

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY,

FEBRUARY 3, 2004

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 1:00 p.m., Geoffrey Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS L. ETHERLY, JR.	Board Member
DAVID A. ZAIDAIN	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

PETER MAY	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Acting Secretary
BEVERLY BAILEY	Office of Zoning
JOHN NYARKU	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

SHERRY GLAZER, ESQ.
MARY NAGELHOUT, ESQ.

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OPENING REMARKS:

Geoffrey Griffis 4

MELVA AND IDRIYS ABDULLAH

APPLICATION NO. 17106:

Clifford Moy 5

COMMENTS: 9

VOTE: 10

33 PST LLC

APPLICATION NO. 17047:

Clifford Moy 10

COMMENTS: 14

VOTE: 17

WOODLAND-NORMANSTONE NEIGHBORHOOD ASSOCIATION

BZA APPEAL NOS. 15129 & 15136 - ANC-3C:

Clifford Moy 17

ACTION TAKEN:

Geoffrey Griffis 19

JEFFREY D. KWATERSKI

APPLICATION NO. 17087:

Clifford Moy 19

COMMENTS: 23

VOTE: 24

JESUS IS THE WAY CHURCH

APPLICATION NO. 17100:

Clifford Moy 25

COMMENTS: 26

VOTE: 40

LUJAN, LUJAN, LUJAN COLUMBIA ROAD, LLC

APPLICATION NO. 17094:

Clifford Moy 40

COMMENTS: 45

VOTE: 71

ROBERT & JENNIFER BEYLICKJIAN

APPLICATION NO. 17102:

Clifford Moy 73

COMMENTS: 77

VOTE: 78

MARK LEE PHILLIPS

APPLICATION NO. 17079:

Clifford Moy 78

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APPLICATION NO. 17079 CONTINUED:

COMMENTS: 82

VOTE: 102

HUMBERTO GONZALEZ

APPLICATION NO. 16823:

Clifford Moy 103

COMMENTS: 103

VOTE: 104

ADJOURN:

Geoffrey Griffis 105

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

3:38 p.m.

CHAIR GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the public meeting of the Board of Zoning Adjustment of the District of Columbia. In case you're overly concerned -- well, there it is. My name is Geoff Griffis. I am Chairperson. With me today is Ms. Miller, Vice Chair, also, Mr. Etherly. Representing the National Capital Planning Commission is Mr. Zaidain, and representing the Zoning Commission will be a series of Zoning Commissioners on our decision making.

Copies of today's roll for our decision should be available to you on the wall where you entered into the hearing room. I will go through the entire order, of course, so people are aware of what we're dealing with and at that time. Please, be aware, of course, that all proceedings before the Board of Zoning Adjustment are recorded. They are recorded in two fashions now. One, the court reporter who is sitting to my right, and also we are being broadcast live on the Office of Zoning's website.

So we ask, first of all, in this important time of deliberation of the Board that people present do not create any disruptive noises or actions. I

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1 would ask that everyone just turn off their cell
2 phones and beepers at this time. Of course, people
3 should be aware that this is not an opportunity for
4 you to address the Board. We won't have any
5 testimony. This will be a time where we will be
6 deliberating on our cases and making decisions, if it
7 so warrants, through our deliberation.

8 That being said, let me say a very good
9 afternoon again to Ms. Bailey and Mr. Moy and ask them
10 if they have any preliminary matters for the Board at
11 this time.

12 MR. MOY: Not at this time, Mr. Chairman.

13 CHAIR GRIFFIS: Good. Then let's call the
14 first case for decision. I would like to call
15 Application 17106.

16 MR. MOY: Yes, sir. The first case for
17 the afternoon public meeting is Application 17106 of
18 Melva and Idriys Abdullah, pursuant to 11 DCMR section
19 3103.2, for a variance from the lot area requirements
20 under section 401, a variance from the rear yard
21 requirements under section 404, a variance from the
22 side yard requirements under section 405, and a
23 variance from the off-street parking requirements
24 under subsection 2101.1, to allow the construction of
25 a new single-family detached dwelling in the R-1-B

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1 District at premises 6025 North Dakota Avenue, N.W,
2 Square 3377, Lot 11.

3 On January 27, 2004, the Board completed
4 testimony on the application and scheduled its
5 decision on February 3, 2004. The Board requested the
6 following posthearing document, which is a copy of the
7 applicant's petition in support of the application,
8 which was presented at the Public Hearing and was
9 submitted to the office this morning, February the 3rd,
10 and I believe that's in your case folders. And that
11 completes my briefing, Mr. Chairman.

12 CHAIR GRIFFIS: Good. Thank you very
13 much, Mr. Moy. You are correct. We did receive the
14 petition that was evidenced in the Public Hearing.
15 That is in the record now, and no further submissions
16 were requested or received. Board Members, I think we
17 all recall this.

18 It was a very interesting case and I think
19 it might be best to expedite this under a motion, and
20 I would move approval of Application 17106, pursuant
21 to the variance of the lot occupancy requirements, the
22 variance of rear yard requirements, the variance of
23 side yard requirements and the variance of the off-
24 street parking requirements to allow the construction
25 of a new single-family detached dwelling in the R-1-B

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1 District, 6025 North Dakota Avenue, N.W. And I would
2 ask for a second.

3 BOARD MEMBER ZAIDAIN: Second.

4 CHAIR GRIFFIS: Thank you very much. I
5 think the uniqueness on this one really was a home run
6 in terms of the triangular lot, which created some of
7 the beginnings of the uniqueness. The additional
8 building restriction line, the triangular nature
9 rendered the buildable lot, in its most efficient way,
10 as a circle, and I think OP really graphically
11 represented that quite well. The circle being upwards
12 of 700 square feet for an entire footprint of a
13 residential home. It was very clear, the fact that
14 there was a uniqueness and out of that uniqueness, a
15 practical difficulty in meeting the strict application
16 of the regulations. Excuse me.

17 Some of the other additional pieces in
18 terms of the testimony that was provided, the existing
19 house on the site now, first of all, the new proposed
20 is not that different in footprint, location, than the
21 existing, but also additionally, the disrepair of the
22 existing structure and the availability of its
23 somewhat adaptive use for the family that is proposing
24 to build the new became difficult.

25 I think looking at whether there would be

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1 any sort of detriment to the public good, it was clear
2 in the testimony that there would not be, and then
3 whether it would impair the intent of the Zone Plan or
4 Map, I think it is fairly clear that it would not as
5 it would make this lot a buildable residential and
6 maintain it as a residential use.

7 We did have the adjacent neighbor that
8 came in and testified, and there was an extensive
9 amount of information provided in opposition of the
10 application, most of which, I would say the majority
11 of which dealt with the construction, the procedure of
12 construction, whether there were hazardous materials
13 in the house, lead and asbestos, and how that might be
14 remediated. I think we addressed that as best we
15 could within our own jurisdiction of zoning and also
16 indicated that that was more of a building
17 construction compliance issue.

18 In terms of the issue of proximity and
19 also light and air, I think the evidence is strong and
20 I am persuaded with the evidence presented that this
21 would not attend to or even impact the light and air
22 or use privacy of the adjacent. I found one of the
23 most compelling pieces of evidence was the Office of
24 Planning's oblique photos that were listed that really
25 give you the perspective of how much open space there

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1 is.

2 If you look at this triangular lot, it
3 looks like the largest lot on the block or square,
4 which is dramatic when you think about it of why is
5 this any trouble, but, obviously, the uniqueness that
6 has been evidenced renders this, essentially, an
7 unbuildable lot. So that's the first reason out of
8 two of the important issues that I have seen in the
9 photographs. The second is the fact of how much open
10 space is actually left, and it is quite extensive, and
11 I think it's fairly clear that the adverse impacts, as
12 given in testimony, are not strongly persuasive.

13 But I'll hear from other Board Members if
14 there are comments. Mr. Zaidain?

15 BOARD MEMBER ZAIDAIN: I was just going to
16 agree with your assessment, and the fact that it is a
17 triangular lot and the thresholds set up by the yard
18 requirements, because it's a triangular lot, and then
19 the resulting building window really gives it -- it's
20 quite a challenge to construct any sort of viable
21 project on that piece of property and it's almost the
22 quintessential variance case as the resulting building
23 window just is, in itself, a practical difficulty in
24 building a viable single-family home in that zone
25 district. So I would support the motion.

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1 CHAIR GRIFFIS: Any other comments? Not
2 hearing any other comments or requests for time, I
3 would ask for all those in favor of the motion to
4 signify by saying aye.

5 ALL: Aye.

6 CHAIR GRIFFIS: And opposed?

7 MR. MOY: Staff would record the vote as
8 4-0-0, motion to approve by the Chairman, second by
9 Mr. Zaidain, in favor of the motion, Mr. Etherly and
10 Ms. Miller. We have a proxy vote from John Parsons
11 voting to approve the application, which would give
12 the final resulting vote as 5-0-0.

13 CHAIR GRIFFIS: Excellent. Thank you, Mr.
14 Moy.

15 MR. MOY: The next case is a motion for
16 reconsideration of Application No. 17047 of 33 PST
17 LLC, pursuant to 11 DCMR section 3103.2, for a
18 variance from the off-street parking requirements
19 under subsection 2101.1, to allow the conversion of a
20 warehouse to an entertainment nightclub in the C-3-C
21 District at premises 33 Patterson Street, N.E., Square
22 672, Lot 255.

23 The Board completed the testimony on the
24 application on September 9, 2003 or rather 2004. No,
25 I'll take that back, I'm sorry, 2003, and approved the

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1 application for a period of five years at its public
2 meeting on October 7, 2003. The final order was
3 issued on December 23, 2003.

4 Before the Board are two motions. First
5 is the motion for reconsideration from a party
6 opponent. The document, the letter from Norman
7 Glasgow and Dennis Hughes of Holland and Knight, LLP,
8 representing 3060 M Street Associates, LLP, dated
9 January 5, 2004 and that is in your case folders
10 identified as Exhibit 77.

11 The Board also has in its case folder a
12 motion to oppose the motion for reconsideration, and
13 that was filed by the applicant represented by Edward
14 Donahue of Cole, Raywid and Braverman, LLP, and that
15 is identified as Exhibit 78. And that completes my
16 briefing, Mr. Chairman.

17 CHAIR GRIFFIS: Thank you very much, Mr.
18 Moy. I think for expedition's sake, let's -- the
19 Board would probably look at this as a single motion,
20 the motion for reconsideration and, of course, we have
21 the filing in opposition to that motion. So before us
22 is the evidence as Mr. Moy has laid out.

23 The motion for reconsideration is
24 compelling us to look back on the record to see
25 whether we erroneously made a finding and also,

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1 therefore, made our conclusions based on erroneous
2 findings and it goes to the parking, of course. I
3 think the best way to go -- well, I think it can
4 easily be said that -- maybe it can't be easily said,
5 so let me get right into it, what I was thinking in
6 terms of rolling this around.

7 First of all, I think the conditions,
8 which were stated, Condition No. 3, in which case the
9 Certificate of Occupancy shall not be issued for an
10 entertainment nightclub unless the application for the
11 certificate is accompanied by a binding, written lease
12 agreement and it goes on, I think is very strongly and
13 directly succinctly and understandable, and I am
14 pleased with that condition and that portion of the
15 condition.

16 The second portion of the condition
17 actually continues on the same aspect, that the
18 Certificate of Occupancy shall be revoked in the event
19 the parking spaces are not provided as stated in the
20 decision or order. It's fairly clear, the fact of
21 what we're being asked to look at is whether we
22 understood the requirement, the changing nature, the
23 availability of public parking and then the
24 establishment of a binding agreement.

25 That is bringing up, I think, an important

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1 point and that is with the lessee or with the person
2 providing the parking off-site, do they have the
3 authority to sign the lease, all that. That, I think,
4 the Board appropriately said isn't our concern. Our
5 concern is the provision of the off-site accessory
6 parking, and I think our condition addresses that
7 directly and actually is able to be measured and
8 complied with.

9 And so I would not support a motion for
10 reconsideration on the substance. I think, in fact,
11 if you look at 3126.7, we do need to have a new
12 finding that could not have been evidenced in the
13 case. I don't really want to deliberate and discuss a
14 lot about that, but only to bring it up to say that I
15 think this was well deliberated. I think the Board
16 has, and it's in the record, had great concerns about
17 this, had concerns about the changing nature and what
18 this is going to be in several years, and I think it
19 was appropriate that the Board put a time limit on
20 this approval and, therefore, can be revisited and to
21 have such a binding condition, I thought, was also
22 appropriate. So I would not support the motion for
23 reconsideration.

24 In addition, if there is concern about
25 whether -- well, if there is concern about the actual

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1 functioning and opening in compliance with the order,
2 I think it's appropriate to look at an appeal of the
3 issuances of a Certificate of Occupancy. And if it
4 is, a Certificate of Occupancy is actually granted,
5 then there is always the compliance aspect to that
6 Certificate of Occupancy, and this is not the only
7 condition in the entire order. They all will need to
8 be complied with.

9 Let me open it up to others if they have
10 comments.

11 BOARD MEMBER ZAIDAIN: Mr. Chair, I agree
12 with your assessment. I mean, as I was reading
13 Holland and Knight's memo, it was kind of interesting
14 reading it, because I agreed with a lot of the things
15 that were stated in that, but, you know, in my
16 recollection of the motion that was made and approved
17 by the Board, it addresses that issue and that is that
18 we put the burden on the applicant after all this kind
19 of -- you know, I was recalling a lot of this while
20 testimony we received from the applicant, at the time,
21 that we had to sort through to try to establish the
22 fact that they could find parking spaces.

23 But at the end of the day, we put the
24 burden on the applicant to find these 100 parking
25 spaces within 100 feet. And we had the same questions

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1 in regards to, I believe, it was the RLA letter or the
2 DCHD letter talking about a potential lease of their
3 spot. We had the same concerns, but again, we put the
4 burden on the applicant.

5 CHAIR GRIFFIS: Right.

6 BOARD MEMBER ZAIDAIN: To prove that to
7 DCRA. Now, Holland and Knight alleges that DCRA
8 doesn't have the capacity to determine it was a
9 binding and legal agreement. That may or may not be
10 true. I can't really decide that. You know, we put a
11 provision in the order that is going to have to be
12 complied with in order to get a C of O and if the C of
13 O is erroneously granted, then there is a way to bring
14 it back to the Board for review and that's through an
15 appeal.

