

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

NOVEMBER 6, 2001

+ + + + +

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
DAVID LEVY	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
JOHN G. PARSONS	Commissioner

COMMISSION STAFF PRESENT:

Sheri M. Pruitt, Secretary, BZA  
Beverly Bailey, Office of Zoning  
Paul O. Hart, Office of Zoning  
John K. A. Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

John Fondersmith, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.  
Marie Sansone, Esq.

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

(9:37 a.m.)

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. This is the Public Meeting of November 6, Tuesday, 2001. Where did the year go? I would propose at staff's convenience that we go through Minutes first.

MR. HART: Good morning, Mr. Chairperson and other members of the Board. This morning, as you said, we'll start off by going through the Minutes. We'll start with the first set of Minutes for October the 2<sup>nd</sup> for a public hearing. The Board Members for that meeting -- the hearing were Ms. Renshaw, Mr. Griffis, Mr. Levy and Ms. Mitten.

COMMISSIONER MITTEN: Mr. Chairman, I would move approval of the Minutes of October 2<sup>nd</sup>, 2001.

CHAIRPERSON GRIFFIS: I would second it and just ask for comments. Does anyone have corrections?

MR. LEVY: Yeah. Actually case number 16758, I'm listed as participating. I don't believe I participated in that case.

CHAIRPERSON GRIFFIS: Okay. We will make that note and then just verify. Okay. It was an exciting case.

VICE CHAIR RENSHAW: Does that change any vote?

CHAIRPERSON GRIFFIS: We haven't voted, if the motion would be amended to accept that, and I would say all in favor. Aye. Opposed. Abstaining.

1 MR. HART: The second set of Minutes, October 9<sup>th</sup>.  
2 This is an Executive Session. The Members were -- it should,  
3 of course, read Ms. Renshaw, Mr. Griffis, Mr. Levy and Ms.  
4 Mitten.

5 CHAIRPERSON GRIFFIS: I'd move approval of  
6 October 9, Executive Session Minutes.

7 MR. LEVY: Second.

8 CHAIRPERSON GRIFFIS: All in favor.

9 (Vote.)

10 CHAIRPERSON GRIFFIS: Opposed.

11 MR. HART: The third set of Minutes, October 9<sup>th</sup>.  
12 This is a Public Meeting set of Minutes. Mr. Reid, Ms.  
13 Renshaw, Mr. Griffis, Mr. Levy and Mr. Hannaham.

14 COMMISSIONER MITTEN: I would approval of the  
15 October 9<sup>th</sup> Special Public Meeting Minutes with the following  
16 corrections, which is I'm not listed as being present, although  
17 I was present and participated in the vote. And I believe that  
18 the time line that we set, this would be on page 3, was that the  
19 Special Public Meeting for the final discussion of the order  
20 would be held on November 27<sup>th</sup>.

21 CHAIRPERSON GRIFFIS: Not October 30<sup>th</sup>.

22 COMMISSIONER MITTEN: Not November 20<sup>th</sup>.

23 CHAIRPERSON GRIFFIS: I'm sorry.

24 MEMBER BAILEY: Mrs. Mitten, excuse me.

25 COMMISSIONER MITTEN: Yes.

1 MEMBER BAILEY: But when we first discussed it,  
2 we did have November the 20<sup>th</sup>. It was subsequently amended.

3 COMMISSIONER MITTEN: Okay.

4 CHAIRPERSON GRIFFIS: So that would be a correct  
5 reflection of November 20 in the Minutes. Okay.

6 MEMBER BAILEY: That's correct.

7 CHAIRPERSON GRIFFIS: And I had a question on the  
8 vote. Was it 4-1-0 or was it 4-0-1?

9 MEMBER BAILEY: 4-0-1.

10 CHAIRPERSON GRIFFIS: Okay.

11 MR. HART: Okay. Do we have a second. Ms.  
12 Mitten moved.

13 CHAIRPERSON GRIFFIS: I'd second it.

14 MR. HART: Okay.

15 CHAIRPERSON GRIFFIS: The motion would be with  
16 changes as noted.

17 MR. HART: Yes.

18 CHAIRPERSON GRIFFIS: All in favor.

19 (Vote.)

20 CHAIRPERSON GRIFFIS: Opposed.

21 MR. HART: Okay. October 9<sup>th</sup> Public Hearing. Mr.  
22 Griffis, Ms. Renshaw, Mrs. Reid, Mr. Levy, and Mr. Hood.

23 VICE CHAIR RENSHAW: I so move.

24 CHAIRPERSON GRIFFIS: Second with a quick  
25 comment. Case 16768, Baumann, two corrections. I'm listed

1 twice as voting which is a great honor, but probably didn't  
2 happen. And then second I would ask to have just to verify the  
3 record on condition number two, that it was in fact the  
4 condition of the motion that was approved, and that is number  
5 two, the additional signage shall be erected at the site. Any  
6 other comments? All in favor.

7 (Vote.)

8 CHAIRPERSON GRIFFIS: Opposed. And Ms. Mitten is  
9 not voting on that, not having participated.

10 MR. HART: The next set of Minutes, October 16<sup>th</sup>,  
11 2001. Mr. Griffis, Ms. Renshaw, Mr. Levy, Mr. Hannaham and Ms.  
12 Mitten.

13 VICE CHAIR RENSHAW: I so move.

14 CHAIRPERSON GRIFFIS: Second. Comments.  
15 Corrections. All in favor.

16 (Vote.)

17 CHAIRPERSON GRIFFIS: Opposed.

18 MR. HART: October 23<sup>rd</sup>, Mr. Griffis, Ms. Renshaw,  
19 Mr. Levy, Ms. Mitten and Mr. Parsons.

20 CHAIRPERSON GRIFFIS: Move approval.

21 MR. LEVY: Second.

22 CHAIRPERSON GRIFFIS: Corrections. All in favor.

23 (Vote.)

24 CHAIRPERSON GRIFFIS: Opposed.

25 MR. HART: October 30<sup>th</sup> Special Public Meeting,

1 Mr. Griffis, Ms. Renshaw, Mr. Levy and Ms. Mitten.

2 CHAIRPERSON GRIFFIS: Move approval.

3 COMMISSIONER MITTEN: Second.

4 CHAIRPERSON GRIFFIS: Corrections. Comments.

5 All in favor.

6 (Vote.)

7 CHAIRPERSON GRIFFIS: Opposed.

8 MR. HART: And October 30<sup>th</sup> Public Hearing. Mr.  
9 Griffis, Ms. Renshaw, Mr. Levy, Mr. Hannaham, and me.

10 CHAIRPERSON GRIFFIS: Approval.

11 MR. LEVY: Second.

12 CHAIRPERSON GRIFFIS: Two things. Application of  
13 the Leonard Woods. It should be noted that information was to  
14 be submitted. It's light now, but we were going to -- this  
15 office was going to provide copies of the plans to the Corsans.

16 I would ask -- I'm sorry. That's the problem with late night  
17 reading. So that isn't a correction, and then -- okay. All in  
18 favor.

19 (Vote.)

20 CHAIRPERSON GRIFFIS: Opposed. Thank you very  
21 much. Any other Minutes?

22 MR. HART: No, that's the final. Next into cases  
23 to be decided. The first case we have before is an exception,  
24 Application 15901 of Milton C. Douglas, Miriam C. Douglas, Mark  
25 D. Douglas, pursuant to 11 DCMR 3108.1 (new section 3104.1) for

1 a special exception under section 335 to establish a youth  
2 rehabilitation home of eight youths, ages 14 to 18 years, and a  
3 rotating staff from an existing youth residential care home in  
4 the basement through the second floor in an R-4 District at  
5 premises 597 Columbia Road, N.W., Square 3051, Lot 813.

6 Now this case was heard -- was decided in 1994,  
7 and the Members who sat on and approved -- and voted on this  
8 case are no longer on the Board, so the staff is requesting the  
9 Board to allow us to end this case out for exception prior to  
10 the staff voting on it, the Board voting on it in December.

11 What we are proposing is that we end out this  
12 order for exceptions, have responses from the parties involved  
13 by November 21<sup>st</sup>, and the decision by the Board being made at  
14 its December 4<sup>th</sup> meeting. We need a vote from the Board.

15 CHAIRPERSON GRIFFIS: So moved.

16 MR. HART: Okay.

17 COMMISSIONER MITTEN: Second.

18 CHAIRPERSON GRIFFIS: Comments. All in favor.

19 (Vote.)

20 CHAIRPERSON GRIFFIS: Opposed.

21 MR. HART: I would at this point like to move to  
22 the third item on the agenda, which is a similar case.  
23 Application 16521 of Charles Sisson pursuant to 11 DCMR 3103.2  
24 for a variance from the allowable percentage of lot occupancy of  
25 a dwelling under subsection 1543.2, the front yard setback

1 requirements of subsection 1543.4, and the nonconforming  
2 structure requirements of subsection 2001.3 for the construction  
3 of a front porch, a rear addition, and accessory garage in the  
4 WHOD/R-1-A District at premises 3020 43<sup>rd</sup> Street, N.W., Square  
5 1621, Lot 17.

6 This case was ruled on by the Board on July 31<sup>st</sup>,  
7 2001. The same situation exists as the first case I just  
8 called, and based on that staff is also requesting that  
9 permission to send this out to the parties involved for  
10 exceptions and argument, to be returned to the Board by the 21<sup>st</sup>  
11 of November, to be decided on at the Board's December 4<sup>th</sup> public  
12 meeting.

13 COMMISSIONER MITTEN: So moved.

14 CHAIRPERSON GRIFFIS: Yes. Questions. Comments.

15 And that would be the same time line, the 21<sup>st</sup> of November. I  
16 think you said that.

17 MR. HART: Yes.

18 CHAIRPERSON GRIFFIS: All in favor.

19 (Vote.)

20 CHAIRPERSON GRIFFIS: Opposed. Thank you.

21 MR. HART: The second case on the agenda if I go  
22 back to the Application 16400 of the National Association of  
23 Concerned Veterans, pursuant to 11 DCMR, new section 3103.2, for  
24 a variance from the off-street parking requirements, Subsection  
25 2101.1, to reduce the number of parking spaces required for non-

1 residential uses to allow a public hall for 300 seats on the  
2 first floor in a C-M-1 District at premises 1350 Okie Street,  
3 N.E., Square 4038, Parcel 142/103.

