

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

JANUARY 28, 2003

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice, at 9:00 a.m., Geoffrey H. Griffis, Chairperson, presiding.

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## 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 MEMBERS PRESENT:

JAMES HANNAHAM	Commissioner
PETER G. MAY	Commissioner

## COMMISSION STAFF PRESENT:

Beverly Bailey, Office of Zoning  
Clifford Moy, Office of Zoning  
John K.A. Nyarku, Office of Zoning

## D.C. OFFICE OF CORPORATION COUNSEL:

Lori Monroe, Esq.  
Alan Bergstein, Esq.

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

9:24 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the Special Public Meeting of 28 January 2003. This is the District of Columbia's Board of Zoning Adjustment. I am Geoff Griffis, Chairperson today. With me is Ms. Anne Renshaw, Vice Chair.

Representing the Zoning Commission is Mr. May, and representing National Capital Planning Commission is Mr. Zaidain. Also with us from the Office of Zoning, Mr. Nyarku is ably assisting all of us, Mr. Moy and Ms. Bailey. Representing Corporation Counsel is Ms. Monroe.

With that, let us jump into the schedule of the morning's decision making. I think what I would like to do briefly -- Board members, as I know you are aware, and for those here today, this is the point at which this Board will deliberate on cases that have been previously heard. We will not have additional testimony, as this is not a hearing. We will commence with our hearing after our deliberations.

What I would like to do, based on several issues but also on the Commission members' schedules

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1 that we are going to be rotating in and out, is call  
2 the Appeal of 16935 first, which would, of course, be  
3 the Southeast Citizens for Smart Development, Inc.

4 MR. MOY: Yes, sir, Mr. Chairman. Good  
5 morning, members of the Board.

6 The case before the Board is the Appeal of  
7 No. 16935 of Southeast Citizens for Smart Development,  
8 Inc., pursuant to 11 DCMR ?? 3100 and 3101, from the  
9 administrative decision of David Clark, Director,  
10 Department of Consumer and Regulatory Affairs,  
11 allowing the construction of four single family  
12 dwellings allegedly in violation of the side yard  
13 requirements under subsections 405.9 and 775.2,  
14 location parking space provisions under subsection  
15 2116.1, parking space accessibility provisions under  
16 subsection 2117.4, in a C-2-A District at Premises  
17 1308, 1310, 1312, and 1314 Potomac Avenue, S.E. These  
18 are in Square 1045, Lots 134, 136, 137, and 138.

19 At the Board's Public Hearing on January  
20 21, 2003, the Board discussed a motion to dismiss by  
21 the Applicant and scheduled its decision on the motion  
22 to dismiss the appeal to today's meeting, January 28,  
23 2003.

24 Before making the decision, the Board  
25 requested that the Applicant submit the following:

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1 Original building permit applications; original site  
2 plans that show the building prints, property lines,  
3 parking areas, etcetera; a full set of civil and  
4 architectural drawings.

5 The Applicant submitted these documents on  
6 January 23, and that is in your case folder as Exhibit  
7 32. The Board also allowed the Appellant to submit  
8 any comments on the motion to dismiss. This was  
9 submitted one day late on January 24, 2003, and that  
10 is in your folders as Exhibit 31.

11 Also as a reminder, the Appellant had also  
12 submitted the motion to dismiss document at the  
13 Board's meeting on January 21, and that is in your  
14 packet as Exhibit 29.

15 Finally, as a preliminary, the Board did  
16 receive a letter dated January 21 at the Board's  
17 meeting in the afternoon from Council Member Phil  
18 Mendelsohn, and that is identified as Exhibit 30 in  
19 your folder.

20 That completes my briefing, Mr. Chairman.

21 MS. WITHUM: Mr. Chairman, I would just  
22 like to correct the record. The caption is incorrect.  
23 The zoning is C-2-B District, not a C-2-A District.

24 CHAIRPERSON GRIFFIS: Thank you very much.

25 MS. WITHUM: Also, our filing was timely

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1 on Friday, because you had indicated that we could FAX  
2 it in first thing Friday morning, which is in fact  
3 what we did, I believe, around nine o'clock.

4 CHAIRPERSON GRIFFIS: Okay. I would take  
5 up just the issue of the submission of Exhibit Number  
6 31. Clearly, we wanted very quick turnaround on that  
7 and asked for that to be received, and we gave an  
8 indication of when it might be good to get it in by,  
9 but I don't think we set a drop dead deadline for  
10 that.

11 Are there issues with accepting the letter  
12 from the Council Member, Exhibit Number 30? Any  
13 objections from the representatives? What is the  
14 consensus of the Board, accept, not accept?

15 COMMISSIONER MAY: I'll accept.

16 VICE CHAIRPERSON RENSHAW: Accept.

17 CHAIRPERSON GRIFFIS: Very well. We can  
18 waive our rules and accept the letter.

19 What is before us, Board Members:  
20 Clearly, Mr. Moy has outlined quite a bit that could  
21 potentially be before us, but what is here today  
22 specifically is the motion to dismiss the appeal. As  
23 we had indicated, there was -- the basis of which we  
24 need to evaluate, and that is the permits, and the  
25 permits -- the first permit and the revisions to the

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1 permits, the changes that were made attendant to the  
2 parking and the side yard.

3 Let me open things up. I know we all  
4 received those. I know we all spent extensive time  
5 going through all of the documents, that being the  
6 permit applications and also the drawings. So if --  
7 Mr. May, were you wanting to open up the discussion?

8 COMMISSIONER MAY: If I could, please.  
9 I'll try to make this as brief as I can. As you said,  
10 we all went through the information that was  
11 submitted.

12 The key question is -- with regard to this  
13 motion is whether there was a change in the  
14 requirements for parking or side yards that resulted  
15 from the altered permit or the new permit application.

16 In other words, did any of those requirements change  
17 from what they were when the permits were originally  
18 filed 11 months earlier? You are looking at me as if  
19 I'm framing it the wrong way.

20 CHAIRPERSON GRIFFIS: Well, I want you to  
21 get into it, because I'm not sure -- In terms of the  
22 motion to dismiss, my idea, and I thought the  
23 direction we had, was specifically focused on if there  
24 were changes from the permit to the permit revision.

25 I think, if we get into the substance of

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1 was there changes in requirements that we are getting  
2 into the substance of granting or denying the appeal.

3 COMMISSIONER MAY: Okay. Well then,  
4 having reviewed the permit documents, there is very  
5 clearly a significant change in the permit application  
6 itself, where the permit originally stated youth care  
7 residential facility or residential home, and in the  
8 subsequent permit application in the same block it  
9 states single family residential or some version of  
10 that.

11 That's the major substantive change, and  
12 that is where the question of changes in requirements  
13 starts to kick in. In other words, as a result of  
14 that change in use, is there some different  
15 requirement or would the -- should the Appellant have  
16 known from the very beginning what the requirements  
17 were with regard to parking and with regard to the  
18 side yard?

19 I believe that the case is -- When it  
20 comes to parking, there is no significant change. In  
21 other words, whether it is a youth care residential  
22 home or whether it is single family residential, there  
23 is no significant change in the parking requirements.

24 You can argue until you are blue in the  
25 face as to whether they met the requirements, whether

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1 the permit was properly issued, but at this point, you  
2 know, it is water under the bridge, because it didn't  
3 change from the very beginning. I think in that case,  
4 we should be ruling to support the motion to dismiss  
5 with regard to parking.

6 When it comes to side yards -- You want to  
7 discuss that? Okay. When it comes to side yards,  
8 there is a significant difference between a youth care  
9 residential home and a single family dwelling in terms  
10 of the requirements for a side yard.

11 Once the change in the use of the facility  
12 kicked in, different requirements kicked in, and I  
13 will walk you through those steps.

14 First of all, a youth care residential  
15 home is a subset of community based residential  
16 facility by definition in the regulations. If you  
17 read those regulations, it states within the text of  
18 community based residential facility that anything  
19 that is considered a community based residential  
20 facility cannot be considered anything else under  
21 these regulations. In other words, it can't be a CBRF  
22 and a single family dwelling at the same time.

23 If you want, I will read the words  
24 directly out of the regulation.

25 CHAIRPERSON GRIFFIS: Yes, actually, give

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1 me that.

2 COMMISSIONER MAY: Okay. This is straight  
3 out of the definitions. "Community based residential  
4 facility" -- this is on page 116 of Title 11, the copy  
5 that I have, and it says: "If an establishment is a  
6 community based residential facility as defined in  
7 this section, it shall not be deemed to constitute any  
8 other use permitted under the authority of these  
9 regulations." So --

10 CHAIRPERSON GRIFFIS: But it goes to use.

11 COMMISSIONER MAY: That is true.

12 CHAIRPERSON GRIFFIS: Use as a single  
13 family is also in addressing use of a structure.

14 COMMISSIONER MAY: Right. Well, this is  
15 only the first step.

16 CHAIRPERSON GRIFFIS: Okay.

17 COMMISSIONER MAY: There are several steps  
18 in the logic. So we have two different uses that have  
19 been applied for.

20 When you go to side yard requirements and  
21 that section, and we are going to 775, 775.2 states  
22 that a single family detached dwelling shall be  
23 subject to the side yard requirements of an R-1  
24 District. 775.3 says a one family semi-detached  
25 dwelling shall be subject to the side yard

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1 requirements of an R-2 District.

2 So as a residential use, either 775.2 or  
3 775.3 apply. 775.5 states, "No side yard shall be  
4 required for any other building or structure, but if a  
5 side yard is provided, it shall be at least two inches  
6 wide for each foot of height of the building but not  
7 less than six feet."

8 Now the way I read the regulations, a CBRF  
9 would be subject to 775.5, not 775.2 or 775.3. So it  
10 is only when the use became a residence, a single  
11 family residential, that the R-2 side yard  
12 requirements kicked in. When the R-2 side yard  
13 requirements kicked in, that is when we go to 405, and  
14 we go to the clause that states that you need to have  
15 a side yard on any free-standing wall. Whereas, if it  
16 were a CBRF, you can have a free-standing lot line  
17 wall and not be required to have a side yard.