16 CHAIR GRIFFIS: Indeed. Well said.

17 BOARD MEMBER ZAIDAIN: So that's my
18 position.

19 CHAIR GRIFFIS: Ms. Miller?

20 VICE CHAIR MILLER: I would concur with
21 what you both have said, but I would add that it was a
22 conscious decision by the Board that we did not have
23 to have a binding lease before us in order to make the
24 decision that the variance was for five years and that
25 over the five year period, there may be different

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1 leases, but there always had to be a binding lease
2 agreement in effect, at the time, and we left that to
3 the Zoning Administrator to make sure that that was
4 the case with respect to issuing the Certificate of
5 Occupancy, and that if it ever is not the case, that
6 parties can appeal that Certificate of Occupancy,
7 because we said that it should be revoked if there is
8 not a binding agreement in place.

9 I think the other point, I think this was
10 a lesser point, but the other point that Holland and
11 Knight made was that the Board didn't make a finding
12 whether parking spaces that became available between
13 5:00 and 6:00 p.m. would continue to be available
14 during the club's hours of operations. I don't think
15 that's a significant point, because we require that
16 there always be parking spaces pursuant to a binding
17 lease agreement in effect for the time that the club
18 is operating. So I would be inclined to deny the
19 motion for reconsideration, as well.

20 CHAIR GRIFFIS: Others? Okay. If I
21 understand correctly, and I hear from the Board, I
22 think it's appropriate to do a motion to deny the
23 motion for reconsideration of Application 17047 of 33
24 PST LLC. Is there a second?

25 BOARD MEMBER ETHERLY: Seconded, Mr.

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1 Chair.

2 CHAIR GRIFFIS: Thank you, Mr. Etherly.
3 Any further discussion? Well, let me ask for all
4 those favor of the motion to deny to signify by saying
5 aye.

6 ALL: Aye.

7 CHAIR GRIFFIS: And opposed?

8 MR. MOY: The staff would record the vote
9 to deny the motion for reconsideration as 4-0-0 on the
10 motion of the Chairman, seconded by Mr. Etherly, also
11 in favor to deny the motion for reconsideration, Ms.
12 Miller, Mr. Zaidain. We also have a proxy vote from
13 John Parsons who is also in favor to deny the motion
14 for reconsideration, which will record the final vote
15 as 5-0-0.

16 The next case is the action of the Board
17 to act on the proposed order as a final order, which
18 is the remand from the District of Columbia Court of
19 Appeals: BZA Appeal Application Nos. 15129 and 15136
20 of Woodland-Normanstone Neighborhood Association and
21 Advisory Neighborhood Commission 3C.

22 At its public meeting on January 6, 2004,
23 the Board voted on the motion to approve the
24 circulation of the proposed order for exceptions. The
25 deadline for written exceptions and arguments was set

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1 for January 28, 2004. On that date, the Board
2 received a letter of exceptions from the firm of
3 Robins, Kaplan, Miller and Ciresi representing a Phil
4 Mendelson. That is in your case folders identified as
5 Exhibit No. 52. And that completes my briefing, Mr.
6 Chairman.

7 CHAIR GRIFFIS: Thank you, Mr. Moy.
8 Anybody want to open this one? Very well. Mr. Moy, I
9 appreciate it. That was an excellent summation of
10 what we're dealing with in terms of the remand of the
11 Woodland Normanstone. I would propose, Board Members,
12 that we not take this up today and move this for
13 decision making on 02 March. That would be our next
14 decision making Tuesday.

15 I think with the new submission, of
16 course, that the Board Members have just recently
17 received, I think it takes at least additional time to
18 review all that that was submitted, and we would be,
19 frankly, more prepared to have substantive
20 deliberations in March.

21 Let me hear of any objections to doing
22 that at this time.

23 BOARD MEMBER ETHERLY: No objection, Mr.
24 Chair.

25 CHAIR GRIFFIS: Thank you, Mr. Etherly.

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1 BOARD MEMBER ZAIDAIN: No objection.

2 VICE CHAIR MILLER: No objection.

3 CHAIR GRIFFIS: Very well. Then I'll take
4 it as a consensus. The Board will move this to the 2nd
5 of March, '04.

6 MR. MOY: Okay. The next case then is a
7 motion for reconsideration of Application No. 17087 of
8 Jeffrey D. Kwaterski, pursuant to 11 DCMR section
9 3103.2, for a variance from the lot occupancy
10 requirements under section 403, a variance from the
11 rear yard requirements under section 404, a variance
12 from the closed court area requirements under section
13 406, and a variance from the nonconforming structure
14 provisions under subsection 2001.3, to allow a rear
15 garage with roof deck addition to a single-family row
16 dwelling in the R-4 District at premises 1366 Quincy
17 Street, N.W., Square 2826, Lot 25.

18 The Board completed testimony on the
19 application and issued a Bench decision on December 9,
20 2003. On January 6, 2004, the Board on its own motion
21 or rather the final order was issued on December 10,
22 2003. Then on January 6, 2004, the Board on its
23 motion moved to reconsider Application No. 17087. And
24 then I'll leave it at that. That completes my
25 briefing, Mr. Chairman.

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1 CHAIR GRIFFIS: Excellent. Thank you very
2 much, Moy, and that is correct. On the 6th on our own
3 motion of which, of course, we needed to waive our
4 rules in order for time, because the order had already
5 been issued. And I think this is just for opening on
6 this, our own motion for reconsideration, I think it's
7 an excellent exercise that we, of course, don't want
8 to do very often, but is appropriate for the Board to
9 do when we look at an application and we have just
10 been through the Public Hearing and have, in fact,
11 decided and realized that it may not have been exactly
12 as it should have been.

13 And I will be specific with this case, but
14 to make the point and the larger point that I don't
15 think this Board is afraid of or should be afraid of
16 reanalyzing its recent or even past decisions or
17 actions. I think it shows some great strength that
18 the Board can do that.

19 Now, that being said, I don't think we
20 have made an error in this application at all. I
21 think the final outcome actually was appropriate.
22 However, in further really analysis of the application
23 on my own and I know with discussion with other Board
24 Members, the reason why we brought a motion for
25 reconsideration is the fact that we may have found,

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1 and I'll see if the Board agrees with me in the
2 deliberation that is about to follow, we may have
3 found that the requested relief was far and above what
4 was actually required of this applicant. And
5 therefore, on our own motion bringing it back,
6 hopefully, with no undue stress on those involved.

7 I believe that this will and should have
8 been formulated as a special exception under section
9 223. My point goes to if you look at the definition
10 of building area. Of course, as you all recall, this
11 was to allow a rear garage addition into a row
12 dwelling. One of the aspects of the variance case
13 that we found did meet the test and was approved was
14 the uniqueness of the property. One of the aspects of
15 the uniqueness was the dramatic site topography in the
16 rear, which allows the garage to be built and
17 constructed below the main level of the house.

18 If you look at the definition in section
19 199 of building area, the garage itself would not be
20 counted towards the building area and, therefore,
21 would not go into the lot occupancy, therefore, would
22 not need the amount of relief required of a variance
23 under section 403, but rather would come under special
24 exception under 223, which does cover, in fact, the
25 rear yard requirements, the closed court requirements

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1 and the issue of nonconforming structure provisions
2 under 2001.3.

3 So I would like to, under our motion for
4 reconsideration, to change the application in relief
5 requested and change it to, as I said, the special
6 exception or 223 and simultaneously, make a motion of
7 approval of the special exception in Application No.
8 17087, and ask for a second on this.

9 VICE CHAIR MILLER: Second.

10 CHAIR GRIFFIS: Thank you very much, Ms.
11 Miller. The other aspects in terms of not being
12 counted towards building, one of the critical pieces,
13 that it has to be found through the definition as laid
14 out, that it has to be found that it would not impair
15 the light and air to the adjacent properties. If you
16 recall the factual evidence in the case, is that there
17 is masonry walls on each side or some type of
18 structure, if I'm not remembering incorrectly, that
19 this would actually align with.

20 It would be near implausible for one to
21 say that this impacted the light and air when there is
22 already a solid structure on each of the adjacent
23 properties and on the property line itself. And
24 therefore, I think it comes completely and fully
25 underneath that analysis that I have laid out.

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1 But let me open it up to others for any
2 further discussion or deliberation on the motion for
3 special exception approval.

4 COMMISSIONER MAY: Well, let me say that I
5 agree, Mr. Chairman, with just about everything that
6 you said, except that I felt that the first time
7 around that the relief that had been granted was in
8 excess of what was merited. I didn't think that the
9 case qualified for a variance and had voted against
10 it.

11 But I was concerned about it, at the time,
12 in that it didn't seem to me that the -- and I didn't
13 really come to a conclusion in my mind that, in fact,
14 the relief that had been requested was the appropriate
15 relief. In other words, it seemed to me that because
16 of the slope, that this didn't fit the normal mold for
17 extending the structure into the rear yard of the
18 property, and because it was all below the first floor
19 or the main floor of the building that a lot of the
20 rules that would otherwise kick in don't, like the lot
21 occupancy is not affected by a structure that is below
22 the floor, the first floor or at or below the level of
23 the main floor. So I was concerned about that.

24 So I'm glad that it has now come back to
25 us for reconsideration, because I think it's

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1 thoroughly appropriate and I am much more comfortable
2 with the idea of granting a special exception for rear
3 yard in this circumstance, rather than a variance.
4 Where I did not believe that this would meet the test
5 for a variance, I do believe it meets the test for a
6 special exception with regard to the rear yard and the
7 closed court.

8 I'm not even sure that the closed court
9 necessarily even applies, and we'll look at that very
10 carefully, but in any case, if we're talking about a
11 section 223 type special exception, that I would
12 support it. Whereas, I did not support the variance.

13 CHAIR GRIFFIS: Good. Others? Very well.

14 I think we can rely on the record that was presented
15 before us and also on the past deliberation, which was
16 actually under the variance test, which is a higher
17 threshold to prove in consolidating our deliberation
18 on the special exception for this.

19 We have a motion then for approval of the
20 special exception and it has been seconded. If there
21 is any other deliberation, comments. If not, then I
22 would ask for all those in favor to signify by saying
23 aye.

24 ALL: Aye.

25 CHAIR GRIFFIS: And opposed? And I think

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1 we can issue a very quick summary order on that one
2 also.

3 MR. MOY: The staff would record the vote
4 on the motion of the Chairman, seconded by Ms. Miller,
5 also in favor of the motion, Mr. Zaidain, Mr. May.
6 The vote is recorded as 4-0-1, Mr. Etherly not
7 participating on the case.

8 The next application is No. 17100 of Jesus
9 Is The Way Church, pursuant to 11 DCMR section 3104.1,
10 for a special exception for a change of nonconforming
11 use under subsection 2003.1, or in the alternative,
12 pursuant to 11 DCMR section 3103.2, a variance from
13 the use provisions, to allow a coffee/sandwich shop
14 under subsection 330.5, in the R-4 District at
15 premises 129 through 131 15th Street, N.E., (first
16 floor only), Square 1069, Lot 801.

17 Staff notes that the advertisement has
18 been amended. The application has been amended to
19 reflect the requested zoning relief only for the
20 property at 129 15th Street, which was noted for the
21 Board at the Public Hearing on January 13, 2004.

22 On that date, the Board completed
23 testimony on the application and scheduled its
24 Decision on February 3, 2004. The Board requested the
25 following posthearing documents. First is a

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1 supplemental report from the Office of Planning and
2 that is in your case folders identified as Exhibit 31.

3 Second, the applicant was also to submit further
4 clarification on a number of issues and concerns, and
5 that is submitted in your case folders identified as
6 Exhibits 31 or rather 32, 33 and 34. Exhibit 35 is
7 the applicant's reply to a complaint. And that
8 completes my briefing, Mr. Chairman.

9 CHAIR GRIFFIS: Thank you, Mr. Moy. It is
10 outlined, we had asked for additional submissions,
11 which the Board has received most of which was
12 regarding the proposed or existing exterior condition
13 of the property and how it might be maintained in a
14 clean and orderly manner, as that was somewhat of the
15 issues of the people in opposition. The other, as
16 Office of Planning's supplemental report laid out,
17 that they would not support the application of
18 evidence wasn't provided for the continuous
19 nonconforming use for the past three years.

20 Board Members, let me open it up to see if
21 one finds that that has been complied with or can be
22 actually evidenced. What we have is copies of
23 receipts of rent paid.

24 BOARD MEMBER ZAIDAIN: That if I could hop
25 in, Mr. Chairman, I mean, I agree with where we are

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1 and I agree with the Office of Planning that as long
2 as it can be established, that it has now gone on in
3 existence for three years and it is probably
4 supportable. I am just struggling with what these
5 receipts are.

6 You know, on the cover or the cover
7 receipts, it seems like 129 has been added and I don't
8 know if that's on the original receipt or not, so I
9 have a little bit of hesitation on that.

10 CHAIR GRIFFIS: What are you saying, 129?

11 BOARD MEMBER ZAIDAIN: Do you see? Am I
12 incorrect? Am I looking at the wrong address? No,
13 129 is the address we're dealing with, correct?

14 CHAIR GRIFFIS: Oh, I see.

15 BOARD MEMBER ZAIDAIN: You see how it's
16 been kind of inked in there? And I hate to be
17 suspicious, but let's go ahead and be suspicious for a
18 second. But if you look at the other sheets, these
19 look a little bit more identifiable. And it's your
20 understanding, Mr. Chair, that these are for rent for
21 that space?

22 CHAIR GRIFFIS: Well, some of them
23 indicate rent and actually, these, the top one does.

24 BOARD MEMBER ZAIDAIN: Well, and it's got
25 dates from to to, so --

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1 CHAIR GRIFFIS: Right.

2 BOARD MEMBER ZAIDAIN: But I don't
3 understand the balance due boxes there, but I guess
4 the original T-shirt shop is called Imagine.

5 CHAIR GRIFFIS: Right.

6 BOARD MEMBER ZAIDAIN: "Imagine Unique,"
7 U, unique. Well, I think this does supplement some
8 original testimony that we received. It does kind of
9 corroborate what we heard, excuse me, in the hearing
10 in regards to the operation of the business. I think
11 if these receipts stood on their own, I would be a
12 little concerned, but I think they were supported by
13 some testimony and some additional Certificate of
14 Occupancy that we saw in the original hearing. I'm
15 not sure if anybody else wants to weigh in on that,
16 but that was my recollection.

