

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY,

APRIL 7, 2009

+ + + + +

The regular Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Marc D. Loud, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MARC D. LOUD Chairman
SHANE L. DETTMAN Vice Chairman

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, FAIA Commissioner
(OAC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary
BEVERLEY BAILEY Sr. Zoning Spec.
JOHN NYARKU Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:
ALAN H. BERGSTEIN, ESQ.
LORI MONROE, ESQ.
SHERRY GLAZER, ESQ.

This transcript constitutes the minutes from the regular Public Meeting held on April 7, 2009.

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

9:30 a.m.

CHAIRMAN LOUD: Good morning. My name is Marc Loud. I am the Chairperson of the Board of Zoning Adjustment. Good morning, everyone. To my right is the Vice Chair, Mr. Shane Dettman, to his right is Mr. Mike Turnbull, Michael Turnbull from the Zoning Commission.

This meeting will, please, come to order. This is the April 7th public decision meeting of the Board of Zoning Adjustment of the District of Columbia. In addition to myself, Mr. Dettman and Mr. Turnbull, we are also joined this morning by Mr. Clifford Moy, who is the Secretary of the Board of Zoning Adjustment, Ms. Beverley Bailey, who is the clerk of the Board of Zoning Adjustment.

Mr. Alan Bergstein, who is the -- from the Office of Attorney General and heads up the section on land use and, of course, Ms. Lori Monroe as well from the Office of

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1 Attorney General.

2 Copies of today's meeting agenda
3 are available to you and are located to my
4 left in the wall bin near the door. We do not
5 take any public testimony at our meetings,
6 unless the Board asks someone to come forward.

7 Please, be advised that this
8 proceeding is being recorded by a Court
9 Reporter and is also webcast live.
10 Accordingly, we must ask you to refrain from
11 any disruptive noises or actions in the
12 hearing room. Please, turn off all beepers
13 and cell phones.

14 Does the staff have any preliminary
15 matters?

16 MR. MOY: Good morning, Mr.
17 Chairman and Members of the Board. Yes, we do
18 and the staff would suggest that we -- the
19 Board take those preliminary matters up case-
20 by-case.

21 CHAIRMAN LOUD: Thank you, Mr. Moy.
22 Then let's proceed with the morning agenda.

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1 Mr. Moy, what I would like to do is call three
2 cases out of order this morning, if there are
3 no objections from the Board Members. And
4 those cases are: No. 17521-A of H Street
5 Ventures; No. 17583-A regarding 1634
6 Associates, LLC and No. 17540-A and 17541-A of
7 Capitol Hill Day School.

8 MR. MOY: Yes, sir, thank you, Mr.
9 Chairman. These three cases on the docket are
10 of the same genre in that there is a request
11 from the applicant to extend the validity of
12 the orders.

13 The first as you just stated is
14 Application No. 17521-A of 601-645 of H Street
15 Ventures, LLC. That particular application
16 was decided on February 6, 2008. The final
17 issuance date of that order was August 21,
18 2007.

19 On the 19th of March 2009, the
20 Board received a letter from this applicant.
21 And pursuant to section 3100.5 and that is in
22 your case folders identified as Exhibit 116.

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1 The second case is Application No.
2 17583-A of 1634 Associate, LLC. This
3 particular application was decided by the
4 Board on -- it was a Bench decision on April
5 3, 2007. The issuance of that order, Mr.
6 Chair, was April 4, 2007.

7 The final case is Application No.
8 17540-A and 17541-A of Capitol Hill Day
9 School. And this application, which combined
10 the two applications, was decided by the Board
11 on February 6, 2007, issuance date of the
12 order of June 11, 2007.

13 Again, in all three of these cases
14 are a request to extend the validity of their
15 orders. The Board is to act on the merits of
16 that request, pursuant to 3100.5 to waive the
17 time limits on Board Action under section
18 3130. And that completes the staff's
19 briefing, Madam Chair -- Mr. Chairman. Old
20 habits are hard to break.

21 CHAIRMAN LOUD: Okay. Let's break
22 it before the day is over, Mr. Moy. Okay.

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1 And just with respect to each of these
2 applications and we won't spend a lot of time
3 on this. They are all asking for 2 year
4 extensions. Is that correct?

5 MR. MOY: That's correct, sir.

6 CHAIRMAN LOUD: Okay. Then why
7 don't we do this, why don't we take each one
8 in order that you just mentioned? We are
9 empowered under our Rule 3100.5 to grant
10 extensions in each of these cases, provided
11 good cause is shown and if in the judgment of
12 the Board, the waiver will not prejudice the
13 rights of any party and is not otherwise
14 prohibited by law.

15 In this case, there is no
16 opposition to extension of the waiver --
17 extension of the order rather in any of the
18 three cases, as I understand it.

19 In addition to which, with respect
20 to 17521-A, 601-645 H Street, the applicants
21 have run into difficulty obtaining financing
22 for their project.

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1 With respect to 17583-A, it is the
2 same situation. There is no opposition. The
3 applicants have run into difficulty securing
4 financing for their project. And the record
5 reflects/substantiates that assertion.

6 And it is the same for 17540-A and
7 17541-A.

8 So why don't we proceed first with
9 respect to 17521-A. As indicated, this is a
10 request for time extension. The original
11 order expires, I believe, August 21 of '09.
12 However, the applicant has not been able to
13 secure financing and seeks a 2 year extension
14 of time to allow it to secure the financing
15 for the project.

16 We are proceeding under 3100.5,
17 which again gives us that authority to do
18 that. It is also worth mentioning that the
19 Zoning Commission has addressed this very
20 issue and has very recently issued a Zoning
21 Commission Order. I don't have the number
22 handy, 3130.

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1 MR. BERGSTEIN: It's Case No. 09-01
2 and they recently took proposed action. The
3 Notice of Proposed Rule Making will be
4 published this Friday and the Zoning
5 Commission will take final action on May 11th.

6 CHAIRMAN LOUD: Thank you, Mr.
7 Bergstein. So the action taking by the Zoning
8 Commission is not effective today as we
9 deliberate on this, so we are going to proceed
10 under 3100.5. But our deliberations are in
11 the spirit of the Zoning Commission Order that
12 will take effect, I believe Mr. Bergstein
13 said, on May 11.

14 MR. BERGSTEIN: If the Zoning
15 Commission takes final action to approve it,
16 it will either be effective that next Friday
17 or the Friday after that, depending on how
18 quickly we can get the order to the Office of
19 Documents.

20 CHAIRMAN LOUD: Fantastic. With
21 that being said, I would open the floor to
22 other Board Members to see if you would like

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1 to -- if you have any comments regarding this
2 matter.

3 Okay. Then why don't we start with
4 Application No. 17521-A of 601-645 H Street
5 Ventures? I would like to move approval of
6 Application No. 17521-A of 601-645 H Street
7 Ventures to grant their requested relief for a
8 2 year extension of the order that we approved
9 August 21, 2007.

