

GOVERNMENT

OF

THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

FEBRUARY 4, 2003

+ + + + +

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 L. ETHERLY, Board Member
DAVID ZAIDAIN, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Commissioner
CAROL J. MITTEN, Commissioner
JOHN G. PARSONS, Commissioner

BZA STAFF PRESENT:

BEVERLEY BAILEY, Office of Zoning
CLIFFORD MOY, Office of Zoning
JOHN NYARKU, Office of Zoning

OTHER AGENCY STAFF PRESENT:

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JOEL LAWSON, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

LORI MONROE, ESQ.

ALAN BERGSTEIN, ESQ.

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P R O C E E D I N G S

9:47 a.m.

CHAIRMAN GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 4th of February 2003, Public Meeting of the District of Columbia Board of Zoning Adjustments. My name is Geoff Griffis, I am Chairperson. With me is Ms. Anne Renshaw, Vice Chair; also Mr. Curtis Etherly, sitting to my right. Representing the National Capital Planning Commission is Mr. Zaidain, sitting to my left. And with us on cases this morning, Zoning Commissioner, Mr. Hood, and we will have other Zoning Commissioners as is appropriate with the cases that will be called.

Able staffing us today and always is Office of Zoning, Ms. Bailey and Mr. Moy. Mr. Nyarku is also with us and Corporation Counsel, Ms. Monroe.

With that, let us get into our first case.

I'm going to make a quick announcement in terms of the schedule. We will be calling and deliberating on the first three cases on the agenda. We will then take a recess for Executive Session and get into the last case of the day. That last case for the morning session decision making is -- well, I've left it out there in the Executive Room, so the official appeal

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1 16879, Nebraska Avenue Neighborhood Association.

2 So we will go through three, take a
3 recess, and then we will come back to that case.

4 And we can clearly disregard the clock in
5 the hearing room which is telling us it's quarter of
6 4. That puts us way behind schedule. However, that
7 being said, let's get into the first case, please.

8 MR. MOY: The first case is Application
9 No. 16962 of Mr. and Mrs. Aislee Smith, pursuant to 11
10 DCMR 3103.2., for a variance from the lot occupancy
11 requirements under section 403, a variance from the
12 rear yard requirements under section 404, a variance
13 from the nonconforming structure provisions under
14 subsection 2001.3, to allow the construction of a
15 three-story addition to a row dwelling in the R-4
16 District at premises 2304 1st Street, N.W. in Square
17 3124, Lot 75.

18 At the Board's last meeting on January 7,
19 the Board requested a number of information. First,
20 graphic representation, photographs or drawings of the
21 subject property in relation to the adjacent property,
22 including the proposed addition and its potential
23 effect on adjacent structures to include views from
24 and into the site and graphic representation or a
25 narrative of lot widths of the subject property and

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1 properties in the surrounding area. Both the
2 Applicant and Party Opponents supplied the information
3 and that's in your folders as Exhibit 37 and Exhibit
4 38, respectively, although the Party Opponents'
5 submission arrived three weeks late being filed on
6 January 17th. That's in your package as Exhibit 41.

7 And that was submitted, filed on January 28th, which
8 was a couple of weeks late.

9 In terms of responses to the above
10 information, the Applicant submitted response by
11 letter and that's in your files as Exhibit 39. And
12 finally, proposed findings of fact and conclusions of
13 law were submitted by both the Applicant and the Party
14 Opponents and they're identified as Exhibit 42 and
15 Exhibit 40, respectively. And that completes my
16 briefing, Mr. Chairman.

17 CHAIRMAN GRIFFIS: Thank you very much,
18 Mr. Moy.

19 First, let's just address the submissions
20 of the additional material. I think it was very
21 helpful in putting together and having an
22 understanding of this case.

23 I'm going to ask the Board's indulgence
24 and get a question answered by the Applicant's
25 representative if they're here and I do believe it's

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1 just a clarification for information that's on the
2 record.

3 Would you mind coming forward? If I could
4 just have you give your name and address?

5 MR. BLANCHARD: Good morning, Mr.
6 Griffis, and Members of the Board. My name is Lyle
7 Blanchard, and I'm representing the Applicant in this
8 case with Greenstein, DeLorman and Luchs. My address
9 is the Applicant's address.

10 CHAIRMAN GRIFFIS: Good. The question
11 that I have and I think it's pretty straightforward is
12 this. There's photographs that are submitted. There
13 looks to be new framing construction on the rear of
14 the building. Is that an existing condition that was
15 rebuilt, structurally altered, modified or is that
16 actually an addition to the structure?

17 MR. BLANCHARD: I believe that was an
18 existing condition that was re -- I think the
19 Applicant testified at the hearing that they'd bought
20 the house approximately five years ago and have done
21 some reconstruction since that purchase date of the
22 original framing of the house. So that's all a matter
23 of right construction that they did earlier.

24 CHAIRMAN GRIFFIS: And that includes,
25 matter of right then includes the third level?

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1 MR. BLANCHARD: Correct.

2 CHAIRMAN GRIFFIS: That we're seeing.

3 MR. BLANCHARD: Right.

4 CHAIRMAN GRIFFIS: So to summarize then
5 for my understanding, the photographs of the existing
6 condition are matter of right and not before us?

7 MR. BLANCHARD: That is correct.

8 CHAIRMAN GRIFFIS: And what is before us
9 then as we break it down is the addition of the three
10 stories which extends out 20 feet from the rear and
11 also the garage?

12 MR. BLANCHARD: Right, the garage extends
13 20 feet to the rear yard, through the entire rear yard
14 and the rest of the addition above it is set back,
15 four feet, 10 inches.

16 CHAIRMAN GRIFFIS: Indeed. Thank you very
17 much.

18 MR. BLANCHARD: Thank you.

19 CHAIRMAN GRIFFIS: Board, I think that
20 clarifies quite a bit in terms of what we're looking
21 at. And let me just start us off here.

22 I think that conceivably this should be
23 broken down and I have viewed this in two separate
24 areas looking at the 3-story addition and also looking
25 at the garage. There is, I believe, ample and

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1 persuasive testimony and evidence to the test
2 regarding the garage. We have a uniqueness on several
3 levels and one, there was an existing structure that
4 was there, an existing garage as a matter of fact.
5 There is a letter from the engineer that talked about
6 or that directly stated that it was a public safety
7 structural hazard that needed to be removed.

8 What's interesting is that by taking that
9 safety precaution it actually puts the Applicant back
10 here to rebuild what was, in fact, then existing
11 condition. I find that to go one, to uniqueness; and
12 two, to a practical difficulty of not being able to,
13 as they might have been able to do matter of right, if
14 it was in better shape, to structurally modify or
15 recondition, let us say, the garage in the rear.

16 The other practical difficulty is where
17 else does it go? It could be looked at at the front,
18 although Office of Planning indicated that they could
19 matter of right do development on the front. I take
20 some issue with as they have a lot occupancy problem,
21 front or back. But in terms of looking at the options
22 of where you would place and where you would park,
23 there is only one. And it was, in fact, in existence.

24 In terms of impairing the integrity of the
25 zone, if you would build it new, it would require a

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1 parking space. It would not necessarily require a
2 garaged space, but it is directly attendant to
3 residential and single family homes and I see no
4 impairing there, nor do I see any impact, negative
5 impact potential for adjacent properties.

6 Any comments on that? Or additional
7 information that I may have missed?

8 (Pause.)

9 Good. That being said, when looking at
10 the 3-story addition, I think this Board is very
11 empathetic to existing structures, first of all,
12 structures that were built before the current
13 contemporary zoning was put into place.

14 Also, I think we hold of great value, the
15 importance of being able to accommodate living
16 situations in order to retain and attract people into
17 this wonderful city. And I think that we do look and
18 go out of our way to look at possibilities of how that
19 can be accommodated.

20 That being said, however, the addition to
21 the rear of this structure seems to be going -- well,
22 in terms of the uniqueness, I don't -- I have a hard
23 time, I am limitedly convinced that there's a
24 uniqueness to this structure.

25 I think the Court itself and the pinching

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1 of the structure lends itself to the uniqueness. Its
2 practical difficulty, again, I am limitedly convinced
3 that based on that fact and the circulation that there
4 is actually the requirement for an additional 16, 15,
5 an addition of a room on all the levels. Then if
6 those could even take me to a convincing level, I go
7 to the third prong which I believe that this cannot
8 meet.

9 I think there was not outrageously
10 persuasive testimony in opposition, but I think the
11 actual graphics and looking at the adjacent properties
12 was very convincing in terms of the line that the
13 buildings hold with the townhouse structures, the
14 extension of this, I think, would become too extreme.

15 And I believe that it would start to impair the
16 integrity of the zoning of the R-4 which does and in
17 several areas is focused on protecting open space.
18 And I think it's always a difficult thing for us to
19 look at and judge because it is not necessarily
20 scientific, although we can see studies and diagrams
21 of it. But I think it also has to go to a base
22 feeling of what would be the impact of the adjacent
23 properties and the entire row for that matter and
24 again, I go back to the fact that you look at the
25 building lines and the rear.

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1 Although there was submissions, written
2 submissions about how there were additions to the
3 back, I found looking at those that the majority of
4 which held two lines for the rear of the structure.
5 And that was often there an addition on the single
6 floor, the first floor of the townhouse that may have
7 extended further into the rear yard, but it was -- I
8 did not see any evidence that there were additional
9 structure above that and certainly not that went as
10 far back and four feet away from the alley line.

11 But that's all I know, so if there are
12 others?

13 VICE CHAIR RENSHAW: Mr. Chairman?

14 CHAIRMAN GRIFFIS: Yes.

15 VICE CHAIR RENSHAW: I concur with your
16 statements. I thought that the graphics that had been
17 submitted showing the west end -- let me just get
18 these here. The south and north elevation as far as
19 the extension and how it -- the impact would fare on
20 the patio and the trellis beyond was too great on the
21 abutters and I could not be in support of this
22 addition.

23 I am, though, in support of the garage
24 addition, with the garage replacement, we should call
25 it.

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1 CHAIRMAN GRIFFIS: Good. Thank you.
2 Anyone else?

3 MR. HOOD: Mr. Chairman, I think your
4 comments definitely, the clarification we got from Mr.
5 Blanchard. I actually came in from Hampton to vote
6 against this project, but I think your comments and
7 what I see in front of me, I would like to move in the
8 direction in which you so freely expressed in your
9 deliberation.

10 I would be inclined to move in that
11 fashion.

12 CHAIRMAN GRIFFIS: Okay. Well, let me
13 propose a motion and we can have further discussion on
14 this and it would be I would move approval, in part,
15 and denial, in part, of Application 16962 of the Smith
16 residence for the variance from the lot occupancy
17 requirements under 403, the variance from the rear
18 yard and the variance from the nonconforming structure
19 under 2001.3 and this is for the dwelling at premises
20 2304 1st Street, N.W. And the motion would, in fact,
21 be in approval of those variances to construct or
22 reconstruct, but construct the garage structure at the
23 rear of the building. And to deny the construction of
24 the 3-story addition to the row dwelling.

25 VICE CHAIR RENSHAW: Second.

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1 CHAIRMAN GRIFFIS: Any further discussion?
2 Clarification? Last moments?

3 In which case I would ask for all in favor
4 of the motion signify by saying aye.

5 (Ayes.)

6 Opposed?

7 (No response.)

8 Thank you very much.

9 Let's move on to the next case, please.

10 MR. MOY: The staff would record the vote
11 as 5-0-0 to approve, in part, and deny, in part, the
12 variances requested, specifically denying the variance
13 for the 3-story addition and voting for the motion is
14 the Chairman, the Vice Chairperson, Mr. Etherly, Mr.
15 Zaidain and Mr. Hood.

16 MR. HOOD: Mr. Chairman, I just have a
17 question. We have sets of findings of facts. I guess
18 in the full order I would hope that some of the
19 comments that the Opponents had done be included. I'm
20 not sure exactly -- normally, we look at it
21 afterwards, but I guess at the BZA we would still need
22 to know what the findings of fact and conclusions of
23 law -- we want to make sure we have an opportune time
24 to comment, I would think.

25 CHAIRMAN GRIFFIS: You want an opportunity

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1 to comment?

2 MR. HOOD: No, I want us the opportunity,
3 the Board to review the findings of facts and
4 conclusions of law once the final draft is done.

5 CHAIRMAN GRIFFIS: Oh, absolutely. We'll
6 review the final, the draft of the final order.

7 MR. HOOD: Okay.

8 CHAIRMAN GRIFFIS: Yes.

9 MR. MOY: The next case is Application No.
10 16927 of The Public Welfare Foundation and Manna,
11 Inc., pursuant to 11 DCMR 3103.2, for a variance from
12 the lot area and lot width requirements under section
13 401, a variance from the lot occupancy requirements
14 under section 403, a variance from the rear yard
15 requirements under section 405, a variance from the
16 off-street parking requirements under subsection
17 2101.1 and a variance from the building on alley lots
18 provisions under subsection 2507.2, and pursuant to 11
19 DCMR 3104.1, a special exception to allow required
20 off-street parking spaces to be located on a lot other
21 than where the principal structure is located under
22 section 2116, to allow the construction of 12
23 single-family dwellings in the R-4 District at
24 premises rear 1300 block of Temperance Court, N.W., in
25 Square 274, Lots 57 through 61 and 804 through 860, 1

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1 through 12 per subdivision.

2 At the January 14, 2003 Public Meeting, if
3 the Board will recall, received a request by the
4 Applicant to continue the case, to today's meeting,
5 February 4, 2003, and the reason was to allow
6 sufficient time for the Applicant to meet with the
7 Department of Transportation and resolve outstanding
8 issues and concerns.

9 The Applicant has submitted the
10 supplemental information received by the Board on
11 January 30th of 2003 and that is in your folders as
12 Exhibit 42 and that completes my briefing.

13 CHAIRMAN GRIFFIS: Thank you, Mr. Moy.
14 Okay, first of all, well, there's a lot to talk about
15 here. There's an awful lot of variances and I would
16 say that just based on that fact and I know when we
17 were in the hearing, we had discussions on that. I
18 don't find that the number of variances go to a
19 success or failure of any application, but I think it
20 does speak in this specific one to the amount of
21 difficulty and complexity that this project is facing.

