

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

+ + + + +

TUESDAY

NOVEMBER 8, 2005

+ + + + +

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 10:06 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice-Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBERS PRESENT:

KEVIN HILDEBRAND	Commissioner (AOC)
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OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
JOHN NYARKU	Zoning Specialist
BEVERLEY BAILEY	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

TRAVIS PARKER

This transcript constitutes the minutes

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from the special public meeting held on November 8,
2005.

C-O-N-T-E-N-T-S

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AGENDA ITEM

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<u>1) Motion for Modification of Approved Plans and Waiver of the Six-Month Time Requirement, Pursuant to 11 DCMR 3129, to Application No. 17027 of Emergence, Inc.:</u>	5
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<u>2) Appeal No. 17310 of Deidre O. Stancioff:</u>	11
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P-R-O-C-E-E-D-I-N-G-S

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10:06 a.m.

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1 CHAIRMAN GRIFFIS: Good morning, I'm Geoff
2 Griffis, Chairperson. Joining me today is Vice Chair
3 Ms. Miller and Mr. Etherly. Representing the National
4 Capital Planning Commission is Mr. Mann. And
5 representing the Zoning Commission for one of the
6 decisions this morning, will be Mr. Hildebrand.

7 During our Special Public Meeting, of
8 course, this is a time where the Board will deliberate
9 on cases that have already been heard. We have two
10 decisions this morning.

11 We appreciate everyone's patience as we
12 get through this, it should not take that long,
13 however, I do ask that people please turn off their
14 cell phones and beepers at this time, so we don't have
15 a disruption of the transmission of our proceedings.

16 Again, this will be a time in which the
17 Board will discuss, deliberate, decide previous cases.
18 We will not have any additional testimony provided to
19 the Board.

20 Let me say a very good morning to Ms.
21 Bailey on my far left, with the Office of Zoning, also
22 Mr. Moy, with the Office of Zoning. Ms. Glazer with
23 the Office of the Attorney General is also with us
24 this morning.

25 Why don't we move right ahead into our

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1 schedule of decision making this morning.

2 MR. MOY: Yes, sir, good morning, Mr.
3 Chairman, members of the Board. The first of two
4 cases for decision making at this Special Public
5 Meeting is a motion for modification of approved plans
6 and a waiver of the six-month time requirement
7 pursuant to 11 DCMR 3129.

8 And this motion is to Application Number
9 17027 of Emergence, Inc., which was an application for
10 a special exception to allow a community service
11 center under Section 334 in the R-4 District, at
12 premises 731 through 733 Euclid Street, N.W.

13 That's in Square 2, 2884, Lot 836. The
14 Board is to act on the motion to modify plans approved
15 at its July 8, 2003, decision meeting. In addition,
16 the Applicant has filed beyond the six month time
17 requirement, and therefore there's a motion to waive
18 this time requirement. The Board convened on November
19 1st, 2005, on this motion, but moved the motion for
20 modification to November 8th, because of the lack of
21 a quorum. That completes the staff's briefing, Mr.
22 Chairman.

23 CHAIRMAN GRIFFIS: Excellent. Thank you
24 very much, Mr. Moy. Let's take up the first element
25 for the decision on this, and that is the waiving of

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1 our time requirement.

2 Is there any opposition from the Board
3 that needs to be discussed to waive the time limit?

4 MEMBER ETHERLY: No opposition, Mr. Chair.

5 CHAIRMAN GRIFFIS: Excellent, Ms. Miller?

6 VICE CHAIR MILLER: No.

7 CHAIRMAN GRIFFIS: Very well, Mr. Mann,
8 I'll take it as a consensus then of the Board. We can
9 waive our time requirement and move ahead to the
10 motion for minor modification.

11 And I think it's very clear, from what Mr.
12 Moy has laid out, but also in terms of the exhibits
13 that have been submitted, specifically to the plans,
14 showing the modification at the rear of the egress
15 stair, which is just being masked differently than was
16 previously approved. I think it falls well within the
17 ability to take this up as a minor modification and it
18 does not change substantially, as I've reviewed, that
19 the special exception that was previously deliberated,
20 heard and deliberated and decided.

21 And I would support the motion. There was
22 an issue that was brought up in my review of this, and
23 that it did remove a parking space. And I know that
24 the board took some time looking back at our
25 deliberations and the orders and whether the parking

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1 count was required in the actual special exception as
2 a condition.

