GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

JANUARY 4, 2005

+ + + + +

The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, DC, 20001, pursuant to notice, at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
CURTIS L. ETHERLY, JR.	Board Member
JOHN A. MANN II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

JOHN PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Deputy Secretary
BEVERLEY BAILEY	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

This transcript constitutes the minutes from the public meeting held on January 4, 2005.

AGENDA ITEM PAGE

CALL TO ORDER:
Geoffrey Griffis 3

PAUL AND FRANCES O'REILLY
APPLICATION NO. 17251.....5

VOTE TO GRANT APPLICATION.....17

CONSENT MOTION TO REVERSE DECISION OF THE OFFICE
OF ADJUDICATION IN THE CIVIL INFRACTION OF
WASTE MANAGEMENT OF MARYLAND, INC.
APPEAL NO. 01-0004.....17

VOTE TO GRANT CONSENT MOTION.....19

REMAND FROM D.C. COURT OF APPEALS OF ANC 4A
APPEAL NO. 16839.....20

ACTION TAKEN: POSTPONEMENT.....32

BOARD ELECTIONS.....34

ADJOURN:
Geoffrey Griffis.....47

P R O C E E D I N G S

Time: 10:22 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the 4th of January 2005 Public Meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Geoff Griffis, Chairperson. Joining me today is Ms. Miller, Vice Chair, also Mr. Etherly who will be joining us momentarily, and representing the National Capital Planning Commission, Mr. Mann. Representing the Zoning Commission on several of our decisions this morning is Mr. Parsons, and he will join us on the cases that he has heard and will deliberate on.

I wish everyone listening today and also here a very happy New Year, and also apologize for starting off a little bit late, as we had quite a bit of business to do in Executive Session, but we are going to get to the morning's schedule very quickly, and to that, of course, the agendas are available for you where you entered into the hearing room. We will get right to that as we quickly proceed.

Let me just first indicate several things. All proceedings before the Board of Zoning Adjustment are recorded. They are recorded in two fashions, a

court reporter and we are also being broadcast live on the Office of Zoning's website. So we ask that people in the hearing room today turn off all cellphones and beepers at this time so we don't disrupt the transmissions of our processing.

This is, of course, the time for the Board to deliberate and make decisions on cases that have already been heard or are before us for differing types of processing. So that there is no testimony from the public today that we will be hearing.

With that, a very happy New Year to Ms. Bailey with the Office of Zoning, and also Mr. Moy. The Office of Attorney General is also represented this morning with us on several of the cases.

Ms. Bailey, Mr. Moy, a Happy New Year, and are there any preliminary matters that should be brought to the attention of the Board at this time or changes in the agenda?

MR. MOY: No, sir.

CHAIRPERSON GRIFFIS: Excellent. Thank you.

Then with that, if I have done everything I need to, let's move and call the first case in the morning.

MR. MOY: Good morning, Mr. Chairman,

members of the Board, and Happy New Year as well.

The first case for decision is Application Number 17251 of Paul and Frances O'Reilly, pursuant to 11 DCMR 3104.1, for a rear two-story addition to an existing single-family, semi-detached dwelling under Section 223, not meeting the rear yard requirements under Section 404, the side yard requirements under Section 405, and the nonconforming structure provisions of 2001.3, in the R-1-B District at premises 3715 Albemarle Street, N.W. That is in Square 1888, Lot 48.

On December 14, 2004, the Board completed public testimony on the application and scheduled its decision on January 4, 2005. The Board requested post-hearing documents from the applicant, which were filed by the applicant on December 21, 2004, and that is in your case folder under Exhibit 32.

The Board also -- The Office also received responses to the applicant's submissions, and those filings were submitted by the party opponent, Emelia Psillos, and ANC-3F, and these documents are also in your case folders identified as Exhibit 33 and 34, respectively.

That completes the staff's briefing, Mr. Chairman.

CHAIRPERSON GRIFFIS: Good. Thank you very much, Mr. Moy.

As you have stated, we did have additional submissions. The additional submissions were, of course, to help the Board fully understand in detail what was being proposed and, therefore, being able to deliberate on the testimony and evidence that was submitted into the record.

There is, of course, the ANC's concerns, and there is an additional submission from the ANC that we should address, and the adjacent neighbor that has brought up concerns.

The submissions that were put in by the applicant were to show definitively the elevation height, and also the grade, of which, obviously, the height could be established. We weren't looking for the building measurement height but rather, one might say, the real height above the grade at the rear where the proposed addition is to be placed.

We see that there is a slight grade change looking at the north rear elevations, as submitted by the architect, and also the dimensions that are being provided of 20 feet, 10 inches. We also have the fact of the fenestration that is now being shown and the materials.

I am going to open it up for a brief discussion and deliberation from the Board. We have several issues that have come up to the Board's attention in this case, keeping in mind that this is, of course, a special exception under 223 in that this property did not meet the requirements under Section 404, which is the rear yard requirement. However, in this case proceeding we had seen -- or rather had heard testimony that, if this addition was to be approved, that it would be a detriment to the use, privacy, light and air of the adjacent neighbor.

Additionally, we have the submission from the ANC which has brought up some aspects that were brought in the case, and then I would say in my reading of this, they have -- how would I say?