18 MEMBER ZAIDAIN: So just to make sure I'm  
19 following your argument, the reason why parking is not  
20 included in this, which is your position, that because  
21 there was no substantial change or no change at all in  
22 the requirement; but since there is a change in  
23 requirement for the side yard, it is something that  
24 should be ripe for this Board to hear in an appeal?

25 COMMISSIONER MAY: Right. Essentially,

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1 yes. Now I also read the arguments that were made by  
2 the Appellant. You know, I found some of it a bit  
3 confusing. I mean, there is an argument that  
4 essentially, because the parking aspect of the  
5 application is confused and scattered and, therefore,  
6 it is appealable because of that -- I did not find  
7 that argument particularly compelling.

8 There was also an argument that  
9 essentially, when this became a single family  
10 dwelling, that all R-2 based requirements for lot  
11 occupancy and everything else kicked in -- I didn't  
12 find that compelling. I can't find any basis for  
13 that. But when you just focus on the side yard  
14 question, you know, it is clear to me that the  
15 requirements changed and, therefore -- and the  
16 Appellant would not necessarily have known to question  
17 that when the permit was first issued, because at that  
18 point it was a CBRF. It wasn't a residential use.

19 CHAIRPERSON GRIFFIS: Others?

20 VICE CHAIRPERSON RENSHAW: Mr. Chairman,  
21 just a short statement to say that I support Mr. May's  
22 discussion of this issue.

23 COMMISSIONER MAY: I am prepared to make a  
24 motion, if you are ready to hear it.

25 CHAIRPERSON GRIFFIS: Mr. Zaidain, did you

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1 have any comments on the discussion.

2 MEMBER ZAIDAIN: You guys are moving too  
3 fast, and I'm going through my zoning code trying to  
4 find something. Give me a second.

5 I apologize. I just wanted to -- I was  
6 struggling for a minute there on the parking, why we  
7 are separating the two, but after rereading the  
8 regulations, I see that. The residential and the CBRF  
9 are regulated essentially the same, and that is why  
10 the appeal would not be valid in that sense, or the  
11 ability to question it would not be valid, because it  
12 is exactly the same as residential. But the side yard  
13 aspect is clearly different.

14 Once that use changed and the side yard  
15 requirements change, which makes them available to be  
16 questioned, which is what we are deciding here today.

17 So I would support Mr. May's position on this.

18 CHAIRPERSON GRIFFIS: Well, let's revisit  
19 then 775 and look at the facts. Mr. Mays, as I am  
20 hearing, is making a compelling argument to Board  
21 members that, in fact, the community residence  
22 facility does not fall under, in terms of side yard,  
23 which is an area of single family home.

24 I think what we need to do for further  
25 elaboration on this is to see whether that is actually

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1 definitive as we go to the definition of family and  
2 look at the size of the youth residence facility that  
3 goes in. I am not sure why that would kick it out of  
4 a semi-detached or detached classification but go  
5 toward 775.5, which would indicate a larger, more --  
6 perhaps a more commercial structure.

7 COMMISSIONER MAY: Well, I'm glad you  
8 brought up the subject of family, because this is  
9 another area where I got tangled up trying to figure  
10 out what the heck this thing is. We got into  
11 discussion of, you know, is it a duck or is it a  
12 goose, and frankly, I have no idea what kind of bird  
13 this thing is, because it doesn't fit any of the  
14 definitions.

15 If you look at, for example, can it be  
16 considered single family, well, the definition of a  
17 family is six unrelated people living together. Well,  
18 we have six residents plus a pair of counselors.  
19 Right? So at a minimum, there are seven different  
20 people living there. So it is not a single family.

21 If you look at the definition of a  
22 dwelling, there is more than one dwelling here. Now  
23 it doesn't fit the definition of a two-family  
24 dwelling, but it doesn't fit the definition of a  
25 single family dwelling.

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1 I think that, if there were a circumstance  
2 where this clearly fit some other definition, that we  
3 could make the case that this was a bit more gray, but  
4 when we look at this thing, I don't know what it is.  
5 I don't even know where the front door is, frankly.  
6 When you look at the plans, it's got a front door that  
7 only serves the counselor's apartment. It's a got a  
8 back door that serves all the rest of the residents.

9 I mean, this is a very strange thing. In  
10 fact, if we do decide to go ahead and hear the case,  
11 I'd like somebody to define what the heck this thing  
12 is.

13 CHAIRPERSON GRIFFIS: Okay.

14 COMMISSIONER MAY: I guess my point in  
15 making this case -- I guess I am expressing a certain  
16 amount of frustration for not really being able to  
17 understand it, but it seems to me that the only way  
18 that we can consider the first application is if it is  
19 what it states that it is on the application, which is  
20 a youth residential care facility.

21 If it is that, it can't be anything else  
22 and, therefore, it is not a one-family detached  
23 dwelling. It's not a single family dwelling. It's  
24 not a semi-detached dwelling. It is "Other," and if  
25 it is "Other," 775.5 kicks in, and that's when we go

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1 into different side yard requirements.

2 Now that they are calling it something  
3 different, there are different side yard requirements  
4 that kick in. I do have to say that there are a few  
5 more cracks in the regulations here, that it's not  
6 clear how to define certain things. Once again, it's  
7 more work for the Zoning Commission.

8 CHAIRPERSON GRIFFIS: Indeed. Well said.

9 I think that is where my major concern comes, is with  
10 the interpretation of dumping this into 775.5. By  
11 your account, Mr. May, you are not sure whether this  
12 is single family or a flat. We aren't really sure  
13 what it is, but you are definitive of the fact that  
14 you can define it under 775 as a single family  
15 detached or semi-detached.

16 COMMISSIONER MAY: Well, I think when we  
17 get into actually hearing the case, maybe we can get  
18 into some of the finer points of what it really is as  
19 opposed to what it has been applied for.

20 CHAIRPERSON GRIFFIS: Right.

21 COMMISSIONER MAY: I think what we have to  
22 judge the motion on is what's been applied for.

23 CHAIRPERSON GRIFFIS: Yes. I was going to  
24 say, I think to caution. As much as we may want to  
25 get into this appeal, and as much as we think it may

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1 be the right thing, we need to take up on a factual  
2 basis of the motion whether this current appeal is  
3 actually timely, which would go to the substantive  
4 changes within the revision.

5 I mean, I think you have pointed to some  
6 interesting aspects to it. I am just at this point  
7 not 100 percent convinced that that is totally  
8 accurate. I mean, how do you reconcile your own  
9 account that you are not sure what it is and yet you  
10 wouldn't then put in the original permit under -- or  
11 how would you have defined it?

12 COMMISSIONER MAY: Well, I think that the  
13 original application that states that it is a youth  
14 care -- youth residential care home -- I think that  
15 that is a reasonable description of what they  
16 submitted plans for. I think that on that basis, I  
17 think 775.5 applies.

18 When the application is changed, even if  
19 it is not -- even if it truly doesn't fit the  
20 definition of single family dwelling or, you know, one  
21 family detached or semi-detached, that's what was  
22 applied for. That is what the Zoning Administrator  
23 acted on. That is what the permit was issued for.

24 Different regulations kick in at that  
25 point and should have been considered. So I think

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1 that, without getting too far into the analysis of  
2 what it is, I think we have to go on what people have  
3 told us and what the actual application states.

4 CHAIRPERSON GRIFFIS: In order to follow  
5 then your argument, one would have to be convinced  
6 that a community residence facility was not or could  
7 not be a one-family dwelling. Is that correct?

8 COMMISSIONER MAY: Well, I think the  
9 regulation states that it can't be. If it's a CBRF,  
10 it is only a CBRF. It is not a single family detached  
11 dwelling. It is not a one-family home.

12 CHAIRPERSON GRIFFIS: I'm not sure it is  
13 so definitive. I mean, if you look at the  
14 definitions, community residence facility, which is  
15 stated on the permit application in parentheses, CRF,  
16 is a facility that meets the definition for and is  
17 licensed as a community residence facility under  
18 health care facilities, community residence facilities  
19 as that definition may be amended from time to time.

20 Clearly, there is an operative residence  
21 word in there, and "facility," of course, we are  
22 fairly familiar with. I guess chasing it down,  
23 looking at residence, wouldn't you then go back to how  
24 you would define how many dwellings or how you would  
25 define the residence, not necessarily --

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1           COMMISSIONER MAY: I think the question is  
2 what standard we would expect the average person  
3 reviewing this application or watching it happen in  
4 their neighborhood can be -- I mean, what is the  
5 common sense interpretation of what we see here?

6           The common sense interpretation is, if it  
7 is a CBRF, it is not a single family home, and so they  
8 shouldn't be checking -- I mean, you know, I think  
9 that there are -- I can already hear the arguments of  
10 various zoning lawyers in town making the case, if  
11 they had brought that issue up, that this is not  
12 single family residential. This is a youth care  
13 residential facility, and 775.5 applies. I mean, I  
14 can hear that argument being made already, if that had  
15 been brought up in the very beginning.

16           I don't think that we can reasonably  
17 expect people to read this and interpret it as saying,  
18 well, okay, it is a youth residential care home, but  
19 it could also be other things; so you better look at  
20 all the other regulations that apply to all the other  
21 uses that it might be. I think it is pretty  
22 straightforward.

23           I'm prepared to make a motion if you are  
24 ready to hear it. Should we do this as two separate  
25 motions?

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1 I would move that we grant the motion to  
2 dismiss the appeal Number 16935 with regard to  
3 parking, and -- I'm sorry, yes, granting the motion  
4 to dismiss the appeal with regard to parking, and  
5 denying the motion with regard to side yards on BZA  
6 appeal Number 16935.

7 CHAIRPERSON GRIFFIS: I'll second that.

8 COMMISSIONER MAY: Did I say it right?  
9 Okay.

10 CHAIRPERSON GRIFFIS: Discussion? Mr.  
11 May, final conclusions?

12 COMMISSIONER MAY: No. I would very much  
13 like to know what the Applicant or what the owner of  
14 the property and what the Appellant believe this  
15 building to actually be. Define it.

