

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY

JANUARY 2, 2001

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

Sheri Pruitt,	Secretary, BZA
Beverly Bailey,	Office of Zoning
John Nyarku,	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein,	Esq.
Marie Samsone,	Esq.

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

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

(10:02 a.m.)

CHAIRPERSON REID: All right. This is January 2nd, year 2001. Happy New York. The first meeting of the Board of Zoning Adjustment. We'll now proceed with the meeting.

Ms. Pruitt.

MS. PRUITT: Good morning, Madame Chair.

The first item on your agenda today are the bench minutes for December 5th and December 19th. Board members present on the 5th were Reid, Sockwell, Renshaw, Mitten, and Holman, and on the 19th it was Reid, Sockwell, Renshaw, Hood, and Mitten.

CHAIRPERSON REID: Okay.

MS. PRUITT: Would you like to take them individually or as a group? I have a proxy from Ms. --

CHAIRPERSON REID: Wait one second please. Ms. Pruitt, on the minutes for the 5th, for the application for Fort Chaplin Clark, 166350, was not there on that particular hearing.

MS. PRUITT: Okay. We can correct that.

CHAIRPERSON REID: Okay. I want to look over it for one second to make sure.

Okay. Any other comments, corrections, additions, modifications?

(No response.)

CHAIRPERSON REID: Okay.

MS. PRUITT: Madame Chair, I do have from Ms.

1 Mitten on the December 19th meeting minutes, the last case on the
2 agenda, where it reads that the appellant alleges that the
3 construction of the garage and covered walk connection and
4 unauthorized commercial use does not conform, it was her
5 recollection that that was not the issue. The issue was --

6 CHAIRPERSON REID: I'm sorry. Which one? I'm not
7 looking at the page.

8 MS. PRUITT: On page 3.

9 CHAIRPERSON REID: Page 2 -- page 3 of?

10 MS. PRUITT: December 19th.

11 CHAIRPERSON REID: Okay.

12 MS. PRUITT: Starting at the second paragraph -- I
13 mean second line. Excuse me.

14 Ms. Mitten, that it wasn't an unauthorized
15 commercial use that was being appealed, but just strictly a
16 building permit so that "unauthorized use" should just be struck.

17 MS. RENSHAW: Ms. Pruitt, I thought that the
18 Appellant also had touched on unauthorized commercial use.

19 CHAIRPERSON REID: I thought so, too.

20 MS. PRUITT: Unfortunately, we're going to have to
21 do some research on that. I was not there at the hearing. So I
22 cannot speak --

23 CHAIRPERSON REID: Well, if I remember correctly --

24 MS. PRUITT: -- directly, but I can check the
25 transcript once it comes in.

1 CHAIRPERSON REID: Yeah. If I remember correctly,
2 that was one of the issues that was raised, and we went into a
3 discussion as to what is, quote, unquote, deemed commercial, and
4 this was an instance where I think this was the Applicant had a
5 home occupancy permit for -- no. Yeah, wasn't that the one that
6 had a home occupancy permit?

7 MS. PRUITT: Correct. That's my understanding,
8 that there was a home occupancy permit, and it was correctly
9 issued.

10 CHAIRPERSON REID: But it was something regarding
11 the regulations and what was and whether it was not deemed
12 commercial, and the aspect of the commercial use was addressed
13 that if they had a home occupancy permit.

14 Now, unauthorized commercial use, where did this
15 wording come from?

16 MS. PRUITT: I believe that's what staff found or,
17 rather, took notes.

18 CHAIRPERSON REID: Yeah, because what I'm saying is
19 I think we were trying to determine. It was alleged that the use
20 was commercial, that it would be used for commercial, but it was
21 not established that it was.

22 MS. RENSHAW: It's whether or not that permit
23 covers work in the garage because it's whether or not the garage
24 addition is attached to the house or a separate building and
25 whether or not that home occupancy permit covers him if he moves

1 his operation.

2 CHAIRPERSON REID: What did Ms. Mitten suggest, to
3 take out what?

4 MS. PRUITT: Just "an authorized commercial use."

5 CHAIRPERSON REID: And just make it --

6 MS. PRUITT: "Does not" --

7 CHAIRPERSON REID: -- "and the use"?

8 MS. PRUITT: No. Actually just take out "and use,"
9 so that it would read, "The Appellant alleges that the
10 construction of the garage and addition and covered connection
11 does not conform to the zoning regulation."

12 MS. RENSHAW: I would certainly check the record as
13 far as that unauthorized commercial use, whether or not it was
14 discussed.

15 MR. SOCKWELL: You might want to say "for an
16 unauthorized commercial use" rather than --

17 CHAIRPERSON REID: Well --

18 MR. SOCKWELL: -- because the idea was that it was
19 a two-story facility. The second floor was the studio, and the
20 first floor had this double garage door, drove through thing.

21 CHAIRPERSON REID: Well, couldn't you put
22 "unauthorized" -- in other words, we haven't established whether
23 or not the use was unauthorized or that it was commercial as
24 alleged.

25 MR. SOCKWELL: Right.

1 CHAIRPERSON REID: So maybe just what she said,
2 just "and use," and I would say "the use does not conform."

3 MR. SOCKWELL: Well, remember if the Appellant is
4 alleging that the construction of the garage addition and covered
5 walk did not conform to the zoning regulations --

6 CHAIRPERSON REID: Wait a minute, wait, wait, wait.
7 You're right. Appellant alleges that the -- okay. Then that's
8 okay. I'm sorry. When you started to read it, we didn't go all
9 the way back. That is the operative word there. So that's fine.

10 MS. PRUITT: But the corrections that Ms. Mitten
11 wanted are correct, are acceptable?

12 CHAIRPERSON REID: Well, she wanted to take out.

13 MS. PRUITT: Right.

14 CHAIRPERSON REID: Well, no. I would say not
15 because the alleged -- the alleging was germane to --

16 MS. PRUITT: The Appellant.

17 CHAIRPERSON REID: Yeah, the Appellant and the
18 unauthorized commercial use. That was something that they
19 alleged. Now, whether or not that's factual we have not
20 established.

21 MR. SOCKWELL: Maybe you just want to take out the
22 word "unauthorized."

23 CHAIRPERSON REID: But that's what they alleged.
24 That's what they are alleging.

25 MR. SOCKWELL: Right. I agree, but --

1 MR. MOULDEN: Take out the "unauthorized" because
2 the alleged assumes that --

3 MR. SOCKWELL: The alleged assumes that the
4 commercial use is unauthorized.

5 MR. MOULDEN: And it comes before the Board to
6 actually prove whether or not it is.

7 CHAIRPERSON REID: What should it be?

8 MR. MOULDEN: Take out the "unauthorized" because
9 the alleges --

10 MR. SOCKWELL: See, unauthorized is actually --

11 CHAIRPERSON REID: Okay.

12 MR. MOULDEN: Indicates that it's a possibility.

13 MR. SOCKWELL: And the Appellant is alleging that a
14 commercial use in this facility does not conform to the regs., but
15 we didn't say that the use was unauthorized.

16 CHAIRPERSON REID: All right. So Appellant alleges
17 that the garage and covered walk --

18 MR. SOCKWELL: And commercial use.

19 CHAIRPERSON REID: And commercial use does not
20 conform. Just take out the word "unauthorized."

21 MR. SOCKWELL: Yeah.

22 CHAIRPERSON REID: Okay. Is that what Ms. Mitten
23 had suggested or say both words?

24 MS. PRUITT: Both words.

25 CHAIRPERSON REID: Okay. Well, I would go with

1 what Moulden said. Just take out "unauthorized."

2 MR. MOULDEN: Yeah, because the "alleges" speaks
3 for the fact that it may or may not be. That's why it was before
4 the Board for us to determine.

5 CHAIRPERSON REID: Okay. Are you going to move,
6 make that motion with that amendment?

7 MS. PRUITT: He didn't actually sit on this. I
8 mean, he wasn't there.

9 CHAIRPERSON REID: Oh, he wasn't?

10 MS. PRUITT: He wasn't. So he's just giving
11 constructive comments.

12 CHAIRPERSON REID: Okay. Mr. Sockwell?

13 MR. SOCKWELL: Well, I move that we remove the word
14 "unauthorized" from Line 3, page 3, Paragraph 1 of the minutes of
15 the 19th.