4 This case was decided February 3<sup>rd</sup>, 1999. In the  
5 interim time, not only have the Members who voted all left, but  
6 also the property has changed hands, and the new owner inherited  
7 the situation involving this application which was denied. And  
8 as such, the new owner is within his rights to submit a letter  
9 of withdrawal of the original case to the Board. And as such,  
10 this letter has been submitted to the Board requesting that the  
11 case which I just read be withdrawn. It's now before the Board  
12 to accept this letter of withdrawal.

13 CHAIRPERSON GRIFFIS: So moved.

14 VICE CHAIR RENSHAW: Second.

15 CHAIRPERSON GRIFFIS: Do Board Members get copies  
16 of the letter and review? Does anyone need that?

17 VICE CHAIR RENSHAW: It would be good to have.

18 CHAIRPERSON GRIFFIS: We would just provide --

19 MR. HART: Yes, that will be provided to the  
20 Board Members. We do have it in our possession.

21 CHAIRPERSON GRIFFIS: Oh, actually it's an  
22 excellent question. I don't believe we need a motion and voting  
23 on a withdrawal. Is that correct?

24 VICE CHAIR RENSHAW: Correct.

25 CHAIRPERSON GRIFFIS: Okay. So we have a

1 consensus that it's there, and that we'll just read the letter  
2 at our leisure. Fabulous.

3 MR. HART: Okay. The fourth case on our agenda  
4 is Appeal Number 16716 of the Nebraska Avenue Neighborhood  
5 Association, pursuant to 11 DCMR Subsections 33100 and 3010,  
6 from the administrative decision of the Zoning Administrator,  
7 Department of Consumer and Regulatory Affairs, in the issuance  
8 of a building permit, number B435464, issued on March 3<sup>rd</sup>, 2001  
9 to Sunny and Louis Keyes, et al, to permit the construction of  
10 102 unit handicapped assisted living apartment residence in an  
11 R-2 and R-5-D District at premises 5111, 5113, 5117, 5119, 5121,  
12 5123, and 5125 Connective Avenue, N.W., and 5201, 5203, and 5205  
13 Chevy Chase Parkway, N.W. This is Square 1989, Lot 49-57, and  
14 161.

15 On October 25<sup>th</sup>, 2001, the Office of Zoning  
16 received motions filed by Advisory Neighborhood Commission 3G,  
17 The Nebraska Avenue Neighborhood Association requesting  
18 reconsideration and rehearing of the order in the above- cited  
19 appeal case. The Zoning Commission at its public hearing on  
20 October 15<sup>th</sup>, 2001 voted to invoke its sua sponte review  
21 authority and to consider the Board's decision on this matter at  
22 its public meeting on November 19<sup>th</sup>, 2001.

23 Without setting precedence, it is the  
24 recommendation of the Office of Zoning that the Board vote as  
25 its November 6<sup>th</sup>, 2001 meeting, today, to hold in abeyance any

1 actions on the two motions until the Zoning Commission's sua  
2 sponte review is completed.

3 The participating Board Members are Mr. Griffis,  
4 Mr. Levy and Ms. Carol Mitten.

5 CHAIRPERSON GRIFFIS: Thank you, Mr. Hart. I  
6 just want to make a quick note that Vice Chair Renshaw is  
7 recused on this case, but in order to expedite time, I think we  
8 can take up how we're going to proceed with that, if that's not  
9 any concern of the Board Members and move on, if we just -- if  
10 we get into issues and it's inappropriate, then we would  
11 respectfully request. But if that's okay with you, Ms. Renshaw,  
12 we'll just move on.

13 VICE CHAIR RENSHAW: Uh-huh.

14 CHAIRPERSON GRIFFIS: So it is before us. Is  
15 there a quick discussion or a motion?

16 MR. LEVY: Mr. Chair.

17 CHAIRPERSON GRIFFIS: Yes, sir.

18 MR. LEVY: I move that we hold this appeal in  
19 abeyance pending a decision of the Zoning Commission at its  
20 November 19<sup>th</sup> meeting.

21 CHAIRPERSON GRIFFIS: Very well. I would second  
22 that, saying that frankly I'm fully prepared to take this up,  
23 but I think it makes logical sense, and there is some wisdom to  
24 that. Any other comments or questions? All in favor.

25 (Vote.)

1 CHAIRPERSON GRIFFIS: Opposed. Thank you much.

2 MR. HART: The staff will record the vote to hold  
3 this decision in abeyance, a vote of 3-0-1. Mr. Levy making the  
4 motion, Mr. Griffis seconded, and Ms. Mitten. Ms. Renshaw has  
5 been recused from this case.

6 Next case, Application Number 16536 of the  
7 National City Christian Church, pursuant to 11 DCMR 3103.2, for  
8 a variance under subsections 530.1 and 533.4 from the building  
9 height restriction and the recreational space requirements for  
10 the construction of an apartment house containing 175 units on  
11 the site that is now the parking lot, and maintain the existing  
12 church in an SP-2 District at premises 14<sup>th</sup> and Thomas Circle,  
13 N.W., at Square 212, Lot 123.

14 This case was heard on January 19<sup>th</sup>, 2000 and it  
15 was a bench decision on January 19<sup>th</sup>, 2000.

16 By a letter dated September 25, 2001, the  
17 National City Christian Church who are the applicants in this  
18 case, through their attorney submitted a request to modify the  
19 previously approved plans that are consistent with BZA Order No.  
20 16536. As a part of the filing, the Applicant requests a waiver  
21 from the six-month limitation for filing modifications of plans  
22 with the Board as set forth in Section 3129.3 of the Zoning  
23 Regulations, in order to allow this modification request to be  
24 heard.

25 The participating members are Mr. Griffis, Ms.

1 Renshaw, Mr. Levy and Ms. Mitten.

2 A request for a waiver of the six-month time  
3 limitation and a Request for a Modification is now before the  
4 Board.

5 CHAIRPERSON GRIFFIS: Thank you, Mr. Hart. Is  
6 there anyone with us today regarding this case, that would be  
7 Case Number 16536, National City Christian Church, a Request for  
8 Modification of approved plans. There is no one here with  
9 regard to this case, in which case I would suggest then we -- I  
10 did have questions and I was hoping they might be here. Being  
11 that they are not, Board Members --

12 COMMISSIONER MITTEN: Mr. Chairman, I think at a  
13 minimum before we can proceed, we need a showing from the  
14 applicant as to why they need the six month waiver. All we have  
15 is a request. We don't have any basis for the request, so I  
16 would move that we defer a decision on both the request for the  
17 waiver of the six month time limitation, the Request for  
18 Modification, until we have adequate information in the record  
19 on which to base a decision.

20 MR. LEVY: I would second that.

21 CHAIRPERSON GRIFFIS: Questions? Comments. I  
22 think that makes sense if we can -- if staff is clear on that to  
23 give direction, I think it would be fairly unburdensome to  
24 produce that for us quickly and handle the case. Do we want to  
25 propose a date, just to get that on schedule. We can deal with

1 that later once we make the contact with the applicant. Next  
2 meeting. You think we can do it in a week?

3 MR. HART: Also, just -- yes, I think December  
4 4<sup>th</sup>.

5 CHAIRPERSON GRIFFIS: Fantastic.

6 COMMISSIONER MITTEN: I would just express to  
7 you, you had said you had some questions, and I didn't know if  
8 those were limited to the discussion about waiving the six month  
9 rule. But if you had things that you wanted the applicant to  
10 respond to, maybe now would be a good time to put those on the  
11 record so that that could be conveyed to the applicant so that -  
12 -

13 CHAIRPERSON GRIFFIS: Right. No, absolutely  
14 appreciate that. No, my questions absolutely did go to the six  
15 month waiver time period. I think the modifications were fairly  
16 self explanatory and not monumental. So we are putting that --  
17 what is the next day?

18 MR. HART: December 5<sup>th</sup>, the public meeting.

19 CHAIRPERSON GRIFFIS: Good. 4 December. Thank  
20 you. All in favor.

21 (Vote.)

22 CHAIRPERSON GRIFFIS: Opposed.

23 MR. HART: The staff will record the vote as 4-0  
24 to the further decision of this case to its next meeting which  
25 is December 4<sup>th</sup>, at which time -- in the meantime, the applicant

1 will be requested to give additional information, particularly  
2 as to reasons for the request for the six month waiver. The  
3 vote -- the motion was made by Ms. Mitten, seconded by Mr.  
4 Griffis.

5 CHAIRPERSON GRIFFIS: Thank you, Mr. Hart.

6 MR. HART: The next case is number 16756 of Teddy  
7 L. Houston, pursuant to 11 DCMR 3103.2 for a variance from the  
8 lot occupancy provisions under Section 403, and a variance from  
9 the provisions that prohibits enlargement of an existing  
10 structure that is non-conforming as to lot occupancy under  
11 Subsection 2001.3, to allow the construction of an accessory  
12 garage in the R-4 District at premises 624 9<sup>th</sup> Street, S.W., at  
13 Square 949, Lot 830.

14 The hearing date was October 2<sup>nd</sup>, 2001. The Board  
15 informed applicant that additional work was needed on the  
16 application to meet the required burden of proof. The Board  
17 instructed applicant to work with staff or other zoning  
18 professionals on the case. The Board did not specify a date by  
19 which the applicant should submit the requested information to  
20 the Office of Zoning. A decision of the application was  
21 scheduled for today, November 6, 2001.

22 On Friday, October 26, 2001, the applicant called  
23 the Office of Zoning to request a one month deferment of the  
24 Board's decision. He explained that he worked for the  
25 Department of Defense and had been unable to find sufficient

1 personal time to put together the additional information  
2 requested by the Board. He informed staff that he would submit  
3 his request in writing explaining his situation, and requesting  
4 that the decision be deferred to the Board's December 4<sup>th</sup>, 2001  
5 public meeting.

6 That letter has been submitted by the applicant  
7 and was in turn submitted to the Board Members. The  
8 participating Board Members are Mr. Griffis, Ms. Renshaw, Mr.  
9 Levy and Ms. Mitten. The applicant's request is now before the  
10 Board.

11 COMMISSIONER MITTEN: Mr. Chairman, I would move  
12 that we defer decision on this case until December 4<sup>th</sup>, 2001.