22 What I would propose is that we take these
23 variances essentially one at a time and the order of
24 which I don't think is absolutely critical, but let me
25 propose, first of all, that we start with the variance

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1 from buildings on alley lot provisions which is under
2 Section 2507.2 and it specifically reads that one
3 family dwelling shall not be erected or construction
4 on an alley lot unless the alley lot abuts an alley 30
5 feet or more in width and has from the alley access to
6 a street, through an alley or alleys not less than 30
7 feet in width. If you read it slowly, it makes sense.

8 This, to me, was a big concern because the
9 -- I believe that the provision of this -- I believe
10 this section is really talking about numerous things
11 and that is clearly vehicular access, but I think its
12 overall access which goes to ensure public safety and
13 access into this and I think we've had extensive
14 amount of discussion on being able to access emergency
15 vehicles and fire trucks into that area, but I'm also
16 concerned with the impact that it has on the people
17 that actually lived there that would be walking in and
18 out and to basically when we look at more traditional
19 townhouses, we have street frontage, we have sidewalks
20 and we have pedestrian and public areas and that is
21 inherent in the complexity of the alley lot
22 developments. But I think in that, one needs to
23 address then how the provisions would be made to
24 facilitate accessing 12 houses and the rear of all the
25 townhouses that surround it by 10 foot public alleys.

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1 Let me step back and then I'll ask for
2 people to continue discussion on that and just say
3 that as I started out, this in and of itself is a very
4 complex project to try and pull together. I think
5 we're all very well aware of that. In fact, I think
6 we've given this even more time than would be normal,
7 10 to 12 hours per case of deliberation.

8 In order to really understand it and
9 understand all the issues and how this can come to be
10 and I must say that I think the submissions from the
11 law firm on this case have been exceptional in terms
12 of putting together the issues before us and
13 addressing those issues.

14 And we'll see how that proceeds, but I --
15 well, there that is.

16 Any comments, deliberation, please on the
17 variance from the alley lot construction?

18 VICE CHAIR RENSHAW: Mr. Chairman? I'm
19 uncomfortable with this project because of the
20 narrowness of the alley system leading to these homes,
21 these 12 row homes and we note that the main public
22 alley off of 12th and 13th Street is only 15.25 in two
23 locations and we also note that per the additional
24 material that was submitted which does not have an
25 exhibit number, but it was dated January 30 from

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1 Arnold & Porter law firm that there is now a proposal
2 to put a speed bump into one of these 15 foot alleys
3 at 13th, just below U Street and also a yield to
4 pedestrian sign which is going to be inadequate and
5 brings up the subject that has yet to be resolved by
6 DDOT, what does "yield" mean?

7 So I'm uncomfortable with this. I see
8 problems, especially as it relates to moving from 13th
9 or 12th Street into the 15-foot alley system and then
10 into a 10-foot alley behind the row houses on 13th
11 Street and the homes that are a part of this
12 development.

13 So we do not have additional material from
14 the Fire Department which is worrisome and I feel that
15 25.702 is there for a reason. The reason is, in large
16 part, public safety and as you stated the safety of
17 the residents living there and unfortunately, this
18 alley system doesn't lend itself to maximizing public
19 safety.

20 CHAIRMAN GRIFFIS: Others?

21 MR. HOOD: I really think, Mr. Chairman, I
22 really think that the Fire Department safety issue is
23 an issue. I know that this Board cannot force their
24 hand, but I would like for us not to throw it all away
25 because I still think preliminary discussion, I think,

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1 that they had at OP, Fire Department didn't have a
2 problem. It was just a matter of them giving us a
3 comfort level to proceed.

4 I would just hate to see us just throw the
5 whole project away because we didn't get a response
6 from what we asked for.

7 CHAIRMAN GRIFFIS: Okay.

8 VICE CHAIR RENSHAW: And it's not enough
9 just to have perhaps the results of a telephone
10 conversation. We do need to have some material in the
11 record and again, I would like the Fire Department, I
12 wished that the Fire Department had just reacted to
13 the -- especially the 10-foot alley system that is
14 behind nine of the homes on one side and three of the
15 homes on the other because the fire apparatus are
16 9-feet wide without opening the doors and if you open
17 the doors, again, it's another 2 to 2.5 feet. This
18 was mentioned in earlier testimony from the Board to
19 the Applicant. But again, we don't have any results
20 from the Fire Department and it needs to be in place
21 in the record.

22 MR. HOOD: Let me just say again, Mr.
23 Chairman, in agreement with Ms. Renshaw, is that what
24 the Board asked for, I think, is not asking for too
25 much: the sidewalk, lead hamper safety. We have some

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1 legitimate, very legitimate questions. And again, I
2 think the Fire Department should be real responsible
3 because I think this Board is looking out for the
4 safety of the residents who may provide or live in
5 that area.

6 I just hate to see us throw this away
7 because the Fire Department was not responsive to this
8 Board.

9 CHAIRMAN GRIFFIS: What I'm hearing and I
10 think we can continue, but what I'm hearing is not
11 necessarily that we just didn't get confirmation, but
12 there are numerous issues that are attendant to this.

13 I mean I think on face we note that we have a 10-foot
14 alley and what accommodations were made with that.
15 But Mr. Gross has approached us, so perhaps we can
16 bend our proceedings a little bit and see if there is
17 some illumination to this issue.

18 If you wouldn't mind introducing yourself.

19 MR. GROSS: Thank you, Mr. Chairman. Nate
20 Gross, Arnold & Porter.

21 I just came up to comment that the Office
22 of Planning after the last meeting submitted a
23 detailed list of questions to the Fire Marshall and
24 received a response back. In fact, I think Mr. Lawson
25 realized yesterday that he needed to forward that to

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1 the record and I know he brought copies this morning
2 and that response is dated December 12th. I just got
3 a copy this morning also.

4 CHAIRMAN GRIFFIS: Well, let's go to
5 Office of Planning then.

6 MR. LAWSON: I should note that the Fire
7 Department did reply to the questions in a short memo.
8 My apologies. I realized yesterday that I did not
9 submit that to the BZA and I should have. I have
10 copies available. It's a short memo noting support
11 for the application and I can distribute that, if you
12 wish or summarize it, if you wish?

13 CHAIRMAN GRIFFIS: Let's do both.

14 MR. LAWSON: I can actually read it out.
15 It's that short.

16 CHAIRMAN GRIFFIS: Perfect.

17 MR. LAWSON: It says -- and it was dated
18 December 12th. "The Fire Department comment that they
19 have no objection to this project, provided the
20 Applicant agrees to install and improve sprinkler
21 systems inside each home." I believe the Applicant
22 has agreed to that.

23 "Based on information submitted regarding
24 parking spaces, members of my staff made another site
25 inspection. As the plan is currently presented, there

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1 is accessibility to all 12 proposed units. However,
2 our concerns would be vehicles parking in the east
3 alley which would hinder emergency response apparatus.

4 Therefore, provisions should be included to prohibit
5 parking in the east alley."

6 My understanding is there is no parking
7 proposed in the east alley, but it could certainly be
8 signed to reinforce that parking would not be
9 permitted in the 10-foot wide east alley.

10 And that's the entire report.

11 VICE CHAIR RENSHAW: And that report is
12 signed by whom?

13 MR. LAWSON: That report came from Ken
14 Ellerby who is the Fire Marshall.

15 VICE CHAIR RENSHAW: Thank you.

16 CHAIRMAN GRIFFIS: Okay, and you have
17 copies of that we can just pass down?

18 MR. LAWSON: Yes, I do.

19 CHAIRMAN GRIFFIS: Do we have any
20 questions of Office of Planning on that issue?

21 (Pause.)

22 Okay, are there other questions regarding
23 the variance from the construction on alley lot? If
24 not, we can go on to -- why don't we take up lot areas
25 and lot width requirements together and move quickly

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1 into lot occupancy.

2 Does anyone want to start that off?

3 (No response.)

4 Let me hear from Board Members and see
5 what -- to deliberate on the uniqueness that was
6 presented in terms of these lots that go to any of the
7 variances, but clearly the four that we've or three
8 that we now have in front of us for discussion. And
9 then let's move to the practical difficulty.

10 If there are thoughts, comments on that?

11 MR. HOOD: What are you asking for again,
12 Mr. Chairman, comments?

13 CHAIRMAN GRIFFIS: Yes, well, deliberation
14 on what's your deliberation on the uniqueness that was
15 shown regarding these lots?

16 (Pause.)

17 And how does that uniqueness arise to
18 create a practical difficulty concerning the lot area,
19 lot width requirements and lot occupancy?

20 MR. ZAIDAIN: Mr. Chair?

21 CHAIRMAN GRIFFIS: Yes.

22 MR. ZAIDAIN: I guess just to instigate
23 the discussion here, one view that I've had when
24 reviewing this is that these lots are entirely located
25 in an alley system and there's really no way to

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1 mitigate that. I don't think this Board would ever or
2 anybody would support moving alleys to combine lots to
3 make them all fit onto full public streets.

4 So that begs the question, when you have
5 lots that are located directly in an alley system,
6 does that present the appropriate level of uniqueness
7 and practical difficulty to allow these types of
8 proceedings in terms of variances to review these?

9 My inclination is to say yes, because
10 there's no way to get around the fact that they're in
11 an alley system. The concerns that the alley system
12 raises in terms of safety are legitimate and sometimes
13 leads me to believe that we may be looking at
14 something that may have been better to go through the
15 Zoning Commission in terms of all the lack of
16 consensus between the agencies and the fact that it's
17 kind of getting into a negotiating situation in terms
18 of conditions. But that may work itself out in terms
19 of mitigating of the public impacts to support the
20 variance.

21 But be that as it may, I think the fact
22 that they are located in an alley system and that does
23 limit the access and the width and depth of these
24 lots, does lend itself to the uniqueness test.

25 CHAIRMAN GRIFFIS: Okay. The practical

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1 difficulty in that all of the lots are in one
2 ownership?

3 MR. ZAIDAIN: That may be by its own
4 definition be self-imposed. I'm not sure I would
5 necessarily agree with that, but I'll leave it at
6 that.

7 CHAIRMAN GRIFFIS: Mr. Zaidain, do you
8 think this would impair the integrity and intent of
9 the zone plan or map or in some way impair the public
10 good or be a detriment to it?

11 MR. ZAIDAIN: Well, you're asking two
12 different questions. One is the zone plan, one is the
13 public good. First, the zone plan, I think we are
14 constantly struggling with how the zone plan deals
15 with alley lots. We get a lot of that coming before
16 us.

17 So it's really hard to gauge. I don't
18 think the zone plan itself is looking to preclude
19 development entirely in alley lots. I think what we
20 have to do is balance what is good for the public
21 welfare which I think was your second part and what
22 may be too much in these alley systems. And to be
23 honest, I think we are somewhat on the threshold here
24 and I'm hoping to draw more testimony or some more
25 discussion from my Board Members to help tip me on one

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1 side or the other, to be honest with you.

2 I hate to put the onus on you guys, but --

3 CHAIRMAN GRIFFIS: Ms. Renshaw?

4 VICE CHAIR RENSHAW: It's a tough one.

5 The proposed use of this alley system and having these
6 townhouses, affordable townhouses is excellent.
7 Again, the Applicant did a survey and made the
8 outreach to the neighborhood and they wanted
9 affordable housing and this is one a parking lot, as I
10 understand it and here is a better use for that piece
11 of property, according to the Applicant. It's just
12 that the configuration in this alley system is
13 worrisome again, because of the public safety aspect
14 and I haven't come to the point where I can feel that
15 my concerns have been relieved enough to vote in favor
16 of this very well meaning project. And I would like
17 to hear from my colleagues as far as their opinions on
18 this.

19 CHAIRMAN GRIFFIS: Mr. Etherly?

20 MR. ETHERLY: Mr. Chairman, any concerns
21 that I had about the public safety issue, I think have
22 been quelled quite satisfactorily by the submission,
23 albeit late, but nevertheless a fairly compelling
24 submission from the Fire Department. I'll also note,
25 of course, as my colleagues reviewed in the

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1 documentation submitted by Arnold & Porter, that there
2 also was discussion in -- while I find the item, I
3 believe it was the January 30th submission, but I
4 apologize for not having the exact exhibit cite, but
5 there was also reference to the fact that there would
6 conceivably be an additional fire hydrant that would
7 be taken care of in the permitting process, albeit
8 that while it may not necessary be in front of us now,
9 I think that taken into account with the additional
10 items that were identified by the Fire Department and
11 acquiesced to by the Applicant give me much, much
12 better concern with regard to the public safety issue,
13 so I definitely be concerned from that standpoint, Mr.
14 Chairman.

15 CHAIRMAN GRIFFIS: Thank you.

16 MR. HOOD: Mr. Chairman, if I could just
17 weigh in on it.

18 CHAIRMAN GRIFFIS: Yes.

19 MR. HOOD: I really think that the
20 submission we got here from the Fire Department, in my
21 view, and the questions that I think that this Board
22 put forward, I think that this letter is unacceptable.

23 While I understand a response is better than nothing,
24 from what I'm reading it's almost next to nothing. So
25 I really think that this Board has some legitimate

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1 concerns.

2 Again, back to Ms. Renshaw's issue of
3 affordable housing and that's where we get into what
4 Mr. Zaidain was saying about the balance. If I could
5 feel a little more comfortable with a little something
6 more than what I have here in front of me, then I may
7 be able to make that balance, but as far as I am
8 concerned this is unacceptable.

9 CHAIRMAN GRIFFIS: Thank you, Mr. Hood. I
10 think there is an overall issue that you've all
11 touched upon and that is the balance. When we go to
12 the public good or the benefit of this project, it is
13 part and parcel of the test, third, necessarily, but
14 it seems to me what I was wrestling with is the aspect
15 of the development of affordable housing which is
16 needed in this area and also across the city. Is this
17 actually the appropriate place for that in terms of
18 the success of that housing and the growing value of
19 those structures? And most importantly, through the
20 integration and being a part of a community, it's
21 almost as if this starts to isolate a product that
22 will be somewhat more difficult to become full and
23 participating in the surrounding area.

24 Now that goes a bit beyond what we're
25 talking about, but what it leads me to is actually the

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1 function that one of the submissions from the
2 Applicant is indicating that they are stressing the
3 fact that the parking lot which was approved by the
4 BZA and there's some question of when that actually
5 happened, I guess the application went in in 1870 and
6 it was approved and ordered in 1998, we're slow on
7 some of these, but 150 years is tough. But the issue
8 that it's lower impact to have single family housing
9 in an alley lot than it is to have parking for 50 or
10 70 cars, whatever it is, I'm not convinced by. I
11 think in fact, a single family, although maybe
12 vehicular trips is less, I think it's a higher impact.

