

**GUNNISON COUNTY BOARD OF ADJUSTMENT**  
**PRELIMINARY AGENDA: April 29, 2025**  
**221 N Wisconsin, Suite D Gunnison, CO 81230**  
**In Person and Zoom**

- 1:30 p.m.**
- Call to order; determine quorum
  - Approval of Minutes from July 18, 2024, Board of Adjustment Meeting
  - Approval of Minutes from March 6, 2025, Board of Adjustment Meeting
  - Unscheduled citizens: A brief period in which the public is invited to make general comments or ask questions of the Board or Planning Staff about items which are not scheduled on the day's agenda.
  - Miscellaneous/Staff Reminders/Announcements

- 1:45 p.m.**    **APPEAL-25-00001 – Appeal of CB South POA Decision- 162 Escalante Dr.**  
Meg Burns (appellant) has submitted an appeal of a decision made by the Crested Butte South Board of Directors approving a multi-family use on a parcel legally described as Lot 8, Block 10, Crested Butte South, Filing 2. The property owner is 162 Escalante, LLC.

**Adjourn**

**Packet Materials are available online** by visiting <https://gunnisoncounty.org/179/Board-of-Adjustment> and selecting "Most Recent Portfolio"

**Use this link to join the Webinar on Zoom:** <https://gunnisoncounty-org.zoom.us/j/86337231015>

**Phone one-tap:**

**+17193594580,,86337231015# US**

**+14086380968,,86337231015# US (San Jose)**

NOTE: Unless otherwise noted, all meetings are conducted in the Blackstock Government Center Meeting Room 221 N. Wisconsin St. in Gunnison, across the street from the Post Office. This is a preliminary agenda; agenda times may be changed up to 24 hours before the meeting date. If you are interested in a specific agenda item, you may want to call the Planning Department (641-0360) ahead of time to confirm its scheduled time. Anyone needing special accommodations may contact the Planning Department before the meeting.

**GUNNISON COUNTY BOARD OF ADJUSTMENT  
JOINT PLANNING COMMISSION AND BOARD OF ADJUSTMENT MEETING MINUTES  
Thursday, July 18, 2024**

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The Gunnison County Planning Commission and Board of Adjustment conducted a joint meeting before a regular meeting of the Planning Commission in the Planning Commission Meeting Room in the Blackstock Government Center, 221 N. Wisconsin, Gunnison, Co. and on Zoom

**Present:**

<p><u>Planning Commission</u> Chair - Roland Mason Vice-Chair- Fred Niederer Commissioner- Matt Schwartz Alt. Commissioner- Catherine McBreen Alt. Commissioner- Bill Barvitski <u>Board of Adjustment</u> BOA Vice-Chair- Liz Smith BOCC- Jonathan Houck BOA- Julie Baca</p>	<p>Director of Community and Economic Development- Cathie Pagano Director of Planning- Hilary Seminick Planner- Sean Pope Planner- Rachael Blondy Planning Technician – Jena Greene Others present as listed in text</p>
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**Absent:** BOA - Laura Puckett Daniels, BOA – Andy Tocke , PC - Eric Phillips

**Recused:** BOA – Andy Tocke

**Zoom:** Julie Baca, Catherine McBreen

*The following meeting minutes are an abbreviated version of the July 18, 2024 Planning Commission meeting, focusing specifically on matters relevant to the Board of Adjustment. For additional details, please reference the July 18, 2024 Planning Commission Minutes.*

**Site Visit**

County Commissioner Houck and Baca joined the planning commission for a site visit prior to the meeting.

**Regular Meeting**

Chairperson Mason opened the July 18, 2024, meeting of the Planning Commission at 9:43 am. Chairperson Mason sat alternative commissioner Barvitski for the planning commission and determined a quorum.

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**Unscheduled Citizens**

None

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**Public Hearing and BOA Joint Meeting: LUC-24-00011 | Minor Impact | Hartman Castle**

The Applicant, Hartman Preservation Corporation, proposed a new commercial use and restoration of the historic Hartman Castle and grounds. The project site would contain mixed uses with the Castle and grounds used for weddings, events, community gatherings and educational purposes. The Castle would be available year-round and the grounds will be used seasonally. The project was located at 277 CR 50, Gunnison CO.