I believe in reading this that they have brought up elements that were heard in the hearing case and just have repackaged them in terms of their submission. I know we all need to pay attention to all of the aspects that they have brought up.

One of the pieces that I want to get to very quickly is the fence, the property along the fence. There seems to be some issue with that in terms of the survey that was conducted by the applicant and what value it has. There is the issue,

an element brought up by the ANC, that this couldn't be used for a wall check.

It is my understand that the wall check would be used -- or would be administered by the Zoning Administrator in going out and checking of construction that has been built, and they would have to have that based on the plat that would be submitted in the permit.

I am not sure. I don't believe that the Board was asking for the survey to show the property line in order for it to actually -- for us to assess the specific wall check, but rather to get the actual dimensions and the location of the property within the site.

So my meaning is, I believe that the document that was submitted is adequate and appropriate for that which we had requested to submit into the record.

Let me open it up to others for comment on all and any of the other issues. If I haven't stated it, one of the other issues was the water drainage as it would be impacted with the proposed new addition.

BOARD MEMBER MANN: I have just a couple of comments to make.

CHAIRPERSON GRIFFIS: Yes, Mr. Mann?

BOARD MEMBER MANN: Regarding, for example, the elevation -- or the drainage -- How did we describe what it is that we wanted?

CHAIRPERSON GRIFFIS: The grading plan?

BOARD MEMBER MANN: The grading plan. I mean, the grading plan -- We didn't get exactly what I anticipated that we got back. I think that, if you look at it closely enough, it probably answers the questions that we had on which direction does the water flow, although it is maybe not quite as -- It doesn't quite as specifically address the grading and the drainage in the way that I would have anticipated. So it was perhaps a little difficult to initially read.

The other thing that I had trouble with was the ANC's -- The ANC's submission raised a lot of issues that, as you said, were kind of repackaged in a way that we hadn't originally heard them, and it originally gave me some cause for concern. But the more that I looked at it and the more that I thought about it, the more I realized that it really doesn't have much relevance or bearing on the decision that we make today -- for example, the bowing of the fence, which maybe is a problem, but that's a problem that is dealt with separately and not through this particular

case.

I mean, if the fence is slightly off-line or if the fence bows a little bit, the correction will have to be made in a different way; but it doesn't really have any bearing on whether or not we should grant this zoning relief.

I am not quite certain what the point of this is, my raising these issues, except to say that I think that I feel fairly comfortable that some of the concerns that were raised by the ANC are not actually concerns that are going to have any bearing on my decision today.

CHAIRPERSON GRIFFIS: Okay. Well said. Others? Ms. Miller?

VICE CHAIRPERSON MILLER: I think that the ANC and the most immediately affected neighbor at 3713 raised two concerns that, I think, were certainly worth our giving some consideration to.

One was the adverse impact from the addition being so close to the property line at 3713 and whether or not that had an adverse impact upon that neighbor.

I think that Office of Planning did a good job at evaluating that issue. Of course, whenever anything is built next-door, it has some impact

usually on light and air, but not necessarily to the level that would cause us to deny an application for a special exception in this case.

Here, I think the fact that both neighboring properties have a lot of side yard property on their property mitigates the fact that this addition is close to the property line.

In addition, there was a concern raised about the addition disrupting the harmony of the pattern of the homes on this block. I would look to the test in 223, and they really go to the addition as viewed from the street, alley and other public way and not really from the back where it couldn't be seen.

So in evaluating this case basically, I think it meets the 223 test as well as the 404 and 405 requirements.

CHAIRPERSON GRIFFIS: Excellent. Thank you. I would bring up or reiterate your point, and not the Office of Planning indicates that, in terms of the light and air, there would be some effect and, obviously, common sense would tell you there would be in any sort of addition to the single family dwelling at 3713 Albemarle Street. But they also indicate that part of the yard of the adjacent dwelling, especially in the late afternoon, would be when it would be

somewhat impacted.

There was testimony of the fact of the large trees that also diminish the sun itself. But the Office of Planning continues, indicating that the issue is whether the addition would unduly affect light and air, which is your point, Ms. Miller, and they also have come to the conclusion that this could be allowed, as it would not unduly affect the light reaching the adjacent dwellings.

I think the other aspect that supports that in terms of whether it would unduly impact the privacy but also the light and air -- The two points is the location of the windows, the fenestration on the addition. There are not that are created that directly look into the adjacent rear yard.

Also, the depth of the open space, even beyond the properties on this block, is fairly expansive. There is no alley in that back yard, but there is wooded property, keeping it quite open and especially as it goes -- I believe it is west. The amount of open space that allows for the light and air to get to all the rear dwellings on that, I think, also moves me to support this special exception in this case. Others?

We had some issue that was brought up in

testimony in terms of mold and mold on the adjacent property stairs. There was some testimony that I believe was trying to direct us to link, one, the standing water on the already started construction site -- the mold. Again, you know, we have to go with what is on the record in terms of each of those that testified.

The applicant had indicated that most of the properties and the adjacent properties has already had that type of covering on the rear stairs, based on the fact that this is a northern facing elevation and that the direct light does not reach it, which would -- my understanding of the testimony provided, which would then eradicate or kill off the mold. It would be the sunlight, and it wasn't, in fact, this proposed addition that would impact that.