13 MR. LEVY: Second.

14 CHAIRPERSON GRIFFIS: All in favor.

15 (Vote.)

16 CHAIRPERSON GRIFFIS: Opposed. Thank you.

17 MR. HART: Okay. Staff would record the vote as  
18 4-0, Ms. Mitten making the motion, Mr. Levy seconded it, to  
19 defer a decision on this case to the Board's December 4<sup>th</sup>, 2001  
20 public meeting.

21 The next case is Application 16765 of the  
22 American Chemical Society, pursuant to 11 DCMR 3104.1 for a  
23 special exception to construct an addition to an office use  
24 under Section 508, pursuant to Subsection 3013.2, a variance  
25 from the floor area ratio requirements under Section 531, and a

1 variance to allow an additional to a non-conforming structure  
2 devoted to a conforming use under Section 2001.3 in an SP-2/C-4  
3 District at premises 1155 16<sup>th</sup> Street, N.W., Square 197, Lot 85.

4 Robie Beatty, on behalf of Metropolitan A.M.E.  
5 Church, located at 1518 M. Street, N.J., requested party status.

6 On a motion made by Carol Mitten, seconded by Ann Renshaw, the  
7 Board voted 4-0-1 to deny the request of Metropolitan A.M.E.  
8 Church for party status.

9 The Board scheduled a decision on the application  
10 for its November 6<sup>th</sup>, 2001 public meeting. The applicant was to  
11 meet with the Board of Directors of the Metropolitan A.M.E.  
12 Church to discuss the project. The Church may submit further  
13 comments to the Board. The parties were asked to provide  
14 findings of fact and conclusions of law by October 23, 2001.

15 The applicant provided proposed findings of fact  
16 and conclusions of law. The applicant also reported that  
17 attempts were made by letter and telephone to arrange a meeting  
18 with representatives of the church. These attempts were  
19 unsuccessful. The church has not made any submissions to the  
20 Board.

21 Participating members are Mr. Griffis, Ms.  
22 Renshaw, Mr. Levy and Ms. Mitten. The application is now before  
23 the Board for a decision.

24 CHAIRPERSON GRIFFIS: Thank you, Mr. Hart. I'm  
25 sure we're all familiar as we've reviewed this case. It is for

1 -- I can put it in layman's term - a small addition on the first  
2 floor with a glass enclosure over an existing patio space. Mr.  
3 Hart has clearly outlined the case before us. Is there  
4 preliminary discussions or comments on this?

5 COMMISSIONER MITTEN: Uh-uh.

6 CHAIRPERSON GRIFFIS: Preference of the Board, I  
7 would then ask.

8 Oh, let me just make a quick aside, that I was  
9 frankly quite pleased with the applicant providing quite a few  
10 cases on this. Often times - this may be a little off-track,  
11 but we read through these cases, and cases are cited and the  
12 substance of which is not completely explored for us. And  
13 myself, personally not being of legal background it was a  
14 positive reading in having received that. So with that?

15 COMMISSIONER MITTEN: Well, Mr. Chairman, I would  
16 move approval of BZA Application number 16768, basically for the  
17 reasons that are expressed in the applicant's proposed findings  
18 of fact and conclusions of law, but I would like to just  
19 piggyback on what you said because I think that is what was --  
20 what was lacking in the Office of Planning report was full  
21 understanding of the case law that augments the -- just the  
22 plain language of the zoning ordinance. And I very much  
23 appreciated the time that was taken by the Office of Planning to  
24 explore the applicant's burden of proof, and if -- I think if  
25 they had had the benefit of Mr. Collins' extensive exploration

1 of the case law, that perhaps they would have been in support of  
2 the application as well. But I think that particularly in light  
3 of those cases, the applicant has met their burden of proof.

4 CHAIRPERSON GRIFFIS: I would second the motion.

5 Any other questions or comments?

6 MR. LEVY: Yeah, just one comment, Mr. Chair. I  
7 would -- Ms. Mitten made reference to a case number 16768, and I  
8 believe the correct number is 65.

9 CHAIRPERSON GRIFFIS: 65.

10 COMMISSIONER MITTEN: Thank you.

11 MR. LEVY: 16765. It's unclear in the written  
12 record.

13 COMMISSIONER MITTEN: Thank you.

14 MS. SANSONE: Mr. Chairman.

15 CHAIRPERSON GRIFFIS: Yes.

16 MS. SANSONE: I just wanted to note, since we're  
17 discussing the case law, one technical correction in the  
18 proposed findings and conclusions.

19 CHAIRPERSON GRIFFIS: Good.

20 MS. SANSONE: On page 10, the second to the last  
21 second of the conclusions is that the Board recognizes judicial  
22 precedent in association for preservation of the 1700 Block of N  
23 Street, N.W. That such rule relating to the self-created  
24 hardship rule only applies to requests for use variances. The  
25 court has backed off from that, and I think you can see it most

1 clearly in an area variance where a property owner subdivides  
2 his property creating sub-standard lots. That's a self created  
3 hardship, so that rule does apply in certain variance cases, and  
4 that particular sentence should be stricken or modified if the  
5 Board is going to adopt the proposed, or draft findings and  
6 conclusions submitted by the applicant.

7 CHAIRPERSON GRIFFIS: Thank you. That's good  
8 information. Let me be clear, Ms. Mitten. Then your motion is  
9 to adopt the findings and facts submitted for its approval of --

10  
11 COMMISSIONER MITTEN: Well, I think perhaps there  
12 should be some, you know, just reworking of the language, but  
13 the meaning that is conveyed is what I am suggesting is the  
14 proper basis for a decision.

15 CHAIRPERSON GRIFFIS: Right. I absolutely concur  
16 in that.

17 COMMISSIONER MITTEN: And I appreciate Ms.  
18 Sansone's clarification. I think that the reason for focusing  
19 on that case, the applicant's reason for focusing on that case  
20 was because much of what the Office Of Planning was expressing  
21 in their report was that many of these things that the applicant  
22 was claiming as unique circumstances were, in the Office of  
23 Planning's opinion, self created. I don't think that that  
24 really runs to the -- I think that -- so they were addressing  
25 that point, but I think there is ample other information,

1 particularly as it relates to the confluence of factors that  
2 were discussed and the fact that, in light of the Monaco case in  
3 particular, that this is a public service organization, and so  
4 there's particular consideration given to them because of that,  
5 so I think those really run to the burden of proof, and the  
6 other issue about self created hardship was more of an aside.

7 CHAIRPERSON GRIFFIS: Excellent comment, because  
8 OP did spend quite a lot of time dealing with the self created  
9 hardship. You did mention Monaco which I found was very  
10 helpful. Gilmartin, Palmer and quite a few others were also  
11 given to us.

12 Any other comments, questions, discussion? Then  
13 I would ask for all those in favor.

14 (Vote.)

15 CHAIRPERSON GRIFFIS: Opposed.

16 MR. HART: Mr. Chair -- who's -- I know Ms.  
17 Mitten made the -- staff would record the vote as 4-0 to  
18 approve. The motion was made by Ms. Mitten and seconded by Mr.  
19 Griffis. Okay.

20 The next case, Mr. Chair.

21 CHAIRPERSON GRIFFIS: Do we -- we need to have a  
22 switch out here. Is that what we're doing?

23 COMMISSIONER MITTEN: Yes.

24 CHAIRPERSON GRIFFIS: Okay. Is that it for you  
25 for the day?

1 COMMISSIONER MITTEN: Yes.

2 CHAIRPERSON GRIFFIS: Well, thank you very much,  
3 Ms. Mitten.

4 COMMISSIONER MITTEN: Okay.

5 CHAIRPERSON GRIFFIS: We'll pause while we wait  
6 for the batter on deck, or is it a relief pitcher? How do we  
7 want to call this one?

8 (Off the record at 10:12 a.m.)

9 (On the record at 10:15 a.m.)

10 CHAIRPERSON GRIFFIS: Mr. Hannaham, he doesn't  
11 seem to be here, but why don't we call the case. We have a  
12 quorum and if he comes in, that would be grand.

13 MR. HART: The next case is Application 16710 of  
14 Vinay Pande, pursuant to 11 DCMR 3104.1 for a special exception  
15 under Section 223 to allow the construction of a canopy over a  
16 driveway and stairway leading to a single family dwelling that  
17 does not comply with the side yard requirements, Section 405, in  
18 an R-1-B District at premises 5210 Kingle Street, N.W., Square  
19 1438, Lot 44.

20 The hearing dates on this case were July 10<sup>th</sup>,  
21 2001, October 16<sup>th</sup>, 2001. The Board granted party status to  
22 John and Elaine Kennedy. Advisory Neighborhood Commission 3D is  
23 automatically a party to the case.

24 The applicant informed the Board that he had a  
25 contractor to construct the canopy over the driveway. He was

1 not aware that the contractor had not obtained the proper  
2 permits from the city to perform the construction. The public  
3 hearing notice advertised the project for the existing canopy.  
4 However, at the public hearing, the applicant indicated that the  
5 existing canopy would be torn down and a new canopy with a  
6 wheelchair lift constructed in its place. The applicant  
7 presented plans for the new canopy and lift.

8 The Board left the record open to receive  
9 comments from the community on the revised plans that the  
10 applicant presented at the hearing, Exhibit No. 43, Drawings A-1  
11 to A-3.

12 The Board instructed the applicant to provide  
13 documentation concerning the design of the new canopy, and to  
14 identify how the wheelchair platform lift would operate at the  
15 site. Also, the applicant should review the zoning relief  
16 requested to ensure that it is in correct relief needed for the  
17 project.

18 The Board established the following time line.  
19 October 19<sup>th</sup>, 2001, submission of comments on the revised plans  
20 from ANC 3D, John Kennedy who is a party to the case, and all  
21 persons in attendance at the public hearing. October 26<sup>th</sup>,  
22 2001, the applicant's response to the submissions, and the  
23 decision today, November 6, 2001.

24 Several comments were received on or before the  
25 due date from neighbors and other persons in attendance at the

1 public hearing. A letter of concern from ANC 3D was received  
2 after the submission date indicated by the Board. See Exhibits  
3 number 39-42, and 46-47. The applicant responded to the  
4 submissions and to the additional information requested by the  
5 Board by the due date. See Exhibit 44 and 45.