Seminick noted that there was an error in the original public notice posting, that was corrected and re-noticed in time to meet the notice requirements to hold the public hearing. Seminick explained the procedure for how the joint public meeting would run, as outlined in the staff memo.

#### Determination of Quorum

Planning Commission: Mason seated alternative commissioner McBreen and Determined Quorum with Mason, Niederer, Schwartz, Barvitski and McBreen as members for the Planning Commission

Board Of Adjustment: Tocke recused himself. Mason determined a quorum for the Board of Adjustment with Vice Chair Smith, Houck, and Baca as members.

Mason opened the public hearing at 9:57 am

Confirmation of adequate public notice – Greene confirmed adequate public notice.

#### Applicant Presentation

Pamela Williams, president of Hartman Castle Preservation Corporation, was present, along with other board members; Tim Williams and Michael Kratz.

They were proposing to return Hartman castle to commercial use: event space, community gardens. The Hartman Castle preservation corporation needed to commercial use approved before they could purchase the property so they could generate income and continue the project. The previously approved commercial use was no longer valid do to lack of use.

#### Staff Comments

Seminick noted the difficulty to meet the 50 setbacks for a commercial use because the property was mostly developed, and moving the castle was to difficult to be considered.

#### Questions from Review Body

Barvitski noted the history of commercial use for the location, which was previously the Fisherman Inn and then a museum, and then a restaurant.

Public Comment None and no public comment had been submitted to staff.

#### Questions from the Board of Adjustment

Baca stated that she was comfortable with use as proposed and had no questions. Echoed by Smith and Houck.

*The Planning Commission discussed, reviewed, and unanimously voted to approve the minor impact land use change. Then the meeting was turned over to the Board of Adjustment.*

Houck, redetermined quorum with Houck, Smith, and Baca. Tocke had recused himself, and Puckett Daniels was not present.

The Board of Adjustment determined that additional public hearing was not necessary. A finding statement was provided by staff in the draft decision documents.

Houck made a motion to approve and accept that the threshold requirements for setbacks had been met and as described in the decision document in the packet. Seconded by Baca. The motion passed unanimously in support.

Mason resumed as chair of the meeting and closed the public hearing at 10:20 am.

DRAFT

**GUNNISON COUNTY BOARD OF ADJUSTMENT & PLANNING COMMISSION  
MEETING MINUTES  
Thursday, March 6, 2025**

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The Gunnison County Board of Adjustment conducted a meeting before a joint Planning Commission and Board of Adjustment meeting in the Planning Commission Meeting Room in the Blackstock Government Center, 221 N. Wisconsin, Gunnison, Co. and on Zoom **Present:**

<p><u>Planning Commission</u>                  Chairperson- Roland Mason                  Vice-Chairperson- Eric Phillips                  Commissioner- Julie Baca                  Commissioner- Fred Niederer                  Alt. Commissioner- Catherine McBreen                  Alt. Commissioner Sean Patrick  <u>Board of Adjustment</u>                  Chairperson- Laura Puckett Daniels                  Vice-Chairperson- Liz Smith                  Andy Tocke                  Drew Brookhart                  John O'Neal</p>	<p>Director of Community and Economic Development-Cathie Pagano                  Director of Planning- Hilary Seminick                  Planner-Rachel Blondy                  Planning Technician – Caroline Danielson                  Others present as listed in text</p>
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**Absent:** Jonathan Houck (BOA)

**Recused:** Bill Barvitski (PC)

**Zoom:** Fred Niederer (PC), Phillips (PC), Baca (PC)

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**GUNNISON COUNTY BOARD OF ADJUSTMENT MEETING:**

With a quorum present Chairperson Daniels opened the March 6, 2025 meeting of the Board of Adjustment at 8:45 am. Chairperson Daniels sat alternate Board of Adjustment Member O'Neal and Brookhart. Noted that Baca would be fulfilling role of Planning Commissioner in this meeting.