The other issues, of course, that we often hear about are the construction issues. In fact, the submission by the adjacent neighbor that had the engineer that walked through that was indicating that there may well be, or there should be, an anticipation of problems with the foundation.

I think that was an excellent thing for the adjacent neighbor to do, and I do not disagree with the conclusions. I don't think they have drawn

definitive conclusions but have given precautionary issues to look at, and I think they should be looked at.

The fact that the construction was started prior to having all appropriate approvals: It doesn't get into, one, our jurisdiction and, two, what the special exceptions are for. They are here in order to proceed and precluding them from coming to us -- we have gone through numerous times -- would not be to continue this.

Therefore, looking at the standing water, obviously, that is not a permanent situation that will continue. It either will be built or it won't be built. Either way, that hole will be dealt with.

That being said, is there any other deliberation at this time prior to a motion? If not, let's move straight into a motion, and we can continue any comments or further aspects to this.

I would move approval of Application 17251 for the special exception to allow a rear two-story addition to the existing single family residence which was not meeting the rear yard requirements, and it is at the premises of 3715 Albemarle Street, N.W. And I would ask for a second.

VICE CHAIRPERSON MILLER: Second.

CHAIRPERSON GRIFFIS: Thank you, Ms. Miller. We can go through the test at 223.2. I think this is the most critical in terms of the privacy, use, light and air. I think we have talked about that substantially. Obviously, it is open, and I won't comment further on that.

In terms of the character, Ms. Miller, I think it was well said in your comments. One, it is at the rear, but also we did look at the materials and the types of materials that were going to be utilized, and it would fit within the character of the existing house.

Again, it goes to an aspect of, certainly, it would change. The massing is going to change, but would the substantial character of it change? I didn't see persuasive evidence that it would be detrimental to the character.

Going to the water issue and any other elements that might create some negative impact, there was testimony by the applicant in terms of how they were going to capture the water off the roof, which is a substantial concern in terms of where that was running off.

It appears that they have, with their plans, remedied any situation. As you recall, there

was testimony of the fact that it wasn't properly draining and that this will be able to correct that aspect and drain to the other side and away from the adjacent neighbors.

Also, there is the concern about the close proximity to the property line. This is lining up with the original house which, whether it was a good idea or not, was set at a certain distance. The applicant has said that they are well aware of what the situation means and entails, and are prepared to maintain that area. I have some confidence that that is the case. That's all I need to say on it. Others? Anything else?

VICE CHAIRPERSON MILLER: I just want to clarify with respect to your motion. I don't know that you listed all the relief that the applicant is seeking, and I just want to clarify what I think that relief is, which is relief under Section 223, not meeting the rear yard requirements under Section 404, the side yard requirements under Section 405, and 2001.3, nonconforming structure.

CHAIRPERSON GRIFFIS: Good. Yes, thank you. Sorry, I was not complete on that. Okay, anything else then? Any other deliberation or discussion.

We have a motion before us. It has been seconded, and I would ask for all those in favor to signify by saying Aye. Opposed? Very well, let's record the vote.

MR. MOY: Staff would record the vote as four to zero to one. This is on the motion of the Chair, Mr. Griffis, to approve the application, seconded by Ms. Miller. Also in support of the motion, Mr. Mann and Mr. Etherly, and we have a Zoning Commission member not participating on this application.

CHAIRPERSON GRIFFIS: Good. Thank you, Mr. Moy. Let's move ahead then.

MR. MOY: The next case before the Board is a consent motion to reverse a decision of the Office of Adjudication in the Civil Infraction case Number 01-0004 of Waste Management of Maryland, Inc. This is in violation of Title 11 DCMR 3203.1 for an operation of a solid waste handling facility without a requisite certificate of occupancy in a CM-2 District at premises 2160 Queens Chapel Road, N.E. That is in Square 4259, Parcels 154/72, 154/87, 154/110, and 154/112 in Lot 3.

So with that, I think staff would like to conclude its briefing, Mr. Chair.

CHAIRPERSON GRIFFIS: Very well. Thank you very much, Mr. Moy. As you have adequately stated, we do have a consent motion before us. Boy, it would be fun to really spend a lot of time going through the entire history of this case, but in the matter of great efficiency and effectiveness, let's not.

I think what is pertinent before us -- Actually, let's process this under a motion and we can deliberate on it. I would move approval of the consent motion to reverse the decision of the Office of Adjudication in the civil infraction case, which is case Number 01-0004, Waste Management of Maryland, Inc., and would ask for a second.

BOARD MEMBER ETHERLY: Second, Mr. Chair.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much, Mr. Etherly. We do have a great and extensive amount of filings on this, but let me just leave it at this. I believe, and I do support the motion based on the fact that it is a consent motion, and it is agreed upon by the parties and participants in this case, and I believe it is their wish, and they have come to this agreement, and I think it is appropriate that the Board supports that. So I, obviously, will be voting for the motion. Others?

Any other comments? Yes, Ms. Miller?

VICE CHAIRPERSON MILLER: I also will be voting for the motion, based on the representation in the applicant's motion. However, I just would say for the future, I would love to see DCRA affirmatively join in on a motion or indicate that they have consented. However, I have no reason to believe that they are being misrepresented. So I also support the motion.

