

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

JANUARY 18, 2005

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 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:

GREGORY JEFFRIES	Commissioner
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARKU	Office of Zoning

D.C. OFFICE OF ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

This transcript constitutes the minutes from the Special Public Meeting held on January 18, 2005.

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Geoffrey Griffis	3
 <u>RICHARD AND CHRISTINA DONNELL</u>	
<u>APPLICATION NO. 17204 - ANC-2A</u>	4
 <u>VOTE TO GRANT APPLICATION</u>	20

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P R O C E E D I N G S

Time: 9:38 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. I would like to call to order this Special Public Meeting of the Board of Zoning Adjustment of the District of Columbia. It is January 18, 2005, and it is cold as anything outside. So we are glad that you are in and, hopefully, the heat is working properly for us this morning.

Of course, this is a Special Public Meeting. Our full agenda is available for you at the wall where you entered into the hearing room. There's several pieces of import that I will reiterate as I call the hearing, but for specifically the Public Meeting, of course, all hearings and public meetings before the Board of Zoning Adjustment are recorded.

They are recorded in two fashions. First, we have the court reporter who is creating the official transcript. Secondly, we are being broadcast live on the Office of Zoning's website.

Attendant to both of those, we ask that people please turn off their cellphones and beepers so that we don't disrupt the transmissions, and we would also ask that people remain quiet through our hearings so that we don't disrupt the transmissions, and also

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1 that of people giving testimony.

2 Let us get right into it so we can make up
3 a little time this morning. We appreciate everyone's
4 patience with the Board. Why don't we call the first
5 case for the decision this morning.

6 Of course, during our public meeting there
7 is no additional testimony that is afforded the Board.

8 This will be the time for the Board to deliberate and
9 decide on a case that has already been heard.

10 Let me say a very good morning to Ms.
11 Bailey, who is with the Office of Zoning, on my very
12 far right, also Mr. Moy. Ms. Bailey, are there any
13 preliminary matters that you are aware of, or Mr. Moy?

14 MR. MOY: Not for the Special Public
15 Meeting, sir.

16 CHAIRPERSON GRIFFIS: Excellent. Then
17 let's call the first case for our decision.

18 MR. MOY: The first case is Application
19 Number 17204 of Richard and Christina Donnell. In the
20 original notice it was pursuant to 11 DCMR 3103.24(a),
21 variance from the lot occupancy requirements under
22 Section 403, a variance from the rear yard
23 requirements under Section 404, and a variance from
24 the nonconforming structure provisions under
25 Subsection 2001.3 to construct a three-story rear

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1 addition to a single family row dwelling in the FB/R3
2 District at premises 2512 I Street, N.W. That is in
3 Square 17, Block 35.

4 This application had been revised or
5 amended from the variance relief to a special
6 exception under 223 from the provisions of 401 for lot
7 area and lot width, 404 for rear yard, and 2001.3 for
8 construction of an addition to a nonconforming
9 structure.

10 On November 30, 2004, the Board completed
11 public testimony on the application and scheduled its
12 decision at a Special Public Meeting on January 4,
13 2005. The Board requested the following post-hearing
14 documents. I won't go through the listing, but
15 submissions were requested from the applicant, the
16 ANC-2A, and other party opponents, and those
17 submissions were filed in your case folders as
18 Exhibits 56 and 52 and 53 from the applicant, Exhibit
19 55 from ANC-2A, and from the party opponent, who is
20 Mr. Paul Fallon, and that was submitted as Exhibit
21 Number 54, I believe.

22 The Board also requested responses to the
23 submissions, and those were filed on January 13, 2005,
24 from the applicant, ANC-2A, and the party opponent,
25 and that is in your case folder. It is identified as

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1 57, 59 and 58 respectively. The staff is going to
2 conclude its briefing, Mr. Chair.

3 CHAIRPERSON GRIFFIS: Excellent. Thank
4 you very much, Mr. Moy. Hearing this case, of
5 course, is myself. Representing the Zoning Commission
6 is Mr. Jeffries. Representing the Board, Ms. Miller
7 and also representing National Capital Planning
8 Commission is Mr. Mann.