16 CHAIRPERSON REID: Okay. Let's see. What else?
17 So then are you also moving approval of the other
18 minutes?

19 MR. SOCKWELL: Yes.

20 CHAIRPERSON REID: Okay.

21 MR. SOCKWELL: And with that I would also include
22 in the motion the approval of the bench minutes of December 5th
23 and the amended bench minutes of the December 19th meeting.

24 CHAIRPERSON REID: All in favor?

25 MS. PRUITT: Second? I need a second. We need a

1 second.

2 MS. RENSHAW: Second.

3 CHAIRPERSON REID: All in favor?

4 (Chorus of ayes.)

5 CHAIRPERSON REID: Opposed?

6 (No response.)

7 MS. PRUITT: Staff would record the vote as four to
8 zero to approve, motion made by Mr. Sockwell, seconded by Ms.
9 Renshaw, Ms. Reid voting and Carol Mitten by proxy.

10 The second item on your agenda are cases to be
11 decided. The first case is Application 16521 of Charles Sission,
12 pursuant to 11 DCMR 3103.2, for a variance from the front yard
13 setback requirements under Subsection 1543.4 and from 1543.2, from
14 the allowable percentage of lot occupancy of a dwelling for
15 construction of a front porch, rear addition, and accessory garage
16 in the Wesley Heights Overlay District, R-1, at 3020 43rd Street,
17 N.W., Square 1621, Lot 70.

18 There were several hearings on this particular
19 case. The first was December 8th in 1999 and then May 3, 16th and
20 24 of this year, and October 17th, as well as December 5th.

21 Board members present were Ms. Reid, Sockwell,
22 Renshaw, and Mr. Holman.

23 The Board deferred the decision to dismiss this
24 case, a motion to dismiss this case until now. So you have that,
25 along with the case, to be decided.

1 CHAIRPERSON REID: Okay. Board members, let's look
2 at the request for dismissal. I think that in this instance, the
3 aspect of the dismissal was based primarily on the status of the
4 permits that had been issued.

5 And, now, subsequent to the motion to dismiss being
6 proffered to us, we determined we had new information as regards
7 to the permit, and I think that the Applicant presented to us at
8 one of these hearings -- I don't know which one now -- a permit
9 that basically covered many of the things that were questionable
10 in this particular dismissal that is open for discussion.

11 Board members?

12 MR. SOCKWELL: Madame Chair, just basically the
13 remedial permit that was issued to Mr. Sission, which I think was
14 dated September 11th or something like that, October 11th of '99,
15 left -- I mean 2000 -- left merely one element for our discussion
16 and deliberation, and that was the acceptability of the roof,
17 which was placed upon the front porch, that roof which created a
18 nonconforming addition to the front of the house.

19 And we heard testimony that spoke to the issues
20 with regard to that construction, and I personally have trouble
21 with the issue of the porch and the way the various permits were
22 issued, in the first place.

23 While I did not, in particular, have a feeling that
24 a roof porch would be less attractive from that standpoint than an
25 unroofed deck; the issue is whether or not the roof should be --

1 CHAIRPERSON REID: But first we have two votes,
2 first on the dismissal and then on the actual case.

3 MR. SOCKWELL: Well, on the dismissal part of it,
4 if we're talking strictly about the dismissal.

5 CHAIRPERSON REID: Un-huh, right now.

6 MR. SOCKWELL: From my understanding, I don't see a
7 reason to dismiss the case for the reasons that were requested.

8 CHAIRPERSON REID: All right. Ms. Renshaw, did you
9 have any comments?

10 MS. RENSHAW: No further comments save that on the
11 dismissal issue I don't see a reason to dismiss. I would like to
12 urge that we expedite this and vote on this motion to dismiss, and
13 I move that we put this on the table immediately.

14 CHAIRPERSON REID: Are you moving that we -- what's
15 your motion?

16 MS. RENSHAW: My motion is that we refuse the or
17 set aside the motion to dismiss.

18 CHAIRPERSON REID: Deny the motion, deny the
19 motion.

20 MS. RENSHAW: Deny the motion to dismiss.

21 CHAIRPERSON REID: Okay. All right. A second?

22 MS. RENSHAW: I will second.

23 CHAIRPERSON REID: Okay. A second.

24 All in favor?

25 (Chorus of ayes.)

1 CHAIRPERSON REID: Opposed?

2 (No response.)

3 MS. PRUITT: Staff would record the vote as three
4 to zero to dismiss, motion made by Ms. Renshaw, seconded by Mr.
5 Sockwell.

6 CHAIRPERSON REID: Okay. Now --

7 MS. PRUITT: Next item?

8 CHAIRPERSON REID: I'm sorry?

9 MS. PRUITT: I'm sorry.

10 CHAIRPERSON REID: You were saying?

11 MS. PRUITT: Go forward. Excuse me. You still
12 have to vote on this case.

13 CHAIRPERSON REID: That's on this dismissal.

14 MS. PRUITT: Correct.

15 CHAIRPERSON REID: On the actual application
16 itself, as it pertains to the variance and the variance basically
17 now dwells with the occupancy for a dwelling for the construction
18 of a front porch, rear addition, and accessory garage, discussion?

19 Now, Mr. Sockwell, you were expounding on the case.

20 MR. SOCKWELL: Well, just with regard to the issues
21 that remain, with the only issue that remains, which is the issue
22 of the porch, roof porch. I have trouble with the way this all
23 came about, and I do feel that it is an unfair imposition on us to
24 leave in place the roof on that porch.

25 CHAIRPERSON REID: Is that all you have to say?

1 MR. SOCKWELL: At the moment, yes.

2 CHAIRPERSON REID: Okay. Ms. Renshaw?

3 MS. RENSHAW: Well, in reading through this
4 voluminous amount of material, and especially Ms. Creary's
5 material that she has presented to the Board, and reflecting on
6 the fact that we are down to one issue now, which is the removal
7 of the roof over the front porch, which in the permit dated
8 10/11/2000, that is what the permit stated.

9 I would agree that the roof over the front porch
10 should be removed. I am alarmed that this case has gotten to the
11 point that it's gotten. I am sorry that Mr. Sission has what I
12 feel trespassed on the Wesley Heights Overlay, which is in place
13 for a reason.

14 And I believe that anyone who lives within that
15 district certainly knows the rules, the ground rules of that
16 overlay, and I do not feel that we should be promoting a variance
17 to allow that roof to continue to be a part of that house.

18 CHAIRPERSON REID: Let me see a copy of the permit.

19 I don't have mine.

20 MR. BERGSTEIN: Madame Chairman, I think that in
21 the course of your discussion, at least for those of us who may
22 have the write a decision or draft for you, that you go through
23 the framework of the variance analysis, discussing the issues of
24 the uniqueness of the property, practical difficulties, since this
25 is an area variance, and the zoning regulation issues, so that the

1 actual tests that the Applicant must meet for an area variance are
2 discussed as part of your vote.

3 CHAIRPERSON REID: Okay. Just one second.

4 (Pause in proceedings.)

5 CHAIRPERSON REID: This case has been around for
6 quite some time, and I just had to kind of get an updating on some
7 of the aspects of it, and it's rather confusing because there have
8 been so many gyrations of it.

9 And I remember that Mr. Gilreath was the one who
10 had told the Applicant or we turned it down, and then for him to
11 go back through the process, and then to come back for a variance
12 to try to address this problem more efficiently, which is what we
13 have before us.

14 Now, if I remember correctly, with these permits
15 that were issued, there was a sequence of various mishaps along
16 the way with the D.C. government, DCRA having issued the permits
17 incorrectly in that they were fraught with errors, as I remember.

18 And one of them did not have the arts overlay, the Willie Heights
19 Overlay on the permit, and it just had a lot of errors on it.

20 And then the Applicant went around and around and
21 around and around, which at one point I think resulted in him
22 going to the Director and talking to the Director and the Director
23 gave a directive for the permits to be issued in a certain way or
24 -- I can't remember -- a stop order be lifted or something, and
25 that was done.

1 And going on those directions, the applicant
2 proceeded. Then there was a time element as to when the work
3 started and when there was an objection registered by the
4 neighbor, and then there were remedial permits to correct what
5 wasn't supposed to be done in the first place, and then these
6 remedial things came out.

7 And then after having gone through all of this
8 hullabaloo, we come here today to determine whether or not we
9 should give a variance based upon a variance of the zoning
10 regulations to allow the application to go forward or to approve
11 the application.