CHAIRPERSON GRIFFIS: Excellent, and that is an excellent point to bring up. As you have just stated, it has been provided to us that they consent, and certainly we don't need to question that of the applicant's attorney that is stating that. But I would agree also. What harm would it be if there was a statement?

Okay, anything else then? Anything else that we need to do, any other comments, deliberations on this? We have a motion before us to grant the consent motion. It has been seconded. I would ask for all those in favor to signify by saying Aye. And opposed? Very well.

MR. MOY: Staff would record the vote to approve the consent motion to reverse the decision of the Office of Adjudication in the civil infraction

case on the motion of the Chair, Mr. Griffis, seconded by Mr. Etherly. Also in support of the motion, Mr. Mann and Ms. Miller, and we have a -- we do not have a Zoning Commission member participating on this case.

CHAIRPERSON GRIFFIS: Thank you. Let's move ahead.

MR. MOY: The next case before the Board is a remand from the District of Columbia Court of Appeals. This is to the appeal of Number 16839 of the Advisory Neighborhood Commission 4A, pursuant to 11 DCMR 3100 and 3101 from the decision of the Zoning Administrator, for the issuance of a certificate of occupancy (No. 183666, dated August 31, 2001) for an elderly development center serving 30 persons, ages 22 - 85 years old and 7 staff, in a C-2-A District at premises 5511 14th Street, N.W. That is in Square 2800, Lot 9.

At its scheduled Public Meeting on November 2, 2004, the Board waived the required timeline established to allow into the record the Department of Regulatory and Consumer Affairs' response, which is dated October 29, 2004 and is identified in your case folders as Exhibit Number 45.

Also, the Board directed the staff to serve Exhibit 45 to all the parties in the case, and

the parties were allowed to reply by deadline of December 14, 2004.

There is a filing that has been submitted from John Chagnon, and that is identified in your case folders as Exhibit 49.

That will complete the staff's briefing, Mr. Chairman.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much, Mr. Moy, a very concise reading and summation of the record on this.

Let me pause for a moment for two elements. First of all, in the last case that just preceded, unless there is any objection from Board members, I would suggest that we allow a summary order be issued, if that is possible, from the Board. Yes, a question?

VICE CHAIRPERSON MILLER: In the last case, I believe there was opposition, and it is often the case that we have a full order when there is opposition.

CHAIRPERSON GRIFFIS: I understand that, except it is a consent motion that --

VICE CHAIRPERSON MILLER: Oh, not that one. I'm sorry. I thought you meant the one before.

CHAIRPERSON GRIFFIS: Just for

clarification on the consent motion that we did, I just want to make it an available vehicle to issue a summary order. There may well be, and I think there is, some detail that the Board wants put into that issue, but I don't think it needs a full finding and conclusions. So that being said on the record, if there is objection to that, of course --

VICE CHAIRPERSON MILLER: No, I'm sorry. I thought you were talking about a different case.

CHAIRPERSON GRIFFIS: Very well. Then secondly, let's welcome Mr. Parsons, which we had in the morning stated he would be here, and now he is here and sitting on this case. Let's get right into it.

We have -- As Mr. Moy has adequately stated, we have taken several steps on this in terms of dealing with the remand from the District of Columbia Court of Appeals, and here we are again. I want to say absolutely and with all clarity, I hope, the Board takes it very seriously, has spent a great deal of time looking at this and processing this and trying to do exactly what is the most efficient and effective and judicious deliberation and action on this.

I think it should not ever be said that

somehow this is not getting attention that it requires or that any other case gets. So with that, let's open it up.

We have several -- Well, as the letter that went out, what we were trying to do, of course, was to clarify the issues that were sent back to us on remand, and also be able to get enough information in front of us for us to remedy this situation, either to uphold the appeal to clarify or to deny.

I think at this juncture we are actually looking at the possibility -- Well, let me open it up for other comments on this. I think, in terms of my looking at this, we have -- and I actually sat on the Appeals. I know Mr. Parsons also did.

We have a particular problem here, which I think is a lack of sufficient clarity in the zoning regulations themselves. It really is coming down to that in my mind, and we keep running up against the same situation with this case, which I think will be duplicated in other cases, in this lacking with the regulations. We are not given the clarity that we need and, therefore, perhaps the Zoning Administrator also doesn't have the clarity.

So with that comment, let me open it up to anyone. Mr. Parsons?

COMMISSIONER PARSONS: Mr. Chairman, thank you. I agree with you. Although I found the letter from the Zoning Administrator persuasive in searching in the C-2-A area for like uses, I think the basic inherent problem here that we probably should have dealt with a long time ago is in the Zoning Commission's deliberations on the definition of child/elderly development center, which I believe occurred in the last century. I'll put it that way.

As a participant in that, the fact that we now have a use that isn't covered because they are not children and elderly -- they are middle-aged, if you will -- I am certain my colleagues at the time, if they knew of this particular use, would have included it in those definitions -- within the framework of that definition.

So I have asked the Office of Corporation Counsel -- excuse me, the Attorney General's Office -- to take a look at that definition and see if we could bring to the Zoning Commission a redefined child/elderly development center which we could then apply to this and other uses that exist in the city that we may not even know about, rather than for the BZA to try again to find a place in the regulations that are specific enough to get us through this.