17 VICE CHAIR MILLER: Well, going through
18 the receipts, I do notice that it looks like they do
19 go back to January 7, 2001, which would put them
20 within the three years continued nonconforming use,
21 would it not? We're into February. I just said that
22 it needs to be established that there has been three
23 years of nonconforming use, and that the receipts that
24 we have go back to January 7, 2001, which brings it
25 within three years of nonconforming use.

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1 BOARD MEMBER ZAIDAIN: It's three years of
2 continued nonconforming use.

3 VICE CHAIR MILLER: At least is dated back
4 to --

5 BOARD MEMBER ZAIDAIN: Right.

6 VICE CHAIR MILLER: It dates back to three
7 years.

8 BOARD MEMBER ZAIDAIN: Right, that it
9 hasn't been discontinued.

10 VICE CHAIR MILLER: Right.

11 BOARD MEMBER ZAIDAIN: For three years.
12 Exactly. So I think there is --

13 COMMISSIONER MAY: Basically, anything
14 after three years ago today or the last hearing, if
15 there was, at any time, that nonconforming use was
16 there, then this should be fine.

17 BOARD MEMBER ZAIDAIN: Right.

18 COMMISSIONER MAY: And I think as far as
19 the receipts go, yes, there are some add little things
20 on it where people try to write some things in to make
21 it clearer what the property was that was affected,
22 but it seems to me apparent enough that it was the
23 building in question and that they were paying rent
24 for it, and we have the word of the church, you know,
25 that that's what happened, I think. It's part of the

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1 testimony. So I think there is reasonable proof.
2 This is better proof than I think we would get in a
3 lot of cases.

4 CHAIR GRIFFIS: Really?

5 COMMISSIONER MAY: On continued
6 nonconforming use. The fact that they had the
7 receipts for the rent that far back, I think is pretty
8 good.

9 CHAIR GRIFFIS: Okay.

10 VICE CHAIR MILLER: I mean, it doesn't
11 show the whole period for sure, but it does show that
12 it goes back to that date. And right, it's to be
13 considered in addition to the testimony we heard, that
14 there was a continuation. And I don't believe we
15 heard any testimony to the contrary.

16 COMMISSIONER MAY: But even if we had
17 proof that they were operating through the end of
18 February in 2001 and stopped the nonconforming use at
19 the end of February in 2001, that is still within the
20 last three years that that nonconforming use has been
21 there. It has to be discontinued for a period of
22 three years before they lose the right to use it.

23 CHAIR GRIFFIS: Anything else?

24 COMMISSIONER MAY: Mr. Chairman?

25 CHAIR GRIFFIS: Yes?

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1 COMMISSIONER MAY: I wanted to raise one
2 other point. I think that now that we have this and
3 because of the new developments that arose from that
4 whole hearing, which, frankly, completely changed the
5 nature of the case I think, I think there is one issue
6 that I would like to visit, which we haven't really
7 discussed in any significance, and that was a
8 recommendation that came from one of the neighborhood
9 organizations that there be a three year period or
10 three year term for this renewal.

11 And I think that while no one has made a
12 strong case for this and there hasn't been a lot of
13 neighborhood opposition, I think that that kind of
14 caution is probably well deserved and it's the kind of
15 caution that this Board has used in other
16 neighborhoods in the city usually on request or on the
17 insistence of other neighborhood organizations or the
18 ANCs, and I think in this case it's probably wise to
19 include a condition like that and then allow the Board
20 to revisit the question of the continued use.

21 CHAIR GRIFFIS: Good.

22 COMMISSIONER MAY: In three years.

23 CHAIR GRIFFIS: Yes, I absolutely agree
24 with you and I was intending to have any motion that
25 went forward with at least that condition of three

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1 years, which, if I am not mistaken, was offered up by
2 the Capitol Hill Restoration Society.

3 Mr. May, you have indicated that although
4 we didn't have a lot of opposition, but, in fact, I
5 thought we had. We didn't have a lot of people
6 showing up.

7 COMMISSIONER MAY: Oh, yes, no, there was
8 definitely some.

9 CHAIR GRIFFIS: Right.

10 COMMISSIONER MAY: But it was --

11 CHAIR GRIFFIS: And it's interesting to me
12 that Capitol Hill Restoration actually in their letter
13 indicates that the community was evenly divided on
14 this. So we probably didn't hear from a lot of
15 people.

16 COMMISSIONER MAY: Right.

17 CHAIR GRIFFIS: I think it's with, you
18 know, undue caution and I think it's an excellent
19 point to have a three year condition put on it. As
20 we're going in this direction then, why don't we look
21 quickly at some of the other elements that came up
22 within the case and see if they don't warrant other
23 conditions on a special exception that might then go
24 into a motion? Very well.

25 I think a condition has to be included

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1 that would state the provision of trash receptacles
2 and adequate lighting on the exterior that a daily
3 cleanup of the property be conducted by the owner, and
4 I think removal of all debris at the front and the
5 rear and maintaining clear passage at all times would
6 be appropriate. Okay. Anything else?

7 You know, this was a case, I don't know if
8 you recall correctly, that one of the neighbors
9 objected to the amount of yard sales that the church
10 was conducting. And just to refresh your
11 recollections, I did cite the regulations 202.8 and
12 203.6 of which our Zoning Regulations actually do
13 regulate yard sales, so for everyone that's listening,
14 just make sure you're complying with the Zoning
15 Regulations this spring when you're having your yard
16 sale. One a year, Mr. May, just one a year.

17 BOARD MEMBER ZAIDAIN: It's been awhile
18 since I have heard the yard sale speech, Mr. Chair.

19 CHAIR GRIFFIS: Yes.

20 BOARD MEMBER ZAIDAIN: I appreciate that.

21 COMMISSIONER MAY: Do I get any kind of
22 credit for having one in 25 years?

23 CHAIR GRIFFIS: I don't think there is any
24 grandfather in that provision, but we'll get on that.

25 Okay. Anything else then? Any other piece? I will

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1 just specify for the Board, I know we're well aware in
2 deliberating this case that there was a lot of talk
3 and discussion about the fact that if this opened, it
4 would encourage illegal and illicit behavior on the
5 street and out in front, and there was testimony about
6 drug dealers utilizing coffee and merchandise in the
7 store.

8 I tend to come from a different view in
9 many respects in looking at retail. I think that
10 retail actually can and does, has the potential on the
11 opposite site, of creating a safer street as it
12 encourages people, the neighbors and the residents of
13 the block, to walk to the corner and get what they
14 need and be out and be seen and, therefore, can, as
15 one might say, patrol their own street. So I would
16 certainly hope that this does. It has three years,
17 obviously, to make that happen and to be productive.

18 On those issues, Mr. Zaidain?

19 BOARD MEMBER ZAIDAIN: I was just going to
20 -- just to say one little piece in regards to the
21 three year issue. One of the reasons why I support
22 that is because in the OP report, it was noted that
23 there is a conflict between the actual zoning for this
24 property and then what's recommended for it under the
25 land-use plan.

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1 CHAIR GRIFFIS: Right.

2 BOARD MEMBER ZAIDAIN: And optimistically,
3 you would think that in a three year period, there
4 will be some sort of effort to rectify those two
5 conflicting issues or at least when this comes back to
6 the Board.

7 CHAIR GRIFFIS: Right.

8 BOARD MEMBER ZAIDAIN: And hopefully, it
9 will be in a different zoning circumstance in order to
10 reflect what the planning efforts are there.

11 CHAIR GRIFFIS: Okay. Yes, and that goes
12 to the larger issue that I'm assuming, and I think
13 correctly assuming, that we're looking at this as a
14 special exception, which under the regulations in that
15 conflict, but then under the regulations of 2003, I
16 think, it would be established as a neighborhood
17 facility, and which would allow us to view this as a
18 special exception. And one of the critical pieces for
19 me in going in that direction is to look at the
20 previous Board, the previous BZA, actually approved a
21 special exception for use in this location, and I
22 think that is critical in our analysis. Pardon me?
23 Not yet. Critical in our analysis.

24 So I think that brings me up to a point of
25 action, which would be appropriate, and that is

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1 approval of Application 17100 pursuant to the special
2 exception for change of nonconforming use for the
3 premises of 129.

4 BOARD MEMBER ZAIDAIN: Second. I'm sorry,
5 I was -- you finished your motion, correct?

6 UNIDENTIFIED SPEAKER: No.

7 CHAIR GRIFFIS: 129 to 131 15th Street,
8 N.E., first floor only, at Square 1069, Lot 801 with
9 conditions as noted. And I would ask for a second.

10 BOARD MEMBER ZAIDAIN: I'll second now.
11 I'm sorry. I was just trying to beat Mr. Etherly to
12 the punch there.

13 CHAIR GRIFFIS: Yes, indeed. Thank you.
14 Further deliberation, comments?

15 VICE CHAIR MILLER: I have a comment and a
16 question, and my comment is also, we heard testimony
17 that there was going to be some kind of special stand
18 within this coffee shop for policemen, and so that was
19 one of the factors going towards minimizing crime in
20 the area.

21 CHAIR GRIFFIS: Yes, we certainly hope
22 that comes up.

23 VICE CHAIR MILLER: Right.

24 CHAIR GRIFFIS: I can't tell you how many
25 of these I have sat on that that's what they say

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1 they're going to do. But I do recall part of the
2 application involved a police officer, so maybe they
3 will.

4 VICE CHAIR MILLER: Right or they were
5 married to a police officer or something like that.

6 CHAIR GRIFFIS: Right.

7 VICE CHAIR MILLER: And my question was I
8 thought you might have alluded to a condition with
9 respect to lighting, but then you didn't say anything
10 about it. Is that going to be one of the conditions,
11 adequate lighting, or not?

12 CHAIR GRIFFIS: Yes. I'm sorry, I thought
13 I put that in there, but yes, I think that would be
14 appropriate in terms of the condition of the front and
15 rear of the property.

16 VICE CHAIR MILLER: Just that there be
17 adequate lighting or is there something more specific?

18 CHAIR GRIFFIS: I'll write up something
19 beautiful.

20 VICE CHAIR MILLER: Okay.

21 COMMISSIONER MAY: On that note, we did
22 get some photographs indicating what the current
23 lighting is.

24 CHAIR GRIFFIS: Yes.

25 COMMISSIONER MAY: Does that meet the

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1 definition of adequate lighting that you are
2 suggesting?

3 CHAIR GRIFFIS: You know, that's an
4 interesting point to look at.

5 COMMISSIONER MAY: Because, I mean,
6 adequate lighting otherwise is --

7 CHAIR GRIFFIS: No, and I think the
8 condition would be much more defined, but I, frankly,
9 don't have it within me this afternoon to say it.

10 COMMISSIONER MAY: Okay.

11 CHAIR GRIFFIS: But no, some of the
12 photographs concern me, which is why I have raised it
13 up.

14 VICE CHAIR MILLER: Yes.

15 CHAIR GRIFFIS: First of all, there is a
16 residential type fixture on the front adjacent to the
17 door. I don't think that's appropriate. The fact of
18 the matter, they shot the photographs at night, which
19 I appreciate, but even with the flash of the camera,
20 you see how dark it is. And so I think we have
21 crafted other lighting conditions that are very well
22 said and articulated, and I think that we can
23 certainly put that in with no trouble. Okay.

24 COMMISSIONER MAY: Okay.

25 CHAIR GRIFFIS: Anything else?

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1 MS. BAILEY: Mr. Chairman?

2 CHAIR GRIFFIS: Yes?

3 MS. BAILEY: The application was
4 advertised for 129 through 131 15th Street, but I
5 believe the testimony specifically was concerned with
6 129, so should the Board --

7 CHAIR GRIFFIS: Right, and that was my
8 hesitation in the middle of the motion, because I
9 don't recall, because as you remember, there is two
10 bays on the first level. So I really believe it is
11 just the 129. Am I correct or --

12 MS. BAILEY: I recall 129, Mr. Chairman.

13 CHAIR GRIFFIS: Right.

14 COMMISSIONER MAY: I don't -- I think it's
15 one and the same, because I think that the
16 differentiation is one, so that -- I don't think that
17 there is actually a property line between the two.

18 CHAIR GRIFFIS: That's right. That is the
19 issue.

20 COMMISSIONER MAY: So I think it's 129.

21 CHAIR GRIFFIS: The point of the fact is
22 it's one property.

23 COMMISSIONER MAY: Right.

24 CHAIR GRIFFIS: With two addresses, and
25 that's why we clarify for the first floor only, which

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1 is actually the address of 129. 131 is the second
2 floor. So, you know, that's the way it is. As you go
3 in, you go up, something like that. Anyway, we'll get
4 it all cleared up later.

5 COMMISSIONER MAY: Okay.

6 CHAIR GRIFFIS: Okay.

7 BOARD MEMBER ZAIDAIN: As advertised. How
8 about that?

9 CHAIR GRIFFIS: That sounds fabulous. All
10 right. If there is no other deliberation or
11 questions, clarifications in this massive confusion, I
12 would ask that all people in favor of the motion
13 signify by saying aye.

14 ALL: Aye.

15 CHAIR GRIFFIS: And opposed?

16 MR. MOY: Staff would record the vote as
17 5-0-0 on the motion of Mr. Griffis, the Chair,
18 seconded by Mr. Zaidain, also in favor of the motion
19 to approve, Ms. Miller, Mr. Etherly and Mr. May.

20 The next application is No. 17094 of Lujan
21 Lujan Lujan Columbia Road, LLC, pursuant to 11 DCMR
22 section 3103.2, for a variance from the floor area
23 ratio requirements under section 771, and a variance
24 from the off-street parking requirements under
25 subsection 2101.1, to allow commercial

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1 (restaurant/public hall) use of the third floor in the
2 C-2-B District at premises 1834 Columbia Road, N.W.,
3 Square 2551, Lot 27.

4 On January 13, 2004, the Board completed
5 testimony on the case and scheduled its decision on
6 February 3, 2004. The Board requested the following
7 posthearing documents. First, the applicant to
8 resubmit the FAR calculations and submit proposed
9 findings. That was submitted and that's in your case
10 folder as Exhibit 27. The Office of Planning was
11 requested to submit a supplemental report based on
12 information provided at the public hearing, and that's
13 in your case folders identified as Exhibit 28. And
14 that completes the briefing, Mr. Chairman.