12 Okay. Now, where I am still grappling with, and I
13 just talked to Mr. Sockwell about it, was the nature of the
14 permit, that the permit that was issued was to remove the roof,
15 but the variance is for us to allow the roof to stay there.

16 Now, I am of the opinion that citizens who come to
17 governmental entities and become involved with a lot of
18 bureaucratic red tape based upon whatever misunderstanding or
19 incompetencies, what have you, that are a result of governmental
20 and for lack of a better word I'll say "incorrectness" to have to
21 basically be the recipient of that, and then to have to try to
22 correct it and then to have to go through even more red tape and
23 then to come here and then to try to address it further because
24 you go from this department to that department. You know, one
25 hand doesn't know what the other hand is doing, it gets to be

1 rather convoluted.

2 Nonetheless, I feel that I have not been convinced
3 even that the roof being there is not detrimental. I've not been
4 convinced that it's detrimental to the community. I'm not
5 convinced that there is an adverse impact.

6 It seems to me that there was an issue regarding an
7 easement, and that it was at first believed that the easement --
8 that the property encroached -- that the addition encroached on
9 the easement.

10 But then it was determined that the easement was a
11 different kind of easement, that it was -- can you help me with
12 this, Mr. Sockwell? That easement --

13 MS. PRUITT: Madame Chair.

14 CHAIRPERSON REID: Yes.

15 MS. PRUITT: My understanding or my recollection,
16 because you're right; it's been a lot of hearings.

17 CHAIRPERSON REID: Right.

18 MS. PRUITT: The easement deals with the property
19 in the back of the house.

20 CHAIRPERSON REID: With the rear of the house.

21 MS. PRUITT: With the garage.

22 CHAIRPERSON REID: Right.

23 MS. RENSHAW: Which we're not.

24 MS. PRUITT: But we're not. Exactly. So it didn't

25 --

1 CHAIRPERSON REID: No, but that was part of it. I
2 was just trying to in my mind's eye go through some of the aspects
3 of it, and we found that the easement part was --

4 MS. PRUITT: But that's not before the Board at
5 all.

6 CHAIRPERSON REID: Okay. That's right. I forgot.
7 That's --

8 MS. PRUITT: The only thing you're really looking
9 at is the porch.

10 CHAIRPERSON REID: I'm sorry. I'm sorry. You're
11 right. You're right. You're right.

12 MS. PRUITT: It is very --

13 CHAIRPERSON REID: Yeah, okay. Back to the porch.

14 MS. PRUITT: So if you could just go through
15 whether or not the porch --

16 CHAIRPERSON REID: Now, the porch itself. Okay.
17 Here's what we have to look at. One, in this area variance,
18 whether or not there is something unique and unusual about this
19 particular property that would cause a practical difficulty to
20 comply with the existing zoning regulations, and when you apply
21 the three-prong test, I think that it was determined obviously
22 that -- and I'm going to have to try to think if it weren't there,
23 right?

24 MS. PRUITT: Yes. Correct.

25 CHAIRPERSON REID: So this is -- please.

1 MR. SOCKWELL: Madame Chair, while you look at
2 that, there are other issues that actually bear upon this, one of
3 which was the fact that in the prehearing statement of the
4 Applicant prior to the May 3rd, 2000 meeting, the front porch was
5 stated on page 9 as an existing porch with the exception of the
6 roof. It was later stated by the adjacent neighbor, Ms. Creary,
7 that in reality the existing front porch was a much smaller porch
8 and that the construction for which we are looking to determine
9 the applicability of a variance to is really a new porch with roof
10 that was constructed with building permits that did not specify
11 exactly what the construction was.

12 The permit that was issued for a roof originally
13 did not express that the porch was a new porch. We're dealing
14 with a number of issues that have, as far as I'm concerned, to do
15 with the accuracy of documentation and filings, the propriety of
16 the representation before us, and whether or not we're really
17 looking at a roof as was described in the documentation that we
18 were submitted by the Applicant, and whether we're looking at a
19 roof over a large porch that really shouldn't be there in the
20 first place.

21 It would be one thing if we are looking at a roof
22 over an existing small porch as a variance. It's another thing to
23 legitimize the construction of a very large porch by approving a
24 variance for a roof for that porch

25 CHAIRPERSON REID: Well, wait a minute.

1 MR. SOCKWELL: And the issue is this.

2 CHAIRPERSON REID: But before you --

3 MR. SOCKWELL: Yes, we're looking at a roof, but
4 it's the animal upon which the roof is located --

5 CHAIRPERSON REID: Okay, but I thought --

6 MR. SOCKWELL: -- that determines for me whether or
7 not the roof is a valid variance request.

8 CHAIRPERSON REID: Okay, but --

9 MR. SOCKWELL: Because the hardship would have been
10 different had the porch been the existing porch.

11 CHAIRPERSON REID: Okay. Well, this is what I find
12 confusing, Mr. Sockwell. The porch itself has a legitimate permit
13 now. So we're not dealing with legitimacy of the porch per se; is
14 that not correct?

15 MR. SOCKWELL: It depends upon how one reads the
16 record. The record could be construed by the documents to have
17 legitimized the porch by the remedial permit that was issued in
18 October having --

19 CHAIRPERSON REID: But what if that's been done.
20 We have to accept that, don't we?

21 MR. SOCKWELL: Well, we can or we can't. We do or
22 we don't. I mean as far as I'm concerned, the paper work may
23 appear to be in order, but the construction for which the paper
24 work represents the applications to the government and approvals
25 by the government may not be in order.

1 CHAIRPERSON REID: Okay, but they told us that we
2 were only to deal with the variance before us and not the other
3 things which now have been legitimized by permit.

4 MR. SOCKWELL: Right.

5 CHAIRPERSON REID: Now, let me ask you a question,
6 Ms. Samsone. If, in fact, there's a permit issued for a structure
7 for which -- what I'm grappling with is the roof. Okay? The roof
8 has to go on something. Okay. If there was no permit for the
9 roof, then there would be not a problem.

10 MR. SOCKWELL: Right.

11 CHAIRPERSON REID: But if there's a permit for the
12 roof, do we look at it -- for the porch, do we look at it as if it
13 weren't there, as we do with some of these types of cases or if
14 the permit has legitimized it, do we now look at the porch itself
15 as a part of the structure being legitimate?

16 MS. SAMSONE: Well, Madame Chair, let me just back
17 up. In answering your question, let me just back up a little.
18 Sine this is a variance case, we do, as you said, had to look at
19 is this property unique or unusual or is there something
20 exceptional, and then would that give rise to practical
21 difficulties.

22 Now, what Mr. Sockwell's discussion would suggest
23 is that the history of this property and the way it was
24 constructed, the previous permits would not supply the exceptional
25 circumstances. That was one of the Applicant's original arguments

1 in his application, was that the way in which the porch came to be
2 could be considered as supplying a basis for finding the property
3 unusual.

4 So Mr. Sockwell has advanced an argument that he
5 does not believe that is a legitimate basis for finding a
6 practical difficulty.

7 CHAIRPERSON REID: That's my question. How do we
8 assess this if, in fact, notwithstanding how it got to be there,
9 okay, once the government has legitimized it; then do we look at
10 it as, you know -- do we look at it as being there or not being
11 there? Do you see where I'm going with this?

12 Because typically if, in fact, there is a situation
13 where an applicant comes before us to get a variance for something
14 that's already there, we have to look at it as if it's not there
15 and it does not have a permit usually.

16 But in this instance, this is something that has
17 been legitimized by the government, and so do we look at it as
18 it's there because it has a permit?

19 MR. SOCKWELL: While you're thinking about that,
20 Ms. Samson, let me say this. Remember that with the remedial
21 permit, the porch itself becomes a deck because the remedial
22 permit was issued to right a wrong, and that is that a covered
23 structure was built that did not meet the requirements of zoning;
24 that the remedial permit takes away the violation by specifying
25 the removal of the roof. The Applicant is here before us to get a

1 variance that will allow the roof to stay and, therefore, would
2 nullify the permit to remove the roof.

3 CHAIRPERSON REID: See, that's what's bothering me,
4 Mr. Sockwell, because -- and in approaching this particular case,
5 it is highly irregular in how we have to look at it because here
6 we have a situation where you're saying, if I understand you
7 correctly, that even though there's a permit in effect for the
8 porch, it is only basically through the variance that the porch is
9 really legitimized because other than that it would be a deck,
10 right?

