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July 25, 2004

Richard S. Nero, Jr.
Chief, Support Services and Quality Control
District of Colombia Office of Zoning
441 4th Street, N.W., Suite 210-S
Washington, DC 20001

Dear Mr. Nero,

In last Friday's Washington Post (7/23/04, page C8), BZA Chairman Geoffrey Griffis has "said he routinely recuses himself when cases involving his architectural practice come before the board and he said board members act independently of his influence"

This is simply not true. I call to your attention DC Court of Appeals case # 02 AA 584, specifically pages 28-31 of my attorney's 8/16/02 brief to the Court (copy attached) that details the Chairman's inappropriate participation in BZA case # 16833.

Also attached is a copy of my 6/24/02 letter to Ms. Ellen McCarthy, DC Office of Planning on another BZA case that questions the city wide impact of the Board's inconsistent interpretation of DCMR regulations, in particular by its present Chairman.

When these examples are coupled with the evidence set forth in exhibits 372 & 375 of BZA case # 16970 (described in the Washington Post article) the Chairman in question should resign in order to maintain the integrity of the BZA Board.

It is the Chair that sets to tone (including the ethical tone) of the entire Board. When that is questionable, the reputation and integrity of the entire Board as well as the City Government they represent suffers.

Sincerely,

Daniel Meijer

Recipient of: "Daniel Meijer Recognition Resolution of 1996"
(DC Council resolution # 11-390

BZA
Case No. 16970
Exhibit No. 376

Please add this letter and attachments to BZA Case file # 16970

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.376

The Washington Post

Friday, July 23, 2004

Gloves Come Off in Row Ove

SCHOOL, *From C1*

school's board of trustees.

But opponents of a $3.5 million plan to double the facilities on narrow Highland Place NW say they had no choice but to reveal evidence of a "close personal relationship" between the chairman of the city panel considering the plan and a woman who until recently was on the nursery school's board. The chairman voted in favor of the expansion, which was approved in April.

"It's a matter that goes to the integrity of the process," said William Jeffress, a lawyer hired by residents challenging the nursery school. "It's an unfortunate fact that [private] investigators are necessary, but they are used all the time."

When last we checked in with the controversy 17 months ago, Cleveland Park was badly riven over the fabled nursery school where nine months' tuition runs to $12,000 a year. Most of the immediate neighbors were against the expansion, arguing that the 171-student nursery school already enrolled too many children and caused severe traffic congestion. Many others in Cleveland Park supported the preschool, noting that it hadn't increased enrollment or renovated in years. Families on opposing sides awkwardly crossed paths at neighborhood functions or at the fancy private elementary schools where the nursery school's graduates go.

The row has only intensified.

"This has gotten so distasteful," said Ana Evans, an expansion opponent. "At this point, what drives me is not so much the NCRC anymore but the general sense of injustice at how the process can be so corrupted."

On Monday, proving that in Washington even a zoning fight can be transformed into film noir, the opponents filed affidavits and photos with the city Board of Zoning Adjustment offering what they said is "incontrovertible evidence" that Board Chairman Geoffrey Griffis had a relationship with Claire Bloch, who in April stepped down after several years on the nursery school board. (The filing was first reported this week by Channel 4.)

Enter Darryl Hess, licensed P.I.

In an affidavit, Hess said he watched the two enter Griffis's residence on Columbia Road at 8:26 p.m. June 4. They emerged at 9:25 a.m. the next day, he said.

"Griffis was carrying two beach chairs over his right shoulder," Hess said. "Bloch was carrying children's beach toys in her right hand . . . and a tennis racquet in her left hand. Griffis opened the rear hatch of Bloch's minivan and they both placed the items into the vehicle. Griffis rubbed Bloch's right shoulder using both hands and then kissed her. They walked to the driver's side door, where they kissed again."

Hess was packing a camcorder and shot video of the two outside the residence. Five photos from the video are attached to the affidavit.

In another affidavit, resident Ana Evans said she witnessed Griffis and Bloch having "an extensive animated conversation" on or about Jan. 23 outside Georgetown Day School, where Griffis had a daughter and Bloch had a son in the same first-grade class. Evans also has children at Georgetown Day.