15 CHAIR GRIFFIS: Good. Thank you very
16 much, Mr. Moy. Of course, as indicated, we did have a
17 supplemental report from the Office of Planning, which
18 had initially not been able to make a recommendation,
19 but is now recommending support and approval of the
20 application based on the fact that documentation could
21 be provided that indicated that the lowest level was a
22 cellar and, therefore, that the FAR calculations, as
23 provided, would be de minimis. We did have that
24 filed. It is in the record and we have reviewed and
25 deliberated on this.

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1 This is an interesting case, which
2 actually, as I recall, the filing of the application
3 was fairly confusing or at least not directly
4 identifiable. Although, in the Public Hearing, all
5 the questions that I had, in fact, were cleared up and
6 I have found great persuasiveness in the test that
7 needed to be met in terms of the variance relief.

8 First of all, in terms of the uniqueness,
9 I think it is substantial in the record of what
10 creates the uniqueness and, therefore, what the
11 practical difficulty arising out of it. First of all,
12 we have the diminished or small lot size. We have the
13 width of the property itself, and then within the
14 property there has been extensive testimony of the
15 stairwell. If looking at, as the provision of C-2-B
16 requires, mixed uses, you have to put residential
17 units in this building.

18 You realize by the time you get a code
19 required residential unit, there is nothing left below
20 it, meaning you're putting in two means of egress
21 stairs or whatever might need to be required also,
22 trying to accommodate the restaurant that is in
23 existence and the use.

24 Going to the parking, I think also, the
25 uniqueness and practical difficulty of providing

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1 parking is within the same elements. That is there is
2 no availability to provide that.

3 Now, I had some great concern when the
4 application first came in in terms of a parking
5 variance for a public hall, which is what this is
6 advertised and what it's just coming under. I find
7 that it is very persuasive. One might say the most
8 analogous use that the Zoning Regulations have to look
9 at this in terms of public hall.

10 I was very persuaded by the testimony of
11 what the actual program is, and the essence of music
12 and dancing is integral to the primary function of the
13 restaurant and the atmosphere, which they create,
14 which creates this unique restaurant establishment.

15 So all of that being said, although, there
16 was in the findings of facts, there was a statement
17 that I absolutely disagreed with, rather than stating
18 it, let me state what I do find. In reviewing the
19 adjacent properties, I find, at this point, that it's
20 actually not similar to most or a majority of them.
21 If you look at the photographs in the record, although
22 limited in nature, it seems evidenced that there is
23 more retail type sites with larger frontages and
24 perhaps not built straight into a row dwelling
25 structure.

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1 Obviously, the row dwelling structure
2 doesn't accommodate well mixed uses based on its
3 diminished width. In terms of whether this would
4 impair the intent and integrity of the Zone Plan or
5 Map or the public good, I think the public good
6 certainly not. I think there was extensive testimony
7 and the record provides evidence of the fact that this
8 actually has become an integral part of the
9 neighborhood and community and, therefore, is, in
10 fact, one of the positive aspects for the public good.

11 In terms of the Zone Plan and Map, I also
12 do not believe that this would have a negative impact
13 as is the diminished aspect of the relief required,
14 well, one would have to argue quite extensively that
15 this would destroy somehow the Zoning Regulations or
16 Map on which it is located.

17 So with that, I think we can move swiftly
18 into further deliberation under a motion. I would
19 move approval of Application 17098 for the variance
20 from the floor area ratio requirements and also the
21 variance from the off-street parking requirements,
22 which would allow the commercial use of the third
23 floor, the C-2-B District, premises 1834 Columbia
24 Road, N.W. And I would ask for a second.

25 VICE CHAIR MILLER: Second.

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1 CHAIR GRIFFIS: Thank you. Further
2 deliberations?

3 BOARD MEMBER ZAIDAIN: Yes, Mr. Chair.

4 CHAIR GRIFFIS: Yes, Mr. Zaidain?

5 BOARD MEMBER ZAIDAIN: I want to make sure
6 I'm clear on the cellar issue. This was the
7 submission, this was the only submission we received
8 on that issue, correct?

9 CHAIR GRIFFIS: Correct.

10 BOARD MEMBER ZAIDAIN: Okay. Okay. So
11 it's somewhat incomplete, but I guess we're taking --
12 although there is a certification or certified
13 architect stamp on it, which gives it additional
14 weight, but I guess we're taking it, at this point, to
15 the ground level of the structure and the rest of the
16 plat, which we're missing, notes it as being 3 feet, 8
17 inches, correct?

18 CHAIR GRIFFIS: What are you saying is
19 incomplete?

20 BOARD MEMBER ZAIDAIN: I mean, I would
21 assume this is just a photocopy of the calculations on
22 the sheet.

23 CHAIR GRIFFIS: It's one sheet.

24 BOARD MEMBER ZAIDAIN: Thank you for the
25 clarification.

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1 CHAIR GRIFFIS: Okay. So what Mr. Zaidain
2 was pointing out for the record and the transcript,
3 obviously, is yes, if you look at just the second
4 page, it wasn't clear what was being dimensioned, but
5 it's actually the dimension on --

6 BOARD MEMBER ZAIDAIN: Yes, that was --

7 CHAIR GRIFFIS: -- the existing
8 photograph.

9 BOARD MEMBER ZAIDAIN: Okay.

10 CHAIR GRIFFIS: Okay. Is that cleared up?

11 BOARD MEMBER ZAIDAIN: Yes, that cleared
12 it up.

13 CHAIR GRIFFIS: Okay. Good. Mr. May?

14 COMMISSIONER MAY: Yes. I have another
15 area that I'm confused about, and that has to do with
16 the public hall issue. First of all, let me say that
17 the fact that, you know, the basement is now actually
18 a cellar and the total FAR being requested is 1.59
19 instead of something much higher when they go into the
20 use of the third floor. I think that that makes me
21 much more comfortable with it.

22 I, frankly, don't agree that there is no
23 an architectural solution to this that would have
24 allowed residential use of the third floor. It would
25 have had to be different, but it certainly could have

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1 been done. It's done elsewhere. Other buildings that
2 are this wide and this tall have apartments above
3 them. It happens. It just would require a little bit
4 more work or maybe it's a lot more work, but it
5 certainly is feasible and the amount of work, you
6 know, we could get into in great length. However,
7 given that it's only a .9 increase over what's
8 allowed, I am much more comfortable with this notion
9 and I think it's acceptable for that reason.

10 The parking issue though is a bigger
11 question, because if this is just a restaurant, then
12 the OP calculation is that there are two parking
13 spaces, but if it's a public hall, then having done my
14 own sort of calculation on this and the square
15 footage, I mean, it could be 30 parking spaces that
16 they need to have in which case the level of relief is
17 much more significant.

18 I, frankly, don't know that the
19 application for public hall license or public hall use
20 here, because this is not the actual license,
21 obviously, is -- I'm not sure that that's even that
22 well considered at this point. I don't know for a
23 fact that they intend to charge a cover charge at the
24 door for people to walk in the door or whether it's
25 simply a matter of having -- you know, they have the

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1 entertainment and then they charge for drinks and that
2 sort of thing.

3 CHAIR GRIFFIS: That was in the testimony,
4 that they are charging.

5 COMMISSIONER MAY: They are charging now?

6 CHAIR GRIFFIS: Yes. I mean, no.

7 VICE CHAIR MILLER: No.

8 CHAIR GRIFFIS: They had planned to
9 charge, which is why they --

10 COMMISSIONER MAY: They had planned to
11 charge? Okay.

12 CHAIR GRIFFIS: -- they're doing the
13 public hall.

14 COMMISSIONER MAY: So in that case, I
15 don't know that there is really -- I mean, I don't
16 think that OP has addressed that particular question,
17 because certainly, they need more than two parking
18 spaces, which is what they say.

19 CHAIR GRIFFIS: Yes.

20 COMMISSIONER MAY: In the OP report. I
21 mean, OP's report seems to not even focus on or
22 mention the public hall.

23 CHAIR GRIFFIS: Ms. Miller?

24 VICE CHAIR MILLER: I have several
25 comments, many which will address some of Mr. May's

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1 concerns. First of all, I just want to note for the
2 record that the ANC supported the application as long
3 as the Board viewed this as an area variance, and that
4 variance, separate from the public hall issue, that
5 was the encroachment into the third and fourth floor,
6 that we saw that as an area variance, which we do.
7 And there were lots of letters in support of this
8 application. But in any event, I --

9 COMMISSIONER MAY: Would that -- I'm
10 sorry. Can I just pick up on that point? Would that
11 then be contrary to the notion of the public hall use,
12 because that goes into use, doesn't it?

13 VICE CHAIR MILLER: That's a hybrid
14 variance with the parking and they weren't really
15 addressing that. They were concerned about conversion
16 of residential uses to commercial uses.

17 CHAIR GRIFFIS: Right.

18 COMMISSIONER MAY: Right.

19 VICE CHAIR MILLER: The third and fourth
20 floor, and that one --

21 COMMISSIONER MAY: So it's not clear then
22 that the ANC would support the actual public hall use.

23 Is that right?

24 CHAIR GRIFFIS: No, I think it is clear.
25 Her point is that it is clear that they were looking

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1 at more of how the mixed use FAR requirement is
2 calculated for use.

3 COMMISSIONER MAY: All right. Well, let
4 me dig through my papers and find their report.

5 VICE CHAIR MILLER: Okay.

6 BOARD MEMBER ZAIDAIN: And actually, in
7 OP's supplemental report, in the second paragraph
8 under the supplemental analysis, they do, albeit
9 generally, address the parking variance. And the way
10 I interpret that is it's kind of a function of the
11 neighborhood. You know, they are saying that there is
12 just no opportunity to expand even though they are
13 asking for additional space. I'm just telling you the
14 way I read it.

15 COMMISSIONER MAY: But they are talking
16 about changing the use from simply restaurant to
17 restaurant and public hall, and so that should be
18 addressed more explicitly by OP because of the
19 increased requirement.

20 VICE CHAIR MILLER: I don't think they are
21 really changing the use. I think they have had music
22 there. They are just expanding into the third and
23 fourth floors.

24 COMMISSIONER MAY: Having music is not the
25 issue. It's charging at the door.

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1 BOARD MEMBER ZAIDAIN: Charging at the
2 door.

3 COMMISSIONER MAY: They would be --

4 BOARD MEMBER ZAIDAIN: Which if you think
5 about it logically, I mean, what does charging at the
6 door do in terms of drawing more traffic to a site?

7 COMMISSIONER MAY: Right.

8 BOARD MEMBER ZAIDAIN: I mean, it's one of
9 those things in the Zoning Regulations that I struggle
10 to comprehend.

11 COMMISSIONER MAY: Instead just a bar or a
12 restaurant. And I mean, you know, they can bring in
13 outside big name entertainment and start charging for
14 seats and that sort of thing. That's the sort of use
15 that they are venturing into with the public hall
16 aspect.

17 BOARD MEMBER ZAIDAIN: So the nature of,
18 the extent of the parking relief is what concerns you,
19 whether or not they are going for six or 30 or
20 whatever it may be?

21 COMMISSIONER MAY: Yes, yes. I just don't
22 feel like it has been -- OP's report, essentially,
23 says that there is no parking in this neighborhood to
24 start with, so why should we insist on parking here?
25 Well, that's one thing if you're saying that there are

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1 two parking spaces required. It's different if it's
2 35.

3 BOARD MEMBER ZAIDAIN: Yes.

4 COMMISSIONER MAY: I'm sorry. I
5 interrupted what you were saying.

6 VICE CHAIR MILLER: Okay. Well, okay. I
7 first want to finish with area variance and then go
8 into the parking. I heard a lot of testimony with
9 respect to the uniqueness of this property and the
10 prohibitiveness of converting it to residential use
11 for the third and fourth floors. The testimony I
12 heard was, in particular, with respect to there is one
13 stairwell that connects the first, second, third and
14 fourth floors that is interior to the business and
15 goes all the way to the fourth floor.

16 And in order for them to create
17 residential space upstairs, they would have to build
18 another stairway, which would encroach to a great
19 extent into the business, I think almost taking up too
20 much room, and it would cost -- the figures that they
21 threw out were \$100,000 to create an additional
22 staircase, and that it wouldn't work, because it would
23 take up so much room with respect to the restaurant.

24 We also heard that the fourth floor is not
25 suited for residential use. It has a weak floor

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1 structure and ceilings below allowable height, and it
2 would cost \$100,000 to bring that into compliance for
3 residential use.

4 In addition, we heard that the building is
5 not suited for tenants due to the noise of the
6 restaurant, and that the third and fourth floors have
7 never been used for residential use. And even if we
8 denied the variance, they still wouldn't be able to
9 use those floors. They would just be going to waste,
10 basically. Certainly, some buildings are built to
11 have residents on top and businesses below, but this
12 is an older building and it would be a prohibitive
13 conversion.

14 With respect to the adverse impact, this
15 business has been operating there for 10 years and we
16 heard testimony that they are contributing members to
17 the community, that there is no adverse impact that
18 has been brought to our attention.

19 With respect to the parking variance from
20 the requirements for public hall, this case came right
21 on top of our decision making in another case where we
22 denied the variance for public hall, finding that
23 Palmer controlled that case and, therefore, we could
24 not grant a variance in that case. And so I looked at
25 Palmer again for this case.

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1 Palmer is the case where there was a
2 Georgetown business that sold records and things like
3 that, and they wanted to expand their entertainment
4 and the court denied it for various reasons. And one
5 of the reasons was that the court, in that case, found
6 that there was no uniqueness. And I would confer with
7 the Chair in this case that there was a good case made
8 that this property wants to have music not just for a
9 profit, but as a contribution to the whole culture for
10 the community, and that if they are not allowed to
11 have music there, then they can't provide that.

12 And we heard testimony that they need to
13 charge for it in order to afford the music. So I
14 think that they do have uniqueness with respect to the
15 parking situation in addition to the structural
16 uniqueness. Also, in the Palmer case, the applicant
17 was a tenant, as opposed to the owner in this case.
18 It's the owner that has come before us.