3 It was not. It was part of the
4 deliberation, I noted, and it was not substantiated
5 the fact of the numbers that were actually required,
6 based on, obviously it didn't rise to the level of a
7 condition, so it wasn't based on the fact that this
8 would, perhaps, create a detrimental situation.

9 Additional reviewing, I think that there's
10 ample space in the rear of the structure to park
11 adequately for the utilization of the program.

12 And, in fact, I think, is as laid out as
13 proposed whether they will stripe it in the rear. If
14 they do, do it that way, I think you can actually do
15 it a more efficient way and increase the number of
16 cars.

17 So it doesn't rise to the level, but I
18 thought it was worth noting, as it did in this minor
19 modification, remove one of those that was previously
20 shown on the plans that were approved.

21 And I'll open it up for any other comments
22 or deliberation on this?

23 (No response.)

24 CHAIRMAN GRIFFIS: Very well, if there's no
25 other further deliberation, I would move approval of

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1 the motion of minor modification in Application 17027
2 of Emergence, Inc., and ask for a second.

3 MEMBER ETHERLY: Second it.

4 CHAIRMAN GRIFFIS: Thank you very much, Mr.
5 Etherly. We have a motion before, it has been
6 seconded. I, again, will give an opportunity to the
7 Board members to provide or, yes, provide
8 deliberation, comment.

9 (No response.)

10 CHAIRMAN GRIFFIS: If there is none, then
11 I would ask for all those in favor of the motion,
12 signify by saying aye.

13 (Chorus of ayes.)

14 CHAIRMAN GRIFFIS: And opposed?

15 (No response.)

16 CHAIRMAN GRIFFIS: Abstaining?

17 (No response.)

18 CHAIRMAN GRIFFIS: Very well, Mr. Moy, if
19 you wouldn't mind?

20 MR. MOY: Yes, sir. The staff would record
21 the vote as three to zero to two. This is on the
22 motion of the Chairman, Mr. Griffis, to approve the
23 minor modification, and to waive the six month time
24 requirement.

25 Seconding the motion is Mr. Etherly. Also

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1 in support of the motion, Ms. Miller. The fourth
2 Board member is not participating on the case, nor is
3 a Zoning Commission Member.

4 Does the Board desire the Summary Order,
5 sir?

6 CHAIRMAN GRIFFIS: I don't think we need a
7 full order on this minor modification. I think that
8 would be an excellent point to waive our rules and
9 regulations and issue a Summary Order.

10 I think it would be incumbent on us at
11 issuance of a Summary Order to incorporate the entire
12 previous order of which we've just modified. And I
13 know we can easily, and have done this previously, but
14 rather than make confusion out of what order is
15 standing, we can combine the two into now a new
16 issuance of a Summary Order. Very well, why don't we
17 move ahead.

18 MR. MOY: Yes, sir, the next case is the
19 Appeal Number 1710 of Deidre O. Stancioff, pursuant to
20 11 DCMR 3100 and 3101, from the Administrative
21 Decision of the Zoning Administrator of the Department
22 of Consumer and Regulatory Affairs.

23 The Appellant alleges that the Zoning
24 Administrator erred by issuing building permits for
25 the construction of an addition to a single-family

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1 dwelling that does not comply with the lot occupancy,
2 Section 403 in side yards, Section 405 requirements in
3 the R-3 District at premises 1812 35th Street, N.W.,
4 that's in Square 1296, Lot 802.

5 On October 25th, 2005, the Board completed
6 public testimony on the appeal case and scheduled its
7 decision at a Special Public Meeting on November 8th,
8 2005.

9 The Board requested that parties submit a
10 list of cases that were cited at the public testimony.
11 Mr. Chairman, that was filed by the Applicant in
12 consultation with the other parties and is enclosed in
13 your case file, identified as Exhibit 41.

14 The Board is to act on the merits of the
15 appeal and staff will conclude its briefing here, Mr.
16 Chairman.

17 CHAIRMAN GRIFFIS: Excellent, thank you
18 very much, Mr. Moy. I think everyone is, I know
19 everyone is adequately prepared and spent an awful lot
20 of time reviewing this from the hearings that we all
21 were involved in.

22 There is, additional information has been
23 brought up and Mr. Moy has adequately summarized this
24 case. Let me open it up to initial deliberation
25 discussion from the Board.

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1 VICE CHAIR MILLER: Mr. Chairman, do you
2 want to open this up under discussion under a motion?