13 And I think the higher impact comes with the fact of
14 how many different types of activities that will be
15 taking place that need to be facilitated, that need to
16 be protected in order for the public good that is for
17 these specific structures and for the surrounding
18 houses and structures in the area.

19 This alley system, we've seen these
20 before. We've seen alley houses and we've always
21 struggled with this 30-foot dimension because of its
22 reality. I think this is even higher on this block
23 because of the mixed and the mixed use that is
24 happening in the area with Metro and with some of the
25 commercial through traffic that may end up happening

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1 in terms of loading the buildings on U Street and also
2 then having to have people walk back into their
3 houses, hopefully, they are walking to Metro and back.

4 Would this have been more successful with
5 fewer houses, maybe mitigating some of the area
6 variances, perhaps. But it is what it is before us.

7 So let me hear, continuing that, we can
8 move on to get full discussion and we will bring this
9 back to take the entire piece together if that's the
10 pleasure of the Board.

11 We have a variance for the off-street
12 parking requirements and also we should make total
13 clarification that we also are looking at a variance
14 to allow the required off-street parking be located on
15 another lot. It was advertised as a special exception
16 when we have had a submission by the Applicant that
17 indicates that they are aware of that and are
18 comfortable with us pursuing the variance, rather than
19 special exception.

20 So, first of all, we have the issue of can
21 you provide parking off the lot and then can we reduce
22 the number of required parking? And I would open that
23 up for deliberation.

24 MR. HOOD: Mr. Chairman?

25 CHAIRMAN GRIFFIS: Yes.

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1 MR. HOOD: Do we know specifically and I
2 guess would it be calling it accessory parking lot?
3 But anyway, do we know specifically where the other
4 lot will be?

5 CHAIRMAN GRIFFIS: Yes. If you look at
6 the site plan, it is -- it's on the north side and the
7 issue is for the required zoning dimension of the
8 parking, they can only fit a certain amount on that --
9 on the north side and then 10, 11 and 12 have their
10 attendant parking spaces. And then there's additional
11 on the -- we need to pull out the big --

12 MR. HOOD: I don't want to -- Mr.
13 Chairman, I don't want to sound like the people who
14 have come down are Smart Growth Group, but I think as
15 we deliberate, we need to take this under
16 consideration, like you stated earlier. It is near a
17 Metro and the option is and I know we can't predict
18 whether people are going to have cars or not, but I
19 think this will be an example, hopefully that folks
20 will use the Metro. You may not need a car.
21 Accessibility. I know that's a little far fetched,
22 but when the testimony in front of the Zoning
23 Commission always the Smart Growth folks that come
24 down, this is how they actually approach these issues
25 and this is the way I would see that maybe Manna had

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1 approached this.

2 CHAIRMAN GRIFFIS: And that would argue
3 towards the reduction of number. But talk to me about
4 the uniqueness, practical difficulty in not providing
5 on each individual lot a parking space and then moving
6 the parking spaces off individual lots?

7 (No response.)

8 Well, if you're convinced that the lot
9 area and lot widths which are nonconforming have met
10 the test of a variance, then you are convinced that
11 there is uniqueness and practical difficulty, just to
12 fit a structure on there, that it leads you directly
13 to the fact of well, if you're just trying to shoehorn
14 a structure in, there certainly is no room left over
15 for parking, right? I mean doesn't it leads you in
16 the same direction?

17 Or on the opposite, if you are not
18 convinced that fill lots are unique or that there's
19 practical difficulty arising from that or that it
20 could not have been cured in some other means, then
21 you really are looking at the same issue in terms of
22 relocating the parking.

23 VICE CHAIR RENSHAW: Mr. Chairman?

24 CHAIRMAN GRIFFIS: Yes.

25 VICE CHAIR RENSHAW: With this tight alley

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1 configuration, it looks to me as though there is going
2 to be parking out in front of these nine townhouses.

3 CHAIRMAN GRIFFIS: You mean in
4 practicality?

5 VICE CHAIR RENSHAW: In practicality, yes.

6 CHAIRMAN GRIFFIS: Just to be clear,
7 there's no plan from the Applicant to put parking
8 spaces on that.

9 VICE CHAIR RENSHAW: But they're going to
10 take up nine to ten feet in width, cutting off the 25-
11 foot alley to maybe 15 feet and the cars will
12 undoubtedly park in front for public safety reasons
13 and also for convenience reasons.

14 Here, we have on the diagram, five parking
15 spaces to the north and two to the south, leaving two
16 of these townhouses without any parking. And they're
17 going to be, if the homeowner has a car, which we
18 expect they would, that means definitely they're going
19 out front or they're going to impact the alley, the
20 10-foot alley system and park out in the rear which is
21 going to be impossible.

22 So this parking situation is not the best
23 in that the nine homes do not have on-site parking
24 when the configuration of the homes is so tight.

25 Ten, 11 and 12 on the other side of the

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1 25-foot public alley are a bit better because cars can
2 be accommodated in the rear of the property. And I
3 understand those fences are going to be removed so
4 that there is greater maneuverability for the autos,
5 but it's not the same on the other side.

6 MR. ZAIDAIN: So let me understand what
7 you're saying.

8 VICE CHAIR RENSHAW: I'm saying there's a
9 problem.

10 (Laughter.)

11 MR. ZAIDAIN: I think that's apparent by
12 the way this discussion is going. But you're saying
13 that you are less concerned with the traffic flow of
14 the three lots to the east?

15 VICE CHAIR RENSHAW: That's right.

16 MR. ZAIDAIN: Even though there's been
17 concerns raised about the flow down the 10-foot alley,
18 the access is lost?

19 VICE CHAIR RENSHAW: Right, and that's a
20 dead end alley. Unless that fence from what I assume
21 is a parking lot that has some border on 12th Street,
22 if that fence is removed, there's going to be an even
23 greater problem with that dead end alley because cars
24 are going to go out the alley system.

25 But because there's parking behind those

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1 three townhouses, I don't have as much a problem as
2 the nine homes, the nine townhomes across the alley,
3 the 25-foot alley.

4 However, we also have to take note that
5 there are -- what are they, duplexes on 12th Street
6 which would also bring 8 cars into that dead end
7 12-foot public alley. And they have frontage on 12th
8 Street.

9 So there may be more of a traffic jam with
10 lots 10, 11 and 12.

11 MR. ZAIDAIN: So --

12 VICE CHAIR RENSHAW: So it's just a bad
13 scene. It's a bad configuration.

14 MR. ZAIDAIN: For Lots 10, 11 and 12 or
15 for the entire project or for the ones on the --

16 VICE CHAIR RENSHAW: Definitely for Lots 1
17 through 9 because again, that's going to push the cars
18 undoubtedly into the 25-foot public alley as far as
19 parking in front of their homes for convenience and
20 public safety sake.

21 The Lots 10, 11 and 12 are a bit better
22 because again, there is parking on site, right behind
23 their townhomes. However, we've got the impact of the
24 townhomes development just fronting on 12th Street
25 that but up against the alley that 10, 11 and 12 will

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1 also be using.

2 But again, I'm not as concerned about 10,
3 11 and 12 as I am about 1 through 9.

4 CHAIRMAN GRIFFIS: So, Ms. Renshaw, in
5 terms of looking at the accessory parking spaces, it's
6 -- what is your opinion as to whether they're located
7 to furnish reasonable and convenient parking
8 facilities for the occupants or guests?

9 VICE CHAIR RENSHAW: Well, it could be
10 reasonable given the tight configuration within this
11 alley system. Convenience, no. It's whether or not
12 parking spaces 1 through 5 to the north and 6 and 7 on
13 the south side will be used or will the home owners
14 just opt to for convenience and public safety sake,
15 park in front of their homes which will probably be
16 the case.

17 CHAIRMAN GRIFFIS: So you're saying that
18 the location on the north and the south side is
19 actually not reasonable because you think that what is
20 reasonable is people will park in front of the
21 structures?

22 VICE CHAIR RENSHAW: People will park in
23 front of the structures. It's reasonable to have
24 additional parking. If you want to look at 1 through
25 5 on the north and 6 and 7 as additional space for

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1 guests or for two-car family residences, but I think
2 that the homeowners are going to be parking right in
3 front of their doorstep.

4 CHAIRMAN GRIFFIS: Okay. Mr. Hood talked
5 about the reduction from 12 to 10 and doesn't have any
6 difficulty with it. I believe you said more of a
7 planning perspective of it, but you find that there is
8 uniqueness to this and the practical difficulty in
9 providing a full 12 required under the zoning
10 regulations, Mr. Hood?

11 MR. HOOD: Let me say this, Mr. Chairman.
12 As I said that, I still stand with that, but the
13 question about these parking spaces on the side of the
14 three homes and the nine homes, I'm sitting here
15 having some issues with that. So I'm back at that now
16 as a problem.

17 CHAIRMAN GRIFFIS: What are the issues?

18 MR. HOOD: It caused me great concern
19 about -- actually, you mentioned, I think your
20 comments earlier was whether or not there was adequate
21 -- was it reasonable for them not to offer parking and
22 I'm concerned about that and I'm trying to figure out
23 how that's going to work. That give me pause. And
24 that's kind of where I'm stuck. So I'm kind of in
25 line where I heard Ms. Renshaw and her comments. I

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1 was trying to get some more deliberation from everyone
2 else and she kind of -- if there was a way that maybe
3 we can sent it back or whatever we can do to try to
4 see, but it's just enough of them to get the nine
5 homes there. So I mean from a planning perspective,
6 the other issue about the accessory parking, that's
7 not an issue. The issue now is the issue here with
8 them not having any parking provided. And that gives
9 me pause.

10 I don't have a remedy. I don't have an
11 answer, but that gives me pause.

12 CHAIRMAN GRIFFIS: Let me be clear about
13 your last statement that there isn't any parking.

14 MR. HOOD: Well --

15 CHAIRMAN GRIFFIS: Maybe I didn't follow.

16 MR. HOOD: Unless I didn't follow it, on
17 the site, they're not providing any parking for --
18 each house will not have a parking space.

19 CHAIRMAN GRIFFIS: That's correct.

20 MR. HOOD: I'm understanding that
21 correctly. So each house is not having a parking
22 space.

23 CHAIRMAN GRIFFIS: At 1 through 9.

24 MR. HOOD: One through 9.

25 CHAIRMAN GRIFFIS: Yes.

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1 MR. HOOD: And if I follow this correctly,
2 they're going to be using accessory parking lot?

3 CHAIRMAN GRIFFIS: Correct, on the north.

4 MR. HOOD: Hopefully.

5 CHAIRMAN GRIFFIS: And south side of the
6 row of townhouses.

7 MR. HOOD: And if I understand Ms.
8 Renshaw's comments, arbitrarily, most people are just
9 going to park in front of their house. Regardless of
10 what we sit here and say and legislate or write down,
11 they're going to still park in front of their house
12 and I think we need to consider that as we deliberate.

13 What is the remedy? I don't know.
14 Because we can sit here and say authorizing and do
15 what we said, no parking on the north side all we want
16 and it still may happen.

17 I think we need to have some foresight in
18 our deliberations and try to remedy that problem and
19 if that means changing the design which doesn't look
20 like we can do that because we're barely getting the
21 houses there.

22 But that's just kind of where I am.

23 CHAIRMAN GRIFFIS: Okay.

24 MR. ZAIDAIN: Mr. Chair, I don't know if
25 I'm going to confuse this further, but as we sit here

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1 and discuss this and as I work through it, i think it
2 may be helpful to look at this in two different ways.

3 One is the development to the west which is Lots 1
4 through 9 and then the development to the east which
5 are Lots 10, 11 and 12.

6 If you look at this in that light, there
7 is a difference between the two sites, both from a
8 practical difficulty and uniqueness standpoint and
9 from a public safety standpoint.

10 If you look at Lots 1 through 9 this is a
11 lot that is completely surrounded by an alley system
12 and we have reviewed those types of developments in
13 the past and they're uniqueness and practical
14 difficulty and also I would even say that that alley
15 system dictates their size and shape which limits the
16 building window for those structures.

17 Now if you look at what's going on the
18 east part of this development, it's not the same
19 because the overall lot does have frontage on 12th
20 Street. And furthermore, there are --

21 CHAIRMAN GRIFFIS: Let me interrupt you,
22 are you saying 10, 11 and 12 have frontage on 12th --

23 MR. ZAIDAIN: Not the lots themselves, but
24 the square does.

25 CHAIRMAN GRIFFIS: Yes.

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1 MR. ZAIDAIN: And I think that makes a
2 difference.

3 CHAIRMAN GRIFFIS: I see. Okay.

4 MR. ZAIDAIN: And furthermore, to go to
5 the public safety standpoint, we are begging the
6 question about how is parking going to function with
7 Lots 1 through 9? I'm at the same place Mr. Hood is
8 on that.

9 But we've heard significant or received
10 significant testimony from the public agencies about
11 the safety concerns raised by lots 10 through 12 on
12 that 10-foot public alley and how they have concerns
13 about the safety flow there.

14 So I think where I'm headed on this is, I
15 can see the substantial benefit and the practical
16 difficulty and uniqueness for Lots 1 through 9.
17 However, I still have some questions in regards to the
18 parking and how that's going to function.

19 However, I don't have that same support
20 for Lots 10 through 12.

21 And unfortunately, and I think we get this
22 from the reports that we're getting from the agencies
23 and I think we're hearing it from our own mouths up
24 here is that we have a lot of questions and there's no
25 answers.

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1 And I don't know if we can take what I'm
2 saying in terms of looking at these two sites
3 differently, forming that into a direction and going
4 from there.

5 I think what I would be inclined to
6 support is let's explore Lots 1 through 9. I think
7 there's a legitimate case for the practical difficulty
8 and uniqueness in terms of their alley system and the
9 shape of the lots and let's see if that aspect of this
10 project can work from a public safety standpoint,
11 i.e., parking. And I don't see myself supporting Lots
12 10 through 12 unless there's some significant concerns
13 that are addressed, specifically the concerns of the
14 public agencies and some clarification for this Board.

15 CHAIRMAN GRIFFIS: Okay, so you see them
16 as having differing issues and in fact, your own
17 deliberations has brought you different conclusions of
18 1 through 9 and 10 through 12.