11 MR. SOCKWELL: With a certain limitation, yes. The
12 problem is that I don't believe that anywhere in the record there
13 is a permit for the porch. I believe that the porch has been
14 construed as existing, and that the roof has been construed as
15 new.

16 CHAIRPERSON REID: No, no, no, no, no, no. This is
17 where we were before.

18 MR. SOCKWELL: Yeah, but let me finish.

19 CHAIRPERSON REID: Okay.

20 MR. SOCKWELL: The issues are more cloudy. It's a
21 little bit more unique situation than we normally have because we
22 usually have an existing structure that has been built illegally,
23 and we have or the owner and applicant has been cited for the
24 illegal construction, prompting the owner to approach the Board
25 for relief.

1 With that relief, the nonconforming or illegal
2 structure will either be legitimized or by our actions we may
3 allow modification that will solve the problem or we could deny
4 and leave the resolution to DCRA through their police powers.

5 Now, in this situation, the porch was initially
6 construed as existing. The roof, by the way the permits state, is
7 considered as new and not legal, and the permit which, in fact,
8 was the remedial permit with regard to the roof actually never
9 spoke to the porch itself at all.

10 CHAIRPERSON REID: Let me see that. Let me see it
11 again. Ms. Renshaw --

12 MR. SOCKWELL: So the issue of hardship, I think,
13 would be based upon the fact that if we were looking at the
14 original porch as an existing situation which had been modified by
15 an illegal roof, then there might be a different hardship to be
16 assessed than the hardship imposed upon a much larger porch or
17 deck, as it might be called, without a roof or much larger
18 structure that, in fact, is in itself a major construction
19 improvement to the house.

20 Therefore, where is the hardship? The hardship is
21 in how we construe the impact on the owner, and the hardship to me
22 of owning a much larger, more functional deck than was original is
23 not the same as the hardship of owning a little porch that you put
24 a roof on that you didn't get a permit for because the issues have
25 been clouded by the fact that this appears really not to be the

1 same porch that would have been an existing porch if the permits
2 and everything else really lined up.

3 But there's a hole in the process, and the hole is
4 that the porch appears and certainly from testimony is not the
5 original porch, although no permit representing the issue of the
6 porch has been issued, except the remedial permit that requires
7 the removal of the roof.

8 The porch has always been an invisible item that
9 was part of construction going on with the house, but never was
10 specified within any of the permits as being part of the
11 construction, but the way the city has handled it, they have left
12 us with a roof on a porch. The reality is that we have been left
13 with a big porch as opposed to the porch that we should really be
14 looking at.

15 But it's the city's responsibility to issue the
16 proper permits and to review the drawings and the construction,
17 and at this point I believe that the word "hardship" could be
18 applied only if we were looking at the original, much smaller
19 porch.

20 I mean if you have a wading pool, and you want a
21 hardship to allow -- you say you need to cover it from the sun,
22 and that's your legal pool, that's fine. I might consider that
23 more simply than if you have a huge swimming pool that you built
24 that nobody really knows is there because it's supposed to be a
25 wading pool, and you want a roof on it, and you're telling me that

1 you have hardship, but there's somewhere a hole in the process
2 that lets me know that this pool really shouldn't be this big
3 pool. It should be a wading pool.

4 And I'm saying that the word "hardship" cannot be
5 applied equally to this condition and the previous condition which
6 has been changed.

7 CHAIRPERSON REID: Well, Mr. Sockwell --

8 MR. SOCKWELL: And it leaves the word "hardship,"
9 and what is hardship?

10 CHAIRPERSON REID: Well, first of all, remember now
11 --

12 MR. SOCKWELL: In this case.

13 CHAIRPERSON REID: Yeah. Remember how a use
14 variance is the variance that pertains to hardship. Area variance
15 is a practical difficulty.

16 MR. SOCKWELL: Well, a practical difficulty
17 negative impacts what --

18 CHAIRPERSON REID: Yeah, practical difficulty is a
19 little earlier than that hardship because use variance is a more
20 difficult burden. However, what I'm trying to look for is the
21 aspect of fairness.

22 MR. SOCKWELL: So am I.

23 CHAIRPERSON REID: Yeah. If, in fact, this larger
24 porch has been -- did you just say that there was no permit for
25 the larger porch?

1 MS. RENSHAW: We can't fine it.

2 MR. SOCKWELL: We have not seen --

3 CHAIRPERSON REID: Because I thought that that was
4 -- I thought the whole thing seemed like it emanated from the fact
5 that, one, there was a permit for a roof over a porch that wasn't
6 there or something like that. There was something backwards about
7 the permitting process, and then they had to go back and correct
8 it.

9 MS. RENSHAW: There was a permit dated 10/5/98 to
10 build a new porch roof as per plans.

11 CHAIRPERSON REID: Okay, but in order to have --

12 MS. RENSHAW: Which stated also on the permit
13 "porch in place," period.

14 MR. SOCKWELL: Existing.

15 CHAIRPERSON REID: Oh, okay. All right. Now, stop
16 right there. But there wasn't.

17 MR. SOCKWELL: There was, but it wasn't what we are
18 looking at.

19 MS. RENSHAW: It was oversized.

20 MR. SOCKWELL: Yeah, it wasn't --

21 MS. RENSHAW: It was an oversized porch. Moreover,
22 it trespassed on --

23 CHAIRPERSON REID: Which porch?

24 MS. RENSHAW: -- the requirements of the Wesley
25 Heights Overlay.

1 CHAIRPERSON REID: Okay. Which porch was the
2 oversized porch? Was that the one that was on the first permit
3 for the roof?

4 MR. SOCKWELL: When the roof permit was issued, it
5 was issued as a roof over an existing porch. The existing porch
6 that was roofed over was not left entirely its original size. It
7 was expanded, and the roof was built to cover the entire porch,
8 which was --

9 CHAIRPERSON REID: Which was expanded without the
10 permit.

11 MR. SOCKWELL: Yeah. The porch was expanded as the
12 roof was built. There is no documentation in DCRA's permit record
13 submitted to us anyway that speaks to the fact that the porch that
14 received the roof permit isn't the porch that was originally there
15 or shall we say that the completed construction -- there's nothing
16 that says it's completed construction included enlarging the
17 porch.

18 But it has been testified to that the porch that
19 exists today that is roofed over is much larger than the original
20 porch prior to the construction.

21 CHAIRPERSON REID: Okay. Now, isn't this why we
22 asked for the survey?

23 MR. SOCKWELL: Well, what we got --

24 CHAIRPERSON REID: To show us dimensions and all of
25 that?

1 MR. SOCKWELL: Yeah. What we got deals only with
2 the existing condition as has been brought before the Board, but
3 what it doesn't do is explain the dimensional differences between
4 the original porch and the new porch because the original porch
5 has never been shown to us. The only porch that we've seen is the
6 porch that we're dealing with, and the issue that I'm raising
7 which is a little bit difficult without a certain amount of
8 evidence other than testimony from Ms. Creary's side -- the thing
9 is that what we don't have is something that shows the original
10 porch before any construction took place.

11 But we do know that there is a large roof over a
12 large porch which even in its dimensions and shape tends not to --
13 it doesn't appear to be the type of configuration that would have
14 existed on the house before, but here, again, we don't have proof
15 one way or the other. We have testimony. We don't have
16 documentation to support the testimony.

17 But we don't have testimony to refute Ms. Creary's
18 testimony either.

19 CHAIRPERSON REID: Okay. Now, then my other
20 question, Mr. Sockwell, is in regard to lot occupancy, once the
21 roof is there, once the porch is there --

22 MR. SOCKWELL: Without a roof, there is no lot
23 occupancy issue because the height of the porch does not exceed
24 four feet above grade.

25 CHAIRPERSON REID: Okay, okay.

1 MR. SOCKWELL: With the roof, the porch becomes the

2 --

3 CHAIRPERSON REID: That's where it kicks in.

4 MR. SOCKWELL: -- issue. Unfortunately, the issue
5 of the existence of the porch as it appears in our documentation
6 is something that is just slightly outside of what we can deal
7 with, and therefore, what I'm saying is that, in brief, we have a
8 big porch where we should have had a little porch. We have a roof
9 over a big porch, and the question is: since we have no control
10 over the porch itself, do we exercise our powers to grant relief
11 for the roof which will, in effect, legitimize a construction that
12 far exceeded what should have existed there and what should exist
13 there today?