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**Moved by** Smith, seconded by Daniels to approve Board of Adjustment meeting minutes, dated July 10, 2024. The motion passed unanimously in support. Daniels noted that O'Neal and Brookhart were recused from this vote given they were not present at the July 10, 2024 meeting.

Chairperson Daniels noted that they would not be voting to approve minutes from July 18, 2024 due to a lack of quorum from that meeting present.

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**Moved by** Smith, seconded by Tocke to elect Houck as Board of Adjustment Chair and Daniels as Board of Adjustment Vice Chair. The motion passed unanimously in support.

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## **BOA Public Hearing: LUC-24-00046 | Pennington Setback Variance**

The Applicant proposed the construction of a shed for personal use at 14 2nd Street in Somerset. The Applicant requested a variance from the 25' and 15' setbacks to utilize more space on their parcel.

### Confirmation of Adequate Public Notice

Blondy confirmed that adequate public notice was given.

### Applicant Presentation

Pennington summarized her proposed project, noting that she is open to turning the shed 90 degrees.

### Staff Comments

Blondy confirmed that the Board of Adjustment would only review the site plan that was provided at the time of public notice. Seminick clarified that the building inspector has not reviewed the building, only the site plan as proposed. Staff mentioned that the building inspector has identified a number of conditions to ensure WUI compliance.

### BOA Questions

BOA discussed the proposed project, clarifying setback variance requests, discussing existing issues with regard to setbacks in Somerest, and adjustments to plan needed to conform with WUI codes.

### Public Comments

John Mlakar- Expressed concern with setback variance impacting snow storage for the town.

Steve LaCroix- Noted that if the site plan was altered, there would be no need to a setback variance.

### Applicant Response

Pennington clarified that the proposed building would be metal, expressed belief that removal of cedar fence would not have an affect due to wooden fence on neighboring parcel.

### Staff Response

Daniels clarified that the fence was being reviewed due to variance request, and that fences are not typically considered in the building permit review. Noted that WUI requirements need to be met due to this being the primary structure on the parcel. Brookhart inquired with the applicant on her primary goal with this site, to which she responded that she would like to maximize the lot potential.

### Next Steps

Daniels suggested that they continue the public hearing to allow for the alternate site plan to be considered. Tocke expressed that he was comfortable with granting the variance with current site plan. Brookhart agreed, with the conditions proposed.

**Moved by** O’Neal, seconded by Smith to approve with proposed conditions. The motion passed unanimously in support.

Daniels closed the public hearing.

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### **GUNNISON COUNTY PLANNING COMMISSION MEETING:**

With a quorum present Chairperson Mason opened the March 6, 2025 meeting of the Planning Commission at 10:03 am.

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**Moved by** Phillips, seconded by McBreen to approve Planning Commission meeting minutes, dated February 4, 2025. The motion passed unanimously in support.

**Moved by** McBreen, seconded by Phillips to approve Planning Commission meeting minutes, dated February 6, 2025. The motion passed unanimously in support.

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Staff announcements/ miscellaneous:

Staff proposed moving the April Planning Commission meetings to April 10<sup>th</sup> and April 24<sup>th</sup> to avoid conflict with CB Spring Break. Planning Commission agreed.

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### **BOA/PC Joint Public Hearing: LUC-24-00057 | Ohio City Mother Lode Minor Impact**

The Applicant proposed a remodel to The Mother Lode store and bar in Ohio City. The proposed remodel would create three long-term rental units and one short-term rental unit. All commercial aspects of the property would be abandoned, and the historical store and bar area would be remodeled into residential use.

Mason opened the Joint Public Hearing.

#### **Confirmation of Adequate Public Notice**

Blondy confirmed that adequate public notice was given.

#### **Applicant Presentation**

Reno summarized the proposed project. He noted that they have no desire to change front profile of the building but will update materials to meet WUI requirements. He noted that they hope to eliminate the RV park.

### Staff Comments

Blondy clarified that they are applying for a setback variance, from 15 ft to 13.6 ft. She noted that a portion of the building already encroaches into the setback, and the request is to expand the existing nonconforming nature of the building.