19 I think that's excellent to say. What I'm
20 hearing actually is others have concerns of 1 through
21 9 that you may not share which lends us --

22 MR. ZAIDAIN: I don't think that's
23 entirely true. I still have the same concerns about
24 the parking myself, but in terms of the standards that
25 we need to use to apply to these variances, I think

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1 they make the case on their own. I think we've been
2 looking at this project as a whole from the get go and
3 I think that maybe has led us to the path we are on
4 now of non-consensus, if that's a word. And I think
5 the case for the standards we need to use to address
6 variances is much stronger for Lots 1 through 9 than
7 they are for 10 through 12. That's my opinion.

8 And furthermore, I'm going to reiterate my
9 concerns when we get to these types of projects.
10 Again, I stated my opinion in terms of the practical
11 difficulty and how -- the standards the Board needs to
12 use to address these projects, but I do think that we
13 kind of work ourselves into a position where we are
14 addressing projects that may very well have been much
15 better served to be a planned unit development. And I
16 think that puts us in a tough position.

17 CHAIRMAN GRIFFIS: Okay.

18 MR. ZAIDAIN: And just to add on that,
19 that's because I think everybody agrees, this is a
20 good project. It's an exciting project. It's in a
21 revitalizing part of town. I think the alley systems
22 may lend itself to the character of the project in the
23 end, but we have certain things that we need to use to
24 assess these projects and it puts us in a tough legal
25 position. It really does. I think that's why we are

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1 still deliberating on this an hour later.

2 MR. HOOD: Mr. Chairman, if one of my
3 colleagues can help refresh my memory. There are
4 seven parking spaces on Lots 1 through 9. The
5 testimony, I'm trying to recall the testimony. How
6 was that going to be used or utilized, first come,
7 first served?

8 MR. ZAIDAIN: What was the question again?

9 MR. HOOD: The question -- I'm trying to
10 remember what was said about the parking. From 1
11 through 9. There are seven spaces. How was that
12 going to be utilized if anyone remembers. I'm just
13 trying to think of how that was being worked out. And
14 also was that going to apply through the parking --
15 the seven spaces, was that also going to apply to the
16 ones across the alley 10, 11 and 12?

17 VICE CHAIR RENSHAW: Well, Mr. Hood, 10,
18 11 and 12 have their own parking spaces directly
19 behind the rowhouse.

20 MR. HOOD: Okay.

21 VICE CHAIR RENSHAW: So it's on their
22 property. And it seems that the wood fences are going
23 to be removed between these dwellings for
24 maneuverability of making sure that the cars can back
25 out and pull into the slot easily.

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1 I seem to remember that these were going
2 to be kind of assigned spaces, but two of the homes
3 would not have assigned spaces or would have to share,
4 if indeed, the home owners had cars. But it may be
5 the case that there has to be writing on the wall
6 saying this is private property and you can't park
7 here.

8 This is near busy U Street and these alley
9 systems are used to a great degree and cars could pull
10 in and park there because those parking spaces are not
11 behind the -- directly behind the townhouse.

12 So it's kind of open season if you are
13 bidding for a parking space, might you not just pull
14 in and just take your chances that your car is not
15 going to be towed.

16 So again, it's a little bit more iffy when
17 the parking spaces are at the end of the row of
18 townhouses. It's much more protected if the parking
19 space, of course, is directly behind these homes.

20 CHAIRMAN GRIFFIS: Does that answer your
21 question, Mr. Hood?

22 MR. HOOD: Yes, that answered my question.
23 Thank you.

24 CHAIRMAN GRIFFIS: Okay.

25 MR. ETHERLY: My only concern with that,

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1 Mr. Chairman, is that's a lot of conjecture to base on
2 denial of the application. I mean it's almost as if
3 we're probing -- I mean I just don't like to get into
4 the habit of trying to prognosticate human behavior
5 which we know is a very imprecise science and for
6 those of us who might be well versed from a doctoral
7 standpoint in that, that's my only concern there.

8 I mean I understand the caution that Ms.
9 Renshaw is laying, but I guess I'm just gravitating on
10 the other side of this and literally you could just
11 flip a coin and say one, you have the spaces laid out
12 as they currently are and people are going to abide by
13 the fact that those spaces are there and they're going
14 to use them; or two, you say well, it's going to be
15 easier and quicker to just take your chances, so to
16 speak, and run the risk of being towed. You could go
17 either way with that. And I'm more inclined to go
18 with the -- go in the direction that the spaces are
19 there and they'll be used accordingly.

20 CHAIRMAN GRIFFIS: Okay. It's well said,
21 Mr. Etherly. We can't, with definitiveness, but I
22 don't think it's a waste of time to speculate how
23 things might actually function as best, in fact, what
24 we're looking at.

25 Okay, well, I'm still not hearing -- well,

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1 there it is. I think this has all been important in
2 terms of discussion.

3 MR. HOOD: Mr. Chairman, I call on myself
4 to disagree with my colleague, Mr. Etherly. I always
5 think back when I hear those interjections at the
6 point, I always think back at the charge that we all
7 took when we were sworn in.

8 CHAIRMAN GRIFFIS: Okay.

9 VICE CHAIR RENSHAW: Plus, there is a
10 greater impact with the five parking spaces on the
11 north side, greater impact in the 15-foot alley system
12 that runs between 12th and 13th Street because those
13 cars will be backing out or pulling out into that
14 alley; 6 and 7 on the south end are parallel to the
15 alley system which appears to me to be a lot easier on
16 the alley system. The northern five parking spaces
17 would seem to me to impact it to a greater degree and
18 not in a positive way.

19 CHAIRMAN GRIFFIS: Okay. Let me somewhat
20 summarize then and I would look to the Board for some
21 action on this. As we've gone through this, there's
22 been several uniqueness elements put forth. One we
23 haven't talked about and that's the historic nature
24 and the aspect of the design. I wasn't so moved to
25 bring that into this test and case, but it should be

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1 stated for the record that was put forth by the
2 Applicant.

3 Additionally, on face, the uniqueness of
4 the lots and the alleys are existing. There was some
5 testimony to the fact that this subdivision or the
6 changing of this brings them to a little bit more
7 conformity, but does obviously not address the alley
8 access and that alley width issue.

9 And in large part, generalizing what's
10 being said is if we require the lot area provisions to
11 be strictly adhered to and bring them into conformity
12 that it would, in fact, preclude any development from
13 happening.

14 Essentially put, the practical difficulty
15 is with this existing condition, with the narrowness
16 and the smallness of size, you can't build anything on
17 it outside of what they're proposing.

18 So additional information, further
19 deliberation. It was also submitted that it would be
20 unnecessarily burdensome if they were to cut the
21 number of houses in half, for instance, and have a
22 different configuration of lots.

23 I'll leave it at that and ask for a motion
24 if someone is so inclined.

25 MR. ZAIDAIN: The look I'm getting from

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1 the Chair, I guess I'm going to be the one that may be
2 so bold. I'm going to try to muddle through a motion
3 here and Corporation Counsel or other Members, please
4 feel free to stop me if I'm going in a direction that
5 may not seem logical or practical.

6 First of all, I'd like to make a motion
7 separating the two different lots from the
8 application.

9 MR. ETHERLY: Maybe I'd like to suggest,
10 Mr. Zaidain, if there's some difficulty, I mean I
11 would just make it nice and clean and just -- and
12 perhaps, I would be inclined to make a motion and just
13 follow the motion as it's presented to us and I'd be
14 more than happy to step in and make that motion, if
15 that would be appropriate and just invite a second for
16 the purposes of the discussion. Because I think my
17 motion might be perhaps a little more to the letter
18 for what we have in front of us, but I'm willing to
19 entertain a second, just to get some conversation
20 around that motion.

21 MR. ZAIDAIN: If you want to give it a
22 shot, go ahead.

23 MR. ETHERLY: It sounds as though you and
24 I may not necessarily be that far apart as it relates
25 to 1 through 9, although I don't have some of the same

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1 concerns that you've expressed with regard to 10
2 through 12.

3 MR. ZAIDAIN: Ten through 12.

4 MR. ETHERLY: Thank you. Mr. Chairman, I
5 would move approval of Application No. 16927 of The
6 Public Welfare Foundation and Manna, Inc. for variance
7 from the lot area and lot width requirements under
8 Section 401; a variance for the lot occupancy
9 requirements under Section 403; a variance for the
10 rear yard requirements under Section 405; a variance
11 from the off-street parking requirements under
12 subsection 2101.1, and a variance from the building on
13 alley lots provisions under subsection 2507.2, and I
14 believe, if I'm correct, we are now also variance to
15 allow the required off-street parking spaces to be
16 located on a lot other than where the principal
17 structure is. I'm looking to Corporation Counsel just
18 to make sure I've essentially hit everything that's
19 now before the Board.

20 MS. MONROE: I think that's 2116.1.

21 MR. ETHERLY: Okay, with that guidance as
22 offered by Corporation Counsel, Mr. Chairman, that
23 would be my motion, so in essence, I am moving
24 approval of the entire application.

25 CHAIRMAN GRIFFIS: Thank you.

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1 MR. ETHERLY: I would invite a second.
2 And once again for purposes of discussion.

3 CHAIRMAN GRIFFIS: Is there a second to
4 the motion?

5 MR. HOOD: I'll second.

6 CHAIRMAN GRIFFIS: Thank you, Mr. Hood.
7 Discussion?

8 MR. ETHERLY: Thank you very much, Mr.
9 Hood. Let me just speak broadly and then kind of
10 encourage conversation as we get into the nuts and
11 bolts of this.

12 Broadly speaking, sometimes the perfect
13 can be the enemy of the good here. And I think what
14 we're looking for is a perfect solution to a rather
15 imperfect set of lots.

16 Clearly, we have an alley system at issue
17 here. Clearly, that alley system prevents us from
18 making perhaps as the Applicant put it in the January
19 30th memorandum, optimal vehicular movement. I accept
20 the fact that we don't have optimal vehicular movement
21 here. But I accept the fact that we've been given
22 written submission by the Fire and EMS Department.
23 Clearly, it would have been perhaps more desirable to
24 have a much lengthier submission, but be that as it
25 may on the strength of site visits, on the strength of

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1 the expertise and the know how that our Fire and EMS
2 personnel bring to such matters, I am still comforted
3 by their statement that they have no objection to the
4 project.

5 There are, however, a couple of items that
6 it would appear the Applicant has acquiesced to that
7 would address some concerns regarding fire safety and
8 egress, exit for emergency vehicular traffic.

9 So let me just pause right there. Once
10 again, I understand and I hear the concerns that some
11 of my colleagues are addressing, but I am comfortable
12 relying on the strength of the December 12th
13 memorandum that we have in front of us and once again,
14 simply noting that optimal vehicular movement here may
15 not be attainable, but what we do have I think is a
16 workable scenario as it relates to the best possible
17 use of this alley system in a way that's going to not
18 only facilitate movement for residents at the subject
19 property, but also any additional traffic that may be
20 generated.

21 So I'll pause right there, Mr. Chairman.

22 CHAIRMAN GRIFFIS: Thank you, Mr. Etherly.
23 Others speaking to the motion?

24 Mr. Zaidain was going in an interesting
25 direction and it may have taken us to clarity, but it

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1 may not have. If we combine all of them together
2 which is what our application is and we have 12 lots
3 that are being put together, the combination of all
4 them and then all the variances needed, I think, has
5 lended itself to some complexity.

6 But here, if we break it down, that is
7 general to all of these, and that is the variance from
8 the, I'm going to say the access of the alley lots,
9 the development potential on alley lots, that doesn't
10 go away with 1 through 9, 10 through 12. That's
11 attendant to all of them. The lot area is also
12 attendant to all of them. Lot 11 is 985 square feet.

13 The lot requirement is 1800 square feet. It's 50
14 percent less than what is required. The lot width
15 also are in need of relief for Lot 11.

16 And then we continue down on all those
17 pieces, it is -- I have still difficulty in looking at
18 specifically each lot as we break it down if they were
19 to stand alone on their own application and together.

20 And that is, we have difficulty getting in there. We
21 have difficulty putting a structure on it and we have
22 difficulty parking it.

23 And I'm not sure -- I think as I said, the
24 uniqueness is somewhat there, although there was
25 citing of other alley lot developments. I'm not -- I

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1 don't think it does away with the uniqueness test that
2 there are other types, but I think it was interesting
3 that Harrison Square which is the block north was
4 evidenced by the Applicant as a comparison of
5 development and I think if you look at it, I don't
6 know, we didn't look at it in the record. That was an
7 entire block that was developed together and there are
8 probably provisions to get into the center of the
9 block. We don't have that kind of control of what's
10 happening in this project that addresses the access in
11 and access out.

12 And again, we're squeezing to get in and
13 we're squeezing buildings on to numerous lots.

14 MR. ZAIDAIN: Just to chime in on what
15 you're saying, I don't think I was saying that the lot
16 to the east was specifically or did not specifically
17 meet the variance test. I think the same issues are
18 there, however, I think the issues are much more
19 extreme for the lots on the west.

20 CHAIRMAN GRIFFIS: I understand what
21 you're saying.

22 MR. ZAIDAIN: I think it's extremely
23 limiting the opportunities that can be done with those
24 lots with because of the way they're designed and the
25 way they're placed on the alley system. I don't

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1 necessarily share that same view with the lots on the
2 east.

3 And unfortunately, I think we're being
4 kind of put into an all or nothing situation by Mr.
5 Etherly's motion.

6 And that's somewhat unfortunate because I
7 think we all support this project and another
8 unfortunate aspect of it is there was not consensus
9 made. I'm stuck with the safety issue with the
10 eastern lot and couple that with the fact that I think
11 there may be some other explorations of design that
12 could be done there.

13 So I am put in a position where we have to
14 support all of it or none of it.

15 CHAIRMAN GRIFFIS: That's the application.

16 MR. ZAIDAIN: That is the application.

17 MR. HOOD: And let me say this, Mr.
18 Zaidain, before I second it, when I found out it
19 wasn't getting a second, I second it, like I said, and
20 I don't want to sound like I'm contracting myself
21 because I still have an issue with the Fire
22 Department. Then I sat here and thought to myself, I
23 need to say this properly, if we wait on the Fire
24 Department and some of these Government agencies, we
25 may not get anywhere.

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1 MR. ZAIDAIN: I agree.

2 MR. HOOD: This is a great project. It's
3 balanced. We talk about affordable housing. While I
4 have never exactly seen the works of a development
5 inside out, this is my first one, obviously, this
6 Board has seen many. And I had to weigh all that,
7 throw it all out or do we save, keep a worthy project?

