

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17789 on behalf of Walgreen Eastern Co., Inc., pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under sections 2101 and 2115 to permit the redevelopment of the site, to demolish an existing gas station/auto repair facility, and to construct a pharmacy and drug store with underground parking at 4225 Connecticut Avenue, N.W. (Square 2051, Lot 7).

HEARING DATES: July 1, 2008, October 28, 2008, February 24, 2009, March 3, 2009
DECISION DATE: April 7, 2009

DECISION AND ORDER

Mid-Atlantic Commercial Properties, LLC (the applicant or Walgreens), filed this application for variance relief on February 19, 2008, on behalf of Walgreen Eastern Co., Inc. (Walgreens), the contract-purchaser of the subject property. Following a public hearing, the Board of Zoning Adjustment (the Board) voted to approve the requested relief.

PRELIMINARY MATTERS

Applicant Representation. The applicant authorized the law firm of Pillsbury Winthrop Shaw Pittman, LLP to represent it during these proceedings.

Self-Certification. The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3113.2 (Exhibit 5).

The Application

The original application was for a parking reduction variance to allow 27 spaces instead of the 40 spaces required under the Zoning Regulations. (Exhibits 2 and 4). However, because the site plan was revised, the nature of the relief changed and Walgreens amended its application twice. After the site plan revisions, Walgreens proposed to provide 31 spaces and amended its application to seek relief from the new requirement of 57 spaces. (Exhibit 29). Walgreens also sought relief under § 2115.2, for permission to substitute 11 of the required regulation spaces with compact size parking spaces, and relief under § 2201.1 for permission to deviate from the loading requirements. (Exhibit 29). However, Walgreens withdrew its request for relief from

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the loading requirements at the public hearing on February 24, 2009. In its April 3, 2009 post-hearing filing, the applicant for the first time asserted that its application included relief from § 2115.4 of the Regulations¹. (Exhibit 52) However, the Board finds that no request for this relief was included in the original application and no request to amend the application to add such relief was made. As a result, the Board will not consider the request for relief under this provision. Thus, the final revised application before the Board sought relief only under §§ 2101.1 and 2115.2 (*i.e.*, a parking reduction variance and a variance to replace regulation sized spaces with compact spaces).

Notice of Public Hearing

Notice. Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent by the Office of Zoning to the applicant, all owners of property within 200 feet of the subject site, Advisory Neighborhood Commission (ANC) 3F, and the District of Columbia Office of Planning (OP).

Posting. The applicant posted placards at the property regarding the application and public hearing in accordance with 11 DCMR §§ 3113.14 through 3113.20. It also submitted an affidavit to this effect in accordance with 11 DCMR §§ 3113.19 and 3113.20. (Exhibit 35).

ANC 3F. The subject site is located within the jurisdiction of ANC 3F which is automatically a party to this application. In its report dated February 19, 2009, ANC 3F indicated that at a regularly scheduled monthly meeting with a quorum present, it voted to oppose the application. (Exhibit 36). The ANC cited three general concerns regarding the application: (1) The ANC asserted that the applicant is able to comply with the Zoning Regulations and is not constrained (as claimed) by the size, shape, or topography of the site. The ANC concluded that, as such, the applicant will not be able to meet its burden of proof for a variance. (2) The ANC asserted that the proposed project would result in further problems with traffic, loading, and parking at and near the site. (3) Finally, the ANC noted that the proposed design contemplates the use of public space at Connecticut Avenue and Veazey Place and at the garage ramp construction, and that the applicant needs approval for such use from the District's Public Space Committee before the application can be heard.

Requests for Party Status. There were two requests for party status: (1) from Ted Occhialino on behalf of the Concerned Citizens of Van Ness (owners of cooperative apartments located at 3001 Veazey Terrace, NW) (Exhibit 30); and (2) from Brian Lederer on behalf of the Van Ness South Tenants' Association, Inc., tenants at the Archstone Van Ness building located at 3003 Van Ness Street, NW) (Exhibit 32). Both requests were granted by the Board, without objection from the applicant or the ANC, and the opposition parties presented a consolidated presentation during the public hearing.

