

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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WEDNESDAY

MAY 3, 2000

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Commissioner
CAROL J. MITTEN	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Jerrily R. Kress	Director
Beverly Bailey	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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

10:00 a.m.

CHAIRPERSON REID: Okay. We'll now open the meeting for the May 3rd morning session of the Board of Zoning Adjustment.

MS. BAILEY: Members of the Board, good morning. My name is Beverly Bailey, and to my left is the Director of the Office of Zoning, Ms. Kress.

May 3rd meeting agenda. The first thing that's on the agenda this morning are the minutes, and the minutes are of March 15, March 29, April 5, April 12, and April 18.

How would you like to handle that matter, Madam Chair?

CHAIRPERSON REID: In regard to the minutes that have been presented to us this morning, are there any corrections, deletions, or any modifications that you wish to have, having read over them? If not, I'd like to get a motion that we approve the minutes. Consider calendar rather than doing them all individually.

BOARD MEMBER RENSHAW: I so move.

BOARD MEMBER MOULDEN: Second.

CHAIRPERSON REID: All in favor.

(AYES)

CHAIRPERSON REID: Opposed.

COMMISSIONER HOOD: Madam Chair, I'd like to be

1 recorded as not having participated in any of these set of the
2 minutes.

3 MS. BAILEY: The staff will record the vote as
4 three to approve the minutes, motion made by Ms. Renshaw, seconded
5 by Mr. Moulden, and Ms. Reid to approve.

6 The next item this morning, Members of the Board,
7 is cases to be decided, and the first case is No. 16-404, Appeal
8 of the Capitol Hill Restoration Society, pursuant to 11 DCMR,
9 Section 3105 and 3106, from the administration decision
10 determination of Gladys Hicks, Acting Zoning Administrator, Zoning
11 Division, Building and Land Regulation Administration, Department
12 of Consumer and Regulatory Affairs, made on February 5, 1998,
13 approving the issuance of Home Occupation Permit No. 98-0271 to
14 Jack Milton Fields, the contract purchaser of the property located
15 in a CAP/R-4 District at premises 434 New Jersey Avenue, S.E.
16 That's in Square 694, Lot 811.

17 The Board issued an order on March 8, 2000 denying
18 the appeal. The Appellant, the Capitol Hill Restoration Society,
19 filed a Motion for Reconsideration on March 16, 2000. The
20 Intervenor, Mr. Jack Fields, filed a statement on March 22, 2000
21 opposing the motion. The Board is to make a decision concerning
22 the Capitol Hill Restoration Society Motion for Reconsideration.

23 The hearing dates were December 16, 1998, February
24 17, 1999, and April 21, 1999. The decision date was June 2, 1999.

25 The members who participated at that time were Ms. Reid, Ms. King

1 and Mr. Gilreath.

2 This action is before the Board for its decision
3 this morning.

4 CHAIRPERSON REID: All right.

5 COMMISSIONER HOOD: Madam Chair, for the record, I
6 have read the record of this case and am able to participate.

7 CHAIRPERSON REID: All right. Board Members, as
8 you are aware, this case had come before us previously, and it was
9 a very confusing and complicated case that went to several
10 aspects, and that was in regard to the question of the residents,
11 primary residents, the definition of the primary residents as well
12 as the application itself being somewhat flawed in that the
13 application did not allow for true representation of the exact
14 status of the applicant, and it went to the person filling out the
15 application who seemingly relied on advice from, oral advice, from
16 persons at DCRA. And as such, it got to be very convoluted.

17 And then we go to whether a contract holder get a
18 home occupancy permit without actually having lived in the
19 premises.

20 Court counsel defined for us, gave us the
21 definition of residents, primary residents, and dwelling unit or
22 domicile, and then it went to being able to determine, given those
23 definitions, which ones were the most applicable in this instance.

24 And, as you can see from my discussion, it was a mess, in a word.

25 And, as such, the Capitol Hill Restoration Society is now asking

1 that there be a reconsideration and that, within itself, also
2 brings up another question because from a procedural point of
3 view, there is a question as to the request for the section cited
4 in the motion is 3106 which is, in fact, a section for a
5 rehearing. Actually, a Motion for Reconsideration comes under
6 3332.4. And, as such, it has to be then corrected as to which is
7 the correct regulation for -- the regulation number and the
8 request for either rehearing or reconsideration have to be
9 consistent, and now they're not. So that has to be corrected, #1.

10 Now, given the fact that the motion reflects three
11 different areas that they claim is erroneous, then it assumed that
12 what they're asking for is a reconsideration, which is 3332.4, not
13 3201.1. So we have to make that assumption before we even get
14 into the merits. And, as such, because of the controversy and
15 because of the irregularities and disparities and the
16 inconsistencies, it is up to us to determine at this point whether
17 or not we feel that it warrants or merits us reconsidering the
18 merits of this particular case. Hello.

19 COMMISSIONER HOOD: I'm sorry, Madam Chair. Could
20 you restate what action we're looking at right now. What are we
21 dealing with at this time?

22 CHAIRPERSON REID: Let me just try to reiterate.

23 COMMISSIONER HOOD: Just the last part. That's
24 what I didn't catch.

25 CHAIRPERSON REID: Well, the last part was a

1 procedural issue as to what is put before us. What was put before
2 us was a request. The motion was requesting that there be a
3 reconsideration of the case under 3106.2. The reconsideration --
4 I'm sorry. 3106.2 is a rehearing. So we have to determine what
5 they're really asking us to, rehearing or reconsideration. If
6 it's a reconsideration, then that comes under 3332.4. Since it's
7 not clear, then we have to basically make an assumption that what
8 they're asking us for is a reconsideration and, as such, we have
9 to amend the motion to reflect 3332.4. You follow me?

10 COMMISSIONER HOOD: Yes, I understand that. I'm
11 just -- I have problems when we start making assumptions, but I do
12 believe that it's clear they're asking for a reconsideration. We
13 just need to tighten that up and put it up under the right
14 regulation.

15 CHAIRPERSON REID: Exactly. That's the first step.
16 And then it's whether or not we feel that the motion put before
17 us, and given the discussion or the facts that I just shared with
18 you, whether or not we feel that it warrants such, the motion
19 warrants the reconsideration that they're asking for. And we have
20 some discussion prior to taking action on it.

21 BOARD MEMBER MOULDEN: You said nothing has
22 basically changed. Just a reconsideration to the original
23 application. No changes.

24 CHAIRPERSON REID: No changes.

25 Now, do we want to take a look at the merits of the

1 argument that has been put before us from the Capitol Hill
2 Restoration Society. The issues that they raise, I kind of
3 summarized them, but just let me go through them quickly. Does
4 everyone have the motion that was submitted by the Capitol Hill
5 Restoration Society? You can kind of look at that. Mr. Sockwell.

6 There's a lot of material.

7 VICE CHAIRPERSON SOCKWELL: Is that the one dated
8 September 11?

9 CHAIRPERSON REID: It's Appeal No. 16404. It says
10 Motion for Reconsideration at the top of the page. Does everyone
11 have it? Okay. Well, in fact, it stipulates that, #1, that
12 Section 203 of the Zoning Regulations is silent as to whether a
13 contract purchaser may apply for and obtain a Home Occupation
14 Permit. And that is true.

15 And if you read some of the testimony that was
16 submitted from the Zoning Administrator appearing here before us,
17 he was somewhat vague about that, and he simply stated that the
18 regulations don't allow for a contract purchaser to get a Home
19 Occupancy Permit generally, but because of the way that the
20 application was filled out, there was some confusion as to who the
21 owner was and who the contract purchaser was and, as such, things
22 moved forward. That's one thing that he's arguing.

23 The next thing is the issue of primary residence.
24 The regulations do not give a clear definition as to what is a
25 primary residence. So, as such, it is something that has to be --

1 Mr. Sockwell, is this a definition?

2 VICE CHAIRPERSON SOCKWELL: Yes.

3 CHAIRPERSON REID: Okay. Could you read it for us,
4 please, of primary residence.

5 VICE CHAIRPERSON SOCKWELL: The definition, using
6 the principal term titled home with occupation for the
7 application, the definition from *Webster's 3rd New International*
8 *Unabridged Dictionary* for the word home. The first definition is,
9 "The house and grounds with their appurtenances habitually
10 occupied by a family: one's principal place of residence."

11 CHAIRPERSON REID: All right. Well, that's one
12 thing that we had looked at previously but also, going a little
13 further, it says, "Domicile." So Mr. Bernstein had then defined
14 for us a little further what a domicile was. Hold on a second.
15 He says that, he defines residence as -- I'm reading from Mr.
16 Bernstein's, the Corporation Counsel, submission to us. Residence
17 as, "The place where one actually lives as distinguished from his
18 domicile or a place of temporary sojourn."

19 VICE CHAIRPERSON SOCKWELL: Actually, Madam Chair,
20 if I might. I left one word out which was part of the first
21 definition, and that was after "principal place of residence,"
22 there's another colon and then followed the word "domicile."

23 CHAIRPERSON REID: I said that. That's what I
24 said. And then on page three at the bottom he goes on to further
25 define domicile and, as such, it then states that the domicile is,

1 "A person's fixed, permanent and principal home for legal
2 purposes." Okay. Then you go to what's legal. How would you
3 ascertain a legal residence? Would that be based on where they
4 vote, where they have their driver's license?

5 BOARD MEMBER RENSHAW: Where they vote.

6 CHAIRPERSON REID: Or otherwise? So then you go to
7 Washington, D.C. being unique and unusual and, therefore, it
8 requires us to be faced with aspects of cases that other
9 jurisdictions don't have and that is members of Congress. I'm not
10 sure you know by now that Mr. Fields is a member of Congress and,
11 as such, I'm not really sure of the definition of the residence of
12 members of Congress. Many of them have residences here in
13 Washington as well as their home state, and how is that
14 reconciled, I'm not real sure. But nonetheless, not getting into
15 the merits of the case right now. What I'm doing now is raising
16 the issues that brought us to this point where we are today.

17 One of the things was the manner in which the
18 application was filled out, and if you go to the application and
19 take a look at it, then I can kind of point out a couple of things
20 to you that caused some of the problem. Are you with me on the
21 application, Board Members?

22 COMMISSIONER HOOD: Yes, Madam Chair. I'm trying
23 to make sure I understand what we're doing. Are we going to take
24 this in sequence?

25 CHAIRPERSON REID: I'm just bringing up the reason

1 why the motion is on the floor and, as such, we have to determine
2 if we feel that there is enough information or there is enough of
3 a case for us to reconsider the previous order.

4 COMMISSIONER HOOD: Madam Chair, I believe it is.
5 In my readings in this -- well anyway, I believe it is because
6 contract purchaser. I went back to the regulations and I'm not
7 exactly sure. I believe someone had this house under contract.
8 So when I looked in the regulations, I was not able to find
9 anything pertaining to anything being under contract. I believe
10 that was asked by former Board Member King. So I think it does
11 have merit for us to move forward to reconsider.

12 CHAIRPERSON REID: Okay. Thank you very much, Mr.
13 Hood, but again, let's look at the application because that was
14 what I believe had a lot of bearing on the determination. I had
15 problems with this initially, and these were some of the things
16 that were brought up. Now, the applicant's name is Jack Fields.
17 Jack Milton Fields. And it has his address on New Jersey Avenue,
18 434, which is the subject property. Okay. But now, at the time
19 this application was filled out, he couldn't be living in the
20 property.

21 COMMISSIONER HOOD: It's checked, Madam Chair, with
22 owner occupied single family dwelling. It's checked that this
23 person is the owner.

24 CHAIRPERSON REID: Okay. That's what I'm pointing
25 out. That's where the discrepancies are. Okay.

1 COMMISSIONER HOOD: I understand the discrepancies.
2 I beg your pardon, but I understand the discrepancies, but I'm
3 also looking at the regulations.