So that would be my suggestion. I would hope to bring that before the Zoning Commission at this meeting which is this Thursday or the February meeting.

CHAIRPERSON GRIFFIS: Excellent. I think that is an excellent suggestion to clarify the text of the regulations. That would then lend itself to clarify the aspects in this specific case and, more importantly, those that continue beyond this. Others?

COMMISSIONER PARSONS: Only one. I said this Thursday. I meant the 13th, which is a week from Thursday.

CHAIRPERSON GRIFFIS: Right. The next Zoning Commission.

COMMISSIONER PARSONS: Monthly meeting.

CHAIRPERSON GRIFFIS: Right. Okay. Mr. Etherly?

BOARD MEMBER ETHERLY: Mr. Chair, I would agree wholeheartedly with the direction that Mr. Parsons has laid out in terms of dealing with this matter. I think, clearly, there are a couple of different options that could have been pursued in the absence of the route that Mr. Parsons has suggested.

Of course, the Board could continue to, so to speak, sit in the Zoning Administrator's shoes and

try to sort this matter out or, in the alternative, grant the appeal. I think both routes would have been somewhat problematic in that the record hasn't perhaps been as fully parsed out as we would have liked to see it with regard to filling in some of the blanks, if you will, regarding the Zoning Administrator's analysis of the similarity of this use to those enumerated uses.

So I once again would agree wholeheartedly with Mr. Parsons' suggest here, because I think it takes us directly to the root of the problem here in terms of trying to essentially shoehorn a solution which really lays in tightening up the language in the zoning regulations.

So I wholeheartedly support what I think would be the appropriate direction in this instance, and that is probably something along the lines of a postponement or a stay here, but I will look to my colleagues to assist in parsing out the appropriate language there. But I think that would be the appropriate course of action.

CHAIRPERSON GRIFFIS: Excellent, and I appreciate your bringing us to that point. Let me reiterate that the aspect that you had indicated -- yes, I think we did entertain an awful lot of

differing ways to move ahead with this.

As Mr. Parsons has stated, I, too, found the Exhibit Number 46, which is the Zoning Administrator's letter to the Board, persuasive. However, in looking at it, we would, of course, need to establish additional facts that supported their conclusions. Then you would look at how would we do that? Do we open up for a continuing processing and all that?

I think, in my mind, and I think the Board is also of the same, there didn't seem to be efficiency or effectiveness, really, in doing that and continuing this on. I think that we have hit on exactly what should happen, and that is the clarifying of the regulations that would clarify all these issues.

That being said, Mr. Etherly, you have indicated that we may actually look at a postponement of this or a stay. I think the postponement would probably be the best situation of this. I would hear other comments and also ask the OAG if they had a comment on that. Ms. Miller, you first.

VICE CHAIRPERSON MILLER: I just have a few points. I think it would be appropriate to grant a stay or postponement in this case pending a decision

by the Zoning Commission as to amending the regulation or creating a regulation that governs this type of use.

I also want to point out that I think that this action is consistent with the Court of Appeals directive, which I would like to just read two sentences of. The Court said: Although Metro Day does not qualify as a "child/elderly development center," it may yet be eligible for a certificate of occupancy under a different use classification. Thus, in vacating the order of the BZA, we remand for further proceedings not inconsistent with this opinion.

That's the Court of Appeals order. I think we did have different options that would be consistent with the opinion and that we are choosing the one that makes the most sense, I think, rather than having a hearing related to this specific case and hearing evidence, etcetera.

I also want to point out that Mr. Chagnon and others will have an opportunity before the Zoning Commission to present any arguments that they would have been able to present here as to why or why not it should be classified in a certain way.

CHAIRPERSON GRIFFIS: Well, for clarity,

you are absolutely right. Mr. Chagnon will have an opportunity to present evidence, but Mr. Parsons may be able to --

VICE CHAIRPERSON MILLER: I didn't say evidence. I said argument.

CHAIRPERSON GRIFFIS: Sorry, testimony in front of the Zoning Commission, but not particularly about this appeal but rather whether the text amendment and what is proposed is appropriate. So there is not going to be a rehearing of this case, but rather the larger regulations on how the definition might be changed or the allowable uses may be expanded.

VICE CHAIRPERSON MILLER: I agree.

CHAIRPERSON GRIFFIS: Okay. Good. There we are then. I'm sorry, Ms. Glazer, did you have a comment on stay or postponement? I think the Board is moving toward a postponement on this pending the Zoning Commission's action.

MS. GLAZIER: I don't have an opinion. Either one would really have the same effect, to stay it pending the Zoning Commission action, or to postpone it pending the Zoning Commission action.

CHAIRPERSON GRIFFIS: Okay. Mr. Parsons, do you know just a rough estimate of the time that

might be involved in this, if we were to postpone this and we could give an approximate time. Actually, why don't we set a date on this for the postponement until?

COMMISSIONER PARSONS: Well, that's very difficult. I'm glad a member of the panel is asking that. First, we would have to decide whether this was an emergency, which is a city-wide issue that we do very carefully. That is, pushing it ahead of other matters and so forth. I don't know where we would come out on that.

CHAIRPERSON GRIFFIS: Okay.

COMMISSIONER PARSONS: Let's presume that is not the case. We would have to set it for hearing, which would probably run us into, I would guess, late March, early April.