Persons in Support/Opposition. No persons testified in support or opposition to the application. However, the Board received a letter in support of the application from Steve Strauss. (Exhibit

¹ This provision requires that compact spaces be placed in groups of five contiguous spaces.

25).

Government Reports

OP Report. OP reviewed the variance application and prepared a report recommending approval of the variance requests. (Exhibit 34). OP's representative, Maxine Brown-Roberts, also testified that, in her opinion, the proposal would not negatively impact the community or the intent of the Zoning Regulations.

Department of Transportation (DDOT). DDOT reviewed the application and prepared a report recommending approval of the variance requests. (Exhibit 33²). In its report, DDOT noted that the reduction in parking spaces would be "a laudable action". It also noted that, because the proposed store would be approximately fifty feet from a metro stop, a parking reduction would be "logical". DDOT's representative, Jeff Jennings, testified at the hearing. Mr. Jennings testified that Walgreens was proposing a sufficient amount of parking to serve its needs.

Fire and Emergency Medical Services Department (Fire and EMS). The District Fire and EMS Department filed a report stating that it had no objection to the variance requests so long as the International Fire Code and all applicable laws were complied with. (Exhibit 37).

The Public Hearing

The case was initially scheduled for a hearing on July 1, 2008, but was continued twice (to October 28, 2008, then to February 24, 2009) so that the applicant could revise its site plan in response to comments from the ANC and government agencies. As mentioned above, the revisions required government approval for the use of public space at Connecticut Avenue and Veazey Place. Because the applicant's request for such approval was pending before the Public Space Committee at the time of the public hearing on February 24, the ANC requested that the Board postpone its hearing on the variance requests. However, the Board denied this request and the actual hearing began on February 24, 2009.

The Applicant's Case

The applicant introduced four witnesses in support of its application: Matthew Harris, representing Walgreens; Randall Clarke, representing Mid-Atlantic Commercial Properties, LLC; Mark Orling of Rust Orling Architects, an architectural firm; and Jami Milanovich, of Wells & Associates, a traffic and transportation firm. Mr. Orling was qualified as an architectural expert and Ms. Milanovich was qualified as an expert in traffic engineering. The applicant also filed a transportation impact study (Exhibit 29, Tab F) which was reviewed by DDOT. The study concluded that a significant portion of the trips associated with the proposed store would be made by individuals walking to the site or by vehicles en route to a primary

² DDOT also submitted a supplemental report dated March 2, 2009, confirming that it supported having 31 parking spaces at the proposed store.

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destination, and that traffic generated by the Walgreens would increase AM peak hour traffic at Connecticut/Veazey by only .5 per cent and PM peak hour traffic by only 1.2 per cent.

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is located at 4225 Connecticut Avenue, NW, Square 2051, Lot 7, in the C-3-A zone district, and is approximately 15,435 square feet in size.
2. The property is generally bounded by Connecticut Avenue, NW to the west, Veazey Terrace, NW to the north, a 16-foot wide alley to the east, and a retail establishment to the south.
3. The property has an unusual trapezoidal shape in that it stretches for 136.97 linear feet along Connecticut Avenue, but narrows to just slightly over half of that length along the public alley in the rear.
4. The property slopes down from west to east. The low point at the corner of Connecticut Avenue and Veazey Terrace is over 6 feet lower than the high point at the alley.
5. The property is currently developed with a gas station/auto repair shop and has a total of four curb cuts servicing it.
6. The property has a 15 foot building restriction line along Veazey Terrace which prohibits any improvements or the provision of parking spaces in its setback area.
7. The property is located adjacent to high-density residential uses, the University of the District of Columbia, and commercial retail. The Van Ness Metrorail Station is directly across the street from the property, approximately 50 feet to the north of the proposed Walgreens. (Exhibit 29, p. 7, and DDOT Report, Exhibit 33, p.2).
8. The block on which the property is situated is a particularly critical portion of the major thoroughfare of Connecticut Avenue. All of the other properties on the block are built to the property line along Connecticut Avenue.