10 VICE CHAIR DETTMAN: Second.

11 CHAIRMAN LOUD: Motion has been
12 made and seconded. Is there any further
13 deliberation?

14 Okay. All those in favor say aye.

15 ALL: Aye.

16 CHAIRMAN LOUD: All those opposed?

17 MR. MOY: Staff would record the
18 vote, Mr. Chairman, as 3-0-2. This is on the
19 motion of the Chair, Mr. Loud, to grant the
20 motion for a 2 year extension of the order,
21 the validity of the order, seconded by Mr.
22 Dettman. Also in support of the motion is Mr.

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1 Turnbull. And there are two other Board
2 Members not participating. Again, the final
3 result is 3-0-2.

4 CHAIRMAN LOUD: Thank you, Mr. Moy.

5 I would like to move now to Application No.
6 17583-A. I have talked a little bit about the
7 circumstances of that application as well.
8 The original order was April 4, 2007. It
9 expires, I presume, April 4, 2009, although it
10 has been tolled by the filing of the
11 application.

12 With respect to that application, I
13 would like to move that the Board grant a 2
14 year extension for the applicant to secure the
15 financing it needs to complete this project.
16 Is there a second?

17 COMMISSIONER TURNBULL: Second.

18 CHAIRMAN LOUD: Any deliberation?
19 Okay. I would like to call the vote.

20 All those in favor, please, say
21 aye.

22 ALL: Aye.

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1 CHAIRMAN LOUD: All those opposed?
2 Abstaining?

3 MR. MOY: Mr. Chair, the staff
4 records -- would record the vote as 3-0-2.
5 This is on the motion of the Chair, Mr. Loud,
6 to grant the motion for a 2 year extension for
7 the validity -- of the validity of the order,
8 seconded by Mr. Turnbull. Also in support of
9 the motion Mr. Dettman. Two other Board
10 Members not participating. Again, the final
11 result of the vote of 3-0-2.

12 CHAIRMAN LOUD: Thank you, Mr. Moy.
13 Finally, I would like to call or reference
14 Case No. 17540-A and 17541-A regarding the
15 Capitol Hill Day School. Originally, these
16 were two separate orders that proceeded
17 historically a little differently, a little
18 different from one another.

19 But in the June '07 case, that you
20 referred to Mr. Moy, both cases were subsumed
21 into a single case. And so even though we
22 continue to show these as two separate cases,

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1 the previous order of the BZA subsumed these
2 cases into a single case.

3 Nonetheless, the relief requested
4 is the same. It is a 2 year extension for the
5 applicant to secure financing for its project.

6 And I think in this case, there were also
7 some environmental concerns, but largely it's
8 a question of the financing, the need for
9 extension for the financing.

10 So I would like to move approval of
11 Application Nos. 17540-A and 17541-A. Is
12 there any deliberation? Okay. I would like
13 to call a vote.

14 All those in favor of approval of
15 Application --

16 MR. MOY: Mr. Chairman, I'm sorry.

17 CHAIRMAN LOUD: I'm sorry.

18 MR. MOY: I don't believe the
19 motion had a second.

20 CHAIRMAN LOUD: I'm sorry, I'm
21 sorry. Let me back up.

22 VICE CHAIR DETTMAN: I'll second

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1 the motion.

2 CHAIRMAN LOUD: Thank you, Mr. Moy.

3 The motion has been made and seconded. I
4 would like to call the vote for approval of
5 Application 17540-A and 17541-A.

6 All those in favor say aye.

7 ALL: Aye.

8 CHAIRMAN LOUD: All those opposed?

9 MR. MOY: The staff would record
10 the vote as 3-0-2 on the motion of the Chair,
11 Mr. Loud, to grant the motion for a 2 year
12 extension of the validity of the order,
13 seconded by Mr. Dettman. In support of the
14 motion Mr. Turnbull. Two other Board Members
15 not participating. Again, a vote of 3-0-2.

16 CHAIRMAN LOUD: Thank you, Mr. Moy.

17 These will be summary decisions. Okay.
18 Thank you.

19 Mr. Moy, I would like to call the
20 case of 17789, if you can call the next case,
21 for us?

22 MR. MOY: Yes, sir. The next case

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1 for decision by the Board is Application No.
2 17789 of The Walgreen Eastern Co., Inc., et
3 al, pursuant to 11 DCMR 3103.2, for a variance
4 from the off-street parking requirements under
5 subsection 2101.1, for a new drugstore in the
6 C-3-A District at premises 4225 Connecticut
7 Avenue, N.W. This is in Square 2051, Lot 7.

8 Staff notes for the Board that the
9 application was amended to also include relief
10 from section 2115.2, which is the percentage
11 of parking spaces for compact cars.

12 On March 3, 2009, the Board
13 completed public testimony, closed the record
14 and scheduled its decision on April 7, 2009.
15 The Board requested additional information to
16 supplement the record from the applicant and
17 responses, including a draft findings of fact
18 and conclusions of law.

19 The applicant submitted a filing on
20 April 3rd and that document, post-hearing
21 document is identified as Exhibit 52. We also
22 have a response filing, which is also embedded

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1 in their findings of fact and conclusions of
2 law dated also April 3, 2009 from party status
3 -- party opposition, Ted Occhialino, and the
4 Concerned Citizens of the Van Ness and that
5 post-hearing document, Mr. Chairman, is
6 identified as Exhibit 53.

7 With respect to preliminary matter,
8 the Applicant's filing did include perhaps a
9 soft preliminary matter with a request for
10 additional relief under 2115.4, that the Board
11 should address. Other than that, the Board is
12 to act on the merits of the requested variance
13 relief, Mr. Chair.

14 CHAIRMAN LOUD: Thank you, Mr. Moy.

15 Let's begin with the preliminary matter. I
16 believe that the preliminary matter concerns
17 the applicant's request for relief under
18 section 2115.4 of the Regulations, which is a
19 provision that requires all compact spaces to
20 be contiguous to one another in minimum
21 numbers of five.

22 And so in this case, the applicant

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1 is, essentially, saying that this is part and
2 parcel of the relief that they have been
3 requesting under this case all along. I think
4 having reviewed and reviewed the file, and
5 I'll let other Board Members weigh in on it as
6 well, we don't feel the applicant amended its
7 application to include relief from section
8 2115.4.

9 We reviewed the file. We have
10 reviewed the transcript. There is no an
11 affirmative motion for relief in the file.
12 Moreover, if you look through the transcript,
13 there is no specific reference to 2115.4. If
14 you look through the exhibits that the
15 applicant says contained its request for a
16 motion to amend, namely Exhibit 29 and I
17 believe page 213 of the transcript, no such
18 request is made.

