINCE: One final note. The property has been
15 properly posted, and I would like Mr. Brown to cite to the Board
16 the provision in the Board's rules that require service on any
17 person of pre-hearing statements or the original application.
18 There is no such rule.

19 MR. BROWN: There's a rule -- and I don't have the
20 cite in front of me, I can easily provide it -- that provides that
21 when papers are required to be shared with parties, that they be
22 done so under certain mailing conditions. One, the ANC is
23 automatically a party to, they were in fact a participant in the
24 December hearing. In this case, it's unlike a typical application
25 where you have the application filed and a pre-hearing statement

1 that precedes follows that.

2 We, in effect, had a mini-hearing on the matter so
3 that we weren't starting from scratch so it's more like a
4 situation where, in act, you've got proposed findings, additional
5 documents requested by the Board, and that just is fundamentally
6 fair and, in fact, the standard that Ms. Dwyer adopted.

7 The ANC, if I might point out, is scheduled to meet
8 Monday night, and I think they ought to be, as a matter of law,
9 given an opportunity to hear the matter under a continuance
10 scenario while I still maintain that, in fact, a dismissal is
11 appropriate.

12 CHAIRPERSON REID: All right. Board Members, let
13 us first discuss this issue of dismissal and to make a decision in
14 regard to that. First of all, are there comments about it or do
15 we want to take a motion to dismiss or to not dismiss this
16 particular application?

17 BOARD MEMBER RENSHAW: Madam Chair, I would move
18 that the Board should consider a continuance of this case.

19 COMMISSIONER HOOD: If that's the motion, Madam
20 Chair, I'll second.

21 CHAIRPERSON REID: Any further discussion? All in
22 favor.

23 (AYES)

24 CHAIRPERSON REID: No opposition. Okay.

25 MS. BAILEY: Madam Chair, the staff would record

1 the vote as five to zero for continuance of this case, and when
2 will we be continuing it? Did you say continuance?

3 CHAIRPERSON REID: Yes. I guess we have to find a
4 date. Ms. Renshaw.

5 BOARD MEMBER RENSHAW: Yes.

6 CHAIRPERSON REID: You did not address the issue of
7 dismissal.

8 BOARD MEMBER RENSHAW: I didn't.

9 CHAIRPERSON REID: No. There's two different
10 motions actually. One is to dismiss and one is to continue, and I
11 move to continue.

12 CHAIRPERSON REID: Okay, but you did not--
13 inadvertently you did, but for the record, I think that you should
14 stipulate your position as far as dismissal is concerned.

15 BOARD MEMBER RENSHAW: Well, I do not -- I would
16 not vote for a dismissal. I would vote -- I did vote for a
17 continuance. I moved and voted for a continuance.

18 CHAIRPERSON REID: I guess we're talking about a
19 dual motion there not to dismiss but to continue.

20 BOARD MEMBER RENSHAW: Thank you very much. I will
21 amend it to say not a dismissal but a continuance.

22 CHAIRPERSON REID: And then the appropriate date
23 that would be adequate for all concerned would be --

24 MS. BAILEY: I need to take a two minute recess and
25 find a date for you.

1 CHAIRPERSON REID: Okay. We'll do that. We'll go
2 to the next case and then, once you come up with a date in the
3 next couple of minutes or so, then we'll just interrupt.

4 COMMISSIONER HOOD: Madam Chair, I just wanted to
5 advise staff that hopefully it's not on one of those congested
6 days where we'll be getting out of here at 12:00 at night. So
7 hopefully we'll be taking all that in advisement when we're
8 looking to find out a schedule, since we're trying revamp our
9 whole operation. Thank you.

10 CHAIRPERSON REID: Absolutely, Mr. Hood. We have
11 copies of the schedule before us so that we can kind of have some
12 input as to where that scheduling goes to. All right. Thank you
13 very much.

14 MR. BROWN: Thank you, Madam Chair.

15 MS. PRINCE: Thank you.

16 MS. BAILEY: Madam Chair, the last case of the day
17 is Application No. 16579 of Phillip Abraham, pursuant to 11 DCMR
18 3104.1 and 3103.2 for a special exception under Section 505.1 to
19 continue to operate a parking lot and a variance under Section
20 505.6 from prohibition against all-day commuter parking in an SP-2
21 District at premises 1303-1311 N Street, N.W.. That's Square 243,
22 Lot 832.

