

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

JANUARY 7, 2003

+ + + + +

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., Geoffrey H.
Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
ANNE MOHNKERN RENSHAW	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
DAVID ZAIDAIN	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL MITTEN	Commissioner
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COMMISSION STAFF PRESENT:

CLIFFORD MOY	Office of Zoning
JOHN NYARKU	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, ESQ.

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C O N T E N T S

AGENDA ITEM	PAGE
PRELIMINARY MATTERS3
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P-R-O-C-E-E-D-I-N-G-S

(9:30 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the Public Meeting of the Board of Zoning Adjustment of the District of Columbia for the 7th of January, 2003, and wish everyone a happy new year who is here. We will be efficient this morning. However, we are going to be a little different in terms of the schedule. We will follow the posted schedule in the cases for our decision making up to number 3, in terms of the cases. We are then going to break. We have numerous Zoning Commissioners that are on each of these cases, and so we are coordinating getting them in and out, and so we will come back very quickly and deal with the last cases involved. So with that, I would bid everyone on the Board, of course, a happy new year, and Staff and Corporation Counsel. And why don't we jump right in and call the first case for our attention this morning.

MR. MOY: Yes. Good morning, Mr. Chairman, Members of the Board. The first case for January 7, 2003 is Application number 16959 of 575 7th Street, LLC, pursuant to 11 DCMR 3103.2, for a variance from the area requirements for arts and

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1 entertainment-related uses under subsection 1704.3(a),
2 to allow a contribution to the Shakespeare Theater in
3 lieu of providing arts uses on-site in the DD/c-4
4 District at premises 625 to 627 E Street, N.W., 620
5 and 626 F Street, N.W., and 501 through 507 and 511
6 through 517 7th Street, N.W., in Square 456, Lots 41,
7 880 and 878.

8 The Board has received additional
9 information from the applicant that were timely, and
10 within the deadline, and that completes my report.

11 CHAIRPERSON GRIFFIS: Thank you very much.
12 That additional information that we had asked for,
13 Board Members, I'm certain you recall was to be
14 briefed on the fact of whether this was a use or an
15 area variance. I think it's probably beneficial to
16 begin with that and have discussion, and just
17 determine whether we would amend the application, so
18 I would open it up to anyone who wanted to begin, or
19 I would easily jump in on that.

20 I found that the case law cited in terms
21 of establishing this as an area variance very
22 compelling, if not definitive. To cite a few of the
23 cases that were associated with this briefing, Palmer,
24 of course, was established, and it was indicated that
25 -- I think the pertinent point was they're talking

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1 about the use variance which would seek relief from a
2 use ordinarily prohibited in the particular zone or
3 district, and clearly, that is not the case here. In
4 the DD Zone we have, in fact, retail arts allowable
5 and required, and so I would hear others on that if
6 there is a differing of opinions.

7 MEMBER ETHERLY: I'm in agreement with
8 your interpretation, Mr. Chair.

9 MEMBER ZAIDAIN: I would agree, Mr. Chair.
10 I think the discussion laid out in the memo from
11 Holland & Knight dated December 23rd provides clear
12 legal reasoning for that interpretation.

13 CHAIRPERSON GRIFFIS: Very well. Then I
14 propose we continue under the area variance. And I
15 note hesitation in Board Members, and I think I
16 understand why, because this is not necessarily a
17 typical area variance. This is, although I would say
18 cleanly presented and compelling in its case
19 presentation, it is difficult really to fully grasp
20 and understand, as it is not the most straightforward
21 variance application that we often see. But with
22 that, I think we can step into it, and discuss the
23 pertinent issues here.

24 Really what we're looking at is in the
25 combined lot development, there is the requirement of

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1 the square footage of the arts to be provided. That
2 square footage, I think, leads us directly into an
3 area variance. Now the issue comes down to how the
4 requirement is fulfilled, and I would say that how for
5 me has been timing. It may be appropriate to get into
6 the direct variance test, and then walk through the
7 specifics of some of this case.

8 I think the establishment of uniqueness
9 and practical difficulty is made, and in fact, an
10 important and critical case law that is cited is
11 Cleric's, and I can never say the last part, but it's
12 in the record which is St. Viattore, I believe it is,
13 or something close to that. Anyway, the importance of
14 that is how existing structures are, in fact, a basis
15 for extraordinary exceptional situation. What we have
16 here in several levels, I believe, first of all, we
17 have the existing structure that is trying to be
18 accommodated within the development. That existing
19 structure lends itself to practical difficulty. In
20 terms of the timing of construction in order to
21 fulfill the requirement of the arts, and I think
22 really what we're looking at is, based on that
23 uniqueness and the extraordinary circumstance that
24 arises from that condition, we have a difficulty of
25 timing, and how, essentially, one would phase this

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1 project in order to fulfill the requirement.

2 I think that does lead -- I think that
3 does give us a difficulty in terms of its cleanness in
4 exact area variance, but I believe that the case
5 presented is a compelling one, and that the timing
6 really comes out of the fact that the receiving lot
7 won't be ready, isn't ready to accommodate. And I
8 believe it's important enough as the specific
9 uniqueness of providing this mixed use in the
10 development, it is important enough to look at the
11 total project in its completion, and then be able to
12 review or have this board be able to review the
13 process by which the developer gets there. And that,
14 again, brings us to the timing.

15 The last piece that I think is not the
16 sole basis for my opinion on this, but I think is part
17 of the full record; and that is, one of the other
18 interesting, or extraordinary, or exceptional
19 situations that's happening is that there is an arts
20 user that has joined the project. And based on their
21 requirements, and based on their needs in the
22 Shakespeare Theater to build a large theater, that
23 also lends itself to difficulties in timing and
24 coordination with an existing structure with an office
25 building that's going up.

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1 Again, I don't find this the most
2 compelling, but I think it is an added element of
3 importance. And really what it comes down to is, in
4 my mind, in some respects we're looking at higher and
5 better use to fulfill the arts requirements.

6 Now I would be remiss if I didn't say that
7 I don't think that would be the case to be made and
8 presented in many other similar situations, but here,
9 I think the fact that frankly we could be comparing
10 pictures for sale hanging in the lobby to a full
11 theater in that area, and I think that runs directly
12 with the intent of having arts requirement, not just
13 to look at how you basically, and at minimum fulfill
14 these requirements. I think the intent of the
15 regulations go well beyond that. They try to ensure
16 where our basis and minimum is, but I don't think it
17 precludes us from looking at going a further distance
18 in fulfilling that. And I would make out a general
19 statement outside of even the arts, of the other
20 requirements that are looked upon as urban amenities.
21 And, therefore, I think it is beneficial in many
22 respects to take on the challenge of trying -- of
23 accommodating the theater in this project. But that's
24 my summation, so if you want me to get into detail, I
25 can. Any others? Yes, Mr. Zaidain.

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1 MEMBER ZAIDAIN: Well, I won't go into as
2 much detail as you just did, but I agree for the most
3 part with your statements. I am inclined to support
4 this request. I believe you touched on other
5 alternative ways they could -- the applicant could go
6 in order to make the timing work and meet the
7 regulations, but that's really not what is before us.
8 We have a project before us that at the end of the day
9 will meet the required amount of arts uses and
10 commercial uses for that matter, required in that
11 zoning designation. And this is just a strict issue
12 of timing.

13 And in this situation, in this zoning
14 district, the issue of timing and implementation is
15 not really addressed, so couple that with the
16 exceptional circumstances on site with the projects
17 that are there, the state of the buildings that are
18 existing, the strict application of this zoning
19 designation does not allow for that type of
20 flexibility in order to make this project work. And
21 I think what has garnered my support for the
22 application is the fact that, like I said, at the end
23 of the day this will meet the minimum requirements, as
24 well obviously as the intent, you're talking about a
25 major theater in an arts district, but it will meet

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1 the specific requirements of the zoning designation.
2 And maybe this is something the Zoning Commission
3 should look at in the future in terms of reworking
4 some of this to make these types of projects work when
5 they are good projects, meeting the intent of the
6 regulations. And when there's hardships, certain
7 realities that will not make it work in terms of
8 timing, maybe there needs to be more flexibility in
9 these regulations, but we are dealing with what is
10 before us.

11 I thought we have a significant amount of
12 testimony as to why the strict application of these
13 regulations will not allow this project to go forward,
14 and I'd be inclined to support the project once a
15 motion is made.

16 CHAIRPERSON GRIFFIS: Thank you, Mr.
17 Zaidain. And let me just address the issue of timing.
18 I think you're well aware that there is timing
19 provisions written in the regulations. But your point
20 is, if I'm hearing you correctly, is the provisions in
21 the regulations of timing are there in order to ensure
22 that it happens, you know, in order to ensure that the
23 requirements, the arts, the commercial would be
24 planned for, and would basically give the deadline
25 that it has to happen in order to -- so that it isn't

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1 just open-ended. And your point in the specific is,
2 this project is together. For the all information
3 we've been given, it is ready to go, but there is a
4 minimal complication in the development and
5 construction schedule that needs to be relied upon and
6 given some flexibility.

7 MEMBER ZAIDAIN: Right. And there is a
8 lot of discussion on what to do, you know, if there's
9 a situation where the theater use does not pan out.
10 How to make this square work, and have it meet the
11 requirements of the DD overlay.

12 CHAIRPERSON GRIFFIS: Right.

13 MEMBER ZAIDAIN: And which I'm also
14 inclined to support those conditions, as well. Just
15 in these types of instances there's usually
16 flexibility. That's why you have a lot of combined
17 lot development in terms of allocate uses to other
18 sites to achieve the intent of the regulations. I
19 mean, those types of regulations are here. It's just
20 you have a situation where the timing just is not
21 working for the applicant.

22 CHAIRPERSON GRIFFIS: I see. Okay.

23 MEMBER ZAIDAIN: And the hardship, you
24 know, the stem of the variance comes from having to
25 deal with the existing conditions of the site. And I

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1 think we have a lot of testimony on that.

2 CHAIRPERSON GRIFFIS: Good. Anything else
3 on that then? Very well. I think it would be
4 appropriate then to have a motion and have further
5 discussion on the motion, so I would move approval of
6 Application 16959 of 575 7th Street for the variance
7 from the area requirements for arts and entertainment
8 retail uses under 1704.3(a), to allow a contribution
9 of the Shakespeare Theater in lieu of providing arts
10 uses on-site in the DD/C-4 District. And I think we
11 will bring clarity to that in our discussion. I'd ask
12 for a second on the motion.

13 MEMBER ZAIDAIN: I'll second the motion.

14 CHAIRPERSON GRIFFIS: Thank you, Mr.
15 Zaidain.

16 MEMBER ZAIDAIN: Are we going to discuss?

17 CHAIRPERSON GRIFFIS: Yes. I think what
18 we ought to do is look at -- we have some
19 recommendations for essentially provisions that would
20 tie to this order, and that would give, I think,
21 clarity and specificity to what is actually being
22 reviewed and potentially approved. As with a normal
23 area variance, we would have drawings that would then
24 be an automatic condition to any order. I think that
25 this will serve in the same respect as drawings would

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1 in a standard area variance. So, Mr. Zaidain, if
2 you're prepared to start us off with that, that would
3 be appropriate.

4 MEMBER ZAIDAIN: Well, I guess I would
5 turn to the submittal by the applicant, which is dated
6 December 27th, 2002. We asked for some additional
7 refinement I guess we'll use, on the proposed
8 conditions in coordination with Office of Planning.
9 It's my understanding that that has been done. And
10 having read through these, I'm inclined to incorporate
11 one through five in the motion.