14 CHAIRPERSON REID: Okay. Then maybe we can take
15 this approach, Mr. Sockwell and Ms. Renshaw. Mr. Bergstein has
16 suggested to us why don't we just apply the regulation. Let's
17 apply the test, and just notwithstanding these other things, let's
18 look at it and see, number one, if, in fact -- and, Ms. Samsone,
19 the answer to the question about whether or not we look at this if
20 it has a permit -- well, see, that's why I'm confused because Mr.
21 Sockwell says there's no permit for the porch, for the larger
22 porch.

23 MS. SAMSONE: Madame Chair, I think for purposes of
24 applying the test, I'm not sure it really makes a difference. The
25 discussion of the permit, which Mr. Sockwell has articulated very

1 clearly, goes to the issue of the practical difficulty. Is there
2 a legitimate practical difficulty?

3 But it doesn't really affect the -- the first
4 question is: is the property unique? It doesn't really impact on
5 the uniqueness of the property.

6 CHAIRPERSON REID: Well, I mean -- what did you
7 say? It does not?

8 The existence of the -- well, my thinking was if,
9 in fact, the porch wasn't there, the configuration either looking
10 at the aspect of it being something inherent in the land itself
11 may have an impact on whether or not the configuration is unique,
12 as if it wasn't there; that's what I was thinking, or does that
13 matter?

14 MS. SAMSONE: Well, following along Mr. Sockwell's
15 analysis, he is suggesting that because of the way in which it
16 came to be there, it should not be counted in treating this as a
17 unique property; that the circumstances of the permitting history,
18 the fact that there doesn't appear to be a permit that authorizes
19 construction of this new porch; that that should not then be used
20 to provide a basis for granting the variance, for finding that the
21 three elements are met.

22 So I think the answer to your question is no, that
23 the Board should look at this property as though the porch were
24 not there and consider, you know, is the property unique or
25 exceptional. Is there a practical difficulty? Is there

1 impairment of the zoning regulations? Is there substantial
2 detriment to the public?

3 CHAIRPERSON REID: Okay.

4 MR. BERGSTEIN: Madame Chair, could I just jump in
5 for a second?

6 CHAIRPERSON REID: Yes.

7 MR. BERGSTEIN: You could have a scenario, I
8 believe, where the porch in another application would not have
9 been here. For example, the porch assume for a moment is matter
10 of right construction. You can have a person who wanted to build
11 a very large porch with a very large roof, and who would come to
12 the Board and self-certify a variance for the roof before they
13 even submitted the plans for the porch because they would first
14 need to get the relief that was required because they wanted to
15 build a large roof.

16 CHAIRPERSON REID: And that would exceed the matter
17 of right.

18 MR. BERGSTEIN: Right. Because if someone went to
19 build a porch like this with no roof, that would be matter of
20 right, and they would never have to come here. I'm assuming
21 that's true.

22 CHAIRPERSON REID: Okay.

23 MR. BERGSTEIN: If somebody before they built
24 anything wanted to build a large porch with a large roof, they
25 could under our rules without even applying for the building

1 permit for the porch itself seek the variance they would need for
2 the roof itself.

3 CHAIRPERSON REID: Oh, okay.

4 MR. BERGSTEIN: And you would be required under
5 those circumstances to judge whether or not the relief should be
6 granted based upon the test which you have and, therefore, whether
7 or not the porch was or was not built or was or was not approved,
8 and those circumstances would have no relevance because you're
9 permitted to self-certify to the Board now without going through
10 the referral process.

11 So as you think about this, you should understand
12 that you could have a scenario before you where you'd have these
13 exact same circumstances in terms of dimension, but you would have
14 no roof -- I'm sorry -- no porch, but you would have a self-
15 certification for zoning relief, and then would your analysis be
16 different?

17 I think, therefore, that whether or not a porch
18 does or does not exist, was or was not applied for may not have
19 any relevance because, again, your rules allow for a person to
20 seek self-certification on the zoning relief alone, and in those
21 circumstances you would be required to assume they probably would
22 get the permit for the porch because it's a matter of right.

23 But then the question is: should they get that
24 zoning relief that's required because they're adding a porch to
25 the structure.

1 CHAIRPERSON REID: Thank you.

2 That really helps me a lot because I was trying to
3 -- I was grappling with, you know, the permit for the roof or
4 applying for a permit for the roof before constructing the porch,
5 and that kind of clarified things for me. Thank you.

6 Good. Ms. Renshaw.

7 MS. RENSHAW: Yes. I wanted to ask Mr. Bergstein
8 about this business of a porch being a matter of right. When the
9 porch in this case seems to step on the Wesley Heights Overlay
10 District, in other words, that that is more restrictive than the
11 R-1-A zoning, and we have it in our record that the front yard
12 requirement is not a requirement under R-1-A. Rather, it's a
13 special requirement of the Wesley Heights Overlay.

14 And if, indeed, that porch extends into the front
15 yard by several feet more than is allowed, I would like to hear
16 your thought about that.

17 MR. BERGSTEIN: Ms. Samsone will address that.

18 MS. SAMSONE: Yes, Ms. Renshaw. I believe, I mean,
19 you're correct. The variances that are requested here are from
20 the Wesley Heights Overlay district requirements, and they have
21 more stringent requirements for porches, but I think Mr.
22 Bergstein's analysis is still correct. It's just that the
23 Applicant is here asking for that relief.

24 And what's driving this is it's the roof that's
25 adding to the lot occupancy under the regulations.

1 CHAIRPERSON REID: Okay. Just one second.

2 MS. RENSHAW: But, therefore, we are not really
3 sure that that porch is matter of right if, indeed, it exceeds the
4 Wesley Heights Overlay District requirements.

5 MR. BERGSTEIN: Well, what I -- maybe you ought to
6 add more technically to this than I would, but if you have a
7 variance for one thing and there is another structure that's also
8 going to be required to support that structure, your variance for
9 the one structure does not necessarily grant the total relief
10 unless it's requested, and if there was another part of this
11 property that required separate relief, if that was true for the
12 porch, your variance here, if you granted it, unless it's
13 expressly stated in the application, would not also grant the
14 variance for the underlying structure, nor would I think you'd be
15 required to grant that relief if it came to you subsequently
16 unless the factors were identical, and I don't know if that's
17 true.

18 But in order to build a structure, you might need
19 several forms of zoning relief. If one type of relief is sought
20 and not the others, that doesn't mean that you have by virtue of
21 granting that one zoning relief allowed the Zoning Administrator
22 to grant all the others that might be necessitated just as a
23 matter of engineering.

24 So that's how I would look at it, that each relief
25 comes to you separately as the choice of the applicant or the

1 decision of the Zoning Administrator in terms of how it's
2 referred, but the fact that when you're looking at a project and
3 you see that there might be other types of zoning relief that
4 might be necessary, the fact that you've granted one doesn't mean
5 that all others would follow from that because each request for
6 zoning relief has to be adjudged separately based upon the factors
7 that are presented as you judge it against the applicable law.

8 MS. SAMSONE: Although let me just add to that. In
9 this case, when it was initiated, the Zoning Administrator had
10 prepared a memorandum identifying the two parts of the regulation
11 that he believed variance relief were necessary from.

12 And those would be the two regulations that are
13 before the Board. One is the lot occupancy, and then the other is
14 the front yard setback.

15 Subsequently there was a survey, and then after the
16 survey, there was even the October 1st so-called remedial building
17 permit. So presumably the Zoning Administrator did not change his
18 mind and identify different or additional types of relief because
19 all we have is the original memorandum identifying the two, the
20 front yard setback and the lot occupancy.

21 So without anything further from the Zoning
22 Administrator, those are the two items before the Board.

23 CHAIRPERSON REID: Okay. All right. Then applying
24 the test and looking at the property, can we establish whether or
25 not the property is unique?

1 Now, from looking on the map, it appears that --

2 (The Board conferred.)

3 CHAIRPERSON REID: Just a moment.

4 (The Board conferred.)

5 MS. PRUITT: Excuse me, Madame Chair. Would you
6 like to adjourn for a child and go into --

7 CHAIRPERSON REID: No.

8 MS. PRUITT: Okay.

9 CHAIRPERSON REID: We're okay. Thanks.

10 (The Board conferred.)

11 CHAIRPERSON REID: We'll take a five-minute recess.

12 (Whereupon, the foregoing matter went off the
13 record at 11:05 a.m. and went back on the record at
14 12:07 a.m.)

