

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

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TUESDAY,

JUNE 27, 2006

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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)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary (BZA)
BEVERLY BAILEY	Sr. Zoning Specialist

The transcript constitutes the minutes from the Special Public Meeting held on June 27, 2006.

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P-R-O-C-E-E-D-I-N-G-S

9:40 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. This is a Special Public Meeting of June 27, 2006. My name is Geoff Griffis. I'm the Chairperson. This is, of course, the Board of Zoning Adjustment of the District of Columbia and I'm joined with the Vice Chair, Ms. Miller, also our Member, Mr. Etherly, and representing the National Capital Planning Commission is Mr. Mann.

This is, as I have said, a Special Public Meeting, so we will take up a case that has already been heard. We go into a brief deliberation and make decisions on that, that is what happens during our meetings. I'm going to dispense with any further openings on that, as I will go right into our hearing and go through our full opening remarks.

Indeed. That being said, let me say a very good morning to Ms. Bailey and also Mr. Moy. If we could call for our decision making and Special Public Meeting the first case on the agenda?

MR. MOY: Yes, sir. Good morning, Mr. Chairman, Members of the Board. The first case that is before the -- for Special Public Meeting is the Board's motion to reopen Application No. 17463 of ARCH

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1 Training Center. And very briefly the staff will read
2 that. This application was originally filed and a
3 hearing was convened on May 9, 2006. This application
4 is pursuant to 11 DCMR 3103.2, for a variance from the
5 off-street parking requirements under subsection
6 2101.1, to convert a vacant community residence
7 facility and re-occupy it as an apartment house, 29
8 units, in the R-5-A District at premises 2025 Fendall
9 Street, S.E., in Square 5777, Lot 952.

10 The Board, as I said earlier, made its
11 decision on May 9, 2006. During the course of the
12 hearing, Ms. Gray approached the Board requesting
13 party status. She claimed that Mr. Gray on behalf of
14 the Frederick Douglas Community Improvement Council
15 filed party status application on April 21, 2006. And
16 staff will just conclude that on May 17, 2006, or
17 thereabouts, the Office of Zoning staff discovered
18 that Ms. Gray's application request for party status
19 was in the office and was attached to the back of a
20 report to a different application, BZA application.

21 Anyhow, the party status request is
22 identified in the case folder as Exhibit 35. That
23 will conclude the staff's comments, Mr. Chairman.

24 CHAIRPERSON GRIFFIS: Excellent. Thank
25 you very much. I would move then that we reopen the

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1 record in this case, Application No. 17463 in order to
2 deliberate on Exhibit No. 35 and would ask for a
3 second.

4 VICE CHAIR MILLER: Second.

5 CHAIRPERSON GRIFFIS: Thank you very much,
6 Ms. Miller. I would just state in terms of the
7 motion, it was fairly clear in the hearing that when
8 it was brought to our attention, we said that we would
9 get to the bottom of this and, in fact, there was
10 actually a misfiling by stapling it to another
11 submission that went into a totally different file.
12 We have found it and are now taking it up. I think
13 it's very appropriate to take it under our
14 consideration, at this time, as we said we would and
15 obviously we'll follow through with.

16 That being said, I'll open it up to others
17 just for their brief comments on that motion.

18 VICE CHAIR MILLER: Well, I first note
19 that since the record was closed, that we need to
20 reopen the record even to admit the application. So
21 now that we have done that, I think the second thing
22 is to determine whether or not to grant the party
23 status. So that would be the second motion. I guess
24 I would move to do that and then we can discuss and
25 deliberate under that motion.

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1 CHAIRPERSON GRIFFIS: Do you want to set
2 aside the first motion or do you want to dispense with
3 that first?

4 VICE CHAIR MILLER: Oh, no, we can vote on
5 the first motion. I'm under the impression we are
6 reopening the record and discussing it, so in a way we
7 have already --

8 CHAIRPERSON GRIFFIS: Is there any
9 opposition to reopening the record?

10 BOARD MEMBER ETHERLY: No opposition.

11 CHAIRPERSON GRIFFIS: Not noting any
12 opposition, we'll take it as a consensus of the Board.
13 That motion has been passed then. Now, moving on to
14 the second, we have Exhibit 35 in front of us, which
15 is the application of the Frederick Douglas Community
16 Improvement Council. It is an important aspect that
17 Ms. Miller is bringing up and I think if you would
18 like to make a motion then, that would be appropriate.