12 CHAIRPERSON GRIFFIS: Okay. I would
13 amend, if it's at all feasible, the removal of the
14 sentence in number five, and have it read, "If the
15 arts requirements are not satisfied consistent with
16 condition number three of this order by December 31,
17 2004, the Office of Planning will direct the \$1.5
18 million escrow", et cetera. It would be the removing,
19 "comma, or such later time as the Board permits."

20 MEMBER ZAIDAIN: You want to eliminate
21 that phrase.

22 CHAIRPERSON GRIFFIS: I do. What that, I
23 think, will run into is some difficulty in procedure
24 of have we -- well, rather than talking about it, I
25 think if the timing foreseeably needed to be changed

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1 again, we could easily take it up as a modification.

2 MEMBER ZAIDAIN: Right. We'd have to deal
3 with it either way.

4 CHAIRPERSON GRIFFIS: So it's either
5 redundant, or will cause us difficulty. Okay. I
6 think the provisions that are being laid out with this
7 are important. And rather than going through and
8 reading them, I know we've all reviewed them and
9 deliberated quite extensively on it. And the fact of
10 the matter is, really it is going to ensuring the
11 satisfaction of the strict regulations and the overall
12 intent of the regulations, so I am comfortable with
13 continuing on this, unless there's any other
14 discussion, conditions, or any clarifications on the
15 motion before us. Not seeing indication of it, then
16 I would ask for all those in favor of the motion as
17 added to by the provisions of clarification to signify
18 by saying aye.

19 (Vote.)

20 CHAIRPERSON GRIFFIS: Any opposed? Very
21 well. Mr. Moy, if you would record the vote.

22 MR. MOY: Yes, Mr. Chairman. The Staff
23 would record the vote as 4-0-0, which includes the
24 proxy for Mr. May, voting in the affirmative. Also,
25 the Staff's understanding that in the draft conditions

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1 on page 2 of the memorandum, that the change in
2 condition number five is to delete the words, "or such
3 later time as the Board permits", so the sentence
4 would read, "If the arts requirements are not
5 satisfied consistent with condition number three of
6 this order by December 31st, 2004, the Office of
7 Planning will direct the \$1.5 million escrow to be
8 paid in one of the following manners in satisfaction
9 of the arts requirement for Lots 880, 878 and 41."

10 CHAIRPERSON GRIFFIS: That's it? Very
11 well. Let's move on then.

12 MR. MOY: The second case of the morning
13 is Application number 16880 of Endale Terefa, pursuant
14 to 11 DCMR 3104.1, for a special exception to allow a
15 change of non-conforming use from retail grocery to
16 retail grocery and deli (no seats) under Section 2003,
17 in an R-4 District, at premises 434 Shepherd Street,
18 N.W., in Square 3237, Lot 79.

19 For the Board's information, in your case
20 folders the Board has received documents from the
21 Council Member's office and from ANC-4C Chair. The
22 letter received from Council Member Adrienne Mendelson
23 arrived at the Board on December the 10th, 2002.
24 Responses were due by -- assuming that the Board
25 agrees that this letter is a response, responses were

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1 due by December 6th, so this could be interpreted as
2 a late response. The document from the Chair of ANC-
3 4C arrived in the offices on November 29th, 2002,
4 which would be timely, if considered as a response.

5 Finally, the third document, Mr. Chair,
6 has just arrived this morning, and is draft Findings
7 of Fact and Conclusions of Law.

8 CHAIRPERSON GRIFFIS: Is this any
9 different than what we received last week? I mean,
10 having just received it, I have no clue, but it looks
11 very similar.

12 MR. MOY: Yeah, to be honest with you, I
13 haven't had a chance to look at it since it's just
14 arrived. Obviously, it's late and it's up to the
15 Board whether or not you want to waive the submission
16 of this document.

17 MEMBER ZAIDAIN: Well, we didn't leave the
18 record open after our last meeting. Correct?

19 CHAIRPERSON GRIFFIS: That's correct.

20 MEMBER ZAIDAIN: So it seems like all of
21 these communications need to be either not accepted or
22 waived. Is that correct?

23 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Yes.

25 VICE CHAIRPERSON RENSHAW: We did

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1 encourage a community meeting, and we expected a
2 report of that community meeting, and that is what the
3 letter from Council Member Fentey and Mendelson have
4 supplied.

5 CHAIRPERSON GRIFFIS: Indeed. I would
6 agree with that. That's Exhibit number 41. Mr. Moy,
7 what other notes do you have in terms of submissions
8 that may not have been timely or were not asked for?

9 MR. MOY: Well, the letter from Mr. Jones,
10 the ANC-4C Chair, that particular letter was not
11 specifically asked for. He's stating a previous
12 position.

13 CHAIRPERSON GRIFFIS: Indeed. I don't see
14 the sufficient need to waive, to take it in as it is.

15 MEMBER ZAIDAIN: What, the ANC letter?

16 CHAIRPERSON GRIFFIS: Right.

17 MEMBER ZAIDAIN: Well, which letters are
18 we accepting as reports from the community meeting?

19 CHAIRPERSON GRIFFIS: So far as we asked
20 for the letter we received dated 9 December, Exhibit
21 41, from Council Member Fentey and Council Member-at-
22 Large Mendelson.

23 VICE CHAIRPERSON RENSHAW: It's dated in
24 the fax covering the letter from Council Member
25 Mendelson that we will have a tape of the citizens

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1 letter.

2 CHAIRPERSON GRIFFIS: Yes.

3 VICE CHAIRPERSON RENSHAW: Did we receive
4 that?

5 CHAIRPERSON GRIFFIS: I understand that
6 they're trying to track that down, and if we have a
7 good lunch break we can watch the video tape then.
8 Unless you feel that you need to do that before we
9 deliberate on that.

10 VICE CHAIRPERSON RENSHAW: Well, I wish I
11 had had some information as to the number of people
12 there.

13 CHAIRPERSON GRIFFIS: I see. Good point.

14 VICE CHAIRPERSON RENSHAW: And the
15 exchange between the community and the applicant.
16 That would be -- I think that that would be well worth
17 reviewing.

18 MR. MOY: If I may, Madam Vice Chair, the
19 Staff has been in contact with Mr. Fentey's office,
20 and they're trying to track the information down
21 themselves, because on the Staff's follow-up to inform
22 them that we had not received neither the original
23 letter, because that's a draft letter you're looking
24 at, so we have neither the original letter nor the
25 enclosed tape. And that's information -- that's as

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1 recent as last night.

2 VICE CHAIRPERSON RENSHAW: Mr. Chairman,
3 I would suggest that we defer a decision on this case
4 pending the review of this material, if we could do
5 that, and just delay this decision for one week.

6 CHAIRPERSON GRIFFIS: Okay. Let me hear
7 from others on that.

8 MEMBER ZAIDAIN: Well, just so long as
9 that's the only material that we even receive. It
10 seems like the longer we drag this case out, the more
11 trees get killed. I mean, we just get inundated with
12 paper.

13 CHAIRPERSON GRIFFIS: Well, I suggest
14 this. The --

15 MEMBER ZAIDAIN: Yeah, I wasn't saying
16 that they're removing the landscaping or something.

17 CHAIRPERSON GRIFFIS: Yes.

18 MEMBER ZAIDAIN: I guess in this kind of
19 a forum I probably shouldn't make that choice.

20 CHAIRPERSON GRIFFIS: Probably not. For
21 clarity, you want to not have as many papers
22 submitted. Ms. Renshaw, I note your concern. I think
23 that the record is full in terms of the community
24 responses.

25 MEMBER ZAIDAIN: Yeah. I mean, I don't

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1 know how many times the same person can reiterate that
2 they're against the variance.

3 CHAIRPERSON GRIFFIS: Right. And I think
4 that there may -- I think the letter --

5 MEMBER ZAIDAIN: For a special exception.

6 CHAIRPERSON GRIFFIS: -- summarizes --
7 yes, let's be clear, special exception. Summarizes
8 that there was not a successful outcome of the
9 community meeting and I'm not sure watching two and a
10 half hours of the meeting will bring us any additional
11 information that we don't already have that we can
12 deliberate on.

13 VICE CHAIRPERSON RENSHAW: Well, there's
14 such a thing as fast forward on tapes, but it's always
15 good -- if information is available to the Board, it's
16 always good to review it.

17 CHAIRPERSON GRIFFIS: Indeed.

18 VICE CHAIRPERSON RENSHAW: If nothing
19 else, to have the Staff review it and make comments to
20 the Board, provide comments to the Board.

21 CHAIRPERSON GRIFFIS: Indeed.

22 VICE CHAIRPERSON RENSHAW: But in any
23 case, I will pull back from that request if indeed my
24 colleagues would prefer to go on with this.

25 CHAIRPERSON GRIFFIS: I'm prepared to move

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1 on. I'll hear from others if they're not.

2 MEMBER ETHERLY: Mr. Chair, I would agree
3 with you. I think my colleague, Ms. Renshaw, raises
4 a good point, but I think the argument on the other
5 side is a little more compelling. I just don't think
6 we're going to hear anything different from the
7 community. I think it's very clear that the community
8 has some significant concerns that unfortunately were
9 not satisfactorily addressed, not because of any lack
10 of effort, but perhaps just because of just that
11 intractable, so I would be prepared to move forward,
12 Mr. Chair.

13 CHAIRPERSON GRIFFIS: Okay. Let's go back
14 quickly to the information that was submitted. I
15 would suggest in order not to err in terms of
16 completeness, that we waive our rules and accept the
17 information that was submitted that is from the ANC,
18 and I believe -- well, frankly, we could take in the
19 findings of facts which were submitted today, which
20 again I look at, look to be identical. Just a little
21 different formatting from the findings that we had
22 here, so we can take a moment to review while we
23 deliberate that. But unless there's any concern or
24 affection of that, I would take it as consensus of
25 this Board that we do it and, therefore, we should

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1 move on.

2 I think it would be best if -- well, let's
3 have a brief discussion on this. Clearly, the record
4 shows the fact that this has been a non-conforming use
5 for numerous years at this location; and that is, one
6 might say a corner market. There was also ample
7 testimony from the surrounding areas about actually
8 the negative impact, the conditions of the existing
9 retail store.

10 It came to light in the application or in
11 the presentation of the case that this was, in fact,
12 a new or newer owner, and had not been long-term, and
13 may not have been responsible for the existing
14 conditions. However, as some of these things do, this
15 case has been around for a little while, and I think
16 we have had an awful lot of information and effort
17 from the community to actually implement some changes.

18 I have one major concern on this. We had
19 asked for quite a substantial amount of items to be
20 submitted. I don't think they were overly burdensome
21 in the number that we asked for. I mean, the simple
22 pieces of lighting fixtures and locations, some of
23 which has been addressed narratively. I think we were
24 very explicit and direct that we were really looking
25 for much more of the -- an overall plan and a plan for

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1 implementation of some of the conditions around the
2 area that would frankly help the business, but also
3 lessen any of the negative impacts to the area.

4 I am concerned about not having that, and
5 I think it does speak in some way to the ability of
6 the current owner to actually fulfill any type of
7 condition or effort again to diminish any of the
8 negative conditions that happen. And I say directly
9 then, I don't have confidence that it could happen.

10 As we look at the special exception, it
11 actually is, in fact, expanding -- one could say
12 expanding and existing special exception. Adding the
13 deli to the market by our regulations, if I'm correct,
14 is an expansion somewhat of the use. Looking at this
15 as a stand-alone special exception, or even an
16 expansion to the existing, I think we have to look at
17 seriously the fact of how this would be expanding
18 existing negative conditions, and negative external
19 effects, and I think those have been easily evidenced.
20 And again, I go back to the fact of I haven't seen any
21 assurance that if we were to grant approval of this
22 special exception, that we would look to actually a
23 better condition, or one that did, in fact, not create
24 negative impact.