23 All those wishing to testify, would you please
24 stand.

25 (The witnesses were sworn.)

1 MR. GREENE: Thank you very much, Madam Chairperson
2 and Members of the Board. For the record, my name is Fred Greene.
3 My address is 1411 K Street, N.W., Suite 503, Washington, D.C.
4 20005. Telephone number is (302) 393-2515.

5 Madam Chair, I have provided you with my talking
6 points, and I've done the best I can to keep them as brief as
7 possible.

8 CHAIRPERSON REID: Mr. Greene, you're the only
9 person who's going to be testifying?

10 MR. GREENE: That's correct.

11 CHAIRPERSON REID: And there is no one else here in
12 opposition or in support of this particular case?

13 MR. GREENE: None in support, for sure. I have no
14 idea about the opposition, Madam Chairperson.

15 CHAIRPERSON REID: Okay. Then, as such, we have
16 read your particular submission and, due to the fact that there is
17 no opposition to your case, you can expedite and just basically
18 give us your salient points and we can be out of here in short
19 order.

20 MR. GREENE: All right. I appreciate that.

21 First of all, let me say good evening.
22 Essentially, Madam Chairperson, this has been a well-maintained,
23 well-operated parking lot for over 20 years. We're now at the
24 point of developing this site, and we are, in essence, asking for
25 a temporary use variance to continue until such time as we execute

1 development on this site. We're not asking for the expanded 20
2 year extension here. We're asking for a period of only 12 months.

3
4 We think construction will get underway on the site
5 within a 12 month period. The project has been financed. It's
6 about a \$20 million, 100,000 square feet condo development.
7 Permits have been filed for excavation and foundations with the
8 D.C. Department of Consumer Regulatory Affairs, and we expect
9 those permits to be issued within the next several months and, for
10 the most part, we're asking to continue the parking lot until such
11 time as we receive those permits.

12 Rather than to continue to bore you with the basis
13 for the special exception -- you have that in front of you -- I'd
14 like this to be entered as part of the record.

15 I would just like to conclude by saying what we are
16 about to do here, although it has taken more time than we had
17 anticipated, actually represents the ultimate goal of phasing out
18 parking lots in SP zone. I remember back in my days as Planning
19 Director, we had many, many requests and many, many problems
20 associated with parking lots in SP zone and, in fact, this one
21 will be eliminated within the next 12 months.

22 So with that, let me stop. I appreciate your
23 patience here, and I'd be happy to answer any questions that you
24 might have.

25 CHAIRPERSON REID: The parking lot, Mr. Greene,

1 will serve for short-term parking for retail service and public
2 facilities but will not provide all-day commuter parking?

3 MR. GREENE: Yes, it will. It will provide all-day
4 commuter parking, as it is currently now. But it also provides
5 short-term parking for residents in the neighborhood, as it has
6 continued to provide.

7 CHAIRPERSON REID: SO it will.

8 MR. GREENE: Yes.

9 CHAIRPERSON REID: That's the variance you're
10 asking for from that provision.

11 MR. GREENE: Right.

12 CHAIRPERSON REID: Okay. Any other questions?

13 VICE CHAIRPERSON SOCKWELL: Mr. Greene, there is a
14 special exception and a variance involved in this application.

15 MR. GREENE: That's correct.

16 CHAIRPERSON REID: The special exception aspect of
17 it is pretty straightforward in that it goes to the compliance
18 with the regulations under which you're applying, which is 505.1,
19 is it?

20 MS. SANSONE: Madam Chair, if I could jump in here.

21 We had hoped this would be a straightforward matter of a special
22 exception, but actually there's a kind of little peculiar twist in
23 this regulation that I had brought to Mr. Greene's attention. In
24 this 505.1, if you take a close look at it, the special exception
25 is for parking lots where they had an approval that was in effect

1 in October of 1978. They're authorized to have a special
2 exception for 20 days form the date of expiration of --

3 CHAIRPERSON REID: Twenty years.

4 MS. SANSONE: Twenty years from the date of
5 expiration of whatever was in effect in 1978. When they fall
6 outside of that time period, they are required to apply for a use
7 variance. However, because we're only talking about a one year
8 period of time here and this parking lot has been operating
9 pursuant to special exception since 1961 or even 1959, I believe,
10 and the notice did provide -- the notice is very clear about what
11 they're intending to do, to continue the use of the parking lot
12 and to have the use variance for the commuter aspect of the
13 parking. I felt that it was appropriate to go

14 forward today, even though the notice technically isn't correct.
15 It should be advertised as a use variance instead of a special
16 exception. It's really clear in the notice what is intended, the
17 type of relief that's being sought, and that there would be no
18 prejudice to anyone going forward with this application and
19 approving it as a use variance for the one year period.