6 The Board Members participating are Ms. Renshaw,  
7 Mr. Levy, Mr. Griffis and Mr. Hannaham. The application is now  
8 before the Board for a decision.

9 CHAIRPERSON GRIFFIS: Thank you, Mr. Hart.

10 First, regarding Exhibit 47 which is a letter  
11 from Leo and Susan Coco dated October 17, which is one of th  
12 ones indicated that came in after the close of the record, we in  
13 Executive Session moved and approved opening the record to  
14 accept Exhibit 47, and it is with this reasoning if I can speak  
15 to what the Board's action was.

16 We felt that it did not include or encompass any  
17 new information, or more importantly and directly, any  
18 information that was not included in other letters already in  
19 the case. Therefore, if the applicant had responded to one of  
20 those letters, would have in fact responded to the Coco letter,  
21 so we did not see that as a major disruption. And I think  
22 that's the only issue we needed to deal with in terms of that  
23 record. Okay.

24 Let's jump into this. Board Members. This has  
25 been a very interesting case with a lot of energy put to it,

1 obviously. We have quite a few letters. There has been some  
2 meetings. I was struck, frankly, looking at some of this and  
3 some of the letters that are coming in, I can generalize by  
4 saying in opposition to this that there seems to be non-clarity,  
5 and I'm not sure whether it's -- I don't want to speculate but  
6 there seems to be non-clarity about what was being looked at,  
7 and when, and what was actually to be approved. There was the  
8 ANC letter that talked about that special exemptions are  
9 actually for use variances, and it's not appropriate for this.  
10 I think we did try to address that in the public hearing, but I  
11 have some concern. I have some concern that the public and  
12 parties are going to be -- are feeling that this whole situation  
13 was not clear. I think some clarity or some unclarity to this  
14 case came to the fact that in the public hearing there were new  
15 plans actually drawn up.

16 Now the new plans were done by the applicant and  
17 I think in very good faith, based on comments they had gotten  
18 from the community and from ANC to hire an architect to explore  
19 different options. They have addressed the different options.  
20 One strikes out in mind, if I can digress for a minute, but is  
21 sinking a driveway off of the street. Fascinating idea. I  
22 don't even want to begin to think about the cost of doing that  
23 because it's none of our business, but the practicality, and I  
24 think actually the legality of it, if you look at the cite and  
25 the section that were given to us, it's just -- it's an

1 inappropriate option but obviously, it was explored by the  
2 applicant, and so the steps were taken.

3 Obviously, the applicant is coming for the  
4 special exemption to do this now a porte cochere previously an  
5 awning, in order to make a cover for the wheelchair lift out of  
6 the house. The site is obviously, as well all know, quite a  
7 dramatic drop from the street level. And that's all I think I  
8 needed to cover to preface as we get into this.

9 VICE CHAIR RENSHAW: Just some points for  
10 clarification, Mr. Chairman. On our original application  
11 notice, we were talking about a special exception to allow the  
12 construction of a canopy.

13 CHAIRPERSON GRIFFIS: Right.

14 VICE CHAIR RENSHAW: Since the applicant has  
15 substituted a more permanent structure for an awning, which I  
16 take is a definition of a canopy, is a porte cochere also to be  
17 considered a canopy? This is some of the confusion that's out  
18 there in the community, because we are voting on the canopy, and  
19 yet we have been given plans for a permanent structure, a porte  
20 cochere. So again, I looked in the regulations. There is no  
21 definition of a canopy. There's no definition in the regs of a  
22 porte cochere.

23 CHAIRPERSON GRIFFIS: Right.

24 VICE CHAIR RENSHAW: Do we go to the dictionary?

25 CHAIRPERSON GRIFFIS: Probably so. Staff had the

1 -- let me see the comment.

2 MS. PRUITT: Maybe I'll shed some light or muddy  
3 the waters. The canopy was always considered in zoning terms a  
4 permanent structure because it had four posts anchored in the  
5 ground, and that's what makes it a permanent structure. So in  
6 the sense of the canopy not being permanent, that's not correct  
7 for zoning, so they were just replacing one type of permanent  
8 structure with another, so because the four posts were anchored,  
9 it was always a permanent structure, whether it had a cloth  
10 awning cover, or a wood cover, or was actually even open with  
11 like a trellis type of thing, so it would still have been  
12 considered a permanent structure, as the porte cochere is for  
13 zoning purposes.

14 CHAIRPERSON GRIFFIS: Good. I would concur, I  
15 mean, the canopy is addressed in certain zoning of the regs and  
16 other pieces in terms of protections over public spaces and such  
17 of that nature, and is well defined as a permanent structure.  
18 But your point being, there may have been added some confusion  
19 in terms of what was to be looked at and what was actually going  
20 for special exception. You know, I can kind of see that. I,  
21 frankly, was dealing more with the fact that I wish the  
22 interested peoples and parties would have come together and  
23 addressed it rather than -- well, rather than started to create  
24 barricades to getting to the end result.

25 Frankly speaking as a Board Member, it's -- we

1 have a case before us. We need to decide it. The most  
2 important thing is that we get arguments submitted to us that we  
3 can deliberate on, and then we can move forward on it, whether  
4 it be to approve or deny. To have creation of an atmosphere  
5 outside that has been confusing and that there is not clarity,  
6 doesn't facilitate us, frankly, doing our jobs. So if folks  
7 have the end result in mind, knowing that they're probably not  
8 here today, but maybe they'll read the record on their weekends  
9 for free time and get some guidance of that.

10 Yes, Mr. Levy.

11 MR. LEVY: I have a question perhaps of the other  
12 Board Members. My recollection, and we did get some new  
13 material submitted on the design. My recollection was that we  
14 asked for a clarification of how the chair lift related to the  
15 design. Is that correct, because I don't see anything new in  
16 the information I have received. It appears to be the same  
17 drawings.

18 CHAIRPERSON GRIFFIS: How the -- what were we  
19 trying to establish?

20 MR. LEVY: Well, there was some question as to  
21 whether the chair lift was, in fact, part of the structure being  
22 erected, and how that fit into the design and the construction  
23 sequence.

24 CHAIRPERSON GRIFFIS: Well, there was the letter  
25 submitted by the architect that was discussing the fact that one

1 -- being this as a, what one would call a fixture, or you know,  
2 a mechanical device, it would not necessarily show up in the  
3 architectural drawings, but the space and the required space,  
4 and attachments, et cetera, that might be required would be  
5 provided for.

6 I hear your question, Mr. Levy. I'm not sure I  
7 share the same, so I'm just trying to tell you what I saw and  
8 heard in this, and that is that the architects are talking  
9 about, first of all, the amount of space, the 3642, whatever it  
10 was, inches wide for the stairs to accommodate the cover, the  
11 roof line that was dropped over it, what other things we were  
12 looking at. They also submitted cut sheets, specs on some of  
13 the --

14 MR. LEVY: Right.

15 CHAIRPERSON GRIFFIS: -- wheelchair machinery. I  
16 mean, I think that's the way -- if my understanding of how this  
17 might proceed is that the owner would pursue an architect do the  
18 drawings, and this what they'd essentially look like, obviously  
19 a little bit more detail as it develops. He would build this,  
20 and he would probably contract with a lift company that would  
21 come and install in into the architecture that was previously  
22 constructed.

23 MR. LEVY: All right.

24 CHAIRPERSON GRIFFIS: I mean, I don't know if  
25 that brings clarity to you or not.

1 MR. LEVY: Well, you know, I understand those  
2 points, but typically equipment of that nature would be  
3 represented on the architectural drawings, even if it's  
4 installed by others, and I don't think that's been clear.

5 There is a note reference to a chair lift on one  
6 of the drawings, but no real indication of how it would operate  
7 or where it would sit. That's just --

8 CHAIRPERSON GRIFFIS: I see. Okay.

9 MR. LEVY: -- I guess in addition to all the  
10 other confusing information in this case that concerns me.

11 CHAIRPERSON GRIFFIS: I see. Okay.

12 VICE CHAIR RENSHAW: I would like to note for the  
13 record the letter of John and Elaine Kennedy. This is Exhibit  
14 42-K that we received. These homeowners own the property  
15 directly south of the canopy, and they have issues enumerated in  
16 the letter. Most importantly, that his porte cochere or his  
17 canopy impacts on the Kennedy's front yard because it's going to  
18 be, as they say, just inches from their property. And again, we  
19 are looking at a special exception, and the rule of the special  
20 exception is that this cannot adversely impact the use of the  
21 neighboring property. While it will not impact Mr. Kennedy's  
22 and Mrs. Kennedy's ability to go in and out of their house, it  
23 does have a visual impact on their property with this porte  
24 cochere so close to their property line, so I want to bring that  
25 point up.

1                   And also, I would like the Board to discuss the  
2 letter of October 18 from ANC 3D that we have in our file. The  
3 ANC is asking for a short delay. The ANC is meeting on November  
4 the 7<sup>th</sup>, which is tomorrow, and would like to bring the plans  
5 that were submitted at the meeting that we had with Mr. Pande  
6 and the neighbors to the ANC meeting so that they could all look  
7 one more time at the same plans, and hopefully get back to us by  
8 Friday the vote of the ANC, because they feel that what they  
9 have considered is not the plans that were submitted to us. And  
10 they are asking for this common starting point of this porte  
11 cochere.

12                   CHAIRPERSON GRIFFIS: Good. Two excellent points  
13 to bring up. Go ahead, Mr. Levy.

14                   MR. LEVY: I was just going to add to that, that  
15 the letter that we have from the ANC that predates the October  
16 18<sup>th</sup> letter is not -- doesn't give a favorable recommendation,  
17 so I just wanted to add that.

18                   CHAIRPERSON GRIFFIS: Right.

19                   MR. LEVY: That's in the record.

20                   CHAIRPERSON GRIFFIS: Right. Just make comment  
21 on those two pieces. I think I fully appreciate the letters  
22 that we're getting, and I think just to let you know my frame of  
23 thinking of this, is that this is exactly what we do get. The  
24 letters that should talk about obstructions, and it is our's to  
25 deliberate on, and then to make decision based on those, and

1 based on the applicant's case.