25 I'm a big proponent of corner grocery

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1 stores, especially in urban neighborhoods, and I think
2 that they are, in fact, important aspects to our
3 community. It is, however, disappointing that this
4 could not have come up to the standards that, in fact,
5 the neighborhood is asking for. And let me have
6 others speak to the case if they would.

7 MEMBER ETHERLY: Mr. Chair, if I may, I
8 agree with you wholeheartedly. From this particular
9 standpoint, I don't think there's a need for
10 substantial discussion. I think this case has always
11 hinged on that issue of the deleterious external
12 effects. And I think we have received substantial
13 testimony in part from officers of the metropolitan
14 police department who handle that PSA on a regular
15 basis, as well as members of the community regarding
16 some of the existing negative external effects related
17 to the store's operation.

18 I, too, agree with you that wherever
19 possible there should be a significant measure of
20 consideration given to small entrepreneurs, business
21 of men and women throughout this city who are helping
22 to kind of supplement the fabric of our communities,
23 but it's a very close case in those instances where
24 neighborhoods are attempting to fight that battle
25 against other aspects of urban living. And I think

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1 this is an issue where perhaps an expansion of the
2 store's activities in this regard might be more
3 deleterious than not, Mr. Chairman, at this juncture
4 barring any additional information, just based on the
5 information that we have in the record, both from
6 testimony as well as the narrative submissions, Mr.
7 Chair. I would be inclined at this point -- I have
8 significant concerns regarding the special exception.

9 CHAIRPERSON GRIFFIS: Good. Well said,
10 Mr. Etherly. And I think a note of clarity that I'm
11 sure we're all aware of, is that this does not end the
12 retail store, but does not allow it to additionally
13 combine the deli aspect to it. Ms. Renshaw.

14 VICE CHAIRPERSON RENSHAW: To make this
15 kind of an establishment work; in other words, greater
16 use in the neighborhood, there has to be a very close
17 marriage of the community to the establishment. And
18 I did not feel that the applicant evidenced any
19 responsibilities to being a part of that community.
20 It's not a matter of selling to the community, but
21 it's a matter of interacting with the community to
22 have the best possible outcome, not only for the
23 establishment here, the applicant, but also for the
24 community. Again, it's the marriage, and this
25 marriage should not, in my opinion, take place.

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1 CHAIRPERSON GRIFFIS: Any others?

2 MEMBER ZAIDAIN: Well, you know, we get
3 inundated with so much -- so many issues that were
4 outside the realm of what we were looking at, it was
5 hard to stay focused on what was the critical issue
6 before us; and that was in 203, and specifically
7 203.7, this Board has the ability to assess these
8 types of special exceptions and require their approval
9 on the basis of design and good character with the
10 surrounding community. And I think we got ourselves
11 to a point in our previous deliberation to we wanted
12 more evidence that the applicant could meet a burden
13 of providing a better design, a better clean up of the
14 store and operate it in a better manner, which is
15 clearly in our purview under the section I just cited.
16 And unfortunately, we didn't receive that information,
17 and we have to be expeditious up here, and we can't
18 keep going on, and on, and on waiting for an applicant
19 to give us the right amount of information, so I think
20 I'm more at a point where Mr. Etherly is, in the sense
21 that I'm discouraged to what we've received, and I
22 don't think I'm at a point where I can support it at
23 this point.

24 CHAIRPERSON GRIFFIS: Very well said, in
25 which case I think it's appropriate that we move for

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1 denial of Application 16880 of Endale Terefa. And I
2 would ask for a second.

3 VICE CHAIRPERSON RENSHAW: Second.

4 CHAIRPERSON GRIFFIS: Thank you very much.
5 Any other discussion? Again, I would underscore the
6 fact that this does not end the current use there, but
7 does not, obviously, approve the special exception
8 application before us. I think, Mr. Etherly, I think
9 all of the Board has stated very well the fact that
10 yes, as a special exception we can condition it in
11 order to diminish any sort of negative impact. But
12 based on the fact that we did not get that information
13 from the applicant of how we might condition it, we
14 can't create it, and make the designs, and the plans,
15 and the implementation strategy. And also, looking at
16 the -- in terms of the current situation of how it
17 might compound the current negative impact, I'm
18 actually creating a worse scenario.

19 MEMBER ZAIDAIN: Well, it seems like most
20 of the testimony we heard was how the negative impacts
21 of what's there now, and so we kind of put the burden
22 on the applicant to show how that can be rectified.
23 And unfortunately, that burden wasn't met.

24 CHAIRPERSON GRIFFIS: Indeed.

25 MEMBER ETHERLY: And, Mr. Chair, I would

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1 note that I believe in addition to your point being
2 underscored, I believe the point of my colleague, Ms.
3 Renshaw also needs to be underscored. And that is
4 that there still is an opportunity, albeit not with
5 respect to this application, but just as a matter of
6 good business going forward, there will always exist
7 an opportunity for this particular applicant to
8 continue his efforts at improving relations with the
9 surrounding community. Because as you said, this
10 decision does not affect the store's ongoing
11 operation, and there clearly is a need for some
12 additional efforts to mitigate some of the impacts
13 that are currently taking place in the community.
14 Thank you.

15 CHAIRPERSON GRIFFIS: Excellent. Any
16 others? Then I would ask for all those in favor of
17 the motion to deny signify by saying aye.

18 (Vote.)

19 CHAIRPERSON GRIFFIS: And opposed? Thank
20 you all very much.

21 MR. MOY: All right. Staff will record
22 that motion to deny the application. I believe it
23 would be recorded as 0-4-1 with Mr. Hannaham not
24 present, not voting.

25 CHAIRPERSON GRIFFIS: Actually, Mr. Moy,

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1 let me just interrupt before we call the next, or
2 address the next. As I indicated, we will be breaking
3 after this. Let me just make a note of how we're
4 going to proceed as we come back.

5 First of all, there is on the schedule
6 16879, which is Nebraska Avenue Neighborhood, known to
7 us as Sunrise. We are going to be delaying that for
8 as long as possible this morning in our Public
9 Meeting, based on the fact that this is up at the
10 Court of Appeals and, therefore, this Board would not
11 have jurisdiction unless we heard something from the
12 court, so we are holding out to see if we, in fact,
13 get something from the courts this morning. And if we
14 don't, then I will address in more detail that piece.
15 So if you see it keep bumping that is, in fact, the
16 reason why. Let's move then quickly to the next.

17 MR. MOY: Thank you, Mr. Chairman. The
18 next case is Application number 16710-B of Vinay
19 Pande, pursuant to 11 DCMR 3104.1, for a special
20 exception under 223, to allow the construction of a
21 canopy over a driveway and stairway leading to a one
22 family dwelling that does not comply with the side
23 yard requirements under Section 405, in a R-1-B
24 District at premises 5210 Klinge Street, N.W., in
25 Square 1438, Lot 44.

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1 For the Board's background, at its
2 decision meeting on December 5th, 2002, the Board took
3 no action on the motion from Mr. John Finney, who was
4 the ANC-3D Chair, to reopen the record and reconsider
5 the Board's decision because the motion failed for
6 lack of a majority vote. And that completes my
7 briefing.

8 CHAIRPERSON GRIFFIS: Good. Thank you
9 very much. We have, as Mr. Moy just stated, we have
10 a motion before us to open the record for
11 reconsideration based on Mr. Finney, and the detail,
12 in fact, is going to, I would summarize only the fact
13 that in the findings of fact in our order, according
14 to Mr. Finney, indicated that there was some residency
15 aspect, and I'll be that vague because I would like to
16 move that we open the record for reconsideration based
17 on this specific aspect.

18 MEMBER ETHERLY: Second it, Mr. Chair.

19 CHAIRPERSON GRIFFIS: Thank you very much.
20 Others discussion? All in favor.

21 (Vote.)

22 CHAIRPERSON GRIFFIS: And opposed? Very
23 well. We have the record open at this point in order
24 to deal with Mr. Finney's detail of a misstatement of
25 fact. I concur that there was a misstatement of fact,

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1 and it does appear in condition number 4. I don't
2 think the Board was, in any way, misled or of the
3 understanding that the applicant resided in the home,
4 or his mother resided, or any of the two combination.

5 Also, in terms of the special exception,
6 it would not run, in fact, with a specific owner-user
7 occupant. It would, in fact, run with the land.

8 Findings of facts -- I said conditions and that was a
9 misstate. The findings of fact number 4 states that
10 "The applicant's mother who resides in the dwelling is
11 debilitated by rheumatoid arthritis." I think,
12 frankly, it was an error that we missed in terms of
13 re-reading and editing. It should have read something
14 to the effect of "The applicant's mother intends or is
15 to reside in the dwelling." And I think that is a
16 finding of fact in this case, and that the applicant
17 had indicated.

18 I don't think that the misstate fact was
19 in any way relied upon in terms of the conclusions of
20 law that were reached. And frankly, it seems to be a
21 little -- well, there it is. Anyone else on this?
22 Very well. Then I would with the record open --
23 frankly, it would be clear enough just to remove the
24 finding of fact number 4 and move on, if that would be
25 appropriate for everybody. So I would move that we

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1 amend and remove the number 4 finding of fact in our
2 final order.

3 VICE CHAIRPERSON RENSHAW: Second.

4 CHAIRPERSON GRIFFIS: Thank you. All in
5 favor.

6 (Vote.)

7 CHAIRPERSON GRIFFIS: Thank you very much.
8 Yes, there it is. Why don't we record the vote on
9 that, Mr. Moy.

10 MR. MOY: Yes, Mr. Chairman. The Staff
11 would record the vote as 3-0-1, with Mr. Hannaham not
12 present, not voting.

13 CHAIRPERSON GRIFFIS: Yes. 3-0-2 it would
14 be.

15 MR. MOY: Oh, I'm sorry, 3-0-2.

16 CHAIRPERSON GRIFFIS: Very well. Anything
17 else we need to do on those specific cases? Okay.
18 We're going to take a short recess. I would
19 anticipate that we're back no later than 11:00.

20 (Off the record 10:33 - 11:13 a.m.)

21 CHAIRPERSON GRIFFIS: Okay. Thank you all
22 for your patience as we try and get through the
23 morning schedule. It is very important for us to take
24 these short breaks and we, I think, should begin the
25 rest of the morning dealing with Application 16942,

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1 D.C. Office of Aging.

2 MR. MOY: Yes, Mr. Chairman and Members of
3 the Board. The next case is Application 16942 of the
4 Government of the District of Columbia Office of
5 Aging, pursuant to 11 DCMR 3104.1, for a special
6 exception to establish a Senior Wellness Center in the
7 Old Hayes School under Section 205 in the R-4
8 District, at premises 1035 5th Street, N.E., in Square
9 830, Lot 816.

10 For the Board's information, the Board has
11 received -- the record was left open for 30 days to
12 receive supplemental information, and the applicant
13 submitted that in a timely way, the Board receiving
14 that information on December the 10th. That completes
15 the briefing, Mr. Chair.

16 CHAIRPERSON GRIFFIS: Thank you, Mr. Moy.

17 As advertised, this was a special exception that was
18 establishing the Senior Wellness Center. Through the
19 hearing we did, in fact, evidence specific aspects of
20 this project that would indicate that it possibly
21 needed additional zoning relief, and that was based on
22 the relocation of the headquarters at the Office of
23 Aging within the building. Some of that was the
24 supplemental information we asked for in terms of the
25 square footage or the use in the building itself.