### PC/BOA Questions

Smith suggested the addition of a condition in the draft decision document that would define the length of the long-term rental.

### Public Comments

Geoffrey Luchetta- Expressed support for the project.

Mason closed public comment at 10:26 AM

### Applicant Response

N/a

### Staff Response

N/a

### Next Steps

**Moved by** Baca, seconded by McBreen to close public hearing. The motion passed unanimously in support.

**Moved by** McBreen, seconded by Phillips to approve the draft decision document as presented and amended. The motion passed unanimously in support.

**Moved by** Tocke, seconded by O'Neal to approve the setback variance. The motion passed unanimously in support.

BOA adjourned at 10:40AM.

PC adjourned at 10:40AM.



Cathie Pagano, Assistant County Manager  
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From: Cathie Pagano, Assistant County Manager for Community & Economic Development  
To: Board of Adjustment  
Date: April 21, 2025  
Re: APPEAL-25-00001

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Gunnison County has received an appeal of a decision made by the Crested Butte South Board of Directors (BOD). The BOD and Gunnison County have jointly adopted the 2025 Crested Butte South Special Area Regulations which grant the BOD certain authorities that might otherwise be controlled by Gunnison County. An appeal of a BOD decision may be submitted to the Gunnison County Board of Adjustment for review and consideration. The appeal is relative to the decision to grant approval of a multi-family development on a parcel legally described as Lot 8, Block 10, Crested Butte South, Filing 2, owned by 162 Escalante, LLC.

#### **Chronology of Events**

**March 22, 2023:** Gunnison Board of County Commissioners approves Resolution No. 2023-8 approving amendments to the Crested Butte South Special Area Regulations and Commercial Area Master Plan.

**February 19, 2025:** Certified mailings sent identifying comment period is from February 27, 2025 to March 12, 2025. The POA did not provide certified mailing receipts to Gunnison County.

**February 20, 2025:** Public Hearing Notice for multi-family development proposed on Lot 8, Block 10, Crested Butte South, 2<sup>nd</sup> Filing published in Crested Butte News

**March 10, 2025:** Petition submitted by community members to the BOD identifying alleged deficiencies.

**March 12, 2025:** Crested Butte South Board of Directors (BOD) Public Hearing for consideration of multi-family development on Lot 8, Block 10, Crested Butte South, Filing 2. Change of use from vacant land to multi-family (triplex) approved by BOD.

**March 19, 2025:** Gunnison County Board of Commissioners approves in Resolution No. 2025-16 an amendment to the [Crested Butte South Special Area Regulations](#) which includes amendments to the appeals process, notice requirements for multi-family residences, variance standards, public hearing requirements (see attached Exhibit 1).

**March 27, 2025:** Appeal submitted to Gunnison County Community Development via email at 11:07pm. No appeal was submitted the Crested Butte South POA Manager as required by Section 6.6: C of the 2025 Crested Butte South Special Area Regulations (SAR).

**March 27, 2025:** Per Section 6.6: C Appeal of POA Board Decision to the Gunnison County Board of Adjustment (2025 SAR), an appeal shall be “tendered in writing to the Gunnison County Community Development Director and the POA Manager no later than 15 days after the POA Board decision at issue is rendered. Such written statement of appeal shall contain the complete basis for the appeal, and any facts, law or argument not set forth in such statement may be deemed waived by the BOA and not considered part of the appeal.”

**March 28, 2025:** Appeal received by Gunnison County Community Development (business hours are Monday through Friday, 8-5pm).

**March 31, 2025:** Appellant paid appeal fee.

**April 4, 2025:** County emailed Ms. Burns and requested “written response explaining how you have standing to appeal the action.”

**April 4, 2025:** Ms. Burns responded to County and stated, “We are appealing an application that was submitted prior to the adoption of these new standing requirements.”