The Proposed Project

9. The applicant proposes to demolish the existing gas station/auto repair shop and construct a 20,000 square foot Walgreens pharmacy and drug store. The store will have a floor area ratio (FAR) of 1.4, a height of 34 feet (with a 10 foot corner tower), and a lot occupancy of 69%. The design is well within the parameters of the C-3-A zone district, which permits a maximum commercial FAR of 2.5, maximum lot occupancy of 100%, and a maximum height of 65 feet.

10. The development will also include a single level below-grade garage holding 27 parking spaces, and four surface spaces will be provided along the eastern property line, adjacent to the alley. Of the thirty-one total spaces to be provided, twenty will be regulation size with dimensions of 9 feet by 19 feet, and eleven spaces will be “compact” spaces with dimensions of only 8 feet by 16 feet.
11. The design includes one curb cut along Veazey Terrace. The below-grade garage will be accessed from a ramp at Veazey Terrace, while the four surface parking spaces will be accessed from the public alley.
12. To conform to the other properties on the block face, the store will be constructed close to the front property line, eliminating eight potential surface parking spaces.

The Zoning Relief

13. Commercial developments in the C-3-A zone district are required to provide one parking space for every 300 square feet of development over 3,000 square feet. 11 DCMR § 2101.1. Therefore, a store this size (20,000 square feet) apparently required 57 parking spaces at the time this application was filed, which could be further reduced to 43 spaces as a result of a final rule adopted by the Zoning Commission in Zoning Commission Order No. 03-10, May 15, 2009. In any event, because the applicant will provide 31 spaces, it requires variance relief under § 2101.1.
14. Twenty of the 31 proposed spaces will be regulation size (9 feet by 19 feet in dimension) as required by 11 DCMR § 2115.1. However, the applicant seeks to replace 11 of the 31 regulation size spaces with compact size spaces (8 by 16 feet in dimension) (See, 11 DCMR § 2115.3). Section 2115.2 of the Zoning Regulations allows up to 40% of required parking spaces to be designated for compact cars, but also requires that a minimum of twenty-five spaces be regulation size. Because the applicant will provide only twenty (and not twenty-five) regulation size spaces, the applicant also requires relief under § 2115.2.

Exceptional Topography, and Condition

15. The six-foot grade change at the property is an exceptional topographical condition.
16. The subject property has an exceptional trapezoidal shape.
17. The 15-foot building restriction line along one of two streets and the fact that the property is the only one on the block facing Connecticut Avenue with an improvement that is not built close to its front property lines, are exceptional conditions of the property.

Practical Difficulty

The garage

18. The Board finds that the property's odd trapezoidal shape on a corner lot, in combination with the objective of reducing the number of existing curb cuts, limits design possibilities for the site as well as the amount of possible parking. These restrictions limit the garage to a single aisle feeding two rows of parking. There is no available room for additional parking spaces in the garage.
19. Because the building will front Connecticut Avenue, the design will minimize surface parking in general and eliminate surface parking along Connecticut Avenue altogether, further limiting designs for how to park the site. Given these design constraints, the applicant is forced to maximize the use of the below-grade garage to provide the bulk of the parking. To fully comply with the parking requirement, the applicant would need to add a second level to the garage. However, the Board agrees with OP that the size and shape of the lot and the required ramp configuration for the second level would lead to an inefficient, costly, and excessive parking level. (Exhibit 34, OP Report).
20. In addition, the Board finds that Veazey Terrace is the only possible location for the garage ramp because DDOT requested that the garage entrance be located as far away from Connecticut Avenue as possible. However, locating the ramp at the higher grade at Veazey Terrace poses additional challenges in designing the garage.