3 CHAIRMAN GRIFFIS: I think that would be
4 the most efficient way to proceed.

5 VICE CHAIR MILLER: Okay. At this point,
6 well I would be prepared to move to grant the appeal
7 of 17310, that the, of Deidre Stancioff. That the
8 Zoning Administrator erred in issuing building permits
9 that allowed an addition to a single-family dwelling
10 that did not comply with the lot occupancy and side
11 yard requirements set forth in Sections 403 and 405 in
12 the R-3 District.

13 CHAIRMAN GRIFFIS: Excellent, is there a
14 second?

15 MR. HILDEBRAND: Second.

16 CHAIRMAN GRIFFIS: Thank you, Mr.
17 Hildebrand. Let's move ahead then and hear
18 deliberation on the motion to grant the appeal.

19 VICE CHAIR MILLER: In looking at this case
20 it seemed that the Zoning Administrator determined
21 that an attachment of an eave from the side of the
22 house to the neighbors property line covered a side
23 yard and thereby eliminated it, and converted the
24 dwelling to a row house.

25 And looking at the regulations and the

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1 facts from this case, it seems to me that that type of
2 attachment of an eave cannot eliminate a side yard and
3 thereby change the status of the zoning here.

4 I think that in trying to look at the
5 facts here, I looked at 2502.2, which specifically
6 talks about eaves. And it says that cornices and
7 eaves may project over any required yard or court for
8 distance not to exceed two feet.

9 And I think the facts in this case show
10 that it was about two and a half feet to cover the
11 side yard. And here we had, 2502 talks about
12 projections into required open spaces.

13 And here we had a required side yard. And
14 by adding an illegal projection, I don't believe that
15 you can thereby convert the dwelling into a row house,
16 and thereby then not be subject to the lot occupancy
17 and side yard requirements for the single-family
18 dwellings, for a semi-detached dwelling.

19 CHAIRMAN GRIFFIS: Very well, thank you.
20 I think that's an excellent framing of the issues.
21 Clearly we're trying to figure out, in this R-3
22 District, whether, well, let me continue then to
23 another level of discussion in the R-3 District.

24 It was brought up whether there might be
25 an ability to create a row dwelling out of this

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1 existing structure. And I don't, in my deliberation
2 reading of the regulations I see under 320 that row
3 dwellings are, of course, a matter of right in the R-3
4 and find that it is one's ability to create a row
5 dwelling there.

6 Ms. Miller has brought up the fact of the
7 detail of this case of whether that actually was done
8 in this case. I go then to the definition of
9 dwelling, row, and it is very simple and
10 straightforward.

11 And that is, in a 199, indicating that a
12 row dwelling is that structure that has no side yards.
13 So, going back then to what Ms. Miller has just
14 indicated in her own deliberation of whether adding on
15 to, as the Applicant had done, or as the Property
16 Owner had done in this appeal, would that then
17 constitute removal of a side yard or creating a
18 substantial structure that would then create a row
19 dwelling out of this semi-detached.

20 And I tend to agree with the fact that
21 this does not go to the level of which would be
22 required in my own deliberation reading of the intent,
23 but also the direct words of the regulation that this
24 would then create a row dwelling.

25 Let me open it up to others and for

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1 further deliberation discussion on this.

2 VICE CHAIR MILLER: I'll just add, also,
3 that the parties pointed to several cases dealing with
4 trellises and to the extent that that was even
5 relevant, I think that this is distinguished in the
6 sense that this eave doesn't connect to another
7 structure.

8 It just goes out to reach of property
9 line. And so, to me, they didn't make the case that
10 it's therefore was the connecting of two structures,
11 which would make one building, or whatever, which is
12 basically how the trellis has been used in other
13 zoning cases.

14 CHAIRMAN GRIFFIS: It's understood.
15 Others? Anything else? I think this is a difficult
16 piece in terms of how the regulations are written.

17 You read them and they are very clear in
18 terms of what I might say is a more common sense
19 aspect. And I think that's what we need to really
20 look at.

21 When I say reading the direct letter of
22 the regulations, but also understanding the intent of
23 the regulations. Because there clearly was, and I
24 think it was well argued in this fact that everything
25 that was done removed a side yard in this piece.

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1 However, in doing that, it was removing a
2 side yard for calculations of which the side yard
3 would need to be dealt with, and that were a different
4 area of calculations and such.

5 But whether just making it count toward,
6 because it's a non-conforming areaway, let's say, or
7 a nonconforming court. Just because it would count
8 towards the lot occupancy, does that make it a row
9 dwelling.