**April 7, 2025:** County emailed Ms. Burns, “We disagree with your interpretation and regardless of whether the revised Special Area Regulations apply, the Gunnison County Land Use Resolution requires demonstration of standing. The Gunnison County Attorney has advised that the revised (March 2025) Special Area Regulations and appeal process shall apply to this appeal request, and he will provide that advice to the Board of Adjustment. Please provide a written response explaining your standing.”

**April 8, 2025:** County emailed applicant/property owner to inform them of the appeal and that they have the opportunity to provide a response.

**April 10, 2025:** Ms. Burns emailed County and said, “My attorney is reviewing everything and getting caught up. We can have a response submitted next week.”

**April 15, 2025:** Crested Butte South POA submitted a response to appeal from attorney Elizabeth Appleton.

**April 16, 2025:** County staff emailed appellant, applicant, and POA, “I have not received any response from Ms. Burns, the appellant, regarding standing nor from Mr. Huckstep regarding the applicant’s response. If I do not receive a response today, I may not be able to include the information in my staff analysis for BOA review and packets.”

**April 16, 2025:** Applicant representative, attorney Aaron Huckstep, submitted a response to the appeal from the applicant.

### **Applicable Regulations**

An application for a multi-family (triplex) structure on Lot 8, Block 10, CB South, Filing 2 was submitted to the Crested Butte South Property Owners Association (POA). No date of application submittal was provided in the record submitted by the POA. The 2023 Crested Butte South Special Area Regulations and Commercial Area Master Plan (adopted in BOCC Resolution No. 2023-8 and recorded at Reception No. 690075) apply to the application for a multi-family development.

The appeal of the BOD decision for the multi-family development on Lot 8, Block 10, CB South, Filing 2 was submitted on March 27, 2025 and the 2025 Crested Butte South Special Area Regulations (adopted

in BOCC Resolution No. 2025-16 and recorded at Reception No. 701120) apply to the appeal which include an appeal process that has been amended since the 2023 SAR.

Per Gunnison County Attorney, Matthew Hoyt:

*“The current appellate procedures under the new SAR apply because they were adopted before the appeal was submitted. See People v. Vigil, 2015 COA 88M, ¶ 22, 459 P.3d 553, 561 (“It is well settled, however, that a new rule for the conduct of criminal proceedings applies “to all criminal cases pending on direct review or not yet final.”); City of Greenwood Vill. v. Petitioners for the Proposed City of Centennial, 3 P.3d 427, 436 (Colo. 2000) (explaining that “legislative powers include passing generic legislation that clarifies and resolves pre-existing issues and applies that resolution to pending cases and controversies.”); Adarand Constructors, Inc. v. Slater, 228 F.3d 1147, 1158 (10th Cir. 2000) (“Generally an appellate court must apply the law in effect at the time it renders its decision where a change in law occurs while a case is on direct appeal[.]”).*

*Note also that the SAR is subject to the LUR, and the LUR changed the standing requirements on December 19, 2023. This may be before the underlying LUC application was even submitted.*

*With regard to standing, it is important to understand that “standing is a threshold jurisdictional question” that must be addressed first by the BOA before conducting a review of the merits of any appeal. See HealthONE v. Rodriguez, 50 P.3d 879, 891-92 (Colo. 2002). Therefore, if an appellant fails to meet her burden to establish standing, the Board of Adjustment can deny an appeal on that basis alone. See, e.g., Wibby v. Boulder Cty. Bd., 2016 COA 104, ¶ 9, 409 P.3d 516, 520 (“Without standing, we cannot consider the merits of the [appellants’] claims.”)*

### **Appellant Standing**

The appellant is required to demonstrate standing in the case per the 2025 SAR Section 6.6: B. *Standing to Appeal* or the Gunnison County *Land Use Resolution* (LUR) Section 8-103: B. *Standing to Appeal*. The appellant stated in the March 27, 2025 email that, “Since this application was submitted prior to the new regulations on 3/19, my standing is established based on the regulations that were effect when the application was submitted.” However, the appellant does not further describe that standing and the Gunnison County Attorney advises that this argument does not have a sound legal basis. In any case, the appellant is required to demonstrate standing under the LUR and has not provided any additional detail, despite three separate requests from County staff to provide a written response (see above timeline). On April 4, 2025 I emailed appellant and requested that she submit an explanation of her standing and again requested a response to her standing in emails to the appellant on April 7th and April 16<sup>th</sup>. The appellant did not submit additional response to her standing.