19 So we don't feel as if they have
20 requested relief under that section and we
21 will not be proceeding forward as if that were
22 a grounds for relief in our deliberations.

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1 Do others want to weigh in? Okay.

2 In that case then, why don't we start with a
3 very brief sort of recitation of the facts in
4 this case and how this case came before us and
5 a little bit of the background?

6 This is an application that was
7 presented to the BZA for deliberation decision
8 for area variance relief from sections 2101.1
9 and 2115.2 of the Zoning Regs. These are two
10 sections of our regs that speak to off-street
11 parking very specifically. The applicant
12 proposes construction of a two-story 20,000
13 square foot Walgreens Retail Center in the C-
14 3-A at the intersection of Connecticut and
15 Veazey Place, N.W.

16 The Walgreens' project will require
17 57 off-street parking spaces under section
18 2101.1 because of its size and moreover at
19 least 25 of those spaces would have to be
20 regulation size, measuring 9 x 19 under our
21 section 2115.2 before the applicant could
22 satisfy parking through compact spaces.

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1 That's not the case here.
2 Applicant's project includes only 31 off-
3 street spaces and only 20 of those are
4 regulation size. Therefore, the applicants
5 request variance relief under 2101.1 and, as I
6 said, 2115.2.

7 The applicant withdrew its initial
8 request for variance relief from section
9 2201.1 regarding the height of the loading
10 dock.

11 The record has been full in this
12 case. There were a number of pleadings
13 submitted. A hearing was -- hearings were
14 conducted. We heard testimony from, of
15 course, the applicant, Walgreens, and its
16 witnesses, Mr. Clarke, Mr. Harris, its
17 transportation expert, Ms. Milanovich. We
18 also heard from the Office of Planning, DDOT,
19 ANC-3F.

20 Party status was granted to Mr. Ted
21 Occhialino and to the Concerned Citizens of
22 Van Ness. Subsequently, they consolidated

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1 their presentation for the Board and did a
2 very great job. And there were some witnesses
3 in opposition as well.

4 Let me start by stating the test
5 for variance relief, both with respect to
6 2101.1 and 2115.2. In order to prevail on a
7 variance claim, the applicant must show a
8 unique or exceptional situation, as for
9 example the shape, the irregular shape of a
10 property. They also must show that there is a
11 practical difficulty caused by the unique
12 condition or exceptional situation.

13 They must further show that there
14 is no substantial detriment to the public good
15 and no harm to the Zone Plan.

16 As weighed against that standard
17 and beginning with the unique and exceptional
18 prong of the test, what the evidence tended to
19 show was that this is an irregularly shaped
20 corner lot. It is trapezoidal in shape. At
21 its widest point, the west lot line along
22 Connecticut Avenue, it is about 136.9 feet and

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1 it narrows in the rear, the east lot line, to
2 about 68.82 feet.

3 So in effect, you have got a piece
4 of property where in the rear of the property
5 had it been shaped as a pure rectangle, you
6 would have about maybe 70 square feet more
7 property and presumably one could get
8 additional parking there, but that's not the
9 case. It is trapezoidal-shaped and it places
10 some constraints on the property.

11 In addition to that, there is a 15
12 foot building restriction line on the Veazey
13 Place side, which is the north lot line of the
14 property, but even without that, it is an
15 irregularly shaped property that in and of
16 itself places some constraints on the
17 applicant.

18 In addition to the shape of the
19 property, there was some testimony regarding
20 the Office of Planning and the District
21 Department of Transportation strongly
22 encouraging this applicant to place the

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1 building directly on Connecticut Avenue, so
2 that the general pattern of buildings in this
3 particular area of Connecticut Avenue could be
4 maintained, namely that the buildings are all
5 built close to the street.

6 And the Office of Planning and DDOT
7 refer to that as their urban design policy
8 preference. So it was some give and take and
9 back and forth between the applicant and two
10 District Government agencies surrounding the
11 location of the property. Ultimately, the
12 applicant made the decision on its own to
13 place the property on Connecticut Avenue, but
14 with tremendous pressure and loss of parking
15 stemming from the conversations with the
16 Office of Planning and the DDOT.

17 But nonetheless, the evidence
18 clearly shows that the property was
19 irregularly shaped, trapezoidal, and I don't
20 think any aspect of that evidence was
21 successfully refuted.

22 With respect to the practical

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1 difficulty prong of the test, the evidence
2 that came in showed that the use of the
3 surface area on the Veazey side for parking
4 would tend to narrow the building to an
5 infeasible size and also eliminate the ramp to
6 the below-grade garage.

7 Partially, this was due to the
8 building restriction, but it's also due to the
9 trapezoidal-shape of the property. If they
10 were to attempt to place the surface parking
11 on the west lot line, which is Connecticut
12 Avenue, obviously, that couldn't be done,
13 because the entire building was brought up to
14 Connecticut Avenue.

15 If they were to attempt to place
16 the parking in the rear, because of the shape,
17 they could only get the four spaces that are
18 currently in the proposed project. And so the
19 site wouldn't yield parking, surface parking,
20 there. And with respect to attempting to get
21 surface parking on the south side of the lot,
22 that would require that the trash dumpsters

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1 and parts of the delivery be displaced.

2 So the site had some real
3 constraints in terms of getting surface
4 parking on -- anywhere except for in the rear
5 and that didn't allow much room except for the
6 four spaces.

7 With respect to underground
8 parking, efforts to increase the parking
9 supply from the proposed 27 would require a
10 second underground level. In other words, of
11 the 31 spaces being provided in the project,
12 27 are underground. But for the applicant to
13 attempt to do more than that, would require a
14 second subterranean level, which the testimony
15 indicated would be both cost-prohibitive and
16 would require an infeasible ramp configuration
17 on the Veazey Street Plaza.

18 With respect to the issue of the
19 regulation size parking spaces, and again the
20 applicant is only allowed to do compact sizes
21 once it has first provided 25 regulation
22 spaces, but with respect to that issue the

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1 testimony suggested and showed that the
2 northern edge of the underground parking level
3 was very shallow, in fact, too shallow for
4 regulation sized parking, that that was a
5 result of the trapezoidal-shape of the
6 property and that it was also a result of the
7 need to have the ramp come from Veazey to the
8 first level of parking.

9 So with respect to the issues of
10 unique and/or exceptional situation and
11 practical difficulty, the evidence put on by
12 the applicant is as stated and was fairly
13 strong.

14 I'm going to go through the
15 evidence, summarize the evidence put on by the
16 ANC and the party status opponent, but first
17 I'm going to walk briefly through the
18 transportation evidence put on, because that
19 relates directly to whether there is
20 substantial detriment to the public good. And
21 this was where the graveling of the case
22 really took everyone in terms of their being

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1 alleged congestion.

2 I know that Mr. Dettman has some
3 thoughts on this and I would stop right now,
4 pause to see if you would like to weigh in
5 now? Okay. Let me defer to Mr. Dettman.