8 And like I said, the letter that I received from the
9 Fire Department is unacceptable. It's not the first
10 time I've gotten anything from the District and I hate
11 to see it, please supply and you have it. But we're
12 talking about affordable housing and I kind of weighed
13 that and that's why I want to second it.

14 I would ask maybe the maker of the motion
15 if we wanted to do this, I don't know, Mr. Chair, in
16 pieces or you just like to leave it as it is. Then
17 maybe we can always take the motion off the table if
18 he was willing to accept it and come back in another
19 form or fashion.

20 MR. ETHERLY: My only concern about doing
21 it piecemeal and as I thought about making the motion,
22 clearly, I wanted to think about what can I get
23 seconded because one never likes to make a motion and
24 then hear the deafening knell of silence afterwards.

25 But be that as it may, I mean clearly we

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1 are coming upon an hour in terms of discussion around
2 this project. If you do this piecemeal, you're
3 probably at least looking at another hour. Now I
4 don't mind putting the time in, but we're -- clearly,
5 we've acknowledged that this is a complex project. If
6 you want to do it piecemeal that's going to be an
7 equally complex undertaking that I'm willing to put
8 the time in and do because I think even doing it
9 piecemeal is simply going to give us a better
10 opportunity to make this work. I'm willing
11 to entertain that. I'm not agreeing to just as of
12 yet. Once again, coming back to the Chairman's
13 comments earlier, it almost sounds as if the Chairman
14 perhaps could be convinced on the uniqueness and the
15 practical difficulty aspect of it, but as you noted,
16 once again, there's difficulty in getting in and
17 there's difficulty in getting out. And I'm wondering
18 just perhaps if that's more of a substantial
19 detriment, you know, concern with regard to the public
20 good and concern about impairing the intent purpose
21 and integrity of the zoning regs and map portion of
22 our variance analysis.

23 Be that as it may, perhaps, without
24 putting Corporation Counsel on the spot because I
25 think I've already answered my own question, but

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1 conceivably the Board in its authority could parse
2 this out and just work through it individually.

3 I would comfortable doing that if there's
4 a sense from my colleague, Mr. Hood, and perhaps from
5 my colleague, Mr. Zaidain that there might be a better
6 chance of achieving some type of middle ground here.

7 MR. HOOD: Let me say this, Mr. Etherly, I
8 said that because I was trying to make Mr. Zaidain fee
9 comfortable. I think that we're going to end up at
10 the same place where we are now, from my perspective.

11 But Mr. Zaidain has some comments he wants to
12 interject --

13 CHAIRMAN GRIFFIS: That brings up an
14 interesting point, Mr. Hood. If we do separate this
15 and look at 10, 11 and 12 together, you still have the
16 variance test for lot area and lot width and the alley
17 access.

18 If those three lots can make that test,
19 why wouldn't 1 through 9?

20 So I don't know that it would necessarily
21 be more successful in terms of approving one portion
22 and not approving the other. It may well be. My gut
23 tells me probably not.

24 Mr. Zaidain?

25 MR. ZAIDAIN: I'm trying to understand

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1 what you're saying. You're saying if we don't approve
2 all of them -- you're saying we are ripe in being in
3 an all or nothing situation is what you're saying?

4 MR. ETHERLY: What the Chair was saying is
5 if you look at the first Office of Planning report and
6 you go through the -- kind of the attached work sheet
7 that they put together, you're not looking at
8 substantial difference across each of the lots. Lot 1
9 through 12.

10 And so essentially, if you do parse them
11 out, it sounds as though our Chair is going to be
12 confronted with the same factors for each of the lots.

13 There's not going to be any marked difference that's
14 going to affect his analysis or calculus on this.

15 And I'm inclined to agree with him. It's
16 just that I'm coming out on the opposite side.

17 MR. ZAIDAIN: I think if I understand the
18 Chair correctly, I don't disagree with the fact that
19 they all meet the uniqueness test. I think what we're
20 looking at is in terms of a safety issue.

21 MR. ETHERLY: I'm not --

22 MR. ZAIDAIN: I'm assuming we are right in
23 taking in account. It shouldn't be the only thing we
24 take into account, but I think that's one thing where
25 I'm hung up on.

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1 CHAIRMAN GRIFFIS: I'm not sure the
2 practical difficulty threshold is made.

3 VICE CHAIR RENSHAW: Mr. Chairman?

4 MR. ZAIDAIN: Excuse me, just to follow up
5 on that thought. I think the practical difficulty is
6 made much more strongly for Lots 1 through 9 than they
7 are for 10 through 12.

8 CHAIRMAN GRIFFIS: See, I differ. If we
9 look at the practical difficulty for the area
10 variances in terms of the lot width, I think that
11 they're in the subdivision and creating a subdivision
12 that what's happened is you -- there is only so much
13 that you can keep falling back on, saying this is
14 existing and this is our problem and we still want to
15 do so much on it. They were capable, conceivably, of
16 bringing into a more conforming -- it may not have
17 been 100 percent conforming, but perhaps more
18 conforming.

19 I mean there is the issue of putting this
20 number of units and the size of the units and all
21 that, but how much can we rely on this is our
22 subdivision, this is the max that we're going to try
23 and put in there. I mean the parking then relies on
24 it. The number of units then relies on it. And then
25 we're -- in order to get in, I believe the practical

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1 difficulty doesn't flow through all of the variances
2 that are being requested.

3 VICE CHAIR RENSHAW: Mr. Chairman?

4 CHAIRMAN GRIFFIS: Yes, Ms. Renshaw.

5 VICE CHAIR RENSHAW: Working for this
6 application is that it is a very well-meaning,
7 community-supported activity. But it is, the
8 Applicant is really squeezing the stone here because
9 there is absolutely no wiggle room in this design and
10 certainly no room here in this set up for SUVs. So
11 it's almost like if you want to have this development
12 go forward, you've got to put up a sign, no SUVs.

13 MR. ZAIDAIN: Can we do that? Can we
14 outlaw SUVs?

15 VICE CHAIR RENSHAW: No. Working against
16 this project is the alley system in which the
17 development is going to be placed, very narrow,
18 extremely narrow for parking and two-way traffic. We
19 have working against this is the undernourished Fire
20 Department report and I dare say if you took the
21 report and the designs to the local captain of the
22 nearest fire house, you would get a different
23 interpretation and it's that fire house that's going
24 to be first on the scene, not the Fire Marshall's
25 office.

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1 And then we have really an undernourished
2 DDOT report in advocating or seemingly complying with
3 the Applicant's request for a speed bump and one
4 paltry "Yield to Pedestrians" sign when DDOT has not
5 figured out what "yield" means.

6 There is a big impact with this
7 development on the alley system and I am going to take
8 it also to the alley openings on major streets. And
9 here we find there could be a problem when you have so
10 much traffic exiting onto 12th Street or 13th Street
11 which is, could be a surprise to drivers in the
12 thoroughfare. So in any case, that is another
13 consideration. It is -- if we only could relax this
14 design and have not as an intense development, I think
15 it would work. But as it stands now it seems to be
16 too intense for the property.

17 MR. ETHERLY: Mr. Chair, could my
18 colleague probe that term "relaxation"? What's
19 relaxation?

20 VICE CHAIR RENSHAW: Relax is not as
21 intense.

22 MR. ETHERLY: Let's be very specific.

23 VICE CHAIR RENSHAW: It's going to take a
24 redesign in my opinion.

25 CHAIRMAN GRIFFIS: Less units?

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1 VICE CHAIR RENSHAW: Less units.

2 CHAIRMAN GRIFFIS: Less dense.

3 VICE CHAIR RENSHAW: Less dense with
4 parking behind.

5 MR. ETHERLY: Three, four, five?

6 VICE CHAIR RENSHAW: It's up to the
7 Applicant to try to figure out how to fit the parking
8 into the townhouse development so that it's protected
9 parking so that the public safety aspect of a
10 homeowner getting into his or her home is made easy
11 and convenient and safe.

12 MR. ETHERLY: Would my colleague support
13 perhaps a continuance to allow the Applicant time to
14 perhaps look at alternatives?

15 VICE CHAIR RENSHAW: Oh yes.

16 MR. HOOD: Well, we also have to be
17 realistic. We're talking about affordable housing.
18 And obviously, the Applicant has squeezed as much
19 housing in there as possible so they can get -- I know
20 it's not a money issue with us, but they are trying to
21 get something out of it, I'm sure.

22 So when we ask them to redesign and I'm
23 not sure how we can go back and ask that. I think we
24 should basically deal with what's in front of us. And
25 I know obviously, wants to turn this down. I'm not

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1 going to say turn it down. We think it's a good
2 project. And we're trying our best to work through
3 it. That's why it's taking us so long.

4 I would be inclined if it's doable it's
5 within our rights to do what, exactly what Ms. Renshaw
6 is asking, to go back or maybe just approve -- we've
7 done it before, just approve eight houses on the side
8 with the nine houses and that would also tell them
9 that we definitely are looking to see more parking.

10 I'm not sure which way the Board would
11 want to move on that, but I can you it's been done in
12 the past.

13 CHAIRMAN GRIFFIS: Let me put it to the
14 Board now. I think we've exhausted the amount that we
15 can talk about it and as has been said, we're all very
16 concerned and have taken a great deal of time with
17 this.

18 We have two options. We can table the
19 motion and we can give the direction to an Applicant
20 to return with something. We can call the vote on the
21 motion, depending on the outcome and then go from
22 there.

23 I do not want to get into redesigning
24 this. I don't think we have the qualifications or the
25 ability, probably not even beyond -- probably not even

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1 the jurisdiction to -- in terms of, I don't think
2 there was specific evidence in the record that spoke
3 to at four units, this is feasibly accessible.
4 There's vehicular traffic in the alley. Twelve units,
5 I have no idea how we would start basing that. We
6 have only essentially been addressing that as the
7 opinion of what is higher impact, a parking lot, which
8 this is approved for or single family homes.

9 So there it is. Let's hear a quick
10 discussion of which direction people want to go.

11 MR. ZAIDAIN: I have a quick question and
12 this may be a reminder of testimony that was taken and
13 as we talk everything gets mixed up. The 25-foot
14 alley --

15 CHAIRMAN GRIFFIS: Yes.

16 MR. ZAIDAIN: What is the situation in
17 terms of parking in that alley, is it allowed or not
18 allowed?

19 CHAIRMAN GRIFFIS: It is not allowed.

20 MR. ZAIDAIN: By whom?

21 CHAIRMAN GRIFFIS: By DDOT.

22 MR. ZAIDAIN: DDOT will not allow that.

23 CHAIRMAN GRIFFIS: Right. There's no
24 parking allowed in public alleys.

25 MR. ZAIDAIN: Okay, I just wanted to be

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1 clear on that.

2 So what direction are we going in? Are we
3 waiting for a motion?

4 CHAIRMAN GRIFFIS: No. What's your
5 opinion? Where do you want to go.

6 MR. ZAIDAIN: I'll make a motion.

7 CHAIRMAN GRIFFIS: Shall we call a vote on
8 the motion?

9 MR. ZAIDAIN: Oh, I was going to offer a
10 different motion, but if you want to call the vote on
11 that one, go ahead.

12 VICE CHAIR RENSHAW: Can we table this?

13 MS. BAILEY: Mr. Chair, there is a motion
14 on the table.

15 CHAIRMAN GRIFFIS: That is very true.

16 VICE CHAIR RENSHAW: Can we table the
17 motion?

18 MR. ETHERLY: Let me ask this question
19 just for reference from Corporation Council, from a
20 procedural standpoint, if an application results in
21 denial, typically, an Applicant has to wait at minimum
22 six months and then, of course, there would have to be
23 some material change to the application. It couldn't
24 be the same application coming forward.

25 MS. MONROE: I think it's in here. Let me

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1 look.

2 MR. ETHERLY: Through the
3 Chairman to Corporation Counsel, what I was inquiring
4 about, Mr. Chair, is just the -- I want to get a sense
5 of what the options are. If the motion is not tabled
6 and we call the question and the motion is
7 unsuccessful, I'm asking Corporation Counsel about
8 what would be procedurally an Applicant's alternative.

9 MR. ZAIDAIN: Have we tabled the motion?

10 CHAIRMAN GRIFFIS: Is there a motion to
11 table the motion?

12 MR. ZAIDAIN: No, no, I wanted to
13 understand what he was saying because Ms. Renshaw and
14 I were talking.

15 CHAIRMAN GRIFFIS: Ms. Renshaw has so
16 moved. Is there a second to table?

17 MR. ETHERLY: But if I understand
18 correctly, because we have an existing motion on the
19 table, we can't entertain another motion. Was that
20 the --

21 CHAIRMAN GRIFFIS: That's correct.

22 MR. ETHERLY: That's what we were getting
23 from staff.

24 MS. BAILEY: You need to dispose of the
25 first motion.

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1 CHAIRMAN GRIFFIS: Okay, do you want to
2 second that so you can keep talking?

3 MR. ETHERLY: I think we're about to get
4 some guidance from staff on the effect of the first
5 motion being on the floor.

6 MS. BAILEY: You would need to dispose of
7 the first motion and then move on to the second motion
8 and I think if you just give Ms. Monroe a few minutes,
9 she's looking at options. Just give her a few
10 minutes.

11 (Pause.)

12 MR. ETHERLY: So if I understand correctly
13 from staff, because we have an existing motion on the
14 table that I have not yet decided as to how I'm going
15 to dispose of it by either calling the question or
16 tabling it. I'm looking for guidance from Corporation
17 Counsel.

18 MR. ZAIDAIN: By withdrawing it, I would
19 assume. I would assume you have the right to withdraw
20 it.

21 VICE CHAIR RENSHAW: But can't Mr. Zaidain
22 a friendly amendment to the motion?

23 CHAIRMAN GRIFFIS: Yes, at this point
24 let's do whatever we can to get through this.

25 MR. ZAIDAIN: I don't think it would be an

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1 amendment. I think it would be a whole entire motion.

2 CHAIRMAN GRIFFIS: Okay, so Mr. Etherly,
3 are you -- there's a movement to table the motion.
4 Mr. Etherly, it would be appropriate if you wanted to
5 second that. We can just put it aside and we can take
6 up another motion and then we will bring that one
7 back, if needed.

8 MS. MONROE: Mr. Chairman, the answer to
9 your question about coming back is a year. The
10 application is denied, you have to wait a year to come
11 back on the same facts, meaning the same development,
12 not exactly the exact same plans. There has to be
13 some change in order to come back at all.

