GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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WEDNESDAY

MAY 3, 2000

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Commissioner
CAROL J. MITTEN	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Jerrily R. Kress	Director
Beverly Bailey	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

C-O-N-T-E-N-T-S

AGENDA ITEM PAGE

MINUTES 4

CASES TO BE DECIDED

APPEAL OF THE CAPITOL HILL RESTORATION SOCIETY:
16404 5

APPLICATION OF THE WELCH FAMILY LIMITED PARTNERSHIP #10/Steve Royall:
16551 58

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

10:00 a.m.

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

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

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

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

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

BOARD MEMBER RENSHAW: I so move.

BOARD MEMBER MOULDEN: Second.

CHAIRPERSON REID: All in favor.

(AYES)

CHAIRPERSON REID: Opposed.

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

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

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

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

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

The hearing dates were December 16, 1998, February 17, 1999, and April 21, 1999. The decision date was June 2, 1999. The members who participated at that time were Ms. Reid, Ms. King

and Mr. Gilreath.

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

CHAIRPERSON REID: All right.

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

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

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

Court counsel defined for us, gave us the definition of residents, primary residents, and dwelling unit or domicile, and then it went to being able to determine, given those definitions, which ones were the most applicable in this instance. And, as you can see from my discussion, it was a mess, in a word. And, as such, the Capitol Hill Restoration Society is now asking

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

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

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

CHAIRPERSON REID: Let me just try to reiterate.

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

CHAIRPERSON REID: Well, the last part was a

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

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

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

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

CHAIRPERSON REID: No changes.

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

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

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

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

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

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

Mr. Sockwell, is this a definition?

VICE CHAIRPERSON SOCKWELL: Yes.

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

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

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

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

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

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

BOARD MEMBER RENSHAW: Where they vote.

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

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

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

CHAIRPERSON REID: I'm just bringing up the reason

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

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

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

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

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

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

CHAIRPERSON REID: And your point would be?

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

CHAIRPERSON REID: Okay. Right.

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

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

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

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

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

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

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

CHAIRPERSON REID: That's a problem.

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

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

CHAIRPERSON REID: Exactly.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON REID: Correctly.

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

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

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

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

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

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

MS. KRESS: And what the Board's practice has been. Many people have come before you as contract purchasers and represented themselves as owner. This has not been unusual at all for the Board. Many, many people will not finalize the purchase on pieces of property until they have the BZA's approval.

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

VICE CHAIRPERSON SOCKWELL: Madam Chair, it would

seem that the --

CHAIRPERSON REID: Excuse me. Before you go there, this is on page 70 of the transcript. It says, this is Ms. Reid. "Mr. Nunley, so that we can all be on the same page, am I understanding you to say that DCRA does not recognize the status of contract holders in granting a home occupancy permit?" Mr. Nunley, "No, that's not at all what I said. What I said is that if the person does not reside on the premises, and one of the ways that we determine whether they reside on the premises is through this form. If they give us a narrative that they are a contract purchaser, well, fine. Do you currently live there and are a contract purchaser or do you live some place else and are under contract to purchase the property? If they respond that they live somewhere else and that they have a contract on this property, then my response to them would be, well, you get there when you have bought the property or once you reside there, whether you have yet bought it or not, then we can issue the certificate, but not until then."

So it's confusing.

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON REID: At the top of the page.

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

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

MS. KRESS: Page 71.

COMMISSIONER HOOD: Oh, page 71.

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

MS. KRESS: Line 22.

CHAIRPERSON REID: Line 22. Okay. I see.

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

CHAIRPERSON REID: Go ahead.

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

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

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

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

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

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

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

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

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

CHAIRPERSON REID: All right. Could you repeat it?

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

CHAIRPERSON REID: Meaning?

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

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

CHAIRPERSON REID: Right.

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

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

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

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

CHAIRPERSON REID: I would agree.

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

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

VICE CHAIRPERSON SOCKWELL: Or woman.

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

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

CHAIRPERSON REID: Which he did.

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

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

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

VICE CHAIRPERSON SOCKWELL: No.

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

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

CHAIRPERSON REID: What?

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

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

VICE CHAIRPERSON SOCKWELL: Yes, the intended use.

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

VICE CHAIRPERSON SOCKWELL: Right.

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

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

CHAIRPERSON REID: Exactly. Does not say that.

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

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

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

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

VICE CHAIRPERSON SOCKWELL: Well, in this--

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

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

CHAIRPERSON REID: A home occupancy permit can be

issued to a renter?

VICE CHAIRPERSON SOCKWELL: In this case, the --

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

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

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

COMMISSIONER HOOD: Madam Chair, can we--

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

CHAIRPERSON REID: Okay.

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

VICE CHAIRPERSON SOCKWELL: It has to be their residence.

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

CHAIRPERSON REID: They already have. Go ahead.

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

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

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

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

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

in?

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

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

Then the third question --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON REID: Well, would you entertain a motion?

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

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

(AYES)

COMMISSIONER HOOD: Opposed.

CHAIRPERSON REID: Wait a minute.

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

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

(AYES)

CHAIRPERSON REID: Opposed.

COMMISSIONER HOOD: Opposed.

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

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

CHAIRPERSON REID: We did.

BOARD MEMBER RENSHAW: And what has been the outcome of that?

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

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

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

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

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

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

burner.

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

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

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

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

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

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

until you physically are there.

CHAIRPERSON REID: Suppose you can't move in?

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

CHAIRPERSON REID: Suppose --

MS. KRESS: Because it rides with the person.

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

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

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

MS. KRESS: No. I'm sorry.