6 VICE CHAIR DETTMAN: Thank you, Mr.
7 Chairman. I can make a few notes based on a
8 fairly thorough analysis of the traffic study.

9 Basically, I didn't really see
10 anything in there that would give rise to kind
11 of a failure of the third prong. I thought it
12 was a very well done parking study given the
13 data that is -- industry data that is
14 available and the field study that was done.

15 So very briefly, I looked at it in
16 terms of parking, additional traffic on the
17 roads, what kind of congestion that is going
18 to have on the surrounding neighborhood as
19 well as queuing. And some of the things that
20 the study specifically speaks to really
21 doesn't go to the parking relief.

22 And so I really made sure that I

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1 was looking at this with a narrow focus and
2 with the focus that, you know, what are the
3 potential negative impacts on the surrounding
4 neighborhood that would be caused due to the
5 reduction in the number of required parking
6 spaces?

7 And so with respect to parking, you
8 know, the ability of this site to accommodate
9 the anticipated trips, the study shows -- and
10 again, the study is based on this ITE data.
11 It is largely suburban. So you know, we do it
12 as an exercise to get a general idea of what
13 could be expected.

14 But then, you know, it is kind of
15 subjective. We need to look at where the site
16 really is located in the urban environment.
17 You know, taking into account a 50 percent
18 mode split and I think that's appropriate and
19 DDOT certainly did as well given the public
20 transportation that services this site.

21 The study shows that it can be
22 expected that in the morning 37 trips will be

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1 made to this site and in the p.m. 42 trips
2 would be made to this site. And as you
3 stated, 31 parking spaces are going to be
4 provided.

5 And so on its face, looking at this
6 ITE data, if you just kind of look at the
7 numbers, there is a potential for, you know, 6
8 cars and spill-over in the morning, 11 cars in
9 the afternoon. But from there, you start to
10 look at, you know, the environment. This is a
11 very urban environment. The data is largely
12 suburban.

13 It doesn't -- those numbers don't
14 take into account any kind of turnover. I
15 mean, these are trips within the time span of
16 an hour, the peak hour. It is certainly my
17 opinion that trips to a drugstore are
18 relatively short lived. So those 6 cars that
19 are going to come, there is a good chance that
20 there is going to be one or two spots
21 available during the peak hour to absorb any
22 potential for spill-over.

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1 In addition, looking at the uses
2 that are in the surrounding area, there is a
3 known quantity in this area already with the
4 CVS. And it was brought out in testimony that
5 there is a CVS across the street as well as a
6 Giant that, you know, to a certain extent,
7 operates as a drugstore and that there is
8 adequate parking.

9 And so any chance that there is
10 spill-over and no parking available at the
11 Walgreens, there is a good chance that those
12 people would just patronize the business
13 across the street. So with respect to
14 parking, I really don't see the potential for,
15 you know, adverse spill-over onto the streets.

16 Finally, with respect to traffic
17 and congestion and again, I didn't look at
18 this with the frame of mind that, you know,
19 how many cars is this going to put on the
20 street and how is it going to affect the level
21 of service at these intersections?

22 I mainly looked at it in terms of

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1 the chance for spill-over and what impact is
2 that spill-over going to have on the level of
3 service of the intersections? And I looked at
4 it that way, because even if this site was
5 providing the required number of parking, the
6 same number of trips are going to be on the
7 street.

8 So looking at it from that angle, I
9 really don't see where any potential for
10 spill-over is going to cause an increase in
11 congestion that is really going to drive down
12 the level of service at any of these
13 intersections, again, because I think there
14 are alternatives in the area with the CVS and
15 the Giant where any spill-over is going to be
16 accommodated in someone else's parking garage.

17 And also, the number of trips
18 generated in the study did not take into
19 account pass-by trips, meaning cars that are
20 already going to be on the road. Essentially
21 what they did is to ensure a conservative
22 estimate, they took -- they considered pass-by

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1 trips as trips that were going to be generated
2 by the site itself.

3 Meaning, these are cars that are
4 going to be leaving their house, going to
5 Walgreens and going home. So additional cars
6 on the road. They state that it's a fair
7 assumption to say that 53 percent of the trips
8 going to the site are going to be pass-by
9 trips. Those are cars that are already on the
10 road and reflected in the level of service
11 study.

12 So the -- again, the transportation
13 study was fairly well executed. And I don't
14 see anything that would make me feel that
15 there is going to be an adverse impact on the
16 neighborhood.

17 CHAIRMAN LOUD: Thank you, Mr.
18 Dettman, that was an excellent recap of the
19 study. Mr. Turnbull, do you have any
20 questions or any -- gotcha. I had one
21 question for you, Mr. Dettman.

22 The ITE study concludes that a

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1 drugstore of this size without a drive-through
2 would probably have a peak hour parking demand
3 of 37 spaces. And this applicant is supplying
4 31 spaces. Did you want to -- do you have any
5 thoughts on the differential?

6 VICE CHAIR DETTMAN: Well, that's
7 where I got -- that's where I came up with
8 these like spill-over numbers.

9 CHAIRMAN LOUD: Okay.

10 VICE CHAIR DETTMAN: If there is a
11 demand for -- not only did the trip generation
12 come up with 37 in the morning and 42 in the
13 afternoon, but looking at the parking demand,
14 which I guess is another calculation kind of
15 metric that is put out by ITE, it came up with
16 37.

17 So 31 spaces, 37 cars, spill-over
18 of 6 over the course of an hour, I think,
19 because of the turnover and the short duration
20 of a trip to a drugstore, I think the site
21 itself is going to be able to absorb any of
22 that spill-over.

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1 CHAIRMAN LOUD: Thank you. Again,
2 thank you, Mr. Dettman. I think that's an
3 excellent recap of the evidence in terms of
4 this third prong of the test. There is really
5 nothing that I would add to it. Obviously,
6 DDOT weighed in on the case. They did provide
7 some testimony. They did reach a conclusion
8 that 31 spaces was a suitable amount of
9 parking for this site. And the Office of
10 Planning also concluded that the 31 spaces
11 would not be detrimental in this context.

12 And I think as you alluded, there
13 are a lot of options there in terms of the 50/
14 50 mode split, the fact that the freight area
15 for this site, according to the testimony of
16 Mr. Harris and Mr. Clarke, is about .5 to 1
17 mile and so many of the folks who come there,
18 you know, even if they are driving, presumably
19 are aware of this excess parking available at
20 the Giant.

21 I think Mrs. Varick testified that
22 there are 499 spaces there and Ms. Solomon

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1 testified that there is always parking
2 available there. So one of the concerns that
3 we heard from the ANC, and I'll get into that
4 a little bit, is that if, assuming arguendo,
5 that 31 is an insufficient number of spaces
6 where the requirement is 57, there would be
7 some congestion on Veazey Place and perhaps in
8 the alley as well.