19 Also, in the Palmer case, I think we were
20 just talking about economics, and I think we're not
21 just talking about economics here. I think we have to
22 keep in mind that we're talking about culture, and
23 that if we deny the variance, then that puts that
24 culture really at risk of being able to flourish in
25 that community. We haven't heard any testimony about

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1 adverse impact. I think that basically covers my
2 testimony.

3 CHAIR GRIFFIS: Good. Additional?

4 COMMISSIONER MAY: I guess I should answer
5 some of that. You know, I heard the same testimony
6 about the uniqueness of the property and the
7 difficulty of converting and, frankly, I just wasn't
8 convinced by it. I don't think that they have done
9 the truly exhaustive thing, because that's not what
10 they were setting out to do. I think if somebody else
11 came in here with the idea of trying to make use of
12 that residential space, they could certainly do it.

13 But, you know, all things considered, I
14 don't have a big issue with that expanded use of the
15 third floor and, you know, in light of the fact that
16 the basement is not a basement, it's a cellar, and,
17 therefore, it doesn't count in the FAR.

18 I also think, frankly, the cultural
19 argument just doesn't hold that much weight when we're
20 talking about a change from what is the current
21 situation. I mean, it's currently operating as a
22 restaurant. There is nothing that prohibits them from
23 having music, which is the cultural benefit that goes
24 with this, and dancing and whatnot. What we're
25 talking about is the ability to charge money at the

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1 door, which changes the nature of the use from simply
2 being a food, drink, music place to a destination for
3 people to go to for music, for performers, and that is
4 a significant change in use and it does have parking
5 impact on the neighborhood.

6 And is the neighborhood or the city
7 culturally poor, because that is not allowed in this
8 circumstance? Maybe it is, but that's not the sort of
9 question that we can get into. I just think that, you
10 know, we have to look at it in the bare facts. It's
11 going from restaurant to being a restaurant with a
12 public hall, and the big question there is parking,
13 and I'm just not compelled on the parking issue and I,
14 frankly, wish that we had had better exploration of
15 this from the Office of Planning.

16 VICE CHAIR MILLER: Well, Mr. May, they
17 currently do have music there and I didn't hear
18 testimony about this great increase in traffic that
19 was going to come about as a result of their being
20 able to charge at the door. I think it's an economics
21 issue. They were a new business. They finally --
22 they had been renting for many years and they finally
23 purchased it and in order to make it economically,
24 they said they needed to charge at the door. So I
25 don't think that there is a drastic change going on

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1 with respect to use or impact on parking.

2 COMMISSIONER MAY: It's --

3 VICE CHAIR MILLER: And you know -- excuse
4 me.

5 COMMISSIONER MAY: It's all right.

6 VICE CHAIR MILLER: I mean, we often hear
7 neighbors come to testify about concerns about impacts
8 on parking in the neighborhood and we didn't hear that
9 in this case.

10 COMMISSIONER MAY: Well --

11 BOARD MEMBER ZAIDAIN: I guess one of the
12 things that -- well, I'm sorry, Mr. May. Go ahead.

13 COMMISSIONER MAY: No, I just -- you know,
14 I'm trying to look at this just from a zoning point of
15 view, and the distinction between public hall and
16 restaurant is the fact that they charge at the door.
17 And, you know, without going into the regulations and
18 giving you chapter and verse on how that use is
19 essentially different from restaurant use, I'm simply
20 stating that it is different and that there are
21 significantly different parking requirements that are
22 associated with it.

23 BOARD MEMBER ZAIDAIN: Right.

24 COMMISSIONER MAY: And that's because of
25 an anticipated increased demand. And the theory that

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1 I -- I mean, what I'm going with is the fact that this
2 is going to -- you know, now you can pay more for the
3 talent that you're going to bring in. There are going
4 to be more people coming in from faraway places to be
5 able to go here. I mean, that's the theory behind it
6 or at least that's what I read into the regulation
7 there.

8 The point is that from a zoning point of
9 view, there is a very significant parking requirement
10 difference in public hall use and restaurant use, and
11 that's what it boils down to for me, and it is a
12 change from what was existing.

13 CHAIR GRIFFIS: Mr. Zaidain?

14 BOARD MEMBER ZAIDAIN: Well, I agree with
15 everything that Mr. May is saying, particularly the
16 cultural argument. I mean, I appreciate the cultural
17 argument, but it doesn't really apply to the zoning
18 analysis.

19 CHAIR GRIFFIS: Can I interject there,
20 because it does?

21 BOARD MEMBER ZAIDAIN: How so?

22 CHAIR GRIFFIS: One of the tests is the
23 public good.

24 BOARD MEMBER ZAIDAIN: Oh, okay.

25 CHAIR GRIFFIS: And what is the

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1 measurement of the public good? It's not just do we
2 all have our own individual parking spaces.

3 BOARD MEMBER ZAIDAIN: I'm not trying to
4 argue that point all the way, to be honest with you,
5 but I was just trying to move the discussion more
6 focused to the zoning issues. I mean, when you look
7 at the parking, I mean, I am familiar with the site,
8 I'm familiar with that neighborhood, and I think we
9 are all in agreement that they have made a test for a
10 variance from the FAR requirement, which is minimal,
11 and then you have got this change of use.

12 However, we really don't know either way
13 what the magnitude in the change of use is going to
14 be. Under the Zoning Regs with the public hall, yes,
15 it's technically going to be a little bit more
16 intense. But in trying to work through that, and
17 whether or not they make the test, if you think about
18 the neighborhood, where would they provide parking?

19 CHAIR GRIFFIS: Right.

20 BOARD MEMBER ZAIDAIN: Well, I mean, I do
21 not see any opportunities off-site. There is no
22 parking on the street or very limited. There is no
23 parking on-site. So, you know, the fact that they
24 want to start charging money at the door and the fact
25 that they are located in probably the most dense

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1 neighborhood in the District of Columbia, does that
2 make them fail for a variance test? I mean, I tend to
3 say no.

4 CHAIR GRIFFIS: All right. I think --

5 BOARD MEMBER ZAIDAIN: I mean, that's what
6 I struggle with. I think all the issues that were
7 raised are --

8 COMMISSIONER MAY: But there are reasons
9 why nightclubs and things wind up getting located in
10 areas different in the city. They don't wind up being
11 in the most dense neighborhood in the city.

12 BOARD MEMBER ZAIDAIN: Right.

13 COMMISSIONER MAY: Because people could
14 park there.

15 BOARD MEMBER ZAIDAIN: Well, no. I guess
16 what I'm saying -- I guess I'm asking a question.
17 Does the way you view this in the sense that it's a
18 nightclub in a dense neighborhood, does that make them
19 fail the variance test, because they cannot provide
20 the parking?

21 COMMISSIONER MAY: If we're talking about
22 a change in use from a restaurant --

23 BOARD MEMBER ZAIDAIN: Yes.

24 COMMISSIONER MAY: -- to a public hall,
25 yes, I think it does.

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1 BOARD MEMBER ZAIDAIN: You think it does?
2 Okay.

3 COMMISSIONER MAY: Yes. I have to say,
4 frankly, one of the other troubling things about this
5 is we don't really even know what the parking really
6 actually is here. The OP report says two spaces. You
7 know, there is no relief requested in this form, in
8 the self certification form. I mean, maybe, I mean,
9 you know, I'm only saying 30 spaces, because I did,
10 you know, a back of a napkin calculation.

11 BOARD MEMBER ZAIDAIN: Right. We're
12 discussing magnitude, but, I mean, I think, I mean,
13 unless I can be corrected, I think, I mean, you have a
14 point in terms of making sure that we're clear.

15 COMMISSIONER MAY: Well, I mean, the thing
16 about restaurant use and the magnitude of the relief
17 is that they already are operating in that form. So
18 it's not -- you know, it's not a significant change in
19 use and not a significant change in the parking
20 requirements. Going to a public hall, I think it is.

21 VICE CHAIR MILLER: Mr. Chairman, I just
22 want to make a couple more points on this parking
23 issue. First of all, I think there wasn't an issue of
24 parking in this case even though they need a variance
25 from that requirement, and that is why we don't have a

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1 lot of information about it. Second, I think that I
2 was under the impression from the hearing that most of
3 the clientele live in that community and that they
4 walk to the restaurant. There is not an issue about
5 cars coming from far away. And third, that I don't
6 think this should be compared to a nightclub. That
7 really is so different from what I heard being
8 described at the hearing. It seemed more as a
9 community cultural restaurant with music.

10 So at this point, I am prepared to make a
11 motion to approve Application No. 17094 of Lujan Lujan
12 Lujan Columbia Road, LLC, pursuant to 11 DCMR section
13 3103.2, for a variance from the floor area ratio
14 requirements under section 771, and a variance from
15 the off-street parking requirements under subsection
16 2101.1, to allow commercial (restaurant/public hall)
17 use of the third floor in the C-2-B District at
18 premises 1834 Columbia Road, N.W., Square 2551, Lot
19 27.

20 BOARD MEMBER ETHERLY: Seconded, Mr.
21 Chair.

22 CHAIR GRIFFIS: Good. Thank you all very
23 much. There is a motion on the table that has been
24 seconded. Ms. Miller, did you want to speak more to
25 it or there is need?

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1 VICE CHAIR MILLER: No.

2 CHAIR GRIFFIS: I'm just giving you the
3 opportunity. Mr. Etherly, did you want to respond as
4 the seconder?

5 BOARD MEMBER ETHERLY: Not at this point.

6 CHAIR GRIFFIS: Okay. Further, Mr. May?

7 COMMISSIONER MAY: Yes. I would like to
8 make one last ditch effort here to separate this into
9 two votes, one on the variance for the FAR and
10 separate the parking, because I would like to be able
11 to vote in favor of the FAR and not vote against it
12 simply because I'm against the parking variance, and I
13 will offer an amendment, if you will, to the motion to
14 that effect.

15 CHAIR GRIFFIS: Ms. Miller, do you --

16 VICE CHAIR MILLER: I could accept that.
17 Okay. I could repeat the motions separately.

18 BOARD MEMBER ETHERLY: I'll just note I
19 appreciate where Mr. May is coming from in this
20 regard, but I would not be in support of parsing out
21 the vote. I would just as soon keep the motion as is
22 and vote on it in its entirety. I understand where
23 Mr. May is coming from, but I just don't see eye to
24 eye with him on this particular issue.

25 CHAIR GRIFFIS: Good. I tend to agree.

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1 COMMISSIONER MAY: I don't understand why
2 you wouldn't allow the vote separately though. The
3 vote will still be recorded. The motion will still
4 wind up passing, it seems to me. You are just -- you
5 don't want to have the issue that clear?

6 BOARD MEMBER ETHERLY: I don't think it's
7 a matter of clarity. I disagree with you in principle
8 on the argument around parking, and I feel strongly
9 enough about it, such that I just -- I would disagree
10 with parsing it out. I just think parsing it out
11 gives it a little more credence than I think it
12 deserves. I understand where you're coming from, but
13 I just disagree with you, Mr. May.

14 COMMISSIONER MAY: Okay. Fine. I'm quite
15 prepared to vote against the motion no matter how it's
16 formulated if you want to go that route.

17 VICE CHAIR MILLER: All right.

18 CHAIR GRIFFIS: Anything else?

19 VICE CHAIR MILLER: So we're leaving the
20 motion as I originally stated it? Okay.

21 CHAIR GRIFFIS: Very well. It seems to me
22 the parking issue and, Mr. Etherly, I appreciate your
23 opinion on that in terms of the motion and also in
24 terms of the substance. It seems to me Mr. May has
25 brought up an interesting point of, you know, what are

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1 we giving relief to if we can't count the number that
2 they actually have to be relieved from.

3 However, I put a lot of credence into and
4 is further persuaded by what Mr. Zaidain was saying,
5 and that is one, we're looking at the existing use,
6 two, and most importantly the uniqueness of the site,
7 and so where would you provide? Whether it's a relief
8 from two or 10, it's still the same uniqueness of the
9 site. There is still practical difficulty of
10 requiring that.

11 I do agree that there is a higher count
12 required for a public hall, but then I do go back to
13 what Ms. Miller is saying in her deliberation on this,
14 is that look, this is not a traditional public hall,
15 which one, we have looked at and denied in other
16 aspects. This is part of, an integral part of the
17 functioning of this establishment and based on also
18 the peculiar circumstances that has arisen as this
19 restaurant, as established, was a tenant and now
20 become an owner and is responsible for the entire
21 building.

22 The requirement to provide .1 FAR
23 residential is such a practical difficulty, but the
24 requirement to also maintain and run this restaurant
25 and be the landowner, I think, goes to the fact of how

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1 they need to run their business and how they need to
2 not change this into, you know, a typical or whatever,
3 an American restaurant, but rather keep the unique
4 quality of what has been established and has been
5 there for numerous years.

6 And so I think it's clear enough for us to
7 look at the relief and the relief and the number of
8 relief based in the parking and also in the FAR, and
9 so I will strongly support the motion. Others?

10 BOARD MEMBER ZAIDAIN: Well, I guess I'm
11 in the middle here. It's kind of becoming
12 commonplace. I agree with the test as you elaborated
13 on it, and I think Mr. May and I -- well, I kind of
14 questioned him to a point where I understand where he
15 is coming from and that we fundamentally disagree.
16 However, I have to speak frankly. I would be more
17 comfortable with having some clarity on exactly what
18 the requirement is and what the relief level is just
19 so that it can be more clearly deliberated. Now --

20 COMMISSIONER MAY: Yes, another reason to
21 separate the vote.

22 BOARD MEMBER ZAIDAIN: Maybe I should
23 abstain from the vote.

24 CHAIR GRIFFIS: Well, I don't see. Let me
25 just ask you where is the clarity in deliberation?

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1 We're looking at a variance from the parking
2 requirement. If I tell you that there's 55 spaces
3 required, how is that giving you clarity for further
4 deliberation?

5 BOARD MEMBER ZAIDAIN: Well, I think it
6 would give me clarity on the magnitude of what we're
7 looking at, and where I am coming from is I feel
8 confident that they could overcome that magnitude. I
9 would just feel more comfortable having some clarity.
10 I don't know for sure.

11 CHAIR GRIFFIS: Okay. Others? I think --

12 COMMISSIONER MAY: I'll just --

13 CHAIR GRIFFIS: Yes? I'm sorry.

14 COMMISSIONER MAY: I'm sorry. I will just
15 say one more time. This is a change in use to a
16 public hall. Cultural considerations aside,
17 uniqueness of the property aside, it is still a change
18 in use from a restaurant to a public hall. It has
19 greater parking requirements. And now, we're
20 preparing to make a vote and we don't even know how
21 many parking spaces they are getting relief from, and
22 I don't think that that's the right thing to do.