19 VICE CHAIR MILLER: Okay. I would move
20 that we admit Frederick Douglas Community Improvement
21 Council, that we grant them party status in this case.

22 BOARD MEMBER ETHERLY: Second, Mr. Chair.

23 CHAIRPERSON GRIFFIS: Excellent. There is
24 much before us to approve the party status.
25 Deliberation, comments on that?

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1 VICE CHAIR MILLER: Well, I have a couple
2 of comments. I think on the face of the party status
3 application, I'm not sure that we would have granted
4 party status or not at the hearing in that the
5 application on its face doesn't show how the party is
6 distinctly or uniquely affected. However, what
7 happened at the hearing was that we didn't have this
8 in front of us and Ms. Jones brought this up midway in
9 the hearing and, in fact, what the Chair did was
10 almost de facto grant her party status, because she
11 was allowed to ask all questions that she had, in
12 effect, cross examine the applicant. And so, at this
13 point, I think it makes sense to grant the party
14 status.

15 CHAIRPERSON GRIFFIS: Excellent. Others?

16 BOARD MEMBER ETHERLY: I would agree
17 entirely, Mr. Chair. I think that it's the
18 appropriate action when we discover upon our own
19 investigation that an error was committed and I think
20 this does, indeed, fall within that particular realm.
21 I'll agree kind of in advance of perhaps where the
22 payoff is on this with Mrs. Miller in terms of the
23 substance of what we do with this with regard to
24 impact on the case as a whole. But I agree with this
25 direction.

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1 VICE CHAIR MILLER: I would also like to
2 note that sometimes when we have a party status
3 application that doesn't appear to address how they
4 are distinctly or uniquely impacted that the applicant
5 at the hearing has an opportunity to further address
6 it and that wasn't done either. So in this, you know,
7 posture, she has already acted as a party in the case.

8 CHAIRPERSON GRIFFIS: Is there anything
9 else? I would absolutely agree. I think there was
10 undue caution presented in the case and they were
11 given and afforded entirely the opportunity to
12 participate as a party, as indicated, and as the
13 transcript shows. If there is nothing further then,
14 we do have a motion.

15 VICE CHAIR MILLER: I would just make one
16 other statement. I also don't think there is any
17 prejudice to the applicant or any other party in that
18 at the hearing the applicant did not object at all to
19 being subjected to her questions.

20 CHAIRPERSON GRIFFIS: Excellent point.
21 And lastly, I don't think that there would be any
22 other reason to continue to have the record open. No
23 other information, evidence, testimony or cross
24 examination would be required as we have exhausted all
25 of that within our own deliberations and within the

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1 course of the hearings on the case. Very well.
2 Anything else?

3 Then we do have a motion before us to
4 grant party status to the Frederick Douglas Community
5 Improvement Council. It has been seconded. I would
6 ask for all those in favor to signify by saying aye.

7 ALL: Aye.

8 CHAIRPERSON GRIFFIS: And opposed?
9 Abstaining? Mr. Moy, if you wouldn't mind recording
10 the vote?

11 MR. MOY: Yes, sir. The staff would
12 record the motion -- record the vote as 4-0-0 on the
13 motion of Ms. Miller to grant party status in the
14 application. Mr. Etherly was also in support of the
15 motion, Mr. Griffis and Mr. Mann. The staff also has
16 John Parsons who participated in the case also
17 submitted an absentee ballot and I believe since the
18 Chair's memory is much better than staff's that --

19 BOARD MEMBER ETHERLY: Mr. Chair?

20 CHAIRPERSON GRIFFIS: Yes?

21 BOARD MEMBER ETHERLY: Perhaps before Mr.
22 Moy gets into that, just for purposes of
23 clarification, with regard to the motion that was just
24 voted upon successfully, does that motion -- let me
25 rephrase it this way. Do we also deal separately with

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1 the issue of prejudice regarding the impact of party
2 status determination on the ultimate decision that was
3 reached in this particular case or is that included as
4 part of the motion?