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1 Board Members, I have great concern with
2 this case at this time, and my concern begins with
3 this. I think the adaptive reuse of this building is
4 an important idea to pursue, and I want to be able to
5 view this correctly, and have it correctly before us.
6 I have additional concern of the basis of a case being
7 made that there would be no other applicable use,
8 matter of right use in this building, and then have
9 the applicant propose to essentially demolish the
10 building maintaining the facade and rebuilding the
11 entire interior. It seems to weaken the case that
12 would be presented before us.

13 Again, going back to the fact that I think
14 this is an important project, and one that should be
15 pursued to the extent possible, I think at this point
16 based on my opinion of the weakness of the case before
17 us that we, in fact, allow additional time. And I
18 would propose for discussion two weeks additional time
19 where the applicant could work with the Office of
20 Planning. Office of Planning in their report, page 2
21 in the second paragraph, indicated the new building
22 being proposed to be constructed on basically the same
23 footprint. Clearly, they are aware of it and may, in
24 fact, be well aware of alternatives in order to bring
25 this together, and to make this a very successful

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1 project, both for the applicant, the community and the
2 city as a whole. I think it would be difficult for us
3 to step into this at this point, and may not, in fact,
4 lend itself to the outcome that would be most
5 beneficial, but I will hear others on that.

6 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Yes.

8 VICE CHAIRPERSON RENSHAW: I want to draw
9 to the Board's attention the letter of November 15th
10 from Council Member Sharon Ambrose of Ward 6. Two
11 points I'd like to make, that Council Member Ambrose
12 is extending, and I'm quoting, "her support to the
13 Office of Aging's proposal to renovate the Old Hayes
14 School in Ward 6 into a Ward 6 Senior Wellness
15 Center." So here, Council Member Ambrose is
16 supporting the renovation into a Senior Wellness
17 Center, but does not speak at all, and I wonder does
18 she know, the amount of demolition that is going to
19 take place at the Old Hayes School. And secondly,
20 there is no indication in this letter of any support
21 for office use in this building, so again her support
22 is to renovate the school into a Ward 6 Senior
23 Wellness Center.

24 CHAIRPERSON GRIFFIS: Okay. And that
25 gives you concern in terms of proceeding today?

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1 VICE CHAIRPERSON RENSHAW: Yes, it does,
2 because I don't think perhaps the full picture has
3 been brought to the Council Member. And perhaps the
4 Council Member would like another opportunity to react
5 to this proposal, and delay-- would afford that.

6 CHAIRPERSON GRIFFIS: Okay. Others?

7 MEMBER ETHERLY: Mr. Chair, to just get a
8 little bit of clarification on the concerns that
9 you've expressed regarding -- could you just reiterate
10 it for me. Is the concern the amount of demolition
11 that is proposed, that is contemplated in terms of the
12 existing interior of the building?

13 CHAIRPERSON GRIFFIS: Well, the demolition
14 goes to if this is requiring the use variance in order
15 to establish the headquarters there, the basis of the
16 case to present would be or is that there were no
17 other adaptive reuses as a matter of right within this
18 building. But once you take away the building, how do
19 you then make the case that there's no other use for
20 it?

21 MEMBER ETHERLY: Okay.

22 CHAIRPERSON GRIFFIS: And so I think there
23 are other ways, frankly, to attack this. And I just
24 don't think what we have in front of us is, in fact,
25 a very strong, and perhaps not successful case. And

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1 in that, I think it would be disappointing overall if
2 we had to pursue it in the form that it is now.

3 MEMBER ETHERLY: Okay. Thank you. Thank
4 you for that clarification.

5 CHAIRPERSON GRIFFIS: Any others? Very
6 well. Then let me hear any objections to postponing
7 the decision on this for a matter of two weeks, and I
8 would say that we could stay open if, in fact, the
9 applicant addressed the Board and needed more time
10 than that. But I think as quickly -- I'm sure they
11 want to do this as quickly as possible, and so do we,
12 so any objections to that occurring?

13 MEMBER ETHERLY: Mr. Chair, I don't have
14 any objections. I just want to be sure that we're
15 being clear with the applicant in terms of what you
16 would -- what this Board would hope to have happen in
17 the next two weeks, so that was the reason for my
18 question back to you, because I'm somewhere on the
19 middle ground here. As Ms. Renshaw noted, the letter
20 of Council Member Ambrose, I too want to see the
21 project move forward, and see some important services
22 brought to bear in the community in Ward 6, but I
23 think what I'm hearing is that there are some
24 significant concern if we move forward today. There
25 are some significant questions that still remain to be

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1 answered in the application, so I want to be sensitive
2 to that and provide time for the applicant and
3 appropriate bodies to work together to try to address
4 some of those concerns. But I would hope that we're
5 very specific, as specific as we can be in comments
6 going forward so the next two weeks can be productive.

7 CHAIRPERSON GRIFFIS: Thank you. I think
8 that's important. And I think as direct as we can be,
9 I would suggest that there be a meeting with a
10 representative of the Office of Zoning and the Office
11 of Planning with the applicant. I would look for two
12 outcomes of that; one, a modification to the
13 application that's before us. Or two, a restating and
14 additions to the case that is to be presented for our
15 decision.

16 CHAIRPERSON GRIFFIS: Others? Very well.
17 I think that's a consensus of the Board in that
18 fashion, and I believe we can move on.

19 MR. MOY: All right. Mr. Chairman, the
20 next case then is Application number 16823 of Humberto
21 Gonzalez, pursuant to 11 DCMR 3103.2 for a variance
22 from the use provisions to allow the expansion of an
23 existing bed and breakfast (home occupation) from six
24 sleeping rooms to eleven sleeping rooms under
25 Subsection 203.8 in an DCOD-R-5-D District, at

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1 premises 1720 16th Street, N.W., in Square 178, Lot
2 800.

3 For the Board's information, at its last
4 meeting, the District Department of Transportation was
5 requested to submit a written report clarifying
6 answers to those questions during cross examination of
7 its own testimony, and that was submitted timely.

8 Second, both the applicant and the parties
9 have submitted proposed Findings of Fact and
10 Conclusions of Law which were submitted after the
11 December 16th due date, so those may be waived in on
12 the wishes of the Board. That completes the briefing.

13 CHAIRPERSON GRIFFIS: Which of the
14 findings were late?

15 MR. MOY: The applicant's proposed
16 Findings of Fact arrived December the 19th, and the
17 parties' arrived on December 17th. The due date was
18 December 16th, 2002.

19 CHAIRPERSON GRIFFIS: That's interesting.
20 Does anyone have any objections to waiving the reports
21 into the record?

22 COMMISSIONER MITTEN: No objection.

23 CHAIRPERSON GRIFFIS: Very well.

24 MEMBER ZAIDAIN: I have no objection.

25 CHAIRPERSON GRIFFIS: Take that as

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1 consensus, and accept them into the record.

2 COMMISSIONER MITTEN: Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Yes, ma'am.

4 COMMISSIONER MITTEN: In as much as I
5 missed the October 29th and November 12th hearings, I
6 would like to state for the record that I have
7 reviewed the entire record in this case, including the
8 transcripts from those two hearings, and that I'm
9 prepared to participate fully in the deliberation
10 today.

11 CHAIRPERSON GRIFFIS: Excellent. And we
12 absolutely look forward to your full participation.

13 VICE CHAIRPERSON RENSHAW: And, Mr.
14 Chairman, just to clarify that this is ten guest rooms
15 being proposed, not eleven as has been stated in the
16 introduction to the case.

17 CHAIRPERSON GRIFFIS: Yes, good point. In
18 the closing remarks by the applicant and also in their
19 final submission, I think it brings clarity, and it is
20 a little different than as advertised and continually
21 stated, but it was ten rooms. I don't think there's
22 a Board Member that has difficulty or did not
23 understand that and find that substantive, we can
24 address that now. If not, we can move forward. I
25 think we can move forward actually for discussion on

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1 the clarity of the relief being sought in this case,
2 and I think that gets us into the substance of the
3 case itself.

4 Special exceptions are available to bed
5 and breakfasts in this zone. We, I believe, have
6 clearly moved above a special exception to a variance
7 in this case, and that is based by a number of
8 factors, but one is the number of rooms that is being
9 requested, that being ten. And also, the additional
10 elements of the zoning regulations that bring it above
11 two, that would move it to a variance, and I think we
12 will have substantive discussion on each of those.

13 There was brief discussion or in-depth
14 discussion during this case about what type of
15 variance this actually went to, whether it was use, or
16 whether, in fact, it was an area variance. And I
17 would like to have any comments on discussion on that.
18 And I would begin it. We have a case cited by the
19 applicant; that is, Wolfe versus the Board of Zoning
20 Adjustment, which speaks to this issue and establishes
21 it as an area variance. It has also come in my
22 understanding several other case citings that speak
23 directly to it, and if I'm not mistaken I believe it's
24 Palmer, which talks about the use variance is
25 established when one is seeking a use that is

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1 ordinarily prohibited in the particular district.

2 I am fairly convinced by the case law that
3 this is actually a use that is allowed, and that we
4 are actually looking for an area variance, not a use
5 variance, an area variance because of the fact of the
6 square footage or the area in which it is to be used,
7 and not the use itself. But I can hear others on that
8 if they have comments.

9 COMMISSIONER MITTEN: Mr. Chairman, I
10 would agree with you. I think the reason for
11 confusion to the extent that any exists may be the
12 fact that typically for an area variance, the burden
13 that's put forward upon the owner is a practical
14 difficulty that's caused by the strict application of
15 the zoning regulations. And in this case, we have
16 more of an undue hardship argument that goes more to
17 a use variance, but I don't know that this is a
18 distinction with a difference in the ultimate burden
19 of proof. But I think that might be the reason for
20 the confusion.

21 CHAIRPERSON GRIFFIS: Okay. Well, when I
22 think, in fact, in some of the briefings that this
23 Board has had in terms of this issue, it is a
24 difficult one sometimes to differentiate, because
25 often times you are looking at a use that is expanding

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1 into an area, a use that is expanding into portions of
2 buildings that may not be allowed. And so, use is
3 being talked about, which is I think why logically we
4 would enter and think about that, whether it actually
5 needed relief for that or not. This, I think, is
6 fairly clear, and so if others agree, we can continue
7 with that. Seeing no other indication, let us move on
8 then, and let me open the discussion.

9 COMMISSIONER MITTEN: Mr. Chairman, I'll
10 begin, if I may.

11 CHAIRPERSON GRIFFIS: Yes.

12 COMMISSIONER MITTEN: And I'd like to get
13 right to the heart of what I think this case is about;
14 which is, whether or not this Board has jurisdiction
15 to provide what I would call is in essence an
16 incentive for the preservation of the interior of this
17 building. The hardship that has been described, which
18 it would be -- the hardship as it has been described
19 is that the interior of this building, including the
20 scale, the way you experience the interior of the
21 building, particularly on the first floor, that that
22 would be lost if the variance is not granted. And
23 this property may be unique in certain aspects, but
24 it's not unique in this one, and that is that it is a
25 historic structure that has this grand scale when you

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1 enter it. And we have, and we have still in the
2 DuPont Circle neighborhood, and we have lost in the
3 DuPont Circle neighborhood many residential buildings
4 that shared that scale in expansiveness when you
5 entered. And some of those buildings have been turned
6 into offices, some have been turned into condominiums,
7 some have been turned into embassies and so forth.
8 And we don't have any evidence in this case, in fact,
9 we have evidence to the contrary that there are
10 numerous alternative uses available, economically
11 feasible uses for this property.