Surface parking

21. The use of surface parking is also constrained by the trapezoidal shape of the property and the building placement up to Connecticut Avenue. The applicant cannot place surface parking along the west lot line on Connecticut Avenue because the entire building will be brought up to the street. Surface parking on the south side of the lot would require movement of the trash dumpsters and parts of the delivery areas, and create turning difficulties for parked cars. The only area that can accommodate surface parking is at the rear of the lot, where the lot narrows down to 68.8 feet. Because of the odd shape of the lot, only four spaces can be accommodated at the rear, and those four spaces are part of the proposed project.
22. The building restriction line along Veazey Terrace precludes surface parking or improvements within the setback area, also making it difficult to park the site. The use of the surface area on the Veazey side for parking would tend to narrow the building to an infeasible size and also eliminate the ramp to the below-grade garage.

Reduction of regulation sized spaces

23. The Board finds that the shape and size of the lot also affects the number of full size spaces that can be provided in the underground garage. In the area on the northern edge of the garage where it is too shallow to accommodate full size spaces, only compact spaces can be accommodated.

The Impact of the Proposed Project

24. The Board finds that the proposed project will be compatible with the neighborhood and the zone plan will not be compromised. Placement of the building close to Connecticut Avenue will be consistent with other nearby buildings that are built along or close to the property line.
25. The Board finds that the proposed parking reduction will not adversely affect the traffic or parking conditions in the neighborhood. The Board agrees with OP and the applicant that most of the pharmacy patrons will walk from the surrounding neighborhood, as the proposed pharmacy will be within easy walking distance of residences, offices and the University of the District of Columbia, as well as a metro station and stops for several bus lines. (Exhibit 34, OP Report).
26. The Board also credits the applicant's traffic study and expert testimony from the applicant's traffic engineer. Both conclude that 31 spaces are more than adequate for this type of store. The traffic study was based upon data from the Institute of Transportation Engineers (ITE), which publishes the industry-wide accepted standards.
27. According to the ITE data, the site will generate 37 additional AM peak hour trips and 42 additional PM peak hour trips. While the 31 proposed spaces may appear insufficient in light of the ITE data, the Board credits the applicant's expert testimony that 31 spaces are more than sufficient at this site.
28. According to Ms. Milanovich, the ITE data is based on suburban locations with little, if any, public transportation. In the case of an urban pharmacy, such as the one proposed here, it is necessary to extrapolate from the ITE data. Taking this factor into account, Ms. Milanovich extrapolated that as few as 18 spaces would serve the store's needs because the proposed site has the benefit of greater density, is close to metrorail and metrobus, and is projected to have a 50/50 mode split. (T., February 24, 2009, p. 208).
29. The Board concludes that the parking reduction will not result in any significant "spillover" into the nearby residential neighborhood. First, a significant portion of the trips associated with the proposed Walgreens will be made by non-automobile modes (primarily on foot). (Exhibit 29, Tab F). Second, the ITE data does not take into account the short duration of the trips to the Walgreens.
30. Given the quick turnover of customers, the site should absorb any potential for spillover. Third, should parking at the Walgreens be insufficient, there are other parking alternatives at the nearby Giant store and CVS pharmacy. Testimony from the ANC representative indicated that parking was always available at the Giant store directly across the street.
31. There is no evidence that the parking reduction will lead to increased congestion near the site. The Board credits the DDOT report which concluded that the proposal will result in an improvement in comparison to existing conditions. DDOT notes that the existing gas

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station/auto repair facility has significant negative impacts on the transportation facilities in the area, and that the projected vehicle trips to the Walgreens will be significantly less than existing traffic counts at the site. (Exhibit 33).