16 CHAIRPERSON GRIFFIS: Well, within a  
17 matter of moments, you may in fact get that  
18 opportunity in the future.

19 Let me say, Mr. May, I think it is  
20 substantial, what you are bringing up. I want to be  
21 there with you. I just have some major concerns in  
22 terms of the timeliness, which is the basis of the  
23 motion.

24 In my mind, I was going directly to the  
25 physical land aspects of the permit and looking for

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1 particular changes. If there were glaring changes on  
2 the drawings or the application, that, to me, would  
3 have given an indication of a direction to go and to  
4 follow in dealing with this motion.

5 I noted, and in fact that is the absolute  
6 only thing in the application and in the drawings that  
7 changed, and that is number 6 item on the application,  
8 proposed use of building or property. I think we are  
9 all pretty clear that that did change.

10 That change, however, I'm not sure,  
11 directly elicits a different look at the side yard.  
12 I'm absolutely in concurrence with the parking. I  
13 guess I haven't crossed the definitive hurdle of  
14 classifying a community residence facility outside the  
15 boundary of a secondary definition of a family  
16 dwelling. They are both residential in use. One has  
17 a specific program attendant to it. But that's  
18 essentially where I am. Others? Mr. Zaidain?

19 MEMBER ZAIDAIN: So you are struggling  
20 with whether or not those two uses are regulated  
21 differently?

22 CHAIRPERSON GRIFFIS: With a particular  
23 look at the side yard, yes.

24 MEMBER ZAIDAIN: Right. Well, I reiterate  
25 the fact that I was in concurrence with Mr. May. I

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1 think what this is essentially is almost -- It kind of  
2 comes to a fundamental fairness argument where you've  
3 got a change of use. That change of use triggers  
4 change in requirements.

5 So do residents have the ability to  
6 question the administration of the permit, once those  
7 requirements change? To take an extreme example, say  
8 you have a resident. Somebody builds a building, and  
9 it's residential, and then they decided to change into  
10 a store without changing the structure.

11 Well, unfortunately, changing it from  
12 residential to commercial -- that triggers a whole  
13 host of requirement changes, parking, etcetera. We  
14 are not deciding the merits of the appeal now, but we  
15 are deciding do people have the ability to question  
16 the permit and the requirements therein, once that use  
17 changes. I could not say not to that.

18 CHAIRPERSON GRIFFIS: Okay. And so what  
19 you are saying, Mr. Zaidain, if I hear you correctly,  
20 is the fact that the community residence facility does  
21 not fit into the definition or description of one-  
22 family, semi-detached dwelling?

23 MEMBER ZAIDAIN: Essentially, yes.

24 CHAIRPERSON GRIFFIS: Okay.

25 MEMBER ZAIDAIN: Now Mr. May took it one

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1 step farther, and he persuaded me to go along with  
2 that, in the sense of saying, instead of just saying,  
3 okay, all the requirements changed as appealable, are  
4 there certain aspects of the requirements that are not  
5 appealable in the sense that they are regulated  
6 essentially the same in the use category? That's  
7 where the parking came in. And I was persuaded by his  
8 argument in that sense.

9 It's kind of hard to discuss it without  
10 getting into the merits of the appeal, but that's  
11 where I am.

12 VICE CHAIRPERSON RENSHAW: Mr. Chairman,  
13 the side yard issues should definitely be examined  
14 before the BZA with this appeal, and the residence --  
15 the community has a right to speak to the Board about  
16 these change in requirements.

17 CHAIRPERSON GRIFFIS: I don't disagree  
18 with that, Ms. Renshaw. I would support the  
19 community's review of this. I just want to make  
20 absolutely sure and definitively that we are acting  
21 properly and accordingly.

22 Well, anything else? Anybody else have  
23 any other additional items on this?

24 VICE CHAIRPERSON RENSHAW: Call the  
25 question.

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1 CHAIRPERSON GRIFFIS: Is it seconded?  
2 There is a motion to call the question.

3 MEMBER ZAIDAIN: There is a motion to vote  
4 on the previous motion? I will second the motion.

5 CHAIRPERSON GRIFFIS: All in favor? Now  
6 just to be clear, we are calling the question, which  
7 is what I was about to do anyway. I'll take it as a  
8 consensus that people would like to me to call the  
9 vote. I would ask then that all those in favor of Mr.  
10 May's motion would signify by saying Aye. And  
11 opposed?

12 I'm afraid I am going to have to register  
13 my vote in opposition, only because of my insufficient  
14 clarity that, in fact, we are correctly moving forward  
15 on this. But any other comments?

16 VICE CHAIRPERSON RENSHAW: Just again, it  
17 is granting the motion to dismiss the appeal regarding  
18 the parking.

19 CHAIRPERSON GRIFFIS: That's correct.

20 VICE CHAIRPERSON RENSHAW: And denying the  
21 motion to dismiss regarding the side yards?

22 CHAIRPERSON GRIFFIS: That is correct.

23 MR. BERGSTEIN: Mr. Chair, could I just  
24 ask one clarification? Are you -- Would the motion be  
25 to deny the motion to dismiss in essence with

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1 prejudice or that, if the record later reflects the  
2 circumstance where at the decision meeting you might  
3 want to revisit the issue based upon what you learn in  
4 the record, you would then revisit it then?

5 In other words, are you dismissing -- Are  
6 you denying the motion in essence for all time based  
7 upon what you heard today or are you denying it at  
8 this time with the idea --

9 CHAIRPERSON GRIFFIS: I think we are  
10 clear. I appreciate that clarification. Mr. May, am  
11 I correct that you are not dismissing with prejudice?

12 COMMISSIONER MAY: No, I am not  
13 recommending dismissing with prejudice.

14 CHAIRPERSON GRIFFIS: Okay. Others have  
15 comments on that? Is everyone clear what Corporation  
16 Counsel is indicating?

17 MR. BERGSTEIN: Well, if you dismiss the  
18 parking, it would be dismissing that with prejudice.  
19 I was more going toward the question of the denial of  
20 the motion to dismiss with respect to the side yard.  
21 I heard some comment at the dais that the record may  
22 not be sufficient at this time to make that  
23 determination, but perhaps after hearing the case,  
24 that might elucidate the issues further. Actually,  
25 that is what I was asking you.

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1                   If you do dismiss on the parking, then  
2 that part of the appeal is dismissed, period.

3                   CHAIRPERSON GRIFFIS:       Is that your  
4 understanding, Mr. May?

5                   COMMISSIONER MAY:   Yes.   I would dismiss  
6 the parking with prejudice, so that there is no reason  
7 for that to come back.   I think the record is pretty  
8 clear.

9                   With regard to the side yard, if the owner  
10 of the property wants to make further motions with  
11 regard to dismissing the case because of some other  
12 argument that could be raised or some other  
13 clarification, I would certainly be willing to hear  
14 that.

15                  MR. BERGSTEIN:   Is that also true with  
16 side yard? In other words, are you deciding that --  
17 You are deciding that this appeal is timely with  
18 respect to side yard, notwithstanding anything you  
19 might later hear as the record progresses?

20                  COMMISSIONER MAY:   Yes.

21                  CHAIRPERSON GRIFFIS:   I think, going to  
22 the merits of the appeal, we can dismiss at anytime we  
23 felt able.   We are maintaining an insurance that we  
24 can revisit the fact that this may not be timely, even  
25 though we are into the appeal itself.

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1 MR. BERGSTEIN: That's right.

2 CHAIRPERSON GRIFFIS: Is everyone clear on  
3 that? Very well, in which case we need to set a date  
4 on this.

5 MR. MOY: First of all, Mr. Chair, staff  
6 would like to record the vote as three-one-one, Ms.  
7 Renshaw, Mr. Zaidain, Mr. May in favor of the motion,  
8 the Chair in opposition, and Mr. Etherly not  
9 participating, not voting.

10 Mr. Chairman, we have on February 4th four  
11 other cases for decision. That is an option, or I  
12 would suggest moving this case to February 11th.

13 CHAIRPERSON GRIFFIS: You understand that  
14 we are going to be going into the appeal, and we need  
15 about an afternoon for this.

16 MR. MOY: A full afternoon?

17 CHAIRPERSON GRIFFIS: And I need a good  
18 night's sleep before it also. So if we can schedule  
19 that.

20 MR. MOY: Okay. Well, considering that, I  
21 would suggest then --

22 MS. BAILEY: April 1st is a good day to  
23 look at.

24 MR. MOY: I was trying to find something  
25 sooner, but I think either March 25th or April 1st,

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1 because the afternoon of March 25th is free.

2 CHAIRPERSON GRIFFIS: The afternoon of the  
3 25th?

4 MS. BAILEY: It's not free.

5 MR. MOY: It's not free?

6 MS. BAILEY: No.

7 MR. MOY: Oh, we have one other case.

8 MS. BAILEY: It is an appeal.

9 MR. MOY: That takes us to April 1st then.

10 CHAIRPERSON GRIFFIS: Okay. Is there  
11 objections from the representatives about the first of  
12 April? We won't add any significance to that date to  
13 this case. Very well, then let's do it, Mr. Moy, if  
14 you would just reiterate.

15 MR. MOY: And this case then would be --  
16 The appeal would be scheduled for April 1st.

17 CHAIRPERSON GRIFFIS: In the afternoon?

18 MR. MOY: In the afternoon, 2003.

19 CHAIRPERSON GRIFFIS: Is it anticipated  
20 this will be the only case in the afternoon, and we  
21 will start --

22 MR. MOY: Yes, sir.

23 CHAIRPERSON GRIFFIS: -- at one o'clock?

24 MR. MOY: Yes, sir.

25 CHAIRPERSON GRIFFIS: And run for the rest

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1 of the day. Good. All right, let's move on.