4 CHAIRPERSON REID: And your point would be?

5 COMMISSIONER HOOD: My point is that the Regulation
6 203.3 specifically says -- give me one second. I just had it. "A
7 home occupation permit may be granted only to a designated person
8 or group of persons who reside at a residential address." Now,
9 having to go back and look at this again, Madam Chair, I still had
10 a problem with contract purchaser because I was not in the
11 regulations able to find anything dealing with any contract
12 purchaser.

13 CHAIRPERSON REID: Okay. Right.

14 COMMISSIONER HOOD: So that's why I kind of went
15 and stopped.

16 CHAIRPERSON REID: Okay. Now then, you have the
17 address of 434 New Jersey Avenue that apparently was not the
18 address of the applicant at that time, who was the contract
19 purchaser. Then it goes to "Applicant is the" and #4, and the
20 possible selections, owner, tenant, other, is not -- there's no
21 indication as to what, in fact, the applicant is. And then it
22 goes to premises indicated in question #3 is "Circle one: Owner
23 occupies single family dwelling." And then you go to the owner's
24 name which is Daryl Cassidy and his address.

25 As you can see, it raises a lot of questions as to

1 what the intent was and also it questions the manner in which it
2 was filled out as well as the manner in which it was submitted to
3 the DCRA and their perhaps not scrutinizing the application
4 thoroughly enough to ascertain what, in fact, it was saying.

5 MS. KRESS: Madam Chair, if I could just add
6 something, and I think Mr. Sockwell is aware of this as well as I
7 am. Often contract purchasers also apply for permits and check
8 that they're the owner of the property. This is not, in my
9 experience, terribly unusual. I know it doesn't fit into any
10 definition, but --

11 CHAIRPERSON REID: Say that again. I'm sorry, Ms.
12 Kress. The contractor purchaser does what?

13 MS. KRESS: The contract purchaser is not
14 separately identified on these forms. There is no place to check
15 contract purchaser.

16 CHAIRPERSON REID: That's a problem.

17 MS. KRESS: That is a problem. And I believe, in
18 fact, that I've had certain clients in the past that were told to
19 fill out owner when they did not own the property when they were
20 the contract purchaser. I'm just concerned that we may be hung up
21 on definitions when, in fact, we don't have a form that properly
22 designates what everyone is. I don't believe necessarily that
23 this person meant to do or knew that they were doing something
24 wrong. I think they were following whatever there was available
25 to them to pursue this matter, and appropriately so. I mean how

1 many people come before you as contract purchasers on property to
2 find out if they can build something before they go ahead and
3 finish the deal?

4 CHAIRPERSON REID: Exactly.

5 MS. KRESS: And so, to me, this is the same kind of
6 thing. I just think it is worth understanding. There's a long
7 history on these kinds of issues and a long history of not having
8 a place to put the appropriate check.

9 CHAIRPERSON REID: Thank you very much, Ms. Kress,
10 and your point is well taken and, when we were taking up this case
11 before, that was one of the things that was raised. The fact that
12 the application form itself is flawed. So, as such, that lends
13 itself to the misconceptions and irregularities and disparities
14 that we have as a result of that. So that's why I was saying
15 there are many things to consider in addition to the DCRA's error
16 or who filled out the application. Also the form itself. There
17 are many things that we have to look at.

18 VICE CHAIRPERSON SOCKWELL: Madam Chair, to
19 reinforce what Ms. Kress said, we have had many clients or
20 numerous clients who, at the time of application for a building
21 permit, were not the owner. The applications do request that the
22 owner place his name in a particular block. When contract
23 purchaser becomes an issue, it has been one that has normally
24 required some explanation but has usually -- well, has always been
25 accepted by the District in the case of one who has property under

1 contract and is in the process of completing either the mechanics
2 of a deal or the deal may be contingent on certain other approvals
3 and that person is more or less in the midst but has not closed on
4 the property and having closed would be, as you would know, the
5 sure sign of ownership.

6 As well, in this particular application form where
7 in #4 it says, "Applicant is: Circle one, owner, tenant, other"
8 and the person didn't do that, because at that time apparently the
9 person, apparently trying to be honest, realized that they
10 couldn't fill that.

11 CHAIRPERSON REID: Right. It doesn't address that
12 category.

13 VICE CHAIRPERSON SOCKWELL: And then premise
14 indicated would be an owner-occupied single family dwelling.
15 Probably in the estimation of the applicant, once he took
16 possession, he would be the owner occupying it. And then in #5 he
17 gave the right answers apparently for current owner.

18 CHAIRPERSON REID: Yes. If it had an E that said
19 contract holder or a blank line to write in what the actual
20 affiliation was with the property.

21 VICE CHAIRPERSON SOCKWELL: None of the
22 applications for most things that the District requests
23 applications for have such lines.

24 CHAIRPERSON REID: This is two things that cause
25 great consternation for us, and that is when you have forms that

1 are flawed that do not adequately ask the questions that need to
2 be for the information that needs to be submitted for the accurate
3 evaluation of the application. That's one.

4 The other thing is in the regulations where there
5 is no clear, as you can see, definition of primary residence.
6 It's just not clear.

7 BOARD MEMBER RENSHAW: Madam Chair, perhaps another
8 line should be added to the form and that is a non-residence
9 property owner.

10 CHAIRPERSON REID: We had suggested that be done,
11 but this is, of course, we are looking at what happened then and
12 we have to base our judgment on that. We sent a message to DCRA
13 based upon this case that obviously there needed to be an
14 adjustment made on this form so that we would not have to revisit
15 this same situation. And I'm sure that in the course of doing
16 their business and utilizing these forms and others, there are
17 other kinds of problems that arise that come as a result of it
18 being flawed or just human error or what have you that just don't
19 come to us. It just so happens that occasionally we get the ones
20 where there is an area of uncertainty or vagueness that we have to
21 try to deal with. But this is something that is not uncommon with
22 DCRA unfortunately.

23 And now, as such, having the permit. To give you
24 the other side of this. The applicant, they went on to purchase
25 the property and later it was determined that -- this appeal came

1 up and it had to come us. Well, what happened was there was
2 another issue regarding number of employees, but that was a
3 different case. It had a special exception which we did not, when
4 we were determining the merits of this case, we did not go into
5 the special exception aspect of it.

6 Nonetheless, the point I'm making is when, because
7 of the District of Columbia's flawed application or problems with
8 misinterpretations by staff members, it causes a detriment or
9 hardship for citizens. We have to take that into consideration as
10 well. And then you look at it and say, well, given what they had
11 to work with, did they make the best judgment they could on the
12 application as well as being given oral instruction as to well,
13 you know, you say, this -- they don't have a category here for
14 contract holder, so what do I do? And somebody said, oh, just go
15 ahead and put so and so. And not realizing the ramifications of
16 that answer later.

17 So the question then becomes do we feel the need to
18 reconsider this whole situation or is there enough information
19 before us right now to determine whether or not we feel that the
20 merits of the case warrants granting or denying the appeal. I'm
21 sorry. Granting or denying the motion. Do you feel that there is
22 a need for reconsideration, or do you feel that there is no need
23 for reconsideration?

24 BOARD MEMBER MOULDEN: Madam Chair, I believe the
25 burden of proof is in the application process with the assistance

1 of the applicant providing as much information as possible to
2 support the case for the application. However, I do believe the
3 office where the application was taken place is responsible for
4 assisting the applicant with the proper guidance to fill out the
5 application.

6 CHAIRPERSON REID: Correctly.

7 BOARD MEMBER MOULDEN: Correctly. But I think, I
8 feel the majority of the responsibility is upon the applicant to
9 provide a case in what form possible, additional material to
10 support the application to make it easy for the Board to
11 understand their request and to make sure that they meet the
12 zoning regulations.

13 With that in mind, I think we can only go by the
14 information that we have.

15 MS. KRESS: I would also remind the Board that a
16 reconsideration has to be on the basis of new information and I
17 think as one reviews the file, you have to evaluate what new
18 information has come to you since the appeal was decided and
19 heard. What new information has come to you since the appeal
20 happened that makes you want to reconsider this?

21 CHAIRPERSON REID: That goes to the submission by
22 the Intervenor whose attorney is Mr. Nettler who then submits to
23 us the grounds, from his perspective, the grounds for granting a
24 Motion for Reconsideration and he says, he argues that the Board
25 has not properly characterized the issue on appeal. The Board's

1 action affects an amendment to DCMR 203. I assume that he means
2 by that the aspect of the primary residence that's not defined in
3 203 and the permit issued to Mr. Fields is contrary to the
4 practice of the Office of Zoning Administrator.

5 Neither claims warrant reconsideration or each
6 claim will reflect the continued misunderstanding of both zoning
7 regulations and the -- before the Board and, as such, the aspect
8 of it in regard to the permit issue being contrary to the
9 practices of the Zoning Administrator, I don't know how we could
10 evaluate that. You mentioned, Ms. Kress, what you know the
11 practice to be.

12 MS. KRESS: And what the Board's practice has been.

13 Many people have come before you as contract purchasers and
14 represented themselves as owner. This has not been unusual at all
15 for the Board. Many, many people will not finalize the purchase
16 on pieces of property until they have the BZA's approval.

17 CHAIRPERSON REID: That's true, but in this
18 instance, this particular case, the issue that was raised was the
19 fact that the Zoning Administrator said that he would not issue a
20 permit to someone who was not in residence at the time the permit
21 was issued. That's a part of the transcript. Matter of fact, I
22 had gone through that. If you like, I can cite it for you because
23 I had to refamiliarize myself with the testimony of the Zoning
24 Administrator.

25 VICE CHAIRPERSON SOCKWELL: Madam Chair, it would

1 seem that the --

2 CHAIRPERSON REID: Excuse me. Before you go there,
3 this is on page 70 of the transcript. It says, this is Ms. Reid.

4 "Mr. Nunley, so that we can all be on the same page, am I
5 understanding you to say that DCRA does not recognize the status
6 of contract holders in granting a home occupancy permit?" Mr.
7 Nunley, "No, that's not at all what I said. What I said is that
8 if the person does not reside on the premises, and one of the ways
9 that we determine whether they reside on the premises is through
10 this form. If they give us a narrative that they are a contract
11 purchaser, well, fine. Do you currently live there and are a
12 contract purchaser or do you live some place else and are under
13 contract to purchase the property? If they respond that they live
14 somewhere else and that they have a contract on this property,
15 then my response to them would be, well, you get there when you
16 have bought the property or once you reside there, whether you
17 have yet bought it or not, then we can issue the certificate, but
18 not until then."

19 So it's confusing.

20 VICE CHAIRPERSON SOCKWELL: I think there's also
21 some more in there and the transcript also says that they also
22 take into consideration other factors and in the file,
23 unfortunately, those other factors were not privy for me as
24 someone who's reading the record to look for. And I understand
25 the application process. But he also mentioned in the transcript

1 that they take into consideration, other things come into play, I
2 believe is how he worded it. And from reading the transcript and
3 the file, I looked for those other things to come into play, and I
4 never saw that.

5 CHAIRPERSON REID: Mr. Hood, it goes further to
6 say, "MS. REID: So are you saying that the contractor holder
7 would have to actually be in occupancy at the time that they apply
8 for and receive the permit? MR. NUNLEY: That's correct." It
9 didn't say anything about --

10 COMMISSIONER HOOD: If we're going to read just
11 parts of the record, I will take the time and read to you where it
12 says that other things come into play. And from someone who did
13 not sit on that case who read the record, I looked through the
14 file and tried to find something else in terms in which he was
15 speaking of that comes into play. But I will point it out to you
16 shortly.

17 CHAIRPERSON REID: Okay. I was just saying to you
18 that these are some of the things -- this was a very convoluted
19 case. It took some time, and I remember it distinctly because of
20 the fact that there were just so many different gyrations of the
21 issues that had to be dealt with. And again, before us today is
22 do we feel that the Motion for Reconsideration should be granted?
23

24 VICE CHAIRPERSON SOCKWELL: Madam Chair, among the
25 things that one might want to consider would be whether or not the

1 application was appropriate at the time that it was initiated and
2 whether or not the issuance was appropriate at the time that it
3 was granted. If the application is appropriate, then it could be
4 that the home occupation permit would just have to be reissued
5 under a certain circumstance. On the other hand, if the
6 application was deemed inappropriate, then the whole process would
7 have to start again. And, based on the way that DCRA handles many
8 of its activities, it seems difficult to say that the application
9 was ill-timed. It might be arguable that the issuance was ill-
10 timed.