32. Also, the Board notes that the ITE trip data took a conservative approach in considering the “pass-by” trips (cars that are already on the road) as trips that are generated by the site. According to the traffic study, 53% of the trips going to the site are going to be pass-by trips. These are cars that are on the road (without the Walgreens) and will not add to the congestion in the area.
33. The traffic study³ presented by the opposition party was flawed in its methodology. The study did not use ITE standards, which are the industry-wide accepted standards. The Board accepts the applicant’s contention (through expert testimony) that a traffic study not using ITE data must take three to five surveys on separate occasions to average out any anomalies. Because the opposition’s study was not conducted in this manner, its conclusions were not accepted by the Board.
34. The Board agrees with OP that the provision of the 11 compact spaces will allow the garage to accommodate more spaces than would be possible if only regulation spaces were provided. The Board further agrees with OP that providing the 11 compact spaces can be accomplished without negatively impacting the neighborhood or the intent of the Zoning Regulations. (Exhibit 34, OP Report).

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799), as amended; D.C. Official Code § 6-641.07(g)(3)(2001), to grant variances from the strict application of the Zoning Regulations. As stated above, the applicant here seeks relief from the off-street parking requirements under sections 2101 and 2115 of the Zoning Regulations.

Under the three-prong test for area variances set out in 11 DCMR § 3103.2, an applicant must demonstrate that (1) the property has an exceptional size, shape, topography, or other extraordinary or exceptional situation or condition inherent in the property; (2) the property owner will encounter practical difficulty if the Zoning Regulations are strictly applied; and (3) the requested variances will not result in substantial detriment to the public good or the zone plan. *See Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1167 (D.C. 1990). In order to prove “practical difficulties,” an applicant must demonstrate first, that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. *Id.* at 1170.

³ The study was presented in testimony by one of the opposition witnesses. It attempted to refute the applicant’s traffic counts based on traffic counts at a nearby CVS pharmacy.

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On April 7, 2009, the date upon which the Board made its decision, the Board believes that the applicant was required to provide 57 parking spaces. A month later, a technical correction made by the Zoning Commission made it clear that this parking requirement was subject to a matter of right reduction of twenty five percent, due to the proximity of the site to metro. (The rule, as last codified, had indicated that Board approval was needed.) Therefore, taking the twenty five percent reduction into account, the actual number of parking spaces required was 43⁴. The applicant proposes to provide 31 spaces.

The Applicant cannot provide eight of these spaces because of its need to construct the property up to the front lot line the property shares with Connecticut Avenue. Of the twelve spaces not being provided, eight can be attributed to the Applicant's inability to provide the surface parking it has originally proposed. The Board concurs with the Applicant that this portion of Connecticut Avenue is exceptional in that all but the Applicant's property is built to the property line. The Board concludes that a practical difficulty arises in that, as to this particular block of Connecticut Avenue, construction of surface parking in front of the building would be so incompatible with the surroundings as to effectively preclude use of the area in front of the building for this purpose.

The inability to provide the remaining four required spaces can be explained by the irregular shape of the property, a six foot grade change at the property, and a 15 foot building restriction line along Veazey Terrace.

As to practical difficulty, the applicant is constrained in parking the site by all of the above factors. It is constrained in providing surface parking in all areas except the rear, but because of the narrowing of the lot at the rear, can only provide four spaces there. Because of the lot's shape and grade, the applicant is also constrained in building the garage. The parking requirement can be met only if the applicant provides a second level of parking in the garage. But as noted by OP, this would be costly and inefficient. (See Finding of Fact 19). Similarly, the applicant is constrained by the lot's shape and grade in providing the required number of regulation sized spaces. (See Finding of Fact 23).

⁴ Subsection 2104.1 as it now reads (and as it should have read as of the date of the decision) is as follows:

2104.1 Except as provided in §2104.2, the number of parking spaces required for a nonresidential building or structure shall be seventy-five percent (75%) of the amount otherwise ordinarily required under § 2101.1 if the building is located within a radius of eight hundred feet (800 ft.) of a Metrorail station entrance and:

- (a) The building or structure is located in a nonresidential district and is at least eight hundred feet (800 ft.) from any R-1, R-2, R-3, or R-4 District; and
- (b) The Metrorail station is currently in operation or is one for which a construction contract has been awarded.