12 And the reason that I caution the Board
13 about exceeding their authority is that the question
14 of preservation has been dealt with from a public
15 policy perspective, both on the federal level and on
16 the local level. There are incentives which I believe
17 the applicant is going to avail himself of, tax
18 credits for preservation. That's an incentive
19 provided for structures that meet certain
20 requirements, and the restoration has to meet certain
21 requirements. In order to provide a -- that's an
22 incentive that's available to encourage historic
23 preservation both of the exterior and interior of a
24 building. And that's on the federal level. Certain
25 jurisdictions, we don't happen to have very generous

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1 local financial incentives. But the zoning ordinance,
2 as well, has dealt with the issue of what kind of
3 incentives or what kind of relief do we want to give
4 to historic buildings. And the ones that come readily
5 to mind, the provisions that have already been made
6 from a policy perspective including the provision for
7 allowing non-profit offices by special exception in
8 residential zones for historic structures that exceed
9 10,000 square feet in size, the waiver for the parking
10 requirement, the fact that you can have -- that you
11 can seek a greater number of rooms in a bed and
12 breakfast for historic structures, another form of
13 relief.

14 I don't -- I think that we would be
15 exceeding our authority if we were to grant this
16 variance based on the hardship that turns on
17 preservation of the interior of this building, no
18 matter how desirable that may be.

19 CHAIRPERSON GRIFFIS: Very well, Ms.
20 Mitten. I think the Board appreciates that caution in
21 terms of basing an approval on creating an incentive
22 for preservation, or basing it on the interior. Do
23 you find, or have you found in this case other aspects
24 that actually speak to the uniqueness and the
25 practical difficulties in front of us? And I have

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1 cautioned -- I have concern about, when we look at --
2 well, let me leave it at that.

3 COMMISSIONER MITTEN: Well, given that I
4 don't think -- I don't want to be the one to have to
5 make the case in the pro. I'd rather if someone does
6 feel that they want to make the case in favor, that
7 someone else should do that.

8 CHAIRPERSON GRIFFIS: Very well.

9 COMMISSIONER MITTEN: I think I've made my
10 opinion clear.

11 CHAIRPERSON GRIFFIS: Others?

12 MEMBER ZAIDAIN: Well, I don't think I'm
13 going to make a case in the pro. I just wanted to
14 piggyback onto what Ms. Mitten was discussing. This
15 was a very difficult case to deliberate on. It was a
16 very difficult case to sit through. We heard an
17 inordinate amount of testimony, numerous requests for
18 dismissals with prejudice that we did not grant. And
19 unfortunately, from both sides of the case, we heard
20 a lot of testimony that when it comes down to it is
21 really not relevant to what we are here to deliberate
22 on.

23 This is a use variance which is the
24 highest -- or I'm sorry, area variance, which is a
25 higher standard than a special exception, which this

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1 is what it would fall under if it was a six room bed
2 and breakfast. The application is for more than that,
3 and looking through the transcripts and sitting
4 through the hearings, the testimony I heard mainly was
5 -- the argument I heard was mainly an economic one,
6 was to make this work from an economic standpoint.
7 And, you know, the project and the program is a good
8 one. It's interesting, but we have to deal with the
9 facts that come before us in terms of our deliberation
10 for these types of variances.

11 We spent an inordinate amount of time on
12 conditions, transportation management plans, limiting
13 weddings and all this, and that is more applicable to
14 me when it comes to special exceptions, when the use
15 is more generally approved in a district, but certain
16 conditions need to be placed on it to mitigate
17 negative impacts. We're beyond that type of procedure
18 at this point. And when it comes down to it, the only
19 argument I heard from the applicant was an economic
20 one, in order to make the loan to work.

21 There was arguments in terms of historic
22 preservation that I think Ms. Mitten dealt with that,
23 and just searching through it, I found it really
24 difficult to support the application for the variance,
25 and so that is where I am at this point.

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1 VICE CHAIRPERSON RENSHAW: Mr. Chairman,
2 I thank my colleagues for their opinions on the case
3 to this point. As I reviewed the information in the
4 case, what struck me was that this application was so
5 far beyond the scope of what I would call in quotes "a
6 home occupation." There is definite impact on the
7 neighborhood from what the applicant has proposed in
8 the number of rooms the applicant is requesting, and
9 the number of events the applicant is also proposing
10 on an annual basis. And it's not clear, it was not
11 clear in my mind. If you could collectively put on
12 these events, even though you can't do so, or it's not
13 proposed to do consecutively on weekends, but whether
14 you can have several events in a three month period
15 versus two events every month.

16 But there is a definite impact on the
17 neighborhood that we have to consider, at least that
18 I considered. It's if you're for the inclusion of
19 this bed and breakfast/event destination, then you
20 would feel that it would be a positive impact. If
21 you're against it, it would be a demand on the
22 neighborhood in fitting this into the block area.

23 I, myself, feel that this has too great an
24 impact on the neighborhood, and I am not
25 enthusiastically in favor of this application, and

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1 have concerns about it, so that my support right at
2 this point, unless I am convinced otherwise during
3 this discussion period that there are some positive
4 benefits that perhaps I have overlooked or just not
5 seen.

6 CHAIRPERSON GRIFFIS: Very well, Ms.
7 Renshaw. I think we need to be careful, as Mr.
8 Zaidain has pointed out, in terms of how we deal with
9 the negative impacts that were evidenced as we are in
10 a variance, and how that goes to that test, and how we
11 actually would deal with those aspects. And I think
12 the regulations in 203 spell out quite a bit of
13 specificity with home occupations that could work to
14 mitigate that.

15 Let me address a couple of things. First
16 of all, I think this case does not necessarily stand-
17 alone on being the basis of the preservation of the
18 interior. I think the uniqueness is based on the fact
19 that we have an existing building, and it is unique in
20 terms of its size. I would say also in terms of its
21 age, its character and its characteristics.

22 Ms. Renshaw, you mentioned that there
23 might be negative impact in terms of the number of
24 rooms that would be used, but we're not talking about
25 new construction. In my mind, we're not talking about

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1 like an expansion of a function.

2 VICE CHAIRPERSON RENSHAW: Just increased
3 use.

4 CHAIRPERSON GRIFFIS: Yes, conceivably.
5 And that's an interesting piece when we talk about an
6 increased use, because we have an existing building.
7 We have it with so many bedrooms. What's precluding
8 it from being used by a family of 50 if it was a
9 single family? And I think it more specifically and
10 directly goes to the fact that a lot of what we heard
11 that Mr. Zaidain was talking about was issues of how
12 it would negatively impact the neighborhood. I'm
13 convinced on some, perhaps not on others, but what I
14 want to bring to the Board's attention for some brief
15 deliberation is it looks like we've been told that if
16 you don't use this building, that is the best case
17 scenario.

18 We have, in the Findings of Fact from the
19 opponent, the issue of the court yard. And there's a
20 statement in there that says after all, if that court
21 yard were to be used, it would impact, impair the use
22 of neighbors' backyards, overhanging decks and
23 balconies. I can clearly understand that some uses of
24 that court yard might do that, but I do not agree in
25 any case that not using that is a good situation.

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1 Directly saying, they're allowed to use
2 their backyards, and their decks, and their
3 overhanging decks and backyards, and all the rest, and
4 have garden parties, and hopefully entertain their
5 neighbors and friends. I'm not sure why we would stop
6 it from happening in the adjacent property, so going
7 to that, I think we ought to look at -- and my point
8 only is to look at it realistically, and then be able
9 to weigh all of the information that's put before us.

10 MEMBER ZAIDAIN: Well, Mr. Chair, just to
11 weigh in on that. I completely agree with you.
12 That's one reason why it was so frustrating since a
13 lot of the arguments we heard was, you know, a bed and
14 breakfast can work on this site, just not at this
15 level. I mean, the zoning gives clear description on
16 how it can work, and so we got into a semantical, you
17 know, argument on the inner workings of a bed and
18 breakfast almost to a ridiculous level, and that's
19 just -- that did not lend any weight to anything to
20 this whole process. I think the zoning regulations
21 are very clear on what can work and what can't.

22 CHAIRPERSON GRIFFIS: And what is your
23 opinion in terms of the uniqueness as its building
24 size and, frankly, its architectural age and character
25 as it goes to the practical difficulty of how you

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1 actually fill this building? Is it convincing to you
2 that the case has been made that based on the size,
3 there is a practical difficulty in having an owner-
4 occupied home occupation?

5 MEMBER ZAIDAIN: Well, no. I think it's
6 even simpler than that. I think the use variance
7 comes to, if you're going to look at it from a
8 preservation standpoint, is by granting -- or this
9 area variance. I keep using the wrong word there, is
10 by granting this area variance the only possible way
11 to preserve this historically significant building?
12 And in my mind the answer is no, there are other ways
13 -- there are other uses that could possibly go in
14 there, other ways to maintain it and preserve it. I
15 don't see the uniqueness in that situation.

16 CHAIRPERSON GRIFFIS: Okay.

17 COMMISSIONER MITTEN: Mr. Chairman, you
18 had said, when you prefaced your remarks you said that
19 you didn't think the case turned on the hardship of
20 trying to preserve the interior, and I heard you
21 articulate the aspects of the property that you felt
22 contributed to its uniqueness, but I didn't hear you
23 follow-through to say what you thought were the -- how
24 those unique characteristics led to either a practical
25 difficulty or an undue hardship that would require the

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1 granting of this variance, so I'd just be interesting
2 in hearing your full thoughts on the subject.

3 CHAIRPERSON GRIFFIS: I absolutely
4 appreciate that. For me, where I go as I look at this
5 case and the record in it, I think the case has been
6 presented to us that based on the size and the unique
7 character, that looking at the regulations, the
8 allowable amount of bed and breakfast that can go in
9 is, one might say, impractical even for this building.
10 And it seems as though the regulations were made for
11 a more standard size, one might say, townhouse that
12 would not want to be overwhelmed with home occupation.
13 And here we have this unique large building, and so is
14 it out of -- well, then the practical difficulty comes
15 from well, if you had say, you know, your standard
16 four bedroom bed and breakfast in it, and you had the
17 remaining eight to ten rooms, is that practical to put
18 a single homeowner in that? You know, are we looking
19 at thousands of square feet that basically would go
20 unused or would not be allowed to be used within a
21 home occupation?

22 COMMISSIONER MITTEN: Well, Mr. Chairman,
23 I'd like to just encourage you to expand your thinking
24 a little bit more, because this is not in an R-1 zone.
25 This is in a R-5-D zone, and there are numerous other

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1 uses available to this property than single family
2 with a home occupation.

3 The previous use is permitted as a matter
4 of right, that's rooming house. Museum is permitted
5 as a matter of right. Private club is permitted as a
6 matter of right, multi-family, and we have evidence in
7 the record that --

8 CHAIRPERSON GRIFFIS: All of which seem to
9 be higher uses, and having an incredibly larger amount
10 of impact on the surrounding area.

11 COMMISSIONER MITTEN: But again, that's
12 not the test. The test is practical difficulty or
13 undue hardship that is caused by a unique
14 circumstance.

15 CHAIRPERSON GRIFFIS: Right. But I don't
16 think a case can be denied based on the fact that we
17 can project that there is another use that can be put
18 in there. I mean, by saying -- by reading what you're
19 saying, we could say yeah, the darn thing ought to be
20 a museum, but we don't have a museum in front of us
21 right now, so I think we need to look specifically --
22 even frankly and directly, even looking at the
23 condominium conversion, I think that it could
24 conceivably be an alternative use to this building.
25 It's also not something we have directly in front of

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1 us, and I'm not sure that we have all of the
2 information that would lend us to say that is a better
3 matter of right use for the building. And maybe a
4 little digression, but I was shocked at the fact that
5 the community came in and put the case on that said it
6 could happen. I think going down that direction would
7 -- it could be strongly argued that that would
8 actually have more negative impact, or more trip
9 generation, more use, more noise, so that's where I
10 am.

