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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

WEDNESDAY

JULY 5, 2000

+ + + + +

The meeting was held at 9:30 a.m. in the Office of Zoning Hearing Room, Suite 220, 441 Fourth Street, N.W., Washington, D.C., 20001, Sheila Cross Reid, Chair, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ROBERT SOCKWELL,	Vice Chairperson
RODNEY MOULDEN,	Board Member
ANNE RENSHAW,	Board Member

ZONING COMMISSION MEMBERS PRESENT:

CAROL MITTEN, Commissioner
JOHN PARSONS, Commissioner

OFFICE OF ZONING STAFF PRESENT:

Sheri Pruitt, Secretary, BZA
Beverley Bailey, Office of Zoning
Paul Hart, Office of Zoning
John Nyarku, Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL :

Alan Bergstein, Esq.
Marie Sansone, Esq.

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P R O C E E D I N G S

9:59 a.m.

CHAIRPERSON REID: Good morning. The meeting of the Board of Zoning Adjustment now come to order.

MS. PRUITT: Good morning, Madam Chair. To accommodate Mr. Parsons time schedule, we re going to sort of reorganize the procedures of what s on our agenda today, and I believe we want to take Application 16573, Application of Martin Hardy, for decision today for you.

This case was heard on January -- June 20, and Board members present was Ms. Reid, Sockwell, Parsons, Renshaw, and Mr. Moulden. Status of the case, there were seven items requested. Those items were provided to you along with draft orders from both the applicant and opponents.

This is now before you for decision.

CHAIRPERSON REID: All right. Note that the items that were requested have been submitted, and I guess the thing is to look further at what we have and determine if, in fact, they are sufficient. Mr. Sockwell, go through the all the inventory just to see the things you had requested. Were you satisfied that they met the -- your approval?

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1 MR. SOCKWELL: It appears that the things
2 that I had requested were submitted. I had maybe one
3 question.

4 CHAIRPERSON REID: They had submitted
5 everything on this, in their folder, and could you take
6 a look at that? Now, the shadow study, there was plans
7 of the alternate development scheme that was heard at
8 the hearing, and they did show on how that would look.

9 They showed -- they gave a copy of s study shadow that
10 was requested by you, Mr. Sockwell, and since you were
11 the one, can you basically get a read on that, as to --
12 I think you want them to have a competing company to do
13 the shadow studies and determine -- I guess to analyze
14 both to determine which one or if in fact the one that
15 they submitted was adequate for you?

16 MR. SOCKWELL: I read the extensive, I
17 guess this is e-mail, interaction between the
18 architect, Mr. Vallen, and his provider of software,
19 and I m comfortable that their conclusions were
20 satisfactory. It does not appear that the alternative
21 scheme presents what I would consider to be unusual
22 year-long hardship on the adjacent properties from the
23 sun and shade standpoint.

24 CHAIRPERSON REID: All right. The next one
25 was the construction management plan, which we ve

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1 looked over, and basically, some of the issues that
2 were raised on the hearing with regard to the brick
3 work that would be done and where was the mortar and
4 debris, how that will be disposed of or handled, and in
5 there is the master plan, they do adjust that and they
6 talk about the terms, the amount of time being about 12
7 months, and that the general contractor will take
8 special care with constructing brick walls so as not to
9 disturb the neighbors, which is very important. And
10 any spillage of mortar sand would be, of course, taken
11 care of right away. And that the general contractor
12 owner will cooperate with neighbors in regards to any
13 adverse impact, that the construction will confirm to
14 District of Columbia regulations, which is appropriate,
15 and that the site will be protected so as not to be
16 cluttered. And I think that that is -- that kind of
17 addresses the concerns of the neighbors as far as how
18 that construction was going to be handled. Now there s
19 applicant sent a copy of the floor plan of the adjacent
20 apartment building, at 1822 Vernon, for the --

21 MS. RENSHAW: Madam Chair.

22 CHAIRPERSON REID: Yes.

23 MS. RENSHAW: In regard to the
24 construction management plan, it s usual for the
25 applicant to insert some information as far as work

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1 hours, grievance procedures for the neighbors,
2 trucking, and I don't see that in the construction
3 management plan that's in the binder.

4 CHAIRPERSON REID: I think, and Mr. Sockwell
5 can help me with this, I think that when applying for
6 the construction permits, do they have to submit that
7 information so as to be in compliance with the City --

8 MR. SOCKWELL: The City has specified
9 hours for construction under the normal permit process.
10 Anything outside of that would have to be applied for
11 separately.

12 MS. RENSHAW: But it is not unusual for
13 those ingredients to be part of the order --

14 CHAIRPERSON REID: Oh, I see --

15 MS. RENSHAW: of the B.Z.A. --

16 CHAIRPERSON REID: I see. So you're saying
17 that you'd like maybe a copy of what they submit --

18 MS. RENSHAW: Yes, yes.

19 CHAIRPERSON REID: And the application be
20 included?

21 MS. RENSHAW: To be included.

22 MS. PRUITT: Madam Chair?

23 CHAIRPERSON REID: Yes, Ms. Pruitt?

24 MS. PRUITT: I'd just say, usually on a
25 project of this size we don't get construction

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1 management plans. This is a single family home,
2 basically.

3 CHAIRPERSON REID: Well, I think that she s
4 saying --

5 MS.. PRUITT: Which is why we haven t had
6 a --

7 CHAIRPERSON REID: Ms. Renshaw s referring
8 to the application itself, I m thinking that there s a
9 form that they have to submit --

10 MS. RENSHAW: I think that there should be
11 at the very minimal --

12 CHAIRPERSON REID: form? Okay.

13 MS. RENSHAW: some information in the
14 B.Z.A. order respective to a grievance procedure should
15 the neighbors have problems with any aspect of the
16 construction. A way to get to the owner of the
17 property and get some remediation for the call.