11 MS. KRESS: Again, I just would remind the Board.
12 You need to re-read the order that we have issued. And legally,
13 you can do whatever you want, but legally, we need to be having
14 new evidence for a reconsideration. You have to be -- to me, as
15 I'm going back and re-reading the order that has been issued, I'm
16 not hearing what you're saying as new evidence, new information.
17 You can do whatever you want, but I just need to point out to you
18 that the basis for reconsideration of an appeal that has already
19 been judged by you has to be some new different information.

20 COMMISSIONER HOOD: Or, Ms. Kress, I believe also
21 if there's something erroneous or in error.

22 MS. KRESS: Or something in error. You're correct.

23 COMMISSIONER HOOD: Okay. Let me just say this,
24 Ms. Reid. I don't know what page this is on the transcript, but
25 it's line 22.

1 CHAIRPERSON REID: At the top of the page.

2 COMMISSIONER HOOD: Oh, okay. Thank you. Seventy
3 one. "MR. NUNLEY:" He says, "When -- if they are -- I mean we
4 make decisions daily. If there are additional facts, then those
5 facts plane the decision."

6 CHAIRPERSON REID: I'm sorry. Where are we?

7 MS. KRESS: Page 71.

8 COMMISSIONER HOOD: Oh, page 71.

9 CHAIRPERSON REID: Let me see where you're reading
10 from.

11 MS. KRESS: Line 22.

12 CHAIRPERSON REID: Line 22. Okay. I see.

13 COMMISSIONER HOOD: And I was just trying to, for
14 the sake of time, just trying to read that. That worried on me a
15 little bit because I looked through the file looking for those
16 other facts that came into play.

17 CHAIRPERSON REID: Go ahead.

18 THE INVESTIGATOR: No. That was just my point and
19 saying not just the application. Apparently what he was saying,
20 my interpretation was, other things come into play as far as the
21 contract purchaser and whether they occupy the property and owning
22 it and that whole piece. Now, I'm going to have to read the whole
23 page to really get to the gist.

24 CHAIRPERSON REID: Can you read a little further
25 because I read that, too. I noted it.

1 COMMISSIONER HOOD: "What I would do in a case such
2 as that -- again, my response about the person having to be
3 physically there was in response to the simple question, single
4 information contract purchaser. I have been in this business a
5 number of years, and I know that just because you have a contract
6 doesn't mean that the contract will ever come to fruition to
7 conveyance, and we don't issue an official document or something
8 as speculative as this simple information that I have a contract
9 to purchase this property."

10 CHAIRPERSON REID: And it says further, "Now, if
11 there is additional information that gives assurance that this
12 person resides on the premises and, of course, that can be taken
13 into consideration. It's a judgment call."

14 COMMISSIONER HOOD: "It's a judgement call."

15 CHAIRPERSON REID: We don't know if that happened
16 because we understand that there may have been additional
17 information or oral, you know, for example, like the clerk said,
18 well, is he going to live in the property? And the person filling
19 it out said yes, he is going to live in it. And they said, well,
20 okay, do this and, as a result of that, we have this. Because the
21 application is flawed, we have this situation here. Again, do we
22 feel that it warrants a reconsideration or we feel that, based on
23 what Ms. Kress is advising us, that we have any new information or
24 new evidence that would compel us to grant the appeal or do we
25 have any information that tells us that there was something that

1 was done in the first case or the first order that was erroneous
2 or a misrepresentation or something of that nature.

3 In other words, do you feel that if we got into
4 this case again and started mulling through the merits of the
5 case, that the motion before us, it would make sense to grant the
6 motion before us?

7 COMMISSIONER HOOD: Madam Chair, if we do do the
8 reconsideration, I think that the process is what I'm actually, as
9 a Commissioner, would like to go after, even though that's not in
10 front of us, but I do think there were some errors made. Mr.
11 Sockwell's last suggestion, and I would have to ask him to repeat
12 it, I thought was right in line with where I think this Board
13 should move.

14 CHAIRPERSON REID: All right. Could you repeat it?

15 VICE CHAIRPERSON SOCKWELL: Before I repeat that,
16 or I will repeat it. I said that it is possible that the way the
17 application was handled, the timeliness of the application may not
18 be of question but the timeliness of the issuance may be arguable.

19 CHAIRPERSON REID: Meaning?

20 VICE CHAIRPERSON SOCKWELL: In other words, that
21 the issuance might have been premature but the application itself
22 may not have been premature. But after saying that, let me try to
23 frame this slightly in a similar situation. You may not agree
24 with me, but if an individual or a business purchases a commercial
25 store facility, that business -- or leases said store facility,

1 that business can not move into the facility until a Certificate
2 of Occupancy has been transferred from the previous owner into the
3 name of the contract purchaser or lessee. Yet, that business does
4 own title to access. They can not take possession of the property
5 for the act of performing a business operation until the
6 Certificate of Occupancy has been issued.

7 CHAIRPERSON REID: Right.

8 VICE CHAIRPERSON SOCKWELL: In the case of Mr.
9 Fields, he had contracted to occupy said piece of property, yet he
10 had not received the permit to use the 25 percent portion for the
11 business that he intended to operate and it would have been normal
12 in the business situation for one to want to hit the ground
13 running, i.e., move in, be able to operate one's business, but one
14 leads the process by going through the application stages for the
15 various approvals that are necessary.

16 In this case, looking at his application and
17 looking at his application alone, it appears that he stated truths
18 throughout the application and that the application itself, as
19 we've all agreed, does not necessarily ask all of the correct
20 questions to get answers that resolve all of the potential
21 situations.

22 CHAIRPERSON REID: You're saying he filled it out
23 as best he could.

24 VICE CHAIRPERSON SOCKWELL: He filled this
25 application out as best he could.

1 CHAIRPERSON REID: I would agree.

2 VICE CHAIRPERSON SOCKWELL: With the possible
3 exception of having left C in #4, Other, uncircled when he went on
4 to correctly circle A, which is owner-occupied single family
5 dwelling, because that is what the dwelling was and that is what
6 he assumed his role with the dwelling would continue to be.

7 CHAIRPERSON REID: And then you have to ask
8 yourself the question -- in this instance, Mr. Sockwell, I see
9 where you're going with this -- what would a prudent man do --

10 VICE CHAIRPERSON SOCKWELL: Or woman.

11 CHAIRPERSON REID: -- or woman if, in fact, you
12 were in a similar situation and you had to fill that form out,
13 given your particular status, and this is all you have to work
14 with. What then would you do?

15 VICE CHAIRPERSON SOCKWELL: In filling such a form
16 out myself, being a contract purchaser and not an owner, if I were
17 trying to be totally honest with the form, I would have filled out
18 #5 with the name of the current owner.

19 CHAIRPERSON REID: Which he did.

20 VICE CHAIRPERSON SOCKWELL: Which he did do. And I
21 would have filled out #1, 2, 3, as he did. With me having circled
22 C as other than owner or tenant and premises indicated would have
23 been an owner-occupied single family dwelling and not to be
24 changed to any other purpose but to have a home occupation
25 installed within it for the 25 percent of the space, and

1 everything else seems to be in order in terms of how he
2 characterized his business.

3 CHAIRPERSON REID: Another thing, too, is under
4 that #4, of the possible responses, he couldn't put rented
5 dwelling or condominium cooperative or flat.

6 VICE CHAIRPERSON SOCKWELL: No.

7 CHAIRPERSON REID: So a guess, I guess it would be
8 a dice throw, what would be consistent with what he was applying
9 for, and that was the home occupancy permit, so it had to be an
10 owner-occupied single family, even though it wasn't at the time,
11 but that's what he was applying for.

12 VICE CHAIRPERSON SOCKWELL: Well, it was an owner-
13 occupied -- well, let's say the building had been vacant for a
14 period of time, but it was always occupied as a single family
15 dwelling, as I understand it.

16 CHAIRPERSON REID: What?

17 VICE CHAIRPERSON SOCKWELL: It would have been
18 occupied as an owner -- it would have been an owner-occupied
19 single family dwelling.

20 CHAIRPERSON REID: No, this is the intended use
21 here.

22 VICE CHAIRPERSON SOCKWELL: Yes, the intended use.

23 CHAIRPERSON REID: Okay. What it was asking --
24 again, it goes to the discrepancies in the formatting of the form.

25 VICE CHAIRPERSON SOCKWELL: Right.

1 CHAIRPERSON REID: It doesn't say what the current
2 use is, which is good.

3 VICE CHAIRPERSON SOCKWELL: It doesn't say proposed
4 use as opposed to existing use.

5 CHAIRPERSON REID: Exactly. Does not say that.

6 VICE CHAIRPERSON SOCKWELL: But that's because this
7 is not a building permit application nor a change of Certificate
8 of Occupancy application. It is a use application.

9 CHAIRPERSON REID: And again, a prudent person or a
10 reasonable man or woman --

11 VICE CHAIRPERSON SOCKWELL: And a subordinate use
12 application, as well.

13 CHAIRPERSON REID: -- looking at this application,
14 because when I was raising the issue about the address, it says
15 the applicant's name and the applicant's address. Then if they
16 didn't put -- well, now here's where it's really confusing because
17 it's asking for the applicant's name and the owner's name and if
18 the theory from the Zoning Administrator holds true, then the
19 applicant and the owner would be the same, wouldn't they?

20 VICE CHAIRPERSON SOCKWELL: Well, in this--

21 CHAIRPERSON REID: Let me deviate a little bit to
22 ask you this.

23 VICE CHAIRPERSON SOCKWELL: Remember, the closing
24 had obviously not taken place.

25 CHAIRPERSON REID: A home occupancy permit can be

1 issued to a renter?

2 VICE CHAIRPERSON SOCKWELL: In this case, the --

3 CHAIRPERSON REID: I'm just asking you. Do you
4 know?

5 VICE CHAIRPERSON SOCKWELL: It would seem to me
6 that it can be. I'm not --

7 CHAIRPERSON REID: So you don't have to be the
8 owner.

9 COMMISSIONER HOOD: Madam Chair, can we--

10 MS. KRESS: You are correct. A person who is
11 renting can obtain that.

12 CHAIRPERSON REID: Okay.

13 COMMISSIONER HOOD: I was just going to ask if --

14 VICE CHAIRPERSON SOCKWELL: It has to be their
15 residence.

16 COMMISSIONER HOOD: -- corp counsel could chime in
17 on this and kind of give us some guidance.

18 CHAIRPERSON REID: They already have. Go ahead.

19 COMMISSIONER HOOD: I know they already have, and I
20 have it in front of me, but maybe if they could put it on the
21 record.

22 MS. SANSONE: Yes, Madam Chair, Mr. Hood, the
23 motion before the Board has been called a Motion for
24 Reconsideration, which would mean that the Capitol Hill
25 Restoration Society is asking the Board to look back over the

1 existing record and transcripts and reconsider the three
2 substantive issues it raised. They did not ask to put in new
3 evidence or new information. They're trying to put forward that
4 they believe the decision that was issued has some errors in it,
5 and they'd like the Board to go back and take a look at those and
6 reconsider whether or not there are errors in the original
7 decision, and they've identified three points that they want the
8 Board to look at.

9 One of those points is whether the statement of
10 issue that was characterized by the Board and described in the
11 written decision was correct, and that went to was this case
12 really about whether or not someone who is a contract purchaser
13 can go into the DCRA and apply for and obtain one of these permits
14 before they actually move in and are residing at the premises or
15 do they have to wait until -- does DCRA have to wait until a
16 person is actually in residence in the building living there
17 before this permit could be issued? So that's the first issue
18 that the Capitol Hill Restoration Society believes that
19 potentially there's an error.