9 Board members, as Mr. Moy has aptly
10 summarized the case and also the filings that we have
11 received, of course, we have reviewed the entire case,
12 and I know we all received those submissions and have
13 looked at those and begun our own deliberations on our
14 own.

15 I am going to open it up for Board members
16 to start discussing. We have several things to get
17 through as points that were brought up, one in
18 opposition, but also as presented by the applicant,
19 several which was pertinent to 223 and whether it is
20 actually allowable as a relief under the Foggy Bottom
21 overlay, also the descriptive nature of the Foggy
22 Bottom overlay and how it relates to reviewing 223s,
23 if so allowed.

24 We have the issue of the rear structure,
25 the garage and whether it does go toward lot

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1 occupancy, and there are several other attendant
2 issues to that as we get through it. But I think
3 those are the -- Well, let's add the height of the
4 building. So with that, let me open it up to Board
5 members for discussion.

6 BOARD MEMBER MANN: Mr. Chairman.

7 CHAIRPERSON GRIFFIS: Good. Mr. Mann?

8 BOARD MEMBER MANN: I would be happy to
9 start the discussion. I actually am in favor of
10 granting this application for reasons that I will get
11 to in a moment. But let me ask you a question. Would
12 you prefer that I kind of go through my reasons first
13 or do you want me to do this under a motion?

14 CHAIRPERSON GRIFFIS: I think it might be
15 expeditious to do it under a motion. I think that
16 would be appropriate.

17 BOARD MEMBER MANN: Okay. Then I would
18 start by saying that I would move that we approve
19 application Number 17204 of Richard and Christina
20 Donnell for a special exception from the provisions of
21 Section 401 for lot area and lot width, Section 404
22 for rear yard, and Section 2001.3 for construction of
23 an addition to a nonconforming structure, and ask for
24 a second.

25 CHAIRPERSON GRIFFIS: Excellent. Is there

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1 a second to the motion?

2 COMMISSIONER JEFFRIES: Second.

3 CHAIRPERSON GRIFFIS: Thank you, Mr.
4 Jeffries.

5 BOARD MEMBER MANN: All right. I would
6 start by saying, first of all, I think the application
7 meets the burden of proof required under Section 223
8 and that the addition won't have a substantially
9 adverse impact on the use or enjoyment of any abutting
10 or adjacent dwelling or property, and that the amount
11 of light and air available to neighboring properties
12 won't be unduly affected.

13 Since the addition would only have windows
14 facing the street and alley, it won't unduly
15 compromise the use and enjoyment of neighboring
16 properties. I don't think the proposed addition will
17 substantially intrude upon the character, scale and
18 pattern of other houses on the street or the rest of
19 the neighborhood.

20 I am glad that we were asked to so
21 intently consider the provisions of the Foggy Bottom
22 Overlay District, because I actually believe, after
23 reading the text and the regulations and after --
24 particularly after reading the zoning order that
25 created the overlay district, that not only is the

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1 Board entirely within its authority to approve this
2 special exception, I actually think that the proposal
3 really supports the spirit of the overlay district.

4 Not only does the addition retain the low
5 scale pattern of the neighborhood, it strengthens the
6 residential character stressed in the text of the
7 overlay district. It is returning a building that was
8 used primarily for student housing to single family
9 residence.

10 Regarding the lot occupancy issue, I
11 believe the correct interpretation is that the garage
12 is less than four feet below the main level, and I'm
13 willing to accept the applicant's argument that the
14 garage would not count toward lot occupancy. Although
15 it doesn't seem to be supported by any written
16 submissions, the applicant indicates that the Zoning
17 Administrator agrees with that as well.

18 Finally, there seems to be some assertion
19 as to the right of the applicant to be able to build a
20 deck, but I don't see any reason why they can't build
21 a deck. Moreover, I don't see why it is an issue that
22 this Board would even consider.