18 CHAIRPERSON REID: In other words, you want
19 them to identify liaison persons --

20 MS. RENSHAW: Absolutely.

21 CHAIRPERSON REID: construction liaison
22 persons?

23 MS. RENSHAW: Construction liaison person.
24 And the hours that person will be available.

25 CHAIRPERSON REID: Okay. I don t think

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1 that that would be a problem to identify such a person.

2 I m looking at the applicant, and they re nodding
3 their head. I have no problem with that unless
4 another. Do the board members have any objection?

5 MR. SOCKWELL: No, you might also ask for
6 stated hours and days of construction.

7 MS. PRUITT: Well, we should actually
8 discuss that and determine that now. If you re going
9 to vote on the order, it s should be part of the order
10 you need to identify this now --

11 CHAIRPERSON REID: Could you -- at this --
12 maybe Ms. Hicks could just give you -- give you a note
13 with that information so that we ll -- we can --

14 MS. PRUITT: If they have that. Like I
15 said, we ve never asked for this on a single-family
16 house before.

17 CHAIRPERSON REID: Nevertheless, if Ms.
18 Renshaw wants it, Ms. Hicks, well, perhaps you could
19 give her --

20 MR. SOCKWELL: This is, in effect, not a
21 single family house, because it s a two-unit --

22 MS. PRUITT: It s a two-family flat. It
23 is a townhouse.

24 CHAIRPERSON REID: Just give the hours of
25 construction so we know what you plan to do as well as

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1 a liaison person who would be the contact person for
2 the community, and if there are any problems.

3 MS. HICKS: Okay. Mr. Vallen --

4 CHAIRPERSON REID: But you can t speak to
5 us.

6 MS. HICKS: Oh, Okay.

7 CHAIRPERSON REID: You have to give the
8 information. Just write it there and give it to Mrs.
9 Pruitt. You can just tell her, but you can t speak
10 directly to the Board.

11 MR. SOCKWELL: Madam Chair, would we --
12 would we also request whether or not they intend to
13 construct on the weekends and therefore have a broad
14 picture of what their construction impact would be.

15 CHAIRPERSON REID: I think they re getting
16 that -- getting it now. But while they re doing that -
17 -

18 MR. SOCKWELL: Days and times, that they
19 expect to be under construction.

20 CHAIRPERSON REID: And the construction
21 liaison person.

22 MR. SOCKWELL: And the construction liaison
23 person.

24 CHAIRPERSON REID: Okay. For right now, so
25 that the -- was it you that requested the floor plan of

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1 the adjacent apartment building, Mr. Sockwell?

2 MR. SOCKWELL: No.

3 CHAIRPERSON REID: Who requested that?

4 MR. SOCKWELL: I don t think it was me. I
5 know I asked about the plat of the subdivision. I
6 asked about the shadow studies. It was requested.
7 Let s see.

8 CHAIRPERSON REID: Nonetheless, for
9 whatever reason, they submitted it, and we have it.
10 And could you look at it, Mr. Sockwell, since you are
11 our resident architect, and determine whether or not
12 you feel that they are appropriate. I can sense that
13 would be the only thing that would be required. I
14 don t remember the request being made, quite frankly --

15 MR. PARSONS: I do. It was my
16 recollection they had it here as an exhibit, and maybe
17 that they just took --

18 MR. SOCKWELL: Their previous exhibit was
19 not a complete floor plan of the areas that were being
20 discussed as having impact, or would be impacted by the
21 building.

22 CHAIRPERSON REID: Okay.

23 MR. PARSONS: It was important because the
24 exhibit was being used for the opposition to show where
25 their units were.

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1 CHAIRPERSON REID: Okay. Oh, you mean --

2 MS. RENSHAW: Madam Chair --

3 CHAIRPERSON REID: Is that what it was for,
4 to show how the sun hits the units in the building
5 behind the --

6 MR. SOCKWELL: That to some --

7 CHAIRPERSON REID: Okay, I see now --

8 MR. SOCKWELL: degree in the relationship
9 of units to impact.

10 CHAIRPERSON REID: Okay, that s right --

11 MR. SOCKWELL: some on the front of
12 building and some on the side.

13 CHAIRPERSON REID: because seeing some of
14 the units were, like, on the back side, and what have
15 you. Okay.

16 MR. SOCKWELL: Configuration issues.

17 MS. RENSHAW: Madam Chair.

18 CHAIRPERSON REID: Yes.

19 MS. RENSHAW: One other matter, that the
20 final design of these two units should show the space,
21 the off-street space, to store trash receptacles
22 between pickups?

23 CHAIRPERSON REID: It does.

24 MS. RENSHAW: Okay. Thank you.

25 CHAIRPERSON REID: All right, then.

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1 MR. SOCKWELL: One question of the
2 applicant. I compared the -- Oh, no, I guess I can't
3 question the applicant. Sorry. Yes, I'll make the
4 statement.

5 I compared the original design to the
6 alternate design, and it is my assumption that in the
7 alternate design the -- what now becomes more of a real
8 studio unit as opposed to a senior-junior bedroom --
9 well, actually, it's more than a junior bedroom unit --
10 is sufficiently sized to meet the needs of the
11 applicant as a viable unit, and that was something I
12 can't ask them, but I'd make that assumption because
13 they provided it this way, but it is significantly
14 different from --

15 CHAIRPERSON REID: Thank you, Mr. Sockwell.
16 And the other thing was, on regard to a question of
17 Corp counsel, addressing the issue of whether the
18 applicant created a self-imposed practical difficulty
19 back in buying the lot. And that was -- it was raised
20 because it was -- it was addressed because it there was
21 an issue raised with regard to the standard for
22 practical difficulty in a area variance, and Corp
23 counsel has held that -- and for the parties, says in
24 light of the fact the circumstances of this case
25 include that the combination of two lots does not bar

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1 variance relief. The applicant is seeking an area
2 variance, which is judged under the practical
3 difficulty standard, and that standard is -- does not
4 have any relevance to -- or should not be judged in
5 regard to the -- let me rephrase that. The parking
6 regard -- the parking garage is not relevant to
7 determination of the practical difficulty in this
8 instance. And, as such, does not preclude him from --
9 would not bar him from variance relief.