20 Now, in reviewing this file, I must say I thought
21 the way the appeal was initially written in the written materials
22 and in the hearing was probably very confusing to the Board, but
23 the Board's decision did seem to boil down to this question: Can
24 contract purchasers who are not living in the home obtain their
25 permit before they actually complete their transaction and move

1 in?

2 So the first question for reconsideration calls
3 upon the Board to decide, is this what this case was about or was
4 it about something else?

5 The next issue that the Capitol Hill Restoration
6 Society raised is whether the Board's order, which would allow a
7 contract purchaser who is not actually in residence to obtain the
8 permit, has the effect of amending Section 203 of the zoning
9 regulations. Only the Zoning Commission can amend the zoning
10 regulations, so this issue is asking the Board to take a look at
11 whether it's interpreted Section 203 properly, whether Section 203
12 requires actual residence in the building before the permit can be
13 issued, or whether it's simply an interpretation of the regulation
14 whether or not to authorize the Zoning Administrator to go ahead
15 and issue these types of permits before the applicant actually is
16 residing in the building.

17 Then the third question --

18 VICE CHAIRPERSON SOCKWELL: Would you repeat that
19 second. It ended with before the resident is residing in the
20 building.

21 MS. SANSONE: The question here is is it a
22 permissible interpretation of Section 203 whether or not DCRA can
23 issue the home occupation permit before the contract purchaser
24 actually moves in and is residing in the building or do they have
25 to wait until the individual is residing in the building.

1 VICE CHAIRPERSON SOCKWELL: May I ask you a
2 question on that one, and that is if DCRA, via the Zoning Office
3 or any other unit that would have jurisdiction over such permit
4 issuance, and since, in this case, it's a Zoning-issued permit, it
5 should be strictly under Zoning's responsibilities. If such an
6 office does not have rules which prohibit the issuance of such a
7 permit without the completion of a document that's a deed or title
8 to the property, then if such procedures are not spelled out in
9 writing and it is more a discretionary action by the Zoning
10 Administrator or delegated review individual, then is there any
11 way that this Board can impose more restrictive requirements than
12 would have been the grounds of the issuance?

13 MS. SANSONE: Yes, Mr. Sockwell. For this Board to
14 impose additional requirements, that really is the province of the
15 Zoning Commission to amend the regulation and, in the written
16 decision in this case, this Board has asked DCRA to take a look at
17 its application form and make adjustments to the form. But if the
18 Board feels that the regulation should be amended to address this
19 situation more specifically, that would have to be referred to the
20 Zoning Commission for that type of action.

21 VICE CHAIRPERSON SOCKWELL: So then you would agree
22 that because Section 203 does not specifically state that the
23 applicant or operator of such a home occupation must be an owner
24 at the time of application and since a renter would as well
25 qualify, does it not leave open the possibility for a contract

1 purchaser to make application and actually receive a home
2 occupation permit?

3 MS. SANSONE: Mr. Sockwell, that is the question
4 that is really in front of this Board, is how do you interpret
5 Section 203, in particular, Section 203.3(c). The home occupation
6 permit doesn't really look to who owns, what's the ownership
7 status of the person. It's asking about residency, and the issue
8 here is do you have to reside in the dwelling at the time you
9 apply for and obtain your permit or can you obtain your permit and
10 subsequently move into the dwelling and conform your home
11 occupation to the terms of that permit residing in there and
12 complying with any of the conditions of the permit. That is the
13 issue. Is that interpretation of 203 or is that actually in
14 there?

15 VICE CHAIRPERSON SOCKWELL: Let's take it beyond
16 interpretation and take it to the operative words. In Section C,
17 a home occupation permit may be granted only to a designated
18 person. Designated person does not get defined as owner versus
19 renter versus Indian chief or whatever. As well, the other
20 operational word here is reside. So designated and reside are the
21 two authority words here.

22 Designated is a very loose word. Resident is a
23 very specific word, and then further defined in other sections as
24 to the number of individuals other than the designated resident
25 who can work at the business, etcetera, would help to modify and

1 specify exactly what the requirements are. And I don't think
2 there's enough in this regulation to prevent the issuance of the
3 home occupation permit in question for us to be able to take it to
4 the next level.

5 MS. KRESS: I think the issue, and you might want
6 to just also highlight D which is it can't be transferred. I
7 think one of the issues here is is this some kind of a permit that
8 can be abused? It can only be used by the person. It is not
9 transferrable. So if this person does not reside, no one else can
10 get this permit. This permit only belongs to the individual who
11 did apply and, to me, there's the opposite side of what's
12 happening and what are the other possibilities that could go
13 wrong.

14 VICE CHAIRPERSON SOCKWELL: And Ms. Kress, if I
15 might interpret, the issue of abuse would then become a zoning
16 inspection issue and that in operational terms would be the method
17 by which we are expected to be able to police home occupations as
18 well as anything else. Given the lack of staff, it's not
19 something that's expected to be done on a regular basis or
20 effectively at this point. But it would be under Zoning's
21 responsibilities.

22 CHAIRPERSON REID: Okay. Let's see if we can kind
23 of wrap this up. We've been at this for a while, which I knew
24 that it would take some discussion. The aspect of the case in
25 regard to the occupancy is one that goes to the time of the

1 occupancy of the applicant and the submission to oppose the
2 Motion for Reconsideration from Nettler says that, in the first
3 place, quote, "CHRS never presented any evidence that Mr. Fields
4 did not occupy 434 New Jersey Avenue at the time he was issued the
5 home occupancy permit."

6 So whether or not he was living there is something
7 that we're not sure of at this point. I just can't remember if in
8 fact that was established. I think that, if I remember correctly,
9 that the property was being renovated or something but,
10 nonetheless, if you go to the facts of the case, I don't remember
11 there being evidence presented that he did not live there so we
12 don't know -- let's just say, for example, in the absence of any
13 proof to the contrary, that it's something that we can not make a
14 definite assertion on. That's one thing.

15 The other thing in regard to the issue of
16 residence, the regulations are silent as to the definition of
17 residence. It's very nebulous as to does that mean someone who's
18 a member of Congress who has two domiciles in two parts of the
19 country or three or four, whatever, or other people who do
20 business here in Washington who have other addresses other places,
21 and it does not distinguish for us clearly what a residence is or
22 how that could be determined. If it's part-time, if it's part of
23 the year or if it's all the year. I'm not really sure. I'm sure
24 that we have people, several people who live in Washington who own
25 properties elsewhere. And so the word reside is within itself

1 something we can not interpret unless, as Mr. Sockwell suggested
2 that -- and we did this before with the first case -- hasn't been
3 done yet-- there be some amendment to the regulations that would
4 clarify what is meant by residence, primary residence, for the
5 purpose of zoning. We don't have that.

6 VICE CHAIRPERSON SOCKWELL: Madam Chair, we
7 recently lost a distinguished fire chief because the definition of
8 residence was interpreted differently by the city than it was by
9 the individual and yet in this case, if there is nothing to
10 substantiate the lack of use of this property as Mr. Fields'
11 principal residence while he is in the District of Columbia and
12 there's nothing to define principal residents as non-voting
13 residents or anything else, it would be inappropriate for this
14 Board to attempt to make such a definition.

15 CHAIRPERSON REID: Well, would you entertain a
16 motion?

17 VICE CHAIRPERSON SOCKWELL: I would entertain a
18 motion to deny.

19 CHAIRPERSON REID: I'd second it. Any further
20 discussion? All in favor.

21 (AYES)

22 COMMISSIONER HOOD: Opposed.

23 CHAIRPERSON REID: Wait a minute.

24 BOARD MEMBER RENSHAW: All have not voted. I'm
25 going to vote to deny.

1 CHAIRPERSON REID: All right. Let me take the vote
2 again. Mr. Sockwell moved that we deny the Motion for
3 Reconsideration. I seconded it. All in favor.

4 (AYES)

5 CHAIRPERSON REID: Opposed.

6 COMMISSIONER HOOD: Opposed.

7 MS. BAILEY: Staff would record the vote as four to
8 zero to deny -- I'm sorry -- four to one to deny the motion made
9 by Mr. Sockwell, seconded by Ms. Reid, Mr. Hood opposed to the
10 motion.

11 BOARD MEMBER RENSCHAW: Have we recommended that
12 this issue go to the Zoning Commission for adjustment?

13 CHAIRPERSON REID: We did.

14 BOARD MEMBER RENSCHAW: And what has been the
15 outcome of that?

16 COMMISSIONER HOOD: Let me just say, Ms. Renschaw,
17 if it has been done, the Zoning Commission hasn't dealt with that
18 under my tenure, but we will take that as an issue.

19 CHAIRPERSON REID: As well as, we also recommended
20 that the forms be reformatted to reflect the exact intent of the
21 applicant and to not cause the same kind of confusion which we're
22 confronted with today that I'm sure has happened time after time
23 after time, and I think that what has gone on, Ms. Renschaw, is
24 that when the forms don't match what the intent is, that staff
25 people will give instruction and the instructions may be

1 incorrect. They'll say, well, put this or put that. Well, I
2 think that means this. But this is the thing that really gives me
3 pause, and that is that these decisions that are being made are of
4 such paramount importance that I just don't understand how they're
5 relegated to a staff person who may not fully understand the
6 ramifications of that advice that's being given.

7 BOARD MEMBER RENSHAW: Well, it seems to me that
8 word resident is so important in these cases that we better align
9 a definition with perhaps the Tax Office that has a very definite
10 definition of a resident and that we ask DCRA, just because we are
11 all curious about this, whether or not this form has been redone
12 and there is a line for non-resident property holder or owner so
13 that at least the tax people could start to capture some of this
14 data and that we not be locked into this horrible problem again.

15 CHAIRPERSON REID: Ms. Kress, would you follow up
16 to see whether or not that has been done because it was
17 recommended.

18 MS. KRESS: I can tell you it has not been done and
19 also I think it goes right to the words as we read them in Section
20 203 because it, to me, no matter how one defines resident, it is
21 not really contract purchaser and perhaps we need to redefine
22 things for ourselves, regardless of what is going on with DCRA or
23 Finance, and I definitely will put on -- as I think all of you are
24 aware, we're looking at doing some major changes to the regs this
25 summer, and this is definitely one that needs to go on the front

1 burner.

2 CHAIRPERSON REID: And your testimony this morning
3 in regard to what is the practice in regard to control holder, we
4 all well know that in this city, or any other city, that many
5 developers or business people, before they can actually purchase a
6 property-- and in my business it happens all the time --

7 MS. KRESS: They make their contracts contingent on
8 it.

9 CHAIRPERSON REID: They have to because they can't
10 buy a building, pay a sizable amount for a building they can't
11 use. So it's subject to obtaining the necessary permits. In this
12 instance where Mr. Nettler -- who was not, incidentally, the
13 Zoning Administrator at the time. It was Gladys Hicks.

14 VICE CHAIRPERSON SOCKWELL: Gladys Hicks was the
15 acting Zoning Administrator.

16 CHAIRPERSON REID: Gladys Hicks was the person who
17 was actually involved, but she wasn't present for our hearing and,
18 as such, we're not really sure but he's saying that -- he very
19 clearly said, and we can give him the copies of the transcript,
20 that unless the person is actually living in the property, they
21 would not be issued a home occupancy permit. The contract holder
22 would not --

23 MS. KRESS: It's the Certificate of Occupancy and
24 the move in and I think it's quoted in the transcript as I was
25 looking at it. You get the approval, but it's not actually issued

1 until you physically are there.

2 CHAIRPERSON REID: Suppose you can't move in?

3 MS. KRESS: And if you don't, then it's void.

4 CHAIRPERSON REID: Suppose --

5 MS. KRESS: Because it rides with the person.

6 CHAIRPERSON REID: Suppose with this home occupancy
7 permit situation, someone wants to buy a property to use as their
8 home occupancy, the property is a shall so, therefore, they can
9 not occupy it and they have to get the permits before they will
10 purchase. If he's saying that they would not issue it unless the
11 person is actually physically living in the property at the time
12 that the permit is issued. You see, there's a disconnect there.