9 And I think the applicant did a
10 good job of showing and the evidence generally
11 showed that there are alternatives there that
12 would tend to preclude that kind of congestion
13 from happening in this case.

14 I wanted to speak about the ANC's
15 case. The ANC put on a case. Ms. Solomon and
16 Ms. Perry and did, what I thought was, an
17 outstanding job of coordinating a fairly
18 complex amount of information in the sense of
19 having a number of persons and parties
20 interested in presenting the case.

21 I think their concerns, once the
22 loading dock issue was removed from the case,

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1 boiled down to two primary considerations.
2 No. 1, they didn't believe the property was
3 unique and they cited the 15 foot building
4 restriction line and how that is applicable in
5 the number of buildings throughout the
6 District. And I think they had some issues
7 with the shape of the property qualifying as
8 unique.

9 However, I think the applicant did
10 a very good job with respect to the whole
11 issue of the shape of the property,
12 particularly the narrowing of the lot in the
13 back. They, essentially, lose half of the lot
14 width in the back because of the shape. And
15 that's pretty significant. And I don't think
16 the ANC had a response or an answer for that.

17 The second area of concern for the
18 ANC was the whole issue of congestion. That
19 again, assuming arguendo that 31 spaces were
20 insufficient, that there would be some
21 congestion. But I don't think that, first,
22 the ANC demonstrated that 31 would be

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1 insufficient.

2 I think the ITE study did a really
3 good job of demonstrating that the 31 would be
4 certainly adequate, that was backed up by
5 DDOT, backed up by OP and perhaps more than
6 adequate. They might actually need less.

7 So one would really have to first
8 buy into the assumption that 31 would be
9 insufficient to follow the rest of their
10 argument, which is that it would lead to
11 congestion. But I think even if you assume
12 arguendo that there is the potential for some
13 congestion, it is just as permissible an
14 inference from the evidentiary record, as you
15 allude to, to conclude that there are options
16 to congestion there because of the small trade
17 area.

18 Most folks that live in the area,
19 presumably, are familiar with the area, and
20 the large supply of parking directly across
21 the street. You would -- I think it's a
22 permissible inference that since the trade

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1 area is so small, many of the folks would know
2 about that parking and take advantage of it.
3 And it is a quick turnover kind of trip that
4 you make to a place like that.

5 So I did not find the evidence with
6 respect to their congestion argument or their
7 uniqueness argument persuasive.

8 There was a party status applicant
9 and -- two party status applicants and they
10 combined efforts. Mr. Ted Occhialino led that
11 effort and did, what I thought was, a really
12 fantastic job of organizing his presentation,
13 in the 2 years I have been here, frankly, just
14 very organized.

15 He stated at the outset how many
16 witnesses he had, what each witness was going
17 to testify to. Sure enough, each witness
18 testified to exactly what he said they were
19 going to testify to. He stayed within his
20 hour. And the sum of his case was to try to
21 demonstrate that the supply of 31 would be
22 inadequate given the size of the Walgreens.

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1 And he tried to establish that very
2 significantly through Ms. Whiteley, who had
3 done a study of the Tenleytown CVS and tried
4 to draw some conclusions and comparisons with
5 respect to her study and the ITE data.

6 One of the interesting things that
7 came out, I think, during the hearing was that
8 the ITE data is the industry standard. And if
9 you are not going to look at the ITE data,
10 then from an expert's point of view, that
11 three surveys on three separate occasions need
12 to be taken.

13 And I think in the case of Ms.
14 Whiteley, that standard was not met. So I
15 think it was a great effort, but I think the
16 combination of the expertise that the
17 applicant presented and you have referenced
18 the study itself, the applicant -- I mean, in
19 the person of Ms. Milanovich and her
20 testimony, but also the study itself was
21 pretty difficult to rebut in terms of there
22 being inadequate supply of parking.

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1 Mr. Dettman, were there any
2 conditions or issues relative to the entrance
3 on Veazey Place that you wanted to get into
4 now or any thoughts you had about that?

5 VICE CHAIR DETTMAN: I can just
6 note the two conditions that were suggested in
7 the traffic study. Now, one of them may not
8 be appropriate given the relief that is being
9 -- given the relief that is before the Board
10 right now.

11 The traffic study suggested that
12 deliveries should be restricted to 30 foot
13 trucks and should be made during non-peak
14 hours, that's the one that may not be
15 appropriate. The second one is a "do not
16 block the driveway" sign should be installed
17 on Veazey Terrace just east of the proposed
18 driveway.

19 And just in my review of the record
20 and previous cases that we have had with
21 similar types of retail or similar types of
22 projects, there were a couple of things that I

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1 -- you know, came to my head that I thought
2 maybe could help mitigate any potential spill-
3 over onto the neighborhood streets.

4 Perhaps a "for customers only" sign
5 to alert drivers of the number -- at the
6 entrance of the parking garage, a similar sign
7 with a time limit on the four spaces to the
8 rear of the property. And there was mention
9 by the applicant that they were looking into
10 some kind of system to alert drivers of the
11 number of spaces that would be available in
12 the garage, which, if implemented, I think
13 could help alleviate the situation that was
14 brought up by the opposition where people go
15 down -- I think it was mentioned an SUV goes
16 down there, there is no spaces available, so
17 you have to do kind of a 3-point turn in there
18 while other people are trying to get in.

19 So those were the things that just
20 kind of came to my head.

21 CHAIRMAN LOUD: Okay. Do you have
22 anything further to add on the other aspects

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1 of the variance test or the record generally
2 before us?

3 VICE CHAIR DETTMAN: I'm in general
4 agreement with the way you laid out the first
5 and second prong. I think that the shape of
6 the lot being a trapezoid is the primary
7 driver behind, you know, the variance test.

8 I think the 15 foot building
9 restriction line though not unique to the
10 city, I think it does contribute to their
11 practical difficulty, in that the regs
12 specifically speak to not being allowed to
13 locate surface parking between the lot line
14 and the building restriction line.

15 So and the placement of the
16 building, I think that's an urban design
17 preference that OP has. It's certainly a good
18 urban design preference, but, again, I don't
19 think that that's particularly unique in that
20 that would apply to any building being located
21 along Connecticut Avenue or most of the
22 streets in the city.

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1 But again, it does contribute to
2 their practical difficulty, because,
3 essentially, what that does is it drives all
4 surface parking to the rear of the property
5 where it narrows down.

6 We inquired of the applicant right
7 at the end of the hearing as to why, when
8 moving the building up to Connecticut Avenue,
9 the footprint had to expand, why the square
10 footage had to go from just over 15,000 square
11 feet to 20,000 square feet.