2 MS. BAILEY: Mr. Chairman, Mr. Etherly  
3 will be participating at that time as well.

4 CHAIRPERSON GRIFFIS: Absolutely will.  
5 And good morning to you, sir.

6 MEMBER ETHERLY: Good morning.

7 MR. MOY: The next case for decision is  
8 Application No. 16896 of Randle Highlands Manor LP,  
9 pursuant to 11 DCMR ? 3103.2, for a variance from  
10 maximum number of stories under Section 400, and a  
11 variance from the floor area ratio requirements under  
12 Section 402, and pursuant to 11 DCMR ? 3104.1, a  
13 special exception to allow the construction of a  
14 community residence facility (assisted living facility  
15 for seniors and other qualified persons, 52 residents  
16 and 40 rotating staff) under Section 358, in the R-5-A  
17 District at premises 2700 R Street, S.E. in Square  
18 5585, Lot 812.)

19 The Board had requested the Applicant to  
20 provide additional information regarding the ratio of  
21 common or public space to private living space in the  
22 proposed facility, and that was submitted. That is in  
23 your case folder as Exhibit Number 57.

24 The Board also requested a map with  
25 narrative showing other existing community based

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1 facilities within 500 feet radius of the proposed site  
2 with photographs in relation to the proposed subject  
3 site, also with photographs. This was submitted three  
4 days late by the party opponent, submitted on January  
5 17th. However, the party opponent had submitted a  
6 letter requesting the extension because of medical  
7 reasons, and that is in your folder as Exhibit 55.  
8 The document is Exhibit Number 60.

9 The Board had also requested that the  
10 Office of Planning submit a response to the Board  
11 regarding confirming its assessment of similar  
12 facilities within the radius of the subject site, and  
13 that is in your folder as Exhibit Number 56.

14 The Applicant has also submitted a  
15 response to the party opponent's submission. That is  
16 dated January 21st identified as Exhibit 63.

17 Finally, as a preliminary, two notes. The  
18 Board received a letter in opposition dated January  
19 7th, which is not one of the requested information  
20 from the Board, from a Margaret Parkman on January 21,  
21 2003. That is Exhibit 62.

22 Finally, the Board at its last meeting  
23 requested that the staff follow through on the ANC-7B,  
24 and supplied in your folder is a copy of the minutes  
25 of the ANC's meeting.

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1                   That concludes my briefing.

2                   CHAIRPERSON GRIFFIS: Thank you, Mr. Moy.

3                   Is there any objection from the Board to accepting  
4 Exhibit Number 60, which was the photographs we had  
5 actually requested? If I don't hear any objection, I  
6 take that as consensus, and we waive our rules and  
7 accept that into the record.

8                   Let's get into this. There was a  
9 substantial amount of time in hearing and also in  
10 additional submissions that were put into this. I  
11 would open it up for discussion.

12                   Let me just first say there are several  
13 issues that I think we should discuss. First of all,  
14 of course, and most importantly and pertinently, is  
15 the case, the test for the variances and also special  
16 exception. If the Board is so inclined, we can break  
17 those apart. I think the full discussion could  
18 probably address most of them together.

19                   Clearly, we are looking at what was the  
20 uniqueness of this particular piece of property, any  
21 sort of practical difficulty that arose that gives us  
22 the indication that this relief is needed, and then,  
23 of course, whether it would serve the public good or  
24 not tend to impair the public good or the zone  
25 planning, purpose and regulations.

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1           Looking at this, we went through quite a  
2 bit.       There are issues that came up from the  
3 community, some typical perhaps, of size of facilities  
4 like this for any neighborhood, and that goes to  
5 parking and congestion; some not so typical, and that  
6 is the issue that was brought up particularly with  
7 this case is the concern with whether this actual  
8 project was -- the nature of what this project was to  
9 be, and that is was it not to be a home ownership  
10 opportunity, a development project that would bring,  
11 as was testified and also as was submitted in writing  
12 on Exhibit 60 talking about selling units to first  
13 time home buyers who would live in it for five years.

14           We also go into the facts in the issues  
15 that were discussed about whether there are other  
16 facilities, CBRFs, adjacent to the site we have, the  
17 filing from Office of Planning, which in all intents  
18 and purposes is inconclusive, but that's what we have.

19       We need to go with that.

20           The other larger issue that was brought up  
21 from the community and also was addressed by the  
22 Applicant, and that is were there additional sites  
23 available?   What was the procedure to look at?   I  
24 think that goes to answering a base question of why  
25 this particular project is trying to fit onto this

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1 particular site. I think there's substantial  
2 documentation allowing us to understand that.

3 So that is the outline I would like to  
4 begin with, and I think we also need to address  
5 parking as a major issue. Clearly, the parking and  
6 the parking requirement is going to be defined by us,  
7 if this motion went to a successful approval, and so  
8 we will need to base substantially on the record what  
9 parking requirement should be.

10 Mr. Zaidain?

11 MEMBER ZAIDAIN: Are we going to kind of  
12 go through and maybe take the special exception first,  
13 and then work our way into the variances?

14 CHAIRPERSON GRIFFIS: If you would like  
15 to.

16 MEMBER ZAIDAIN: Okay, because, obviously,  
17 special exceptions are the more cut and dry. You can  
18 look at the standards and see if the testimony --  
19 Well, it's supposed to be more cut and dry, where you  
20 can go through and see if the standards have been met.

21 To start off, we asked for some guidance  
22 from OP in terms of the surrounding CBRFs, and I think  
23 you said in your opening statement that it was  
24 inconclusive. But unfortunately, today we need to be  
25 conclusive on that issue in order to decide this.

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1 I guess I'm just kind of opening that up  
2 for the rest of the Board members to decide on how we  
3 want to take this memo. I appreciate OP's effort in  
4 trying to decipher this but, unfortunately, they kind  
5 of had their hands tied in terms of how to decide what  
6 CBRFs are operating in the area. So that is one issue  
7 that I see as something that needs to be discussed.

8 Also, under 358 there was an issue. One  
9 of the standards is the facility shall not have an  
10 adverse impact on the neighborhood because of traffic,  
11 noise, operations, etcetera. That is, obviously, a  
12 pretty broad standard, but that is something that we  
13 need to decide.

14 You mentioned some issues about parking  
15 and, obviously, that is tied to the impacts to the  
16 neighborhood. Is this facility going to provide  
17 enough parking, or can we decide what parking level  
18 they need to have to mitigate any negative impacts in  
19 the surrounding neighborhood?

20 I really struggled with that, going  
21 through the record. So right off the bat with the  
22 special exception process, I kind of have two  
23 different gaps in the record and in my knowledge on  
24 how to decide these standards, that being the  
25 surrounding CBRFs and the parking aspect of the

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1 development.

2 So I guess what I am doing is just  
3 throwing it out to the Board members to try to flesh  
4 out those issues, because I think it's important to  
5 decide the special exception. Once we decide if this  
6 does fall within a special exception, I think then we  
7 can address the variances.

8 CHAIRPERSON GRIFFIS: Okay. I think you  
9 brought up some pertinent issues. Let me say, it may  
10 be easier to look at it at the variance level first.

11 MEMBER ZAIDAIN: You think so?

12 CHAIRPERSON GRIFFIS: And I think, if we  
13 started to talk -- I'm sorry to throw this back and  
14 forth, but I have great concern --

15 MEMBER ZAIDAIN: Well, it's a complex  
16 case.

17 CHAIRPERSON GRIFFIS: Indeed, it is, and I  
18 have great concern that the test hasn't been  
19 adequately addressed. I think we can start and jump  
20 right into what is the practical difficulty of the  
21 project that was presented to us.

22 Clearly, we had testimony that indicated  
23 that, if this facility was of lesser size, it would be  
24 essentially uneconomical or undoable, and that's for  
25 the assisted living facility. But never was it

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1 addressed what the alternative. Could you, as a  
2 matter of right, build housing -- It all went to the  
3 program that they were trying to put in, and then,  
4 therefore, the indication, in order to make this  
5 program work, it has to be a certain size.

6 MEMBER ZAIDAIN: Let's be clear on that.  
7 When you say make the program work, you are referring  
8 to the economic standpoint?

9 CHAIRPERSON GRIFFIS: Correct.

10 VICE CHAIRPERSON RENSHAW: But, Mr.  
11 Chairman, there is no practical difficulty or  
12 exceptional hardship arising out of the land other  
13 than the terrain is sloping, but that is not an  
14 argument in itself to speak to practical difficulty.  
15 I could find nothing else in reviewing all the  
16 documents that were submitted to illuminate that  
17 point. So I really struggled with it. What is it  
18 that we are looking at?

19 We are looking at an enterprise here, and  
20 we are being asked to make that enterprise work. On  
21 the other side is the community saying that they want  
22 something else for that location, and they want it to  
23 have in that developing location, once that blight was  
24 removed, not single family, but they wanted to have  
25 home ownership. That is what the city had reacted to.

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1           Then the Applicant went back to say that  
2 this was a 39 unit facility that they were looking to  
3 put up. But I couldn't find in the documents any  
4 clarification to the city agency that they were not  
5 doing 39, but they were looking to do a 52 unit  
6 development.

7           So there is confusion here as to how they  
8 are presenting themselves to the city and to the  
9 community.

10           CHAIRPERSON GRIFFIS: So you are saying  
11 that perhaps the original award of this parcel and  
12 property was awarded for a viable use, for a viable  
13 product.

14           VICE CHAIRPERSON RENSHAW: Yes.

15           CHAIRPERSON GRIFFIS: And that that, if  
16 I'm understanding you correctly, was not exhausted  
17 before the option of doing -- of the assisted living  
18 was looked at for this particular site?

19           VICE CHAIRPERSON RENSHAW: That's correct.

20           CHAIRPERSON GRIFFIS: Okay. Others? It's  
21 an interesting piece. If you boil it down, you look  
22 at what is being asked of us and told us, this site is  
23 too small. Ms. Renshaw, if I understand you  
24 correctly, you are saying, well, what inherently is  
25 there that makes it practically difficult then to

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1 build on this site, and what is the particular and  
2 specific uniqueness that makes it difficult for this  
3 project, and that is assisted living which needs a  
4 certain amount of units in order to make it  
5 economically viable.

6 A brief digression: I think this whole  
7 Board -- and we had substantial testimony. I don't  
8 think anyone disagrees with the fact that there is a  
9 need for these, and I don't think that is what any of  
10 the deliberation is being based on, but in terms of --  
11 It's an interesting point of how one would factor that  
12 also into the urgent need for assisted living in the  
13 area.