10 There was an argument that was raised with
11 court cases put to us by the opposition, and we have
12 determined from Corp counsel, and the gist of it is,
13 there was some confusion as to the application of the
14 court cases in regard to this particular case and the
15 understanding of the application of standard that would
16 be applied for practical difficulty, and, as such, this
17 issue about the garage in the lot does not have any
18 relevance.

19 Okay. All right, were there any other
20 questions, comments, discussions, in regard to this
21 particular case?

22 All right, can I get a motion?

23 MR. SOCKWELL: I would move that we
24 approve the new two-unit building based upon the
25 alternate floor plan arrangement.

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1 MS. RENSHAW: Second.

2 MR. MOULDEN: Question. Do we know the
3 hours before we approve this?

4 CHAIRPERSON REID: Do we have those, Ms.
5 Pruitt?

6 MS. PRUITT: Yes. The hours of
7 construction would be -- would comply with the
8 District, which would be 7 to 5 p.m. Monday through
9 Friday, and 8 to 5 on the weekends, with Mr. Hardy or
10 Vallen being contact persons.

11 MR. MOULDEN: What is weekends? Saturday
12 and Sunday?

13 MS. PRUITT: Yes.

14 MR. MOULDEN: Do construction work on
15 Sunday?

16 MS. RENSHAW: Can we -- can we limit that
17 to Saturday only? And in fairness to the neighbors, I
18 think Saturday ought to be a half day.

19 CHAIRPERSON REID: Well that s -- we can t
20 --

21 MS. RENSHAW: Can we do that?

22 CHAIRPERSON REID: If the code allows it,
23 we can t -- right, you know, we can t usurp the code.

24 MS. RENSHAW: It can be worked into the
25 arrangement, and perhaps the applicant would want to --

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1 MS. PRUITT: We can request it but you
2 can t make it a -- a condition is different than a
3 request.

4 MS. RENSHAW: Could we request it, then,
5 because perhaps the applicant and the neighbors would
6 want to enter into some kind of agreement for weekend
7 work?

8 MS. PRUITT: It can be part of the order,
9 but not a condition, because a condition is
10 enforceable, whereas if you re just requesting we can
11 write it in as a request that there be no weekend work
12 or weekend work will end by noon, is that what you re
13 requesting?

14 MR. SOCKWELL: I m not sure what the
15 Saturday -- I m not positive whether the Saturday work
16 schedule has to be done separately or not, as a
17 request. But I am concerned that 8 a.m. on Sunday
18 should not be any earlier than 9 a.m.

19 MS. RENSHAW: I don t think there should
20 be any work on Sunday --

21 MR. SOCKWELL: Sunday, Sunday.

22 MS. RENSHAW: and I hope that the
23 applicant would be understanding if the neighborhood
24 issues at least one day of rest.

25 MS. SANSONE: Madam Chair.

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1 CHAIRPERSON REID: Sunday, and that s --
2 I m sorry, who s speaking?

3 MS. SANSONE: Madam Chair, I d just like to
4 point out in the variance cases that any conditions we
5 put in the order are limited to those that would run
6 with the land, not with a particular developer or his
7 construction business or project here.

8 We can include the discussion of these
9 appropriate requirements and requests in the order, but
10 we should not make them a condition to the variance.

11 MR. SOCKWELL: I guess, then, I would just
12 rather, if we cannot condition the order in that sense,
13 I would place in the record and perhaps in the order a
14 statement that the liaison would be expected to respond
15 to neighbors issues with regard to weekend
16 construction.

17 MS. RENSHAW: That s acceptable.

18 CHAIRPERSON REID: I think that that would
19 take care of it. Okay.

20 All right, then. I also feel that the
21 applicant has met his burden of proof in regard to the
22 variance and demonstrates there would be a practical
23 difficulty in complying with the District Zoning
24 regulations and that there would not be any adverse
25 impact and does not impair the integrity of the Zoning

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1 regulations from that. Okay, and as such, all in
2 favor?

3 (Chorus of ayes.)

4 CHAIRPERSON REID: Opposed?

5 (No response.)

6 MS. PRUITT: Staff will record the vote as
7 five to zero to approve. Motion made by Mr. Sockwell,
8 seconded by Ms. Renshaw.

9 (John Parsons exits.)

10 MS. PRUITT: Okay, the next item on the --
11 well, now that Mr. Parsons is gone, do you want to go
12 back to the regular sequence?

13 CHAIRPERSON REID: Yes, we can.

14 MS. PRUITT: Okay. The first item on your
15 agenda are the public hearing --

16 CHAIRPERSON REID: I m sorry, Ms. Mitten
17 was supposed to come back in.

18 MS. PRUITT: Yes, we need to get Ms.
19 Mitten.

20 CHAIRPERSON REID: Mr. Bergstein, Mr.
21 Bergstein. Could you please ask Ms. Mitten to come in
22 please. Thank you.

23 (Carol Mitten enters.)

24 CHAIRPERSON REID: All right, Ms. Pruitt.

25 MS. PRUITT: Good morning, Madam Chair.

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1 Before you there are the Public Hearing Minutes for
2 June 7th, 13th, and 20th.

3 CHAIRPERSON REID: All right. Was there
4 any question, Mr. Sockwell and Ms. Renshaw? Were there
5 any questions with regard to the Public Hearing
6 Minutes?

7 MS. PRUITT: No, there s not.

8 CHAIRPERSON REID: Did you just read it for
9 June 7th?

10 MS. PRUITT: No, I read it for all three.

11 CHAIRPERSON REID: Okay, I m sorry. I was
12 talking, but if there are any questions or corrections
13 or anything with regard to the minutes, then we can --

14 MS. PRUITT: Vote on them en block.

15 CHAIRPERSON REID: vote them en block.
16 Okay, motion, please. Or, I move that we accept the
17 minutes as presented to us.