13 MS. KRESS: You're talking about a construction
14 permit and a home occupancy permit and a C of O. Those things
15 happen at different times. If you're living in a shell, well
16 then, you're going to just get a building permit at that time to
17 get the construction done. Then after the construction is done
18 and you're ready to move in, you get the C of O and the final of
19 the home occupancy permit. But it rides with the person and with
20 them physically being there.

21 CHAIRPERSON REID: Are you saying something
22 different from what I said?

23 MS. KRESS: No. I'm sorry.

24 BOARD MEMBER RENSHAW: In the future, when we have
25 to review home occupation permits, it would be a good idea to get

1 some indication from DCRA who reviewed this application because
2 what we had in front of us was Mr. Fields' application but nothing
3 here about the application status and where we pointed out in the
4 testimony today, #4 where the applicant did not circle owner,
5 tenant or other, there should have been some indication that
6 someone caught that and initialed it as far as the applicant would
7 not do this or it was just oversight and he added it later.

8 CHAIRPERSON REID: In other words, you're speaking
9 about the procedure.

10 BOARD MEMBER RENSHAW: The procedure. In other
11 words, we should have received the application with some kind of
12 status written in by DCRA.

13 BOARD MEMBER MOULDEN: I'd like to make a strong
14 suggestion that the Zoning Office get together with the Planning
15 Office and look at what other jurisdictions are doing nearby. For
16 example, I worked in Baltimore County Zoning Office and the city,
17 and they have a policy guide for home occupation, professional
18 offices and home, that they use in addition to the zoning
19 regulations. They're pretty tough cases sometimes, especially
20 when they want these things before the actual building is built or
21 whether they have a contract on it. So the definition is not even
22 listed. I think there needs to be some definite work on that.

23 MS. KRESS: I think you're definitely correct. I
24 would only just say maybe it's not Office of Planning because
25 Office of Planning doesn't really get into that. Maybe it's

1 Office of Zoning working with the Zoning Administrator.

2 BOARD MEMBER MOULDEN: Zoning Administrator. Okay.

3 MS. KRESS: And I think it's an excellent
4 suggestion. And, by the way, I do know there is some kind of
5 brochure that DCRA has, but we should get a hold of that and help
6 rewrite it and get it clarified and change our regs and change
7 their form because I think -- and as all of us know -- living in
8 the world we do now with the computers, the whole computer
9 technology being such an important piece, more and more people are
10 working at home, as I think we've all read and know, and I really
11 think we need to be dealing with issue even past this one of
12 definition into the whole expansion of home occupancy and re-
13 review all of home occupancy as we have known it in the past.

14 BOARD MEMBER MOULDEN: Right.

15 VICE CHAIRPERSON SOCKWELL: It might be
16 advantageous in looking at home occupations and the fact that we
17 have special regulations for foreign missions, that we extend,
18 where such definitions are important, definitions to cover the
19 Congressional people because they are elected officials who spend
20 a certain percentage of their time or at least expected to --

21 CHAIRPERSON REID: They have to.

22 VICE CHAIRPERSON SOCKWELL: -- within the District
23 of Columbia. Well, when they're AWOL on major votes for major
24 portions --

25 CHAIRPERSON REID: They have a request to be --

1 VICE CHAIRPERSON SOCKWELL: If we define them, then
2 it would keep this from happening again because if one designates,
3 let's say, as Ms. Renshaw requested, that we align with the Tax
4 and Revenue Office, then it might be that we would have to say
5 that a resident is one who qualifies for a Home State Act
6 exemption whether or not they actually applied for it, which would
7 define a resident very tightly because--

8 CHAIRPERSON REID: If they did what?

9 VICE CHAIRPERSON SOCKWELL: That qualifies for Home
10 State Act exemption because that requires that one be an owner
11 occupant.

12 CHAIRPERSON REID: How is it defined?

13 VICE CHAIRPERSON SOCKWELL: Well, I'm saying that -
14 -

15 MS. KRESS: Your idea is that renters couldn't then
16 have this. It only applies --

17 VICE CHAIRPERSON SOCKWELL: I'm saying that renters
18 should be able to have home occupation permits because they are
19 characterized as residents. If I'm a renter and I'm a voting
20 resident, then I'm a resident. If I am an owner and I live in
21 Massachusetts, then I'm not a resident. But if I'm a
22 Congressional person required to be in the District of Columbia
23 for a certain period of time, then for that particular category of
24 individual, maybe I am a resident and maybe it is even more
25 appropriate that a Congressional person doing much of his time in

1 penance in Congress should be able to operate some other type of
2 business as part of his normal life. It's sort of like being a
3 Member of the Zoning Adjustment and having something else to do.

4 CHAIRPERSON REID: This particular Congressman was
5 retired, former Congressman, so this was a business that he
6 elected to go into after his service in the Congress.

7 One other thing before we leave this issue, and
8 that is it is chilling to me to see instances where simple errors
9 in a form or indiscriminate decisions that are made by staff
10 members can inadvertently cause considerable financial detriment
11 to citizens. This is a situation where this particular person,
12 predicated upon his permit, went ahead and purchased this building
13 and this building was not cheap, and then come to this with this
14 particular situation and then, of course, the opposition brought
15 it to the BZA and if it had been turned down, then the person
16 would have been stuck with a very expensive house that he couldn't
17 use.

18 And this is not the first time. Often this happens
19 with mistakes that are made due to the lack of accuracy and forms
20 and training and staff and the interpretation of the zoning
21 regulations. And I think that that's shameful.

22 COMMISSIONER HOOD: Madam Chair, I would just ask,
23 while I understand the interpretation of the regulation, what I've
24 heard, even though I didn't comment on it, the regulation is open-
25 ended and I didn't agree with the conversation I did hear. But I

1 will ask is that if you can have staff to direct to the Zoning
2 Commission that they look at this issue. I know Ms. Kress said
3 she would do it. I mean it is going to happen. But the Zoning
4 Commission right now-- and as Ms. Kress knows -- we have so much.

5 I want to make sure that this does not drop through the cracks.
6 So if you can direct staff to --

7 CHAIRPERSON REID: I did.

8 COMMISSIONER HOOD: -- write a letter to the Zoning
9 Commission.

10 CHAIRPERSON REID: Oh, you said write a letter?

11 COMMISSIONER HOOD: Write a letter, because we have
12 so much on the table that I don't want it to drop through the
13 cracks.

14 CHAIRPERSON REID: Ms. Kress, you can so direct
15 her, as well.

16 COMMISSIONER HOOD: I just think it would come
17 better from the Chairperson of BZA. Just to make sure that it
18 doesn't drop through the cracks. Not that Ms. Kress would do it.
19 She's excellent.

20 CHAIRPERSON REID: You make sure this is not
21 dropped through the cracks and that a letter is given to the
22 Zoning Commission to make sure that this matter is taken up.

23 COMMISSIONER HOOD: The reason I'm saying that is
24 because you'll be here next year. I'm not saying that we won't
25 take it up, but you'll be here next year with another issue

1 dealing with the same thing, and we want to make sure --

2 CHAIRPERSON REID: Oh, that's what we're trying to
3 eliminate. Right.

4 COMMISSIONER HOOD: We want to make sure that
5 everything that comes in front of BZA the Zoning Commission
6 address so we can have more regulations and we can tighten up and
7 put things in order.

8 CHAIRPERSON REID: Sure. For sure.

9 MS. KRESS: And I do want to reiterate again that
10 the Zoning Commission has decided it's going to take up really re-
11 evaluating the zoning regulations this coming summer. So the
12 kinds of things you've been dealing with, maybe they're years old
13 and you haven't told me. Please focus on those and get all of
14 those issues to me for this summer so that we can work on them and
15 get them to the Zoning Commission to evaluate.

16 VICE CHAIRPERSON SOCKWELL: Ms. Kress, I'd like to
17 reinforce something that Mr. Moulden said, and that is the
18 coordination between the Zoning Office and perhaps the Office of
19 Planning and, in particular, the Deputy Mayor for Economic
20 Development because one of the situations that can occur when we
21 redefine things is that it creates a log jam at some other end of
22 the pipeline and to define owner and whatnot, if that occurred in
23 such a restrictive way that it excluded contract purchaser, then
24 we'd have a lot more cases not coming before us but going into the
25 court system over disgruntled adversaries of one development

1 project or another because there is now a definition that says
2 that developer X or owner X is not really an owner and, therefore,
3 made an improper application for a particular thing, and we need
4 to be sure that what we do is coordinated throughout and that we
5 don't have any kind of glitches that we make trying to solve one
6 problem but creating something that's even worse.

7 MS. KRESS: And Mr. Sockwell, where I thought you
8 were going is also the coordination with DCRA, and I know you mean
9 that as well. I think that's very key that whatever this
10 definition turns out to be, and I would just tell you that we are
11 meeting monthly with the Office of Planning and the Zoning
12 Administrator and we keep an ongoing list of things that we chat
13 about, and I think this is one that we should chat about prior --
14 I'm sorry -- I didn't mean to leave out Corporation Counsel Marie
15 sits in on those meetings with us, and I think this is something
16 that's discussed, even before anything gets written. But thank
17 you for your advice and help.

18 MS. BAILEY: The next case and final case of the
19 morning is Application 16551 of the Welch Family Limited
20 Partnership #10/Steve Royall, pursuant to 11 DCMR 3103.2, for a
21 variance under Section 2101 from the off-street parking
22 requirements for a social lounge and dance place (public hall) in
23 a C-2-A District at premises 1335 H Street, N.E. That's Square
24 1026, Lot 824.

25 The hearing dates were February 16, 2000 and April

1 5, 2000. On April 5, two motions were made. The first was to
2 approve the application and the second was to deny the
3 application. Both motions failed for lack of a majority vote.
4 The Board instructed staff to send the record to Commissioners
5 Moulden and Renshaw to participate in the decision.

6 The February 16 Members who participated were: Ms.
7 Reid, Mr. Sockwell, Mr. Moulden, and Ms. Renshaw, and the Members
8 who participated on April 5 were: Ms. Reid, Mr. Sockwell, and Ms.
9 Mitten.

10 This case is before the Board for its decision this
11 morning.

12 BOARD MEMBER MOULDEN: For the record, I have read
13 the file from this case and am prepared.

14 BOARD MEMBER RENSHAW: And I have, also.

15 CHAIRPERSON REID: Okay. This case was one in
16 which the applicant had requested a relief in order to open a
17 public hall, I think it was, in the C-2-A District at 1335 H
18 Street, N.E. and basically what she had to demonstrate was that
19 there was something unique and unusual about the property that
20 would prevent her from complying with the existing zoning
21 regulations and that there would not be considerable adverse
22 impact and that it would not impair the integrity and intent of
23 the zoning regulations. And the issues that came up as a result
24 were getting to the meat of what in fact she intended to do there
25 and her proposing to us her plans.

1 There were questions from some of the persons who
2 lived there. There was an organization. I can't think of the name
3 of it. It was a community organization who came in opposition to
4 the application.

5 The applicant basically demonstrated, in my
6 opinion, that -- let me first start this with a motion, then
7 discussion. I would move that we approve the application. What
8 she demonstrated was that the building had 100 percent occupancy
9 and, as such, it was impossible to be able to provide parking and,
10 to remedy that, she had entered into an agreement with a salon
11 down the street to provide so many parking spaces. I think three
12 or four parking spaces for persons that would be coming to her
13 facility.

14 She had also a petition of support with several
15 signatures of people who lived around there to support her
16 application. And then she had a letter from the ANC. The letter
17 from the ANC, I think it was 6A, Mr. Pernell. It was kind of hard
18 to glean what he was saying. We did not have a letter that gave
19 us a definite vote by the full ANC, and I think there was a timing
20 issue. But from what I could glean from reading the letter was
21 that they were not opposed to the application on its face, and
22 there had been some problem with a single member, District
23 representative, who came before us that he said did not represent
24 the whole ANC and so forth and so on.