15 CHAIRPERSON REID: All right. Now, sorry that this
16 took so long. However, as you can appreciate, the Board has been
17 given a case that is extremely complicated, and as such, we did
18 not want to inadvertently make the wrong decision predicated upon
19 us not having looked at every nook and cranny of this particular
20 case.

21 And there were some questions that we had that we
22 were trying to get resolved as to the procedure, DCRA, and as to
23 the request that is being -- the relief that's being requested,
24 and if in fact what is before us is sufficient for us to be able
25 to make the decision that we need to make today.

1 And after having a little side bar discussion, we
2 determined that there are still some questions that are glaring to
3 us, and in order for us to make a decision that would be fair to
4 all parties concerned, such as the issue of the front porch and
5 whether or not there was, whether or not there should be a permit
6 for the front porch, or if, in fact, there is additional zoning
7 relief that would be necessary for the front porch, but then allow
8 us to make a decision as to the roof because there are two schools
9 of thought, that a roof can be applied for without a permit or the
10 zoning relief for a porch in certain circumstances.

11 And then, on the other hand, for our edification,
12 it appears that this Board would feel more comfortable with having
13 the Zoning Administrator make a determination as to whether or not
14 there is relief required for the porch prior to us making a
15 decision as to whether or not we can grant a variance for the roof
16 to cover this said porch, if that makes any sense. I hope you
17 followed that.

18 Comments, other Board members?

19 MR. SOCKWELL: Yes, Madame Chair. I believe that
20 the existence of the Wesley Heights Overlay District and its
21 restrictions that could apply to porches and other structures in
22 front yard would, in fact, apply to this porch if, in fact, this
23 porch is a new construction as opposed to an existing one, and it
24 would apply in a different way than for either case.

25 The roof itself being requested for the porch is,

1 therefore either an extension of a nonconforming element or it's
2 an extension itself as a change to a conforming element.

3 So we need some information from the Zoning
4 Administrator, and we need to see any evidence of the existence of
5 a building permit that allowed the porch that we have been
6 reviewing to be constructed if, in fact, it is not the existing
7 porch of the existing house, and if, in fact, it was constructed
8 in the same time period as other modifications to the existing
9 structure.

10 Then the permit which was the remedial permit that
11 was issued for the removal of a roof would then, in fact, be
12 either the removal of a roof of the existing porch or would become
13 the removal of a roof for a porch that was built without a permit
14 or if a permit becomes issued, then the entire construction
15 becomes a single element to be ruled upon.

16 MS. RENSHAW: Madame Chair, I would like to request
17 that in our communicate with the Zoning Administrator that we ask
18 the Zoning Administrator to reflect on the Wesley Heights Overlay
19 in regard to the porch and the projection of the porch and also
20 the projection of the roof so that we can reflect in an open
21 session on the Wesley Heights requirements as it refers back to
22 this case.

23 It's very important that we not set a new precedent
24 here by stepping on the Wesley Heights Overlay requirements as
25 they are now set down.

1 MR. SOCKWELL: If I might add, we would want or I
2 would want the Zoning Administrator to give us a set of
3 measurements and calculations of the specific relief required if
4 the porch, in fact, needs relief from the Wesley Heights Overlay
5 District requirements for front yard setbacks and a clear
6 calculation of the area of the porch.

7 CHAIRPERSON REID: Okay. Now, do we need to do
8 some form of a motion?

9 Okay. I would move that we remand the or request
10 from the Zoning Administrator further clarification as to the
11 zoning relief that would be required, if necessary, for the porch,
12 as well as the measurements as Mr. Sockwell indicated, another
13 survey that would reflect exactly what we're dealing with, and
14 also the information that has been requested by Ms. Renshaw in
15 regard to -- can you reiterate that briefly?

16 MS. PRUITT: Wesley Heights Overlay.

17 MS. RENSHAW: The Wesley Heights Overlay.

18 CHAIRPERSON REID: Okay, all right. Is there a
19 second?

20 MR. SOCKWELL: Second.

21 CHAIRPERSON REID: Okay. All in favor?

22 (Chorus of ayes.)

23 MS. PRUITT: Staff would record the vote as three
24 to zero to send a letter requesting some additional information
25 from the ZA, and to defer the decision on this case until that

1 information has come in.

2 CHAIRPERSON REID: Right, and then at that time,
3 predicated upon what we get from the Zoning Administrator, we will
4 then --

5 MS. PRUITT: Determine if you need additional
6 hearing.

7 CHAIRPERSON REID: Exactly, on that particular
8 issue.

9 And we would like to request, Ms. Pruitt, that if,
10 in fact, there is an additional hearing set or hearing date set
11 for the porch variance, relief for the porch, then it be scheduled
12 on the same day as the hearing -- the appeal that is germane to
13 this particular case.

14 MS. PRUITT: Okay.

15 CHAIRPERSON REID: As well. Both on the same day.

16 MS. PRUITT: Okay.

17 CHAIRPERSON REID: Thank you.

18 MS. PRUITT: Next case? The last case of the
19 morning is a motion for modification, Application 16494 of Exxon
20 Corporation, pursuant to 11 DCMR 3108.1, the new Section 3104.2,
21 for a special exception under Section 706 to allow the expansion
22 of a gasoline service station with convenience store in the C-2-A
23 district at 5515 South Dakota Avenue, Square 3760, Lot 812 and
24 814.

25 The hearing on this case was October 13th, 1999,

1 with a bench decision on October 13th, 1999, and the order was
2 issued on November 2nd.

3 Board members present were Ms. Reid, Sockwell, and
4 Gilreath.

5 In a letter dated December 21st from the firm of
6 Wilkes Artis on behalf of Exxon, the modification is requesting --
7 Wilkes Artis is requesting a modification of plans for the BZA
8 order pursuant to 3129. The revised plans include a modest
9 increase in the convenience store, a new single light Exxon pole
10 ID sign, an additional parking space, the reduction of a
11 northernmost driveway, and the relocation of a telephone.

12 CHAIRPERSON REID: Okay. Board members, I remember
13 this case well, and we had some consternation as to how this
14 particular application we approve would affect the neighboring
15 community in regard to trash, noise, traffic, and the lottery
16 tickets. Mr. Sockwell had brought that issue up as far as people
17 coming back and forth and there would be additional traffic.

18 However, what I found most glaring was the fact
19 that I did not see in my file, unless I missed something, any
20 opposition to this motion.

21 MS. PRUITT: And, in fact, on the summary order.
22 We were able to get a summary order because there was no
23 opposition at the hearing.

24 CHAIRPERSON REID: Yeah, and there was no ANC
25 response --

1 MS. PRUITT: Correct.

2 CHAIRPERSON REID: -- to this motion. So we're
3 assuming that they have no problem with it, and the request for
4 the increase of the convenience store and a single pole ID sign I
5 have no problem with. I think it's rather modest. There does not
6 appear to cause any additional problems there, and it seems that
7 they have been heretofore good neighbors. If they were not, I
8 think that we would probably have heard from them by now.

9 So any further discussion?

10 MS. RENSHAW: Yes. Madame Chair, I wanted to ask
11 how tall this sign is, and I take it that it's a lighted sign.

12 MS. PRUITT: Yes, but that is not before the Board.

13 That is not being --

14 MS. RENSHAW: How tall?

15 MS. PRUITT: That's not before the Board. It's
16 only --

17 MS. RENSHAW: It isn't before the Board? It should
18 be.

19 CHAIRPERSON REID: Mr. Sockwell?

20 MR. SOCKWELL: Yes, just a second.

21 Yes, Madame Chair, there were just a couple of
22 things that I have -- excuse me.

23 Madame Chair, there were just a couple of things
24 that I have looked at with regard to the Amoco (sic) application.

25 CHAIRPERSON REID: You mean Exxon.

1 MR. SOCKWELL: I mean Exxon. Pardon me. Exxon-
2 Mobile as it is now called.

3 The request for the reduction of the driveway from
4 50 feet to 40 feet did not seem to be a problem. I was interested
5 in how they appeared to get nine parking spaces in approximately
6 the same area as they had shown eight parking spaces without
7 changing the dimensions of said parking spaces, but apparently
8 there's no one here to represent that.

9 CHAIRPERSON REID: But they have to comply with the
10 parking regulations for --

11 MR. SOCKWELL: They do. They do.

12 CHAIRPERSON REID: Okay.

13 MR. SOCKWELL: The sign as being lower was not a
14 problem. The style of the sign did not bother me.

15 The elevations, and that is the views shown in page
16 3 of 3 of the architectural submission showing the on-the-run
17 design, which has been adapted from Mobile Oil Corporation's
18 standard, is a more compatible look to the residential community
19 in that the hipped roof is a typical roof design of the houses,
20 and the singled look would probably be more appropriate, more
21 attractive than the more what I would call a highway design or
22 whatnot of the previous structure.