The applicant, in a letter dated April 15, 2025 from attorney Aaron Huckstep has provided the following response the appellant’s standing:

*“The LUR specifically requires evidence of standing. See LUR Section 8-103.B. At the time this letter was prepared, the Appellant had not provided detail supporting her allegation of standing. The only reasonable basis for the Appellant’s claim of standing is pursuant to LUR Section 8-103.B.2., which requires a demonstration that Ms. Burns has been denied a claim of right, or that the March 12, 2025 POA Boad decision “imposes a substantial burden or obligation” upon Ms. Burns.*

*There has been no denial of a claim of right in this instance. Ms. Burns had the right to notice of the March 12, 2025 hearing; that right was satisfied. See Appellant’s statement, Section II.1.c., which implicitly acknowledges the receipt of a “certified letter to adjacent owners.” Ms. Burns had the opportunity to give testimony at the March 12, 2025 public hearing, but apparently chose not to provide any testimony based on the meeting minutes.*

*The POA Board’s decision also does not impose a substantial burden or obligation upon Ms. Burns. Although there is no definition of what qualifies as a “substantial burden” within the LUR, a reasonable interpretation would be that such a burden must impose a heavy and serious pressure upon Ms. Burns to take certain offensive action. In this instance, the only potential burden Ms. Burns could claim is requiring her to live around the corner from not two families, but three. This does not rise to the level of a “substantial burden.”*

*The Applicant believes that the incremental addition of one family in the most dense unincorporated subdivision within Gunnison County, on the Property - which is near park and commercial facilities (See Appellant’s statement, section II.1.g.) - does not rise to the level of a “substantial burden” or obligation.*

*For the reasons stated above, please find that the Appellant has no standing and deny the Appeal on that basis.”*

The Crested Butte South Property Owners Association attorney, Elizabeth Appleton also commented on the appellant’s standing in a letter dated April 15, 2025:

*“At the time of this writing, the Appellant has yet to establish standing. Pursuant to the SAR, Section 6, 6.6 (B), the Appellant bears the burden of establishing that she has standing to appeal in the first place. Ms. Burns has failed to do so and therefore, and therefore this appeal should be dismissed.”*

### **2025 SAR Section 6.6:C.1 Compliance**

As stated above the 2025 Special Area Regulations apply to this appeal process. The appellant did not follow the required appeal submittal requirements detailed in the 2025 SAR Section 6.6: C.1 because the appeal was not tendered to the POA Manager no later than 15 days after the BOD decision was rendered.

The Crested Butte South Property Owners Association attorney, Elizabeth Appleton states in a letter dated April 15, 2025:

*“Pursuant to Section 6, 6.6 (C)(1) of the Special Area Regulations (SAR), ‘[a]ny appeal shall be tendered in writing to the Gunnison County Community Development Director and the P.O.A. Manager no later than 15 days after the P.O.A. Board decision at issue is rendered.’ While the appeal is dated March 27, 2025, the Community Development Director did not receive said appeal until March 28, 2025, one day after the deadline of March 27, 2025. For this reason, it should be dismissed as untimely. In addition, the Appellant did not tender her appeal to the P.O.A. Manager as required. The Appellant did not follow proper process so along with her timeliness issue, the appeal should be dismissed.”*

### **Staff Recommendation**

Staff recommends that the BOA deny the appeal because the appellant has not demonstrated standing and did not meet the appeal requirements of 2025 SAR Section 6.6: C.1. Our recommendation is you need not review the merits of the application because of these threshold issues, standing and application. Should you decide to review the merits (that is, should you decide that the appeal should proceed notwithstanding appellant's failure to comply with the rules and meet her threshold burden to demonstrate standing), Staff will provide a supplemental memo and recommend that the BOA continue the meeting until a later date to receive evidence and argument on the merits.