25 Now, as far as adverse impact was concerned, the

1 persons who came to oppose it said that they felt that traffic
2 noise, parking and the like would cause some adverse impact to the
3 particular area as a result of the application being given and, as
4 a result of that, they were here to oppose it.

5 That being said, I open it up for further
6 discussion.

7 COMMISSIONER MITTEN: Madam Chair, if I could
8 start. I re-read the transcript because I wanted to be sure that
9 I recalled everything that had been said and so on. And I just
10 wanted to highlight a couple of things that we had discussed. My
11 opposition to this application was in part that the intensity of
12 the use, the public hall is a very intense use which has a high
13 parking requirement relative to other uses that are possible in C-
14 2-A and that it hadn't been adequately shown, in my opinion, that
15 that was the only use of the property and, hence, that was
16 creating an undue hardship on the owner.

17 So just to focus on the public hall issue for a
18 minute, I went back. Mr. Sockwell had raised a good point. I'm
19 just going to read a little bit from his testimony. So this is
20 Mr. Sockwell speaking.

21 "The problem I see is that the public hall aspects
22 of the business is the one that creates the greatest negative
23 effects on the community because it's not so much that you can
24 charge admission, it's that you can lease the space out to all who
25 come to you based on your own discretion and to who they are and

1 whether they will pay the going rate or whatever."

2 So Mr. Sockwell had raised this issue about the
3 uncertainty of the user and also, I think, the impact on the
4 number of people that would be frequenting the facility in
5 utilizing a public hall license.

6 So then later, shortly after this in the testimony,
7 Ms. Hunter says, "I am even willing to get occupancy under a CN or
8 CR license as of now if it will satisfy the community." Those are
9 restaurant licenses, not public hall licenses, and for a
10 restaurant instead of a public hall, because you have to meet the
11 threshold to even have a parking requirement of 3,000 square feet.

12 She wouldn't have a parking requirement if she got a restaurant
13 license.

14 CHAIRPERSON REID: But Ms. Mitten, does she have a
15 parking requirement?

16 COMMISSIONER MITTEN: If she gets a public hall,
17 under the public hall license, she would need 20 spaces.

18 CHAIRPERSON REID: But she can't because of the 100
19 percent lot occupancy.

20 COMMISSIONER MITTEN: That's right. That's what
21 the variance is about. But I'm saying that if she comes for a
22 public hall, she needs a variance. The variance is for 20 spaces
23 that would otherwise be required. For a restaurant, because she's
24 less than 3,000 square feet, she wouldn't even have a parking
25 requirement. So I'm trying to capture the fact that a less

1 intensive use that she said she was wiling to accept --

2 CHAIRPERSON REID: Yes, I remember that.

3 COMMISSIONER MITTEN: -- she wouldn't even need to
4 be here so she wouldn't need a variance. It's only because she
5 wants this intense use of public hall. I think that was the area
6 of primary concern. I think that was what came up a lot with the
7 community folks and Mr. Sockwell rightly raised the point. I
8 think he was, because of his experience, best captured sort of the
9 negative aspects that can attend a public hall.

10 So I guess I want to throw that out for your
11 consideration that she's not dead in the water if you don't allow
12 the public hall, the variance associated with public hall to go
13 forward. She said she's wiling to go for something less intense.

14 She wouldn't have to come back here. It doesn't create a burden
15 for her.

16 BOARD MEMBER RENSHAW: I'd just like to know
17 whether if she applies for a liquor license after having been
18 given a restaurant license, is she then required to have X number
19 of parking spaces? Do you know?

20 COMMISSIONER MITTEN: It's not a function of liquor
21 license. It's the use, and the liquor license is apart from that.

22 It doesn't require more or less parking.

23 VICE CHAIRPERSON SOCKWELL: What I wanted to say
24 was that there were a couple of things that I was concerned about
25 with regard to this application, one of which was, as Ms. Mitten

1 suggested, the issue of public hall versus some other less intense
2 use.

3 The other issue was that there were conflicting
4 aspects of the stated operation. In other words, there was an
5 intent proposed to have sobriety meetings and yet the sobriety
6 meeting aspect flies right in the face of the public hall or heavy
7 liquor oriented, potentially heavy liquor oriented use, and yet no
8 specific avenues for achieving the sobriety meeting operation were
9 ever voiced, i.e., there was no relationship with an organization,
10 there was no set relationship, no one's letters of support had
11 come in from Alcoholics Anonymous or anything like that.

12 And I felt, as I thought about it more, that this
13 might not be as real as we might want to think it is and it might
14 not be the most appropriate aspect of a business that wishes to
15 have a liquor license, would prefer to be a public hall, and would
16 tend to attract a high intensity liquor drinking clientele as a
17 public hall.

18 Now, as a restaurant with a license to have liquor,
19 they could operate both within and perhaps outside of the
20 restrictions of a restaurant, depending upon the level of
21 enforcement of their license restrictions. And I am concerned
22 that there was less meat in the more public spirited portions of
23 the proposal and it left me feeling unfulfilled with regard to my
24 support of the application, although I did give it a positive vote
25 at that time.

1 CHAIRPERSON REID: Mr. Moulden.

2 BOARD MEMBER MOULDEN: This project is in the H
3 Street commercial revitalization corridor. That corridor was
4 under a commercial revitalization plan to improve some of the
5 vacant facilities and so forth. So with that in mind, I think
6 it's positive that entrepreneurs are trying to reuse some of the
7 facilities, boost the tax base and so forth, for D.C.

8 However, I am concerned about typical community
9 concerns such as parking generated by additional retail, hall,
10 banquet uses, whatever you call it. Since it's in the city where
11 there's very limited off street parking, a lot of facilities, new
12 retail, commercial users, offices, and so forth, it's hard for
13 them to meet the parking requirements.

14 I think the best way to handle that is to probably
15 put some kind of restrictions on the use with limiting hours of
16 operation and so forth. I think that's probably the way we should
17 look at this case if it meets the other requirements.

18 COMMISSIONER MITTEN: Can I just speak to that for
19 a second, which is something that came out of the discussion the
20 first time we went through this is that, as Ms. Sansone told us,
21 we can't condition -- in a variance, we can have a restriction
22 that is related to the property but not the use of the property.
23 So I think in terms -- and maybe, Ms. Sansone, you can pipe in
24 here, is limiting hours of operation the kind of condition you can
25 put on a variance?

1 MS. SANSONE: I think that the condition-- there
2 isn't a lot of practice with the Zoning Board conditioning
3 variances, and it's kind of a confusing area. But the conditions
4 -- I think we can condition variances that conditions have to run
5 with the land so that if Ms. Hunter were to go out of business or
6 such in a year, if we put a condition on, that condition would
7 stay permanently attached to this land for any future businesses
8 that might come in.

9 Now, this afternoon we're going to have a case
10 involving a parking lot, and I did some research, a little more
11 research into conditions on variances because that parking lot has
12 a use variance and it was conditioned for a certain number of
13 years. So I did some research into whether perhaps a limitation
14 on the term might be appropriate for a new starting business. In
15 that case, there's a history of conditions being imposed limiting
16 this parking lot to a certain number of years. So that might be
17 the kind of condition that could be placed on this application if
18 that was the Board's wish.

19 But conditions that really are related more to the
20 operation of the business I think would be problematic because if
21 Ms. Hunter is not there in a year or two years time, the next
22 business might be totally different. They may not be able to meet
23 those conditions, and then we'd have that condition running with
24 the land, and it really wouldn't be suitable.

25 CHAIRPERSON REID: Let me say that I think,

1 sequeing on what Mr. Moulden just referred to in regard to the
2 corridor over on H Street being one that is targeted for
3 commercial revitalization and, as such, heretofore there has not
4 been a lot of progress unfortunately. That is an area that is yet
5 to come. I'd like to see it progress because there's a lot of
6 blight.

7 Now, in this particular instance with this
8 application, what I see is a person who wants to try to open a
9 business to provide entertainment or a place to go for, I would
10 think, younger people who are -- I was impressed with the issue of
11 the sobriety night because, let's face it, D.C. has a drug problem
12 and if there are more places available for those who are trying to
13 get off drugs or who are in rehab to go to for entertainment, I
14 think that's good for city because I think that we need to provide
15 those kinds of places if they are available.

16 Now, there was only one night of sobriety night and
17 that was, I guess, structured so that people who wanted to be at a
18 club but in an environment where there was not alcohol served
19 where they can enjoy themselves, that that would be something I
20 felt very positive. I was struck by the fact that the ANC, which
21 is very active in the area, did not come out in opposition. If
22 they did, then it would be very clear to us what the position --
23 it would be more clear to us what the position of the community
24 was, and the fact that there were not just letters but petitions,
25 pages of petitions of people who lived right there who were in

1 support of this application. And I was struck by that. Those
2 persons who would be most affected had been in favor of it.

3 She indicated that she would not have go-go, the
4 kind of music that we know that characterizes the negative impact
5 of the kind of people who come and shooting and all of that. But
6 we have to look at providing places for the young people that are
7 an alternative to the kinds of places that cause the problem. So
8 that's what I looked at this as being something that would provide
9 them a place to go and have a night that they would not have to be
10 exposed to the liquor and, as such, would be something that would
11 help our communities.

12 In regard to the intensity of use, if I'm not
13 mistaken, I don't remember exactly, but didn't she agree to less
14 than number of seating or something like that in trying to
15 compromise?

16 COMMISSIONER MITTEN: Well, it had been suggested
17 that there be a limit on the number of people that could attend a
18 function there and capping that at 50.

19 CHAIRPERSON REID: And she agreed to that.

20 COMMISSIONER MITTEN: I think so, but I'd have to
21 look back at the transcript.

22 CHAIRPERSON REID: At 50 persons -- 50? Is that
23 all? It had to be more than 50.

24 COMMISSIONER MITTEN: I'll find it.

25 CHAIRPERSON REID: Okay. Well, 50, that number of

1 people would then require what parking because seemingly she had
2 gotten the parking commitment from the beauty salon down the
3 street to provide so many spaces as well as, I think she talked
4 about valet escort or something from her facility to the parking
5 lot late at night for people who would be coming and going there.

6 I know either were some attempts made to compromise.

7 COMMISSIONER MITTEN: What she had said was that
8 the way that it would be handled in terms of individuals coming to
9 the facility and being made aware of where the parking was
10 available was that there would be a staff person there, not that
11 they would valet park the cars or that there would be escorts.
12 She did not say that.

13 CHAIRPERSON REID: She did. She did.

14 COMMISSIONER MITTEN: She did not. I mean I read
15 this transcript within the last day and there was no mention made
16 of escorts.

17 CHAIRPERSON REID: All right. In my head somewhere
18 it seems to me she was saying something about people who had been
19 in the club being escorted to the parking lot by some employees of
20 the club. Maybe I misunderstood. I have to go back and look at
21 the transcript myself.

22 But nonetheless, if in fact this could be done with
23 constraints as to hours of operation and days of operation and a
24 term like, let's say, for example, we gave her so many years and
25 then she'd have to come back to be able to demonstrate that there

1 had not been problems there, then maybe it's worth giving her a
2 chance.

3 VICE CHAIRPERSON SOCKWELL: Let me make a couple of
4 statements, if I may. First, Ms. Hunter's relationship with the
5 group or with the organization was questioned, I think, both by
6 Mr. Pittman, and I think one of the issues was that if Ms. Hunter
7 is listed as agent as opposed to owner or some particular more
8 established position with that group, then anything that she says
9 we could hope to hold her to. Otherwise, it might be difficult to
10 know whether or not what she says is carrying the weight of the
11 ownership or just the intent of the applicant to get approved.

12 It was also stated in testimony that Ms. Hunter
13 would apply for a liquor license within 90 days. The 50 seat
14 capacity was stated by the applicant.