CHAIRPERSON GRIFFIS: Okay. So then let me ask it this way, directly, for our schedule. Would it be safe to set this for our June decision making, or July?

COMMISSIONER PARSONS: Yes. As a text case, I guess, yes, that would be -- and I'm presuming we could deal with it in May.

CHAIRPERSON GRIFFIS: Okay. Why don't we do that then? Why don't we set it for our June first

session, Public Meeting in June, postpone this decision until then?

COMMISSIONER PARSONS: I'm not sure of what the Board would do at that point, other than to get a status report, because if by that time there is a provision in the regulations that Metro could apply for a new certificate of occupancy under a new regulation, this Board theoretically wouldn't see it again.

CHAIRPERSON GRIFFIS: Right.

COMMISSIONER PARSONS: But if that's what you mean, you don't mean to set a hearing or anything. You just mean a status report.

CHAIRPERSON GRIFFIS: Well, no, what I am -- Yes and no. What we would do is we would postpone our decision making on this, what we have before us, for the June meeting. At the June time, obviously, we would have an update from the Zoning Commission and could evaluate it from that standpoint.

COMMISSIONER PARSONS: All right then.

CHAIRPERSON GRIFFIS: It may moot this whole issue, in which case it is what it is. It may come back and rear its head for us, but it would allow us to, one, set the schedule now on the public record, and we would be able to proceed from there.

COMMISSIONER PARSONS: All right.

CHAIRPERSON GRIFFIS: Good. Yes? Ms. Glazier, did you have a comment?

MS. GLAZIER: No, Mr. Chair.

CHAIRPERSON GRIFFIS: Sorry. Thought I saw your mike on. Okay. Well, if nothing, then let's set this. Mr. Moy, Ms. Bailey, is that appropriate for the schedule, and what was the date?

MR. MOY: Well, if the Board is looking for June, I don't have a calendar in front of us for the exact date for the Public Meeting in June, but that should be the first Tuesday in June.

CHAIRPERSON GRIFFIS: The first Tuesday. Ms. Bailey?

MS. BAILEY: The seventh, Mr. Chairman.

CHAIRPERSON GRIFFIS: Seventh of June 2005. Excellent.

MS. BAILEY: And will it be held at a meeting or --

CHAIRPERSON GRIFFIS: Yes. This is postponing a decision on this. So it is set for the Public Meeting.

I think we have been very good in terms of correspondence, and I know for a fact on any of the cases, the questions and clarifications are succinctly

and accurately provided by the Office of Zoning. So, obviously, if anything changes relevant to this, we would take the appropriate actions in terms of communication.

BOARD MEMBER ETHERLY: And, Mr. Chair, if I might just as we close off this particular chapter on the case and postpone it for further action, I think it is perhaps an appropriate starting point for us in 2005 that, as you noted and as Ms. Miller noted and, I think, as Mr. Parsons' comments suggested, that oftentimes this Board is taken to ask for lengthy proceedings and hearings on a matter. Clearly, this is a case that has some extended history with us.

I think it is a very important message to send as we start off 2005 that we are taking a step that, I think, is a fairly clear and decisive one toward avoiding further protracted hearings on a matter that really can be clarified in a very quick, decisive and almost surgical way.

So I am very pleased with the direction in which we are moving with regard to this particular matter. Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Well said, Mr. Etherly, and I absolutely agree that this Board -- it serves us not to have lengthy proceedings, and that is

something that we go into and try and encourage and, in fact, do all our best not to. But as we have said in the past, our proceedings are extended based on the fact that we do allow and have testimony from numerous people, and try not to, unless it is absolutely necessary, cut anyone off.

Obviously, the only reason why we do that is it goes beyond our jurisdiction or the direction of the course of the hearings and proceedings. So I know we are all very attentive to everyone's time and requirement, one, as Board members and, most importantly, in the public.

So with that speed and efficiency and effectiveness, it is eleven o'clock, and we are about done with the morning session. Is that correct?

Good. What's next? Anything else on our agenda?

MR. MOY: Mr. Chair?

CHAIRPERSON GRIFFIS: Yes, sir?

MR. MOY: There is just one other matter on your agenda, which is the Board election. So I don't know if the Board wanted to continue that at this time or at some time during the day?

CHAIRPERSON GRIFFIS: I think it is appropriate to proceed in that fashion. Let's drop

the balloons and show the confetti. Oh, wait, that's after. Is that right? Very well.

We do have our Board elections, as required by our regulations, on the first session in January. We are here. So I will open it up. We, obviously, have the Chair and the Vice Chair positions that need to be voted on.

VICE CHAIRPERSON MILLER: Mr. Chairman, I would like to move to nominate you again as Chair of BZA. I think that you have demonstrated a commitment to serve the public in this capacity which has been unsurpassed, and your hard work and your breadth of knowledge in zoning matters and, most importantly, your sense of humor that has gotten us and the public through many days and nights of long hearings -- and short ones as well.

Anyway, that is my motion, and is there a second?

BOARD MEMBER MANN: Second.

VICE CHAIRPERSON MILLER: I guess I might as well ask if there's any other discussion on this motion.