20 CHAIRPERSON REID: And there's no one here
21 objecting.

22 MS. SANSONE: That's correct. There's a long
23 history. I pulled all the previous Board orders in this case that
24 I'll just pass out to the Board. I'll hand them down to Ms.
25 Renshaw to pass out. In the past, there were two lots involved

1 here. One of them actually did have a use variance for the
2 parking, the rationale being that the economy and use history of
3 the area supported the variance. There had been a lack of
4 development potential during the time the parking lot was in
5 existence but there are future plans for development.

6 The property had actually been purchased by the
7 District of Columbia and, when the District auctioned it off, they
8 represented it as being appropriate for a parking lot, approved
9 for a parking lot, and having the proper zoning relief for that.
10 That was the basis of the previous orders. It would seem to still
11 be applicable to support the variance as opposed to a special
12 exception.

13 VICE CHAIRPERSON SOCKWELL: Does the Board, in
14 fact, have authority beyond the 20 year period?

15 MS. SANSONE: Mr. Sockwell, yes, and as part of the
16 packet of materials that I've handed to you, there's a long
17 history of Zoning Commission work being done on this regulation
18 and the zoning orders that accompany the regulations all pretty
19 much reference the Board granting use variances to allow the
20 parking lots in the SP zone when they fall outside the time limits
21 that had been established in the regulation. That pretty much
22 goes back to 1983. There have been text amendments in
23 '83, '85, and '90 and each of the Zoning Commission orders that
24 accompanied those regulation changes speak to applicants having to
25 come before the Board for a use variance because they're falling

1 outside this phase out period. So it is a recognized type of
2 relief for the Board to grant.

3 CHAIRPERSON REID: I'm sorry. I was interrupted.
4 I didn't hear the last part of what you said.

5 MS. SANSONE: Yes, Madam Chair. Mr. Sockwell had
6 asked if the Board was authorized to grant use variances under
7 Section 505. In researching the history of that regulation, in
8 each of the text amendments that had occurred in 1983, 1985, and
9 1990 that extended the phase out period, the Zoning Commission
10 recognized in their orders that applicants who were not able to
11 meet the phase out period were appearing before the Board and
12 applying for and obtaining use variances. So that is a recognized
13 procedure that had been followed before and is an appropriate type
14 of relief for someone who falls outside of the 20 year phase out
15 period.

16 CHAIRPERSON REID: Right, but you also indicated
17 that the announcement could be amended where this applicant, C
18 under 505.1.

19 MS. SANSONE: Madam Chair, what I was referring to
20 was this case was public noticed as a special exception under
21 505.1 to continue the use of the parking lot and also for a use
22 variance under Section 505.6 for a use variance from the
23 prohibition against all day commuter parking. Because the notice
24 is pretty clear as to the type of use that's going to be carried
25 on, the nature of the relief, we didn't feel -- it's technically

1 not correct but it does provide adequate notice of the nature of
2 relief, the type of proceeding, that it would be appropriate to
3 go ahead with this application.

4 CHAIRPERSON REID: And Mr. Greene self-certified
5 this application. Right?

6 MR. GREENE: That's correct.

7 CHAIRPERSON REID: And, as such -- Mr. Greene, you
8 have in front of you under what regulation you self-certified
9 because if it's not reflected, then it could be amended. Here it
10 is. While we're looking, I was asking you, would that be all that
11 would be required for us to proceed?

12 MS. SANSONE: I believe we can proceed on this
13 application. I believe that notice has been adequate. If Mr.
14 Greene would like to submit a corrected self-certification form,
15 we could leave the record open for that.