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The opposition party claims that the applicant has not established practical difficulty, asserting it can meet the parking requirement by constructing a smaller store.⁵ However, as stated above, without the drive-through pharmacy, it would not be economically feasible to construct a smaller store. (See Finding of Fact 13).

Turning to the third prong of the variance test, the Board concludes that neither the parking reduction nor the reduction in regulation-sized spaces will result in substantial detriment to the public good. As explained, the Board concludes that the 31 spaces provided are more than adequate, as is the substitution of 11 compact spaces for regulation sized spaces.

The parties in opposition argued that the reduction in parking will exacerbate traffic conditions in the area, including congestion in the alley behind the property. However, these claims are inconsistent with the opinions of OP, DDOT, and the traffic engineer. While the opposition attempted to refute the applicant's contentions with its own traffic study, this study was flawed. Thus, the Board cannot conclude that reducing the required parking will increase congestion in the area.

The parties in opposition also argued that the reduction in parking would lead to more cars parked in the neighborhood or illegally parked on their property. However, no persuasive evidence was presented regarding this "spill-over" effect, and the Board does not accept this contention.

Finally, the parties in opposition argued that the applicant's traffic data is unreliable and, therefore, the Board should reject the applicant's conclusions related to parking and traffic. (Exhibit 53). The Board does not agree. As stated, the applicant's traffic engineer relied on established methods for calculating parking needs. This Board has repeatedly accepted the standards espoused by the ITE, and sees no reason to reject the ITE data and the extrapolations therefrom in this case. Furthermore, the Board has no other reason for rejecting Ms. Milanovich's testimony that 31 spaces will be more than adequate at the site. *See, Committee for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1193 (D.C. 1982) ("some indication of the reasons for rejecting expert, as opposed to lay testimony is required").

Miscellaneous Issues

Lastly, the Board will address two legal issues raised by the opposition party. (See, Exhibit 52, Opposition Party's Proposed Findings of Fact and Conclusions of Law). First, the opposition claims that the applicant cannot qualify for a variance because it is not the "owner" of the property. Second, the opposition claims that the sole means for obtaining a parking reduction is through a special exception under § 2108 of the Zoning Regulation. However, the opposition is mistaken with respect to each of these claims. First, this application was brought by the owner. Although the application was brought on Walgreens' behalf, the application itself was signed by the current property owner. (See, Exhibit 2 and Exhibit 29, pp. 1 and 3, and it is the owner's

⁵ As stated above, the parking requirement is linked to the size of the store. (See Finding of Fact 12).

ability to comply with the Zoning Regulations that is at issue here). The owner wishes for the property to be developed in the manner proposed by Walgreens and this cannot occur without the relief that is granted here. Second, the applicant is not limited to special exception relief, as the opposition asserts. He may elect to seek a parking reduction under § 2108 as a special exception; or, if the stricter test is met, may seek a parking reduction as a variance from the parking requirements. While § 2108 sets a 25% cap on the special exception relief, § 3103 allows a variance from *any* zoning regulation, including the parking requirements set forth in the parking schedule of § 2101. So long as the strict variance test is met, an applicant may seek a partial reduction – either less than or more than 25% of the requirement -- or even a full parking reduction.

ANC Issues and Concerns

Section 13(b) (d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10 (d)(3)(B)) requires that the Board's written orders give "great weight" to the issues and concerns raised in the recommendations of the affected ANC. Specifically:

The written rationale of the decision shall articulate with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate specific findings and conclusions with respect to each issue and concern raised by the Commission. Further, the government entity is required to support its position on the record.

As noted, the ANC opposed the application. It raised concerns that: (1) the application did not meet the variance test because the property is not affected by an exceptional situation or condition of the property; (2) the store would lead to more congestion; (3) a curb cut on Veazey Terrace would be objectionable; and (4) the Board should not hear the application until the Public Space Committee has made a decision. Finally, the ANC concluded that it would prefer no parking at all rather than a parking reduction. (T. March 3, 2009, pp. 33, 54.)