14 You can withdraw your motion if you want
15 to, if that was the question.

16 MR. HOOD: Let me ask this, can I withdraw
17 my second?

18 (Laughter.)

19 MS. MONROE: Yes, you may.

20 CHAIRMAN GRIFFIS: It seems as though
21 there are just questions in people's minds
22 procedurally. So let's take five minutes in the
23 Executive Room and I think I can answer some
24 questions.

25 (Off the record.)

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1 CHAIRMAN GRIFFIS: Okay, thank you very
2 much.

3 Mr. Etherly?

4 MR. ETHERLY: Thank you very much, Mr.
5 Chair. Mr. Chair, I will withdraw the motion that was
6 seconded by my colleague, thankfully, Mr. Hood.

7 What I would offer for my colleagues'
8 consideration is that we -- I believe heading into the
9 direction that my colleague, Ms. Renshaw was heading
10 in that we table this matter and afford the Applicant
11 an opportunity to digest the conversation and the
12 deliberation that has taken place today.

13 I think broadly speaking, while some of --
14 while these concerns are not necessarily embraced by
15 myself, I believe there is considerable enough concern
16 on the part of my colleagues as it relates broadly to
17 the issue of density of the proposed project and
18 continuing concern from the public safety standpoint
19 that perhaps an additional continuance will afford the
20 Applicant an opportunity to address those matters.
21 I'll leave it there, Mr. Chairman. So I would
22 withdraw my motion for approval of Application 16927
23 and seek a -- if it would be appropriate, either a
24 motion to table or a motion for continuance.

25 CHAIRMAN GRIFFIS: You withdrew the

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1 motion, right?

2 MR. ETHERLY: That is correct, Mr.
3 Chairman.

4 CHAIRMAN GRIFFIS: We have no motion on
5 the table. Now Mr. Etherly is offering an alternative
6 direction to go. Can I hear support or comments on
7 that?

8 VICE CHAIR RENSHAW: I will second that
9 motion. Mr. Etherly, did you make a motion to table
10 or continue?

11 MR. ETHERLY: That is correct, Ms.
12 Renshaw. I made a motion to table and if I understand
13 correctly, you are seconding?

14 VICE CHAIR RENSHAW: I will second that.
15 It's the right way to go.

16 MR. HOOD: Mr. Chairman, can I just add, I
17 believe that the Applicant has heard this
18 deliberation. They kind of know what our concerns
19 are, especially with the density, especially 1 through
20 9.

21 Let me just ask this for clarification,
22 are we setting a time frame -- if it goes through, are
23 we going to set a time?

24 CHAIRMAN GRIFFIS: If this is the Board's
25 direction, I'll set a calendar date that we'll respond

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1 to.

2 First of all, now I'm confused, Mr.
3 Etherly, you've withdrawn a motion and it's been
4 table. And so it's off for consideration --

5 MR. ETHERLY: No, a separate motion to
6 table. I have withdrawn the motion for approval, so
7 that motion -- do we need to take a vote formally --

8 CHAIRMAN GRIFFIS: You've withdrawn your
9 motion that was offered and what you're asking is a
10 motion to continue the decision?

11 MR. ETHERLY: That is correct, Mr.
12 Chairman.

13 CHAIRMAN GRIFFIS: Thank you. Ms. Renshaw
14 has seconded it. Let's hear supportive comments.
15 Also, I think it's very important, first of all, I
16 don't support the motion. We have given two
17 continuances on this and I think we will be here two
18 months from now unless there is substantial changes.
19 I do support the idea of giving Applicants enough time
20 to pull it together and I think perhaps there were
21 some things said today regarding density with this
22 proposal. If we're throwing everything out, then if
23 we're looking at density, I think there ought to be
24 looked at opportunities for developing a project like
25 this or this exact project in an adjacent area on an

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1 adjacent lot, if it's so -- if one is available.

2 So let's give specific direction to what
3 we're looking for from the Applicant when they return.

4 MR. ZAIDAIN: I'll just state that I'll be
5 skeptical and support the motion as opposed to being
6 pessimistic and not supporting the motion. But I
7 again, I think I've made clear my concerns in regards
8 to lots 10 through 12 and I think that reworking that
9 location could possibly free up the answers for the
10 parking and circulation problem for 1 through 9. I
11 think that's something that could -- that the
12 Applicant could definitely explore. I think there --
13 I'm just going to say that I think there are
14 opportunities in that square to solve the problems for
15 the western lots.

16 CHAIRMAN GRIFFIS: Okay.

17 MR. ZAIDAIN: That's all I will say on
18 that.

19 CHAIRMAN GRIFFIS: Other comments,
20 directions? Mr. Hood?

21 MR. HOOD: I also think, Mr. Chairman, and
22 we need to send a clear signal as a result -- I think
23 your comments, practical difficulty, and those issues.

24 We need to make sure that the Applicant has exhausted
25 all other avenues to where they can maybe do this

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1 project elsewhere and also, they need to cut back, if
2 they retain this project, they need to cut back the
3 density, I believe, especially with those houses 1
4 through 9 and I would hate for us to come back in
5 whatever time frame we set and be in the same place we
6 are here today because at that point in time then I
7 think we will need to deal with this, with what we
8 have in front of us. I think the Applicant has a
9 perfectly good opportunity to come back with
10 something. They've heard our discussions, come back
11 with something that maybe the Board will be in favor
12 of.

13 CHAIRMAN GRIFFIS: Okay.

14 MR. ETHERLY: Mr. Chair, I'll also note
15 just as a final thought, clearly, we've had
16 substantial discussion regarding the Fire Department
17 and concerns regarding the public safety component.
18 While I am satisfied with the submission we received
19 today from the Office of Planning, nevertheless, it
20 would probably behoove the Applicant to pursue
21 additional contacts with the Fire Department and I
22 don't know if it would be appropriate to perhaps
23 encourage staff to either -- whether it's appropriate
24 to have staff assist in that process, but clearly if
25 there's an ability to obtain additional documentation,

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1 or submission from the Fire Department on that issue,
2 that, I think would be important in terms of some of
3 the concerns that my colleagues address in public
4 safety.

5 CHAIRMAN GRIFFIS: Indeed, and I don't
6 think that went unnoticed. Certainly, we've said
7 enough.

8 VICE CHAIR RENSHAW: And I would also add
9 DDOT because there were some questions that the
10 Applicant has addressed to DDOT and DDOT has not
11 responded. I think the road map that we have outlined
12 this morning is very extensive. It's very clear and
13 we look forward to the Applicant returning at a time
14 frame to be set by the Chair where we will see some
15 changes and that we can then support this very worthy
16 project.

17 CHAIRMAN GRIFFIS: Okay, there's a motion
18 to postpone our decision on this and it's been
19 seconded. Can I hear it for all those in favor
20 signify by saying aye.

21 (Ayes.)

22 Opposed?

23 (No response.)

24 I want to set this up --

25 MR. MOY: Mr. Chair, if you want to

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1 continue for two months, the two months would give us
2 -- that date would be April 1st. If you want to give
3 them three months, that would be May 6th.

4 CHAIRMAN GRIFFIS: All right, we'll take
5 this up April 1, 2003.

6 MR. MOY: All right, the staff will record
7 the vote as 5-0-0 to approve the motion to continue
8 the case to April 1, 2003. Those in favor of that
9 motion is the Chairman, Vice Chairperson, Mr. Zaidain,
10 Mr. Etherly and Mr. Hood.

11 CHAIRMAN GRIFFIS: Thank you very much.
12 Let's move on.

13 MR. MOY: The next case, Mr. Chairman, is
14 Application No. 16965 of 2914 11th Street, LLC,
15 pursuant to 11 DCMR 3103.2, for a variance from the
16 nonconforming structure provisions under subsection
17 2001.3, a variance from the lot occupancy requirements
18 under section 403, and variances from the open and
19 closed court requirements under section 406, to allow
20 an addition to an existing apartment house in the R-4
21 District at premises 2914 11th Street, N.W. in Square
22 2853, Lots 813, and 858 per subdivision.

23 At the Board's last public hearing on
24 January 4, 2003, the Board completed the testimony on
25 the case and asked for supplemental information,

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1 primarily requesting of the Applicant clarification
2 and a restating how the requested zoning variances
3 meet each of the tests of the burden of proof
4 including in regards to the Courts and lot occupancy
5 requirements.

6 The Applicant submitted that
7 documentation, pardon, also the Applicant was to
8 submit documentation regarding communication between
9 with Harvard Mews, an adjacent property owner,
10 including circulation of the petition to Harvard Mews.

11 Further detailed information -- and further detailed
12 information on the parking area plan and how it would
13 relate or affect Harvard Mews.

14 The Applicant has submitted that
15 information, dated January 21, 2003 and that's
16 identified in your folder as Exhibits 28 and 27. That
17 completes my briefing.

18 CHAIRMAN GRIFFIS: Thank you, Mr. Moy.
19 Board Members, do you have Exhibit 27?

20 Indeed. Okay. I think there was some
21 issue about the parking plan, parking lot plan.

22 Mr. Moy, can you identify that?

23 MR. MOY: Let me check. I believe it was
24 in Exhibit 28. Let me check that.

25 (Pause.)

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1 MR. MOY: Mr. Chair, the only document I
2 see in Exhibit 28 is the -- if you look at the
3 surveyor's plat which is -- they identify it as their
4 D.C. Builder's Plat on Exhibit A, their attachment to
5 Exhibit A.

6 CHAIRMAN GRIFFIS: All right. Well, we'll
7 get to that. Oh, except that -- I mean there's two
8 issues and both are laying out the parking, the
9 striping of it and then one is actually evidencing,
10 it's actually Exhibit 27, Sheet L.1 which identifies
11 the property line, identifies asphalt surface and also
12 identifies graphically trees and bushes and gives a
13 count. There are two trees and approximately 11
14 bushes.

15 I mean we had talked a little bit about
16 curb and such. That's still under our jurisdiction if
17 we want to take that up in terms of specifics. I
18 think that would be appropriate, but let's launch into
19 this and take as much time as we need and hopefully be
20 expeditious in use of that time.

21 First of all, the submission, Exhibit 27,
22 which actually is from the architects, I found to be
23 incredibly helpful in terms of its directness,
24 addressing each individual issue and answering those
25 issues. And so what I want to do is refer to that in

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1 my own explanation and deliberation.

2 Clearly, we have a unique situation here.

3 It was built in 1909. It was built and when the
4 zoning was adopted it identified it was nonconforming,
5 by definition. However, it was predating the
6 regulations.

7 In its deterioration as testified to,
8 there were structures on this building, conceivably on
9 all sides, but certainly on the east, west and south
10 elevations of which were no longer there. Existing
11 structures that were no longer there, there was no
12 testimony or history necessarily based on why, but
13 clearly I think one can infer that they fell apart or
14 were taken down for safety reasons.

15 I think in terms of also the modernization
16 of a multi-family house, that it has lended itself to
17 certain practical difficulties that go directly to the
18 issues at hand. First of all, the addition of the
19 closed court which is removing the dilapidated fire
20 stair, I think on face and on the record, that is a
21 successful request for the variance. First of all, we
22 do have safety issues.

23 Secondly, even this Board was questioning
24 whether it was in need of relief and I think the
25 situation, and it is complex and I'm happy that this

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1 Applicant has been forthright and is pushing us to
2 actually look at this, rather than falling to maybe a
3 direction that we might have given.

4 But the point is, the court exists, the
5 court configuration is not necessarily changing in
6 terms of its physical dimensions defined by the
7 structure of the building, however, its nonconformity
8 does change based on the reconforming of a fire exit
9 stair. The practical difficulty is clear in terms of
10 being able to egress out of this building and access
11 the existing layout of units, and in fact, the new
12 layout of units and clearly the last test in terms of
13 any detriment to the public good or zone plan and map,
14 I don't think is -- clearly, there aren't any in terms
15 of impacting on that.

16 The addition of the open court at 403.2
17 and 6 and also additions to the nonconforming
18 structures of 201.3, I believe fall under the same
19 criterion that I've addressed that go to the
20 uniqueness and practical difficulty and in addition or
21 I should say redundantly, but here we had certain
22 types of structures that were part and parcel of
23 outside space.

24 It's interesting that we deal so much with
25 recreation space in certain zoning for residential in

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1 this city and we've tried to define numerous times
2 what residential space and -- I'm sorry, recreation
3 space, is what I'm meaning to say, and the importance
4 of it.

5 Here, clearly, we have a large, multi-unit
6 building and I think it is very important to have some
7 sort of exterior space, although not a requirement
8 here. And I'm moved, even more so, on the practical
9 difficulty aspect to the effect that they had existing
10 structures, balconies that were evidenced in the
11 photographs that for now are current zoning
12 regulations, precludes someone from putting them back
13 on the building and therefore, I am fairly moved by
14 that and I think that they have met the test in that
15 regard.

16 Lastly, in terms of the addition to the
17 rear of the building, here is an interesting point
18 that the additions to the bays, again, the uniqueness
19 flows to this also. The practical difficulty, I
20 believe, does also in terms of the modern adaptation.

21 Clearly, they're reconfiguring the units, dropping
22 from 16 to 11 to accommodate what is a more
23 contemporary living situation. In doing so, the
24 configuration at the rear of this building was
25 testified to by the Applicant, creates rooms and

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1 bedrooms that are, I believe, his words were not
2 usable. I would venture to say are touching on the
3 impractical for size of bedrooms in order to
4 accommodate closets, also in terms of the ventilation
5 and the requirements for the air and light into these
6 rooms.

7 In addition to that, I believe some of the
8 uniqueness and also to the third test in terms of
9 public good, there are two issues that are attendant
10 to the addition to the rear of the building and that
11 is it is not the rear elevation, but rather a
12 secondary type elevation. It's not the primary
13 facade, but it is an important secondary facade in
14 that there is, interestingly enough, an alley rowhouse
15 development that fronts the rear of this building. At
16 least we need to talk about alley lot developments.

17 Harvard Mews, it was talked to. In fact,
18 we sent the Applicant to talk to them and get
19 information from those. We have had a petition that
20 is signed by a significant number of units in that
21 area.

22 So here we have an issue that the rear
23 yard which is west as the southern in terms of the
24 structures of the rear also had additional structures.

25 I believe the photograph showed us that there are

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1 actually doors out on the rear of that building.
2 Clearly, there was something that addressed the back
3 and this was built, I would gather from the
4 photographs prior to the alley townhouses, but now
5 that the alley townhouses are actually there, it even
6 impacts it more in terms of how you animate and how
7 you deal with the rear portion. And to that, there
8 was a movement to remedy the lot occupancy
9 nonconformity and that as discussed by the Applicant
10 was the acquisition of the adjacent lot.