18 MR. MOULDEN: Second.

19 CHAIRPERSON REID: All in favor?

20 (Chorus of ayes.)

21 CHAIRPERSON REID: Aye. Opposed?

22 (No response.)

23 MS. PRUITT: Staff would record the vote
24 as four to one to approve motion made by Ms. Reid,
25 seconded by Mr. Moulden, Ms. Mitten not voting, not

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1 having been present. Okay.

2 CHAIRPERSON REID: All right.

3 MS. PRUITT: Okay, the first case to be
4 decided is Application 16472, of Holy Christian
5 Missionary Baptist Church for all People.

6 This was actually before you last -- it
7 actually went out for exceptions a while ago. It was
8 before you last month, and the Board requested that a
9 decision be postponed pending their ability to read the
10 file.

11 We have sent you the file, and now it s up
12 before you for decision.

13 CHAIRPERSON REID: All right. This was --
14 there are a couple things we need to discuss with this.

15 This was gone out for exception, and there were no --
16 there were no objections to this particular case.
17 Nonetheless -- I m sorry?

18 MS. PRUITT: None received.

19 CHAIRPERSON REID: None received. Okay.
20 And, typically, what we do is look at the proposed
21 order and look at whether or not there are any
22 objections, and if there aren t, usually we move
23 forward.

24 However, in this instance, I think Ms.
25 Mitten has some comments, and we may do it a little

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1 differently to take into consideration some of her
2 observations. Ms. Mitten.

3 MS. MITTEN: I had a couple things that I
4 wanted to suggest that are either corrections or
5 clarifications. Should I just walk through them?

6 CHAIRPERSON REID: Yes, please.

7 MS. MITTEN: All right. On page 2 of the
8 proposed order, paragraph number 4.

9 CHAIRPERSON REID: Page 2, paragraph number
10 -- which page?

11 MS. MITTEN: Page 2.

12 CHAIRPERSON REID: Page 2? Okay.

13 MS. MITTEN: Paragraph number 4. The
14 third sentence says the Zoning Administrator has the
15 authority to waive the 8" rear yard setback
16 requirement. It s that the Zoning Administrator has
17 the authority to waive 8" of the rear yard setback
18 requirement that -- the setback requirement is 12' 8".

19 The Zoning Administrator has the authority to waive 8"
20 of that. That s what they re requesting. So it s not
21 an 8" setback requirement. So I think that s a
22 clarification worth making.

23 CHAIRPERSON REID: Okay.

24 MS. MITTEN: I ll read the sentence the
25 way I think it should read.

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1 CHAIRPERSON REID: Right.

2 MS. MITTEN: The Zoning Administrator has
3 the authority to waive 8" of the rear yard setback
4 requirement.

5 Then, the next paragraph down, the
6 applicant requested variance relief from the onsite
7 parking requirement for 66 spaces. It says at 75
8 percent, which is what the applicant had written, but
9 it s really 80 percent. Do the math, it s 80 percent.

10 CHAIRPERSON REID: Okay, I think that what
11 we ll need to do is to check that and determine if, in
12 fact, the calculations are correct and make whatever
13 necessary adjustments needed.

14 MS. MITTEN: All right. I have one more.

15 CHAIRPERSON REID: Same page, fourth --
16 one, two, three, four, the fifth paragraph, the last
17 sentence in regard to the calculation for expense of
18 the parking -- onsite parking requirement. Right here.
19 The applicant.

20 MS. MITTEN: Okay. And then I have one
21 more. And this is on page 6. Second paragraph.

22 CHAIRPERSON REID: Page 6.

23 MS. MITTEN: It s sort of a long --
24 there s a number of sentences that lead up to the final
25 sentence, as such, the applicant has a self-imposed

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1 practical difficulty. But that s not -- all of the
2 preceding sentences do not lead up to that conclusion.

3 CHAIRPERSON REID: I m sorry, which
4 paragraph?

5 MS. MITTEN: I m in the second paragraph
6 on page 6.

7 CHAIRPERSON REID. Okay.

8 MS. MITTEN: I think that rather than say
9 as such, the introductory clause should say, because
10 the size of the building is within the discretion of
11 the applicant, the applicant has a self-imposed
12 practical difficulty.

13 CHAIRPERSON REID: All right, starting
14 with, as such ?

15 MS. MITTEN: Substituting for as such.

16 CHAIRPERSON REID: And place -- put what
17 instead?

18 MS. MITTEN: Because the size of the
19 building is within the discretion of the applicant, the
20 applicant has a self-imposed practical difficulty.
21 All the other preceding sentences don t -- are not the
22 basis for --

23 CHAIRPERSON REID: They re not the
24 conclusion for --

25 MS. MITTEN: Right.

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1 CHAIRPERSON REID: for the premises that
2 they had.

3 MS. MITTEN: Correct.

4 CHAIRPERSON REID: Oh, I see. Okay.

5 MS. MITTEN: Right.

6 CHAIRPERSON REID: Now, with that being the
7 case going through it, then I think that we would then
8 have to send it back out again to the parties to
9 reflect the changes of the Board, or what? Or do we
10 have to -- are these just basic grammatical or --

11 MS. MITTEN: These are very minor, some
12 clarifications.

13 CHAIRPERSON REID: So, it was not a major
14 departure, just some basic grammatical kind of
15 syntactical type of changes, corrections. So, okay.

16 MS. PRUITT: Would the Board like to see
17 this once more before we send it out? Would you like
18 to see this once more with the corrections in there
19 before we send it out?

20 CHAIRPERSON REID: Do you wish to see it
21 again?

22 MS. MITTEN: I m confident that once you
23 make those changes it will be fine.

24 MS. PRUITT: Okay.

25 CHAIRPERSON REID: Okay, now wait a minute.

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1 The -- this will take me one second, I m looking at my
2 files. Okay.