BOARD MEMBER ETHERLY: Mr. Chair, I will speak in support of the motion. I think I would simply like to reiterate the comments that have been

raised by Ms. Miller, and perhaps it's a nice bridge from the piece that we just concluded where I referenced oftentimes to things that this Board is taken to task for.

I think it is probably an understatement to note that 2004 was quite an adventurous and eventful year for this body on a number of different levels, clearly just continuing to conduct the business of the public and the District of Columbia on zoning matters. I think this Board continues under your leadership to set a very excellent example for all of the boards and commissions here in this city, considering the workload.

The amount of work that has to be completed, to continue the course of this body is just a herculean task, and I think you have performed more than admirably in that regard. But I will once again note that oftentimes this Board is taken to task, and I think unfairly, for a number of different things, whether it is perceptions regarding lengthy hearings or what have you.

I think it is not said enough, one, the work that not only you do but also that this Board does under your leadership, sifting through the mountains of information, the witness testimony, the

written submissions, and doing it in a way that I think continues to, Tuesday in and Tuesday out, afford the public with an opportunity to weigh in on matters that not only impact them in very personal ways, whether it's a matter involving two neighbors and a deck or whether it's a matter involving two ANCs and a private school or whether it's a matter involving a transfer station or any number of other issues that have come before this Board.

We deal with a lot of emotions in terms of the testimony and the perspectives that are brought before us. We deal with a lot of favorable support. We deal with a lot of opposition. But I think, under your leadership, this Board has done an excellent job of hearing in equal parts without favor, without partiality, hearing all of the perspectives that residents, ANC members, elected officials in some instances, and members of the general public desire to bring forward before this body.

I think that is clearly the type of leadership that we continue to need as we conduct the business of the Board of Zoning Adjustment. So I am happy to speak in support of the motion and look forward to another year of continued service with you and my colleagues. Thank you, Mr. Chair.

VICE CHAIRPERSON MILLER: I would like to add one other point, now that we are reflecting on -- Well, no, on 2004 and the emotions that are involved in these types of hearings.

I would also like to add how the Chairman takes the time and the consideration to deal with various parties who don't have any knowledge about BZA proceedings per se or who are very nervous and emotional. He really takes the time to explain the rules to them and to give them a chance to catch their breath, just in a very kind way that I think is unusual and extremely valuable. So thank you.

COMMISSIONER PARSONS: Mr. Chairman, I feel I need to weigh in here as Commissioner of the day. As you know, I have watched these proceedings for almost 30 years, and this panel that is now assembled, the appointees by the Mayor, is the best panel I have ever sat with, and I mean that sincerely.

It is difficult to find citizens like you to do this job, and what I mean by "like you" is not that I like you -- I mean that have the interest and knowledge to dig into these issues and solve problems. But the leadership, as we all know, is extremely important, and Mr. Griffis' leadership has turned this panel around, not that it needed a lot of it but,

frankly, it's been a much different experience for me since you all came.

There is creativity in solving problems. There's a much better rapport with the public, as has already been said. Not only Geoff but all of you, I think, are doing a much better job than I have seen ever, and you all have a thorough knowledge of the regulations, which is not something your predecessors did. But I certainly support this worthy nomination, and congratulations to all of you.

VICE CHAIRPERSON MILLER: Well, at this point then, all those in favor of the motion, say Aye. All those opposed? All those abstaining?

CHAIRPERSON GRIFFIS: Well, I am sincerely moved and honored by the comments today, but also let me say, and briefly, it is an honor to serve with this Board. I think Mr. Parsons has adequately touched it, and our new member, Mr. Mann, has added invaluable aspects to this.

We are a group that I can say in my professional and also personal experience is not easy to bring five differing folks that drop in once a week and try to weigh and hear and deliberate on monumental things, and Mr. Etherly said it correctly. It may be a back deck, and it's still monumental to that

applicant that is before us, and we obviously have quite large cases that we look at that have major impacts across the city.

I don't think I could be looked at as doing a successful job here without the success and the importance of all of you and the roles that you play and the input that you play. What is not ever clearly, and I don't think can be clearly understood from the other side of the dais is how much work actually goes into what we do, and not to praise us but to give a full understanding of is, you know, we all live independent lives. We are appointed to this. We have other jobs that we do full time, and yet we do spend the 20 to 30 hours a week preparing and getting ready for this.

We take this very seriously and, as I say, our success should be equally distributed to each of us. But it is together that our success is really measured, and I think can be done so very well.

You know, we've really hit an excellent time, I think, in two other aspects. One, those of us that are on the Board now have come together, and some of the chemistry that we have that is brought together that allows us to be as successful, but we also have the administration in this city that has supported the

larger systems and the larger processing and, really, I think, supports what we do here in terms of the changes in the city, and I think they are very positive.

I can also say affirmatively that the Office of Zoning and the staff there and the dedication that they have is impressive, and it is not one that I am very familiar with, with other agencies. I think our job also is -- We get an awful lot of credit for things that are actually done by the Office of Zoning and the staff in getting the preparation of applications together.

Mr. Etherly, in the last piece you brought up that this Board is criticized. You know, I have two comments on that. In one respect, I step back and I look at it and say we must be doing something definitively if there is criticism out there, and what we are asked to do is definitive things. So with that, I absolutely agree.