14 Of course, we did have testimony from some  
15 of the residents around that they did not feel it was  
16 needed, but anyway, as I say, a bit of a digression.

17 VICE CHAIRPERSON RENSHAW: Just for  
18 clarification, the Applicant is presenting itself as  
19 assisted living, but there is also evidence that it  
20 planned to have an Alzheimer's wing which is far  
21 beyond assisted living and is really into nursing  
22 care, 24 hour nursing care. So there is a  
23 misrepresentation, to me, and that is just not clear.

24 CHAIRPERSON GRIFFIS: Okay. Yes, Mr.  
25 Etherly?

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1                   MEMBER ETHERLY:     Thank you, Mr. Chair.  
2     Just an additional piece of information, more or less  
3     for my colleagues' consideration, because I'm still  
4     kind of struggling myself, I think, to kind of fit it  
5     within the variance construct, which is we did  
6     entertain some testimony, I believe, from one of the  
7     expert witnesses for the Applicant, Ms. Westerhoff,  
8     that did speak to, when you talk about the size needs  
9     or requirements for an assisted living facility, there  
10    also was testimony offered regarding the internal --  
11    trying to work through this -- the internal kind of  
12    structure, configuration of the property.

13                   I'm not sure how to fit that into the  
14    variance test, but what I am kind of working around  
15    the edges of is, if you take the fact that part of the  
16    argument seems to be you need a certain size property  
17    here and the concern was there was no other similarly  
18    sized parcel available outside of commercial corridors  
19    in Ward 7, if you take that in tandem with the fact  
20    that you also need to give consideration to the type  
21    of internal configuration of the facility, do those  
22    two things combined -- I'm not necessarily talking  
23    about the economics, because I'm wondering whether or  
24    not the size of the parcel itself coupled with the  
25    fact that there was no adequate -- no other adequately

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1 sized parcel available, based on some of the testimony  
2 received from the Applicant and the testimony that was  
3 offered by the expert witness -- Does that, in perhaps  
4 my colleagues' minds, speak to either the uniqueness  
5 or the practical difficulty aspects of the variance  
6 test?

7 I'm not sure -- I'm wondering whether or  
8 not it does, but I'm not certain if it does, because  
9 that doesn't necessarily speak to the land. It speaks  
10 more to the type of property you are trying to place  
11 on the land.

12 MEMBER ZAIDAIN: Right. To make sure I  
13 understand, you're saying it is not necessarily  
14 economic, but it's more of a programmatic requirement  
15 of the development and how that relates to the shape  
16 of the lot?

17 MEMBER ETHERLY: Correct. Yes, sir.

18 MEMBER ZAIDAIN: In terms of the  
19 threshold, you know, and space design, things such as  
20 that, and what would be required for this type of  
21 facility and whether or not it can fit essentially on  
22 this lot. That is beyond -- I don't know if I would  
23 say beyond, but that is different from economics. I  
24 just want to make sure I understand what you are  
25 saying.

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1                   MEMBER ETHERLY: No, no. You're correct,  
2 and perhaps my question or my offering as food for  
3 thought is does that necessarily impact the thinking  
4 or analysis for any of my colleagues?

5                   If you look at the variance test, you have  
6 a uniqueness issue here. Part of the argument that's  
7 been proffered has been the size of the property as it  
8 is currently set up, coupled with the fact that there  
9 don't appear to be any other suitable locations of a  
10 similar size in Ward 7.

11                   The practical difficulty is that, if you  
12 were compelled to build within the allowable FAR, you  
13 would not have a facility of the appropriate size and  
14 the appropriate configuration that is consistent with  
15 kind of common assisted living facility practice and  
16 construction.

17                   CHAIRPERSON GRIFFIS: Well, then you seem  
18 to be taking it right back. I can understand  
19 configuration, but then if it's configuration, then we  
20 are only at special exception. You wouldn't need to  
21 ask for more density.

22                   I didn't see anything in the testimony or  
23 anything presented to us that the actual configuration  
24 of the common space, the unit layout, circulation,  
25 anything of that dictated that they needed more FAR or

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1 additional stories.

2           What was presented was, in order for this  
3 to be feasible -- and there is an economic element to  
4 that -- to be feasible, it had to be a certain number  
5 of units, and that certain number of units then raised  
6 the requirement for the FAR, stories, etcetera.

7           MEMBER ETHERLY:    Okay, I hear you.    I  
8 definitely hear you on that, Mr. Chairman.    I think  
9 perhaps what I am offering is, and I heard -- I was  
10 also somewhat swayed by the testimony that was offered  
11 by the expert, Ms. Westerhoff who spoke to that  
12 configuration issue.

13           Granted, I believe that conversation was  
14 much shorter in length compared to the documentation  
15 and the testimony we heard regarding the economic  
16 aspect of it.    Perhaps what I'm just offering is that  
17 is food for thought for my colleagues.

18           CHAIRPERSON GRIFFIS:    And I think it's  
19 good.    If we look at Exhibit 22, which is the  
20 Applicant's submission, you go to page 7, it is  
21 outlined for practical difficulty and uniqueness.    The  
22 second paragraph of that page states the first factor,  
23 which when combined with other facts and other  
24 circumstances in this case, creates a practical  
25 difficulty is a beneficial use of the property to the

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1 owner and to the community.

2 I am not making the connection there in  
3 terms of configuration or use, if we go into use, that  
4 somehow the use doesn't fit on the site, which then  
5 creates its practical difficulty.

6 There is another court citing in the next  
7 page of the Applicant's submission, and it is  
8 indicating that the Court of Appeals reversed an  
9 order, and it found that petitioners needed to show --  
10 all they needed to show, essentially, was the  
11 inability to make a reasonable disposition of their  
12 property for a permitted use.

13 Again, I would ask was it definitive, the  
14 fact that this could not be developed in some other  
15 manner that did not require the same variances? If it  
16 is the program that is demanding a larger site, then  
17 I'm not sure how we would attack the idea of any  
18 parcel, unique or not, coming in with people saying,  
19 in order to build a large commercial office building  
20 downtown, I need to make a certain amount of money  
21 and, therefore, I need additional height to add  
22 additional stories.

23 I'm sorry, one last piece of it, and  
24 that's to mention there's been a lot of discussion on  
25 the original building that was there. We are looking

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1 at a vacant piece of land.

2 VICE CHAIRPERSON RENSHAW: Which they  
3 applied for and they raised that abandoned apartment  
4 building, and they stated to us there were  
5 unsuccessful purchasers, etcetera. But I was really  
6 not swayed about this business of a search for another  
7 property that might be more suitable.

8 What I did find was their argument that  
9 this particular site was a safe location. That was  
10 their main concern, and they are using the  
11 neighborhood to attract a target market, which is age  
12 75. So this was a marketing decision, that it is  
13 nestled in an area which is struggling to -- which is  
14 wanting to build out that particular site as  
15 residential, but they found that to be the safe  
16 location that would be attractive for this particular  
17 business. But again, it doesn't come out to  
18 uniqueness, to practical difficulty. I just can't get  
19 there.

20 CHAIRPERSON GRIFFIS: Others? Mr.  
21 Hannaham, did you have anything?

22 COMMISSIONER HANNAHAM: I did sit for the  
23 first hearing back last year, and I have read the  
24 transcript of the previous hearing, in fact, going  
25 back to the July 16th. That's where I had to leave

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1 early, but I was able to catch up and read the  
2 transcript of the subsequent hearings.

3 One of the things that both the proponents  
4 and the opponents neglected to mention -- I think it  
5 is of some importance here -- is that the community,  
6 the Randle Highlands community, is a part of a larger  
7 community. They near the Dupont community, which has  
8 several neighborhoods, including Hillcrest which is  
9 adjacent to Randle.

10 The history of the communities concerned  
11 with this particular issue, and that is the care and  
12 the treatment of senior citizens, goes back quite a  
13 way. It goes back, to my knowledge, at least, oh,  
14 about three decades.

15 There was a program, which nobody has  
16 mentioned, that I think is pertinent here, and that is  
17 the program for feeding. That was a program to  
18 provide a lunch and a full meal every day in the  
19 community. It was the east of the river Meals on  
20 Wheels program which serviced people in this community  
21 as well as Hillcrest, in fact the whole far southeast,  
22 in Ward 8 and in nearby Prince George's County.

23 Many of the folks who were into the  
24 situation where they might require some sort of  
25 assistance later on were at least able to stay in

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1 their homes much longer because of the existence of  
2 this program. This program died out about a couple of  
3 years ago. It was a nonprofit, nongovernment  
4 supported -- It was strictly a voluntary program.

5 There were a group of people, a couple of  
6 hundred folks who supported this program in one way or  
7 another, as drivers delivering the meals every day and  
8 doing all the things that were necessary. The support  
9 was centered in a couple of churches, the Lutheran  
10 church and another church.

11 The point is there is a sensitivity and  
12 there is an appreciation within this larger community  
13 for services for people who are senior and who are  
14 approaching this age where they have needs for some  
15 sort of a support facility.

16 My feeling right now as a resident in that  
17 community is that this project is well presented. The  
18 concerns I have, I guess, is lack of a sense of a full  
19 appreciation of the ability of the people who will be  
20 managing this program to actually execute it in a way  
21 that is beneficial to the clients.

22 I have not been able to satisfy myself  
23 thoroughly that that is the case from the evidence  
24 that I have seen so far. I know that there was some  
25 mention of -- and I would hope that there would have

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1 been an opportunity to have a look at a marketing plan  
2 or some sort of a scheme that would give us a sense as  
3 to how this program would actually function, and I  
4 haven't seen that. Maybe I've just missed it.

5 On the special exception, I'm not really  
6 clear now as to whether the Applicant has really made  
7 a strong enough case for me to support it.