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

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

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

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

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

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

Office of Zoning working with the Zoning Administrator.

BOARD MEMBER MOULDEN: Zoning Administrator. Okay.

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

BOARD MEMBER MOULDEN: Right.

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

CHAIRPERSON REID: They have to.

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

CHAIRPERSON REID: They have a request to be --

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

CHAIRPERSON REID: If they did what?

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

CHAIRPERSON REID: How is it defined?

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

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

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

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

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

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

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

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

will ask is that if you can have staff to direct to the Zoning Commission that they look at this issue. I know Ms. Kress said she would do it. I mean it is going to happen. But the Zoning Commission right now-- and as Ms. Kress knows -- we have so much. I want to make sure that this does not drop through the cracks. So if you can direct staff to --

CHAIRPERSON REID: I did.

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

CHAIRPERSON REID: Oh, you said write a letter?

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

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

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

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

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

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

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

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

CHAIRPERSON REID: Sure. For sure.

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

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

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

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

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

The hearing dates were February 16, 2000 and April

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

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

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

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

BOARD MEMBER RENSHAW: And I have, also.

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

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

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

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

Now, as far as adverse impact was concerned, the

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

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

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

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

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

whether they will pay the going rate or whatever."

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

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

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

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

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

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

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

CHAIRPERSON REID: Yes, I remember that.

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

So I guess I want to throw that out for your consideration that she's not dead in the water if you don't allow the public hall, the variance associated with public hall to go forward. She said she's wiling to go for something less intense. She wouldn't have to come back here. It doesn't create a burden for her.

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

COMMISSIONER MITTEN: It's not a function of liquor license. It's the use, and the liquor license is apart from that. It doesn't require more or less parking.

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

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

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

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

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

CHAIRPERSON REID: Mr. Moulden.

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

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

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

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

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

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

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

CHAIRPERSON REID: Let me say that I think,

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

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

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

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

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

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

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

CHAIRPERSON REID: And she agreed to that.

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

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

COMMISSIONER MITTEN: I'll find it.

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

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

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

CHAIRPERSON REID: She did. She did.

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

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

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

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

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

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

CHAIRPERSON REID: She did.

VICE CHAIRPERSON SOCKWELL: Yes.

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

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

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

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

the number of seats because if you imagine that you're having a function in the capacity of a public hall, you wouldn't necessarily be providing seating for everyone. They would perhaps be standing and so on, which is why the calculation is different. So unless we impose the restriction for no more than 50 people, because the seats become really irrelevant --

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

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

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

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

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

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

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

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

condition it. The public hall aspect of it --

CHAIRPERSON REID: What is the questionable activity?

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

CHAIRPERSON REID: Not if we condition.

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

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

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

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

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

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

VICE CHAIRPERSON SOCKWELL: Thirty two eighty, you said?

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

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

COMMISSIONER MITTEN: The parking requirement is 20 spaces.

CHAIRPERSON REID: Oh, it's still 20?

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

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

COMMISSIONER MITTEN: Yes, for a public hall.

CHAIRPERSON REID: Oh really?

COMMISSIONER MITTEN: Yes.

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

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

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

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

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

VICE CHAIRPERSON SOCKWELL: Wait a minute.

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

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

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

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

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

VICE CHAIRPERSON SOCKWELL: It's probably unlikely.

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

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

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

CHAIRPERSON REID: Right.

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

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

application and just opened a place there as a restaurant?

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

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

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

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

COMMISSIONER MITTEN: See, that's the point.

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

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

CHAIRPERSON REID: Is that the only difference?

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

CHAIRPERSON REID: Is that the only difference?

VICE CHAIRPERSON SOCKWELL: Food and liquor.

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

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

CHAIRPERSON REID: What are we doing then?

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

CHAIRPERSON REID: Well, that's very true and I think that we have to recognize that -- and I've stated this many times before -- where we have people who come in with high-powered attorneys who are able to represent and interpret and to put their case before us in a very professional, very succinct manner. There are other people who are laypeople who don't have the benefit of all that who just come to us and try to get their cases through and, as such, they're not as tight as it could have been. I think that if she had an attorney, that it could have been framed to us in such a way that it would have made a lot more sense. But I find that she appears to be kind of groping here and trying to open up a business. Then she's got all this red tape,

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

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

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

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

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

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

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

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

COMMISSIONER MITTEN: Daniel.

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

BOARD MEMBER RENSHAW: Zoning and Licensing Subcommittee.

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

problem with the application.

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

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

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

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

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

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

COMMISSIONER MITTEN: Dee's Diamond in the Rough.

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

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

CHAIRPERSON REID: That could be the conditions

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

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

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

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

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

VICE CHAIRPERSON SOCKWELL: The --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON REID: Yes, I recognize that.

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

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

BOARD MEMBER RENSHAW: Madam Chair, I hear your

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

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

CHAIRPERSON REID: No.

VICE CHAIRPERSON SOCKWELL: There was not.

MS. BAILEY: Okay.

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

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

BOARD MEMBER MOULDEN: I second that motion.

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

(AYES)

CHAIRPERSON REID: Opposed.

(AYES)

MS. BAILEY: The motion failed for lack of a

majority vote.

CHAIRPERSON REID: All right. Was that the last?

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

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

CHAIRPERSON REID: Okay. Second?

BOARD MEMBER RENSHAW: Second.

CHAIRPERSON REID: All right. All in favor.

(AYES)

CHAIRPERSON REID: All opposed.

(AYES)

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

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

MS. BAILEY: Certainly.

COMMISSIONER MITTEN: Thank you.

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

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