Earlier in January, the zoning panel had voted 3 to 1 against the preschool's expansion, with Griffis in the minority. But later the panel voted unanimously to revisit the issue, and in April the vote was 3 to 1, with Griffis in the majority, to approve the physical expansion, but not the addition of 10 children.

The opponents argue that Griffis persuaded his colleagues to take the second look and swayed the vote for the expansion. They say he should have disclosed his relationship with Bloch and recused himself. Now they say the board should deliberate again without Griffis's influence.

Griffis, who has been divorced for several years, declined to discuss his relationship with Bloch in detail in an interview yesterday. He noted that the private detective's pictures were taken months after the vote on the expansion.

Bloch said in a telephone message to a reporter that she did not care to discuss her personal life. She has been separated from her husband since last fall, before any question of a relationship with Griffis arose, according to people who know her.

"There was nothing to disclose while this case was proceeding," Griffis said of his relationship with Bloch. "My personal relationships have no influence or bearing on any of the applicants that I see."

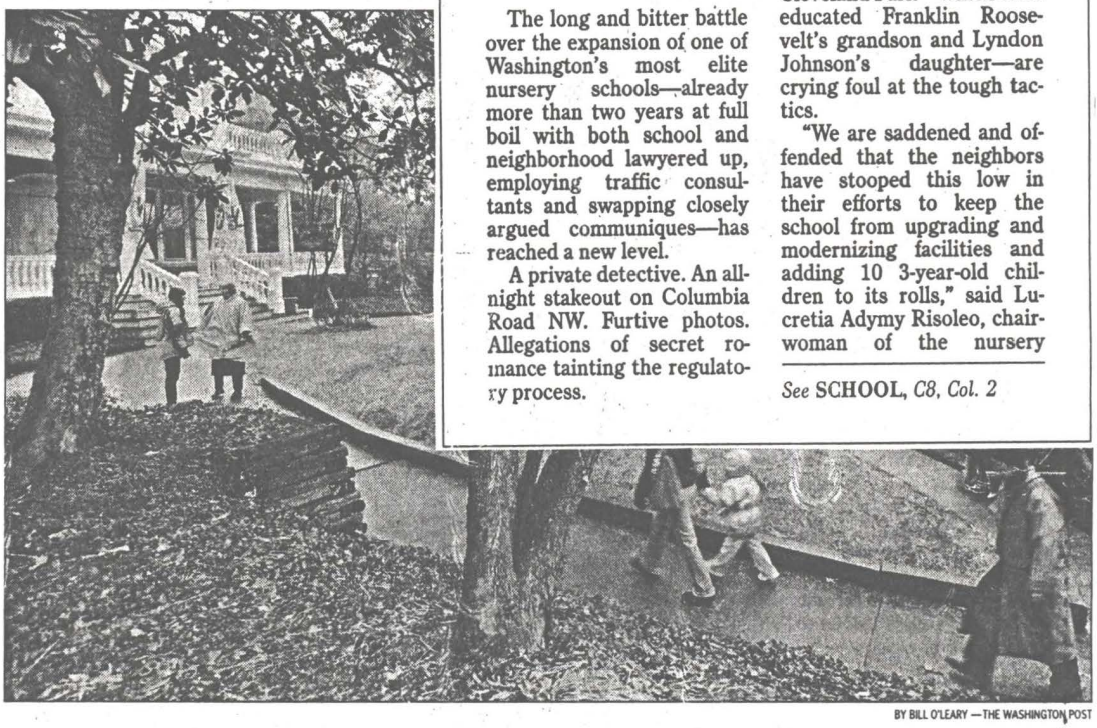
He said he routinely recuses himself when cases involving his architectural practice come before the board, and he said board members act independently of his influence.

As for his animated conversation with Bloch outside Georgetown Day in January, he said, "I walked out of GDS after the Martin Luther King assembly. I imagine we were all animated—we had just watched our children put on a two-hour performance."

Jeffress, the lawyer for the opponents, said, "If his view were that this kind of relationship didn't require a disqualification, we respectfully disagree."

The zoning adjustment board will vote Tuesday on the opponents' motion to exclude the chairman and vacate the approval of the expansion. Griffis said he will recuse himself from the vote to recuse him.

Staff researcher Bobbye Pratt contributed to this report.