23 CHAIRPERSON GRIFFIS: Excellent. Thank
24 you very much, and well stated. Let me just clarify
25 one thing in terms of the garage and whether it went

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1 to building area which, of course, would then go to
2 lot occupancy.

3 You indicated that it was less than four
4 feet. Were you saying that it was actually aligned
5 with the main level of the residential or below?

6 BOARD MEMBER MANN: I believe that is
7 below the main level of the residence where the
8 residence is in the rear part of the lot -- of the
9 house.

10 CHAIRPERSON GRIFFIS: Okay. Because as I
11 recall -- or definitely in this case, but also the
12 regulations, it speaks to if there is structure that
13 is not above four feet of the adjacent grade that it
14 wouldn't toward lot occupancy. But the building area
15 definition says except -- Let's get to that point -- a
16 building that do not extend above the level of the
17 main floor of the main building, if placed so not to
18 obstruct the light. That is what you are talking
19 about in terms of it not going toward building areas?

20 BOARD MEMBER MANN: That's right, because
21 the main floor of the building is above it in the rear
22 part of the house.

23 CHAIRPERSON GRIFFIS: Excellent. Okay.
24 And even though that it shows in the section in the
25 application that the main level changes levels, that

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1 still falls within your understanding and
2 interpretation of the building area, and it is
3 adjacent to the garage?

4 BOARD MEMBER MANN: I don't see anything
5 in the regulations that stipulates that the main level
6 all has to be at one particular point or level.

7 CHAIRPERSON GRIFFIS: And how about for an
8 addition? Is there anything in the regulation that
9 prohibits or proscribes that the level is to remain
10 consistent?

11 BOARD MEMBER MANN: I haven't seen
12 anything like that in the regulations.

13 CHAIRPERSON GRIFFIS: I'm not aware of it
14 either. Others? Yes, Ms. Miller?

15 VICE CHAIRPERSON MILLER: I want to
16 address a couple of points. One is how we apply the
17 regulations under the Foggy Bottom Overlay District
18 with our 223 analysis. In looking at all of these
19 regulations together, I note that we started our 223
20 analysis, which says that an addition to a one-family
21 dwelling or flat in a residential district where a
22 flat is permitted shall permitted as a special
23 exception if approved by the Board of Zoning
24 Adjustment under Section 3104.

25 3104 says that the special exceptions can

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1 be authorized if they are in harmony with the general
2 purpose and intent of the zoning regulations and
3 zoning maps.

4 Then I think that brings us to the Foggy
5 Bottom Overlay District regulations, which require,
6 one, that the scale of development be consistent with
7 the characteristics of the low scale harmony of
8 rhythmic townhouses of a purely residential
9 neighborhood that form the basis on which the area was
10 designated as a historic district.

11 Then if we look at 1522.1, it says that
12 the Foggy Bottom Overlay District is mapped in
13 combination with underlying R-3 district. The point
14 that I'm getting to is this issue about whether or not
15 three stories is in harmony with the Foggy Bottom
16 Overlay District or only two stories.

17 My conclusion is, certainly based on these
18 regulations, that an R-3 district allows three
19 stories, and when this overlay was mapped, there were
20 three stories in the overlay. If you look at the
21 block on which this building and project is to be
22 built, there are three-story buildings right next-
23 door.

24 So I find that it is in harmony with the
25 characteristics of the low scale rhythmic townhouses

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1 on that block and in the overlay. So I don't find any
2 conflict there whatsoever.

3 Another issue was about the roof deck. I
4 don't see anything in the regulations that proscribes
5 a roof deck or for us to find that it is not in
6 harmony as well.

7 There was an issue that the applicant
8 raised about not giving great weight to the ANC,
9 because they didn't file their resolution seven days
10 prior to the hearing, as required by our regulations.

11 I would recommend that we waive that regulation, as
12 we often do, given that we specifically allowed the
13 ANC to file their resolution, and in all other
14 respects it complies with our requirements.

15 CHAIRPERSON GRIFFIS: Very well. To stay
16 somewhat within our parliamentary procedure, why don't
17 we just set aside the motion for a quick moment and
18 deal with the waiving of that. Ms. Miller, you
19 indicated that the resolution was received, and does
20 it satisfy the requirements to be granted great
21 weight?