10 And I think that the whole point of having
11 the different definitions of dwelling, speaks to and
12 is clearly an intention of the regulations to
13 differentiate the type of structure and that of just
14 how you calculate different aspects of the area
15 requirements in this specific site or application,
16 additional. Anything else? Ms. Miller?

17 VICE CHAIR MILLER: I don't have anything
18 further.

19 CHAIRMAN GRIFFIS: Indeed. Anyone else,
20 anything else? Mr. Hildebrand?

21 MR. HILDEBRAND: I guess the only, I'd like
22 to second what Ms. Miller says, but also to go a
23 little further in saying that I found it very
24 troubling, the concept that the Zoning Administrator
25 took that artificial addition of something like an

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1 eave or an awning, or even a trellis, could have this
2 power to convert a semi-detached dwelling into a row
3 dwelling.

4 And I think we really need to look at what
5 is a substantial connection, and a substantial
6 modification. I agree with you completely that the
7 Zoning Regulations don't preclude a row dwelling from
8 occupying this site.

9 But I think, in saying that, then the
10 proposal has to come up to the level of a row dwelling
11 in order to be considered a row dwelling. And that's
12 the only thing I'd like to add.

13 CHAIRMAN GRIFFIS: Good, and I appreciate
14 you bringing that up. I don't think we are reaching
15 that, in this deliberation. And I don't think that it
16 would be appropriate for the Board to go then further
17 and define exactly the level that would be required,
18 as you're talking about.

19 And I think you're in agreement with that.
20 But I do absolutely agree that what has been proposed
21 here is a failing, in my mind, in reading the
22 regulations in creating that.

23 You know, it's an interesting piece here
24 because obviously in granting or denying an appeal
25 we're finding an error somewhere.

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1 What's fascinating in this piece is how
2 difficult this was, in all the processing, and that
3 the Zoning Administrator actually, in their authority,
4 stepped in to try and remedy a situation. And so I
5 don't think this is, you know, a huge fault that we've
6 found or an egregious error, but clearly I think it
7 pushed the level of what the regulations were written
8 to do.

9 And perhaps then brought this to a level
10 that it should not have been, which seems to be
11 apparent by the way the Board is heading on this.
12 Okay, anything else, then?

13 VICE CHAIR MILLER: If there's any doubt,
14 this appeal was amended to include additional building
15 permits so that my motion goes to granting the appeal
16 with respect to the amended appeal, including all the
17 building permits at issue.

18 Do you recall we had the motion to --

19 CHAIRMAN GRIFFIS: -- had any doubts.

20 VICE CHAIR MILLER: Someone had doubts,
21 okay.

22 CHAIRMAN GRIFFIS: I have many doubts
23 myself, however. Good, very well. Good
24 clarification, and I appreciate that. The last
25 opportunity for further deliberation on the motion?

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1 (No response.)

2 CHAIRMAN GRIFFIS: Very well, we do have a
3 motion and it has been seconded, to grant the appeal
4 in 017310, as advertised and clarified, and cleared of
5 all doubts. I would ask then for all those in favor
6 of the motion signify by saying aye.

7 (Chorus of ayes.)

8 CHAIRMAN GRIFFIS: And opposed?

9 (No response.)

10 CHAIRMAN GRIFFIS: Abstaining?

11 (No response.)

12 CHAIRMAN GRIFFIS: Very well, Mr. Moy.

13 MR. MOY: The staff would record the vote
14 as five to zero to zero on the motion of the Vice
15 Chairman, Ms. Miller, to grant the appeal. Seconded
16 by Mr. Etherly. Also in support of the motion, the
17 Chair, Mr. Griffis, Mr. Mann and Mr. Hildebrand.

18 CHAIRMAN GRIFFIS: Good thing, Mr. Moy,
19 we're just going to make one clarification of that.
20 Mr. Hildebrand was the seconder of the motion.

21 MR. MOY: Oh, he was, I'm sorry.

22 CHAIRMAN GRIFFIS: Excellent. That being
23 cleared up, is there any further business for the
24 Board in this Special Public Meeting this morning?

25 MR. MOY: No, sir, that completes the

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1 Special Public Meeting.

2 CHAIRMAN GRIFFIS: Excellent. With that
3 then, let's adjourn our Special Public Meeting.

4 (Whereupon, the proceedings in
5 the above-entitled matter were
6 concluded at 10:25 a.m.)

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