

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

JANUARY 17, 2006

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:52 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
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Chairperson
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Specialist
TRACEY W. ROSE	Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from the Special Public Meeting held on January 17, 2006.

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P R O C E E D I N G S

9:52 A.M.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order our special public meeting of the 17th of January 2006. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller; and Board Member Mr. Etherly. Representing the National Capital Planning Commission, Mr. Mann; and representing the Zoning Commission on the first case for decision is Mr. Parsons who is not going to be present with us today.

As I have just briefly indicated, this is a special public meeting. This is called to deliberate and decide a case that has previously been heard on this. It will take us a little time, I believe, to get through and then I will call into session our public hearing, in which case I will have a lengthier opening. But to expedite our process, let's move ahead then and say a very good morning to Ms. Bailey, on my very far left; and Mr. Moy, closer to me on the left on the dais, representing the Office of Zoning.

With that, Mr. Moy, if you wouldn't mind calling for decision our first case for this morning.

SECRETARY MOY: Yes sir. Good morning,

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1 Mr. Chairman, Members of the Board.

2 The first and only case for decision
3 making at this special public meeting is the
4 Application No. 17419 of Bradford A. Deel, pursuant to
5 11 DCMR 3104.1, for a special exception to allow a
6 rear deck addition to an existing single-family
7 dwelling under section 223, not meeting the lot
8 occupancy (section 403) and rear yard (section 404)
9 provisions, in the R-1-B District at premises 5528
10 MacArthur Boulevard, N.W. That's in Square 1445, Lot
11 64.

12 Staff notes that at the Board's last
13 hearing on January 10th, the relief, the zoning relief
14 from lot occupancy was dropped or rather removed from
15 their request.

16 On January 10, 2006, the Board completed
17 public testimony on the application and scheduled its
18 decision on January 17, 2006. The record is closed
19 and the Board is to act on the merits of the
20 application.

21 That completes the Staff's briefing, Mr.
22 Chairman.

23 CHAIRPERSON GRIFFIS: Thanks very much,
24 Mr. Moy. Yes, this should be very fresh on all the
25 Board Members' minds. We did hear this late into the

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1 day last week. It was a special exception. It's been
2 outlined by Mr. Moy and the additional information
3 that came in.

4 It was an interesting case. It seemed and
5 it actually is, not just seeming, for a deck addition
6 to an existing house. There was some opposition, a
7 substantial amount of opposition in terms of the
8 testimony provided, raising critical aspects that
9 somewhat related to the application, the aspect of
10 whether the whole and entire development was properly
11 done in terms of the character of the surrounding area
12 and neighborhood. There are easements that were
13 spoken of, the storm water.

14 Also, Pepco -- storm water was certainly
15 much more detailed in terms of the specificity and the
16 importance of it. There was also some photographs
17 indicating the need for proper functioning storm water
18 management system and plan.

19 However, we are obviously charged and have
20 jurisdiction over the application that's before us and
21 therefore need to limit our decisions based on that
22 and this 223 special exception was for that deck
23 addition.

24 Of course, the test for that is whether it
25 would impair the light, air, use and enjoyment of the

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1 adjacent neighbors, whether it would stay in character
2 with the community, whether proper graphic
3 representation has been provided for the Board's full
4 understanding. I'll run down quite a few of it, but
5 I think you'll find it more expeditious and proper to
6 do this under a motion and I would move approval of
7 application 17419 of Bradford A. Deel and that is as
8 I've not said several times, pursuant to a special
9 exception under 223, not meeting the lot occupancy
10 under 403 or the rear yard under 404 provision on 5528
11 MacArthur Boulevard, N.W.

12 I would ask for a second.

13 MEMBER ETHERLY: Second, Mr. Chairman.

14 CHAIRPERSON GRIFFIS: Thank you very much,
15 Mr. Etherly. I'll run down -- of course, the Office
16 of Planning was recommending approval. They did an
17 excellent analysis of it. The ANC was recommending
18 denial of it based on numerous issues, some of which
19 I find were beyond, one, the scope of the application
20 and in fact, beyond our jurisdiction and I want to
21 hopefully address that. But one of the aspects was
22 that this should be referred or some analysis ought to
23 be made by environmental or health agencies in town.

