

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

MARCH 9, 2004

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The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:00 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD	Vice Chairperson
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	ACTING Secretary, BZA
BEVERLY BAILEY	Zoning Specialist

OFFICE OF CORPORATION COUNSEL PRESENT:

LORI MONROE, ESQ.
JANICE SKIPPER, ESQ.

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

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9:42 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Please, forgive our little bit of delay. We had quite an extensive amount to go through in Executive Session this morning, but with that, I would like to call to order our Special Public Meeting of the 9th of March 2004. My name is Geoff Griffis. I am Chairperson. Joining me today on the decision making is Mr. Etherly. Representing the Zoning Commission is Mr. Hood and representing the National Capital Planning Commission is Mr. Zaidain.

Copies of today's hearing agenda are available to you. I'm going to go through this very quickly, so that we can make up some time and get to our matters of great attention. Of course, in our Public Meetings this is a point in time where the Board brings up cases for deliberation discussion. There is no opportunity for public testimony or any sort of engagement with those that are present in the hearing room today. So I would ask that people sit back, relax and listen well.

With that, Mr. Moy, if you would not mind noting and calling the first case for our discussion this morning?

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1 MR. MOY: Yes, yes, sir. Good morning,
2 Mr. Chairman, Members of the Board. The first case in
3 the Special Public Meeting and the only case in the
4 Special Public Meeting is Application No. 16970 of the
5 National Child Research Center. The only thing that
6 the staff would like to add is that the application
7 was decided on January 6, 2004, and that would
8 complete the staff's briefing, Mr. Chairman.

9 CHAIRPERSON GRIFFIS: Very well. Thank
10 you very much, Mr. Moy. I think the Board is well-
11 aware of how long and involved this case was and the
12 extensive amount of material that was submitted in
13 this case. I think it is also very important to state
14 that this Board doesn't walk away from its dias after
15 its discussion deliberation and forget what happened
16 or the importance of what happened. I think there is
17 a substantial amount of digestion and further thought
18 on that.

19 It is not abnormal, although it does not
20 happen in numerous occasions, but on several occasions
21 this Board has reopened a record and revisited a vote
22 perhaps rescinding the vote, perhaps changing it or
23 substantiating it. I think that, in this case, with
24 the complication and the amount of information there
25 is a lack of deliberation on the Board's part

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1 regarding part of the application, and that goes to
2 the new construction and the renovation of the
3 National Child Research Center.

4 With that, I'll open up to the Board.

5 BOARD MEMBER ETHERLY: Thank you very
6 much, Mr. Chair, for your opening remarks. If I could
7 be allowed to continue in that vein, we are, of
8 course, we as a Board, and I believe those who have
9 joined us here in the hearing room are intimately
10 familiar with this particular case having spent a
11 significant amount of time together over the past
12 year. We've had substantial discussion and dialogue
13 on a number of critical issues that surround this
14 application, and I think the Board struggled seriously
15 and to a very, very significant extent with the
16 questions that were at issue here.

17 It is my understanding, Mr. Chair, that by
18 virtue of communications and concerns that have been
19 expressed by our corporation counsel that there is
20 perhaps some question with regard to the completeness
21 of our deliberation and consideration of the record as
22 it relates to the issue of the proposed new
23 construction. Of course, my colleagues will recall
24 this case essentially broke down to two very critical
25 questions. One being the issue of increased staff and

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1 enrollment and the other being the issue of new
2 construction.

3 It is my suggestion, Mr. Chair, and I will
4 make this suggestion in the form of a motion, that I
5 would move for reconsideration of Application No.
6 16970, the National Child Research Center,
7 specifically with regard to the question of new
8 construction. And if I have my cite correctly, Mr.
9 Chairman, that would be pursuant to section 205 in 11
10 DCMR 3103.2, a reconsideration of the requested
11 variance relief from section 3202.3 in order to allow
12 the construction of an additional principal structure
13 and the use of an additional principal structure, such
14 that more than one principal structure will exist on a
15 record lot. And I would leave the motion at that, Mr.
16 Chair.

17 CHAIRPERSON GRIFFIS: Is there a second?

18 BOARD MEMBER ETHERLY: I hope I've laid
19 that out correctly.

20 BOARD MEMBER ZAIDAIN: I'll second the
21 motion, but I believe there is -- I don't know if
22 you're going to clarify the relief there, but I
23 believe that we're not going to reconsider the
24 variance aspect of it. We're just reconsidering the
25 construction of the new house. We dealt with the

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1 variance relief in our deliberation.

2 CHAIRPERSON GRIFFIS: That's correct.
3 It's a special exception.

4 BOARD MEMBER ZAIDAIN: Right.

5 CHAIRPERSON GRIFFIS: As cited under 205,
6 so we really can't do special exception. If I
7 understand the motion, it's actually to rescind the
8 vote in part and is there an aspect of to rescind the
9 vote in part in conjunction with the construction
10 renovation?