3 So basically, if we want to vote on this,
4 on the proposed order with the - amended proposed order
5 -- amend the proposed order with the changes, as
6 reflected -- as indicated by Ms. Mitten, to deny. I
7 said, we re going to basically vote on the proposed
8 order with the changes, as indicated by Ms. Mitten, the
9 proposed order to deny.

10 MS. PRUITT: I m sorry. This is -- you re
11 voting whether or not to accept this exception or not,
12 not to deny it.

13 MR. SOCKWELL: We re voting to approve.

14 MS. PRUITT: To approve this exception.

15 MS. SANSONE: The Board is voting to
16 approve the order as drafted by staff.

17 CHAIRPERSON REID: But the order is to
18 deny, right?

19 MS. SANSONE: That s correct. Okay, yes.

20 MR. SOCKWELL: We re voting to approve --

21 MS. SANSONE: Okay, an order to deny --

22 MR. SOCKWELL: an order denying --

23 CHAIRPERSON REID: Okay, okay. We re
24 voting to approve the proposed order to deny.

25 MR. SOCKWELL: That is correct.

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1 CHAIRPERSON REID: We re voting on. Okay.

2 I don t want to confuse any more.

3 MR. SOCKWELL: We re approving the
4 language of the order to deny.

5 CHAIRPERSON REID: Okay. All in favor?

6 MS. PRUITT: I m sorry, who made a motion?
7 I don t remember a motion being made.

8 MS. RENSCHAW: Mrs. Reid made the --

9 MR. SOCKWELL: Motion to approve the
10 language of the order to deny.

11 MS. PRUITT: And seconded?

12 MS. RENSCHAW: Second.

13 MR. SOCKWELL: I ll second it.

14 MS. RENSCHAW: I seconded.

15 CHAIRPERSON REID: We have two seconds. We
16 have two seconds now.

17 MR. SOCKWELL: We have two seconds to do
18 this.

19 CHAIRPERSON REID: All in favor?

20 (Chorus of ayes.)

21 CHAIRPERSON REID: Opposed?

22 (No response.)

23 MS. PRUITT: Staff will record the vote as
24 five to zero to approve the order to deny based on the
25 changes by Ms. Mitten. Motion made by Ms. Reid,

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1 seconded by Ms. Renshaw.

2 Could you excuse me for one minute, please?

3 Next case on the agenda is Application
4 16492, Rock of Salvation, pursuant to 11 DCMR 3103.2
5 for a variance from section 206, for parking
6 requirements in an R-2 District at 5582 Jay Street,
7 N.E., Square 5214, Lot 54. This application was filed
8 -- an incomplete application was filed on June 22, of
9 99, on the 25th of this month -- excuse me, it was on
10 May 25th. The office sent out a letter to the
11 applicant requesting the status of it, and requested
12 that we receive something back in writing by the 15th.

13 As of this date, we ve had no return of
14 information.

15 CHAIRPERSON REID: Did you receive any
16 response from the letter that you sent out on the 25th?

17 MS. PRUITT: That s what I said, we did
18 not.

19 CHAIRPERSON REID: Okay. This applicant is
20 also requesting, it should be in your file, a refund of
21 his application fee, too.

22 I think that, since we haven t heard from
23 them, except for the request for the -- I guess they
24 don t want it to go forward.

25 MS. PRUITT: Well, actually, the

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1 letter dated, or stamped, on June 13th, talks about --
2 he does talk about he wants to -- he s not going to be
3 able to go forward and at that time is requesting that
4 his --

5 CHAIRPERSON REID: Now wait a minute. I m
6 a little confused. I thought that -- oh, this
7 something --

8 MS. RENSHAW: May I ask staff what is
9 meant by a hold check? Do you have a category? Does
10 the B.Z.A. have a category?

11 MS. PRUITT: No, not really.

12 MS. RENSHAW: So it s understood that any
13 --

14 MS. PRUITT: It s understood that the
15 Board -- that the staff does not have the authority to
16 waive fees, that is a Board decision, and that if the
17 Board should -- the Board may not choose to waive your
18 fee, so if you give us a check, and they choose not to,
19 the check will be deposited. It is at your risk that
20 you then submit it to us with the understanding that we
21 don t -- the staff does not have the authority and the
22 Board does not necessarily have -- will not necessarily
23 waive your fee.

24 MR. SOCKWELL: When was the check
25 submitted?

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1 MS. PRUITT: It probably was submitted in
2 the very beginning, back in -- well, it had to be
3 submitted when the application came in, which was on
4 June 20 -- a year ago.

5 MR. SOCKWELL: And was the check
6 deposited?

7 MS. PRUITT: I believe it was, sir.

8 MR. SOCKWELL: If it wasn't deposited, the
9 likelihood is that it's not good.

10 MS. PRUITT: After 90 days or so, or 120
11 days, usually.

12 MR. SOCKWELL: 120, 180, six months. It
13 depends upon the bank.

14 CHAIRPERSON REID: Correction, I was asking
15 had we received the funds --

16 MR. SOCKWELL: Depends upon whether
17 there's money in their account, as well.

18 CHAIRPERSON REID: That was -- that was --
19 because I had not -- remember, I was saying I got the
20 things late and I hadn't seen that letter. But, I
21 think we should dismiss it, and that -- it concerns me
22 because they say the check that was a hold check. Now,
23 do we know whether or not -- it sounds like maybe they
24 submitted it to a staff member, may have said it, oh,
25 we'll hold it until you're certain whether or not you

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1 need the process --

2 MS. PRUITT: since I have been here, the
3 policy has always been to, you know, to hold the check,
4 but also, if you re going to go forward with an
5 application, that the check -- probably it will be
6 cashed, and that the Board will then make the
7 determination on whether or not a refund --

8 MR. BERGSTEIN: Was anything -- Excuse me,
9 I m sorry, I need to jump in --

10 CHAIRPERSON REID: Yes.

11 MR. BERGSTEIN: because this matter is
12 actually looking close to litigation before the Zoning
13 Commission. Our office advised the Zoning Commission
14 that once a check is deposited, it does not have the
15 authority, appropriation authority, to refund. Refund
16 authority is very specific in the D.C. Code, and only a
17 few agencies have the actual authority to refund. And
18 that case involved a PUD. The filing fee was \$100,000.