8 CHAIRPERSON GRIFFIS: Thank you, Mr.  
9 Hannaham. Others?

10 VICE CHAIRPERSON RENSHAW: Well, Mr.  
11 Hannaham's discussion segues into the fact that Ms.  
12 Marshall, who was appearing on behalf of the Randle  
13 Heights or Highland Citizens Association, talked about  
14 the fact that the site is in a developing area and  
15 that money is given for home care, and there was an  
16 emphasis in the community -- at least, this is what I  
17 gleaned from her discussion -- that this home care was  
18 very important.

19 She made the statement that assisted  
20 living will be obliterated in five years. Well,  
21 assisted living is the now. It is something that has  
22 taken hold, and it is being marketed across  
23 communities throughout the United States.

24 One has to look beyond assisted living and  
25 into where these folks go once they are beyond the

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1 ability to have this kind of independent yet assisted  
2 living arrangement. That was never explained, other  
3 than there would be something to do with hospitals and  
4 nursing homes. But the overall plan, I don't see.

5 I did not get from this material any  
6 feeling that they have investigated the community or  
7 are, in fact, looking to be a part of the community  
8 insofar as to what they plan to deliver. There is an  
9 outside group that would manage this facility, and the  
10 outside group is not local. It is -- Their  
11 headquarters are based in Philadelphia or suburban  
12 Philadelphia.

13 So again, they looked to a location where  
14 they could have a safe neighborhood. They picked an  
15 abandoned piece of property. They got to a government  
16 agency which made it an affordable purchase, and now  
17 they are trying to persuade us that that is the site  
18 for them. I am not convinced that it is.

19 CHAIRPERSON GRIFFIS: Okay. Additional  
20 clarification, that essentially will it speak to  
21 everything, but also especially -- but we are not --  
22 What is for review is not the specific program here or  
23 evaluation. I don't think we have enough  
24 documentation nor experience nor jurisdiction to pass  
25 judgment on how this would be run or whether it would

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1 or could conceivably appropriately be run. But I  
2 think what I am hearing from both of you is that, in  
3 terms of the special exception, looking to the  
4 potential adverse use of neighboring properties, it  
5 goes substantially to that and also, as Ms. Renshaw  
6 has said, in terms of looking for whether this site is  
7 actually appropriate or, in fact, too small.

8 Others?

9 MEMBER ETHERLY: Let me just, perhaps as a  
10 recap, kind of go on the argument or the analysis that  
11 I'm working on for the variance side of this. I'm  
12 just speaking to the variance issue, just so my  
13 colleagues are kind of clear where my thinking is on  
14 that.

15 If you address the first part of the  
16 variance test, which speaks to practical -- I'm sorry,  
17 it speaks to uniqueness. It is my contention that  
18 we've had sufficient testimony on the record offered  
19 by the Applicant that speaks to, one, the size of the  
20 parcel that is at issue here.

21 Granted, I think we did hear perhaps more  
22 than we needed to on the economic component, but I  
23 believe the Applicant has put forward a compelling  
24 argument in their brief which speaks to the fact that  
25 the economic issue, while part and parcel of the

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1 uniqueness or maybe the practical difficulty argument,  
2 is not necessarily the only factor here that they are  
3 looking to kind of hang their hat on.

4 The Chairman, I think, did well to  
5 reference back to the Applicant's written statement  
6 supporting this application, and there was, I believe,  
7 some interesting language offered from the DeAzcarate  
8 case, which was a D.C. Appeals case, 1978, where it  
9 just simply noted in relevant portion that what the  
10 Applicant is arguing here is that there is significant  
11 -- and I'm quoting from the Applicant's brief on page  
12 10, that there is significant and substantial inherent  
13 factors, both in the land and extraneous to the land,  
14 which sustain a finding of extraordinary or  
15 exceptional situation or condition that results in  
16 peculiar and exceptional practical difficulties.

17 To put a little bit of meat on that  
18 statement as it applies to this particular case, once  
19 again I'm somewhat compelled by, when you take in  
20 tandem the size of the parcel that is at issue here,  
21 what I believe also to be compelling testimony that  
22 spoke to the need for an assisted living facility in  
23 this part of the city, both offered by the Applicant  
24 as well as expert witnesses that were proffered by the  
25 Applicant from nonprofit organizations doing business

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1 in this particular line of work in the District of  
2 Columbia.

3 I believe we had testimony from the  
4 Greater Washington Urban League, just as an example  
5 of one such organization. Then without having the  
6 name of the individual who was before us, I believe we  
7 also did have either verbal testimony or written  
8 testimony submitted from arms of the District of  
9 Columbia government, also speaking to the need for  
10 this type of service in the District of Columbia and  
11 east of the river.

12 I think, when you take all of those  
13 elements in tandem, that gets you to the uniqueness --  
14 That gets you in part to the uniqueness, but I think  
15 it also then helps you in fashioning the practical  
16 difficulty and hardship here.

17 I think what I am hearing from my  
18 colleagues, of course, is that there still continues  
19 to be difficulty with accepting that argument, but  
20 once again, just one final effort to kind of lay out  
21 what my thinking is on this and kind of where I'm  
22 landing on the variance issue.

23 Thank you, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Thank you. I do  
25 think you bring up some excellent points. The

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1 question still in mind, going actually to the area of  
2 reference of the Applicant on page 10, top of the page  
3 at the end of that paragraph, it indicates that this  
4 application amounts to an honest endeavor to create  
5 the most reasonable and efficient use of available  
6 land in a timely manner.

7 I think that is really what you stated.  
8 It's just whether, in fact, the evidence is persuasive  
9 on that account.

10 Any further discussion? I would be happy  
11 to entertain a motion on this.

12 MEMBER ZAIDAIN: Well, I'm not going to  
13 make a motion at this point, but I would just kind of  
14 keep the competition going for a second.

15 I think I'm in the same position Mr.  
16 Etherly is in terms of the variances. You know,  
17 reading through the Office of Planning report -- Well,  
18 first of all, we did get several reports from  
19 different -- various government agencies and,  
20 obviously, Office of Aging recommended approval of  
21 this. In my mind, they are the agency that determines  
22 need.

23 I think it is our job to look at that and  
24 assess that for what it is, but I don't -- We're not  
25 the Office of Aging review board here in terms of

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1 second guessing that agency.

2 I think there was some -- Aside from the  
3 Applicant's submission, which Mr. Etherly just cited,  
4 there is also some interesting information in the  
5 Office of Planning report regarding the variances, and  
6 talks about how the lot slopes sharply toward the  
7 south and restricts the building line for the  
8 development. Obviously, that rises strictly out of  
9 the land, and OP cites as a support for the variance  
10 from the story and height requirements.

11 Now I find that regulation to be somewhat  
12 interesting, considering the fact that it is still --  
13 the building still is within the maximum permitted  
14 height of 40 feet at 38, but the stories are more than  
15 what is required. So I think that is kind of an odd  
16 regulation, in my mind.

17 I'm sure that the thinking behind there is  
18 to regulate the massing of the building in terms of  
19 its residential character, but the fact that it's  
20 still within the height, I think, lends some validity  
21 to that argument.

22 So I think what my position is I think  
23 there is some testimony that supports the variance  
24 issues. I think where I am a little lacking is in  
25 terms of the mitigation of impacts with issues such as

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1 parking and landscaping.

2 We did see some site plans. There was one  
3 submitted for this meeting that shows the elevations  
4 and the massing and the design of the building, but  
5 the surrounding landscape just really isn't there. So  
6 that's kind of the position I'm in, and that's kind of  
7 moving the conversation to the special exception  
8 process.

9 VICE CHAIRPERSON RENSHAW: Well, that is  
10 one of the problems with the size of the building on  
11 the lot, because there is no softening of the  
12 structure by landscaping. It is right there. It's in  
13 your face. It is a large building in what had hoped  
14 to be a residentially developed area.

15 There is going to be with this building  
16 parking problems because of the number of staff. They  
17 talk about 40 staff rotating or 25 full time  
18 equivalent, but there is going to be a lot of coming  
19 and going, and the Board sets the parking. But in  
20 fact, will the community be able to accommodate the  
21 congestion in the cars?

22 The community states that it will not, but  
23 this is a factor in our decision. Is this a location  
24 which, one thing, cannot be landscaped to soften the  
25 effect of that building, should we allow an additional

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1 story? Can we soften the building? Has the Applicant  
2 given us enough information to say that, yes, it is  
3 going to be appealing at that location in this  
4 residential community? And is there a way to mitigate  
5 the parking situation, which is going to come down  
6 hard on this community?

7 The community has spoken to us of the  
8 streetscape and the travel on the roadways, and it  
9 doesn't sound to me as though this site is going to be  
10 a forgiving site, but I'd like to hear from my  
11 colleagues as to whether or not they feel that parking  
12 will or not be a problem.

13 MEMBER ETHERLY: Mr. Chairman, perhaps  
14 with my colleague, Ms. Renshaw's comments in mind and  
15 as part of an effort to move us forward, I would be  
16 inclined to offer the following motion, and will do  
17 that and would seek a second, of course, with the  
18 opportunity to continue discussion; because I believe  
19 Ms. Renshaw and Mr. Zaidain's comments have taken a  
20 step in the direction of the special exception, which  
21 we perhaps haven't hit on as thoroughly.

22 I would move for approval of Application  
23 Number 16896 of Randle Highlands Manor for variance  
24 for the maximum number of stories under Section 400, a  
25 variance from the floor area ratio requirements, and a

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1 special exception to allow the construction of a  
2 community residence facility under Section 358 in the  
3 R-5-A District at premises 2700 R Street, S.E., Square  
4 5585, Lot 812, and would invite a second.

5 CHAIRPERSON GRIFFIS: I'll second the  
6 motion for discussion.

7 MEMBER ETHERLY: Thank you very much, Mr.  
8 Chairman. Let me speak a little bit to the special  
9 exception component first, of course, not precluding  
10 any conversation on the variance issue, because I  
11 think the Office of Planning -- the most recent Office  
12 of Planning submission is somewhat of a fly in the  
13 proverbial ointment, as it were.

14 As the Chairman noted, it perhaps is not  
15 as unequivocal as you would like, but be that as it  
16 may, it does, I think, offer a complication. But let  
17 me just speak to the special exception very broadly.