5 What I'm trying to be just clear on is
6 sometimes the bureaucracy process can be a nightmare.
7 But just to be clear, one, we reopened the record.
8 Two, we granted party status. Is there a need to do
9 a separate step to deal with the issue of whether the
10 party was prejudiced by virtue of not participating?

11 CHAIRPERSON GRIFFIS: Right.

12 BOARD MEMBER ETHERLY: I understand what
13 Mrs. Miller's motion was and I am in agreement that
14 the party was not prejudiced. He made them a party,
15 but that does not ultimately change the outcome of
16 this particular case. I just wanted to be sure that
17 there is a point of which we say that clearly.

18 CHAIRPERSON GRIFFIS: Good.

19 BOARD MEMBER ETHERLY: So that there is a
20 clear indication that there is nothing else that
21 happens with this case.

22 CHAIRPERSON GRIFFIS: Well, I think there
23 is two important points that you have brought up and
24 I think we should all articulate that we are in
25 agreement with that, first of all, that we did not

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1 find that it would prejudice the applicant and it did
2 not prejudice the party we have now granted, because
3 we did, in fact, go through all of the required
4 aspects. We gave them opportunities to cross examine.
5 We gave them opportunity to present a full case.

6 They were not timed as the other testimony
7 persons were and I think the transcript clearly shows
8 that they exhausted all of those elements of which
9 were their concern. And if they had not exhausted we,
10 as the Board, I think, in our own deliberation and
11 questioning, picked it up where they had left off or
12 were short.

13 The last piece though that I think, second
14 piece, rather, that you bring up I think is an
15 important one. It is not part of my deliberation. I
16 still hold the vote that I cast on that case. This
17 did not change in any fact matter the deliberation on
18 this and I think we would probably just articulate
19 that if anyone disagreed with that. Because we would
20 not be reopening the record for any further
21 deliberation.

22 BOARD MEMBER ETHERLY: I agree, Mr. Chair.
23 Thank you.

24 VICE CHAIR MILLER: Yes, I think upon a
25 review of the transcript, it is clear, as the Chairman

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1 said, that they were afforded basically all the
2 privileges of party status, so it wasn't as if they
3 weren't allowed to present any evidence or do any
4 cross examination.

5 CHAIRPERSON GRIFFIS: Okay. Good.
6 Excellent points and clarification. Thereby, let's
7 continue. Mr. Moy was about to drop the shoe of the
8 absentee ballot of Mr. Parsons.

9 MR. MOY: Well, thank you. Well, anyways,
10 I'll just get to the quick of it. With Mr. Parson,
11 the final vote, absentee vote, the final vote if 5-0-
12 0. And, Mr. Chair, if you would like to add any
13 further comments on Mr. Parsons' absentee ballot?

14 CHAIRPERSON GRIFFIS: I don't believe that
15 was his vote, was it?

16 VICE CHAIR MILLER: No.

17 MR. MOY: I'm sorry, Mr. Chairman, see you
18 have my copy of it. I don't have a copy.

19 CHAIRPERSON GRIFFIS: Oh, no wonder. Now
20 I get the inference of my recollection is better than
21 your's. I will pull it out as this was handed to us
22 this morning, I would note that Mr. Parsons did submit
23 his absentee ballot and it reads, comment 1, he is in
24 favor and votes in favor of reopening the record to
25 receive Exhibit 35 and second he votes to deny the

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1 party status, that there is no exceptional effects on
2 the group of individuals as shown in their
3 application.

4 MR. MOY: So hearing that, on granting the
5 party status then the vote will be 4-1-0.

6 CHAIRPERSON GRIFFIS: Excellent.

7 MR. MOY: Thank you, sir.

8 CHAIRPERSON GRIFFIS: Thank you very much.
9 With that then, is there any other business for the
10 Board in the Special Public Meeting?

11 MR. MOY: No, that concludes the Special
12 Public Meeting, sir.

13 CHAIRPERSON GRIFFIS: Excellent. We will
14 then conclude the Special Public Meeting.

15 (Whereupon, the Special Public Meeting was
16 concluded at 9:50 a.m.)

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