19 It was withdrawn because of zoning relief was granted
20 through a rule making the requested refund of the
21 check, and the Zoning Commission ruled that it did not
22 have the authority to refund. I think the appeal on
23 that was eventually withdrawn before the Court of
24 Appeals, but I want the B.Z.A. to be aware that our
25 office has advised the Zoning Commission that once a

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1 check is deposited, the Zoning Commission and B.Z.A. do
2 not have the -- unless there s specific appropriations
3 for you to refund, you don t have the authority to
4 refund.

5 MS. PRUITT: And at this time, we don t.

6 MR. BERGSTEIN: The D.C. treasurer can, by
7 the way, and that s, just to go full circle. If an
8 applicant believes that they paid for something that
9 they did not receive, the D.C. treasurer does have
10 general appropriated authority to make that refund.
11 And you can write on behalf of the applicant to do
12 that. But you don t have the express authority to do
13 that yourself.

14 CHAIRPERSON REID: Mr. Bergstein, that s
15 regardless as to whether or not the application itself
16 was ever actually processed or not?

17 MR. BERGSTEIN: That s correct.

18 CHAIRPERSON REID: It doesn t matter?

19 MR. BERGSTEIN: That s correct.

20 CHAIRPERSON REID: Okay.

21 MR. BERGSTEIN: Because the fees are based
22 upon estimated cost, not upon actual costs. You don t
23 go through each application to see how much work you ve
24 done and then decide whether or not you refund, but the
25 real basis is, even if you wanted to do it, you can t

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1 do it. For example, with parking tickets for DMV, they
2 do refunds by writing to the D.C. Treasurer saying that
3 the person s entitled to the refund, but the Department
4 of Motor Vehicles does not make the refund itself.
5 It s the D.C. Treasurer that makes the refund because
6 they re the only one with appropriate authority to do
7 it. And that s how it has to be done.

8 CHAIRPERSON REID: Okay. Well, that, then,
9 answers the question, then. Then motion to dismiss
10 without a refund.

11 MS. RENSHAW: Aye. Second.

12 MR. SOCKWELL: Maybe the language of the
13 motion should be, motion to dismiss, B.Z.A. not
14 empowered to refund filing fee, so that it s not
15 misread as our decision not to refund the money, but
16 it s read as our inability to refund the money based
17 upon our procedures and rules.

18 MR. BERGSTEIN: I can provide the
19 citations to the actual order of the Zoning Commission
20 that would address this issue fully if that would be
21 helpful.

22 CHAIRPERSON REID: Thank you. All in
23 favor?

24 (Chorus of ayes.)

25 CHAIRPERSON REID: Opposed?

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1 (No response.)

2 MS. PRUITT: Staff would report the vote
3 as five to zero to deny, or to dismiss, motion made by
4 Mrs. Reid, seconded by Mrs. Renshaw, and to include
5 the language as to the authority of the B.Z.A. to not
6 refund money.

7 Okay. The next item on your agenda is a
8 Motion of Application 16556, Application of Jewish
9 Primary Day School of the Nation s Capital. Hearing
10 dates were March 15th and 21st, decision date was April
11 15th. The order was issued on June 15th. Board
12 members present were Ms. Reid, Sockwell, Parsons,
13 Renshaw, and Moulden.

14 A motion dated -- excuse me. You received
15 a motion dated June 23, from Cornish Hitchcock on
16 behalf of the Shepherd/Colonial Village Neighborhood
17 Alliance requesting that the Board stay the
18 effectiveness of the order issued on June 15th.

19 Then you received also a motion in
20 opposition to the request for stay from Wilkes Artis,
21 or, rather, the applicant s attorneys for JPDS.

22 CHAIRPERSON REID: All right. In this
23 instance, we didn t see a proposed order in regard to
24 this motion to stay from Corp counsel. And, basically,
25 we ve been instructed that the criteria concerning

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1 these issues are based on -- there are four criteria in
2 citing a motion to stay, and go over those, but prior
3 to that I d like to discuss the issue of standing as it
4 pertains to the procedure.

5 And I d like one of the -- one of the Board
6 members to discuss that aspect of it and then we ll go
7 into the other parts of it. Ms. Renshaw, would you
8 like to? I draft you, but I wanted to have more
9 discussion.

10 MS. RENSHAW: All right. We discussed
11 about the proper procedure here, and the criteria for
12 issuing a stay. There were four points that we should
13 consider.

14 First of all is the --

15 CHAIRPERSON REID: Excuse me. Before we go
16 into that, I want the Board members to discuss this,
17 the issue of standing whether or not the Alliance, the
18 Shepherd Park Colonial village Neighborhood Alliance,
19 has standing, in order to request a stay or to appeal
20 in the first place.

21 MS. RENSHAW: It is my understanding that
22 the Alliance does have standing to bring a stay request
23 to the B.Z.A..

24 CHAIRPERSON REID: Okay, and that s based
25 upon any affected or grieved party that feels that they

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1 are -- a person or entity that feels that they are
2 adversely impacted upon irrespective as to whether or
3 not they had --

4 MS. RENSHAW: It may appeal to the Board.

5 CHAIRPERSON REID: Okay. Whether or not
6 they had party status.

7 MS. RENSHAW: Exactly.

8 CHAIRPERSON REID: First to the Board, and
9 then after they make that determination that, yes, they
10 do have standing, then we go to the criteria for
11 deciding whether or not the -- whether or not the Board
12 can grant a stay or not or will grant a stay or not.

13 Okay. Now, let s go over -- let s take
14 each one. The first one is, Is the Alliance likely to
15 avail on the merge of this appeal, and that s spelled
16 out for us but, now, that, Ms. Renshaw, if you would
17 handle that aspect.