2 Keeping that in mind, I want to make  
3 clarification as we go to ANC 3D's letter, the paragraph that  
4 says that the understand the code, a special exception is  
5 designed to permit applicants to request alternative use of a  
6 property. That is not correct, in fact, and I think the Board  
7 Members are well aware of that, and how that actually gets  
8 addressed with the ANC I do not know, but wanted to state that.

9  
10 Well, Board Members, I would say that the  
11 schedule being such that the ANC meeting is tomorrow, I would  
12 entertain quick discussion on whether we do want to delay this.

13 I think before we move in that direction, I believe someone  
14 from the applicant is here. I would just like to ask quickly if  
15 -- that they can facilitate that, but I think it might be a wise  
16 idea to push this off to December 4 which would be our next  
17 decision making, in order that we might have, or allow for time  
18 for some clarity within the community.

19 VICE CHAIR RENSHAW: I think that would be very  
20 wise, Mr. Chairman.

21 MR. LEVY: I would be in favor of that, as well.

22 CHAIRPERSON GRIFFIS: Okay. If I'm not mistaken,  
23 sir, you're here with the Pande case.

24 MR. ROSS: That's correct.

25 CHAIRPERSON GRIFFIS: Do you mind just coming up

1 for a quick second, and I'd just have you state your name for  
2 the record with a mike on.

3 MR. ROSS: Yes. For the record, Howard Ross,  
4 representing the applicant in this matter.

5 CHAIRPERSON GRIFFIS: Great. Thank you, Mr.  
6 Ross. Just a quick question. Obviously, you just heard what we  
7 were saying. ANC is meeting tomorrow night, I believe, which is  
8 the 7<sup>th</sup>. Would -- I want to, frankly, feel comfortable that the  
9 applicant has provided the information the ANC is looking for,  
10 so that they might be able to address the case with hopefully  
11 further clarity.

12 MR. ROSS: Well, as indicated in my response, the  
13 plans submitted before the last ANC meeting are the same plans  
14 that were submitted and addressed at the hearing on October  
15 16<sup>th</sup>. There were only one set of plans, and the point I had  
16 hoped to make is that they've seen those plans and they rejected  
17 them. The opposition indicates that they simply, you know,  
18 don't want a violation of the zoning ordinance. They didn't  
19 really comment on the plans themselves, but rather to say that  
20 they didn't want the structure built.

21 CHAIRPERSON GRIFFIS: And I think you were very  
22 clear in that, and I think we are all very clear that there are  
23 -- the plans A-1-A-3 that were delivered, they were delivered  
24 different sizes. Some were faxed and, you know, as I say, I  
25 think I spoke to a little bit about that. That seems to be a

1 bit of a diversion in the whole situation, but I think it's --  
2 in terms of the amount of opposition that we have on this case,  
3 I think it would be very important to get a consensus -- if a  
4 consensus can come together, that it would be important to have  
5 it presented tomorrow evening to the ANC, not burdening you to  
6 absolutely be there as long as the documents are there, but I  
7 think the ANC would certainly welcome the applicant being there  
8 to make the case, and I would strongly urge it. Unless you have  
9 a very frank, direct objection to that that we need to consider  
10 at this point, I think that's the direction we'll take.

11 MR. ROSS: Well, I understand and share Ms.  
12 Renshaw's opinion, it would be nice to get a consensus. We've  
13 gone through the exercise twice, and I just don't see it  
14 happening. I'd love it to happen. The ANC has mentioned that  
15 Mr. Pande's attitude is to do what is necessary to reach a  
16 consensus, but I think we're at the point where these are the  
17 plans after going to three architects that would be functional,  
18 and if the neighbors object to it and say we don't want any  
19 structure, it's got to be one or the other.

20 CHAIRPERSON GRIFFIS: Right.

21 MR. ROSS: I'm happy to have the ANC meet, review  
22 the plans again and provide comments on the plans. I'm not  
23 terribly optimistic that's going to change anything, but I think  
24 it may be well worth taking a chance, if you'd agree.

25 CHAIRPERSON GRIFFIS: I understand.

1 MR. ROSS: Yes. I don't if the applicant will be  
2 able to go to the meeting, but you know, if it's on the agenda  
3 and they want to review the plans again, I have no objection to  
4 that.

5 CHAIRPERSON GRIFFIS: Okay. Good. I mean, we  
6 obviously can't order that that happen or anything like that,  
7 but it's obviously a strong recommendation that if Mr. Pande  
8 can't be there or one of his agents, at least make contact, you  
9 know, through a quick phone call or a memo stating that fact.  
10 In which case, I think there's a motion -- or no, we would need  
11 a motion.

12 VICE CHAIR RENSHAW: Well, Mr. Chairman, I move  
13 that we defer decision on this case to allow the ANC 3D to bring  
14 this before its public meeting on November the 7<sup>th</sup>, so that it  
15 is very clear that the plans before them that night are the  
16 plans that were presented to the Board of Zoning Adjustment, and  
17 that we defer decision until December the 4<sup>th</sup>.

18 CHAIRPERSON GRIFFIS: Good. I think was thinking  
19 that just for clarification, our motion would actually be to  
20 defer decision to December 4.

21 VICE CHAIR RENSHAW: To December 4. Uh-huh.

22 CHAIRPERSON GRIFFIS: With the comments that we  
23 want to facilitate the community conversation and the ANC  
24 meeting. Mr. Levy, any quick comment, question?

25 MR. LEVY: No.

1 CHAIRPERSON GRIFFIS: Very well. All in favor.

2 (Vote.)

3 CHAIRPERSON GRIFFIS: Opposed. Good. And yes,  
4 sir. Yeah.

5 MR. ROSS: Just for one point of clarification,  
6 will there be -- the record will be left open for their  
7 additional comments and a response, or how does the Board want  
8 to treat that?

9 CHAIRPERSON GRIFFIS: Thank goodness there are  
10 lawyers to keep us in check. Is that not correct? Yeah, that  
11 is going to be what we're going to have to do. I would suggest  
12 that we -- I would put it for consensus. I would suggest that  
13 we -- oh, gosh, December 4<sup>th</sup>. We do have some time. We keep  
14 the record open for two weeks for --

15 VICE CHAIR RENSHAW: The 21<sup>st</sup>.

16 MS. PRUITT: The ANC report only because that's  
17 the only person they're going to.

18 CHAIRPERSON GRIFFIS: Right. Indeed.

19 MS. PRUITT: And then the applicant can respond  
20 to the ANC. That's what I would suggest.

21 CHAIRPERSON GRIFFIS: Yeah. I think that would  
22 be -- yeah, let's keep it --

23 MS. PRUITT: But it would only be the ANC report.

24 CHAIRPERSON GRIFFIS: Keep it focused.

25 MS. PRUITT: Let's see. I'm looking at times here

1 to see.

2 VICE CHAIR RENSHAW: The 21<sup>st</sup>.

3 CHAIRPERSON GRIFFIS: The 21<sup>st</sup> Ms. Renshaw  
4 indicates.

5 MS. PRUITT: That's the day before Thanksgiving,  
6 but that was actually --

7 CHAIRPERSON GRIFFIS: Well, they're not doing it  
8 to Thanksgiving.

9 MS. PRUITT: Right.

10 CHAIRPERSON GRIFFIS: I mean, how much time do  
11 you think you would need to respond if you had an ANC?

12 MR. ROSS: No more than a week.

13 CHAIRPERSON GRIFFIS: No more than a week.

14 MS. PRUITT: Well, that would be the -- if  
15 they're meeting tomorrow, by the -- on the 7<sup>th</sup> and we give the  
16 ANC until the 14<sup>th</sup>, a week, and then the applicant to the 21<sup>st</sup>  
17 which is another week --

18 VICE CHAIR RENSHAW: Okay.

19 MS. PRUITT: -- to respond to any ANC concerns.

20 CHAIRPERSON GRIFFIS: That works. Okay.

21 MS. PRUITT: I believe we have somebody from the  
22 ANC.

23 MR. FINNEY: If I may clarify --

24 CHAIRPERSON GRIFFIS: Sir, before you speak.

25 MR. FINNEY: I'm sorry.

1 CHAIRPERSON GRIFFIS: Can you just come up to the  
2 table and speak in the mike. We have to get you on the record.  
3 Yeah, just turn on one of the mikes and --

4 MR. LEVY: Give your name.

5 MR. FINNEY: John Finney. I'm ANC 3D-04. This  
6 is in my independent district. I wanted to clarify, when would  
7 you like a response from us?

8 MS. PRUITT: November 14<sup>th</sup> which is a week. Your  
9 -- I believe tomorrow is your meeting. Correct, sir?

10 MR. FINNEY: Yes.

11 MS. PRUITT: So then a week later, which would be  
12 the 14<sup>th</sup>.

13 MR. FINNEY: Shall do.

14 MS. PRUITT: Thank you.

15 CHAIRPERSON GRIFFIS: Thank you very much. Thank  
16 you both for your patience. And to that, let me check my notes  
17 here. We are at roughly 10:45. We have one more case in the  
18 morning which is Application 26775, National Medical  
19 Association. Before we call it, loosely looking out, I believe  
20 the applicant is here. We are going to break  
21 until --

22 MS. PRUITT: Mr. Chair, we have some information  
23 that may help.

24 CHAIRPERSON GRIFFIS: Yes.

25 MS. PRUITT: We have not been able to get in

1 touch with Mr. Parsons. He's on the hill. We've talked with  
2 his secretary, and understand that he'll be here by 11:30 at the  
3 very latest. And he's the other Board Member on this case.

4 CHAIRPERSON GRIFFIS: Early lunch. No, no.  
5 Okay. We have a couple of problems. We have -- we will be  
6 waiting for Mr. Parsons on this case. He is on Capitol Hill at  
7 this point, and was coming over as soon as possible, but 11:30  
8 is what staff has indicated.

9 MS. PRUITT: And we do have a message in to him,  
10 so it may be a possibility he gets here earlier, but --

11 CHAIRPERSON GRIFFIS: Can we patch him in on the  
12 speaker phone? No.

13 MS. PRUITT: We can't actually physically get him  
14 on the phone.

15 CHAIRPERSON GRIFFIS: Yeah. I understand. And  
16 our morning is running so smoothly. Okay, well this is it.  
17 We're going to take a 15 minute break. I'm going to come out at  
18 11:00 and give you an assessment of where we are. Worse case  
19 scenario right now, we're looking to start this at 11:30, and  
20 that's when Mr. Parsons would be able to join us, and then we'd  
21 be done by 11:33, so we'll be on lunch by 12.