15 CHAIRPERSON REID: She did.

16 VICE CHAIRPERSON SOCKWELL: Yes.

17 CHAIRPERSON REID: Well, 50 doesn't seem to be --

18 VICE CHAIRPERSON SOCKWELL: She said if they got a
19 public hall, there would be no liquor license for the first 90
20 days or so and she would apply for a liquor license.

21 CHAIRPERSON REID: And 50 seats. Ms. Mitten, how
22 many parking spaces would that require? Do you know?

23 COMMISSIONER MITTEN: Well, I just want to say
24 something, which is the original application was for 75 seats but
25 if the seats are not fixed, then the calculation is not based on

1 the number of seats because if you imagine that you're having a
2 function in the capacity of a public hall, you wouldn't
3 necessarily be providing seating for everyone. They would perhaps
4 be standing and so on, which is why the calculation is different.

5 So unless we impose the restriction for no more than 50 people,
6 because the seats become really irrelevant --

7 CHAIRPERSON REID: Oh, okay. That's what I --

8 COMMISSIONER MITTEN: Okay. I just want to be
9 clear about that because --

10 CHAIRPERSON REID: Oh, I see what you're saying.
11 You're saying 50 seats and there may be people who will stand like
12 at a dance, not sitting down necessarily.

13 COMMISSIONER MITTEN: That's right. Yes. If you
14 restrict it to 50 seats, you really haven't done anything.

15 CHAIRPERSON REID: Okay. I see what you're saying.

16 VICE CHAIRPERSON SOCKWELL: It may be difficult, I
17 might add, to condition this application effectively with regard
18 to operational issues because any conditions that we make would
19 have to be sustained by some kind of monitoring, which we really
20 don't have the ability to do.

21 CHAIRPERSON REID: We don't. We never do.

22 VICE CHAIRPERSON SOCKWELL: We never do. But this
23 application does have some -- let's say it has some problems,
24 primarily in that it is a potentially questionable activity and
25 there's no way that we can effectively monitor it and effectively

1 condition it. The public hall aspect of it --

2 CHAIRPERSON REID: What is the questionable
3 activity?

4 VICE CHAIRPERSON SOCKWELL: The public hall aspect
5 of it because if it becomes a public hall and gets a public hall
6 license, then the seating capacity could be restructured to three
7 or seven square feet per person for public hall for standing only
8 crowds.

9 CHAIRPERSON REID: Not if we condition.

10 VICE CHAIRPERSON SOCKWELL: Well, if we condition
11 it as a public hall, then we would have to be at least in
12 conformance with whatever the requirements are under other
13 licensing requirements for public halls.

14 CHAIRPERSON REID: That's why I was asking what is
15 the ratio of people to parking spaces, given certain levels of
16 intensity? Isn't it in the -- well, let's look at the
17 regulations.

18 VICE CHAIRPERSON SOCKWELL: There are other public
19 halls in other sections of the city that have no parking at all
20 that can hold 600 people and have no parking spaces. None.

21 CHAIRPERSON REID: What's the square footage of the
22 facility? Does anybody remember that?

23 COMMISSIONER MITTEN: I have that. As Mr. Nunley
24 calculated it, which did not include -- remember, she said there
25 was a back room that was closed off or a back section that was

1 closed off. So an Nunley calculated, what would be used would be
2 2,280 square feet.

3 VICE CHAIRPERSON SOCKWELL: Thirty two eighty, you
4 said?

5 COMMISSIONER MITTEN: Two two eight zero. And then
6 he subtracted -- he was trying to figure out the area that was
7 available for seating, so he subtracted 861 square feet and got
8 1,419 square feet as the basis for the parking space calculation.

9 CHAIRPERSON REID: Okay. And, as such, what was
10 the parking?

11 COMMISSIONER MITTEN: The parking requirement is 20
12 spaces.

13 CHAIRPERSON REID: Oh, it's still 20?

14 COMMISSIONER MITTEN: Well see, the parking
15 requirements are not a function of human beings. They're a
16 function of either fixed seats or square footage.

17 CHAIRPERSON REID: Okay. So my question is, based
18 on 1,401 square feet, that requires 20 parking spaces?

19 COMMISSIONER MITTEN: Yes, for a public hall.

20 CHAIRPERSON REID: Oh really?

21 COMMISSIONER MITTEN: Yes.

22 VICE CHAIRPERSON SOCKWELL: Now just to put this
23 into some perspective, if you have 1,419, if you had concentrated
24 tables and chairs, you could get 202 people in the space, and
25 that's at seven square feet per person. Concentrated chairs only.

1 I'm sorry. Chairs only. If you went with standing crowd at
2 three square feet per person, you could get 473 people into that
3 space by definition in the BOCA Building Code.

4 CHAIRPERSON REID: What about the combination of
5 the seating and other standing room?

6 VICE CHAIRPERSON SOCKWELL: Well, the other would
7 be unconcentrated tables and chairs.

8 CHAIRPERSON REID: Let's say 50. If she said 50
9 seats, then what would that do?

10 VICE CHAIRPERSON SOCKWELL: Wait a minute.

11 VICE CHAIRPERSON SOCKWELL: Even if you used tables
12 and chairs, you could get 94 people in there.

13 CHAIRPERSON REID: So if she had 50 people seated,
14 50 seats and the other of standing room persons of approximately
15 how many people are we talking about?

16 VICE CHAIRPERSON SOCKWELL: Well legally, if she's
17 limited to 50 seats, she'll have a capacity placard based on the
18 type of seating or type of activity to be provided. That capacity
19 placard would be posted on the wall and would state a specific
20 occupant load for a specific type of occupancy, and it would
21 either say, like a restaurant, tables and chairs, chairs only or
22 standing. And there would be a capacity placard issued for the
23 maximum capacity for whatever they're licensed to do.

24 CHAIRPERSON REID: Okay, but what I'm asking is
25 right here and now what we're doing, you're saying you don't think

1 it would be feasible to then limit the amount of persons at any
2 given time?

3 VICE CHAIRPERSON SOCKWELL: It's probably unlikely.

4 CHAIRPERSON REID: Or is that something in the fire
5 code?

6 VICE CHAIRPERSON SOCKWELL: It would be, not in the
7 fire code, but in the building code when they go for their
8 certificate of occupancy.

9 COMMISSIONER MITTEN: Madam Chair, I think,
10 consistent with what Mr. Sockwell is saying, relative to the
11 capacity that they would have without any kind of restrictions or
12 restraints, the capacity that they would have as a public hall is
13 like way, way above 50 people, and so, I mean if we're going to --
14 it seems a little bit of a stretch to say, we're going to call it
15 a public hall but we're going to limit you to 50 people. Why not
16 just say it's a restaurant and be done with it?

17 CHAIRPERSON REID: Right.

18 COMMISSIONER MITTEN: I just think that that would
19 be a lot -- I really feel that that's a lot more consistent with
20 where we're trying to get in our sensitivity to some of the issues
21 that have been raised.

22 CHAIRPERSON REID: What I don't understand is if,
23 in fact, she wanted to go with the -- I'm not really clear as to
24 what is allowed as a restaurant as opposed to a public hall
25 because, that being the case, she could just have withdrawn her

1 application and just opened a place there as a restaurant?

2 COMMISSIONER MITTEN: The restaurant use is a
3 matter of right. If she wanted to serve liquor, she'd still have
4 to get a liquor license.

5 CHAIRPERSON REID: Right, but I'm just saying that
6 -- so with the restaurant license, then there's no dancing, no
7 entertainment allowed. Is that right?

8 VICE CHAIRPERSON SOCKWELL: That's not necessarily
9 the case. It's just that public hall allows you to rent your
10 place out.

11 CHAIRPERSON REID: That's one of the conditions we
12 could put. She stipulated that she would not rent her facility to
13 any other entity to have functions there.

14 COMMISSIONER MITTEN: See, that's the point.

15 VICE CHAIRPERSON SOCKWELL: In a public hall you
16 don't have to serve food.

17 COMMISSIONER MITTEN: By saying that though, then
18 she's saying -- so that means that the essential ingredient of the
19 public hall, which is the ability to rent it out, she's willing to
20 forego that, so then it becomes, I guess, a question of well then,
21 why are we insisting on granting a variance for a public hall?

22 CHAIRPERSON REID: Is that the only difference?

23 VICE CHAIRPERSON SOCKWELL: Restaurants require a
24 certain amount of food to be served.

25 CHAIRPERSON REID: Is that the only difference?

1 VICE CHAIRPERSON SOCKWELL: Food and liquor.

2 CHAIRPERSON REID: Oh, she would have to serve
3 food.

4 BOARD MEMBER RENSHAW: And restaurants can rent out
5 part of their facility and they can close down --

6 CHAIRPERSON REID: What are we doing then?

7 COMMISSIONER MITTEN: Madam Chair, I think you
8 raised a good point, which is why are we trying to solve this
9 problem for her and, if that was the case, why didn't she withdraw
10 it. But I think our experience with her has been she doesn't
11 understand the system at all and so if this hasn't been suggested
12 to her, it wouldn't occur to her that this is an alternative
13 that's available.

14 CHAIRPERSON REID: Well, that's very true and I
15 think that we have to recognize that -- and I've stated this many
16 times before -- where we have people who come in with high-powered
17 attorneys who are able to represent and interpret and to put their
18 case before us in a very professional, very succinct manner.
19 There are other people who are laypeople who don't have the
20 benefit of all that who just come to us and try to get their cases
21 through and, as such, they're not as tight as it could have been.

22 I think that if she had an attorney, that it could have been
23 framed to us in such a way that it would have made a lot more
24 sense. But I find that she appears to be kind of groping here and
25 trying to open up a business. Then she's got all this red tape,

1 just kind of try to do the best she could. I got the impression,
2 too, that I don't think she's been here before. I don't think she
3 understood exactly what this procedure was all about.

4 Nonetheless, if in fact we can somehow assist her
5 with being able to achieve what she's trying to achieve -- and I
6 think that it would be something that would also be a positive
7 thing for the District of Columbia to have a facility like that
8 and to do it in such a way that it would not restrict her or limit
9 her to the point that she couldn't run her business. Then if
10 there is something else that we could do or suggest that she open
11 -- she said she would be willing to do the restaurant and that
12 restaurant will allow her to do basically the same things that she
13 would with the public hall. I can't see why --

14 BOARD MEMBER RENSHAW: I just want to say that I am
15 very much for small business in this city, but I am against new
16 businesses being created whereby they may potentially create a
17 parking problem in a neighborhood. I was looking back in my
18 notes, and we were to get a parking plan. We had asked for that,
19 and I don't see it, and I am just wondering why the applicant
20 didn't pursue other possible off-street parking other than a
21 couple of spaces at a beauty salon about three blocks away. I
22 feel that the applicant has not really been creative. She hasn't
23 proven to me -- representing the owner, she hasn't proven to me
24 that they really take this as a concern.

25 And then I look back in my notes and I see that the

1 ANC representative who came before the Board in February on the
2 16th didn't know that the ANC had sent a letter, and we had asked
3 the ANC to straighten out this correspondence matter and that we
4 wanted an appropriate letter, and I'm wondering did the Board ever
5 get it?

6 CHAIRPERSON REID: Yes. Did you not see the letter
7 from Pernell?

8 BOARD MEMBER RENSHAW: I did not. I don't have
9 that.

10 CHAIRPERSON REID: Oh. There was a letter from --
11 what's his first name?

12 COMMISSIONER MITTEN: Daniel.

13 CHAIRPERSON REID: Daniel Pernell, and he in the
14 letter -- the letter was interesting and, as such, what you had to
15 do was try to glean from what he was saying what, in fact, the
16 essence of the letter was. And what I got out of that was that
17 the person who came before us did not represent the ANC, had no
18 authority to represent. I think it was the Zoning Commission or
19 Land Use and Zoning.