23 As well, the size of the pump island canopies is
24 slightly less in all dimensions, and its height is an inch lower.

25 There has been a change in the location of the fuel pumps with

1 the new design, but I didn't find that to be a problem.

2 I just looked at all of the things that were being
3 done to see if there was a reason that what they were asking for
4 might have a negative impact.

5 CHAIRPERSON REID: If not they --

6 MR. SOCKWELL: The only thing that bothered me was
7 a statement that was made, which was that this should be granted
8 simply because the company-wide design for Exxon-Mobile is the --
9 would not be as easily implemented if we didn't allow the change.

10 I just didn't like the way that was stated. The
11 support for this is not whether or not Exxon-Mobile does a same
12 station design all over the country. It's whether or not the
13 station design for the particular neighborhood is appropriate.

14 So with that in mind, I don't have any objection to
15 the requested changes.

16 MS. RENSHAW: Madame Chair, the business of the ANC
17 being so nonresponsive, and you had mentioned that you had had
18 some worry about that at the time of the hearing.

19 CHAIRPERSON REID: No, I didn't.

20 MR. SOCKWELL: I did.

21 MS. RENSHAW: You did. All right.

22 MR. SOCKWELL: I questioned --

23 CHAIRPERSON REID: They didn't have a problem.

24 MS. RENSHAW: That's right. It was Mr. Sockwell.

25 CHAIRPERSON REID: Yes. That particular site had

1 been vacant for some time.

2 MR. SOCKWELL: It's not vacant.

3 CHAIRPERSON REID: No, it had been. No, no, let me
4 finish.

5 In that there had been -- before the Exxon station
6 had been a veterinary clinic there, and it had been vacant.

7 MR. SOCKWELL: No, no, not --

8 MS. RENSHAW: Yeah, but that store part was the
9 veterinary part.

10 MR. SOCKWELL: If I might say the portion --

11 CHAIRPERSON REID: Okay.

12 MR. SOCKWELL: -- the portion that's being
13 acquired, which is to the north of the existing Exxon station, has
14 been at various times a fast food restaurant of one or two types
15 and most recently was a veterinary clinic that closed.

16 CHAIRPERSON REID: Right, and then it was closed.
17 It was just --

18 MR. SOCKWELL: Yeah, that particular portion of the
19 site.

20 CHAIRPERSON REID: And in that area -- let me
21 finish my thought -- in that area we know that there is a fair
22 amount of drug activity in those vacant buildings and what have
23 you. So I think that the ANC by not coming to voice an objection
24 was pleased to have something going in there to kind of help to
25 revitalize that little -- it's right on the corner of South

1 Capitol and Riggs Road, and --

2 MR. SOCKWELL: No, actually it's further down.
3 It's -- what's it? I can't think of the street, but it's below
4 Riggs Road. It actually is across the street from a public
5 building.

6 MS. PRUITT: A school.

7 MR. SOCKWELL: A school.

8 CHAIRPERSON REID: That is a junior high school.

9 MS. PRUITT: Yes.

10 MR. SOCKWELL: It's not --

11 CHAIRPERSON REID: Yeah.

12 MR. SOCKWELL: Is that first building -- that
13 building isn't Bacchus. That building is a library.

14 CHAIRPERSON REID: No, no. It's Bacchus where you
15 first come down that --

16 MR. SOCKWELL: Bacchus is a block away or a half a
17 block down the street because there's a public building, and then
18 there are houses, and I thought Bacchus was in the next block, and
19 then north --

20 CHAIRPERSON REID: Is it?

21 MR. SOCKWELL: Yeah. My parents live over there.

22 CHAIRPERSON REID: Oh, okay. Well, then you know.
23 Excuse me. I thought that Bacchus was right there beside it.

24 MR. SOCKWELL: Yeah, and then east of it, up the
25 hill is all residential.

1 CHAIRPERSON REID: Oh, okay.

2 MR. SOCKWELL: But there is an independent public
3 building on the corner directly to the south of the subject site,
4 and then next to that building are residences to the next corner,
5 and then there's the junior high school.

6 CHAIRPERSON REID: Okay. Then can we have a motion
7 so we can dispose of this particular case?

8 MR. SOCKWELL: I move that we accept the changes to
9 --

10 CHAIRPERSON REID: The modification.

11 MR. SOCKWELL: -- the modifications to BZA Order
12 No. --

13 CHAIRPERSON REID: One, six, four, nine, four.

14 MR. SOCKWELL: -- 16494 as being in substantial
15 compliance with the issued order and not a detrimental or negative
16 effect to the previous criteria approved.

17 CHAIRPERSON REID: Okay. Second?

18 All in favor?

19 MS. SAMSONE: Madame Chair, there's a need to waive
20 the six-month rule in this case.

21 MR. SOCKWELL: Oh, that's right, and I move that we
22 waive the six-month rule, which is stated in the zoning or in BZA
23 procedures, that no changes to an issued order may be requested
24 after six months from the date that the order was issued.

25 CHAIRPERSON REID: Okay. All in favor.

1 (Chorus of ayes.)

2 CHAIRPERSON REID: Opposed?

3 (No response.)

4 MS. PRUITT: Staff would record the vote as three
5 to zero to grant the modification and the six-month waiver, motion
6 made by Mr. Sockwell, seconded by Ms. Reid.

7 The last item on your agenda is election of
8 officers.

9 CHAIRPERSON REID: Board members, I think that
10 based on the fact that Mr. Moulden has had to leave and --

11 MS. PRUITT: I'm sorry. He did proxy a vote.

12 CHAIRPERSON REID: Yeah, I know.

13 MS. PRUITT: Okay.

14 CHAIRPERSON REID: And that we don't have a Zoning
15 Commissioner representative here that we sort of determine
16 deferring the election until the next meeting.

17 MS. PRUITT: The next meeting, February?

18 CHAIRPERSON REID: The next meeting date.

19 MR. SOCKWELL: The next meeting is not in February,
20 is it?

21 MS. PRUITT: Yes, meeting. That's why I asked.

22 MR. SOCKWELL: Oh, meeting.

23 MS. PRUITT: Yes, that's why I asked, just like
24 February.

25 MS. RENSHAW: But we have a quorum here. We could

1 take care of this.

2 MS. PRUITT: You need to -- well, yeah, that is
3 your choice. You could. That's up to you all to decide.

4 MR. SOCKWELL: Yeah, I -- who moved?

5 CHAIRPERSON REID: I moved.

6 MS. RENSCHAW: Wait. Nobody did.

7 CHAIRPERSON REID: I did. I moved.

8 MR. SOCKWELL: She moved.

9 CHAIRPERSON REID: I moved that we --

10 MR. SOCKWELL: I'll second it. I'll second.

11 MS. RENSCHAW: You're seconding to defer?

12 MR. SOCKWELL: To defer.

13 MS. RENSCHAW: I'm not voting to defer. I'm voting
14 against deferring.

15 CHAIRPERSON REID: Okay. All in favor?

16 MR. SOCKWELL: Discussion?

17 CHAIRPERSON REID: Oh, I thought you did discuss.

18 I'm sorry. Go ahead, go ahead.

19 MR. SOCKWELL: I believe that if we defer to a time
20 when we've had a chance to discuss any of the specifics, there may
21 be -- if we defer it till the next meeting, which will be in
22 February, it might make it more simplified to vote on the
23 positions, the officers because --

24 CHAIRPERSON REID: And also status.

25 MR. SOCKWELL: -- and status issues should have

1 been satisfied by that time. That's why I would recommend the
2 deferral only.

3 CHAIRPERSON REID: Okay.

4 MR. SOCKWELL: Thank you.

5 CHAIRPERSON REID: All right. All in favor?

6 (Chorus of ayes.)

7 MS. RENSHAW: Against. I'm against deferring.

8 MS. PRUITT: Staff would record the vote as two to
9 one to defer.

10 CHAIRPERSON REID: Have you got a proxy?

11 MS. PRUITT: Yes, actually. The motion fails then.

12 Mr. Moulden has a vote for today, he wanted for today.

13 MS. RENSHAW: That's what I thought.

14 CHAIRPERSON REID: Okay.

15 (The Board conferred.)