22 VICE CHAIR RENSHAW: Other than that --

23 CHAIRPERSON GRIFFIS: I think that's -- I'm  
24 sorry. Go ahead.

25 VICE CHAIR RENSHAW: Well, I was just asking, are

1 we going to go ahead if Mr. Parsons does not come by 11:30?

2 CHAIRPERSON GRIFFIS: Yeah. I think we're going  
3 to take an assessment. Hopefully, he will contact us. As I  
4 stated, he's on the hill. He was supposed to be available this  
5 morning. He may not be available. We'll move on, but as I say,  
6 15 minutes, 11:00. I'll come out, just give a quick update, and  
7 hopefully we'll have more information at that time. Thank you.

8 (Off the record at 10:42 a.m.)

9 (On the record at 11:05 a.m.)

10 CHAIRPERSON GRIFFIS: I guess I'll be on the  
11 record for this, but just to give you a quick update, Mr.  
12 Parsons is still not here, not called, so we will be starting at  
13 11:30 with or without Mr. Parsons and get through this. Thanks.

14 (Off the record at 11:05 a.m.)

15 (On the record at 12:06 p.m.)

16 CHAIRPERSON GRIFFIS: Okay. Coming back from our  
17 recess. Do forgive us, as we're trying to juggle schedules, and  
18 we're very aware of your's also, but Mr. Parsons has joined us,  
19 and so we did delay in order to have a full Board that has heard  
20 this so that we might be complete. To that, I think we can  
21 resume where we left off, and I will speak slowly so the staff  
22 can get together, and whenever you're ready, we're all set.

23 MR. HART: We will continue with Application  
24 number 16775 of National Medical Association, pursuant to 11  
25 DCMR 3103.2 for a variance to allow a certificate of occupancy

1 to be issued to the non-residential space in advance of the  
2 required residential space in a combined lot development under  
3 Subsection 1706.13, a variance from the time limit for the  
4 issuance of C of O under Subsection 1708.1(f), a variance from  
5 the rear yard requirements under Section 774, a variance from  
6 the off-street requirements under Section 2102, and a variance  
7 from the loading berth requirements under Section 2201, and  
8 pursuant to 11 DCMR 310-4.1, a special exception from the roof  
9 structure provisions under Subsection 411.11 to allow the  
10 construction of a new office building in a DD/C-2-C District at  
11 premises 1012 10<sup>th</sup> Street, N.W., Square 342, Lot 57.

12 The hearing date was October 23<sup>rd</sup>, 2001. The  
13 Board heard the facts of the case and determined that additional  
14 information would be needed from the applicant. Specifically,  
15 based on the requirements of the DD Overlay in 11 DCMR  
16 Subsection 1706.4, the applicant is required to provide housing  
17 on or off-site, a minimum of 4.5 FAR. The applicant is  
18 proposing to provide the housing off-site in Housing Priority  
19 Area B, to fulfill the housing component required by the Zoning  
20 Regulations under the Transfer Development Right arrangements.

21 The Zoning Commission recently adopted  
22 regulations, Case Number 00-30TA to provide relief from the  
23 provisions prohibiting the issuance of a Certificate of  
24 Occupancy for the non-residential component of a linkage project  
25 prior to the issuance of a Certificate of Occupancy for the

1 housing component. The new regulations will allow a Certificate  
2 of Occupancy for the non-residential component to be issued  
3 before the Certificate of Occupancy for the housing on the  
4 component, provided the owner of the non-residential component  
5 establishes an escrow account to assure that construction funds  
6 will be available when the housing is ready to proceed. If the  
7 housing construction were not undertaken in a timely manner, the  
8 escrowed money would be released to the Housing Production Trust  
9 Fund. However, as of the date of the Board's hearing on the  
10 application, the Commission had not yet published a Notice of  
11 Final Rule Making. Therefore, the new regulations were not yet  
12 effective.

13 The Board was of the opinion that the application  
14 does not contain the specificity needed concerning the receiving  
15 site. The Board received a letter from Douglas Jemal indicating  
16 that as the owner of the approximately 27,000 square feet of  
17 land on the east side of Square 517, he is committed to entering  
18 into a Combined Lot Development covenant with the National  
19 Medical Association. Further, the applicant presented oral  
20 testimony that Mr. Jemal agreed to receive the 4.5 FAR at no  
21 cost to the National Medical Association, a significant amenity.

22 The Office of Planning recommended that the  
23 application be approved, except for the variances having to do  
24 with the timing of the off-site housing construction. The Board  
25 requested that the applicant work with Office of Planning to

1 provide assurance to the city that the housing would be  
2 constructed in a timely manner. The Board outlined various  
3 options for the housing for the applicant to consider. One,  
4 provide a signed covenant between the parties. Two, establish  
5 an escrow account. Three, develop another mechanism for  
6 committing to providing the housing in a timely manner.

7 The submission was to be filed by October 30<sup>th</sup>,  
8 2001. The Office of Planning may file a supplemental report. A  
9 decision will be made on the application at the Board's November  
10 6<sup>th</sup>, 2001 public meeting. If the applicant was unable to meet  
11 the October 5 deadline, the Board will establish a new decision  
12 date.

13 The applicant stated that variance relief from  
14 the timing provisions of Subsection 1708.1(f) is not required,  
15 since variance from the timing provisions of Subsection 1706.13  
16 would provide greater relief, superseding the requirements of  
17 Subsection 1708.1(f). The applicant withdrew the request for a  
18 variance from Subsection 1708.1(f).

19 In a submission dated October 30<sup>th</sup>, 2001, the  
20 applicant responded to the Board's request for additional  
21 information, and also indicated that they had continued to work  
22 with the Office of Planning. The Office of Planning has  
23 submitted a supplemental report.

24 The Board Members sitting on this case are Mr.  
25 Griffis, Ms. Renshaw, Mr. Levy, and Mr. Parsons. The

1 application is now before the Board for a decision.

2 CHAIRPERSON GRIFFIS: Mr. Hart, thank you very  
3 much. A complete overview. I would refresh the Board's memory  
4 and my own on this case, although it's probably not required.  
5 We've been looking at this quite extensively, but what is  
6 obviously impressive with this particularly unique situation is  
7 the small lot, roughly just over 3,000 square feet for a full  
8 building. I think the case was walked through fairly  
9 extensively and clearly, and what kind of practical  
10 difficulties, that of course realizes when trying to put in an  
11 office or even a mixed use.

12 I would propose at this point that we take  
13 several of these issues separately, and I would propose for  
14 discussion, and at the pleasure of the Board's action. The  
15 variance from the rear yard requirements under Section 774,  
16 variance from the off-street parking requirements under Section  
17 2101, and a variance from the loading berth requirements under  
18 Section 2201. And I would also lump in the special exception  
19 for the roof structure provisions under 411.11 at this point,  
20 and we will bring up the subsequent issues after, so I would  
21 open the floor up to the Board's pleasure, comments, questions,  
22 discussions.

23 Actually, let me just quickly start in refreshing  
24 in terms of the off-street parking. Obviously, it's based on  
25 the site size, which goes to the overall case that was presented

1 before us. There is one handicap provided on site, and there  
2 has been proffered by the applicant to enter an agreement to  
3 lease 12 others off-site, just to refresh. And with that, I  
4 will open up the floor. Nothing. That's fine. No -- oh,  
5 please, Ms. Renshaw.

6 VICE CHAIR RENSHAW: Well, I was going to move  
7 that the Board approve the application for the rear yard, off-  
8 street parking and loading dock variances and the special  
9 exception for the -- relating to the roof structures.

10 MR. PARSONS: Second.

11 CHAIRPERSON GRIFFIS: There's a motion and a  
12 second. Did you want to include a condition on -- within that  
13 motion, or we will get to that?

14 VICE CHAIR RENSHAW: I think we'll get to it,  
15 unless --

16 CHAIRPERSON GRIFFIS: Very well.

17 VICE CHAIR RENSHAW: -- one of the Board Members  
18 has -- would like to proffer something at this point.

19 MR. LEVY: I guess I would just ask whether we  
20 would -- is there a condition attached relative to the provision  
21 of 12 off-site parking spaces?

22 VICE CHAIR RENSHAW: Uh-huh.

23 MR. PARSONS: Yes.

24 VICE CHAIR RENSHAW: Yes.

25 CHAIRPERSON GRIFFIS: I think just to be clear,

1 if -- to make a friendly amendment to the motion.

2 VICE CHAIR RENSHAW: Absolutely. That's fine.

3 CHAIRPERSON GRIFFIS: That's part of the motion  
4 to be considered. Any other discussion? Seeing none, I would  
5 call a vote. All those in favor.

6 (Vote.)

7 CHAIRPERSON GRIFFIS: Opposed. Thank you much.  
8 Why don't we record that vote.

9 MR. HART: Staff would record the vote as 4-0 to  
10 approve the rear yard, off-street parking section of this  
11 application with conditions as discussed.

12 VICE CHAIR RENSHAW: The loading dock.

13 CHAIRPERSON GRIFFIS: Right. With the loading  
14 dock, the loading berth requirements also.

15 MR. LEVY: And also the special exception from  
16 the roof structures.

17 VICE CHAIR RENSHAW: Yeah.

18 CHAIRPERSON GRIFFIS: Good. Okay. Yeah, this as  
19 the staff just writes that down. I think this case was  
20 particularly interesting with Section 1411 and the roof  
21 structure, realizing that you could not conceivably come into  
22 compliance in terms of the setbacks, and I think it may just  
23 underscore the need for some dedicated look at that section of  
24 the regulations, but that may just be a pot shot at one of our  
25 colleagues, so we'll move on to the next -- the variance from

1 the time limit for the issuance of a C of O under Subsection  
2 1708.1(f). I know there's been clarifications on that, and  
3 Subsection 1706.13.

4 This is, in fact, a particularly unique situation  
5 to be before the Board at this point for several reasons, and  
6 I'm hoping that most of this will come out in discussion here.