24 To address that specifically, it would be
25 my understanding that as this was moved towards

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1 permitting, that that analysis would take place, if
2 there are easements, be it Pepco in the land
3 subdivision, deeded easements for storm water,
4 certainly they will have to be complied with. More
5 importantly, as you will -- as anyone would start
6 digging footings, they would -- they will hopefully,
7 contact Miss Utilities and flag any other aspects that
8 are below grade.

9 I'm sure we're all very well familiar that
10 there are certain aspects that are of great concern
11 that need to be complied with, but don't necessarily
12 fall under our Title 11 and that being zoning.

13 However, it does raise the level of
14 whether it would create any detrimental impact and
15 that's where special exception aspects for this can
16 come into play. And I think one of the other
17 important aspects to it, as we review this was the
18 privacy and also the character.

19 Now some of the character, I might agree
20 with, might not, but the character that the testimony
21 was made that these houses, their size, their
22 positioning on lots, etcetera, aren't in character
23 with the overall -- but that's not what is before us.
24 What's before us is this deck and how it fits in and
25 in terms of the light, the air, the setbacks, the

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1 privacy, I didn't see anything persuasive that this
2 would have a negative impact or tend to have a
3 negative impact.

4 Separation. There was testimony for the
5 Applicant about this public alley. It seemed like
6 that may have been misinterpreted of what was being
7 said as the opposition was saying the alleys are not
8 to be calculated into the setbacks of rear yards.
9 Well, I think the point that I found in the
10 application was that aspect that this deck abuts an
11 open area, that open alley. And then there are
12 setback on the adjacent properties too.

13 There wasn't anything, as I say, in terms
14 of testimony that was provided that this deck addition
15 would somehow create a detrimental use or aspect that
16 would deny the proper use and enjoyment or light and
17 air to the adjacent property.

18 I'll open it up for any others' comments
19 on that.

20 MEMBER ETHERLY: Just a weigh in, very
21 briefly, Mr. Chair. I agree entirely with your
22 assessment of the case as it was presented before us.
23 I'm going to speak a little bit to both the issue of
24 the easements and the ANC testimony.

25 I agree entirely with your assessment of

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1 the easements. We heard some substantial discussion
2 about the existence of those two easements, but at the
3 end of the day, I did not find anything with regard to
4 compelling argument that those easements were going to
5 be called into any type of serious question. There
6 was no major concern raised with the Office of
7 Planning as related to the existence of the storm
8 water easement. And with respect to the conversation
9 about the Pepco easement, I think we were able to put
10 that to bed fairly decisively during the course of the
11 hearing.

12 As it relates to the concerns that were
13 raised by what I felt was very excellent testimony, in
14 terms of its level of detail and level of specificity,
15 I was, nevertheless, however, not convinced that
16 concerns that were identified with respect to issues
17 of privacy were compelling arguments as related to the
18 ANC's testimony.

19 There was some discussion about concern of
20 site lines as related to the deck should it be
21 approved, and ultimately constructed, site lines from
22 that deck to a rear property, that abutted the rear of
23 this area, kind of as you headed -- I believe the
24 topography was downhill, but there was a very strong
25 indication from the Office of Planning, based on their

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1 site visit, that there were no issues, they felt were
2 raised with respect to the ability to see into
3 neighborhood homes in that direction from the deck,
4 should it be ultimately constructed.

5 And then ultimately with regard to the
6 issue of storm water management itself, I think there
7 was very clear testimony that this deck could indeed
8 be constructed and in particular its footings could be
9 laid in such a way as to not exacerbate what I think
10 was clear testimony that there are some storm water
11 issues attendant to this overall area of the city as
12 opposed to something that's particularly attachable to
13 this particular property and the deck in question.