11 COMMISSIONER MITTEN: But again, that's
12 not the test. The test is not whether another use
13 that is permitted as a matter of right would cause
14 greater burden to the community. The question is --

15 CHAIRPERSON GRIFFIS: No, I understand
16 that, and that's why I'm addressing it.

17 COMMISSIONER MITTEN: Okay.

18 CHAIRPERSON GRIFFIS: Because I keep
19 hearing from you and from others that look, there are
20 these other alternatives. You know, certainly maybe
21 we denied this because there's other alternatives to
22 put in this building. And my point was bringing it
23 back to the fact that now we have this before us, and
24 we need to look at this directly, so it does go to the
25 fact that we have this structure, its uniqueness of

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1 size, and location. And we have an applicant before
2 us telling that there's a practical difficulty, a
3 hardship of not being able to expand a matter of right
4 use within this building.

5 COMMISSIONER MITTEN: Well, and that's the
6 point. They're saying they have a practical
7 difficulty because of the use that they have chosen to
8 pursue.

9 CHAIRPERSON GRIFFIS: Yeah, but that goes
10 back to the same argument, that you're saying that be
11 definition, anyone that comes in here with something
12 proposed that needs relief should be denied because
13 they're having to ask for relief.

14 COMMISSIONER MITTEN: That's not what I
15 said, and that's not the nature of my response. The
16 fact is when -- if someone says I have a hardship
17 because I can only do X, then you say well, is that
18 true? Can you really only do X? And the fact is no,
19 they can do Y, Z, Q, P, R, whatever.

20 CHAIRPERSON GRIFFIS: Right.

21 COMMISSIONER MITTEN: You know, and so we
22 have to say well, I'm going to have to probe your
23 argument that you can only do X.

24 CHAIRPERSON GRIFFIS: Right.

25 COMMISSIONER MITTEN: And that's all I'm

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1 asking.

2 CHAIRPERSON GRIFFIS: And I don't hear
3 them saying they can only do a bed and breakfast. I
4 didn't hear that in the case. I heard in the case
5 that they were proposing a bed and breakfast, and that
6 they have this large building that would accommodate
7 the increased bedrooms of a bed and breakfast, and
8 that's where I am. I'm addressing the bed and
9 breakfast proposal.

10 COMMISSIONER MITTEN: I'm going to let Mr.
11 Etherly say something.

12 MEMBER ETHERLY: It's -- I mean, I'm
13 caught somewhere between the two positions, but I'm
14 inclined to -- I mean, I'm compelled by the Chairman's
15 argument because it almost sounds as though the
16 logical outcome of where you're heading, Ms. Mitten,
17 is that an applicant has to play use roulette, and has
18 to come here and kind of choose the right use, and
19 then that gets them to the right place. And I'm not
20 sure if that's the appropriate outcome that we're
21 looking for here. If an applicant steps forward and
22 has chosen a particular use, I think I agree with you
23 in as much as you've said okay, then you have to run
24 that use through the crucible of the test before us,
25 but I'm not necessarily compelled by the argument that

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1 there are alternative uses out there. Any project or
2 application that comes before us, conceivably whether
3 it's a convenience store on a community sidewalk, or
4 whether it's an office building, I'm not convinced.

5 COMMISSIONER MITTEN: Okay. Let me
6 attempt -- oh.

7 MEMBER ETHERLY: The uniqueness here, as
8 the Chairman laid out, is you have a substantial
9 building. You have a large space. You have could you
10 do a smaller bed and breakfast here? Of course you
11 could. Could that smaller bed and breakfast be an
12 economically viable operation? I don't think so,
13 because I think you're still going to have some of the
14 same arguments about conditions on the operation of
15 that bed and breakfast that you would have if we're
16 talking about a ten, or eleven, or fifteen room
17 operation. That, I think, is part of the uniqueness
18 here and the practical difficulty, if I'm using the
19 right language here. The undue hardship.

20 CHAIRPERSON GRIFFIS: You know, there's a
21 case -- Mr. Etherly, I appreciate that, and it brings
22 to mind a case we recently heard which I won't cite,
23 although it was cited in the record of this. And one
24 could draw an interesting comparison, and that was an
25 expanded use within a building that had some

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1 intriguing character to the interior of it. But what
2 the difference in my mind between a situation like
3 that and this one, as you were going to, is that we're
4 not adding onto this building in order to accommodate
5 the expansion of a use. It's actually just utilizing
6 the existing building, and therefore not -- obviously
7 the reverse, not having any sort of under-utilization
8 of it.

9 MEMBER ZAIDAIN: I have a question, and
10 what Mr. Etherly I think was trying to go through
11 there, and I'm kind of interested on the track we're
12 getting off on here. It's leading into an interesting
13 argument, but you were walking through a situation
14 where you have a matter of right or a special
15 exception use for a bed and breakfast to six rooms,
16 whatever it may be. And then you said but it comes
17 back that the economics of that will not make it a
18 profitable undertaking, so therefore, a request has
19 come to us to exceed that. Are you supporting the
20 fact that the economics of it would lend credibility
21 to the argument that an area variance should be
22 granted? I mean, I'm wanting clarification to your
23 argument.

24 MEMBER ETHERLY: Part of my thinking here,
25 let me step back and do kind of a 500 foot overview

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1 here, if I could, and then let me try to come back to
2 the test because I agree wholeheartedly with where
3 you're heading, and where all my colleagues are
4 heading; and that is, that you have to be clear where
5 the test fits in here. Let me take the 500 foot
6 overview first, which is you have a structure here.
7 And the challenges to anybody who purchases the
8 structure, or just looking at the structure in the
9 street, what the heck do you do with the structure?

10 You have, as Ms. Mitten notes, you have a
11 number of mechanisms that are in place, many of which
12 are part of the zoning regs, many of which are part of
13 other parts of the D.C. Code or federal law, which
14 encourage some type of productive or efficient use of
15 a property, especially a property that has historic
16 significance.

17 Here, I don't think there's any
18 disagreement that we have a property that has some
19 historic significance. We have a property that
20 probably has architectural significance in terms of
21 its size and its character. Okay? Still I'm outside
22 the scope of what the zoning test is, and I'm
23 acknowledging that, but I'm just taking a 500 foot
24 overview.

25 With that being said, let me try to kind

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1 of come back to this issue that we started off with,
2 which was okay, is this a use or area variance? I
3 think we've all reached agreement that we're not in
4 the situation that involves a use variance, because
5 there could be a matter of right use as a bed and
6 breakfast, if we were talking probably a smaller scale
7 here, so we're talking about an area variance.

8 There's language in one of the cases that
9 was cited by the applicant in their submission,
10 proposed Findings of Facts, and that's the Monickle
11 case. And language was cited there which I found to
12 be a very interesting application here, and that was
13 that the efficient use of large historic residential
14 structures to avoid their deterioration into empty
15 shells. And that, for me, I think is the crux of the
16 500 foot overview here, which is you have th is large
17 structure. The question is can it work on some kind
18 of smaller scale.

19 My question is you could make it work on
20 some smaller scale. I don't want to stand here and
21 say that you can't do that, but my concern is what
22 damage or what impact do you do to the structure, to
23 this large historically significant structure in order
24 to make it work on a smaller scale? Okay. That's
25 kind of one question.

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1 The applicant has put forward some
2 argument which speaks to significant concerns that in
3 order to make it work on a smaller scale, either as a
4 condo development, some type of multi-family
5 development or smaller bed and breakfast. Let me deal
6 with the condo and the multi-family development first.

7 There, I am somewhat persuaded that the
8 economics of that type of conversion, one from the
9 standpoint of the impact on the interior of the
10 property creates a significant concern. You're
11 talking about probably wholesale change to the
12 interior of the property, and that's just kind of a
13 lay person's standpoint. And I'm not speaking from
14 the architectural significance or anything, that is
15 just my gut sense, that you're going to have to do
16 some wholesale rehabilitation to the interior of that
17 building to make it work as a multi-family or condo
18 residence. Am I heading in the right direction to
19 respond to your question?

20 MEMBER ZAIDAIN: No.

21 MEMBER ETHERLY: Okay.

22 MEMBER ZAIDAIN: But I don't know why
23 we're getting on to this whole discussion about
24 alternatives. I didn't think of alternatives, and we
25 heard a lot of testimony about the condo and all that.

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1 That's not for us to decide. I mean, we had an
2 application before us for an area variance to exceed
3 what is normally allowed in the zoning designation for
4 home occupation, bed and breakfast. And so we were to
5 deliberate on testimony why they should be allowed to
6 have more than what's allowed in that zoning
7 designation. And I didn't hear any testimony other
8 than economic arguments --

9 MEMBER ETHERLY: No, I agree with you
10 completely.

11 MEMBER ZAIDAIN: -- from either side on
12 whether it should or should not to be honest with you.

13 CHAIRPERSON GRIFFIS: Well, I think what
14 Mr. Etherly, I think, is ably addressing is really not
15 necessarily economics, but the utilization, and
16 they're tied. If we look at how the regulations have
17 dealt with contributing buildings and historic
18 buildings, there is a great concern, as Mr. Etherly
19 has raised, for them not becoming unusable based on
20 their size, and also based on the requirements to
21 upkeep buildings of that quality and size. So when we
22 have this offer to use in the proposal before us,
23 really what's happening is if the variance was
24 granted, it would permit the efficient use and
25 utilization of the large mansion. And I think that's

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1 really where you were going, Mr. Etherly, in some
2 respects, not necessarily that it will make top
3 dollar, and this is the best economic thing or money-
4 maker to put in this. But rather, it is making full
5 utilization with a bed and breakfast of the building
6 size.

7 COMMISSIONER MITTEN: May I have a word,
8 Mr. Chairman?

9 CHAIRPERSON GRIFFIS: Certainly.

10 COMMISSIONER MITTEN: I think we have to
11 have the discussion about alternative uses, and I'll
12 tell you why, especially -- and I wrote down exactly
13 what you said when you were making your argument, Mr.
14 Chair, which is the allowable amount of bed and
15 breakfast is impractical for a building of this size.
16 And so, certain of my colleagues have focused on the
17 bed and breakfast because that's what this owner has
18 chosen to pursue. Okay? But when you have
19 alternative uses, and someone says but I want to
20 pursue this one, and this one creates the hardship,
21 then that's a self-imposed hardship. They have chosen
22 to pursue a course, a use that does not fully utilize
23 the property and brings them to us for relief. But if
24 size is what is the unique condition, then you must
25 look at alternative uses for a building of this size.

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1 And I would argue that we have numerous examples of
2 buildings of this size being converted to embassies.
3 We have numerous examples -- those are common
4 knowledge. We have examples in the record of
5 buildings of this size being converted to
6 condominiums, and in addition to that, we have
7 testimony from an architect. And I know that we can
8 all think of other examples, but I --

9 CHAIRPERSON GRIFFIS: Well, he --

10 COMMISSIONER MITTEN: Just let me finish.

11 CHAIRPERSON GRIFFIS: Sure.

12 COMMISSIONER MITTEN: So in remaining
13 focused on the bed and breakfast, you have to
14 understand that that is self-imposed. There is
15 nothing inherent in the property that dictates that it
16 be a bed and breakfast, and that the unique condition
17 has to --

18 CHAIRPERSON GRIFFIS: No, I understand
19 that.

20 COMMISSIONER MITTEN: -- relate to the
21 property, not the choices made by the owner.

22 CHAIRPERSON GRIFFIS: I understand your
23 position, and I do differ from it. And I'm not sure
24 how we would bring clarity to that, because I don't
25 think it's as easy to say to the applicant, you know,

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1 why don't you make this an embassy? I think you need
2 to look at it is as the bed and breakfast itself.
3 It's just like looking at the development of an office
4 building that we think should be zoned, or is zoned
5 for residential, and we look at a commercial developer
6 and tell them build residential units. Well, they may
7 not do that. It's not so easy to flip uses and
8 opportunities, but I don't know that I will change
9 your opinion or thinking on that.