7 As Mr. Hart adequately stated, there is movement  
8 within the Commission for this condition on this site in terms  
9 of a combined lot development. The regulations are anticipated  
10 within a very short period of time. There is the importance in  
11 our deliberation to understand several things, one of which is  
12 the delicacy by which this may become a precedent that would not  
13 in fact be a positive precedent for the continuation of the DD  
14 Overlay, but also in terms of the overall intent of the city and  
15 the city's residents.

16 I say that with the full understanding or want to  
17 have understood that this Board has taken quite some time in  
18 deliberating on our own, and in briefly an Executive Session,  
19 trying to come to an understanding of how we can look at this  
20 specific case.

21 I think I want to leave it there and open it up  
22 to discussion, and I, perhaps, will return back to my comments.

23 MR. PARSONS: Mr. Chairman, I guess I'll just  
24 give you a little remarks from the Zoning Commissioner who has  
25 spent a great deal of time over the past 20 years trying to

1 accomplish a housing goal that's in the Comprehensive Plan, and  
2 I think everybody wants housing downtown. And the Zoning  
3 Commission passed some regulations some years ago that attempted  
4 to do that, and it proved to be ineffective. That is, it  
5 required the housing be built ahead of the office space, and so  
6 we undertook an extensive series of hearings this year to see if  
7 there was some way we could be assured that housing would occur  
8 not before the office, but in turn subsequently. And the result  
9 is, without being redundant here, or trying not to be, that  
10 nobody could guarantee that housing would be built with some  
11 kind of handshake agreement between two owners, that something  
12 had to be there to guarantee it. And we came to the conclusion  
13 that an escrow was the way to do that. And I understand those  
14 regulations will be in effect right after Thanksgiving.

15 And for us then, this Board, to find a different  
16 circumstance here, that simply a covenant somehow is adequate  
17 without an escrow, to me is really unfortunate. I mean, that's  
18 what this is all about. And yes, we're dealing with regulations  
19 that aren't in place. We're dealing with last July's  
20 regulations. I appreciate it, but you can't ignore what's going  
21 on around us, or we can't ignore what's going on around us, so I  
22 am very troubled by the notion that this is unique. It'll never  
23 happen again, but I'm troubled by the notion that the Board is  
24 moving out ahead with a completely different conclusion that the  
25 Zoning Commission drew on this issue of guaranteeing housing, so

1 I would urge us to deny this aspect of the case or the  
2 application, knowing full well that what would result if time  
3 passes as I understand it to pass. Crystal balls are always  
4 bad, that the applicant could move forward with our variances  
5 already granted as a matter of right here in the very near  
6 future to go that next step passed the covenant provided for us  
7 to find \$219,000 to do what everybody else is expected to do in  
8 the DD to accomplish a goal that is common to all of us. Those  
9 are my feelings on the matter, but I won't make a motion.  
10 That's premature.

11 CHAIRPERSON GRIFFIS: Thank you very much, Mr.  
12 Parsons. I would turn to counsel for just a brief comment on  
13 the fact that the matter of right regulations that are coming  
14 down. Can you speak to the fact of whether this case would come  
15 under that or not? Mr. Parsons has brought up the fact that  
16 this case is submitted under the current regulations.

17 MR. BERGSTEIN: Well, it was submitted as a  
18 variance based upon the current regulations. The Zoning  
19 Commission has voted final approval of regulations that would,  
20 in essence, add an option which doesn't technically exist as of  
21 this date of your decision meeting. But based upon my own  
22 progress in reviewing the draft final rules, I would anticipate  
23 that they would be final between November 16<sup>th</sup> and November 30<sup>th</sup>.

24 At this point, it's a ministerial job of me going through the  
25 transcript of the Zoning Commission hearing and making some

1 technical corrections to a text, so in that instance when you're  
2 making a decision, and you're deciding whether or not to grant  
3 variance relief, I think it's appropriate to look within the  
4 foreseeable future. And if there is a substantial likelihood,  
5 and it's more than a substantial likelihood that within the next  
6 three weeks the rules of the game will change fundamentally, so  
7 that the only thing that's left is the ability to fund the  
8 escrow. I think at this decision meeting you could take that  
9 into account, with the understanding that the likelihood is the  
10 final order that would give effect to your decision, would  
11 probably come out after the zoning regulations become effective.

12 The other way of looking at it is that at least  
13 you know that the Zoning Commission has weighed the issue of  
14 whether a sending lot should be allowed to go forward with  
15 receiving its C of O before the residential use is in place.  
16 And as determined without establishing any waivers that an  
17 escrow must be funded to at least assure that after five years,  
18 if the send -- if the receiving lot does not obtain 50 percent  
19 completion, the money will be used elsewhere to guarantee  
20 housing. So even though technically speaking the rules are not  
21 in place, the Zoning Commission in its deliberations has  
22 concluded for your guidance that the only -- in its view, the  
23 only acceptable alternative to waiting is to fund an escrow  
24 which would guarantee housing.

25 CHAIRPERSON GRIFFIS: Thank you. Mr. Parsons, I

1 would turn back to you and ask you just to briefly state if  
2 you're so inclined, your deliberations on the case made for the  
3 variance. I think it was absolutely important for us to have  
4 the background in terms of the Commission, and you have stated  
5 the fact that you're inclined to deny the variance. Do you want  
6 to elaborate further on just the fact that obviously you're  
7 moving to deny the variance, that you feel that the case wasn't  
8 made, or is that self-explanatory in your statement, and maybe  
9 I'm not clear.

10 MR. PARSONS: Do you mean as far as whether the  
11 structure can accommodate housing?

12 CHAIRPERSON GRIFFIS: No, no. I'm talking about  
13 --

14 MR. PARSONS: Because that case was made. There's  
15 no doubt about --

16 CHAIRPERSON GRIFFIS: No, I'm talking more just  
17 the boilerplate case for a variance in terms of how the time  
18 limits relates to that, in terms of uniqueness. Perhaps I'm not  
19 clear.

20 MR. PARSONS: Because the uniqueness goes to the  
21 property.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. PARSONS: I'm not sure what you're asking.

24 CHAIRPERSON GRIFFIS: Well, I won't pull teeth  
25 and put words in your mouth, things that you're not prepared to

1 talk about, but okay. Any other comments, discussion?

2 MR. LEVY: I guess, Mr. Chair, if I might, to  
3 somewhat address your last point. You know, I've personally  
4 struggled with this case from many different angles, and  
5 considered it -- including from the perspective of -- or the  
6 question of whether or not a variance from timing is even  
7 appropriate relief. And to follow up on your last comment, I  
8 would say along that line, I don't see where a case has been  
9 made to time -- anything relevant to the issue of timing. I  
10 would reluctantly -- somewhat reluctantly have to follow in Mr.  
11 Parsons footsteps in terms of how I see the case at this point  
12 in time.

13 VICE CHAIR RENSHAW: Mr. Chairman, a question for  
14 Mr. Parsons. Mr. Parsons, you stated that you thought that the  
15 Board has a different interpretation from the Zoning Commission.  
16 Do you feel that we are getting out in front of the Zoning  
17 Commission? Would you flesh that out a little bit.

18 MR. PARSONS: No, I think we are coming to a  
19 different conclusion. The Commission concluded that a covenant  
20 as is proffered here, if that's the right term, was not enough.  
21 It wouldn't guarantee the housing. It -- I think I  
22 characterized it a handshake agreement, I didn't mean that.  
23 It's a written legal instrument. But given how difficult it is  
24 to accomplish housing, we felt on the Zoning Commission that  
25 three or four years from now we would have applicants coming

1 back saying well gee, it didn't work out. You know, there was a  
2 recession or whatever, and that we'd be waiving that. And in  
3 concert with the Comprehensive Plan and the desires of so many  
4 in this city, we said the only way to do that is to put adequate  
5 funding in an escrow account, not this small amount. We're  
6 talking about large amounts of money when you pool it, and then  
7 we and the public would know that although this was going to  
8 become an office building, there was housing that would occur.  
9 And what we would be doing if we followed the request here is to  
10 say no, this covenant is enough, and that's where I can't get  
11 there. I mean, we just -- at this literally 14 days ahead of a  
12 set of regulations that anticipated this kind of thing, and came  
13 to a different conclusion, that's what I meant.

14 VICE CHAIR RENSHAW: Thank you.

15 CHAIRPERSON GRIFFIS: Well, there is one aspect  
16 in my thinking when I look at the timing for the combined lot  
17 development, and that is that this is one of the steps that has  
18 to be taken in order for, as the cases stated, the project to  
19 move forward. Therefore, it is part and parcel of the  
20 difficulty inherent in this site. And I put this out for  
21 comment, saying that that in fact -- is there a way that we can  
22 see this as tied to this site as we have clearly stated that --  
23 and have approved the variances from the other issues of area,  
24 that in a completeness of a project, this being one part of it,  
25 based on the fact that this -- the lot size is so small as to --

1 I would daresay, and I think the applicant has stated be next  
2 to, if not impossible to do a mixed use of commercial and  
3 residential. Therefore, inherent in that is the fact that the  
4 residential have to go somewhere in keeping with the  
5 regulations. Does that tie it back then to the site, the  
6 condition, and therefore, the case for the variance?

7 MR. LEVY: Mr. Chair, I would agree that there's  
8 little question because of the constraints of the site. There's  
9 no question that the housing -- it would be very difficult, if  
10 not impossible, to construct the housing and the office building  
11 on the same site.

12 Where I have a problem then is tying back to the  
13 issue of timing, and I think the case has been made that the  
14 housing cannot be constructed on the site. I'm not sure the  
15 case has been made that the timing is therefore affected.

16 CHAIRPERSON GRIFFIS: Thank you, Mr. Levy. That  
17 is very clear, and a good point. Let us, unless someone is  
18 burning to make further discussion, we have a submittal  
19 recommendation from Planning. It is in the record. It does not  
20 need to be waived as it's connected to the original report. But  
21 first of all, do Board Members have questions of Planning, or  
22 would you like a brief overview from Planning as to their  
23 supplemental recommendation?

24 VICE CHAIR RENSHAW: I would ask for a brief  
25 overview from planning.

1 CHAIRPERSON GRIFFIS: If we could so ask then.

2 VICE CHAIR RENSHAW: Uh-huh.

3 MR. FONDERSMITH: Thank you, Mr. Chairman,  
4 Members of the Board. I'm John Fondersmith from the Office of  
5 Planning. We tried to make this a fairly brief supplemental  
6 report. We noted that we had supported the variances you've  
7 discussed and the special exception and gone into considerable  
8 length about the property in the first initial report.