22 VICE CHAIRPERSON MILLER: Yes, it does.

23 CHAIRPERSON GRIFFIS: Indeed. Is there
24 any objection to waiving our regulations, accepting it
25 into the record? Having no voiced opposition, I think

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1 we can waive and accept that in for the great weight
2 and move back to the motion then that is before us,
3 and has been seconded, and continue our discussion on
4 that.

5 Ms. Miller, you bring up an excellent
6 point in terms of the compatibility with the third
7 story, and I think your deliberation is excellent and
8 to the point of it starts with the general and gets to
9 the specific. As we look our regulations for the
10 Foggy Bottom, there is a general statement of
11 description of maintaining the harmony, and I think
12 the overlay, in fact, was to do that.

13 I would also indicate that the submission
14 by the applicant's representative, Mr. Gell, was
15 incredibly persuasive in looking at the legislative
16 history of the Zoning Commission in adopting that, and
17 also actually the reports and the opinions of the
18 Office of Planning and the government agencies that
19 adopted that.

20 It goes to how it was down-zoned and also
21 created it to the Historic District and was down-zoned
22 to an R-3, and I think that the Foggy Bottom is to --
23 generally, as we look at it, is to support the R-3,
24 which is a low density zoning in this city.

25 Going to the specific, I think it was an

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1 excellent descriptive analysis of then look at the
2 exact block and what is happening, and does this fit
3 within the character. If I understand you correctly,
4 you are indicating that you find that the proposed
5 addition does fit within the character.

6 The deck, which has now been talked about
7 several times, I think, is also aptly put by Mr. Mann
8 and Ms. Miller in terms of there is nothing -- and I
9 had also looked at the regulations of what would
10 prohibit or require a roof deck. There is nothing
11 that sets out for this Board.

12 One of the things that the opposition, the
13 ANC, has addressed is, really, it comes to my mind
14 when we are looking at the harmony and the scale.
15 They are asking us to step into a much more design
16 review board aspect, which is not out of our
17 jurisdiction in the 223.

18 In fact, that is within our full
19 jurisdiction. However, I think of the elements which
20 we are looking at, taking the overall massing and how
21 it fits in and how that massing and the architectural
22 aspects of this building affect the light, air and
23 privacy is the appropriate means of which for us to
24 assess.

25 This will go through the Historic

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1 Preservation Review Board, which will get into more
2 depth as to the materials and as to who knows what
3 other aspects that they will get to in that. I think
4 it would be imprudent for us to get too far further
5 than what I have heard the deliberation has taken to
6 this point.

7 The last piece on that: As I brought up
8 the HPRB, there was also another aspect that was
9 brought up in the application of whether this
10 applicant actually followed the correct process, the
11 process being they should have gone to HPRB first and
12 then come to BZA for their zoning.

13 There is nothing -- Relooking at this,
14 this is not the first time it has come up. There is
15 nothing that proscribes the process chronology. There
16 is nothing that prohibits an applicant from coming to
17 this Board first and then going to the Historic
18 Preservation Review Board or vice versa. We have seen
19 both in numerous cases. It is, obviously, the choice
20 of an applicant and how they want to proceed. Let me
21 open it up to others then. Mr. Jeffries?

22 COMMISSIONER JEFFRIES: We have already
23 discussed here the whole notion of the Foggy Bottom
24 Overlay not putting forth a prohibition of three-story
25 buildings, and R-3 permits it as a matter of right.

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1 The other thing, in trying desperately not
2 to look as if we are a design review board here, I was
3 struck with the fact that a setback was included in
4 the overall design that really, to me, really helps
5 allow this building to respond to sort of the scale of
6 the so called low scale aspects of the Foggy Bottom
7 Overlay, and allows for some maintenance of the sort
8 of rhythm of the streetscape.