16 MR. GREENE: Madam Chair, I don't understand what
17 you mean by self-certified. The property has been posted. We
18 submitted the affidavit indicating that, and we also received from
19 the Office of Zoning a certification of sort which gave us
20 obviously the right to move forward. So I don't understand. I'm
21 trying to understand what do you mean by a self-certification?
22 Self-certification to what? I guess, also, Madam Chair, I think
23 counsel has indicated that it has been advertised properly for the
24 action being sought and she has also indicated that--

25 CHAIRPERSON REID: I think that what Ms. Sansone is

1 saying is that rather than -- are you saying that it is actually a
2 use variance. Rather than 505.1, it's a use variance? The
3 special exception should be a use variance.

4 MS. SANSONE: That is correct, Madam Chair. The
5 public notice of this case did refer to the proper sections for
6 relief, 505.1 and 505.6, and it indicated that a special exception
7 was being sought under 505.1 to continue use of the parking lot.
8 Technically, it should have said use variance.

9 CHAIRPERSON REID: A use variance. Two variances.

10 MS. SANSONE: Two use variances instead of a
11 special exception and a use variance.

12 CHAIRPERSON REID: So he can just amend where he
13 has special exception checked. Just white that out.

14 VICE CHAIRPERSON SOCKWELL: Variation #1 is
15 continuation of a parking lot use. Variance #2 is operation
16 outside of the requirements for short-term parking.

17 CHAIRPERSON REID: Mr. Greene, are you following
18 this line?

19 MR. GREENE: Yes.

20 MS. SANSONE: That's correct.

21 CHAIRPERSON REID: It will be okay. All right.
22 Then proceed.

23 MS. BAILEY: Madam Chair, excuse me. So Mr. Sisson
24 and Mr. Brown will be sitting waiting. Is it possible to go over
25 those dates now?

1 MR. BROWN: Ms. Sisson and my client are out of the
2 room. I'd love to do it.

3 CHAIRPERSON REID: Wait until they come back. Now
4 Mr. Greene, proceed.

5 MR. GREENE: All right. Well, I guess just to
6 summarize, we're asking, if it's proper to ask this question now,
7 for an action to grant the request. I'm not picking up that we
8 have to advertise this project.

9 CHAIRPERSON REID: You mean the notice of the
10 change?

11 MR. GREENE: The notices and etcetera?

12 CHAIRPERSON REID: No, I think that Ms. Sansone
13 said that she thought that we'd be okay.

14 MR. GREENE: Secondly, as Ms. Sansone has indicated
15 and also as we described on the second page of my comments, we
16 think that there is sufficient grounds for the special exception
17 as well as grounds on the same page for the use variance.

18 CHAIRPERSON REID: No, Mr. Greene, what she's
19 saying now is just stay with variance. Just demonstrate how you
20 are able to meet your burden of relief for two use variances and
21 they would be one and the same basically.

22 MR. GREENE: Okay.

23 CHAIRPERSON REID: I mean you're proffering to us
24 how you meet the test would be one and the same.

25 MR. GREENE: Okay. Fine. Well, let me start by

1 saying that the previous orders -- and I'd like for this to be
2 part of the record, as well. I'd like to submit this as part of
3 the record. The previous orders outlined circumstances that are
4 pretty current today and set the foundation and the basis for the
5 request for the variance.

6 And in summary, we think that the extraordinary and
7 exceptional size of the site, the economy, and use history of the
8 area surrounding the site have contributed to the lack of
9 development potential in the area. However, things are about to
10 happen in a positive for this site and, therefore, we're not
11 asking for anything greater than 12 months because we have gone to
12 closing, in fact, for the development of this site.

13 My second point is that strict application of the
14 zoning regulation would result in undue hardship upon the owner
15 and that the property could be put to no reasonable economically
16 viable use up until this point. So those are the main points for
17 the variance here.

18 CHAIRPERSON REID: Okay.

19 MR. GREENE: And I guess just to add to that, this
20 use has been in operation for greater than 20 years. There are no
21 problems. It has not been or likely to become objectionable to
22 adjoining and nearby property owners because of noise, traffic,
23 and other objectionable conditions. Additionally, it will not
24 adversely affect the present character and future development of
25 the area and, in fact, the development is going to enhance the

1 area.

2 So with those points, Madam Chairperson, we feel
3 that there's strong basis to continue this for another 12 months.

4 Thank you.

5 CHAIRPERSON REID: Okay. Also, Mr. Greene, do you
6 feel that it will impair the intent or the integrity of the zoning
7 regulations or map?