18 MS. RENSHAW: Yes, so that was the first
19 point --

20 CHAIRPERSON REID: Number one.

21 MS. RENSHAW: That s number one. And
22 number two is whether the Alliance will suffer
23 irreparable injury if the stay --

24 CHAIRPERSON REID: The stay was number one.

25 MS. RENSHAW: Stay -- all right.

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1 CHAIRPERSON REID: You can discuss number
2 one for me, please. Four, I believe.

3 MS. RENSHAW: All right, well --

4 CHAIRPERSON REID: On that one, from the
5 second page of the report from Mr. -- would you like
6 one from Mr. Bergstein? He goes to the -- or is that -
7 -

8 MS. RENSHAW: I think that that would be
9 the best idea. Mr. Bergstein.

10 CHAIRPERSON REID: Page three of three.

11 MR. BERGSTEIN: Well, I m going to ask Ms.
12 Sansone, but just to make it clear this was an order
13 that was drafted by my office at the request of the
14 Office of Zoning, and it was drafted as a denial of the
15 stay, and if Ms. Sansone would just paraphrase what the
16 order contains, and then you can discuss it. But
17 that s what we vote for here, Madam Chair.

18 CHAIRPERSON REID: That s fine.

19 MS SANSONE: Thank you, Madam Chair, the
20 first criteria that is before the Board for decision
21 is, as we already noted, is the Alliance likely to
22 prevail upon their merits when it gets into the Court
23 of Appeals, and if we go back to the motion that was
24 filed by the Alliance, it essentially raises about five
25 issues, most of which boil down to whether the Board s

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1 decision and order in this case contain sufficient
2 findings of fact and conclusions of law to support its
3 decision to grant the special exception for the one-
4 year period.

5 Specifically, the Alliance is concerned
6 whether the findings and conclusions are sufficient for
7 traffic and parking, whether the Board was correct in
8 allowing JPDS to defer some of the technical issues
9 relating to the parking plan, to the building permit,
10 and the CFO stage of the proceeding, whether the Board
11 had given great weight to the ANC s objections
12 regarding the parking plan, whether there was
13 sufficient factual findings and conclusions in the
14 order to support the conditions that the Board imposed
15 to mitigate any adverse affects of the school, and
16 whether the conditions were adequate to protect the
17 neighborhood from objectionable impacts.

18 So, in order to address these types of
19 arguments, is the Alliance likely to prevail with them,
20 the Board should consider whether its decision and
21 order went through sufficient detail in examining the
22 evidence and in providing findings on all the contested
23 issues.

24 If the Board feels that its decision and
25 order was sufficient in that regard, then you should

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1 conclude that the Alliance is not likely to prevail on
2 appeal.

3 In the proposed order that we drafted, we
4 suggest that given the detail through which the order
5 reviewed all the information on traffic and parking
6 that that should be sufficient to support the Board's
7 decision and all the conditions that were imposed in
8 the Board's order.

9 But that's what's being called for in this
10 first question of, is the Alliance likely to prevail
11 on appeal?

12 CHAIRPERSON REID: And also in regard to
13 the aspect of it, number two, that pertain to, has the
14 Board erred in allowing JPDS to demonstrate tentative
15 plans for the parking place requirement, I think that
16 we should emphasize the fact that those issues are
17 pertaining to technical zoning aspects of the case, are
18 those that we don't have purview in, and that we leave
19 that to DCRA to make those determinations.

20 Basically, we, our, a body, is charged with
21 making decisions based on the merits of the case as
22 they pertain to whether or not they should receive the
23 release that they're requesting, either a special
24 exception or a variance.

25 Okay, now. To number two, will the

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1 alliance suffer irreparable injury if the stay is
2 denied. Mr. Sockwell, do you want to speak to that
3 one?

4 MR. SOCKWELL: With regard to
5 irreparable damage, it s my belief that the Alliance
6 could not suffer irreparable damage in a conditioned
7 order that has a one-year life span, nonrenewable, with
8 the protections that were built in by the Board s
9 deliberations in this case and the, at this point,
10 promise of the applicant to abide by those elements of
11 the order which were placed there specifically to
12 protect the community from adverse impacts of their
13 temporary stay in the facility.

14 CHAIRPERSON REID: I think that the
15 operative word here is temporary. And that the order
16 was granted for a one-year term, and, as such, we don t
17 deem that there is anything that would be permanent or
18 irreversible during that time frame. And we have
19 imposed conditions to mitigate the adverse impact that
20 would be imposed within that time frame. So, we feel
21 that as far as that motion is concerned, that we do --
22 we have analyzed that and feel that that is our
23 determination that there would not irreparable harm.

24 Now, as to number three. Will the opposing
25 parties be harmed by a stay? Will the opposing parties

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1 be harmed by a stay? Would you like to speak to that
2 one, Mr. Moulden? Or do you want me to?

3 Okay. I ll speak to that one. And that
4 is, the JPDS had indicated to us that they were
5 operating under very, very tight time frames and, as
6 such, for them to be able to move forward with their
7 school within a timely manner, the school year, if in
8 fact, we were to impose a stay, then that would have --
9 would impose harm on JPDS because they would not be
10 able to start the school year. And then the whole
11 order would be moot, so I think that here s no question
12 about -- no question as to whether or not the opposing
13 party would be harmed.

14 The last one is does the public interest
15 favor granting a stay, and Ms. Renshaw, I ask you to
16 respond to that one.

17 MS. RENSHAW: Yes. It is in the public
18 interest for a school, a private school, to be
19 encouraged to remain in the district. We felt that
20 that was the case and there was -- it would not be in
21 the public s interest, we felt, to at this point grant
22 a stay for the Alliance.

23 Madam Chair, I also want to point out in
24 number two that where we talked about the irreparable
25 injury, that we did require the applicant to submit the

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1 lease and that lease had to be included with the B.Z.A.
2 order, so that further strengthens the B.Z.A. s
3 position in protecting the neighborhood.