12 And the applicant -- you know, the
13 response was the loss of the drive-through
14 was, you know, a financial impact to them.
15 And so, you know, that would have to -- that
16 equated to a slight expansion of the
17 footprint. And in so doing, it decreased the
18 amount of space in the rear of the building
19 that could accommodate surface parking, which
20 drives you underground even to a further
21 extent.

22 CHAIRMAN LOUD: Um-hum.

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1 VICE CHAIR DETTMAN: And so then
2 you get underground and you only have so much
3 space, given the columns and the size of the
4 lot. And I was convinced, based on the
5 applicant's testimony, that a second level of
6 parking spaces would be financially
7 burdensome.

8 CHAIRMAN LOUD: Um-hum.

9 VICE CHAIR DETTMAN: So those were
10 just a couple extra thoughts that I had with
11 respect to the first prong.

12 CHAIRMAN LOUD: I don't think that
13 I have anything to add to what you have said
14 and what I have said earlier. And I would
15 like to close out our deliberation and move to
16 a vote on this matter.

17 Okay. Well, with that said, I
18 would like to move for approval of Application
19 No. 17789 of Walgreens Pharmacy for variance
20 relief from section 2101.1 and section 2115.2.
21 2101.1 allowing a reduction of the required
22 spaces from 57 to 31 and 2115.2 allowing the

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1 applicant to provide compact parking spaces
2 without first providing the required 25
3 regulation size spaces. Is there a second?

4 VICE CHAIR DETTMAN: Second.

5 CHAIRMAN LOUD: Any further
6 deliberation? If there are no further
7 deliberation, I think I would like to call for
8 a vote, but quite candidly, Mr. Moy, let me
9 ask you this question, since this is my first
10 day in this seat. There could be a condition
11 imposed here, so would this be the appropriate
12 time to discuss that or after the vote?

13 MR. MOY: I think before you
14 vote --

15 CHAIRMAN LOUD: Okay.

16 MR. MOY: -- would be appropriate,
17 Mr. Chairman.

18 CHAIRMAN LOUD: All right. Then
19 let's spend a few moments on that discussion
20 regarding conditions. Mr. Dettman, did you
21 have some thoughts on that?

22 VICE CHAIR DETTMAN: I think the

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1 conditions -- I think the "do not block
2 driveway" sign as proposed by the
3 transportation engineer, I think that's a good
4 suggestion for a condition and a relatively
5 easy one to implement. And it goes
6 specifically to parking and any type of spill-
7 over that could happen onto the streets.

8 I don't remember the gentleman's
9 name from CVS, but he had mentioned something
10 about how they occasionally will use "for
11 customers only" signs at their facilities. I
12 think that's again a relatively easy one to
13 implement.

14 CHAIRMAN LOUD: Um-hum.

15 VICE CHAIR DETTMAN: And could be
16 effectively enforced.

17 CHAIRMAN LOUD: Okay. I think
18 those are both good ideas. Let me just
19 clarify. So the "for customer only" signs
20 would be both on Veazey Terrace, Veazey Place,
21 I'm sorry, not Veazey Terrace, Veazey Place at
22 the entrance to the underground ramp as well

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1 as the four rear surface spaces?

2 VICE CHAIR DETTMAN: That's right.

3 CHAIRMAN LOUD: Okay.

4 VICE CHAIR DETTMAN: The sign on
5 the four surface spaces that the gentleman
6 from CVS had mentioned that they occasionally
7 will put a time limit on it. And we see that
8 occasionally, you know, to kind of encourage
9 turnover of those spaces, you know, short
10 lived, short duration trips. So maybe that's
11 a condition tacked on to this.

12 CHAIRMAN LOUD: Okay. I think it
13 will be simple enough to do. I don't have any
14 problems with that. So let me then --
15 anything else, Mr. Dettman?

16 VICE CHAIR DETTMAN: Did we want to
17 address this idea of implementing a system to
18 alert drivers of the number of spaces
19 available in the garage?

20 CHAIRMAN LOUD: You know, I think
21 for all of the reasons that we covered in the
22 hearing, the Wells study took a look at the

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1 level of service for Veazey and the alley and
2 said that it was an appropriate level of
3 service D or better and it might even improve
4 by built-out conditions, the availability of
5 this huge parking supply right there on Veazey
6 and the split mode where most of these folks,
7 according to the data, are living within a
8 half a mile or mile, and so they probably are
9 going to be using non-auto transport.

10 I'm not certain if we want to take
11 it to that level.

12 VICE CHAIR DETTMAN: I concur.

13 CHAIRMAN LOUD: Okay. So as
14 clarified then, I would like to move again for
15 approval of Application No. 17789, Walgreens
16 Pharmacy, for relief from section 2101.1 and
17 2115.2, as conditioned. And the conditions
18 are three and it would be that: The applicant
19 install a "for customers only" sign on the
20 Veazey Street entrance to the underground
21 parking facility; that the applicant also
22 install a "for customers only" sign in the

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1 rear of the property where the four surface
2 spaces are that would also include a time
3 limitation on it; and that the applicant, in
4 accordance with its own study, the Wells study
5 install a "do not block the driveway" sign on
6 the Veazey Terrace side just east of the
7 proposed driveway.

8 VICE CHAIR DETTMAN: Second.

9 CHAIRMAN LOUD: Any further
10 deliberation? Okay. Then I would like to
11 call for a vote.

12 All those in favor say aye.

13 ALL: Aye.

14 CHAIRMAN LOUD: All those opposed?
15 Nay? I'm sorry, all those opposed?
16 Abstentions? Would you call --

17 MR. MOY: Yes, Mr. Chair, before I
18 call the final vote, the staff would like to
19 add that we have absentee ballots from two
20 participating Members on this case. The first
21 one is from Mr. Jeffries who participated and
22 his absentee vote is to approve with such

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1 conditions as the Board may impose.

2 Similarly, we also have the same
3 vote from Mary Oates Walker whose vote is also
4 to approve with such conditions as the Board
5 may impose.

6 So with these two votes in the
7 affirmative, it would give a final vote of 4-
8 0-1 to approve as conditioned. The motion
9 made by the Chair, Mr. Loud, seconded by Mr.
10 Dettman, the Vice Chair. Also in support, of
11 course, Ms. Walker and Mr. Jeffries and no
12 other Board Member participating. Again, 4-0-
13 1.

14 CHAIRMAN LOUD: Thank you, Mr. Moy.

15 MR. MOY: You're welcome, Mr.
16 Chairman. The next and last case for
17 decision, I believe, Mr. Chair, is Application
18 No. 17799 of Chy H. Yang, pursuant to 11 DCMR
19 3104.1. Staff notes for the Board that the
20 application was amended to withdraw zoning
21 relief from variance requirements.

22 So this reading then is again,

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1 pursuant to 11 DCMR 3104.1, for a special
2 exception under section 223, from the open
3 court requirement under section 406, for a
4 rear addition to an existing one-family row
5 dwelling in the R-4 District. This is at
6 premises 1121 Lamont Street, N.W., Square
7 2842, Lot 64.

