GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY

JANUARY 7, 2003

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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., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

CAROL MITTEN	Commissioner

COMMISSION STAFF PRESENT:

CLIFFORD MOY	Office of Zoning
JOHN NYARKU	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, ESQ.

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

(9:30 a.m.)

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

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

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

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

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

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

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

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

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

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

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

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

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

project in order to fulfill the requirement.

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON GRIFFIS: Right.

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

CHAIRPERSON GRIFFIS: I see. Okay.

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

think we have a lot of testimony on that.

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

MEMBER ZAIDAIN: I'll second the motion.

CHAIRPERSON GRIFFIS: Thank you, Mr. Zaidain.

MEMBER ZAIDAIN: Are we going to discuss?

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

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

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

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

MEMBER ZAIDAIN: You want to eliminate that phrase.

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

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

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

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

(Vote.)

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON GRIFFIS: That's correct.

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

VICE CHAIRPERSON RENSHAW: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes.

VICE CHAIRPERSON RENSHAW: We did

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

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

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

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

MEMBER ZAIDAIN: What, the ANC letter?

CHAIRPERSON GRIFFIS: Right.

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

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

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

letter.

CHAIRPERSON GRIFFIS: Yes.

VICE CHAIRPERSON RENSHAW: Did we receive that?

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

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

CHAIRPERSON GRIFFIS: I see. Good point.

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

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

recent as last night.

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

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

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

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

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

CHAIRPERSON GRIFFIS: Yes.

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

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

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

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

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

MEMBER ZAIDAIN: For a special exception.

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

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

CHAIRPERSON GRIFFIS: Indeed.

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

CHAIRPERSON GRIFFIS: Indeed.

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

CHAIRPERSON GRIFFIS: I'm prepared to move

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

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

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

move on.

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

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

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

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

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

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

I'm a big proponent of corner grocery

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

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

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

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

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

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

CHAIRPERSON GRIFFIS: Any others?

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

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

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

VICE CHAIRPERSON RENSHAW: Second.

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

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

CHAIRPERSON GRIFFIS: Indeed.

MEMBER ETHERLY: And, Mr. Chair, I would

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

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

(Vote.)

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

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

CHAIRPERSON GRIFFIS: Actually, Mr. Moy,

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

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

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

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

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

MEMBER ETHERLY: Second it, Mr. Chair.

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

(Vote.)

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

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

Also, in terms of the special exception, it would not run, in fact, with a specific owner-user occupant. It would, in fact, run with the land. Findings of facts -- I said conditions and that was a misstate. The findings of fact number 4 states that "The applicant's mother who resides in the dwelling is debilitated by rheumatoid arthritis." I think, frankly, it was an error that we missed in terms of re-reading and editing. It should have read something to the effect of "The applicant's mother intends or is to reside in the dwelling." And I think that is a finding of fact in this case, and that the applicant had indicated.

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

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

VICE CHAIRPERSON RENSHAW: Second.

CHAIRPERSON GRIFFIS: Thank you. All in favor.

(Vote.)

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

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

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

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

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

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

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

D.C. Office of Aging.

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

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

CHAIRPERSON GRIFFIS: Thank you, Mr. Moy. As advertised, this was a special exception that was establishing the Senior Wellness Center. Through the hearing we did, in fact, evidence specific aspects of this project that would indicate that it possibly needed additional zoning relief, and that was based on the relocation of the headquarters at the Office of Aging within the building. Some of that was the supplemental information we asked for in terms of the square footage or the use in the building itself.

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

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

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

VICE CHAIRPERSON RENSHAW: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes.

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

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

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

CHAIRPERSON GRIFFIS: Okay. Others?

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

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

MEMBER ETHERLY: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRPERSON GRIFFIS: Which of the findings were late?

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

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

COMMISSIONER MITTEN: No objection.

CHAIRPERSON GRIFFIS: Very well.

MEMBER ZAIDAIN: I have no objection.

CHAIRPERSON GRIFFIS: Take that as

consensus, and accept them into the record.

COMMISSIONER MITTEN: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes, ma'am.

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

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

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

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

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

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

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

ordinarily prohibited in the particular district.

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

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

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

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

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

CHAIRPERSON GRIFFIS: Yes.

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

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

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

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

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

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

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

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

CHAIRPERSON GRIFFIS: Very well.

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

CHAIRPERSON GRIFFIS: Others?

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

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

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

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

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

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

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

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

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

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

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

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

like an expansion of a function.

VICE CHAIRPERSON RENSHAW: Just increased use.

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

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

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

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

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

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

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

CHAIRPERSON GRIFFIS: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

COMMISSIONER MITTEN: Okay.

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

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

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

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

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

CHAIRPERSON GRIFFIS: Right.

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

CHAIRPERSON GRIFFIS: Right.

COMMISSIONER MITTEN: And that's all I'm

asking.

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

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

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

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

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

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

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

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

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

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

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

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

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

With that being said, let me try to kind

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

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

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

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

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

MEMBER ZAIDAIN: No.

MEMBER ETHERLY: Okay.

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

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

MEMBER ETHERLY: No, I agree with you completely.

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

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

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

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

CHAIRPERSON GRIFFIS: Certainly.

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

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

CHAIRPERSON GRIFFIS: Well, he --

COMMISSIONER MITTEN: Just let me finish.

CHAIRPERSON GRIFFIS: Sure.

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

CHAIRPERSON GRIFFIS: No, I understand that.

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

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

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

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

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

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

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

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

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

VICE CHAIRPERSON RENSHAW: Yes. Mr.

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

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

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

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

CHAIRPERSON GRIFFIS: Right.

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

CHAIRPERSON GRIFFIS: Right.

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

CHAIRPERSON GRIFFIS: Okay.

VICE CHAIRPERSON RENSHAW: Or is it a doable project.

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

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

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

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

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

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

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

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

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

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

VICE CHAIRPERSON RENSHAW: Not necessarily.

COMMISSIONER MITTEN: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yeah.

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

CHAIRPERSON GRIFFIS: Yes.

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

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

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

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

CHAIRPERSON GRIFFIS: Okay.

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

COMMISSIONER MITTEN: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes.

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

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

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

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

course of action is even necessary.

CHAIRPERSON GRIFFIS: I see.

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

MEMBER ZAIDAIN: I'll second.

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

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

CHAIRPERSON GRIFFIS: Mr. Zaidain.

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

CHAIRPERSON GRIFFIS: Indeed. Others?

COMMISSIONER MITTEN: I just want to echo

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

CHAIRPERSON GRIFFIS: Right.

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

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

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

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

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

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

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

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

of the motion to deny.

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

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

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

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

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

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

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

(Vote.)

CHAIRPERSON GRIFFIS: And all those opposed to the motion.

(Vote.)

CHAIRPERSON GRIFFIS: And we can record the vote.

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

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

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

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

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

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

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

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

that.

VICE CHAIRPERSON RENSHAW: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes.

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

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

VICE CHAIRPERSON RENSHAW: We've maintained.

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

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

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

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

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

COMMISSIONER MITTEN: I'm sorry.

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

CHAIRPERSON GRIFFIS: We have limited time so --

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

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

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

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

MEMBER ZAIDAIN: Yes.

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

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

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

(Vote.)

VICE CHAIRPERSON RENSHAW: And we now have a Chair.

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

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

MEMBER ETHERLY: I would second that

motion, Mr. Chairman, enthusiastically.

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

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

(Vote.)

CHAIRPERSON GRIFFIS: And opposed?

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

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

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

CHAIRPERSON GRIFFIS: Good. Thank you all

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

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