10 MEMBER ETHERLY: May I -- once again --
11 gosh, this is -- I'm glad we're working through it
12 because it's a complex case, and I think the
13 complexity of the case is evidenced by the fact that
14 we had a substantial amount of testimony, as everyone
15 will recall, a zillion days.

16 I think Ms. Mitten's discussion about the
17 alternative uses is an instructive one, and I think I
18 was trying to address, and that's probably where I
19 started to create some confusion in Mr. Zaidain's
20 mind, because I was attempting to kind of dispose of
21 it by arguing that I understand where you're coming
22 from, Mrs. Mitten, but I guess my response to that
23 simply is we have -- in each and every case we have an
24 applicant who comes forward with a proposed use. Is
25 it within this Board's purview to argue in response to

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1 whatever the proposed use it that well, hey, you just
2 chose the wrong use. You know, you're kind of just,
3 you know, tough beans.

4 I think what I'm trying to say is that
5 that's kind of my response to where you're heading
6 with that. I understand what you're saying, and I
7 agree with you that you're going to have to, you know,
8 maybe give some consideration to it, but I keep coming
9 back to the thought that a six room bed and breakfast
10 would work here as a matter of right, and we wouldn't
11 have any of these conversations, so the issue isn't
12 necessarily the bed and breakfast. It still comes
13 back -- and that's why we're at an area variance. It
14 still comes back to the scale on which the proposed
15 bed and breakfast is before us here. So I hear where
16 you're coming from on the alternative uses. I just
17 don't think that, you know, the proposed use is before
18 us. You know, let's take a look at it and deal with
19 that issue.

20 The fact that the applicant didn't come
21 forward and say I want to do an embassy, or I want to
22 do a multi-family unit, I'm not swayed by that.

23 CHAIRPERSON GRIFFIS: Good. Thank you,
24 Mr. Etherly. Ms. Renshaw.

25 VICE CHAIRPERSON RENSHAW: Yes. Mr.

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1 Chairman and colleagues, I want to dovetail on what
2 Mr. Etherly has been talking about regarding the scale
3 of the bed and breakfast, because the chosen use here
4 is what, to me, presents the problems, and it's the
5 problems that we have to get back to in order to
6 decide Application 16823.

7 In my opinion, it's not so much the number
8 of rooms that have been requested, but in the events
9 that have been proposed, and so I would like to bring
10 us back to the chosen use, and to see whether or not
11 we can work through this, or the chosen use as
12 described to us through the hearing process is
13 something that is too great, the scale as Mr. Etherly
14 has stated, is too big for the use of that piece of
15 property.

16 CHAIRPERSON GRIFFIS: So if I'm hearing
17 you correctly, you're indicating that the bed and
18 breakfast may just be proposed too large for this
19 area, so you're looking at --

20 VICE CHAIRPERSON RENSHAW: Well, it's not
21 so much the number of rooms that have been asked for.

22 CHAIRPERSON GRIFFIS: Right.

23 VICE CHAIRPERSON RENSHAW: In other words,
24 from six to ten.

25 CHAIRPERSON GRIFFIS: Right.

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1 VICE CHAIRPERSON RENSHAW: Not eleven, but
2 ten. But there is more to this application than just
3 the number of rooms to this bed and breakfast. And we
4 had asked the Department of Transportation to weigh in
5 with answers to questions that have been proposed,
6 which I, myself, found very illuminating. But when
7 you package all of this into Application 16823, the
8 question is, is that package, is that scale too much.
9 And that is what is before us, not so much the
10 alternative use, not so much these economic arguments,
11 but what is packaged, is it too much?

12 CHAIRPERSON GRIFFIS: Okay.

13 VICE CHAIRPERSON RENSHAW: Or is it a
14 doable project.

15 CHAIRPERSON GRIFFIS: And what are you
16 proposing? If I can project, perhaps what I'm hearing
17 you say, and that is you could support, in fact, a bed
18 and breakfast of ten rooms, but you would want to
19 condition it severely that you might reduce the amount
20 of detriment to the public good that this would
21 create.

22 VICE CHAIRPERSON RENSHAW: I am leaning
23 right at this point in that direction. What has me in
24 opposition to the application right now is this whole
25 matter of special events, and the scale of special

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1 events as has been proposed, and the impact on the
2 parking in the community, the number of vehicles, the
3 kind of catering service operation that would have to
4 take place.

5 I was not won over by the applicant with
6 the description of how that was going to be handled.
7 And in fact, I saw some major demerits to that whole
8 operation, so I would like to get us back to the
9 chosen use as expressed by the applicant, and to talk
10 through whether or not what has been requested is
11 doable.

12 CHAIRPERSON GRIFFIS: Okay. For quick
13 clarification, Ms. Renshaw, if a matter of right bed
14 and breakfast went in, what do you see as the
15 allowable level of events for occupants in the
16 building would be? Where are we moving from?

17 VICE CHAIRPERSON RENSHAW: Are you asking
18 about the number of bedrooms, guest rooms as they call
19 them?

20 CHAIRPERSON GRIFFIS: No, not necessarily.
21 I'm trying to understand your --

22 VICE CHAIRPERSON RENSHAW: Well, what has
23 been proposed in special events to, shall we say,
24 support this whole operation. And it sounds to me as
25 though this operation cannot be supported just on the

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1 use of this facility as a guest room operation, a bed
2 and breakfast. But there is the need here for these
3 special events, and that is what is troubling.

4 CHAIRPERSON GRIFFIS: Let me see if others
5 agree with that, because I thought that that -- there
6 was some testimony to that, but I thought that was
7 clarified by the applicant, that he had entertained
8 doing fund-raisers or things of that nature. I think
9 what is before us, and we should bring clarification,
10 is that we're all dealing with the same elements. My
11 understanding is that these are events that are
12 directly attendant to the bed and breakfast, and the
13 bed and breakfast occupants. And what was --

14 VICE CHAIRPERSON RENSHAW: Not
15 necessarily.

16 COMMISSIONER MITTEN: Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Yeah.

18 COMMISSIONER MITTEN: There's a case, the
19 Swan House Bed and Breakfast, there was an appeal.

20 CHAIRPERSON GRIFFIS: Yes.

21 COMMISSIONER MITTEN: And just for a
22 regular bed and breakfast, you know, one that isn't up
23 for a variance or anything, certain functions like
24 weddings are permitted without any kind of special --
25 we're not conferring the right to have special events.

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1 That's attendant. That's been determined by the Court
2 of Appeals to be attendant to a bed and breakfast use.
3 That doesn't mean it's unlimited, but I think you
4 should be aware of that.

5 CHAIRPERSON GRIFFIS: And I was very well
6 aware of it, and I appreciate you giving specifics.
7 Sometimes I'm not as direct as I might be, and that's
8 what I was trying to explore with Ms. Renshaw, if
9 she's saying that it's not the number of rooms in the
10 bed and breakfast function, but the events. I'm not
11 sure how she's thinking about dealing with that, in
12 that it is essentially an accessory to the accessory,
13 and so --

14 VICE CHAIRPERSON RENSHAW: But when you
15 add all of that up, there is a decided impact.

16 CHAIRPERSON GRIFFIS: Okay.

17 VICE CHAIRPERSON RENSHAW: The impact is
18 not a positive impact. It's more a negative impact,
19 so I am just wanting to move the discussion and hear
20 from others as far as if they are in agreement that
21 the number of guest rooms is doable, then is the
22 number of special events, in their opinion, also
23 within reason? I don't feel it is, but I'd like to
24 hear from others.

25 COMMISSIONER MITTEN: Mr. Chairman.

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1 CHAIRPERSON GRIFFIS: Yes.

2 COMMISSIONER MITTEN: If I could just
3 address something to Ms. Renshaw; which is, given that
4 the ten guest rooms don't come in isolation. They
5 come -- if you grant the variance in order to allow
6 this facility, this large house to become a larger bed
7 and breakfast than is already permitted, then you will
8 be -- what comes with that are special events, so if
9 you are given pause by the special events, then I
10 think you do have to question whether or not you want
11 to grant a variance that facilitates this bed and
12 breakfast existing in this location for a building of
13 this size.

14 VICE CHAIRPERSON RENSHAW: All right.
15 Thank you for that description, explanation.

16 CHAIRPERSON GRIFFIS: I think it would be
17 appropriate, if someone is inclined to make a motion.
18 What I would like to do, and I think what we have not
19 done is get even deeper into the specifics, which I
20 think Ms. Renshaw was leading us to, and that is the
21 other areas of relief from Section 203 that are being
22 offered here. We can either do that now, or we can do
23 it under a motion. I'm open to the Board's desire.

24 COMMISSIONER MITTEN: Mr. Chair, I'll make
25 a motion to determine whether or not that second

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1 course of action is even necessary.

2 CHAIRPERSON GRIFFIS: I see.

3 COMMISSIONER MITTEN: I would move that we
4 deny Application number 16823.

5 MEMBER ZAIDAIN: I'll second.

6 CHAIRPERSON GRIFFIS: Discussion? Ms.
7 Mitten, did you want to elaborate further, if you --

8 COMMISSIONER MITTEN: I think I've
9 exhausted my arguments.

10 CHAIRPERSON GRIFFIS: Mr. Zaidain.

11 MEMBER ZAIDAIN: I'm inclined to say that
12 we've exhausted. I will say it's a -- I mean, I guess
13 just to say something, it was an extremely difficult
14 case. I don't think anyone on this Board is against
15 the program and against bed and breakfasts, having
16 attended wedding ceremonies at a bed and breakfast in
17 the past, it was nice to hear all the testimony on how
18 those things function, but I just -- I think the
19 testimony we heard in regards to what we need to
20 deliberate on just was not there, basically from
21 either side. It was very disappointing, the arguments
22 that were made from both sides of the case, and it was
23 a painful process to sit through.

24 CHAIRPERSON GRIFFIS: Indeed. Others?

25 COMMISSIONER MITTEN: I just want to echo

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1 what Mr. Zaidain just said. And I have to say, I
2 consider myself a preservationist, and yet I think our
3 duty here first and foremost is to the zoning
4 ordinance and to the strict application of the
5 variance test, and that's what I'm trying to stay
6 focused on.

7 CHAIRPERSON GRIFFIS: Right.

8 MEMBER ETHERLY: Mr. Chairman, I'll just
9 note that I think we're perhaps getting lost in the
10 minutia of the trees and forgetting the overall well-
11 being of the forest here. I do believe that a case
12 was put forward by the applicant that speaks to an
13 extraordinary or exceptional situation or condition
14 here, and I believe we're losing sight of that
15 condition, and that condition is the building itself.