In addition, though, we do need to look at what those criticisms are and to see if we cannot change those, if it is appropriate, one of which has been, as you have now said several times, and it is important to say, the length of our hearings.

I don't give much relevancy to the

criticism, because I know I'm here. You all are here. We know how things proceed, and we can get through eight cases a week in our sessions, and do oftentimes. We've processed things that can go quickly, quickly. Those that cannot and should not are not processed in that fashion.

The other piece that often comes up is enforcement. How come the BZA doesn't go out and enforce things? Why don't we demand the Zoning Administrator show up or why don't we demand that they shut down or, you know, enforce our orders?

The moment we are given the jurisdiction for enforceability is the moment we should take it. At this point, we obviously don't have that jurisdiction to do it. But we do, and always, craft our decisions -- and I know this, because we have been through it so many times. Our orders are written, crafted and decided upon with the firm belief and anticipation that they will be in full force.

So 2005, obviously, will bring great changes, I think, for the BZA in the continuation, and we will continue with all those that have been established in the past year and the several years before that.

So I thank you all very much for your

incredibly kind comments, and we should continue and get to work. The next step in that for this morning is I would like to nominate for the Vice Chairman Ms. Miller to continue on, and to state that, as I always do, each and everyone of us on the Board has an invaluable position and brings to it unique and differing aspects.

I think we have a very equal standing on the Board, but it is an important role to play as the Vice Chair in terms of monitoring the process of the Board and being able to step in to conduct the hearings.

Ms. Miller, over the time that you have been on the Board, you have obviously played an invaluable part, and I appreciate -- Well, absolutely an invaluable part. I was trying to limit any humor as we went through this. So I will try and keep to that.

You know, one of the important pieces that I think we do find, and it is often a comment, is shouldn't this entire Board be attorneys. We do have two attorneys on the Board now, and I look as the Board playing a differing role, as we do have the OAG that actually is the attorney for the Board. But you bring an excellent perspective in terms of the legal

history and the background, and actually it gives us the perspective of looking at our decisions and how they may proceed and what the ramifications may well be and how the courts might look at it or have looked at similar issues in the past.

It is again -- which is why it is important to have a diversity of people on this Board, in order to have the diversity of input for the informative nature. I think that is one of the strongest things that this Board has at this point, is that we have so many different points of reference that can all come together and look at the same application. I absolutely think that that is invaluable.

Let me open it up to others for comments and a second on the nomination motion for Ms. Miller.

BOARD MEMBER MANN: I'd like to second the motion. Also, I'd like to just take that a little farther and say that I think actually the fact that Ms. Miller does not have a design or planning background is actually in this case a strength, because it does force us to look at things from a slightly different perspective that she analyzes things in a very different way than those of us with design backgrounds do. I think that kind of forces us

to look at things in a unique way that is very helpful.

CHAIRPERSON GRIFFIS: Excellent. Thank you. Very well. I know we could continue on and say a great deal, but let me -- Let's move ahead, be efficient and effective. We have a motion before us. It has been seconded. I would ask for all those in favor to signify by saying Aye. And opposed? Abstaining? Very well, and we will turn it over to you, Ms. Miller, to have any --

VICE CHAIRPERSON MILLER: I have a few comments. One is on the reflection we have made about how valuable it is to have persons on the Board with different backgrounds. I think, going to what Mr. Mann said, it actually forces each of us to explain our different perspective and analyses, and thereby to analyze it better, and then be able to explain it better to the public.

Also I want to pick up where I left off, I think, last year. I came here, and I said what a great inspiration various people have been to me, and it is a lot of -- This job does require a lot of work to do a good job, but what makes it possible, really, for me is the inspiration that I get from my other Board members and the support and inspiration I get

from the Office of Zoning and the Office of Attorney General.

Last year, Mr. Moore from the Office of Planning said he hoped that I would be able to say the same thing about the Office of Planning. And that really is true, that their reports are incredibly in depth and helpful, and they play a critical role in the process.

I also, when I come here and sit in hearings before the public and the applicants and I see the amount of work that has gone into so many of these applications, that also is an inspiration for me to give it all that I can give.

So thank you for your support, and I look forward to another year.

CHAIRPERSON GRIFFIS: Good. Thank you very much. Last word on that: I wanted just to state that one of the things that I absolutely appreciate is also your passion for the regulations, but also your compassion to those that are before us. And I mean it in this fashion. Oftentimes, you are a great and attentive member in terms of the requirements of the regulations, be it with the ANC filings and the equity of which you make that statement and the import is unquestionable.

The importance of it is to make sure that anyone that's here is filing correctly, especially parties like the ANC, so that we can utilize what they put in. I think it is an important distinction that you have brought to the Board in terms of going through the actual requirements and maintaining that vigilance in terms of being able to comply with it.

As I say, I think it is in a very compassionate way and an equitable way at all times.

So with that -- awful lot of emoting -- I think we have concluded the business at hand today, unless -- Mr. Moy, is there anything else for the Board?

MR. MOY: That's it for the Public Meeting today, sir.

CHAIRPERSON GRIFFIS: Excellent. Very well. Thank you very much. Thank you all very much. With that, I think I can conclude the morning session of the fourth of January '05.

(Whereupon, the Public Meeting was adjourned at 11:25 a.m.)

- - -