4 In other words, we had requirement of
5 evidence that the applicant had signed a one-year lease
6 only to the dates that we specified.

7 CHAIRPERSON REID: And also, I don t -- I
8 don t know specifically how we did it, but we did talk
9 in terms of there not being - we re told that we
10 proffered to JPDS that they not come back to us within
11 a year, after a year, and ask for an extension.

12 That was the understanding that we garnered
13 from the hearing that we had and also what the
14 expectation would be if we were to grant the order.

15 Is there any further discussion on this
16 particular motion?

17 MR. SOCKWELL: If only just to state that,
18 I believe that the Board was very careful in its
19 deliberations to review and try to look very carefully
20 at the community s issues and to try to respond to them
21 as effectively as possible by putting the onus on the
22 Jewish Primary Day School to meet what we felt were the
23 most rigorous potential conditions of negative effects
24 with a coordinated and well-supervised and well-staffed
25 approach to controlling, primarily, the traffic

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1 activities to be generated by the activity of the
2 school.

3 And without being able to say 100 percent
4 that everything will be managed exactly as expected, we
5 feel that we have approached the situation fairly for
6 both sides, and that the order as written was an
7 effective response.

8 CHAIRPERSON REID: Thank you. Would you
9 make the motion?

10 MR. SOCKWELL: I would move therefore that
11 we deny consideration of the motion to stay the B.Z.A.
12 order on Case No. 16556.

13 CHAIRPERSON REID: Is it okay to say, deny
14 consideration ?

15 MR. SOCKWELL: Deny the motion.

16 CHAIRPERSON REID: Deny the motion. Okay.

17 MS. RENSHAW: And I second.

18 CHAIRPERSON REID: Okay. All in favor?

19 (Chorus of ayes.)

20 CHAIRPERSON REID: Opposed:

21 (No response.)

22 MS. PRUITT: Staff would record the vote
23 as five to zero to one, with a proxy from Mr. Parsons,
24 and Ms. Mitten, not present, not having voting -- not
25 voting, not having been present. Excuse me.

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1 PARTICIPANT: Ms. Mitten.

2 MS. PRUITT: One more case that I
3 overlooked inadvertently, which is a dismissal, and
4 that s Application 16522 of Thomas Swarm. This is
5 another case that was filed on October 8th of 99. On
6 May 25th of this year we sent out a letter, and we did
7 not receive any response for this.

8 This is now, again, before you for
9 dismissal.

10 CHAIRPERSON REID: Which one?

11 MS. PRUITT: This should have come in your
12 new package. Application 16522. Thomas Swarm.

13 CHAIRPERSON REID. Oh, yes, okay. That s
14 not on the agenda?

15 MS. PRUITT: It s on your revised agenda.

16 CHAIRPERSON REID: I don t have the revised
17 one. I don t have the revised agenda.

18 MS. PRUITT: It s in your new package.

19 CHAIRPERSON REID: I just remembered, I
20 didn t get the mail.

21 MS. PRUITT: You didn t get to look at it
22 this morning, but it s in there.

23 CHAIRPERSON REID: All right, so, let s
24 see.

25 Okay, you said that we have not heard back

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1 from him? So, all right, I think this is pretty
2 straightforward, Board Members. May I have a motion?

3 MS. MITTEN: I move for dismissal of Case
4 No. 16522.

5 MR. MOULDEN: I second.

6 CHAIRPERSON REID: All in favor?

7 (Chorus of ayes.)

8 CHAIRPERSON REID: Opposed?

9 (No response.)

10 MS. PRUITT: Staff will record the vote as
11 five to zero to dismiss this case. Motion made by Ms.
12 Mitten and seconded by Mr. Moulden.

13 And basically, the last thing on the agenda
14 is really just a report, or just to report back to you.

15 You were tentatively scheduled to vote on Application
16 16578 today, but the applicant withdrew its request, so
17 I just wanted to provide you with that information to
18 bring some closure.

19 CHAIRPERSON REID: In that particular one,
20 Ms. Pruitt, the hearing date, you said July 7th, it was
21 June 7th.

22 MS. PRUITT: June 7th, correct. And you
23 were slated to make a decision today, but they withdrew
24 the application, so just so you can close out the
25 records, or just --

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1 MR. SOCKWELL: It seems strange that they
2 withdrew the application because they were only being
3 requested to provide proof that the parking could not
4 work on their property. And that they could provide 18
5 spaces within a reasonable distance of their property.
6 There must have been some other very significant
7 underlying issues with that project.

8 CHAIRPERSON REID: All right, now, did you
9 -- did you call 16492? I don't know why I'm not --
10 which one was that? Was that the letter?

11 MS. PRUITT: Rock of Salvation. That was
12 the -- 16492 was the dismissal with the request for
13 refund.

14 CHAIRPERSON REID: Okay. The one -- the
15 one, okay. I see. I see that. That was the one that
16 --

17 PARTICIPANT: Holy Christian was heard.

18 CHAIRPERSON REID: we dismissed and didn't
19 give them their refund. Okay.

20 All right. Was that the last one?

21 MS. PRUITT: Correct.

22 CHAIRPERSON REID: We're finished? We
23 finished in an hour. That's great. Wow. This is
24 record-setting. Yes, okay. So then, I wish we could
25 start now. We have two hours now to start the one --

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1 we should start the afternoon session at 12.

2 MS. RENSHAW: But they won t be here until

3 --

4 CHAIRPERSON REID: No, I know. And we
5 can t. We can t, because, you know, the agenda, the
6 notice has been advertised for 1:00.

7 MR. SOCKWELL: Have we --

8 MS. RENSHAW: Adjourned?

9 MR. SOCKWELL: Adjourned?

10 CHAIRPERSON REID: No. We re just talking.
11 Okay, all right, then. That concludes the morning
12 session for the B.Z.A. meeting for July 5th. Thank you
13 very much.

14 (Whereupon, the Board of Zoning Adjustment
15 Public Meeting was concluded at 10:54 a.m.)
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