16 We have a use that's presented to us that
17 I believe offers an excellent opportunity to maintain
18 what once again I believe everyone agrees is an
19 architectural and historic jewel, not only for the
20 immediate neighborhood and community, but also for the
21 city as a whole. I'm not stating that to suggest that
22 any of my colleagues who are voting in support, or who
23 would conceivably be voting in support of the motion
24 are saying anything to the contrary, so I want to be
25 clear about that. I'm not stating that my colleague,

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1 Ms. Mitten, or Mr. Zaidain, or Mrs. Renshaw, or anyone
2 else who's voting supporting the motion is saying
3 something different regarding how important and how
4 significant this structure is. But my concern is that
5 I believe we do have a collection of circumstances
6 which speak to an exceptional situation; that is, the
7 size of the building. To answer Mr. Zaidain's earlier
8 question, I think taken in concert with some of the
9 economic discussion that I heard, while it might not
10 have been compelling to some of my colleagues, I do
11 think when you look at the size of the building, the
12 uniqueness of the structure historically and
13 architecturally, and you add in I think the economic
14 considerations that have to be taken into account, to
15 contemplate alternative uses, I think that speaks to
16 overall an exceptional situation or condition of the
17 property that would make strict application of the
18 zoning regulations result in undue hardship. And I
19 believe that undue hardship would be to significantly
20 impact the interior, perhaps even the exterior, but
21 more importantly the interior, once again, of a very
22 significant structure. That's my first concern with
23 respect to the motion.

24 Secondly, once again I do agree with Mrs.
25 Mitten that you have to give consideration to the

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1 scale of the proposed operation here, and my
2 colleague, Mrs. Renshaw, I believe took us very ably
3 in that direction. I think it was very clear after
4 hearing testimony from the community, also testimony
5 from the applicant themselves that there were going to
6 have to be some considerable conditions placed on the
7 operation here to ensure that you wouldn't have a
8 significantly deleterious effect on the community, and
9 I think that could indeed had been possible.

10 This Board in the past has taken pains to
11 implement a wide array of varied conditions on other
12 projects, and I think it could have indeed been
13 achieved here. I'll leave it at that, Mr. Chairman,
14 as I agree with my colleagues that we've exhausted
15 just about all the conversation here, but I have
16 concerns about supporting this motion, and will vote
17 accordingly. Thank you, Mr. Chair.

18 CHAIRPERSON GRIFFIS: Thank you, Mr.
19 Etherly. Ms. Renshaw.

20 VICE CHAIRPERSON RENSHAW: Mr. Chair, just
21 a quick statement that I support small business
22 operations being one myself, but here the scale of
23 expansion to include a significant number of events
24 would have a negative impact on the community, and
25 therefore, I will be voting for the motion, in favor

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1 of the motion to deny.

2 CHAIRPERSON GRIFFIS: Good. Thank you all
3 very much. I agree with everything that's been said,
4 that this was a long and difficult case, and one which
5 I very seriously -- I think that of utmost importance
6 to look at what has created this uniqueness, and that
7 is going directly to the structure. And I think it's
8 important, although as Ms. Mitten has said, we need to
9 look directly to the regulations. This Board in this
10 jurisdiction is to grant relief from that, and I think
11 one of the aspects of why we have people sit on boards
12 and not computer programs that would process
13 applications is that so we can, in fact, deliberate on
14 the human nature of projects, and specifically this
15 one. I think our regulations have life to them based
16 on our human interaction with them.

17 That meaning, this is an incredibly unique
18 structure. It's quite significant noting from the
19 photographs, both interior but also exterior. We have
20 a home occupation that's being proposed to expand into
21 the existing square footage of this building, one that
22 I think can stand alone in terms of not being compared
23 to others as you would not ask a doctor to open up a
24 dentist shop in his house as a home occupation. We
25 have a bed and breakfast being proposed to us. I

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1 think it is somewhat difficult, and I'm not -- well,
2 I think the deliberation has been excellent in terms
3 of the points, and I know that often times we all
4 makes points in order to establish discussion.

5 It would have been helpful to have this
6 very convincing on either side, and it makes our job
7 easier, but not all cases work out that cleanly. I
8 think the case is not perfect, but I do believe that
9 it is strong enough to support, and I'll let anyone
10 else have last word if needed, and I will then call
11 for the vote on the motion to deny.

12 VICE CHAIRPERSON RENSHAW: Do we have a
13 second on that?

14 COMMISSIONER MITTEN: Yes, we do. Mr.
15 Zaidain.

16 CHAIRPERSON GRIFFIS: It's been motioned
17 and seconded. If anyone has closing remarks, if not,
18 then I would ask for all those in favor of the motion
19 to deny signify by saying aye.

20 (Vote.)

21 CHAIRPERSON GRIFFIS: And all those
22 opposed to the motion.

23 (Vote.)

24 CHAIRPERSON GRIFFIS: And we can record
25 the vote.

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1 MR. MOY: Mr. Chair, Staff would record
2 the vote on the motion to deny 3-2-0. That's three to
3 deny, two not to deny.

4 CHAIRPERSON GRIFFIS: Thank you all very
5 much. The last point of business is I need to ask
6 Staff if we have heard anything from the Court of
7 Appeals.

8 MR. MOY: No, sir, we have not.

9 CHAIRPERSON GRIFFIS: Not having heard
10 anything from the Court of Appeals, do we have any
11 other business for us this morning?

12 MR. MOY: No, that completes the morning
13 session.

14 CHAIRPERSON GRIFFIS: Very well. I thank
15 you all very much and wish you a good afternoon. This
16 would then conclude Public Meeting of 7 January, '03.

17 (Off the record 12:21 - 12:22 p.m.)

18 CHAIRPERSON GRIFFIS: Very well. We did
19 have one more point of business for us, as this is the
20 first meeting in the new year. We do have elections
21 for officers at this time. I will sit back and let
22 people comment and make nominations is really what
23 we're getting to. And I would just briefly say that
24 I would absolutely encourage and support a nomination
25 for myself to continue as chair, and I will let it at

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1 that.

2 VICE CHAIRPERSON RENSHAW: Mr. Chairman.

3 CHAIRPERSON GRIFFIS: Yes.

4 VICE CHAIRPERSON RENSHAW: Do we call you
5 Mr. Chairman, or do we all step aside, or have we been
6 put aside?

7 CHAIRPERSON GRIFFIS: I don't know if
8 we've been -- no, I think we maintain --

9 VICE CHAIRPERSON RENSHAW: We've
10 maintained.

11 CHAIRPERSON GRIFFIS: We either get voted
12 in or voted out.

13 VICE CHAIRPERSON RENSHAW: Right. Well,
14 in any case, I am going to -- I would like to nominate
15 the current Chair to continue in that office, and
16 would look to a second.

17 COMMISSIONER MITTEN: Second. And if I
18 may in making my second say that, Mr. Griffis, when he
19 became Chair was relatively new to the Board, and I
20 think he has grown immensely in his ability. I mean,
21 we were confident a year ago, and I think he's grown
22 into the position to the point that we have the utmost
23 confidence in his ability to lead us and to keep us on
24 track, and to give -- you know, guide a discussion
25 like we jus had, that was healthy. There was no

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1 corner of the project or the record, or the substance
2 that was not discussed fully and, you know, that's due
3 in large measure to the guidance of the Chair, so I
4 enthusiastically second the motion.

5 VICE CHAIRPERSON RENSHAW: Well, Ms.
6 Mitten kind of jumped in before I could elaborate
7 while I was making the motion.

8 COMMISSIONER MITTEN: I'm sorry.

9 VICE CHAIRPERSON RENSHAW: But I do want
10 to say that from my experience being a Chair of an ANC
11 for many years, how difficult it is to be a Chair.
12 And this is a particularly taxing board. This is one
13 of the hardest assignments I think in the District of
14 Columbia, and in some respects even over the
15 leadership of the District of Columbia is the Board of
16 Zoning Adjustment in difficulty, so we commend our
17 present and very able Chairman on his efforts to keep
18 a rather interesting bunch of colleagues together
19 under trying circumstances. And as Ms. Mitten has
20 said, to probe every corner of a case so that we have
21 a full record of a case in order to put out an order.
22 So with that, I would like to ask the other members of
23 the Board of Zoning Adjustment if they have anything
24 to say about the proposal to endorse Geoff Griffis for
25 another term.

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1 CHAIRPERSON GRIFFIS: We have limited time
2 so --

3 MEMBER ZAIDAIN: Well, if we keep going we
4 may make you blush, but --

5 VICE CHAIRPERSON RENSHAW: We can always
6 eat our lunch here.

7 MEMBER ZAIDAIN: But I do want to say that
8 I echo and associate myself with all of the comments
9 that I've heard. And I do appreciate Mr. Griffis'
10 candor and humor intertwined with this serious
11 material that we have to deal with up here. And I do
12 want to see if we can condition this to make sure that
13 nobody erroneously calls him Your Honor any more. We
14 hear that quite often. It always sends me laughing,
15 but --

16 MEMBER ETHERLY: Is that a friendly
17 amendment to the motion?

18 MEMBER ZAIDAIN: Yes.

19 MEMBER ETHERLY: We have a number of other
20 conditions that need to be added? No.

21 MEMBER ZAIDAIN: But I'll be more than
22 happy to vote for the motion.

23 VICE CHAIRPERSON RENSHAW: All right. All
24 those in favor?

25 (Vote.)

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1 VICE CHAIRPERSON RENSHAW: And we now have
2 a Chair.

3 CHAIRPERSON GRIFFIS: I thank you all very
4 much, and I will be brief, but I'm actually humbled by
5 those comments, and I appreciate all of them. And it
6 has to be said that it is not just one person. It is
7 clearly all of us that work together to make this
8 either easy or hard. And I think we do, as a Board,
9 address our challenges and really take into very, very
10 difficult issues. And I appreciate everyone working
11 together on that, although we, as clearly in numerous
12 cases, do not always agree. It is always very
13 respectful, very substantive, and very informative,
14 and I think that's absolutely important.

15 And on that high note, I would also like
16 to nominate Ms. Renshaw to continue as Vice Chair.
17 Again, I think it is not one person, but the group of
18 us that work together and Ms. Renshaw has also given
19 great leadership in the time that she's served on this
20 Board, and an important perspective that always needs
21 to be put into in terms of our deliberation on cases.
22 We all can bring unique aspects and opinions, and also
23 a vision of projects. And I think in cumulation it
24 serves us very well.

25 MEMBER ETHERLY: I would second that

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1 motion, Mr. Chairman, enthusiastically.

2 MEMBER ZAIDAIN: I will vote in favor of
3 the motion, and I will request that Ms. Renshaw keep
4 bringing cookies to keep my blood sugar level up
5 during our long evenings, so just to keep consistent
6 and offer another condition to these motions. I've
7 got to get it while I can.

8 CHAIRPERSON GRIFFIS: Anyone else? Very
9 well. Then I'd ask for all those in favor signify by
10 saying aye.

11 (Vote.)

12 CHAIRPERSON GRIFFIS: And opposed?

13 VICE CHAIRPERSON RENSHAW: Well, many
14 thanks to all of you for this endorsement, and I look
15 forward to supporting our Chair and the Board for the
16 new future. Thank you.

17 CHAIRPERSON GRIFFIS: Good. Thank you
18 very much. And why don't we just lastly just record
19 the vote on both, and we can move on.

20 MR. MOY: Yes. The Staff would record the
21 vote for Mr. Griffis to continue another term as
22 Chair, 5-5-0 in favor. I'm sorry, 5-0-0 in favor, and
23 also on the motion for the vote for Ms. Renshaw to
24 continue as Vice Chair for another term, also 5-0-0.

25 CHAIRPERSON GRIFFIS: Good. Thank you all

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1 very much, and I think this does then conclusively
2 conclude our Public Meeting on the 7th of January,
3 `03.

4 (Off the record 12:29 p.m.)

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