8 MR. GREENE: Absolutely not. In fact, I think the
9 development of the site actually carries out one of the intents,
10 which is to phase out parking lots in SP zones. And this, in
11 fact, phasing it out through development, and this has been a
12 goal, I would say, since the early '80s.

13 CHAIRPERSON REID: Thank you. Board Members, any
14 questions, comments?

15 VICE CHAIRPERSON SOCKWELL: This is, while not
16 necessarily important, the change in the property tax laws hasn't
17 hurt your client at all in this respect.

18 CHAIRPERSON REID: Moving on, moving on to--

19 MR. GREENE: Probably has, but I'm not at liberty
20 to discuss it right now.

21 CHAIRPERSON REID: Moving on to ANC reports.
22 There's no ANC member here. Was there a letter in the file from
23 the ANC?

24 BOARD MEMBER RENSHAW: I did not see one, Madam
25 Chair, from 2F.

1 CHAIRPERSON REID: Mr. Greene, typically when there
2 is no response from the ANC, the assumption is that they have no
3 objection.

4 MR. GREENE: So in that regard, Madam Chairperson,
5 I would like to respectfully request a bench decision.

6 CHAIRPERSON REID: Okay. There are no people here
7 in support or in opposition, and closing remarks by the applicant.
8 You've already given the closing remarks.

9 MR. GREENE: Well, I mean with the request for a
10 bench decision.

11 CHAIRPERSON REID: Yes. Summary order. Board
12 Members, I would move that we approve this application. I feel
13 that the applicant has demonstrated that he has met his burden of
14 proof in regard to the use variance, demonstrated that because of
15 the size of the property, the extraordinary size of the property
16 and the economy and the history, use history going over several
17 years, that the property is unique and unusual and that to be able
18 to strictly apply to the regulations would cause undue hardship on
19 the owner in that there's no other reasonable, economic or viable
20 use and that there seems to be no adverse impact in regard to
21 noise, traffic, or other objectionable conditions. It does not
22 seem to adversely affect the present, current or future
23 development of the neighborhood and, in fact, this development
24 would be a viable project for downtown and, as such, would not
25 impair the intent and integrity of the zoning regulations in map.

1 Is there a second?

2 BOARD MEMBER RENSHAW: Second.

3 CHAIRPERSON REID: Any other discussion?

4 VICE CHAIRPERSON SOCKWELL: Yes. Your motion was
5 for 12 months?

6 CHAIRPERSON REID: The applicant requested 12
7 months.

8 VICE CHAIRPERSON SOCKWELL: What was your motion
9 for?

10 CHAIRPERSON REID: For the application. Yes.

11 VICE CHAIRPERSON SOCKWELL: I would move to amend
12 the application to extend the period for an additional six months
13 to 18 months to allow for any faltering in the process that would
14 be minor.

15 CHAIRPERSON REID: I have no problem with that.

16 BOARD MEMBER RENSHAW: Madam Chair, the application
17 does not say 12 months per se. At least I don't see it on the
18 application.

19 COMMISSIONER HOOD: I think in his testimony.

20 CHAIRPERSON REID: In his testimony, he did say
21 that. Nonetheless, I assume the regulation under which he's
22 coming -- isn't that the one that extends it to 20 years?

23 VICE CHAIRPERSON SOCKWELL: No, it doesn't extend
24 it to 20 years. It allows 20 years of overall use, but it was
25 apparently issued in multiples of five years or whatever.

1 CHAIRPERSON REID: Ms. Sansone.

2 MS. SANSONE: Mr. Sockwell is correct. It would be
3 20 years from the date of expiration of whatever period was in
4 effect in '78.

5 CHAIRPERSON REID: So is there a need to put any
6 time limit on it?

7 MS. SANSONE: Madam Chair, I believe there probably
8 should be a time limit and, in your discretion, 18 months, 12
9 months.

10 CHAIRPERSON REID: All right. I have no problem
11 with that. Mr. Hood.

12 COMMISSIONER HOOD: I was just going to say for the
13 sake of time, two years. I mean we might as well just go ahead.
14 Eighteen months is fine, but two years. The applicant did say
15 they have a development permit.