23 And I think that, as I said before, I am
24 perfectly prepared to go ahead and vote in favor of
25 the variance on the FAR, but I am not prepared to vote

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1 for a blanket parking variance simply because this is
2 somehow different from every other public hall in town
3 that could be a nightclub or be something else that is
4 much more unpalatable at least in terms of this Board.

5 VICE CHAIR MILLER: Well, we do have in
6 the record that OP assessed we're talking about two
7 spaces, and I'm not sure with respect to Mr. Zaidain's
8 position, whatever that number is, why that would
9 change your vote.

10 BOARD MEMBER ZAIDAIN: Well, because I do
11 think that, although I think it gets overplayed quite
12 a bit, I do think magnitude in the level of relief, as
13 opposed to what is being requested, is something that
14 we need to weigh. And I think by not having clarity
15 on that, it reflects that we have not thought that
16 through clearly to say, I think, that it is giving us
17 a blanker parking variance.

18 Now, going back to what I said earlier, I
19 feel pretty confident in that once clarity is brought,
20 I think they would still make the test, but, however,
21 I think, you know, there is some level of encumbrance
22 on this Board to do the due diligence to make sure
23 there is clarity on what is being asked, what the
24 level of relief is and what the test is in granting
25 that relief. That's just my opinion.

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1 BOARD MEMBER ETHERLY: Well, I think Ms.
2 Miller's clarification is a good one. I don't think
3 it's a lack of clarity. I think it's just a
4 disagreement on the part of some Board Members as to
5 what OP had stated in their report twice now with the
6 supplemental report and with their first report.

7 BOARD MEMBER ZAIDAIN: Right.

8 BOARD MEMBER ETHERLY: And of course,
9 disagreement is not unusual and is oftentimes
10 warranted, and I think we just have a disagreement in
11 the interpretation of the report.

12 BOARD MEMBER ZAIDAIN: Well, I mean, well,
13 then, trust me, I don't want to be confused and I
14 certainly don't want to abstain from the vote. So
15 please, if I'm missing something, please, tell me.

16 BOARD MEMBER ETHERLY: Well, I mean, quite
17 honestly, you know, I mean, for the sake of time, I
18 mean, you know, the head count is what it is. Let's
19 move forward and let's just have the vote and get done
20 with the case.

21 BOARD MEMBER ZAIDAIN: I agree with you,
22 Mr. Etherly, I do.

23 CHAIR GRIFFIS: And that's fine, but I
24 don't want to diminish some of the arguments that were
25 said, and there's two things and perhaps that will be

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1 the last word. First of all, to find clarity, what do
2 we do? We delay a decision for another week, two
3 weeks, we ask OP. OP has told us several things.

4 First of all, in their first submission OP
5 said that there is not room on the lot for additional
6 parking and no off-site parking is proposed, right?
7 They had their calculations at eight parking spots
8 were required. Two are existing and relief from
9 variance from six. And then we have the supplemental
10 in which they are saying two. I'm not sure if they
11 are messing up. I'm not sure they are going to
12 provide the clarity that we need.

13 But my confidence goes to, and although
14 Mr. May's strong statement about how we are disrupting
15 and doing things that may well put us into difficulty,
16 but I'm sorry, that's not a clear statement and I'll
17 clarify that later, but my confidence goes to looking
18 at the relief from the variance from the parking. I
19 would have looked more appropriately at the ANC in
20 their submission and in their testimony.

21 This ANC 1-C, I must say, this Board has
22 complimented extensively and this is no case that
23 doesn't fall within what we come to expect from this
24 ANC as one of the most comprehensive submissions of
25 the ANC based on regulation, based on the test, based

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1 on all of the points in the record. In fact, this ANC
2 looked at us and said if this is a use variance, they
3 did their own analysis and indicated if it was a use
4 variance, that they would not support it and would
5 actually take a different course of action. But in
6 their analysis, they believe that it was strictly an
7 area variance and that we should proceed in that
8 fashion.

9 My point being in their clarity, in their
10 depth, in their substantive analysis, in their public
11 meetings, they clearly have looked at the parking
12 issue and I think that's what we would be weighing.
13 If we start talking magnitude, you know, the chapter
14 in the regulation gives us the table that tells us how
15 many spaces have to be made, we would have to be
16 weighing that. But now, we have the existing
17 condition and the ANC is saying look, we weighed
18 reality and it hasn't raised a problem, and that's
19 what I can strongly rely upon, is the ANC's
20 recommendation to approve this.

21 So with that, I would ask for last
22 comments and deliberation. Not noting any, I would
23 then ask for all those in favor of the motion to
24 signify by saying aye. Aye.

25 VICE CHAIR MILLER: Aye.

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1 BOARD MEMBER ETHERLY: Aye.

2 CHAIR GRIFFIS: And opposed?

3 COMMISSIONER MAY: Opposed.

4 CHAIR GRIFFIS: Abstaining?

5 BOARD MEMBER ZAIDAIN: Abstaining.

6 MR. MOY: The staff would record the vote
7 at 3-1-1 on the motion to approve, the motion of Ms.
8 Miller, the Vice Chair, seconded by Mr. Etherly, also
9 in favor of the motion to approve, Mr. Chairman,
10 opposed, Mr. May, abstained, Mr. Zaidain.

11 CHAIR GRIFFIS: Very well. Thank you.
12 Let's call the next case then.

13 COMMISSIONER MAY: Before we do, Mr.
14 Chairman.

15 CHAIR GRIFFIS: Yes.

16 COMMISSIONER MAY: Let me just say it has
17 been a pleasure serving on the BZA and I am taking my
18 leave now. This will be my last day, sir.

19 CHAIR GRIFFIS: Is this it? You have no
20 other cases?

21 COMMISSIONER MAY: I have no other cases.

22 CHAIR GRIFFIS: Well --

23 COMMISSIONER MAY: Thank you very much.

24 CHAIR GRIFFIS: I wish I had known that.
25 We could have popped some I don't know what, chocolate

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1 or something. Take a flower on your way out. There
2 are fresh ones on the counter.

3 COMMISSIONER MAY: Thank you very much. I
4 will be back Friday for a Zoning Commission.

5 VICE CHAIR MILLER: Thank you.

6 BOARD MEMBER ETHERLY: See you.

7 BOARD MEMBER ZAIDAIN: All right, buddy.
8 Take care.

9 MR. MOY: Okay. The next application is
10 No. 17102 of Robert and Jennifer Beylickjian, pursuant
11 to 11 DCMR section 3104.1, for a special exception to
12 allow the construction of a two-story rear addition to
13 a single-family detached dwelling under section 223,
14 not meeting the side yard section 405 requirements in
15 the R-1-B District at premises 3415 McKinley Street,
16 N.W., Square 1997, Lot 76 (822).

17 On January 20, 2004, the Board completed
18 testimony on the application and scheduled its
19 decision on February 3, 2004. The Board requested
20 additional information, which is in the form of
21 architectural drawings by the applicant, which was
22 submitted on the day of the hearing. The only other
23 submission to the file has been a letter from a John
24 Grabner dated January 19, 2004 that was received by
25 the Board on January the 20th and is a statement

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1 clarifying ownership of the property fence, and that
2 is identified as Exhibit No. 30. And that completes
3 the briefing, Mr. Chairman.

4 CHAIR GRIFFIS: Thank you, Mr. Moy. Very
5 well. Let's take this up. This special exception,
6 Mr. Moy did note that we had asked for or left the
7 record open for certain responses. We had not
8 received some. The architectural drawings by the
9 applicant, we had received, Exhibit 29. I think the
10 critical aspect of this, looking at the special
11 exception report, was any sort of adverse impact to
12 light and air and use privacy of the adjoining
13 neighbors.

14 If you recall, we did have testimony and
15 there was the adjacent neighbor present on this case
16 that had great concern. I think the majority of the
17 substantive complaints arose from the construction
18 impact, and I think we brought some clarity to that
19 about that, it being outside of our jurisdiction.
20 There was some destruction of or potential for
21 destruction on the adjacent property and then building
22 materials and nails and such. I would certainly
23 assume that that would all be remedied.

24 In terms of the privacy issue of the
25 adjacent property, I believe that the concern was

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1 raised about how one would actually maintain the
2 addition based on its proximity to the side yard.
3 It's an interesting point whether one would have to go
4 over onto the adjacent property just to get to
5 whatever it be, paint or clean the gutters on that
6 side.

7 However, I am not persuaded by the fact
8 that that is actually required, and I'm not persuaded
9 on two points. First of all, I think there probably
10 is adequate way to secure a ladder that would reach to
11 the heights of the new addition. Secondly, the
12 existing structure is there and has been there for
13 decades and, obviously, it has been able to be
14 maintained.

15 Also, there was concern about the roof
16 pitch and the roof lines in terms of water runoff and
17 also maybe even ice sheeting and such. There was
18 testimony in the record from the architect that they
19 were going to put -- in fact, there is a photograph
20 that shows the installation of a rain gutter and
21 leader on that side. Also, I think part of the test
22 of the 223 is to show that this addition is in
23 character.

24 If you look at the side elevations as
25 provided in the documents, you will see that the roof

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1 pitch line, shape and massing is quite in character
2 with the existing building and I think that, in fact,
3 it would be difficult to picture a different type of
4 roof pitch, slope or direction on an addition of this
5 nature. And therefore, I am not persuaded that it
6 actually creates any sort of adverse impact, but, in
7 fact, I think it provides us with the applicable test
8 requirement under 223.

9 There also is the adjacent. Well, there
10 is a very deep rear yard and the photographs, I think,
11 also indicate, I'm just trying to reference them from
12 my own recollection, the amount of open space. You
13 know, clearly, photographs aren't always true, but
14 there are several things that I look at in photographs
15 and I won't belabor all of that, aspects that I look
16 at, but one of the things that struck me in the
17 photographs in this case is look at the size and
18 maturity of the trees.

19 I mean, the size of the trees and maturity
20 of those don't grow in small cramped spaces without
21 open space and light and air. Granted, they are not
22 all directly on this, the instant property, or the
23 adjacent neighbors. There is an open area on the
24 opposite side, but I think it goes to the point that
25 I'm trying to make.

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1 So let me open it to others, if there is
2 any other comments, deliberation on this.

3 BOARD MEMBER ZAIDAIN: Mr. Chair?

4 CHAIR GRIFFIS: Yes?

5 BOARD MEMBER ZAIDAIN: I agree with
6 everything you said and in recalling the testimony
7 from the party in opposition, I think there were some
8 valid points raised by that party. However, a lot of
9 them were more dealing with construction and, frankly,
10 possible trespass on her property, and no action that
11 we take here today would grant somebody relief from
12 the trespassing laws. So I am hopeful that the two
13 neighbors can work that out.

14 But I felt that the test for the special
15 exception relief under 223 was pretty clear and was
16 established in the record and a lot of the previous
17 deliberation. I will go ahead and make the motion to
18 approve Application 17102 of Robert and Jennifer
19 Beylickjian, pursuant to 11 DCMR section 3104.1, for a
20 special exception to allow the construction of a two-
21 story rear addition to a single-family detached
22 dwelling under section 223, not meeting the side yard
23 requirements in the R-1-B District at premises 3415
24 McKinley Street, N.W.

25 CHAIR GRIFFIS: Well, I second. Good.

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1 The motion is before us. Is there any further
2 discussions, Ms. Miller?

3 VICE CHAIR MILLER: I just want to note
4 for the record that ANC 3-4-G submitted a report in
5 support of the application and OP also submitted a
6 report in support of the application.

7 CHAIR GRIFFIS: Excellent. Anything
8 further? Not noting any further deliberation on the
9 case, I would ask for all those in favor of the motion
10 to signify by saying aye.

11 ALL: All.

12 CHAIR GRIFFIS: And opposed?

13 MR. MOY: Staff would record the vote as
14 3-0-2 to approve the application on the motion of Mr.
15 Zaidain, seconded by the Chair, also in favor of the
16 motion, Ms. Miller, the Vice Chair. We have a Board
17 Member and a Zoning Commission Member not present, not
18 participating on the application.

19 CHAIR GRIFFIS: Lucky we all agree.

20 MR. MOY: The next application is No.
21 17079 of Mark Lee Phillips, pursuant to 11 DCMR
22 section 3104.1, for a special exception to increase
23 the number of sleeping rooms in a bed and breakfast
24 (home occupation) from two to four or six under
25 subsection 203.8, and the provisions governing special

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1 exceptions within the Capitol Hill Overlay District
2 under subsection 1202.1, in the CAP/R-4 District at
3 premises 417 A Street, S.E., Square 818, Lot 27.

4 On January 6, 2004, the Board convened to
5 decide the application. After deliberation, the Board
6 opened the record to receive additional information
7 for its decision on January 27, 2004. The Board
8 subsequently revised its schedule to convene the case
9 at its regularly scheduled public meeting on February
10 3, 2004. I think staff is going to conclude its
11 briefing here, Mr. Chairman.

12 CHAIR GRIFFIS: Very well. Thank you.
13 What was the last date you indicated? Is that what
14 threw you off here?

15 MR. MOY: The last date, sir?

16 CHAIR GRIFFIS: Yes. I'm sorry. It seems
17 like you were stating something that happened on a
18 last date. Is that were you concluded your opening?
19 That's all right. Don't worry about it.

20 BOARD MEMBER ZAIDAIN: Mr. Chair, this
21 is --

22 CHAIR GRIFFIS: Yes, it probably didn't.

23 BOARD MEMBER ETHERLY: I mean, this is
24 fairly straightforward, wouldn't you say, Mr. Chair?

25 CHAIR GRIFFIS: I agree. It is very

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1 straightforward.

2 BOARD MEMBER ETHERLY: I mean, I would be
3 more than happy to move that the Board adopt the
4 proposed order, which would reflect the decision of
5 our Board on January 7, 2003.