18 With regard to the special exception, in  
19 my opinion, being in harmony with the general purpose  
20 and intent of the zoning regs and the zoning map, I  
21 think it is. Once again, I think we have heard some  
22 testimony. We've received definitely written  
23 testimony from many segments of the District of  
24 Columbia government which speak to the need for this  
25 type of facility.

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1 I think what is also important to note  
2 here is that we are talking about a facility that --  
3 we are talking about a property that is at present  
4 vacant. So with regard to impact on the community --  
5 and I definitely don't want to gloss over that; I  
6 think we need to have some substantial discussion  
7 there -- if it were the case that this application  
8 were to move forward successfully, there would have to  
9 clearly be a very strong transportation management  
10 plan in place as it relates to parking, landscaping,  
11 but I don't want to jump ahead of ourselves here.

12 MEMBER ZAIDAIN: Well, actually, that's  
13 actually a good place to jump in, if you don't mind me  
14 interrupting. I was going to offer a friendly  
15 amendment to the motion, because I am leaning toward  
16 supporting the motion. However, there are still some  
17 outstanding issues that I'm having a hard time with,  
18 and I think I wanted to throw out the issue of -- or  
19 throw out the idea to the Board members of supporting  
20 this motion but then amending it based -- the approval  
21 of this application be based on the proper submission  
22 of a landscaping and parking plan to this Board.

23 I'd like to get some comment on that to  
24 see what the other Board members and Corporation  
25 Counsel, if necessary, thinks about offering that

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1 motion -- that amendment.

2 MEMBER ETHERLY: Well, just from this  
3 particular Board member's standpoint, I would be more  
4 than happy to accept that as a friendly amendment. I  
5 know that at times in the past we have had  
6 extraordinary difficulty with conditioning approval on  
7 the inclusion of certain conditions or certain types  
8 of language. So there could conceivably be some  
9 concern from Corporation Counsel, and perhaps I look  
10 to Ms. Monroe to assist in that regard.

11 Once again, approval predicated in some  
12 measure on --

13 MS. MONROE: Yes. I don't think you can  
14 do that, because you can approve with conditions, but  
15 you can't approve conditioned on something.

16 MEMBER ETHERLY: Okay. But I think the  
17 spirit in which these comments are going, once again  
18 from my standpoint, I think, is an appropriate  
19 direction, because I think Ms. Renshaw's comments are  
20 right on the mark here, that you need to ensure that  
21 you are negating whatever impacts are going to be  
22 created by this application, if it were successful.

23 I'm not that concerned that the impacts  
24 are going to be that significant. You know, once  
25 again we are not talking about a population as far as

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1 the residential component of the structure that is  
2 going to be constantly mobile in terms of using  
3 vehicles and that types of thing.

4 Now, clearly attendant to the operation of  
5 the facility, as Ms. Renshaw noted, you are going to  
6 have staff. You have to be sure you have a clear plan  
7 in place to deal with that, and perhaps ten parking  
8 spaces on the property may be enough or they may not.

9 Ms. Renshaw alluded to the fact that you  
10 may be looking upwards of 40 staff members.  
11 Additionally, you are looking at the assisted -- the  
12 transportation vehicles that will be used to transport  
13 those residents who may not have family members with  
14 vehicles, and those vans tend to need a certain type  
15 of space or type of dropoff area, that type of thing.

16 All of that is to say, under the special  
17 exception the only concern in the special exception  
18 analysis that I have is highlighted by the Office of  
19 Planning memo that was dated January 17th, noted as  
20 Exhibit Number 61.

21 Once again, as my colleagues are fully  
22 aware, Section 358.3 notes that there is -- one of the  
23 requirements would be that there is no other property  
24 containing a CBRF facility for seven or more persons  
25 within a radius of 500 feet from any portion of the

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1 site.

2 Based on the Office of Planning's review  
3 of this question as it arose out of our last  
4 proceeding, the Office of Planning does appear to have  
5 found one CBRF within a 500 foot radius of the address  
6 at issue here. That facility is shown, based on the C  
7 of O, as having a capacity of eight persons.

8 I'm not sure how that kind of gravitates,  
9 because the Office of Planning continues to note that  
10 for a person walking along the public right of way  
11 from the nearest corner of 1536 28th Street where the  
12 CBRF is located to the nearest corner of the subject  
13 properly, you are traversing approximately 700 feet.  
14 But be that as it may, once again, I think you have a  
15 CBRF within a 500 foot radius. I'm struggling with  
16 that. So I'll pause there, Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Okay. Others?

18 COMMISSIONER HANNAHAM: Mr. Chairman, if  
19 this proposal should go forward, I would like -- and  
20 I'm not sure exactly how this might work, but I'd like  
21 to see some consideration given by the Applicant to  
22 setting up some mechanism to work with the community.

23 I think that the community's history of  
24 involvement with seniors is really -- has really been  
25 outstanding over these last years, and perhaps some

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1 sort of a mechanism for establishing an advisory or  
2 some other kind of a body, a community based body to  
3 work with the management of this particular facility,  
4 I think, would be a good idea.

5 I'm thinking of the needs of these people.

6 They are -- in many cases, will be people who have  
7 lived in the community, have had residences in the  
8 community. I can see where that going to this  
9 facility would just be an extension of just moving  
10 somewhere within the same neighborhood, but the people  
11 that they knew, the relationships that they had with  
12 institutions will still be very important to their  
13 lives.

14 I would like some consideration to be  
15 given to requiring the Applicant, the management, to  
16 institute a dialogue that would be based on some sort  
17 of a structure that would be long lasting with these  
18 clients in this particular facility.

19 CHAIRPERSON GRIFFIS: It sounds -- and I  
20 appreciate that, Mr. Hannaham, but what I'm hearing  
21 from this Board is that there is a continued amount of  
22 concerns, and it doesn't seem as though we are  
23 satisfied on numerous issues, and I would --

24 COMMISSIONER HANNAHAM: Mr. Chairman, I  
25 conditioned that on should we move forward.

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1 CHAIRPERSON GRIFFIS: Indeed. Indeed, and  
2 that is an excellent point. Others?

3 VICE CHAIRPERSON RENSHAW: Mr. Chairman,  
4 just to pick up on Mr. Hannaham's statements or  
5 feelings, what I think you are leading to is almost a  
6 requirement to say that X percentage of those  
7 residents in that facility would have to come from the  
8 community, because, remember, this is a commercial  
9 venture.

10 The business is out to fill those rooms,  
11 and they are not going to be solely selecting or  
12 accommodating folks from the community. It's probably  
13 going to be first come, first served.

14 COMMISSIONER HANNAHAM: No, I understand  
15 that. I had not expected it would be primarily  
16 soliciting from people in the immediate community. I  
17 see this as a facility that would service the whole  
18 city.

19 VICE CHAIRPERSON RENSHAW: But these types  
20 of facilities are sprouting up across the city. In my  
21 ANC area we have six of these facilities, and where I  
22 live there is one to my right and there is one to my  
23 left, for instance, on the same road. But the  
24 argument here is that those facilities are supposed to  
25 be in the neighborhood to support the neighborhood,

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1 but again we go back to the argument here that this  
2 particular applicant has selected this because there  
3 is a very attractive deal, what with the Homestead  
4 program, and they selected that location because it's  
5 safe and they want to attract a specific target market  
6 of 75 or older. But the R-5-A is low height and  
7 density.

8 Here the Applicant is asking for an  
9 additional story, additional number of rooms because,  
10 again, of a marketing decision, not keeping in mind  
11 the residential nature of the surrounding locale and  
12 the wishes of the community that, yes, there is  
13 congestion and you need a larger site away from the  
14 congestion.

15 It certainly should be a place that is,  
16 shall we say, landscaped properly to fit into the  
17 locale, which here it is not. So I am stating again  
18 that there is nothing persuasive in this application.

19 There is no practical difficulty. There is no  
20 uniqueness to say that that is the site for this  
21 particular application or Applicant, rather.

22 I would urge my colleagues to consider  
23 denying this application for those reasons.

24 CHAIRPERSON GRIFFIS: Very well. Anyone  
25 else want to speak to the motion?

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1           MEMBER ETHERLY:     I'll just note, Mr.  
2 Chairman, as we consider the issue of parking, it's  
3 difficult for us to talk about the prior use on the  
4 property, because of course, that former building has  
5 been razed. But the Applicant did offer testimony  
6 that there was some indication that there were 39  
7 units in the former building that was on site.

8           I offer that piece of information just as  
9 additional thought when we talk about the issue of  
10 parking and impacts. Once again, clearly, we are  
11 talking about a pure residential use that at one point  
12 existed on the site versus an assisted living facility  
13 which will have some attendant uses in terms of staff  
14 and perhaps other vehicles, but yet and still, we are  
15 talking conceivably a 39 unit building that at one  
16 point existed on that site. That probably had a  
17 significant traffic component to it.

18           So I just offer that just to note that it  
19 is my sense that I think the neighborhood is going to  
20 be able to accommodate with a well managed and well  
21 thought out traffic plan. Not offering it as a  
22 condition, but just with the appropriate planning, I  
23 believe this facility could indeed exist there.

24           CHAIRPERSON GRIFFIS:     Okay.     Quick  
25 rebuttal, Ms. Renshaw?

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1           VICE CHAIRPERSON RENSHAW: Yes. I go back  
2 to the September 17, '98 letter to Lynn French at the  
3 Homestead Program from the Anacostia Economic  
4 Development Corporation, stating that they wanted to  
5 develop a 39 unit assisted living facility -- 39 unit.

6       Somehow it has expanded to a 50 unit, again because  
7 of the dollar sign.

8           This is a commercial venture. No doubt  
9 about it. There is going to be commercial traffic to  
10 this assisted living facility, and there are going to  
11 be parking problems as a result of loading and  
12 unloading and staffing and visitors.

13          We are told by the community that there is  
14 congestion. That does not seem to me to be the site  
15 for what could be a very important amenity in the  
16 community, but it doesn't sound to me as though this  
17 is the place for it.

18          I am arguing for a larger site, and I am  
19 arguing against this site, because there is no  
20 practical difficulty, no uniqueness, that we have been  
21 -- that has been brought to our attention to warrant  
22 approval by this Board.