16 CHAIRPERSON REID: It's a major development and
17 there are all kinds of --

18 COMMISSIONER HOOD: Permits problems.

19 CHAIRPERSON REID: Permits or Murphy might get
20 involved.

21 COMMISSIONER HOOD: Right. That way, we won't have
22 to revisit it in 18 months.

23 CHAIRPERSON REID: Okay.

24 VICE CHAIRPERSON SOCKWELL: At the same time, we
25 can get that parking lot out of here quicker if we don't extend

1 the term longer.

2 CHAIRPERSON REID: All in favor.

3 (AYES)

4 BOARD MEMBER RENSHAW: Did we vote on the 18 or the
5 two years?

6 CHAIRPERSON REID: Two years. Amended. Mr.
7 Sockwell amended it to 18 years and then Mr. Hood was the last --

8 VICE CHAIRPERSON SOCKWELL: Eighteen months, not 18
9 years.

10 CHAIRPERSON REID: I'm sorry. Eighteen months, and
11 Mr. Hood amended it to two years, 24 months. All right. So the
12 motion is for two years. All in favor.

13 (AYES)

14 CHAIRPERSON REID: Opposed.

15 MS. BAILEY: Staff will record the vote as five to
16 zero to approve the application for use variance for two years.
17 Motion made by Ms. Reid, seconded by Ms. Renshaw, with Mr.
18 Sockwell, Mr. Moulden and Mr. Hood to approve.

19 CHAIRPERSON REID: Mr. Greene, you should have your
20 order in about two weeks.

21 MR. GREENE: Thank you very much.

22 CHAIRPERSON REID: Thank you.

23 MS. BAILEY: The last matter of the afternoon,
24 Members of the Board, concerns the hearing date for Ms. Sisson's
25 application, 16521, and staff is recommending one of two days. We

1 have July 11 and we have July 25, and this case can go on either
2 one of those agendas.

3 CHAIRPERSON REID: July 11 --

4 MS. BAILEY: -- and July 25.

5 CHAIRPERSON REID: Either day. You have your
6 choice.

7 MR. BROWN: Well, I'm trying to reconcile three
8 schedules. July 11. July 11 is okay from our side. It's
9 Tuesday, July 11?

10 CHAIRPERSON REID: Yes, on a Tuesday. Make note of
11 that, Mr. Brown, because of the change from Tuesday to Wednesday.

12 MR. BROWN: Are we talking morning or afternoon?

13 MS. BAILEY: What's your pleasure, Madam Chair?
14 Would you like it in the morning?

15 CHAIRPERSON REID: It doesn't matter. What is the
16 best time for everybody concerned?

17 MS. PRINCE: The entire month of July presents all
18 kinds of vacation difficulties for me and my client. Given the
19 fact that this application has been pending since October of '99
20 and was scheduled for hearing on December 8 and then scheduled for
21 hearing again today and given the fact that additional notice will
22 not be required of any continued hearing, is there any way to
23 squeeze us in during the month of June?

24 CHAIRPERSON REID: June is packed. June is packed
25 to the rafters. We have four sessions set up for June, two of

1 which are all day campus plans, and then the other two days are
2 hearing dates except

3 -- well actually, June 7 is decision meeting and we have four,
4 one, two, three, four, four cases scheduled for the afternoon and
5 then all day on the 13th with campus plan. On June 20 we have,
6 for the morning, three cases and in the afternoon we have
7 Donbarton Oaks and we just put the date here. Is there a
8 possibility -- wait, Ms. Prince. Is there a possibility of the
9 afternoon, Ms. Bailey, maybe to squeeze this particular case in
10 that day as we have now two for the afternoon.

11 MS. BAILEY: Which date is that, Madam Chair?

12 CHAIRPERSON REID: The 20th of June.

13 MS. KRESS: We already have -- there's one marked
14 in the 20th of June. The Bertha Tucker was put on the morning of
15 June 20. Bertha Tucker case was added to the morning of June 20.