20 BOARD MEMBER RENSHAW: Zoning and Licensing
21 Subcommittee.

22 CHAIRPERSON REID: And that they did not represent
23 -- they were not authorized to represent that committee, and that
24 they had talked to the applicant, and that they had not had a
25 chance to have a full meeting, but that they basically had no

1 problem with the application.

2 COMMISSIONER MITTEN: And that's Exhibit No. 27. I
3 don't know if you have that or not.

4 CHAIRPERSON REID: I think that would be good. Do
5 you have it, Mr. Moulden, that letter from Dan Pernell?

6 VICE CHAIRPERSON SOCKWELL: I have just one thing
7 to say and I'd like to reiterate this only because I think that it
8 is an important factor within any of our deliberations on cases,
9 and that is that the people that represent the applicant are
10 supported by the owners or actual providers of the service and,
11 while Ms. Hunter represented her position, she was listed as an
12 agent as opposed to a named party in the ownership group. And I
13 say that only because her name may never go on a Certificate of
14 Occupancy. Her name may not even be on the lease, and it concerns
15 me that we are relying upon her good will and her intent, yet she
16 could be out of here before the order is written, and whatever
17 they decide to do will be based on someone else's interest and may
18 have nothing to do with her input to this Board, and I am
19 concerned about that because we normally don't get that.

20 CHAIRPERSON REID: Well, what you got was a
21 layperson attempting to come before this Board who had no previous
22 experience and didn't know the best way to put their application
23 together, Mr. Sockwell. I think that's fairly apparent. I don't
24 think that an applicant should be indicted for the lack of
25 sophistication in regard to these proceedings. Nonetheless --

1 VICE CHAIRPERSON SOCKWELL: I wasn't concerned with
2 her sophistication at all.

3 CHAIRPERSON REID: Nonetheless, she brought what
4 she thought we needed, and that was authorization from the owner,
5 authorization from her partner in the -- what's the name of the
6 club?

7 COMMISSIONER MITTEN: Dee's Diamond in the Rough.

8 CHAIRPERSON REID: Dee's Diamond in the Rough, and
9 she felt that that was all that was necessary for her to be able
10 to appear before this Board and she was designated as the agent
11 who would, I guess, have the day to day responsibility of the
12 club. Now, the application would be -- any relief that would be
13 granted would go to the owner of the club. I guess she would be a
14 lessee on the lease, but the use would go to the building itself
15 and whoever operated the business would have to comply with
16 whatever order that was put forth by this particular Board.

17 COMMISSIONER MITTEN: Madam Chair, I think what Mr.
18 Sockwell is just trying to be cautious about is the fact that Ms.
19 Hunter says she's going to do sobriety nights and she's going to
20 have art shows for homeless people and she's going to do these
21 things and yet, just as you just said, this permission, this
22 variance goes to the property. It doesn't go to her. So all
23 those positive things that you associate with her personally, that
24 could go away tomorrow.

25 CHAIRPERSON REID: That could be the conditions

1 that her claim to have it not leased out to anyone else or the
2 amount of people, the term of the time that she would be able to
3 utilize or to run the club, all of that could be condition.

4 COMMISSIONER MITTEN: And I appreciate that, and
5 you've been very sensitive to her lack of experience before the
6 Board and so on. And I think that, based on everything that's
7 been said, which is her willingness to forego the right to lease
8 the facility out to third parties, which is an essential sort of
9 characteristic of the public hall license, her willingness, as we
10 have in the transcript, her willingness to apply for a restaurant
11 kind of liquor license so that she would accept a restaurant use
12 and the fact that we know that if we don't give her the variance
13 for public hall, she doesn't have to come back to us to get a
14 variance for a restaurant because she doesn't meet the minimum --
15 she's not big enough to require even one space.

16 So if we deny this and we have staff help her by
17 informing her that she doesn't have any parking requirement for a
18 restaurant license and all of the things that are associated with
19 a restaurant license that will allow her to accomplish all of the
20 things that she said she wanted to accomplish in her business,
21 we're not harming her if we do not approve this variance. That's
22 what I'm trying to say and I think Mr. Sockwell is.

23 CHAIRPERSON REID: I'm not convinced that not
24 granting her what she asks for is a solution here because if, in
25 fact, the only difference between a restaurant and a public hall

1 is the ability to be able to lease it out, she says she's not
2 going to do that, and then Ms. Renshaw --

3 VICE CHAIRPERSON SOCKWELL: The --

4 CHAIRPERSON REID: Just a moment, please, Mr.
5 Sockwell. May I? Ms. Renshaw said -- or Mr. Sockwell -- I just
6 heard it -- that they can lease out a restaurant, so what's the
7 difference? What is the big difference that makes her not be able
8 to be granted one thing and she could do another in the same spot?

9 VICE CHAIRPERSON SOCKWELL: Let's say this. The
10 issue of public hall is one of dollars and cents. Even if she
11 doesn't rent it to others, public hall takes money at the door.
12 Boom. Major income increase. The margin of profit on a
13 restaurant is low on food, high on alcohol. The more food you
14 serve, the more people you bring in, hopefully the more they
15 drink. The profit on public hall is virtually entirely on two
16 things: liquor at the bar, cover charge at the door. That is a
17 cash business and cash businesses make a lot of money when they
18 can charge a cover plus drinks.

19 So her business will suffer if she is denied public
20 hall because she will have to survive on a percentage of food,
21 which is specified for restaurants, and a percentage of bar. And,
22 even if those things go out of balance to a certain degree, and
23 they do at different times in virtually all restaurants that have
24 strong happy hours or this, that and the other.

25 But anyway, I'm just saying that we are either to

1 deny her public hall application or we would be very wise to
2 condition it carefully and put a very short time limit on it so
3 that if we have made an error in assuming that her good intentions
4 will be carried out, it will be the least imposition upon a
5 community that is divided in its interest in having that there.

6 CHAIRPERSON REID: If I hear you correctly, Mr.
7 Sockwell, and I hope that I did not, you're indicating that you
8 feel that it would be better to impose a hardship on her where she
9 would not be able to realize as much of a profit potential as a
10 public hall as she would for a restaurant. Why?

11 VICE CHAIRPERSON SOCKWELL: What I'm saying to you
12 is --

13 CHAIRPERSON REID: What difference does that make
14 to us how much she is able to realize as an ongoing concern?

15 VICE CHAIRPERSON SOCKWELL: What I'm saying to you
16 is that a public hall is not necessarily a business that thrives
17 on providing quality service. Public hall is a business that
18 thrives on bringing people through the door period. A restaurant
19 has to serve good food or you won't go back. And that is what
20 makes restaurants work. If a restaurant, be it a family
21 restaurant, be it a big, impersonal restaurant like Hogates, which
22 claims to be a family restaurant, a restaurant has to provide a
23 level of service that returns the clientele. A public hall relies
24 strictly upon the band that's there, the bar that's there, and
25 your friends. It is not the same kind of business.

1 I have many business associates who have
2 restaurants who operate public halls. I'm very familiar with
3 public halls.

4 CHAIRPERSON REID: So what are you advocating that
5 we do? Just close down all the public halls in the District?

6 VICE CHAIRPERSON SOCKWELL: There are people who
7 would like to have that done. But the issue of public halls is
8 that you have a larger concentration of people, more need for
9 security, you're not talking about people who are coming in, mom
10 and dad and sons and daughters. You're talking about individuals.

11 CHAIRPERSON REID: Mr. Sockwell, I would be a
12 little careful with that because here now you're going into
13 characterizing the calibre of the clientele--

14 VICE CHAIRPERSON SOCKWELL: No, I'm not
15 characterizing the calibre of the clientele.

16 CHAIRPERSON REID: -- that would go to the public
17 hall rather than the ones who would go to a restaurant or a mom
18 and pop.

19 VICE CHAIRPERSON SOCKWELL: No. Calibre has to do
20 with intangibles that we don't bring before this Board.

21 CHAIRPERSON REID: I think that what we have heard,
22 and that's why I mentioned that, so we would not come up with any
23 difficulties.

24 VICE CHAIRPERSON SOCKWELL: There is no difficulty
25 with my testimony on that because that's not what I'm saying.

1 CHAIRPERSON REID: But we have to be very careful
2 the perception that we give here, and I just wanted to be careful
3 with that. Let me also say finally, and then Mr. Moulden, I will
4 get to you.

5 BOARD MEMBER MOULDEN: I'm just saying we'll get
6 into value statements.

7 CHAIRPERSON REID: Yes, I recognize that.

8 VICE CHAIRPERSON SOCKWELL: Public hall is a type
9 of business operation different than that of a restaurant, and
10 I'll leave it at that.

11 CHAIRPERSON REID: We know that there are -- again,
12 and I prefaced my statement earlier with there's, in my opinion, a
13 need for places for our young people to be able to go, and the
14 problem that we've had is with the go-go types of dances where
15 there's been shooting and what have you. So I think that
16 providing a forum or providing a facility where they are able to
17 go where they will not have that go-go element. You could
18 condition it that there's not a go-go element, but they could go
19 and enjoy themselves, have a nice time. On sobriety night, those
20 who are in rehabilitation, our drug addicts in the city who are
21 trying to rehab themselves, will have a place to go to be able to
22 relax and enjoy themselves without having liquor being served.
23 And that's why I think that a place like that is something that's
24 positive for the community.

25 BOARD MEMBER RENSHAW: Madam Chair, I hear your

1 sincerity in all of that and I concur, but I don't believe that
2 that is a given. I'm afraid that I just feel that that is
3 something that may go by the by. It's very pleasant to think that
4 that is going to happen, but that is not necessarily guaranteed.
5 And I just feel that that is something that we can't hang a hook
6 on.

7 MS. BAILEY: Madam Chair, you made a motion to
8 approve the application. Was there a second to that?

9 CHAIRPERSON REID: No.

10 VICE CHAIRPERSON SOCKWELL: There was not.

11 MS. BAILEY: Okay.

12 COMMISSIONER MITTEN: I'd be ready to vote if
13 everybody else is.

14 CHAIRPERSON REID: Okay. Well, I again move that
15 we approve the application with conditions, and then we can
16 determine what conditions we want to impose on the particular
17 application so as to make it more compatible to the particular
18 community.

19 BOARD MEMBER MOULDEN: I second that motion.

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

22 (AYES)

23 CHAIRPERSON REID: Opposed.

24 (AYES)

25 MS. BAILEY: The motion failed for lack of a

1 majority vote.

2 CHAIRPERSON REID: All right. Was that the last?

3 MS. BAILEY: That's the last case. Do you want to
4 do that again because the motion failed?

5 COMMISSIONER MITTEN: I'll make an alternative
6 motion. I move that we deny this application for a parking
7 variance for public hall use at 1335 H Street, N.E.

8 CHAIRPERSON REID: Okay. Second?

9 BOARD MEMBER RENSHAW: Second.

10 CHAIRPERSON REID: All right. All in favor.

11 (AYES)

12 CHAIRPERSON REID: All opposed.

13 (AYES)

14 MS. BAILEY: Staff will record the vote as three to
15 two to deny the application. The motion was made by Ms. Mitten,
16 seconded by Ms. Renshaw. Mr. Sockwell voted to deny, Ms. Reid and
17 Mr. Moulden are opposed to the motion to deny. That's the end of
18 the morning session.

19 COMMISSIONER MITTEN: Madam Chair, could I just ask
20 that staff would take special consideration of the fact that this
21 woman, Ms. Hunter, is not aware of the ins and outs of the zoning
22 ordinance in any level of detail and to help walk her through what
23 her alternatives are now and what her obligations are, depending
24 on what use she wants to pursue.

25 MS. BAILEY: Certainly.

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COMMISSIONER MITTEN: Thank you.

CHAIRPERSON REID: Okay. That would then conclude the morning session. Prior to us adjourning, I'd just like to acknowledge staff and to say that we greatly appreciate all the hard work that you have put forth in preparing for our hearings and for our meetings, as well as the background work and all the intensity of toil and labor that went into the preparation for the budget hearing, and continue the good work. Thank you.

(The meeting was concluded at 12:14 p.m.)

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