14 So ultimately, Mr. Chair, I did not find
15 it persuasive that this deck would in any way
16 exacerbate or further complicate storm water issues in
17 the immediate vicinity of this community.

18 Thank you, Mr. Chair.

19 CHAIRPERSON GRIFFIS: Thank you very much
20 and I absolutely agree and in fact in the record is
21 the covenant declaration of covenants for the storm
22 water management facility and in no way would our
23 order override that or void it. It would obviously
24 still need to be complied with and I think that's an
25 important aspect to look at.

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1 Others?

2 VICE-CHAIRPERSON MILLER: I'm just going
3 to make a few points because you two basically covered
4 most of what I was going to say.

5 With respect to finding adverse impact, we
6 would need to find substantial adverse impact and I
7 don't think the case was made at all with respect to
8 light, air or privacy and I think the two of you
9 covered why and OP certainly addressed it.

10 And then the factor of negatively
11 impacting the character of the neighborhood. I was
12 left clearly with the impression that the ANC and the
13 persons in opposition were more concerned with the
14 house as opposed to the deck or at least there could
15 have been made a case more for the house being out of
16 character which was not before us.

17 And then with respect to the storm water
18 management and the easement question which was a big
19 issue in the case, I was not left with finding any
20 evidence that construction of the deck violated the
21 easement, but again, the easement is a legal document
22 that has enforcement in other forums and in another
23 forum, in effect, proves to be the case, then that
24 could be taken there.

25 I was under the impression that access to

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1 the storm water system was what was critical and that
2 this special application, special exception
3 application would certainly not preclude that.

4 Also, with respect to the easement, it
5 seemed like the arguments were more speculative than
6 based on evidence. The ANC stated that the
7 "Commissioners noted they could not say without more
8 information what the impacts might be on the
9 functioning of the system or the extent of legal
10 implications." So they are really just concerns as
11 opposed to any evidence that was presented. And the
12 Applicant, in contrast, presented evidence by an
13 engineering consultant who indicated that the location
14 and depth of the footings of the deck would not affect
15 storm water management system.

16 In that same context, the ANC had
17 requested the BZA to ask for a letter of approval from
18 the Environmental Health Administration and I think
19 you probably already addressed that that at permitting
20 they may come in on this, but also when you look at
21 the covenant, the Environmental Health Administration
22 in the covenant has an obligation to correct
23 conditions if the property owners fail to ensure
24 proper functioning of the storm trench, to
25 independently take action to correct conditions. And

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1 that's in ANC testimony.

2 So if there's any problem, they're under
3 an obligation under the covenant which is enforceable
4 elsewhere to correct any conditions.

5 So -- and I didn't see any evidence that
6 granting a special exception was likely to cause any
7 problems there.

8 So that's all the comments I have.

9 CHAIRPERSON GRIFFIS: Indeed. Excellent.
10 Anything else then?

11 Mr. Moy?

12 SECRETARY MOY: Yes sir. The Office is in
13 receipt of an absentee ballot from Mr. Parsons who has
14 participated on this case and if the Board desires,
15 along with his vote, he also has written comments.
16 Shall I read the comments?

17 The comments reads as "as designed, it
18 would be detrimental to privacy of the neighbor and
19 would intrude on the failing storm water system. I
20 therefore recommend approval of a deck size 12 feet by
21 30 feet on the south end of the house over the
22 driveway to cure both of these problems. If the Board
23 decides to approve, as submitted, I would vote" -- and
24 I'll leave it at that.

25 CHAIRPERSON GRIFFIS: Indeed. Mr. Moy,

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1 from what I understand what Mr. Parsons is indicating
2 is that this size of deck would somehow become an
3 element of detriment to the privacy and also to storm
4 water management. Is that correct?