23          CHAIRPERSON GRIFFIS: Very well, Ms.  
24 Renshaw. Let me speak to the motion, and I go and I  
25 refer to the transcript of the last hearing and Mr.

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1 Moore's closing statement. He directs the Board to  
2 look at a numerous amount of cases where variances  
3 were granted, and clearly, each is taken on their own  
4 individual merits, as we are doing today.

5 What is pertinent to me in the closing  
6 statement is the factor that he lays out for us to  
7 decide, and it is whether there can economically be a  
8 building constructed on this site or whether, in fact,  
9 in the reverse, it is actually precluded based on the  
10 site size and configuration that a building would be  
11 able to be constructed.

12 I refer you to page 234 and 235 where he  
13 is basically asking us to believe that the Applicant  
14 is unable to economically construct any building on  
15 the site due to the size and configuration. I'm not  
16 convinced.

17 Last comments?

18 MEMBER ETHERLY: I'm prepared to move  
19 forward, Mr. Chairman. I think we have had a very  
20 thorough discussion on the issue. I appreciate Ms.  
21 Renshaw's caution about this being a commercial  
22 venture, but you know, once again, I'm not necessarily  
23 overly concerned about rampant crowds of 75-year-old  
24 persons running through the community and causing all  
25 manner of chaos and destruction.

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1 VICE CHAIRPERSON RENSHAW: No, they are  
2 not the ones. They are not the ones.

3 MEMBER ETHERLY: And here I thought it was  
4 settled.

5 CHAIRPERSON GRIFFIS: Indeed. Okay. That  
6 being said, there is a motion that has been seconded  
7 for approval of the application 16896, and I would ask  
8 for all those in favor of the motion, signify by  
9 saying Aye. And those opposed, Opposed? The staff  
10 would record the vote.

11 MR. MOY: The staff would record the vote  
12 as 2-3-0. I believe those voting for the motion is  
13 Mr. Etherly, Mr. Zaidain. Those opposed, Mr. Griffis,  
14 Ms. Renshaw, and Mr. Hannaham.

15 CHAIRPERSON GRIFFIS: Thank you, Mr. Moy,  
16 for clarification. Then am I correct in the calling  
17 of the vote that the motion is not successful, and the  
18 application is denied?

19 MR. MOY: Yes, that is correct.

20 CHAIRPERSON GRIFFIS: Let's move on to the  
21 last case for decision making in the special public  
22 meeting this morning.

23 MR. MOY: The next case for decision is  
24 Application Number 16559 of The Morris and Gwendolyn  
25 Cafritz Foundation/The Field School, pursuant to 11

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1 DCMR ? 3129, for the minor modification of the Board  
2 of Zoning Adjustment's prior approval to establish a  
3 private school under Section 206 for a maximum of 320  
4 students and 74 faculty and staff in a R-1-A Zone  
5 District at premises 2101 Foxhall Road, N.W. in Square  
6 1341, Lots 856, 861, 878, and 879.

7 At its meeting on January 21, 2003, the  
8 Board determined that more clarification was needed  
9 before it could decide on a motion to extend by one  
10 month a requirement of the alternate transportation  
11 management plan.

12 In that respect, the Board requested the  
13 Applicant provide, in conjunction with the Department  
14 of Transportation, a number of items, first being a  
15 pedestrian safety plan and a description of how the  
16 plan would be implemented, including during the  
17 construction phase, provide and identify any future  
18 meetings that would be planned that would address  
19 concerns of the adjacent and nearby property owners,  
20 and (3) identify if the abutting ANCs would be  
21 notified of traffic related plans for the site and  
22 nearby area.

23 The Applicant submitted these documents,  
24 and they are in your case folder as Exhibit 519. The  
25 Department -- The DDOT submitted its response as the

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1 traffic management plan in your case folder as Exhibit  
2 518.

3 Finally, the Board should note that on  
4 January 22, the day after the Board's meeting on the  
5 21st, ANC-3-D FAX'ed a letter in support of the case  
6 application, and that is identified as Exhibit 517.

7 Last, on January 16, 2003, the Neighbors  
8 Against Foxhall Gridlock submitted a letter describing  
9 their other concerns, and that is identified as  
10 Exhibit 516.

11 That completes my briefing.

12 CHAIRPERSON GRIFFIS: Thank you, Mr. Moy.

13 Okay, Board members, let us get right into this.  
14 Clearly, as we looked at this before or previously,  
15 our major concern was public safety, and that is why  
16 we had postponed this to receive the Department of  
17 Transportation's safety plan or a temporary  
18 construction plan.

19 We have received that. Also in terms of  
20 the communications, Mr. Moy has indicated keeping the  
21 lines of communications open with the community. Then  
22 lastly and most importantly, which I think is a hurdle  
23 we did get over, the conditions that were appropriate  
24 to be complied with, and I mean that in terms of time  
25 before this is actually all completed. The conditions

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1 and the previous original order were actually in  
2 compliance.

3 I am satisfied with the submission that  
4 was put in. We did put some additional burden on the  
5 school to come up with essentially what is the  
6 Department of Transportation's responsibility. I  
7 would draw particular attention to -- and clearly, Mr.  
8 Prowley-Moore -- some of the submissions from DDOT are  
9 more, let's say, typical details and typical operating  
10 instructions. But I would draw the Board's attention  
11 to page PG-1 as the indication and PG-2 and Item  
12 Number 22, and these are clearly notes that go on the  
13 drawings to give indication of what should happen.

14 Twenty-two states that all contractors  
15 shall maintain pedestrian crosswalks and walkways,  
16 whether paved or not, unless otherwise provided in  
17 floor plans approved by the city. Temporary  
18 wheelchair ramps shall also be installed, maintained  
19 by the contractor.

20 The point of me bringing it up is that the  
21 clear responsibility is on the contractor to make sure  
22 that this area is improved temporarily for the proper  
23 and safe passage of pedestrians, and the plan also  
24 shows the flag and locations, the sign locations which  
25 deal clearly with the direction of traffic.

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1 VICE CHAIRPERSON RENSHAW: Mr. Chairman,  
2 just to note that Exhibit 518, Kenneth Laden's  
3 submission to the Board on the traffic management plan  
4 prepared by the construction company, has an  
5 attachment from the construction company, but it is  
6 not dated.

7 CHAIRPERSON GRIFFIS: Indeed, I noted that  
8 also. The letter is not.

9 VICE CHAIRPERSON RENSHAW: And it states,  
10 "We expect to complete all work in four weeks," and it  
11 begs the question, from when?

12 CHAIRPERSON GRIFFIS: Right. Well, and  
13 that is an excellent point. It was submitted on  
14 January 24th, but I had the same note on it. Here, we  
15 have -- and that was the other additional detail that  
16 we asked the school to provide, was let's be  
17 realistic. Are we going to be here in another month,  
18 and we have had an update, and this is a modification  
19 to extend the management plan to the 31st of March  
20 2003. I think it is appropriate to do that.

21 We did have just brief testimony of the  
22 fact that they may days away in completing it, but of  
23 course, we have had an exciting and wild winter.

24 So I would -- In order to expedite -- and  
25 I think the submission places information in the

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1 record. I would move approval of Application 16559,  
2 which is the minor modification to our prior approval  
3 to establish the private school, and that would move  
4 the modification extension period to the 31st of March  
5 2003.

6 MEMBER ETHERLY: Seconded, Mr. Chairman.

7 VICE CHAIRPERSON RENSHAW: Discussion?

8 CHAIRPERSON GRIFFIS: Sure.

9 VICE CHAIRPERSON RENSHAW: I want to clear  
10 up one matter on Exhibit 519, which is a submission by  
11 the Applicant's attorney, Shaw, Pittman, Mr. Feola,  
12 requesting the extension to March 31st, but he  
13 attaches correspondence that was sent to, or delivered  
14 to, the associated ANCs 2-A, 3-C and, by mistake, 3-G.  
15 Those letters are dated August 14, 2002.

16 Well, first of all, ANC-3-G, which I  
17 chair, is not in the particular area. That is ANC-3-  
18 E, and also I never saw this letter of August 14. The  
19 ANC was on holiday during August, and this letter was  
20 never brought to the Commission's attention, in any  
21 case and, I gather, was sent on to 3-E for its review.

22 My question has to do with were the ANCs  
23 2-A, 3-C AND 3-E alerted to this hearing, and was  
24 there any reaction from the August 14th letters? We  
25 did not receive anything that would speak to that. So

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1 I just wanted to mention it for the record.

2 CHAIRPERSON GRIFFIS: Okay. That is  
3 reiterated in the fact that proper notification, at  
4 minimum, should go to the ANC.

5 VICE CHAIRPERSON RENSHAW: Well, it states  
6 that the traffic routes for teachers and staff were  
7 supposed to be transmitted to the three ANCs prior to  
8 the certificate of occupancy. I wonder whether that  
9 was done, and whether the interim transportation  
10 management plan was transmitted to them also.

11 CHAIRPERSON GRIFFIS: Okay. Well, we can  
12 have the Office follow up with that. Any other  
13 discussions on the motion itself or the substance of  
14 it? Any other submissions?

15 Then I can ask for all those in favor of  
16 the motion, signify by saying Aye. And opposed?

17 MR. MOY: Mr. Chair, we have a proxy vote  
18 from Mr. John Parsons in the affirmative, to approve  
19 the motion. So that would make the vote 4-0-0 in the  
20 affirmative with Mr. Griffis, Ms. Renshaw, Mr. Etherly  
21 and Mr. Parsons.

22 CHAIRPERSON GRIFFIS: Good. Thank you  
23 very much, Mr. Moy.

24 This would then conclude, if I am correct,  
25 unless staff has anything further for us, the 28th of

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1 January Special Public Meeting of the Board of Zoning  
2 Adjustment. I would like to just take a brief ten  
3 minutes, hopefully faster, but we shall be back in  
4 about ten minutes, and then call the Public Hearing to  
5 order.

6 (Whereupon, the foregoing matter went off  
7 the record at 11:08 a.m.)  
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