

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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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
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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.

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CALL TO ORDER:
Geoffrey Griffis3

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

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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

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

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

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

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

19 MR. MOY: No, sir.

20 CHAIRPERSON GRIFFIS: Excellent. Thank
21 you.

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

25 MR. MOY: Good morning, Mr. Chairman,

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

2 The first case for decision is Application
3 Number 17251 of Paul and Frances O'Reilly, pursuant to
4 11 DCMR 3104.1, for a rear two-story addition to an
5 existing single-family, semi-detached dwelling under
6 Section 223, not meeting the rear yard requirements
7 under Section 404, the side yard requirements under
8 Section 405, and the nonconforming structure
9 provisions of 2001.3, in the R-1-B District at
10 premises 3715 Albemarle Street, N.W. That is in
11 Square 1888, Lot 48.

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

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

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

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

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

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

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

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

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1 I am going to open it up for a brief
2 discussion and deliberation from the Board. We have
3 several issues that have come up to the Board's
4 attention in this case, keeping in mind that this is,
5 of course, a special exception under 223 in that this
6 property did not meet the requirements under Section
7 404, which is the rear yard requirement. However, in
8 this case proceeding we had seen -- or rather had
9 heard testimony that, if this addition was to be
10 approved, that it would be a detriment to the use,
11 privacy, light and air of the adjacent neighbor.

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

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

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

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

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

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

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

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

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

25 CHAIRPERSON GRIFFIS: Yes, Mr. Mann?

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

4 CHAIRPERSON GRIFFIS: The grading plan?

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

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

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1 case.

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

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

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

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

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

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

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

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

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

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

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

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1 somewhat impacted.

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

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

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

25 We had some issue that was brought up in

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

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

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

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

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

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

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

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

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

25 VICE CHAIRPERSON MILLER: Second.

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

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

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

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

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

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

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

14 VICE CHAIRPERSON MILLER: I just want to
15 clarify with respect to your motion. I don't know
16 that you listed all the relief that the applicant is
17 seeking, and I just want to clarify what I think that
18 relief is, which is relief under Section 223, not
19 meeting the rear yard requirements under Section 404,
20 the side yard requirements under Section 405, and
21 2001.3, nonconforming structure.

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

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

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

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

14 MR. MOY: The next case before the Board
15 is a consent motion to reverse a decision of the
16 Office of Adjudication in the Civil Infraction case
17 Number 01-0004 of Waste Management of Maryland, Inc.
18 This is in violation of Title 11 DCMR 3203.1 for an
19 operation of a solid waste handling facility without a
20 requisite certificate of occupancy in a CM-2 District
21 at premises 2160 Queens Chapel Road, N.E. That is in
22 Square 4259, Parcels 154/72, 154/87, 154/110, and
23 154/112 in Lot 3.

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

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

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

15 BOARD MEMBER ETHERLY: Second, Mr. Chair.

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

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1 Any other comments? Yes, Ms. Miller?

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

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

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

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

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

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

7 MR. MOY: The next case before the Board
8 is a remand from the District of Columbia Court of
9 Appeals. This is to the appeal of Number 16839 of the
10 Advisory Neighborhood Commission 4A, pursuant to 11
11 DCMR 3100 and 3101 from the decision of the Zoning
12 Administrator, for the issuance of a certificate of
13 occupancy (No. 183666, dated August 31, 2001) for an
14 elderly development center serving 30 persons, ages 22
15 - 85 years old and 7 staff, in a C-2-A District at
16 premises 5511 14th Street, N.W. That is in Square
17 2800, Lot 9.

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

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

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

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

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

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

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

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

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

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

25 CHAIRPERSON GRIFFIS: Just for

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

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

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

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

25 I think it should not ever be said that

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

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

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

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

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

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

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

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

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

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

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

13 CHAIRPERSON GRIFFIS: Right. The next
14 Zoning Commission.

15 COMMISSIONER PARSONS: Monthly meeting.

16 CHAIRPERSON GRIFFIS: Right. Okay. Mr.
17 Etherly?

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

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

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

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

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

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

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1 differing ways to move ahead with this.

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

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

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

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

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

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

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

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

25 CHAIRPERSON GRIFFIS: Well, for clarity,

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

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

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

14 VICE CHAIRPERSON MILLER: I agree.

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

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

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

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

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

12 CHAIRPERSON GRIFFIS: Okay.

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

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

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

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

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

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

10 CHAIRPERSON GRIFFIS: Right.

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

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

20 COMMISSIONER PARSONS: All right then.

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

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1 COMMISSIONER PARSONS: All right.

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

4 MS. GLAZIER: No, Mr. Chair.

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

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

13 CHAIRPERSON GRIFFIS: The first Tuesday.
14 Ms. Bailey?

15 MS. BAILEY: The seventh, Mr. Chairman.

16 CHAIRPERSON GRIFFIS: Seventh of June
17 2005. Excellent.

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

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

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

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

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

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

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

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

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

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

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

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

18 MR. MOY: Mr. Chair?

19 CHAIRPERSON GRIFFIS: Yes, sir?

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

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

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

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

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

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

19 BOARD MEMBER MANN: Second.

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

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

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

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

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

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

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

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

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

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

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

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

19 It is difficult to find citizens like you
20 to do this job, and what I mean by "like you" is not
21 that I like you -- I mean that have the interest and
22 knowledge to dig into these issues and solve problems.

23 But the leadership, as we all know, is extremely
24 important, and Mr. Griffis' leadership has turned this
25 panel around, not that it needed a lot of it but,

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

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

11 VICE CHAIRPERSON MILLER: Well, at this
12 point then, all those in favor of the motion, say Aye.

13 All those opposed? All those abstaining?

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

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

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

4 I don't think I could be looked at as
5 doing a successful job here without the success and
6 the importance of all of you and the roles that you
7 play and the input that you play. What is not ever
8 clearly, and I don't think can be clearly understood
9 from the other side of the dais is how much work
10 actually goes into what we do, and not to praise us
11 but to give a full understanding of is, you know, we
12 all live independent lives. We are appointed to this.

13 We have other jobs that we do full time, and yet we
14 do spend the 20 to 30 hours a week preparing and
15 getting ready for this.

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

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

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

5 I can also say affirmatively that the
6 Office of Zoning and the staff there and the
7 dedication that they have is impressive, and it is not
8 one that I am very familiar with, with other agencies.

9 I think our job also is -- We get an awful lot of
10 credit for things that are actually done by the Office
11 of Zoning and the staff in getting the preparation of
12 applications together.

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

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

25 I don't give much relevancy to the

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1 criticism, because I know I'm here. You all are here.

2 We know how things proceed, and we can get through
3 eight cases a week in our sessions, and do oftentimes.

4 We've processed things that can go quickly, quickly.

5 Those that cannot and should not are not processed in
6 that fashion.

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

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

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

25 So I thank you all very much for your

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 CHAIRPERSON GRIFFIS: Excellent. Very
17 well. Thank you very much. Thank you all very much.

18 With that, I think I can conclude the morning session
19 of the fourth of January '05.

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

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