11 The Applicant has exhausted every
12 opportunity in order to expand, to bring it into a
13 conformity and I believe all that together makes for
14 the case to approve the variances that are before us,
15 but let me hear from others.

16 MR. ZAIDAIN: Mr. Chair, just for the sake
17 of time and for the sake that I do not need to hear my
18 own self speak, I will say that I concur with
19 everything you've said and I do think that the
20 Applicant's submittals, especially the one dated
21 January 20, 2003, were especially clear in guiding
22 this Board in terms of addressing the variance tests
23 for this project and I would be inclined to support a
24 motion of approval.

25 VICE CHAIR RENSHAW: Second.

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1 MR. ZAIDAIN: Then I make a motion.

2 MR. PARSONS: Mr. Chairman, I agree with
3 you in the first two instances. I just wanted to make
4 sure we address this issue that the Office of
5 Planning, of course, recommended denial of the rear
6 addition, their case being that this is merely a
7 convenience for potential residents.

8 Where the architect comes back and speaks
9 about the -- this addition, which is only 135 square
10 feet, is in some way to accommodate the need for, the
11 requirement for closets in the bedroom in order for it
12 to qualify as a bedroom. I wondered if that's -- I
13 didn't hear you mention that in your remarks. Is that
14 -- you mentioned that you were going to go to this
15 January 20th memo and you missed that part. And it's
16 such a key part --

17 CHAIRMAN GRIFFIS: In terms of the
18 bedrooms, is that what --

19 MR. PARSONS: Yes. In other words --

20 CHAIRMAN GRIFFIS: I thought I did. I may
21 have said that too quickly.

22 MR. PARSONS: Oh, okay.

23 CHAIRMAN GRIFFIS: But in terms of
24 expanding, the testimony was and I'm persuaded by it
25 is the rear bedrooms, actually become -- it was

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1 testified that they become nonusable, I believe, if
2 the record shows. I'm not convinced that they're
3 nonusable, but it gets to a size in order to
4 incorporate the windows and the closet storage that
5 are required for definition of the bedroom, that it
6 becomes impractical to start laying them out as such.

7 MR. PARSONS: I just wanted to make sure
8 that the closet requirement was part of our
9 deliberations, that's all.

10 CHAIRMAN GRIFFIS: Good. I appreciate
11 that.

12 MR. PARSONS: OP was simply saying the
13 bedrooms are just larger and more rentable or
14 saleable. So I would support the motion.

15 CHAIRMAN GRIFFIS: Good, thank you. And
16 you know, it's interesting, we do dance on a fine line
17 when we start saying it's more rentable or more
18 saleable because we're not talking about how much can
19 we maximize the money that a developer makes. That's
20 not a test or a jurisdiction that we have, but what
21 that says to me, Mr. Parsons is more of if it's more
22 marketable -- what it's saying is it's more useable.
23 It's more in line with normal, contemporary use and I
24 think that goes exactly to the argument that's being
25 made and in addition to that and perhaps I'll just

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1 reiterate, but I think it's well laid out in terms of
2 the Exhibit 27. The zoning regulations, part of the
3 practical difficulty is that the zoning regulations
4 keep them from replacing features that were original
5 to the building which goes into all -- in fact, I
6 think -- well, there it is.

7 I think that goes to all of the issues in
8 the variances that are talked about.

9 Others?

10 Okay. In which case, Mr. Zaidain, do you
11 want to keep that as your motion?

12 MR. ZAIDAIN: Yes, I have no problem
13 making that motion.

14 CHAIRMAN GRIFFIS: The motion is there and
15 seconded. I'm going to ask for a friendly amendment
16 to your motion for approval of it and that is this,
17 looking at the parking spaces, I'm going to talk about
18 two different things and perhaps Corporation Counsel
19 will tell me we can't do this, but I would like to
20 propose that we have a curb line defined around the
21 parking spaces so that we don't just have the car
22 stops on each of those. That would be on the three
23 sides on the property line, my point being, if that is
24 not practical, I think we can look at a simple
25 modification to the order and can take that up very

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1 quickly.

2 Secondly, in terms of there was a lot paid
3 in terms of the elevation into Harvard Mews. I'm not
4 sure how to deal with this, but I'm interested in that
5 part of the testimony that was spoken to was what this
6 elevation is going to be. I'm interested in knowing
7 further exploration of materials and also more of the
8 design development in terms of the details that are
9 happening there.

10 But let me lay that out as a direction and
11 hope that the Applicant takes that to heart and
12 spending some time and frankly some money, perhaps, on
13 materials to animate that, to make that actually an
14 important elevation and element on the back of the
15 building.

16 MR. ZAIDAIN: Mr. Chair, are you offering
17 that as an amendment?

18 CHAIRMAN GRIFFIS: I have one amendment
19 and one direction. So just the amendment, the curb
20 that outlines the parking. Well, there it is.

21 MR. ZAIDAIN: The curb line is clearly
22 tied towards public safety, obviously.

23 CHAIRMAN GRIFFIS: Yes. And in your
24 motion for adoption, I'm assuming that you -- it is,
25 in fact, a condition that does not need to be stated

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1 that the drawings are adopted which include the
2 submitted landscape design.

3 MR. ZAIDAIN: As always.

4 CHAIRMAN GRIFFIS: Okay. Any -- Mr.
5 Zaidain, is that acceptable to you?

6 MR. ZAIDAIN: I have no problem with that.

7 CHAIRMAN GRIFFIS: Ms. Renshaw, you
8 seconded, correct?

9 VICE CHAIR RENSHAW: Yes.

10 CHAIRMAN GRIFFIS: Acceptable?

11 VICE CHAIR RENSHAW: Acceptable.

12 CHAIRMAN GRIFFIS: Very well. Everyone
13 understand the motion? Then I ask for all those in
14 favor of the motion signify by saying aye.

15 (Ayes.)

16 Opposed?

17 (No response.)

18 Thank you, we can record the vote.

19 MR. MOY: Yes, the staff would record the
20 vote as 5-0-0 to approve the case application. Those
21 voting in approval is the Chair, the Vice Chairperson,
22 Mr. Zaidain, Mr. Etherly and Mr. Parsons.

23 MS. BAILEY: Mr. Chairman, so that I can
24 clearly understand, the friendly amendments that you
25 added, they were not conditions?

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1 CHAIRMAN GRIFFIS: Oh, an interesting
2 technicality.

3 MR. ZAIDAIN: I thought your first
4 amendment was a condition.

5 CHAIRMAN GRIFFIS: Indeed, that the
6 landscape plan would incorporate a curb.

7 MS. MONROE: You can make that a
8 condition.

9 CHAIRMAN GRIFFIS: Exactly, a short curb
10 defined in the property, the parking spots from the
11 landscape.

12 MR. ZAIDAIN: As maker of the motion, that
13 was my understanding. I have no problem with that.

14 CHAIRMAN GRIFFIS: Okay.

15 MS. BAILEY: So it's with conditions and
16 is this a summary order, Mr. Chairman?

17 CHAIRMAN GRIFFIS: I don't see any
18 difficulty in making it a summary order, as long as we
19 can add that one condition.

20 MS. BAILEY: Thank you, sir.

21 CHAIRMAN GRIFFIS: Thank you very much.
22 Anything else?

23 Very well, then as scheduled, we're going
24 to take a recess and come back for the last case of
25 the morning.

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1 (Off the record.)

2 CHAIRMAN GRIFFIS: Okay, we're back. I
3 appreciate everybody's patience in getting through the
4 agenda this morning.

5 Let's call the last case of the morning
6 for our deliberation of the public.

7 MR. MOY: I guess, Mr. Chairman, you have
8 before you the Appeal No. 16879 of Nebraska Avenue
9 Neighborhood Association, pursuant to 11 DCMR 3100 and
10 3101, from the administrative decision of the Zoning
11 Administrator, Department of Consumer and Regulatory
12 Affairs, in the issuance of a building permit, No.
13 B442149, issued on January 22, 2002, to Sunrise
14 Connecticut Avenue Assisted Living LLC, allowing a
15 modification to Permit No. B435464, dated March 8,
16 2001, allowing revisions to the roof plan/structure,
17 including the elevator, in an R-2 and R-5-D District
18 at premises 5111 Connecticut Avenue, N.W. in Square
19 1989, Lot 162.

20 What you have before the Board is a motion
21 to accept a late filing and that's identified in your
22 Exhibit 53 and 54. And there was a filing in
23 opposition to that motion.

24 That completes my briefing.

25 CHAIRMAN GRIFFIS: Very well, thank you,

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1 Mr. Moy.

2 Let me ask Corporation Counsel just to
3 reiterate which I think the Board is aware of, but
4 make sure we all are understanding why this is
5 actually in front of us, a brief chronology of why
6 this is now here.

7 MR. BERGSTEIN: Thank you, Mr. Chairman.
8 What, in essence, happened here is that you received
9 these two requests to accept a late filed motion for
10 reconsideration, but shortly thereafter the Appellant
11 who filed those motions also petitioned the Court of
12 Appeals to review your decision.

13 That had the effect of depriving of your
14 jurisdiction over this case. And therefore, you could
15 not take up those requests.

16 The Appellate Division of the Office of
17 Corporation Counsel thereafter requested the Court of
18 Appeals to remand the case back to you for the purpose
19 of taking up that motion which the Court of Appeals
20 did on January 7th. So you do now have jurisdiction
21 to take up the motion and to take up such other
22 further actions as may be required.

23 CHAIRMAN GRIFFIS: Very well, in which
24 case, Board Members, we have before us the decision to
25 make a ruling on the timeliness of the submission.

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1 I'll open it up for discussion.

2 MS. MITTEN: Mr. Chairman, I think there's
3 probably two things and they're related to each other,
4 but one is that the Appellant believes that the
5 regulations have been misinterpreted by Mrs. Kress in
6 returning their submission to them. And so I think we
7 need to express an opinion on whether or not we
8 believe that staff erred in that interpretation and
9 then move to the issue of whether or not -- there
10 truly is a misinterpretation or whether or not there
11 was a late filing and then we take that up -- take up
12 the issue on its merits. So I'll just speak to the
13 first issue, first, about the misinterpretation of the
14 regulations.

15 I don't believe there was any
16 misinterpretation of the regulations and I don't want
17 to go through, I don't want to read aloud what's in
18 the regulations other than to say when this filing was
19 first made. I went back and I said okay, well, let me
20 just read and see what, if there's any room for
21 ambiguity here and there really is not room. The
22 regulation does not add an extra day for a holiday
23 regardless of where it occurs. It's only at the end
24 of the filing period and I think that's very clear and
25 so I don't believe there was any misinterpretation by

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1 staff in returning the submission.

2 CHAIRMAN GRIFFIS: If I could just
3 interject, you're talking to the last day and the
4 holiday goes to 3110.2 which clearly states that the
5 last date of the period so computed shall be included,
6 unless it is Saturday, Sunday or an official District
7 of Columbia holiday?

8 MS. MITTEN: Yes.

9 CHAIRMAN GRIFFIS: There's no ambiguity
10 there.

11 MS. MITTEN: Right. And I just want to
12 say that because I don't want there to be -- I don't
13 want staff to be concerned that we don't support the
14 position that they took because I don't think there is
15 room for misinterpretation. I don't think staff -- I
16 think staff acted appropriately.

17 So then we have a late filing and I think
18 it is important, particularly --

19 CHAIRMAN GRIFFIS: Do you want to get a
20 consensus of the Board just on that interpretation?

21 MS. MITTEN: Sure.

22 CHAIRMAN GRIFFIS: Because I think it's
23 important to take these in separate steps. Is anyone
24 in disagreement?

25 MR. ZAIDAIN: I'm in agreement, Mr. Chair.

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1 CHAIRMAN GRIFFIS: Mr. Etherly? Okay. So
2 there is consensus of what Ms. Mitten is saying in
3 that there is no ambiguity in the regulations as she
4 stated. Very well, thank you.

5 MS. MITTEN: Okay, then the merits of just
6 accepting a late filing, I think there's a couple of
7 reasons why we shouldn't. I think the primary basis,
8 based on the December 2nd letter to the Board,
9 December 2, 2002 letter to the Board regarding the
10 late filing, it all turns on the fact that there was
11 this alleged misinterpretation, not that there was
12 some other outside force that caused the Appellant to
13 make a late filing such as an illness or something
14 like that and in fact, we had a filing in August,
15 August 21, 2002, that was actually premature in
16 requesting reconsideration of our decision. So I
17 believe that they were fully prepared and could have
18 met the deadline and should have met the deadline, but
19 we don't have any real -- there's no showing of an
20 extenuating circumstance why the deadline was not met.

21 CHAIRMAN GRIFFIS: Very well, I would take
22 that then, Ms. Mitten, as a motion to deny the
23 acceptance of the late filing?

24 MS. MITTEN: So moved.

25 CHAIRMAN GRIFFIS: Is there a second?

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1 MR. ZAIDAIN: I'll second that, Mr. Chair.

2 CHAIRMAN GRIFFIS: Further discussion?

3 (No response.)

4 Anything further? Hold on a second.

5 (Pause.)

6 There's a motion that's been seconded.

7 Anything additional from the Board? Very well, then

8 I'd ask for all those in favor of the motion signify

9 by saying aye.

10 (Ayes.)

11 Opposed?

12 (No response.)

13 We can record the vote.

14 MR. MOY: Staff would record the vote as

15 4-0-1 to deny the motion to accept late filing. Those

16 voting to deny the motion is the Chairman, Mr.

17 Zaidain, Mr. Etherly and Ms. Mitten and Ms. Renshaw is

18 not participating, not present.

19 CHAIRMAN GRIFFIS: Good, thank you very

20 much. I'm sorry, I couldn't recognize you obviously

21 when we have a motion and has been seconded and our

22 deliberation, but you approached the bench at this

23 point, so why don't I have you introduce yourselves

24 for the record, if there is something you want to

25 address to the Board?

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1 MS. CHIAPELLA: Yes, Paige Chiapella,
2 Nebraska Avenue Neighborhood Association. One of the
3 issues, the reason why it was late is that we relied
4 on staff telling us that was the date. I actually
5 called and staff said based on her 30 years of
6 experience that was the correct interpretation.