9 Then I was also struck with the notion
10 that at the pedestrian level there's only a few feet
11 that you even really recognize that there is a third
12 story. So I think that the applicant did a very
13 admirable job of making certain that there was
14 sensitivity around the actual overlay and the
15 character and nature of the adjacent buildings.

16 So I strongly support the application.

17 CHAIRPERSON GRIFFIS: Excellent. Thank
18 you. Ms. Miller?

19 VICE CHAIRPERSON MILLER: Yes. I just
20 want to address one other point raised by the ANC. In
21 giving them great weight, I think we need to do that.
22 One point that they did raise in their resolution at
23 paragraph 12, and they also raised at the hearing, was
24 the notion that the Board wasn't authorized to grant a
25 special exception for properties within the Foggy

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1 Bottom Overlay District, they say, absent a specific
2 regulation adopted by the Zoning Commission.

3 I don't see any basis for that. In fact,
4 the applicant did bring to our attention in the Zoning
5 Commission order 714 that enacted this regulation the
6 statement by the Zoning Commission that the rezoning
7 proposed does not significantly alter the process
8 available to property owners for obtaining relief, if
9 additions to existing structures are sought.

10 So I think that is specific direction to
11 the Board that we are authorized to grant special
12 exceptions in this type of case.

13 CHAIRPERSON GRIFFIS: Excellent. Thank
14 you. I note also on the January 3 Exhibit Number 59
15 letter from the Foggy Bottom ANC-2A, in their third
16 paragraph they say there is no question that the Foggy
17 Bottom Overlay District does not contain a blanket
18 prohibition of three-story townhouses.

19 They are pushing us to understand, which
20 they say that the applicant doesn't -- for us to
21 understand the concept of low scale harmony and
22 rhythmic townhouses, which is the language from the
23 Overlay. I think we have done an apt job of
24 addressing that issue.

25 Lastly -- well, for me, let's say -- two

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1 things. You know, I spent my normal amount of time
2 going through this case, as I would say is a lot, and
3 looking at any other angles of which this might run
4 into some difficulty, and could find none.

5 Going to Chapter 23 -- 2300.2, I believe,
6 is the regulations in terms of the siting of garages
7 and the setbacks from the alley -- it would seem to me
8 that there wasn't sufficient information in the
9 application of whether the setback was properly met,
10 and I see why there wasn't adequate information. It
11 wasn't required.

12 Of course, the garage would need to be set
13 back 12 feet from the center line of the alley. This
14 has a very interesting alley setback, and it comes
15 back, in my estimation, in the site plan almost 50
16 feet in that little enclave. So it clearly meets the
17 regulations of that.

18 Going to the character, first of all, the
19 rear of an addition and also that portion of the
20 garage, which is the rear, you look at it. And I
21 would go to the Office of Planning's Attachment 4 of
22 their report. I believe it was Exhibit 36.

23 Their aerial photograph that shows, in
24 fact, the whole line of buildings on that side of the
25 block have a similar configuration at the rear. This

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1 one, without it, actually falls out of character or
2 out of character of the existing conditions on that
3 block, and I think that this is a positive design
4 dealing with that type of situation as opposed to,
5 frankly, the existing condition.

6 That's all I need to say. I would open it
7 up to others for last words. Very well. We have a
8 motion before us. It has been seconded. I would ask
9 for all those in favor to signify by saying Aye.
10 Opposed? Abstaining?

11 MR. MOY: The staff would record the vote
12 as four to zero to one to approve the application on
13 the motion of Mr. Mann, seconded by Mr. Jeffries; also
14 in support of the motion, the Chairman, Mr. Griffis,
15 and the Vice Chairperson, Ms. Miller. And we have a
16 Board member who is not participating on the case.

17 CHAIRPERSON GRIFFIS: Thank you, Mr. Moy.
18 Is there anything else for the Board in this Special
19 Public Meeting?

20 MR. MOY: Not today, sir.

21 CHAIRPERSON GRIFFIS: Very well. If there
22 is nothing further for the Board in this Special
23 Public Meeting, let me adjourn.

24 (Whereupon, the foregoing matter went off
25 the record at 10:00 a.m.)

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