16 CHAIRPERSON REID: The morning or the afternoon?

17 BOARD MEMBER RENSHAW: Madam Chair --

18 MR. BROWN: That conflicts, I think, with travel
19 plans of Ms. Crary.

20 CHAIRPERSON REID: Okay. So the 20th won't work.

21 BOARD MEMBER RENSHAW: Madam Chair, could I suggest
22 an earlier date, May 16.

23 MS. PRINCE: That would be wonderful.

24 BOARD MEMBER RENSHAW: May 16. Look on your
25 schedule.

1 MS. KRESS: That is scheduled as the Georgetown
2 University campus plan all day.

3 BOARD MEMBER RENSHAW: That's been continued.

4 MS. KRESS: Oh, that's right. That's the one that
5 was continued.

6 CHAIRPERSON REID: But wait a minute, Ms. Renshaw,
7 remember there was some consternation about so many cases being
8 scheduled in so many days in May.

9 BOARD MEMBER RENSHAW: Yes, but it was the next
10 week that was the problem.

11 CHAIRPERSON REID: Well actually, the idea was that
12 we had one, two, three, five days scheduled for May and taking
13 that day off gave a little relief for that month, so to add
14 another day is going to put you right back where we were in the
15 beginning.

16 MS. PRINCE: Unfortunately, I fear that if you put
17 us on a day where there are four other hearings, we may end up in
18 this endless continuum situation because I do not believe this
19 will be a one hour hearing.

20 CHAIRPERSON REID: I agree. On the May 23 the
21 Lauren Condo. Do you think that that's going to be -- there's no
22 room on that day at all?

23 MR. BROWN: Madam Chair, I'm not available that
24 day.

25 CHAIRPERSON REID: Oh, boy.

1 MS. PRINCE: How about the 16th with stringent time
2 limits?

3 MR. BROWN: I heard an inquiry about the 16th of
4 June.

5 MS. PRINCE: May.

6 MR. BROWN: I think that's too soon. I still
7 haven't seen the pre-hearing statement. The ANC hasn't heard this
8 matter.

9 MS. PRINCE: The ANC is hearing the matter on the
10 8th. You can get a copy of the pre-hearing statement today.

11 CHAIRPERSON REID: If we can't reconcile some date
12 between now and July --

13 MR. BROWN: I think we're all agreed on July 11th.

14 MS. PRINCE: No, I did not agree on July.

15 CHAIRPERSON REID: Then that's going to kick us
16 until September, Ms. Prince, because we recess in August.

17 MS. PRINCE: I really urge you to look at May,
18 given the length of this case, the length that it's been pending.

19
20 CHAIRPERSON REID: Mr. Brown has a conflict with
21 May dates.

22 MS. PRINCE: He doesn't have a conflict with May
23 16. He simply wants more time. I strenuously argued against the
24 postponement. We have a huge block of time this afternoon to take
25 up this whole matter, and we've lost that opportunity.

1 MR. BROWN: But Madam Chair, in all fairness, we're
2 trying very hard and my client, but on the other hand, the delay
3 in this case arises strictly out of the applicant's action. They
4 changed the application midstream the first time --

5 MS. PRINCE: At your request.

6 MR. BROWN: No, before I even requested it, they
7 changed their application and indicated that they needed to go to
8 the Zoning Administrator.

9 MS. PRINCE: At the request of the ANC and you.

10 MR. BROWN: The postponement was requested before
11 the ANC meeting. Madam Chair, I'm willing to work on this, but I
12 object to trying to race this through. I object to being put
13 under time constraints. There's a fairly lengthy case here
14 involved. I mean my clients are available --

15 CHAIRPERSON REID: September. How is September?

16 MS. KRESS: I'm sorry. Both the 11th of July and
17 the 25th of July were no good?

18 MR. BROWN: The 11th is good for me. The 25th is
19 not.

20 CHAIRPERSON REID: Alison Prince --

21 MS. PRINCE: I will have to change vacation plans
22 with two weeks scheduled vacation to be here July 11th, but if
23 you're giving me a choice between September and July, I obviously
24 have to --

25 CHAIRPERSON REID: What about the 25th, Ms. Prince?

1 MS. PRINCE: It's a two week vacation.

2 CHAIRPERSON REID: Oh, I see. So it spans over
3 both of those dates.

4 MS. PRINCE: I go mid-week to mid-week.

5 MR. BROWN: And my client isn't available on July
6 25. The 11th is fine, and I don't want to impose this burden on
7 Ms. Prince because I understand, and she is a friend. We're
8 available on other dates after that.

9 CHAIRPERSON REID: What about the first date in
10 July. I thought that was July 5.

11 MS. KRESS: Yes, we're talking July 5 and we have
12 not sent that out yet, so we could potentially move something from
13 the 5th and add this on to the 5th. That's a possibility.