8 As the Board will recall, on
9 January 13, 2009, the Board completed public
10 testimony, closed the record and scheduled its
11 decision on April 7th. The Board requested
12 additional information to supplement the
13 record from the applicant and responses from
14 the opposition party and the ANC and other
15 parties, including the next door neighbor to
16 the subject property.

17 There are two filings in your case
18 folders, Mr. Chairman. The first is from the
19 applicant and that post-hearing document is
20 identified as Exhibit 43. The second filing
21 is from ANC-1A, that was filed on April 3,
22 2009 identified in your case folder as Exhibit

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1 44.

2 Staff adds, Mr. Chairman, that this
3 filing is a preliminary matter, that it is
4 untimely since the deadline for responses
5 imposed by the Board is March 23, 2009. Other
6 than that, the Board is to act on the merits
7 of the special exception 223 request. And
8 that completes the staff's briefing, Madam --
9 Mr. Chairman.

10 CHAIRMAN LOUD: Thank you, Mr. Moy.

11 I believe the Board does not have any
12 objection to the late filing in this matter.
13 And I believe that Mr. Dettman is going to
14 lead us in our deliberation on this case.

15 VICE CHAIR DETTMAN: Thank you, Mr.
16 Chairman. Before I dive into our analysis
17 under 223, I just wanted to say for the record
18 that I did not participate in the hearing. I
19 did sit for the original postponement. I did
20 not sit for the hearing, but I have reviewed
21 the record in its entirety and am prepared to
22 lead the Board through the analysis as well as

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1 participate in our final vote.

2 I think there is a provision in the
3 regs that speaks to participation on hearings,
4 but I don't necessarily know what it is.
5 Perhaps the Office of Attorney General can
6 help me with that.

7 And so going to the merits of the
8 case, in my review of the record, there seemed
9 to be a little bit of discussion about whether
10 or not this should be a special exception
11 under 223 or a variance from the court
12 requirements of 406. I think that it is most
13 appropriately before the Board, given the
14 characteristics of this lot and the
15 improvements on the lot.

16 I think it falls squarely under 223
17 special exception and that's how I assumed I
18 could go forward, if the Board agreed.

19 This case has some history to it
20 given, you know, the improvements to the
21 property and how they were carried out, but I
22 think given what the Board needs to look at in

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1 its narrow focus on 223, this is a very, very
2 straightforward case. So I'll just kind of
3 very briefly go through the filing, the latest
4 filing given, the plans that were submitted in
5 the record, which is our Exhibit No. 43 and
6 then jump right into a very brief description
7 of the 223 criteria.

8 At the end of the Public Hearing
9 one of the Board Members raised the question
10 that were the renderings that were being
11 looked at adequate enough to give the Board
12 some confidence that what was being proposed
13 was actually going to be carried through to
14 completion.

15 So the Board put off decision
16 pending the submission of plans drawn up by a
17 professional architect. The applicant did
18 that and again that's Exhibit No. 43.

19 There is some opposition to this
20 case. The neighbor at 1119 Lamont Street, I
21 believe, a Mr. Green, and his primary
22 opposition went to water that was going onto

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1 his property during heavy rainstorms given the
2 design of the improvements. And that design
3 is that there was a -- on the east side of the
4 property, the roof was sloped so that when it
5 did rain, the water went onto his property.

6 Between the postponement and the
7 hearing, the applicant and the neighbor did
8 work together and the neighbor did propose
9 some design changes that he would like to see
10 happen and the applicant did oblige.

11 Those changes are: The flattening
12 of the roof, the construction of a 10 inch
13 perimeter wall around three sides of the
14 addition to prevent water from flowing onto
15 the neighbor's property, as well as moving the
16 gutter downspout from the east to the west
17 side of the property. And all of those
18 changes are reflected in the amended plans,
19 Exhibit 43.

20 As a final note, we had instructed
21 the applicant to work with the neighbor to the
22 other side, to the side that the gutter is

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1 being moved to to make sure that there wasn't
2 -- basically, we weren't going to move the
3 opposition from one side of the property to
4 the other, because of water issues.

5 Though we don't have anything in
6 the file that says that the applicant worked
7 with the neighbor or the neighbor has any
8 opposition or support, I'm confident enough
9 that the applicant did work with the neighbor,
10 did serve the neighbor with the plans and they
11 were on notice.

12 So I think not having anything in
13 the record in the form of opposition, I think
14 it is safe to assume that we are okay with
15 going forward with this case.

16 So getting into 223 which looks at
17 additions to one family dwellings or flats in
18 Residential Districts, this is an addition, a
19 one-story addition, approximately, 50 square
20 feet to a one-family row dwelling located in
21 the R-4 District that does not meet the court
22 requirements of section 406.

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1 223.2(a) looks at the impacts to
2 light and air. I'm just going to follow along
3 very quickly OP's report, because I think that
4 laid out the analysis quite well.

5 Given the size and the height of
6 this addition and the orientation of the
7 property, it does not appear as if this small
8 addition is going to have any undue impact on
9 the availability of light and air to
10 neighboring properties.

11 The same goes for 223.2(b) with
12 respect to the privacy, use and enjoyment of
13 the neighboring properties. The placement of
14 the window and again the size and scale of
15 this addition does not look like it's going to
16 have an unduly impact on use and enjoyment of
17 neighboring properties.

18 (c) deals with the visibility of
19 the structure from streets, alleys and other
20 public rights-of-way. The addition is not
21 going to be visible from the Lamont Street
22 right-of-way. It is visible from the rear

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1 alley and according to OP's report, it is
2 similar in finishing in terms of its materials
3 to many of the other additions that have taken
4 place along this street.

5 And it is definitely much smaller
6 in scale than some of the other additions. So
7 I think that provision is met.

8 (d) deals with filing requirements,
9 which according to OP's report, the applicant
10 has met that.

11 223.3 deals with the allowable lot
12 occupancy under 223. And as this is an R-4
13 District, 70 percent lot occupancy is allowed.

14 The addition brings the subject property to,
15 approximately, 52 percent lot occupancy, which
16 is well under the 70 percent.

17 223.4 deals with special treatment
18 required by the Board. OP does not feel that
19 any is necessary, nor do I.

20 Finally, 223.5 states "This section
21 may not be used to permit the introduction or
22 expansion of a nonconforming use as a special

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1 exception." This is a one-family row
2 dwelling, with the addition it is going to
3 remain as a one-family row dwelling. There is
4 no indication that that's going to change.

5 So with that, I will hand it back
6 to you, Mr. Chairman. And it appears to me
7 that the requirements of 223 are met.

8 CHAIRMAN LOUD: Thank you, Mr.
9 Dettman, that was an excellent summary of both
10 the facts in this case, the history and 223.
11 Was there an ANC report in this case?