6 CHAIR GRIFFIS: Excellent. Is there a
7 second?

8 BOARD MEMBER ZAIDAIN: We're doing 16823
9 now?

10 CHAIR GRIFFIS: Gosh, I sure hope so.

11 BOARD MEMBER ZAIDAIN: Mr. Moy, we're in
12 B&B muddy water here.

13 MR. MOY: We're on --

14 BOARD MEMBER ZAIDAIN: We're doing
15 Gonzalez?

16 MR. MOY: We're on Application 17079.

17 BOARD MEMBER ZAIDAIN: That's what I
18 thought. That's what I thought.

19 CHAIR GRIFFIS: Boy, we were in a
20 different cycle there.

21 BOARD MEMBER ETHERLY: I will withdraw
22 that motion. I will withdraw that motion, Mr. Chair,
23 until the appropriate time.

24 BOARD MEMBER ZAIDAIN: Just hold off,
25 because we'll need that motion in a minute, Mr.

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1 Etherly.

2 CHAIR GRIFFIS: Yes.

3 BOARD MEMBER ZAIDAIN: Just hang onto
4 that.

5 CHAIR GRIFFIS: I thought we were, in
6 fact, doing that, in that direction. Okay. Well,
7 there it is.

8 BOARD MEMBER ZAIDAIN: Yes, good cover.

9 CHAIR GRIFFIS: Thank God someone was
10 brave enough to ask.

11 BOARD MEMBER ZAIDAIN: I am the fed. I'm
12 supposed to look stupid, right?

13 CHAIR GRIFFIS: That's right. Okay. That
14 being said, did anyone want to open this up? I think
15 I can do a general. As the hearing opened up, we were
16 asked to look at whether this was a matter of law or
17 not. I think the Board has and did leave the record
18 open to have that information submitted. And if not,
19 there is a course of action in terms of the special
20 exception, which would increase from two bedrooms to
21 four.

22 Ms. Miller, did you have opening comments
23 in addition?

24 VICE CHAIR MILLER: I have lots of
25 comments. I don't know if you want me to start the

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1 discussion or not.

2 CHAIR GRIFFIS: Indeed.

3 VICE CHAIR MILLER: Okay. This case
4 involves a bed and breakfast that currently has two
5 sleeping rooms and wants to increase the number of
6 sleeping rooms under subsection 203.8, and the
7 provisions governing special exceptions within the
8 Capitol Hill Overlay District under subsection 1202.

9 Properties located in the Capitol Hill
10 Historic District, it has been certified as a
11 contributing building and, therefore, the parking
12 requirements were waived pursuant to 2100.5. The
13 property is located in ANC 6-B. ANC 6-B submitted a
14 report in opposition to the application.

15 Okay. Let's see. OP initially stated in
16 its November 21, 2003 report that it could not
17 recommend approval of the application for a special
18 exception because of outstanding issues regarding the
19 potential impacts of noise, traffic and parking that
20 needed to be addressed by the applicant. OP then
21 submitted a supplemental report dated November 26,
22 2003 recommending approval on grounds that DOT had
23 reviewed the application and determined that the
24 proposed increase to four guest rooms would not
25 adversely impact parking in the neighborhood. The

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1 Board granted party status to five neighbors who were
2 joined as one party.

3 Parking was a big issue in this case, but
4 I think that the threshold issue in this case was
5 whether or not the applicant could increase the
6 sleeping rooms from two to four as a Matter-of-Right,
7 and the applicant argued that pursuant to 203.8(c)(1),
8 as the property is a dwelling that has been certified
9 as contributing to historic district, that it's
10 entitled as a matter of law to increase its number of
11 sleeping rooms from two to six.

12 We took a look at the statutory language
13 and at the hearing, ANC -- well, ANC in its report and
14 OP at the hearing disagreed with that interpretation.

15 And upon looking at the statutory language, I would
16 suggest that they are not entitled as a Matter-of-
17 Right to increase the sleeping rooms from two to six,
18 but may do so by special exception.

19 203.8(c) provides that the maximum number
20 of sleeping rooms in a bed and breakfast home
21 occupation shall be two, except: (1) Pursuant to
22 203.10(b), the maximum number of sleeping rooms may be
23 increased to four or in a dwelling that is a historic
24 landmark or that is located in a historic district and
25 certified by the State Historic Preservation Officer

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1 as contributing to the character of that historic
2 district, the number of sleeping rooms may be
3 increased to six.

4 203.8(c) specifically cross references
5 203.10(b), which authorizes the Board to grant by
6 special exception modifications that are listed as
7 conditions in 203.8. It just says that general
8 statutory construction and the language says pursuant
9 to 203.10(b), it must apply to the second part of this
10 phrase, as well as the first part, because it uses the
11 word or.

12 I mean, basically, if you take out a lot
13 of the qualifying language about contributing to the
14 character, etcetera, you could read it pursuant to
15 203.10(b), the maximum number of sleeping rooms may be
16 increased to four or in the case of historic
17 dwellings, may be increased to six. For me, the use
18 of the word may and the specific reference to 203.10
19 clearly indicate that this increase is not Matter-of-
20 Right, but by special exception.

21 CHAIR GRIFFIS: Do you want to hear
22 comments on that from the Board?

23 VICE CHAIR MILLER: Sure, yes.

24 CHAIR GRIFFIS: I think it's -- you could
25 hear comments from the Board.

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1 BOARD MEMBER ZAIDAIN: Well, the only
2 thing I will say is it's my understanding that, you
3 know, we asked for it. We put this decision off and
4 we asked for some legal briefings, which we did not
5 receive, and I was disappointed in that. I thought
6 this would have been a good issue to discuss.

7 However, Ms. Miller has thoroughly
8 researched the issue, and I think she has given a good
9 argument on how it should be interpreted, and I agree
10 with it and I think it should go forward as a special
11 exception. But like I said, I was anticipating some
12 pretty good -- especially given the parties involved,
13 I was anticipating some detailed legal briefings on
14 the issue.

15 CHAIR GRIFFIS: Well, we did some.

16 BOARD MEMBER ZAIDAIN: Well, they were
17 intertwined in a prehearing statement that was either
18 for a special exception or an appeal or whatever.

19 CHAIR GRIFFIS: But the applicant fairly
20 sufficiently laid out the argument for it. What you
21 are saying is we left the record open for the parties.

22 BOARD MEMBER ZAIDAIN: Specified
23 briefings, right.

24 CHAIR GRIFFIS: Right. Okay. I just want
25 to be clear.

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1 BOARD MEMBER ZAIDAIN: Right, but the
2 applicant involved was trying to argue an appeal type
3 of case when the application was for a variance, and I
4 found that troubling to find some, you know, pointed
5 legal discussion on the interpretation and we didn't
6 get it.

7 CHAIR GRIFFIS: Okay.

8 BOARD MEMBER ZAIDAIN: But be that as it
9 may.

10 CHAIR GRIFFIS: Good. So you are
11 concurring with Ms. Miller's assessment of the
12 regulations?

13 BOARD MEMBER ZAIDAIN: I believe so.

14 VICE CHAIR MILLER: Just to be complete,
15 can I also address the --

16 BOARD MEMBER ZAIDAIN: Was there something
17 radical I missed?

18 VICE CHAIR MILLER: Well, no, that was an
19 assessment based on the statutory construction, but
20 also, just to be complete, the appellant also cited
21 some case law and BZA law. They cited, in support of
22 their application, they had cited DuPont Circle
23 Citizens' Association versus D.C. BZA, which upheld a
24 BZA decision regarding the Swan House. But as the
25 Zoning Administrator stated, they upheld the decision,

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1 but they didn't address this issue. Even when the --

2 CHAIR GRIFFIS: So it has no relevancy to
3 this case or this issue?

4 VICE CHAIR MILLER: Certainly not
5 controlling. They didn't address it.

6 CHAIR GRIFFIS: How about relevancy?

7 VICE CHAIR MILLER: And I don't --

8 CHAIR GRIFFIS: They didn't discuss this
9 issue. So let's move. Next case?

10 VICE CHAIR MILLER: The next case was the
11 Swan case that they -- where the Board, the BZA, had
12 said that it was a Matter-of-Right if they have made
13 in their findings of fact that it was Matter-of-Right
14 to increase from two to six.

15 CHAIR GRIFFIS: What is --

16 VICE CHAIR MILLER: What?

17 CHAIR GRIFFIS: Okay.

18 VICE CHAIR MILLER: But in that case, they
19 made that one statement, but they didn't do any kind
20 of legal analysis as to why it was or that wasn't
21 really the issue.

22 CHAIR GRIFFIS: Why was the Swan House in
23 for a special exception then?

24 VICE CHAIR MILLER: I think they wanted to
25 have some social events or something, and that was

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1 really the main issue involving that case.

2 CHAIR GRIFFIS: How would that bring you
3 in? If you had the Matter-of-Right to put six
4 bedrooms in, why would you come for a special
5 exception?

6 VICE CHAIR MILLER: Oh, they also --

7 BOARD MEMBER ZAIDAIN: Tried to
8 reauthorize the previous order.

9 VICE CHAIR MILLER: Okay. If I can
10 recall, I think they also wanted to increase to nine
11 rooms.

12 CHAIR GRIFFIS: Okay.

13 VICE CHAIR MILLER: And they already had
14 six and it was just a statement that was thrown out
15 there that they had six.

16 CHAIR GRIFFIS: So also, that wasn't
17 addressed in this issue?

18 VICE CHAIR MILLER: Not really, not
19 really.

20 CHAIR GRIFFIS: So it doesn't have much
21 relevancy?

22 VICE CHAIR MILLER: Not really.

23 CHAIR GRIFFIS: Okay. Next case?

24 VICE CHAIR MILLER: I would also say that
25 there are BZA decisions that are consistent with our

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1 finding that it is not a Matter-of-Right, and that is
2 the Gonzalez case, which I believe is about to be --
3 it's on the agenda next. And then there was a Bench
4 decision in the case of Anexora Skvirsky, Application
5 No. 16793, January 8, 2002, in which the current Chair
6 and Board Member Etherly granted a special exception
7 in increase sleeping rooms from two to six. And that
8 completes my analysis.

9 CHAIR GRIFFIS: Indeed. And by stating
10 that case law and those issues, you're maintaining
11 what?

12 VICE CHAIR MILLER: I'm maintaining that
13 in order for the applicant to increase the sleeping
14 rooms from two to four in this case, they need to do
15 it by special exception, that it is not a Matter-of-
16 Right even though the building is contributing to a
17 historic district.

18 CHAIR GRIFFIS: Okay. Any other comments
19 on that then? Is there any disagreement with that
20 from the Board? Not noting any disagreement, I
21 would --

22 BOARD MEMBER ZAIDAIN: Well --

23 CHAIR GRIFFIS: Yes, Mr. Zaidain?

24 BOARD MEMBER ZAIDAIN: Well, just to make
25 sure we're clear, it can go up to six in a historic

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1 district?

2 CHAIR GRIFFIS: Correct.

3 BOARD MEMBER ZAIDAIN: And that's where
4 we're at.

5 VICE CHAIR MILLER: Yes, by special
6 exception.

7 BOARD MEMBER ZAIDAIN: By special
8 exception. So you said up to four. I just want to
9 make sure that six was in there.

10 VICE CHAIR MILLER: It can go up to six.
11 They are only seeking up to four in this case.

12 CHAIR GRIFFIS: Okay. Very well. Let's
13 see there is consensus of the Board to continue this
14 as a special exception of which we did hear,
15 obviously, the application under.

16 BOARD MEMBER ZAIDAIN: Well, do you want
17 to go ahead?

18 VICE CHAIR MILLER: Well, just citing the
19 framework, I would say that this -- we need to deal
20 with 203.10(b), which is specifically referenced by
21 203.8(c) for increasing the sleeping rooms from two to
22 six. So in addition to the general special exception
23 regulation, 203.10 says that it allows for a special
24 exception pursuant to 3104 and B, as extra provides,
25 so that the general purposes intent of this section be

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1 complied with, and this section refers to the home
2 occupation section. And I just want to read that,
3 just to set the context.

4 203.1 says the purpose of the home
5 occupation provisions shall be to allow home
6 occupations as accessory uses to residential uses
7 provided that they are compatible with the residential
8 neighborhood in which they are located. The intent is
9 to protect residential areas from adverse effects of
10 activities associated with home occupations while
11 permitting residents of the community the opportunity
12 to use the home as a work place and source of
13 livelihood under specific regulatory conditions.

14 BOARD MEMBER ZAIDAIN: Well, Mr. Chair,
15 oh, I'm sorry. I keep interrupting you.

16 VICE CHAIR MILLER: Well, I would say it's
17 not all that dissimilar to the regular special
18 exception test. I mean, we're really looking at --

19 BOARD MEMBER ZAIDAIN: Right.

20 VICE CHAIR MILLER: -- you know, are there
21 adverse impacts on the community, basically.

22 BOARD MEMBER ZAIDAIN: Right. Yes, and I
23 guess if we can just hop into deliberation on what we
24 heard in as far as testimony. I was not swayed by the
25 opposition that this home occupation was going to

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1 cause detrimental impact to the neighborhood. We
2 heard a lot of testimony regarding parking.

3 Being somewhat familiar with the
4 neighborhood, parking is tight everywhere when you get
5 up towards the Capitol, the Capitol complex and
6 surrounding office buildings and the Library of
7 Congress. And I think that the only way that this
8 could work -- well, first of all, the impacts, in my
9 mind, would be no different than a single-family
10 residence, you know, in terms of parking in itself,
11 and I agreed with the applicant in that most people
12 coming to this use will be coming from Union Station,
13 surrounding airports, coming via cab.

14 So I think in terms of making the
15 application fail, I don't think that the opposition
16 succeeded. I was concerned with some of the, what's
17 the word I can use, I guess neighborly type of impacts
18 that were cited in terms of people coming to the B&B
19 late at night, you know, causing disruption, because
20 this is tucked into a residential neighborhood, and
21 that is exactly what the Zoning Regulations are
22 contemplating here.

23 So I don't think that that testimony, you
24 know, lifted it to a point where I could not support
25 the application. However, it did cause me a little

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1 bit of concern, and I don't know if the Zoning Regs
2 specifically address those types of angles. I know,
3 you know, in Council Member Ambrose's letter, you
4 know, she gave her testimony in opposition of the
5 application, but then even she says well, maybe the
6 Zoning Regulations in these types of areas need to be
7 revisited. And just like every other use in the
8 middle of a residential neighborhood, I would probably
9 agree with her. There are just types of impacts that
10 are just going to happen whether it's a school, B&B,
11 child development center, whatever it may be.