5 SECRETARY MOY: Yes sir.

6 CHAIRPERSON GRIFFIS: Okay, interesting.
7 Comments?

8 VICE-CHAIRPERSON MILLER: Well, I guess
9 because Mr. Parsons isn't here, we don't have the
10 benefit of upon what evidence in the record he may be
11 relying on, but I didn't see that evidence in the
12 record to draw those conclusions.

13 CHAIRPERSON GRIFFIS: Very well. I tend
14 to agree in terms of the dimensional aspect. I don't
15 recall ever having discussions or testimony or
16 rebuttal on a 30 foot dimension. The deck now as
17 proposed is a bit over 56, if I recall the dimension
18 correctly. It was, in fact, revised and for our
19 presentation at the hearing and it was diminished in
20 size.

21 The element of size, I think we talked
22 about completely and it's not something that rose to
23 the level of us conditioning or rose to the level of
24 somehow having an adverse condition. I know there was
25 some limited testimony about whether large parties

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1 could be prepared on the deck. Again, that wasn't an
2 element that I think that went into a persuasive
3 nature of what we need to actually look at. Nor do I
4 think that that would tend to move very quickly into
5 any sort of regulation in the zoning.

6 However, certainly the size of a deck
7 could become an issue of detriment, but I don't find
8 that persuasive in this case. And in terms of the
9 size dimension, the 30 to 50, 55, 56.86 and the storm
10 water management relation. I don't see any in that.
11 In fact, as I recall, well, it was fairly clear that
12 it's the footings that are of critical aspect and they
13 will need to be placed, whether there are two, four or
14 three. They will need to be placed so that they don't
15 interfere with that.

16 I also recall that they have to span the
17 driveway. They obviously can't have any sort of
18 column in the middle of the driveway trying to walk
19 through so I would be concerned if we went into
20 changing the dimensions without having as Ms. Miller
21 said, address in the record of that element.

22 Okay, others? Discussion of deliberation?
23 Very well, we have a motion. It has been seconded.
24 I would ask all those in favor signify by saying aye.

25 (Ayes.)

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1 CHAIRPERSON GRIFFIS: Opposed?
2 Abstaining? Very well, Mr. Moy, if you wouldn't mind
3 recording the vote.

4 SECRETARY MOY: Yes, the Staff would
5 record the vote as 4 to 0 to 0. This is on the motion
6 of the Chair, Mr. Griffis, to approve the application;
7 seconded by Mr. Etherly. Also in support of the
8 application, Mr. Mann and Ms. Miller. As to Mr.
9 Parsons' absentee ballot, he did say that if the Board
10 decided to approve as submitted, he would vote to
11 deny; so that would give a final vote of 4 to 1 to 0.

12 With Mr. Parsons' absentee vote and the
13 ANC being opposed, would the Board desire a summary
14 order or a for order?

15 CHAIRPERSON GRIFFIS: I don't think we're
16 precluded from waiving our rules and regulations and
17 issue a summary order, even with the ANC in
18 opposition.

19 Different legal opinion, Ms. Glazer?

20 MS. GLAZER: Well, I don't know that
21 you're precluded, but there is a requirement that the
22 ANC be given great weight and to the extent that you
23 would need to explain your reasons for rejecting the
24 ANC's advice, that would have to be stated.

25 CHAIRPERSON GRIFFIS: That's fine. I

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1 think we can do a summary -- or rather a for order on
2 this and address those very quickly. I think the
3 Board has done an excellent job, actually, in giving
4 great weight to the ANC in addressing all of their
5 issues and so it should be of no difficulty for us to
6 write that.

7 Very well, that being said, Mr. Moy, any
8 other business for the Board in the special public
9 meeting?

10 SECRETARY MOY: No, that concludes this
11 session, sir.

12 CHAIRPERSON GRIFFIS: Very well. If
13 there's no other further business, let us adjourn the
14 special public meeting and call to order our public
15 hearing of the 17th of January 2006.

16 (Whereupon, at 10:10 a.m., the special
17 public meeting was concluded.)

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