11 BOARD MEMBER ZAIDAIN: Right. It's just
12 applying to the new construction on-site. The vote as
13 it stands regarding the enrollment and staff increases
14 will stay as it is. And just to speak to the motion,
15 you know, we had an exhaustive deliberation on the
16 transportation aspects and that we touched on the
17 construction briefly. We've been advised that we need
18 to have some more discussion on that and focus on that
19 issue as it is really a two part application at the
20 end of the day.

21 And not that we want to prolong this
22 application, as we've all spent a lot of time dealing
23 with it, we want to make sure that our orders are
24 clear and decisive, and so I think we need to get some
25 more information on it. And again, as a seconder to

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1 the motion, it's my suggestion that we go through this
2 in a written format, if possible, and I would like to
3 hear some responses from the Board on that.

4 CHAIRPERSON GRIFFIS: So if I understand
5 what you are saying, Mr. Zaidain, you seconded a
6 motion that is to rescind the vote in part and also to
7 open the record for limited submissions on the issue?

8 BOARD MEMBER ZAIDAIN: Yes, yes.

9 CHAIRPERSON GRIFFIS: Mr. Zaidain, that's
10 correct? We have a motion before us and it has been
11 seconded. Is there further discussion?

12 VICE CHAIR HOOD: Mr. Chairman, I also
13 want to discuss. I really believe that the impact of
14 a hearing was draining on us and I want to make sure
15 that we do stuff in order. And I don't think, from my
16 perspective, that we really looked at the objectional
17 impacts on the surrounding neighborhood due to the
18 construction. It kind of got lost in the traffic.
19 And after talking about traffic for, I would say, four
20 and a half or five hours, the rest of it, I believe,
21 just got lost, and I would like to make sure from this
22 Board Member's perspective is that the record is clear
23 and there is enough in there for me to make a decision
24 on the construction piece.

25 Again, I will apologize to the public for

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1 not really focusing on the construction, but four and
2 a half to five hours, I really think is a long time to
3 be talking about traffic. So I would agree with the
4 motion and I would agree with the seconding of the
5 motion, and I will be holding support to reconsider
6 and look at the scope of the construction only.

7 BOARD MEMBER ETHERLY: And just a follow-
8 up. Mr. Chair, as a conversation with my colleague,
9 Mr. Zaidain, indicated it would be my intent for a
10 very limited reopening of the record here. It is not
11 my intent to suggest that this Board revisit to the
12 full extent that we were engaged in the hearing this
13 very particular issue. And I want to be very clear
14 about my thinking with regard to this motion here.

15 As many of you are probably aware, this
16 body is advised very closely by corporation counsel
17 and we work hand in hand in preparing the appropriate
18 documentation that enunciates the Board's decision
19 making and deliberation. And in this particular
20 instance, once again, there was concern expressed that
21 the deliberation needed to be further flushed out,
22 somewhat more detailed and it is that spirit in which
23 I have made this motion to reconsider this particular
24 issue. But I agree with you, Mr. Chairman, and my
25 colleague, Mr. Zaidain, that the reopening of the

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1 record has to be very limited in scope. And, of
2 course, as we discuss this motion further, we will
3 have guidance as to how directed and how limited that
4 reopening should be.

5 BOARD MEMBER ZAIDAIN: Well, yes, it has
6 to be focused. That's kind of the whole reason why
7 we're doing it. I mean, we need to be able to have
8 specific testimony relating to the new construction,
9 enough, you know, pulled from the record, so that we
10 can focus the Board on that and have a substantial
11 deliberation on that issue. You know, and just to
12 follow-up on some of the comments, I don't think
13 anybody on this Board or in this room is overly
14 excited about trying to rehash all these issues, but
15 it is important that we make the correct decision that
16 is clear and defensible and decisive in our order.

17 VICE CHAIR HOOD: And let me just state
18 and I'll say this before it carries. I would think
19 that it is not necessarily important to submit
20 anything different. I think just point us to the
21 exhibit numbers that maybe already exist in the
22 record. That may cut back on some of -- the applicant
23 and the parties having to submit new material and that
24 may cut back on some of the leg work that everyone has
25 to do.

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1 CHAIRPERSON GRIFFIS: Very well. Let me
2 summarize to see if I understand the Board. First of
3 all, I do want to touch on the fact that the record
4 has been closed up to date and the Board hasn't seen
5 any other submissions. Obviously, this action is
6 being taken on our own reevaluation of the case and
7 the presentation to date. Our regulations also allow
8 this Board, as I think is very clear in the reading of
9 the regulations, to reconsider any decision on its own
10 motion at any time up until 10 days after the final
11 decision is issued.