12 VICE CHAIR DETTMAN: Yes, thank you
13 for bringing that up, because originally the
14 ANC did --

15 MR. MOY: 44.

16 VICE CHAIR DETTMAN: What was that,
17 Mr. Moy?

18 MR. MOY: It should be Exhibit 44.

19 VICE CHAIR DETTMAN: Got it, got
20 it. Thank you. It's Exhibit 44 in our
21 record. And as I said, the ANC was originally
22 opposed to it, as indicated in Exhibits 33 and

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1 38, when they were looking at this as a
2 variance. In working with the neighbor and
3 working out any issues that the neighbor had,
4 the ANC has submitted a new resolution, again,
5 Exhibit 44, expressing their support for the
6 case.

7 CHAIRMAN LOUD: Thank you, Mr.
8 Dettman. I don't believe that I have anything
9 to add to that. I think it is helpful that
10 the applicant went back and undertook some of
11 the steps that resulted from the initial
12 hearing as well as worked with the ANC to undo
13 the original vote for denial. And the relief
14 changed a little bit from a variance to a
15 special exception as well.

16 So is there a motion, Mr. Dettman?

17 MS. MONROE: While there is a
18 second, do you want the cite to the regulation
19 that Mr. Dettman referenced earlier? Because
20 you didn't -- you had to review the transcript
21 and you weren't at the hearing. If you do, it
22 is 3105.15.

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1 CHAIRMAN LOUD: Thank you. And
2 that -- what Ms. Miller is referring to is
3 the --

4 MR. MOY: Ms. Monroe.

5 CHAIRMAN LOUD: I'm sorry. I've
6 been called madam this morning, so don't --
7 what Ms. Monroe is referring to is Mr.
8 Dettman's reference to not being -- not
9 participating in the original hearing, but
10 having read the transcript fully and reviewed
11 the complete record, so thereby being
12 authorized to participate and vote in the
13 case.

14 So thank you, Ms. Monroe, for
15 clearing that up. I think you were in the
16 process of making a motion.

17 VICE CHAIR DETTMAN: I would like
18 to move for approval of Application No. 17799
19 of Chy Yang, pursuant to 11 DCMR 3104.1, for a
20 special exception under section 223, not
21 meeting the court requirements of section 406,
22 for a rear addition to an existing one-family

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1 row dwelling in the R-4 District at 21 -- or
2 1121 Lamont Street, N.W.

3 CHAIRMAN LOUD: Second.

4 MR. MOY: Mr. Chairman?

5 CHAIRMAN LOUD: Yes.

6 MR. MOY: Oh, I'm sorry.

7 CHAIRMAN LOUD: Go ahead, no.

8 MR. MOY: For the final vote, we
9 also have an absentee ballot from a
10 participating Board Member who is Mary Oates
11 Walker and her absentee vote is to approve
12 with such conditions as the Board may impose.

13 So with her vote in the affirmative, that
14 would give a final vote of 3-0-2 on the motion
15 of Mr. Dettman, the Vice Chair, to approve,
16 seconded by Mr. Loud. We have no other Board
17 Member participating nor a Zoning Commission
18 Member participating. So again, the final
19 vote 3-0-2.

20 CHAIRMAN LOUD: The only thing, Mr.
21 Moy, I don't think -- did we vote? I don't
22 think we voted actually.

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1 MR. MOY: Oh, I'm sorry.

2 CHAIRMAN LOUD: We were on --

3 MR. MOY: I'm sorry.

4 CHAIRMAN LOUD: -- the verge of it.

5 MR. MOY: There you go. I'm off
6 today, too.

7 CHAIRMAN LOUD: That's okay. So a
8 motion has been made. It has been seconded.

9 All those in favor say aye.

10 CHAIRMAN LOUD: Aye.

11 VICE CHAIR DETTMAN: Aye.

12 CHAIRMAN LOUD: Those opposed?
13 Abstentions? Hearing none, can you read the
14 vote?

15 MR. MOY: Yes, sir, very much.

16 CHAIRMAN LOUD: All right.

17 MR. MOY: Again, on the motion of
18 the Vice Chair, Mr. Dettman to approve the
19 special exception relief of 223 not meeting
20 the open court requirements under section 406,
21 seconded by the Chair, Mr. Loud. Again, which
22 I gave as a preview, the absentee vote from

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1 Ms. Walker, which gives a final vote of 3-0-2.

2 CHAIRMAN LOUD: Thank you, Mr. Moy.

3 Do we have anything further on the agenda for
4 the Public Meeting this morning?

5 MR. MOY: No, sir.

6 MS. BAILEY: Mr. Chairman?

7 CHAIRMAN LOUD: Yes.

8 MS. BAILEY: Before you leave this
9 case, there was a party in opposition, a
10 Charles Green of 1119 Lamont Street. Did you
11 want a full order on this project?

12 CHAIRMAN LOUD: Yes.

13 MS. BAILEY: Thank you.

14 CHAIRMAN LOUD: Thank you.

15 MR. MOY: That should complete the
16 Public Meeting, Mr. Chairman.

17 CHAIRMAN LOUD: Is it appropriate
18 for me to take point of privilege and just say
19 something on the record?

20 MR. MOY: Yes, you may.

21 CHAIRMAN LOUD: On that case of my
22 first Public Meeting?

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1 MR. MOY: Yes, you may.

2 CHAIRMAN LOUD: I just wanted to go
3 on the record and thank Mr. Moy for all of his
4 support during the transition phase of this.
5 I step into some fairly large shoes, but there
6 is a great team of people involved, both the
7 volunteer Board Members as well as the staff
8 from OZ. So I wanted to thank Mr. Moy.

9 I also especially want to thank Ms.
10 Beverley Bailey for all of the assistance and
11 support that she has provided the two years
12 that I have served on this Board. I feel
13 very, very comfortable transitioning as Chair
14 because of all of that support. And it goes
15 without saying that the Office of Attorney
16 General is in the same stead.

17 So I just wanted to say that
18 officially on the record as we close the
19 Public Meeting this morning. Thank all of you
20 guys.

21 MS. MONROE: Thank you.

22 MR. MOY: Thank you, Mr. Chairman,

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1 and welcome. Oh, also, Mr. Chairman, I also
2 want to welcome the new Vice Chair as well. I
3 didn't want to neglect our new Vice Chairman,
4 Mr. Dettman.

5 VICE CHAIR DETTMAN: Thank you, Mr.
6 Moy, and I would definitely repeat the
7 comments and the gratitude expressed by Mr.
8 Loud.

9 COMMISSIONER TURNBULL: And on
10 behalf of the Zoning Commission, we extend our
11 congratulations also to both of you.

12 CHAIRMAN LOUD: Thank you, Mr.
13 Turnbull. This meeting is officially adjourned.

14 (Whereupon, the Public Meeting was
15 concluded at 10:49 a.m.)

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