7 CHAIRMAN GRIFFIS: Okay.

8 MS. CHIAPELLA: In fact, if we had had to
9 make the arguments earlier and asked for a waiver, we
10 would have. We responded based on that. It was --
11 the turnaround, as you know, it took months to get us
12 that information, so turnaround times sort of are a
13 relative kind of thing, so I want it to be in the
14 record that we did actually rely on staff and I do
15 believe Ms. Kress mentioned also in her -- in some
16 communication or communication with the Board, that
17 staff had told us that.

18 So understandably we don't want to change
19 rules and regulations. Nevertheless, in some cases,
20 especially when it hinges, the whole case hinges on
21 looking at the information and there was information
22 to be looked at, based on our good faith understanding
23 of what we were told.

24 Plus, I think Corporation Counsel made the
25 argument to the Court in requesting remand that that

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1 was a possible interpretation. There is ambiguity,
2 possible ambiguity in that interpretation. So we
3 relied on that.

4 CHAIRMAN GRIFFIS: Okay, I think the Board
5 was aware of your position on that and I believe it's
6 been addressed.

7 Yes sir?

8 MR. FRYE: I am John Frye from Nebraska
9 Association. And I would like to say in relevance to
10 this that when my income tax time comes and I write a
11 check to the IRS and I put on it April 10th and my
12 postmark is the 16th, I want to guarantee you they do
13 not accept my postmark.

14 And there has been some consideration here
15 that the letter, the time, the dating on some of the
16 letter is what the Office says is the time and date
17 that's on the letter, rather than when it is actually
18 placed in the mailbox.

19 MS. CHIAPELLA: That speaks to the
20 previous filing from Nebraska Avenue Neighborhood
21 Association that was mailed on May 3rd, but dated on
22 May 2nd that we responded based on the May 3rd date.

23 CHAIRMAN GRIFFIS: If I understand that
24 correctly then, we'll take just another brief minute
25 on this, what you're saying, if I understand your IRS

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1 analogy is that there should be actually unlimited
2 time for the mail because conceivably it could get
3 lost and take six days. The time period, or the three
4 days that's given in provisions in our regulations for
5 mailing, actually should be open ended?

6 MR. FRYE: No. If I write the letter one
7 day, I may put it in my desk. I may not mail it for
8 several days later. If you're going to look at the
9 date that's on the letter, rather than when it was
10 postmarked, you're robbing us in this case of the
11 right to respond.

12 MS. CHIAPELLA: As I was mentioning that
13 is in regards to another filing by the Nebraska Avenue
14 Neighborhood Association which was rejected because we
15 relied on the postmark date rather than on the letter
16 date.

17 And again, that was a good faith
18 misunderstanding, but we did document that that letter
19 was sent to us on a postmark date that was later than
20 the mail date.

21 So I'm really asking this Board, we are
22 being deprived, I believe, of due consideration based
23 on one day differences that have been given to others,
24 in fact, in the case when Sunrise in their motion
25 could not provide the burden of proof, they were given

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1 on the Board's own initiative additional time.

2 So I'm asking that we be given that same
3 consideration.

4 CHAIRMAN GRIFFIS: Understandable. Let me
5 ask Corporation Counsel, what's the significance of
6 the postmark date, the letter date and that date by
7 the Office of Zoning as received.

8 MR. BERGSTEIN: I'm actually not clear
9 because the reconsideration rules say any party may
10 file, meaning filing with Office of Zoning, a motion
11 for reconsideration of hearing of any decision of the
12 Board, providing the motion is filed, it is physically
13 presented to the BZA within 10 days from the date of
14 the final written order by the Board.

15 So the Board's order is dated X date.
16 Then they have 10 days to physically file it.
17 However, the rules provide that if that decision was
18 mailed to them, they have three additional days unless
19 -- and if the third day falls on a Sunday, Saturday or
20 holiday, then they have the next day to file it.

21 CHAIRMAN GRIFFIS: That seems to put the
22 time frame in the parameters and the critical dates
23 are one, the date of an order; and two, the date of
24 receipt in Office of Zoning, which would --

25 MR. BERGSTEIN: Date of the order, then

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1 you count 10 days from that date.

2 CHAIRMAN GRIFFIS: I understand that.

3 MR. BERGSTEIN: Okay. I'm sorry.

4 MS. CHIAPELLA: The previous -- the
5 earlier one when we were talking about the postmark
6 versus the letter date, was not the final order date.
7 It just had to do with the timing of our response.
8 In each case, we're talking about a single day length
9 of time in responding that affected no other aspect of
10 the case in the sense that it deprived others of time
11 to respond because that was giving the adequate time
12 to be considered by the Board before their next
13 meeting. It did not deprive the Board of the time.
14 It was a misunderstanding in each case. It was a good
15 faith --

16 MR. BERGSTEIN: Mr. Chairman, I really do
17 have to caution the Board at this point.

18 CHAIRMAN GRIFFIS: Okay.

19 MR. BERGSTEIN: There is possibility of
20 this being ex parte communication.

21 CHAIRMAN GRIFFIS: Right, indeed.

22 MR. BERGSTEIN: You're hearing arguments
23 after a motion. If you're going to consider these
24 arguments and possibly change your views, then I think
25 you need to let Sunrise know that you're having a

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1 hearing and they have the opportunity to respond to
2 this.

3 MR. FRYE: Let me respond to what you just
4 said. On the day that this motion was made not to
5 accept, we were not given that announcement and
6 Sunrise attorneys came to this table and made that
7 motion that it be turned down. That again is unfair.

8 It does not speak to due process. We were not here
9 to respond to that.

10 CHAIRMAN GRIFFIS: Okay, I do need to, in
11 fact, listen to Corporation Counsel in terms of their
12 advice in this specific instance. We have had a
13 motion. We have deliberated and acted on it.

14 I did want to give a little bit of leeway
15 in having you speak to the Board as you did. So I
16 think we can move on.

17 Ms. Mitten, did you have additional?

18 MS. MITTEN: I just wanted to make a point
19 of clarification, just for future reference, if not to
20 belabor this.

21 CHAIRMAN GRIFFIS: Very well.

22 MS. MITTEN: Is the three additional days
23 that are permitted by our regulations or if the
24 notice, any notice is mailed to you, not if you mail
25 something back.

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1 CHAIRMAN GRIFFIS: Good point.

2 MS. MITTEN: Thank you.

3 CHAIRMAN GRIFFIS: Thank you all very
4 much, in which case that dispenses with the cases for
5 deliberation and we can move to our meeting minutes
6 and I would ask that the Board present -- Ms. Mitten,
7 are you on any of these?

8 MS. MITTEN: I'm on part of two of them.

9 CHAIRMAN GRIFFIS: Very well. Mr. Etherly
10 is going to go and get our Vice Chair and we will take
11 these up.

12 I'm going to run through one at a time. I
13 will call these out and I'll take corrections,
14 additions or edits as required.

15 Let us begin slowly while we get the other
16 Members back up here to look at the January 14, 2003
17 minutes.

18 (Pause.)

19 Let's look at the January 14, 2003
20 minutes. Is there any corrections, additions? Mr.
21 Zaidain?

22 MR. ZAIDAIN: I have no corrections.

23 CHAIRMAN GRIFFIS: Very well, Mr. Etherly,
24 did you have any corrections, additions or edits to
25 the minutes of January 14, 2003?

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1 I have one in Application of Tony Thomas.
2 There's just a word missing in the last sentence,
3 "the Board did not hear any portion of the case."

4 MR. ETHERLY: I have no corrections or
5 additions, Mr. Chairman.

6 CHAIRMAN GRIFFIS: Very well, I move
7 approval of 14 January 2003.

8 MR. ETHERLY: Second.

9 CHAIRMAN GRIFFIS: All in favor?

10 (Ayes.)

11 CHAIRMAN GRIFFIS: Looking at January 21,
12 2003, Special Public Meeting, additions, corrections?

13 MS. MITTEN: Mr. Chairman?

14 CHAIRMAN GRIFFIS: Yes.

15 MS. MITTEN: First, I would like to have
16 my name added to the list of Board Members present.
17 And the references in Case 16875 are to a special
18 exception and that was not -- that was determined not
19 to be a special exception case.

20 CHAIRMAN GRIFFIS: Good. So the first
21 full paragraph underneath the outline there is a
22 request special exception and that should be to
23 variance.

24 MR. BERGSTEIN: Well, let me say it was a
25 request for special exception.

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1 CHAIRMAN GRIFFIS: Exactly.

2 MR. BERGSTEIN: But there were two
3 conditions for the special exception that they did not
4 meet and so those were treated as requests for
5 variances --

6 CHAIRMAN GRIFFIS: Right.

7 MR. BERGSTEIN: From the conditions to the
8 special exception.

9 MS. MITTEN: Then perhaps that just needs
10 to be better articulated.

11 CHAIRMAN GRIFFIS: I think it needs to be
12 clarified because we then refer down to variances at
13 the end of the paragraph on the end of this piece.

14 If I can go up above that, Ms. Mitten,
15 where the sentence starts, "However, upon further
16 deliberation and review", I would add "and review of
17 the draft order" which was the significance of our
18 actions on that.

19 Other items on that particular Application
20 16875?

21 MS. MITTEN: Yes, maybe it's just a way of
22 noting the votes that is confusing to me, but on each
23 of the motions, if the motion was to deny, then there
24 were three in favor to deny.

25 CHAIRMAN GRIFFIS: I would agree.

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1 MS. MITTEN: This is confusing.

2 CHAIRMAN GRIFFIS: That will follow
3 through for the other cases.

4 MS. MITTEN: Yes.

5 CHAIRMAN GRIFFIS: We need to know exactly
6 if the motion was to deny, then the vote obviously
7 would have been three in favor. If the motion was to
8 approve, and it was denied, then the vote should
9 reflect that appropriately.

10 We can check the record and just make
11 absolutely sure and on the Meyer would be the same,
12 otherwise it looks like we approved 1619.

13 Anything else?

14 (No response.)

15 I move approval of January 21, 2003, Board
16 Meeting Minutes with additions and corrections.

17 MR. ZAIDAIN: Second.

18 CHAIRMAN GRIFFIS: All in favor?

19 (Ayes.)

20 Let's move to the 28th. Additions,
21 corrections, clarifications?

22 MS. MITTEN: I had a couple of things. On
23 the last page under 16947 which was the appeal. I
24 think we should say in the Intervenor, that it's the
25 Charles E. Smith Company, not Charles E. Smith as a

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1 human, individual human.

2 And then I think we should also add
3 something in the discussion about the case that there
4 was confusion over the type of appeal that this would
5 be, whether it would be a de novo hearing or a record
6 review and that that was clarified.

7 CHAIRMAN GRIFFIS: Excellent. Others?
8 Corrections, additions?

9 (No response.)

10 All in favor of approving the minutes of
11 28 January 2003?

12 MR. ZAIDAIN: Second.

13 CHAIRMAN GRIFFIS: Thank you. All in
14 favor, say aye.

15 (Ayes.)

16 Opposed?

17 (No response.)

18 Very well. Anything further, staff?

19 MS. BAILEY: Mr. Chairman, you had some
20 December -- some minutes for December. Did you get
21 those?

22 CHAIRMAN GRIFFIS: I did not. Did anyone
23 receive -- okay.

24 Why don't we take a lunch break. We'll do
25 that first thing, it will be faster. And we'll go

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1 right into the afternoon. The afternoon will go very,
2 very quickly and expeditiously. We'll be back at
3 1:45.

4 (Whereupon, at 1:05 p.m., the public
5 meeting was recessed, to reconvene at 1:45 p.m.)
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10 A F T E R N O O N S E S S I O N

11 1:57 P.M.

12 CHAIRMAN GRIFFIS: Okay, Board Members,
13 let us jump right in and dispense with the December
14 meeting minutes.

15 I will call the December 3, 2002. I would
16 take any corrections or amendments, additions to the
17 meeting minutes of the 3rd?

18 Hearing no corrections or additions. I
19 move approval.

20 MR. ZAIDAIN: Second.

21 CHAIRMAN GRIFFIS: All in favor?

22 (Ayes.)

23 CHAIRMAN GRIFFIS: Going to December 10,
24 2002, again, any edits, corrections?

25 (Pause.)

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1 December 10, 2002, if there are no
2 corrections or edits or additions, I would move
3 approval.

4 Is there a second?

5 VICE CHAIR RENSHAW: Second.

6 CHAIRMAN GRIFFIS: Thank you, Ms. Renshaw.
7 All in favor?

8 (Ayes.)

9 CHAIRMAN GRIFFIS: December 17, 2002.

10 VICE CHAIR RENSHAW: Mr. Chairman, I have
11 -- the problem with Washington Home, 16836. I was
12 voting by proxy. I'd like to say from aborad, but it
13 wasn't from aborad.

14 And I did vote in support of the 4-bed
15 hospice, however, because I put down for the Board's
16 consideration various conditions, to include that I
17 thought were very valid and that you would leap to and
18 pass, but you did not. I therefore am finding myself
19 in the camp of being opposed to the 4-bed hospice and
20 I wonder is there a way to word this so that I can be
21 voted or I can be seen as voting for a 4-bed hospice.

22 CHAIRMAN GRIFFIS: Very good. Let us look
23 to an edit on footnote 3 to clarify that and I think
24 full clarification will come out in the order also.
25 But I think we can easily do that.

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1 The notion of the fact of the matter is
2 there was a proxy and conditions, we had to take it on
3 face in its entirety and that we could not cast your
4 proxy vote in favor because we didn't adopt all of
5 your conditions.

6 VICE CHAIR RENSHAW: Right. It was in the
7 same with 6944, Georgetown Day.

8 CHAIRMAN GRIFFIS: Excellent.

9 VICE CHAIR RENSHAW: So if those two edits
10 could be made, I'd appreciate it.

11 CHAIRMAN GRIFFIS: Very good. We will
12 submit edits to staff for the incorporation in the
13 December 17, 2002.

14 Any other additions, corrections, edits?
15 If not, I'd ask approval of the minutes of December
16 17, 2002 and ask for a second?

17 MR. ETHERLY: Second it, Mr. Chair.

18 CHAIRMAN GRIFFIS: All in favor?

19 (Ayes.)

20 Opposed?

21 (No response.)

22 CHAIRMAN GRIFFIS: Let's move on to --
23 nothing. That is it.

24 Thank you all very much. I will adjourn
25 the morning session of February 4, 2003 and

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1 simultaneously call the afternoon session and I wish
2 everyone a good afternoon.

3 (Whereupon, at 2:00 p.m., the public
4 meeting was concluded.)

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