12 Of course, that is section 3126.7 and I
13 paraphrased it a bit, but it is important to do. And
14 I think also in our past deliberations and our
15 decisions in applications it is obvious and very clear
16 with the actions of the Court of Appeals that we do
17 need to deliberate extensively on each aspect that is
18 brought up in an application. And I think that's what
19 we're looking for is to be able to address the
20 evidence that is presented to deliberate and then to
21 vote according to our own deliberation.

22 To clarify, what I am hearing the Board
23 wanted to do is have focused and limited information
24 submission. I think the comment is well said that we
25 are not looking for new evidence to be presented, but

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1 rather a flushing out of the case presentation that
2 was already in the record. Meaning, we would look for
3 written submissions that would highlight and restate
4 and clarify the case that was presented.

5 Our action for limited reconsideration, of
6 course, is going with respect to specifically 205.5 of
7 the Zoning Code which does read in pertinent part that
8 the facility shall be located and designed so that
9 there will be no objectional impacts on adjacent
10 nearby properties due to noise, activity, visual or
11 other objectional conditions. I think it is clear
12 that we are only looking with respect to reconsidering
13 our vote and rescinding the vote in part on the
14 construction of the new building, the Carriage House,
15 the construction addition on the renovation of the
16 main building and the proposed construction of a
17 larger maintenance facility bike shed, which, of
18 course, is replacing the existing shed.

19 Lastly, it is not unique to this
20 application to look at these elements separately. The
21 Board is well-aware and well-remembers how much time
22 we spent looking at the construction and the main
23 building, two distinct issues. First of all, what was
24 the proper relief that would be required for that. We
25 had extensive evidence submission and rebuttals on

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1 whether it was a variance or a special exception. Of
2 course, the Board had finally decided that it was a
3 special exception and we moved ahead accordingly.

4 The point being, we looked extensively at
5 this separately and it is in the same vein that we
6 continue to do so. We also had extensive amount of
7 testimony and evidence submitted into the height of
8 the existing structure of which we did find to be
9 conforming in the zoned district in which it is
10 located. So with that, we have the motion. Is there
11 last or further information comments that need to be
12 said? If not, then I would ask for all those in favor
13 of the motion to signify by saying aye.

14 ALL: Aye.

15 CHAIRPERSON GRIFFIS: And opposed?

16 MR. MOY: The staff would record the
17 motion as 4-0-1 on the motion for reconsideration on
18 the motion of Mr. Etherly, seconded by Mr. Zaidain,
19 also in favor of the motion Mr. Griffis, the Chair,
20 and Mr. Hood and we have one Board Member who is
21 recused and not participating on the case.

22 CHAIRPERSON GRIFFIS: Very well. Well, we
23 all regretted we would ever have to do, why don't we
24 set a schedule for the National Child Research Center.
25 I would suggest that we have a two week submission

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1 for the flushing out of the case that has been
2 presented, as Mr. Hood, I believe, said appropriately
3 a citing of any exhibits that would need to be looked
4 at by the Board that would support one person's case.

5 And I think we would allow two weeks after for
6 responses to the initial submissions and we can set
7 this then on the April 13th, if I'm not mistaken.

8 MR. MOY: Yes, sir, that would give, if
9 we're shooting for Special Public Meeting on April the
10 13th, then the deadline for submissions of the written
11 material would be March the 23rd. Written responses to
12 the submission would be April the 6th. And, of course,
13 the submissions are due into the office by 3:00 p.m.

14 CHAIRPERSON GRIFFIS: Any other questions
15 or clarification from the Board?

16 BOARD MEMBER ZAIDAIN: Yes, I think I
17 should make one. This is my last day on the dias
18 representing the National Capital Planning Commission.

19 CHAIRPERSON GRIFFIS: All right. I was
20 going to wait for the opening to do that.

21 BOARD MEMBER ZAIDAIN: But I am remaining
22 on cases that are already in process and I will stay
23 as a voting member on this case.

24 VICE CHAIR HOOD: Mr. Zaidain, I just want
25 to say it has been a pleasure to work with you. I

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1 don't know if I'm going to have this opportunity, so
2 I'm going to seize the moment. It has been a pleasure
3 to work with you. I think you've been an asset to the
4 Board and to the whole Office of Zoning.

5 BOARD MEMBER ZAIDAIN: Thank you, Mr.
6 Hood.

7 VICE CHAIR HOOD: So I'm sure I'll see you
8 around the circle.

9 BOARD MEMBER ZAIDAIN: Absolutely. Thank
10 you.

11 CHAIRPERSON GRIFFIS: Good. Thank you all
12 very much. Then if there's no other further issues
13 for us in the Special Public Meeting, I would then
14 adjourn it.

15 MR. MOY: There is nothing else, sir.

16 CHAIRPERSON GRIFFIS: Good. Thank you all
17 very much. We're going to take just five minutes and
18 then start our morning session.

19 (Whereupon, the Special Public Meeting was
20 adjourned at 9:57 a.m.)
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