BY BILL O'LEARY — THE WASHINGTON POST

Parents drop off their kids at the NCRC school along Highland Place. Most neighbors oppose a $3.5 million planned expansion.

Stic..s and Stones At Nursery School

Battle Over Cleveland Park Expansion Escalates With Hiring of Gumshoe

By David Montgomery
Washington Post Staff Writer

The long and bitter battle over the expansion of one of Washington's most elite nursery schools—already more than two years at full boil with both school and neighborhood lawyered up, employing traffic consultants and swapping closely argued communiques—has reached a new level.

A private detective. An all-night stakeout on Columbia Road NW. Furtive photos. Allegations of secret romance tainting the regulatory process.

Supporters of the National Child Research Center in Cleveland Park—which once educated Franklin Roosevelt's grandson and Lyndon Johnson's daughter—are crying foul at the tough tactics.

"We are saddened and offended that the neighbors have stooped this low in their efforts to keep the school from upgrading and modernizing facilities and adding 10 3-year-old children to its rolls," said Lucretia Adymy Risoleo, chairwoman of the nursery

See SCHOOL, *C8, Col. 2*

D. The Variance Decision May Have Been Influenced By The Chair's Improper Hostility Toward The Statutory Requirement That Was Relaxed

Perhaps the most revealing aspect of the record in explaining the Board's indifference to the burdens the statute imposes on the variance applicant cannot be discerned from the formal written Decision, but rather from commentary during the hearing by Board Chair Griffis. As detailed above, Mr. Griffis was openly critical of the wisdom of the statutory requirement of residential recreation space, apparently believing the requirement to be counter-productive to the creation of a people-interactive urban environment. (R.264-65). In expressing his policy views, Mr. Griffis may or may not have made a persuasive point; reasonable minds could and do differ on this. But there is a right time and right place for expressing those views, and a wrong time and wrong place. Plainly, his comments were made in the wrong place and at the wrong time, as even Mr. Griffis belatedly seemed to recognize, ending his policy digression on one of his "favorite sections to discuss" (R.265-66), as follows:

> That has probably nothing to do with what we need to deal with today, however, I just thought I would take a moment and discuss that.

(R.265-66).

While Mr. Griffis' interjection of his views on the residential recreation space requirement were plainly inappropriate, they were hardly surprising in light of his disclosure at the outset of the hearing that the architect for the applicant at the hearing was from the firm where Mr. Griffis was also employed as an architect. According to his own words, Mr. Griffis thought he could render a fair and impartial decision (R.12), but his self-confidence in this respect was such that he would have recused himself with the "mere mention" of concern. (R.357). In many contexts, objective fact, not subjective assessments, control the outcome. For

example, if Mr. Griffis had been serving on a federal rather than District of Columbia administrative board, his failure to recuse himself would in all likelihood have been a violation of federal regulations, whatever his feelings about his impartiality. See 5 C.F.R. §§ 2635.402, 2635.403. The same conclusion would obtain if Mr. Griffis had been deciding this case as a federal judge (or part of a judicial panel), and the attorney arguing the case for the applicant was from Mr. Griffis' former law firm. See 28 U.S.C. § 455(b)(2). The strictures on architects serving as public officers in the District of Columbia may be less clearly delineated,[7] but the extent of Mr. Griffis' financial interest in the testifying firm was not disclosed by him and obviously should have been disclosed, so that the propriety of his failure to recuse himself would be at least somewhat apparent. Mr. Griffis' failure to do that, coupled with his remarks openly hostile to the statutory requirement sought to be relaxed, surely gives "rise to a reasonable question as to his impartiality." Dupont Circle Citizens Ass'n v. ABC Board, 766 A.2d 59, 65 (D.C. App. 2001).

[7] The Board's conflict-of-interest rules do not expressly cover this situation. Under those Rules, the Chair may not represent someone before the Board (a) while serving on the Board, 11 DCMR § 3106.4; (b) for 6 months thereafter, id. §3106.5; or (c) at any time on any matter previously ruled on by the Board while he was a member. Id. § 3106.6.