16 MR. BERGSTEIN: We need to explore the issue of
17 whether or not you need a full majority of the Board to take an
18 action of this kind, which is procedural, as opposed to the
19 requirement of three members to vote on --

20 CHAIRPERSON REID: I'm sorry. We were talking.
21 I'm sorry. Can you repeat that? Go ahead.

22 MR. BERGSTEIN: If the issue, and we're thinking
23 about this at the moment, if the issue is whether or not you need
24 -- well, the motion before you is whether or not to defer a vote.
25 The fact that Mr. Moulden has actually cast a vote doesn't mean

1 he's against the motion.

2 MS. PRUITT: No, for both because I just --

3 MR. BERGSTEIN: Oh, he actually voted for that?

4 MS. PRUITT: Right. He voted for a person and also
5 to have the election today.

6 MR. BERGSTEIN: He affirmatively voted for that.

7 MS. PRUITT: Yes.

8 MR. BERGSTEIN: Oh, all right. I was not aware of
9 that.

10 MS. PRUITT: Yes, that's the proxy.

11 MR. BERGSTEIN: Okay. I'm sorry.

12 MS. PRUITT: I asked him about that.

13 MR. BERGSTEIN: Okay.

14 MR. SOCKWELL: Then, Madame Chair, if the motion
15 has failed, then we have no choice but to take the matter up.

16 CHAIRPERSON REID: Okay.

17 MS. RENSCHAW: So are we moving candidates?

18 MR. SOCKWELL: I guess we are moving candidates.

19 MS. RENSCHAW: We are moving candidates. I'll move
20 a candidate.

21 It's tough on a small board such as the BZA to
22 single out one individual for the chairmanship over another
23 individual when everyone is of equal and stellar value, but at
24 this case, I would like to nominate for Chairman of the BZA Robert
25 Sockwell, and would put his name in on the table, on the floor.

1 CHAIRPERSON REID: I'd second it.

2 MR. SOCKWELL: And I accept the nomination.

3 CHAIRPERSON REID: All right. All in favor?

4 (Chorus of ayes.)

5 MS. PRUITT: It's four to zero. Staff would record
6 the vote as four to zero to approve Mr. Sockwell as chair, motion
7 made by Ms. Renshaw, seconded by Ms. Reid, and a proxy from Mr.
8 Moulden.

9 CHAIRPERSON REID: Okay.

10 MR. SOCKWELL: Well, thank you very much.

11 MS. PRUITT: You have to do Vice Chair.

12 MR. SOCKWELL: Yeah, we have to do Vice Chair.

13 MS. RENSRAW: So it's up to you to.

14 MR. SOCKWELL: I as member of the Board for this
15 period of time feel that the position of Vice Chair would be well
16 filled by either of my stellar colleagues, but I think that it
17 would be most effective at this time to nominate Sheila Cross Reid
18 to be Vice Chair because of her extreme knowledge and experience
19 with this Board and her ability to support the Chairperson in any
20 circumstance that might arise.

21 MS. RENSRAW: I second.

22 Call the vote.

23 MR. SOCKWELL: I call for the vote. All in favor?

24 (Chorus of ayes.)

25 MS. PRUITT: I'm sorry?

1 CHAIRPERSON REID: I said aye.

2 MS. PRUITT: Staff would the record the vote as
3 three to zero for election of Ms. Sheila Cross Reid as Vice Chair,
4 motion made by Robert Sockwell, seconded by Ms. Renshaw, and we do
5 not have a proxy on this particular one.

6 CHAIRPERSON REID: Oh, you didn't get the Vice.
7 Okay.

8 All right. Mr. Sockwell, I'd like to congratulate
9 you. I think from the time that you've been on this Board, you
10 certainly have been an asset, and that given the fact that you
11 have now garnered quite a bit of experience, that you will be able
12 to guide this Board most effectively, and I will give you my
13 wholehearted support and will, you know, assist you in any way I
14 can.

15 MR. SOCKWELL: Thank you very much, Madame Vice
16 Chair.

17 MS. RENSHAW: And a tribute to both of these fine
18 individuals who have an enormously difficult task to move these
19 various applications through the hearing process.

20 As a new member, the newest member of the Board of
21 Zoning Adjustment, I can appreciate the homework that is done by
22 these individuals to be ready for a case, and I am amazed and in
23 full admiration of their abilities to handle the complex issues
24 that are before the Board.

25 And so I'm delighted to be a part of this panel and

1 to serve with these very fine individuals, Sheila Cross Reid and
2 Robert Sockwell.

3 CHAIRPERSON REID: Thank you.

4 MR. SOCKWELL: And I would like to state
5 unequivocally that my experience sitting to the left of the
6 Chairperson, Sheila Cross Reid, has been a very, very important
7 one for me because of her understanding and knowledge of the
8 process, procedures, and her sensitivity to the community and to
9 the issues at hand.

10 And I believe that with Sheila Cross Reid's
11 extensive experience in fielding the tough questions and dealing
12 with the very difficult and often complex issues, she has shown me
13 the light that I need in order to understand more fully and more
14 effectively the duties of the chairperson and those
15 responsibilities which are not always as apparent just by what's
16 written in the book.

17 And to that, I want to say that it has been a
18 pleasure to serve under Sheila Cross Reid, and it will be a
19 pleasure to be next to her. Hopefully she'll sit in my seat and
20 keep it warm while I'm sitting in the one that she has just
21 vacated.

22 Thank you.

23 CHAIRPERSON REID: Thank you very much.

24 And as always, I very much appreciate your comments
25 and your support, but all of this would not have been possible, of

1 course, without the staff and the stellar job that they have done,
2 particularly in the last -- and I've seen them grow -- over the
3 last three years under the guidance of Jerrily Kress, who has just
4 done a terrific job in completely revamping the Zoning Office and
5 bringing in the computerization that we need and redesigning it
6 and making the various hearings and the meetings go more
7 efficiently.

8 And for the input of the staff, Sheri Pruitt. Even
9 though she has had some challenges, she has been able to hang.

10 Unfortunately Paul Hart is not here, but Paul and
11 the great job that he has done.

12 MS. RENSRAW: And Beverly.

13 CHAIRPERSON REID: Beverly, who has stepped to the
14 plate this year, last year, and taken on more responsibility and
15 assisted us.

16 John Nyarku, and also let's not forget Corp.
17 Counsel over there.

18 MS. RENSRAW: That's right.

19 CHAIRPERSON REID: Alan, although we don't always
20 agree with him, but he certainly --

21 (Laughter.)

22 CHAIRPERSON REID: He certainly straightens us out.

23 And Marie, who has just done an incredible job, and
24 she's there for us, and sometimes she always really surprises me
25 when, you know, she's sitting there, and all of a sudden we pop a

1 question over there, and she is right on point, and we really
2 appreciate that.

3 And if there's anyone that I haven't mentioned,
4 like Mary and Ms. Booth, Kathy, Betty, Naomi -- did I pronounce it
5 right? -- Naomi Sara, the whole staff. I just want to give my
6 heartfelt appreciation for all that you have done and the way that
7 we have grown together. I really appreciate that.

8 MR. SOCKWELL: And a salute to our newest member,
9 Anne Renshaw, who has brought forth at every situation the need
10 for us to be concerned, as always, with the community viewpoint,
11 with the people who represent for the Advisory Neighborhood
12 Commissions, the historic boards and commissions within the
13 community, the neighborhood groups that are the mainstay of the
14 community process, those which Anne Renshaw knows so well and has
15 articulated the position and need for us to consider in the most
16 eloquent of terms.

17 So to work with Sheila Cross Reid and Anne Renshaw
18 is going to be a great pleasure, as it has been, and all of the
19 other support people from the Zoning Commission, from the National
20 Capitol Planning Commission, from the National Park Service --

21 CHAIRPERSON REID: Office of Planning.

22 MR. SOCKWELL: -- Office of Planning, all of the
23 people --

24 CHAIRPERSON REID: DPW, DZRA, everybody.

25 MR. SOCKWELL: And on those rare occasions where we

1 do have the Foreign Missions Board of Zoning Adjustment hearings,
2 it will be a pleasure as well.

3 Thank you.

4 CHAIRPERSON REID: Thank you very much.

5 And with that I'll close the meeting with putting
6 the gavel down and ceremoniously passing it over.

7 MR. SOCKWELL: Thank you.

8 (Whereupon, at 12:39 p.m., the public meeting was
9 concluded.)

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