9 On the timing issue, we did say in the initial  
10 report to avoid the timing issue, the applicant should establish  
11 a housing escrow account as allowed under the new rules which  
12 have been approved by the Zoning Commission. There was  
13 considerable discussion at the October 23<sup>rd</sup> hearing. I regret  
14 that I wasn't here for that, but other members of the staff from  
15 the Office of Planning were.

16 Subsequent to that, in the urging of the Board to  
17 get more information from the applicant and for us, we did have  
18 conversations with the applicant about alternative approaches,  
19 essentially a letter of credit or some other arrangement that  
20 might be easier for, or at least we thought might be easier for  
21 the applicant and would still get at the desired thing. But  
22 essentially, I think I can say the applicant felt that any such  
23 arrangement would also be a burden.

24 I mean, as we say in here, they have worked out  
25 the arrangement with Mr. Jemal on the combined lot. That

1 essentially as Mr. Williams said in his letter, saves them or  
2 has a value of \$350,000 to \$400,000. That costs isn't there,  
3 and now they, perhaps understandably, want a variance that --  
4 from the timing requirements now, and not to have to go into an  
5 escrow or potentially some other arrangement that would work  
6 there.

7 We note, and you have in the submittal from the  
8 applicant that more specificity was provided from Mr. Jemal in  
9 his letter, and the draft covenant was also provided. And of  
10 course, if something were worked out, the Corp. Counsel would  
11 review that covenant in detail for legal sufficiency. And the  
12 applicant also submitted some other cases, including the  
13 application 16387 which was Square 456 in the Golden Rule Plaza  
14 (phonetic). We did want to note that in there there was an  
15 escrow account established. That's a little different kind of  
16 case, but that was done there, so we just are concerned about  
17 the precedent issue here too. We certainly went into detail in  
18 our report about the value, the importance of the National  
19 Medical Association, that long history in the city, the  
20 importance of keeping them here, and the possibility that what  
21 they want to do is, you know, is a fine building, and can help  
22 that area. But we simply are concerned about opening the door,  
23 and it really comes down to that, in our view, that this could  
24 be for other cases, even with the new rules in place for the  
25 escrow, reason to say, you know, somebody else to say we have a

1 small site and we can't make it work, and so on. So we really  
2 continue to recommend in -- with respect to the housing timing  
3 variance that that not be granted, and that therefore the  
4 applicant really look at -- hopefully will look again the escrow  
5 contribution approach, so I think that is, you know, where we  
6 are on this.

7 CHAIRPERSON GRIFFIS: Thank you very much. Any  
8 questions of Planning? Clarifications? We absolutely  
9 appreciate that synopsis, and in fact the first report. And I  
10 think you did underscore, and I think I can speak for myself but  
11 I think also for this Board, in how important the National  
12 Medical Association is, and type of business that is important  
13 to this city, and they stated very eloquently the fact that they  
14 have been here over 100 years, and obviously are history and  
15 heritage of businesses that have had that commitment to this  
16 city are very important.

17 Let us flesh out and reflect, perhaps, some more  
18 on this issue of the regulations that will be forthcoming that  
19 will, we anticipate, establish as a matter of right, and if I  
20 understand this correctly, a matter of right in a combined lot  
21 development, the establishment of an escrow account that would  
22 allow for the leniency of -- well, for lack of a better -- to  
23 allow for the construction of commercial prior to the  
24 residential construction. If I am clear that that escrow  
25 account is established in order for a certain amount of money by

1 the sender's site to be put into, and I think Corp. Counsel has  
2 indicated that if in fact then, and in this specific case on the  
3 Parcel 517 I believe it is, if it did not go in a certain amount  
4 of time to construction of residential, then that escrowed money  
5 would actually go into a larger escrow that would fund other  
6 housing projects within and around the city.

7 MR. BERGSTEIN: What the rule will provide is  
8 that if the project architect doesn't certify in five years that  
9 50 percent of the residential development is completed, at that  
10 point the escrow agent would release the funds to the Housing  
11 Trust Fund, unless the owner of the receiving site requested a  
12 three year extension from the Zoning Commission. If the Zoning  
13 Commission grants that extension, there would be another three  
14 years for a total of eight years for the receiving site to reach  
15 50 percent completion. If at the end of eight years, 50 percent  
16 completion is still not achieved, at that point the escrow agent  
17 would have to release the funds to the Housing Trust Fund.

18 CHAIRPERSON GRIFFIS: So generally speaking, a  
19 sender site putting into escrow, it is perhaps not the legal  
20 terms, but it is a cost of development of that site.

21 MR. BERGSTEIN: In the normal combined lot  
22 development transaction where the owner of the sending lot is  
23 different from the owner of the receiving lot, the combined lot  
24 process envisions, in essence, the owner of the sending lot  
25 entering into a commercial transaction that equals the value, in

1 essence, to the sending lot of having no longer to account for  
2 housing on the sending lot. And that amount has, up to this  
3 point, never been regulated. It's a matter of an arm's length  
4 transaction. And then having accomplished that, and once the  
5 covenant is entered into, the sending lot has for the value of  
6 that money been released from the requirement to account for  
7 that much FAR on site. You could have a combined lot  
8 development where the owner of the receiving lot and the sending  
9 lot are the same, and normally I would assume that no money  
10 would pass hands giving the unity of ownership. But even then  
11 under the new rules, an escrow account is nonetheless required.

12 CHAIRPERSON GRIFFIS: Interesting. Well,  
13 actually that brings some clarification, and it may be the  
14 longest yes I've ever heard, but nonetheless.

15 MR. BERGSTEIN: Yes.

16 CHAIRPERSON GRIFFIS: It does range as a base  
17 when we then go back to this specific circumstance in terms of  
18 establishing if it was -- well, actually I don't know if I want  
19 to go there, because we're speculating on things that are  
20 frankly in the future, or maybe not in the future, so I'll let  
21 that be, and I appreciate the clarification from Corporate  
22 Counsel.

23 Mr. Levy, did you have something?

24 MR. LEVY: I guess I would just like to say that  
25 I look toward the new rules being adopted by the Zoning

1 Commission to hopefully ease the requirement, the housing  
2 development requirement so that it will enable organizations  
3 such as the National Medical Association to construct -- to not  
4 have to construct the housing portion, but enable them to have a  
5 way to stay in this city, because I don't -- no matter how the  
6 vote goes, I don't want there to be any question that, at least  
7 in my mind, that we value the National Medical Association, and  
8 hope that they will stay in the District of Columbia.

9 CHAIRPERSON GRIFFIS: Thank you. I absolutely  
10 concur with that.

11 VICE CHAIR RENSHAW: Mr. Chairman.

12 CHAIRPERSON GRIFFIS: Yeah.

13 VICE CHAIR RENSHAW: Just to say at this point,  
14 during the hearing I spoke in favor of allowing the, you might  
15 say the excuse of the escrow because of this organization being  
16 valued by our city. It's a very important organization, and I  
17 spoke in terms of, of course, always liking to express a use for  
18 money, or to suggest a use for money, had offered the suggestion  
19 that this money could be better spent in training of the  
20 physicians for the bio-terrorism that confronts our country at  
21 this time.

22 However, I also want to remark, I want to reflect  
23 on what my colleague, Mr. Parsons, has brought to the Board  
24 today, and to also let everyone know that I toiled in the fields  
25 many years ago on the living downtown concept and struggled with

1 everyone else over the need for housing downtown. And that has  
2 never -- I have never strayed from that. I think that housing  
3 downtown is absolutely essential for the life of Washington,  
4 D.C. So I just want to say that we cannot come to, or we should  
5 not come to a different conclusion than the Zoning Commission.  
6 And I defer to my colleague, Mr. Parsons, who states that a  
7 plain covenant, although signed, is not enough. We have to have  
8 the escrow with the covenant, or we have to have the escrow.  
9 That's absolutely important in this negotiation, or in this  
10 application.

11 CHAIRPERSON GRIFFIS: Thank you, Ms. Renshaw. I  
12 think that is well said, and I think what you touched upon, and  
13 I'm glad you did, the fact that the Board did look at the  
14 variance case in terms of -- delicately and quickly in terms of  
15 the light of the economic reality of setting up an escrow  
16 account, and I think it can be said in my deliberation that it  
17 was hard to move that into making the variance case, that went  
18 then back to the issues that were before us. But certainly, it  
19 was -- is a reality that none of us could put aside, so I thank  
20 you for that.

21 I think that -- I'm not sure who else and what  
22 else we want to flesh out on this, and I would ask the pleasure  
23 of the Board at this point on direction of what we would like to  
24 do.

25 MR. PARSONS: Mr. Chairman, I would move that we

1 deny the request for a variance on the timing rule that applies  
2 to combined lot developments.

3 CHAIRPERSON GRIFFIS: Do I have a second?

4 VICE CHAIR RENSHAW: Second.

5 CHAIRPERSON GRIFFIS: Any final discussion,  
6 comment? Mr. Levy, quick on the draw on that mike.

7 MR. LEVY: No further comments.

8 CHAIRPERSON GRIFFIS: Very well. I would just  
9 make a comment that this is not something that I think that I  
10 have had any easy time with in terms of the complexity of the  
11 issue to this specific case, and I think I can speak for the  
12 Board Members the same, that there has been quite a lot of  
13 deliberation and great attention to this. And I think as Ms.  
14 Renshaw has eloquently said, great caring for our city and for  
15 this particular applicant. With that, I would call the vote for  
16 all those in favor.

17 MR. LEVY: Aye.

18 VICE CHAIR RENSHAW: Aye.

19 MR. PARSONS: Aye.

20 CHAIRPERSON GRIFFIS: And opposed. Thank you all  
21 very much. Staff would record the vote, if we're ready.

22 MR. HART: Staff would record the vote as 4-0,  
23 Mr. Parsons making the motion, and Ms. Renshaw seconded.

24 CHAIRPERSON GRIFFIS: Thank you very much. If we  
25 don't have anything further, I believe this ends our November

1 6<sup>th</sup> public meeting in the a.m.

2 (Off the record at 12:49 p.m.)

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