This Court, however, is not being asked in this appeal to decide whether there was reversible error solely for a failure of recusal. The Meijers see no need to reach that issue, particularly in light of other obvious problems with the Decision. In addition, they understand that their failure to object at the hearing raises an arguable issue preclusion question at this juncture. See, e.g., Marcus v. Director, Office of Workers' Compensation Programs, U.S. Dept. of Labor, 548 F.2d 1044, 1050-51, 179 U.S. App. D.C. 89, 95-96 (D.C. Cir. 1976). The Meijers do not concede any waiver, particularly in light of Mr. Griffis' failure to disclose his financial interest in the testifying firm. But even assuming arguendo that reversal for failure of recusal is foreclosed, the Meijers are surely not foreclosed from presenting here what the record shows and what can be inferred from it, in order for the Court to understand what did and did not happen in this case and why, as it relates to their claims of legal error.

The Meijers respectfully submit that Mr. Griffis' employment as an architect and his comments critical of the statutory requirement under consideration go a long way toward explaining the Board's complete failure to insist that TP2 demonstrate sufficient economic injury to warrant a variance -- one whose magnitude was either misunderstood or misrepresented. Mr. Griffis' unstated message to the rest of the Board seems clear enough: what is the harm in a "small" variance to a requirement that a knowledgeable and opinionated architect says is a bad idea in the first place? This Court's answer, while it need not address recusal, perhaps could reflect on what role exists in the administrative process for decisionmakers to voice doubts about the wisdom or utility of laws they have been sworn to uphold. The Meijers believe that such contributions are wrong when made by a Board member in deliberation, worse when made by the Chair in leading the deliberation, and worse yet when they appear to be not the product of

experience in administering the law as a public officer, but rather views formulated in the course of related gainful employment.

CONCLUSION

For the foregoing reasons, the Decision of the Board should be reversed. A remand for legally sufficient findings is not appropriate because there is no evidence in the record that would support the requested variance.

Respectfully submitted,



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Attorneys for Petitioners

August 16, 2002

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June 24; 2002

Ms. Ellen McCarthy
Deputy Director - Development Review
Office of Planning
801 North Capital St. N.E., Room 400
Washington D.C. 20012

Dear Ms. McCarthy,

Last Tuesday, the BZA granted the special exception request of the Cade Lee House owners without any conditions. They based their decision on a belief that this house contained the requisite 10,000 square ft. This does not appear to be the case as explained in my letter to the BZA requesting reconsideration (see attachment). They have apparently decided that "Adjacent finished grade" may also include the "lowest point at (5) feet from the perimeter of the house."

In another BZA case # 16716 (Sunrise development), the Board heard testimony from Mr. Bellows (DCRA) and Mr. Lourenco (formerly of DCRA) regarding this very issue.

Mr. Bellows: "And adjacent finished grade is adjacent to the wall and not a distance away from the wall" (Transcript page 184, lines 14-15)

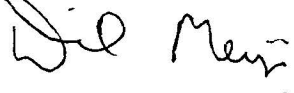
Mr. Lourenco: "those four feet are measured from the ceiling of that lower level to the grade at the perimeter of the building where the building comes out of grade." (TR pg. 234, lines 18-21)

This hearing took place 8/1/01 of which Board Member Mr. Geoffrey Griffis was "Present".

In this case the applicant has a total FAR of 3.47 in a R-5D zone that limits development to a FAR of 3.5. If I understand the transcript correctly, a large portion of the "basement" was determined to be a "cellar" and thus not included in the FAR total calculations.

The present decision by the BZA of the Cady House in effect changes the (DCMR) regulation to determine basement or cellar zoning classification. When this precedence is applied to the above described pending case, the proposed project would likely exceed the FAR limits of the neighborhood and thus not be built. Who knows how many other proposed projects may be affected in the same way. This is why the recent BZA decision must be reconsidered.

Sincerely,



Daniel Meijer

P.S. On the matter of my proposed abandonment of Chestnut Street, please see Act # A14-372 for an example of: "The Council's order to close the street [that] is contingent upon the applicant's compliance with the conditions required by the Department of Public Works ..."

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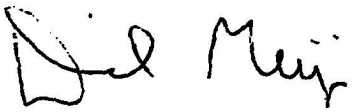
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To: JERRILY KRESS
DC Office of Zoning

From: DAN MEIJER

Will drop off original copy (with attachments) this morning

Dan Meijer