14 CHAIRPERSON REID: Okay. Then we could add some of
15 these others to the 11th or the 25th?

16 MS. KRESS: Yes.

17 CHAIRPERSON REID: Spread them out. Okay, Ms.
18 Prince, would the 5th be all right with you?

19 MS. PRINCE: That's great with me. I fear it's not
20 great with Mr. Brown.

21 MR. BROWN: No.

22 CHAIRPERSON REID: Come on.

23 MR. BROWN: I'm away that whole week.

24 CHAIRPERSON REID: Come on. We get one side and
25 the other side can't.

1 COMMISSIONER HOOD: Madam Chair, obviously that is
2 the vacation season so either we'll have to make sacrifices or it
3 will have to be September.

4 CHAIRPERSON REID: What's the problem with the 5th,
5 Mr. Brown?

6 MR. BROWN: I'm out of town that entire week. I've
7 got plans, too.

8 MS. PRINCE: Then I say go back to July 11th and
9 I'll make the necessary change.

10 CHAIRPERSON REID: The May 16th date, what did you
11 say?

12 MR. BROWN: I don't think that's appropriate, Madam
13 Chair.

14 MS. PRINCE: This case has been pending since
15 October.

16 CHAIRPERSON REID: But if the ANC meets on the 8th,
17 that gives them a chance to get their report in and you're
18 prepared to go. So what's the problem? Did they say okay?

19 MR. BROWN: -- being a time crunch, morning,
20 afternoon --

21 CHAIRPERSON REID: What happened, Mr. Brown, was
22 that we had an all day campus plan scheduled that day and it was
23 rescheduled a couple of hours ago, so that day became free just
24 within -- you know, after 12:00.

25 MR. BROWN: Morning?

1 CHAIRPERSON REID: It could be the morning or the
2 afternoon. Probably we could start in the morning and just go
3 until we are able to complete it and with appropriate time
4 constraints. We don't intend to be here all day and, if we have
5 appropriate times for both sides, then we should be able to get
6 out of here fairly -- you know, within a reasonable amount of
7 time.

8 MR. BROWN: Okay. That's fine. We'll plan for the
9 morning. 9:30?

10 CHAIRPERSON REID: Yes.

11 MS. PRINCE: No further notice is required for this
12 hearing?

13 CHAIRPERSON REID: No. Ms. Kress, this is the
14 notice here at the hearing. Right?

15 MS. PRINCE: Would you like us to re-post the
16 property?

17 CHAIRPERSON REID: Do they usually do that?

18 MS. PRINCE: It's not required under the rules. I
19 simply want to --

20 MS. KRESS: I believe it's being offered and it's
21 the Board's decision if they would like it.

22 MS. PRINCE: We'll re-post the property today.

23 MS. KRESS: Thank you.

24 MS. PRINCE: Or tomorrow. Tomorrow.

25 MR. BROWN: Madam Chair, can I also, just for

1 clarification purposes, 1) so that we don't have any further
2 confusion, myself as Ms. Crary's counsel is in fact a party in
3 this case and entitled to any filings that should occur. Also, I
4 would like to request that the Board order the applicant --
5 because we are in a tight time frame -- hand deliver to myself and
6 the ANC a copy of their pre-hearing statement tomorrow.

7 MS. PRINCE: That's fine.

8 CHAIRPERSON REID: Was there an issue raised -- I
9 thought I heard someone say that you all had not been granted
10 party status.

11 MR. BROWN: Well, that allegation was made. I
12 think it's undermined by the facts of the matter, both in the
13 applicant and his counsel's actions, the Board's actions back in
14 December.

15 CHAIRPERSON REID: But you were?

16 MR. BROWN: Yes, but again, for clarification
17 purposes, that I'm counsel for Ms. Crary who is, in fact, a quote
18 "party" in this case and entitled to copies of any filings that
19 should occur.

20 CHAIRPERSON REID: Okay.

21 MR. BROWN: For clarification purposes.

22 CHAIRPERSON REID: Okay. Is there any further
23 discussion? All right. Then May 16th will be date.

24 Are there any other issues, matters that need to be
25 discussed?

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That being the case, unbelievably, we're adjourned
for today.

(Whereupon, the hearing was adjourned at 2:53 p.m.)