12 So I felt that the application did meet
13 the test, but I did have some concerns in regards to
14 how it interacts with the residential units around it.

15 But in terms of how to solve that, I don't know.
16 There was no discussion about a time limit as far as I
17 could recall. I think that may have been appropriate.

18 Maybe it still could be appropriate to make sure it's
19 going to work. However, there was no suggested time
20 limit on the application when it was before the Board,
21 so I'm not really sure how we could take that up.

22 Also, I do want to say that the Office of
23 Planning, and I believe that we had this information
24 in the hearing, they did originally not support the
25 application. However, upon further information from

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1 the District Department of Transportation, did say
2 they did support the application. So that gave me a
3 little bit more clarity on how to sift through the
4 negative impacts that I did believe and whether or not
5 it made the application fail or succeed.

6 CHAIR GRIFFIS: Excellent point. Yes,
7 Council Member Ambrose's letter did give rise to some
8 of the concerns that we had heard, and I tend to agree
9 with your analysis of what the letter stated. We also
10 had the issue of the party in the case talking about
11 the noise, and also the adjacency of bathrooms on the
12 party wall. I am just flushing out all --

13 BOARD MEMBER ZAIDAIN: Yes, I know.

14 CHAIR GRIFFIS: -- the issues that came
15 out.

16 BOARD MEMBER ZAIDAIN: Right.

17 CHAIR GRIFFIS: Oh, that's bad.

18 BOARD MEMBER ZAIDAIN: Well, it was
19 unsubstantiated. I think during cross examination,
20 you know, it was not clear whether or not those were
21 coming from, you know, rooms that were being occupied
22 and it was very unclear. And it was also unclear
23 whether or not there was -- I mean, I don't know. We
24 didn't get into detail about the condition of that
25 party wall, but who is to say if that house was

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1 converted into a residential unit or, say, a single-
2 family if this problem still wouldn't persist. I
3 mean, that's kind of the problems you have when you
4 share a party wall.

5 CHAIR GRIFFIS: Or as its previous use of
6 a tenement house, which had upwards of five kitchens,
7 I believe it was.

8 BOARD MEMBER ZAIDAIN: Right.

9 CHAIR GRIFFIS: Not that it could be
10 converted necessarily back to that, but it perhaps
11 could have existed as a nonconforming. Okay.
12 Additional?

13 VICE CHAIR MILLER: I think parking was
14 the biggest adverse impact that was addressed, and I
15 don't think the opponents had anything really
16 substantial. There were concerns that parking is
17 difficult, but there wasn't anything to grab onto as
18 to that this increase to two more bedrooms would cause
19 much more difficulties for parking.

20 ANC characterized it as one of the
21 potentially most disruptive elements of a B&B with
22 more than two rooms. Well, it's potentially, but
23 there really wasn't any evidence there that that was
24 really going to happen. Whereas, on the other side we
25 had Department of Transportation, whose job it is to

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1 assess this kind of impact, reviewing the application
2 and determining that the proposed increase would not
3 adversely impact parking in the neighborhood.

4 We had testimony from the applicant that
5 the majority of guests arrive in D.C. by train or
6 Metro and arrive at the property by taxi. We had
7 Jacklyn Reed, who is president of Bed and Breakfast
8 Society, testify that she did a survey in D.C. of bed
9 and breakfasts and that very few guests to bed and
10 breakfasts brought their cars. She said that 82
11 percent arrived without a car and of the 82 percent,
12 only that, let's see, 82 percent arrived without a car
13 and 18 percent of the 82 percent came without a car,
14 and that 80 percent went to places that had parking.
15 But in any event, we don't have any evidence of a lot
16 of cars really coming to bed and breakfasts.

17 And with respect to other types of adverse
18 impacts, we heard the next door neighbor complained
19 about luggage going upstairs or being asked directions
20 or sounds from party walls, and that does not, to me,
21 rise to the level of adverse impacts that the
22 regulations contemplate. And there was also a concern
23 about commercialization, but there wasn't really any
24 evidence that it was going to increase
25 commercialization.

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1 CHAIR GRIFFIS: Okay. And talking about
2 section 203.4 through 203.6, which is the home
3 occupation, are there other additional issues that we
4 want to be brought to bare? I think the evidence in
5 the record substantiates how it complies with that. I
6 would look at 203.4 also, which states the numerous
7 conditions that have to be met for a practitioner of a
8 home occupation, and it seems to me it lays out a heck
9 of a lot of conditions that would have to be complied
10 with if this was, in fact, granted relief. But be
11 that as it may, I think the record does show that this
12 was a house principally used by the applicant as their
13 residence, making the B&B or home occupation a
14 secondary use of the property.

15 There was testimony that there were not
16 going to be any signs, if you recall. Actually, there
17 was a sign put up at one point that was probably not
18 appropriate or it certainly wasn't liked or wouldn't
19 comply with 203.5 and that was removed. There was
20 testimony by the property owner that he would not
21 proceed in reinstalling any sort of banner, but come
22 into compliance with 203.5 if a sign was put on the
23 dwelling.

24 Sales. There was no evidence presented
25 that sales were to be permitted or were to be

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1 provided, and I don't think that that was a contested
2 fact or issue at all in this case.

3 I think without going through all of the
4 rest, I don't come across any that were evidenced by
5 the opposition or the applicant that would raise to
6 the level of concern for the deliberation on that. In
7 fact, 203.4 even goes to regulating vehicle trips to
8 the premises by the visitors, so looking at any sort
9 of conditions that might be appropriate, it seems to
10 be it's well taken care of within the regulations
11 themselves. No more than two vehicles are able to be
12 used in the practice of a home occupation. It seems
13 to me that there was talk of possibly just one, but
14 never more than two in this application.

15 In looking at 1202, which is the chapter
16 regulating the Capitol Hill Overlay for its
17 compatibility, I think it's appropriate to find that,
18 and it does go to special exceptions within the
19 Capitol Hill Overlay. And really, although it may
20 seem redundant, but I think it's an important aspect
21 to call out in this section, but one, needing to be
22 found compatible with the present and proposed
23 development of the neighborhood.

24 As this is a historic district, one, we
25 can certainly assess the fact that there aren't

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1 proposals to radically alter the use, mass and density
2 of the area and, two, in terms of compatibility,
3 certainly the applicant's testimony, but even the
4 opposition's testimony gave rise to the compatibility
5 of the development itself or of the proposed nature
6 of, one, based on the conversion from the tenement to
7 a single-family house to now home occupation based
8 seems to be more compatible with the adjacent nature
9 of use of the block. Yes?

10 BOARD MEMBER ZAIDAIN: Well, I was going
11 to -- you know, I agree with that, but something
12 happened during the hearing that I really take
13 exception to when we have these applicants in front of
14 us that have opposition. You know, the party in
15 opposition was giving testimony about some of the
16 negative impacts they felt would occur, and I think
17 we're deliberating through those appropriately, and I
18 think one of the responses from the applicant was
19 well, you live in an urban area.

20 Well, just -- and we hear that quite a bit
21 and, to speak frankly, that drives me nuts. Just
22 because people live in an urban area doesn't mean they
23 can't -- they still have -- there are still
24 inappropriate, negative impacts and that really
25 bothers me when we hear that.

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1 However, I think given the nature of this
2 neighborhood and the type of structure we're talking
3 about and the underlying zoning being R-4, I don't
4 think that this use as a bed and breakfast for four
5 rooms is incompatible, and I hope that the operator of
6 this establishment can mitigate those concerns that we
7 heard. But, you know, just because somebody lives in
8 an urban area doesn't mean that --

9 CHAIR GRIFFIS: No, it's absolutely true.

10 BOARD MEMBER ZAIDAIN: -- they have to put
11 up with certain things.

12 CHAIR GRIFFIS: That's absolutely true.
13 Although, what Ms. Miller brought up is, you know,
14 when we got to specifics and asking the specifics of
15 what was the negative impact, I mean, we did hear
16 about people carrying luggage in.

17 BOARD MEMBER ZAIDAIN: Yes, and like I
18 say, I think we can take the negative impacts at face
19 value.

20 CHAIR GRIFFIS: Right.

21 BOARD MEMBER ZAIDAIN: And I think my
22 point is to say well --

23 CHAIR GRIFFIS: And I think you --

24 BOARD MEMBER ZAIDAIN: You live in an
25 urban area, so you shouldn't say anything.

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1 CHAIR GRIFFIS: Yes, right, right.

2 BOARD MEMBER ZAIDAIN: I don't agree with
3 that.

4 CHAIR GRIFFIS: Understood. Okay.
5 Anything further? Additional?

6 VICE CHAIR MILLER: Mr. Chairman?

7 CHAIR GRIFFIS: Yes?

8 VICE CHAIR MILLER: With respect to 1202.
9 I'm sorry.

10 CHAIR GRIFFIS: Yes.

11 VICE CHAIR MILLER: 1202.1, I think it's
12 important to note that we received a letter from the
13 Architect of the Capitol stating that the increase
14 from two to four or six rooms would create no adverse
15 impact on the Capitol complex or the master plan.

16 CHAIR GRIFFIS: Good.

17 VICE CHAIR MILLER: Referred to in 11 DCMR
18 section 1200.1.

19 CHAIR GRIFFIS: Indeed.

20 VICE CHAIR MILLER: And also, that the
21 Capitol Hill Association of Merchants and
22 Professionals also submitted a letter supporting the
23 application.

24 CHAIR GRIFFIS: Okay. For clarity, 1202.3
25 is the requirement of the Architect of the Capitol,

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1 not .1. Okay. Anything else then? Is there action?

2 Is the Board in the position to entertain a motion?

3 VICE CHAIR MILLER: Okay. I would move to
4 approve Application No. 17079 of Mark Lee Phillips,
5 pursuant to 11 DCMR section 3104.1, for a special
6 exception to increase the number of sleeping rooms in
7 a bed and breakfast (home occupation) from two to four
8 under subsection 203.8, and the provisions governing
9 special exceptions within the Capitol Hill Overlay
10 District under subsection 1202.1, in the CAP/R-4
11 District at premises 417 A Street, S.E., Square 818,
12 Lot 27.

13 CHAIR GRIFFIS: Is there a second?

14 BOARD MEMBER ETHERLY: Seconded.

15 CHAIR GRIFFIS: Thank you, Mr. Etherly.
16 Further deliberations, discussion on the motion?
17 Issues? The motion before us has been seconded. I
18 would ask for all those in favor of the motion to
19 signify by saying aye.

20 ALL: Aye.

21 CHAIR GRIFFIS: And opposed?

22 MR. MOY: Staff would record the vote as
23 4-0-1 on the motion of Ms. Miller, the Vice Chair, to
24 approve, seconded by Mr. Etherly, also in favor of the
25 motion, the Chairman and Mr. Zaidain. We have a

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1 Zoning Commission Member not present and not voting.

2 The next application is No. 16823 of
3 Humberto Gonzalez, pursuant to 11 DCMR section 3103.2,
4 for a variance from the use provisions to allow a home
5 occupation bed and breakfast with 10 sleeping rooms
6 and four full-time equivalent employees under section
7 203 in the DCOD/R-5-D District at premises 1720 16th
8 Street, N.W., Square 178, Lot 800.

9 The Board completed testimony on this case
10 on November 12, 2002 and decided the case on January
11 7, 2003. The action before the Board is to act on the
12 proposed order that reflects the decision of the Board
13 at its meeting on January 7, 2003. That completes the
14 briefing, Mr. Chairman.

15 CHAIR GRIFFIS: Thank you, Mr. Moy. Ms.
16 Miller?

17 VICE CHAIR MILLER: Mr. Chairman, I didn't
18 participate in the decision, in the hearing or the
19 decision, so I won't be participating in this
20 deliberation.

21 CHAIR GRIFFIS: Good. Thank you. Mr.
22 Etherly?

23 BOARD MEMBER ETHERLY: Mr. Chair, I
24 believe we can resolve this relatively quickly. It
25 would be my motion that the Board move forward with

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1 adoption of the proposed order to reflect the Board's
2 decision of January 7, 2003.

3 CHAIR GRIFFIS: Excellent. Is there a
4 second?

5 BOARD MEMBER ZAIDAIN: I'll second that,
6 Mr. Chair.

7 CHAIR GRIFFIS: Thank you very much. Is
8 there further discussion or deliberation on this? The
9 motion is before us for the adoption of the proposed
10 order to reflect the decision of the Board on January
11 7, 2003. If there is nothing further then, I would
12 ask for all those in favor to signify by saying aye.

13 ALL: Aye.

14 CHAIR GRIFFIS: And opposed? Abstaining?

15 MR. MOY: Staff would record the vote as
16 3-0-1 on the motion of Mr. Etherly to adopt the order
17 that reflects the decision of the Board of January 7,
18 2003. We also have a proxy vote from Ms. Mitten and
19 her proxy vote is to adopt the proposed order.

20 CHAIR GRIFFIS: Very well.

21 MR. MOY: Oh, and also, seconded was Mr.
22 Zaidain. I wouldn't want to miss out Mr. Zaidain.

23 BOARD MEMBER ZAIDAIN: Yes, please, don't.

24 CHAIR GRIFFIS: So we have a vote, 4-0-0.
25 Is that correct?

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1 MR. MOY: 4-0-1, because we have a Board
2 Member not participating.

3 CHAIR GRIFFIS: Oh, I'm sorry.

4 BOARD MEMBER ZAIDAIN: It would be 4-0-1?

5 MR. MOY: That's correct.

6 CHAIR GRIFFIS: Okay. Excellent. Very
7 well. Anything else?

8 MR. MOY: Not from the staff, sir.

9 BOARD MEMBER ZAIDAIN: I would like to
10 publicly commend the Chair for getting us through such
11 a tight schedule. I'm amazed that -- I think I owe
12 you something now that we're getting out of here
13 before 6:00.

14 CHAIR GRIFFIS: That's true. Very well.
15 If there is no other official business for the
16 afternoon, is staff aware, anybody?

17 BOARD MEMBER ZAIDAIN: Just cheer on my
18 beloved Bearcats on ESPN 2 since you're not going to
19 see the Mayor.

20 CHAIR GRIFFIS: Indeed. Thank you all very
21 much. This would adjourn then the 3rd of February '04
22 public meeting of the Board of Zoning Adjustment.

23 (Whereupon, the Public Meeting was concluded at
24 5:45 p.m.)

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