Regarding the question of "uniqueness", the Board does not agree that the property is not affected by an exceptional situation or condition. The Board finds the opposite in fact: there are conditions that affect the property which undeniably affect the applicant's ability to comply with the Zoning Regulations. As discussed in detail above, the property has an irregular shape with almost twice the frontage along Connecticut Avenue as along the rear alley. Essentially, the applicant loses half of the lot width in the back because of its shape. In addition, there is a six foot grade change at the property which presents significant design constraints. And, the 15 foot building restriction line – though not unique in the District – is an additional factor on this site that further limits parking capacity by prohibiting spaces in the setback along Veazey Terrace. These characteristics constitute an exceptional condition which poses a challenge in parking the site.

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As to the alleged “congestion”, this argument is premised upon the 31 proposed spaces being insufficient and leading to congestion. As stated, the Board does not find the 31 spaces to be insufficient. But even if the Board were to assume some potential for congestion, there are two factors which decrease this possibility. First, most of the Walgreens customers are likely to live in the area and be familiar with the large supply of available parking directly across the street. Second, the quick trip turnover to the Walgreens should reduce the possibility of congestion at and near the site. While the Board does not believe that a parking reduction will result in congestion or spill-over, it will impose conditions which require signage in order to mitigate these potential adverse effects.

Regarding the curb cut on Veazey Terrace, this objection is not related to the parking reduction relief but to the design of the project. Therefore, it is not a relevant “issue” or “concern” to be given great weight. *Wheeler v. District of Columbia Bd. of Zoning Adjustment*, 395 A.2d 85 (D.C. App. 1978). However, even were the Board to give this issue “great weight”, the ANC did not present specific evidence to support its claim that the curb cut will result in objectionable conditions.

Regarding the request to continue the hearing, the Board finds no reason to delay this proceeding pending a decision by the District’s Public Space Committee. There is no regulation which requires Public Space Committee approval before the Board can hear this application, and the applicant has a right to have this application decided on the merits. See, *N Street Follies v. D.C. Bd. of Zoning Adjustment*, 949 A.2d 584 (D.C. 2008) (BZA must hear zoning application pending design review by Historic Preservation Review Board).

In sum, the Board has given great weight to the ANC’s recommendation but does not agree with the ANC.

Therefore, for the reasons stated above, it is hereby **ORDERED** that the application is hereby **GRANTED** to allow zoning relief from the requirements under § 2101.1 and § 2115.2. Approval is also **SUBJECT** to the following **CONDITIONS**:

1. A “For Customers Only” sign will be placed at the entrance to the underground garage ramp at Veazey Place.
2. A “For Customers Only” sign will be placed at the rear of the property in the location of the four surface parking spaces, which will also include a time limitation for parking.
3. A “Do Not Block the Driveway” sign will be placed east of the proposed driveway at Veazey Terrace.

Pursuant to § 3125.8, an applicant is required to carry out the construction, renovation, or alteration only in accordance with the plans approved by the Board, unless the Board orders otherwise. For the purposes of that provision, the Board’s approval of the plans does not include those drawings or specifications that do not show compliance with the compact parking space

requirement of § 2115.4. No building permit for the construction authorized by this order shall be issued unless the plans submitted with the application for the permit show compliance with that provision.

VOTE: **4-0-1** (Marc D. Loud and Shane L. Dettman to Approve; Gregory N. Jeffries and Mary Oates Walker to Approve by absentee ballot; one Mayoral appointee (vacant) not present, not voting)

Vote taken on April 7, 2009

ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board Members approved the issuance of this Decision and Order.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 17 2010

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

SG

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on MAR 17 2010, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

John Epting, Esq.
Christine Roddy, Esq.
Pillsbury Winthrop Shaw Pittman
2300 N Street, N.W.
Washington, D.C. 20037-1122

Chairperson
Advisory Neighborhood Commission 3F
4401-A Connecticut Avenue, N.W., Box #244
Washington, D.C. 20008-2322

Single Member District Commissioner 3F02
Advisory Neighborhood Commission 3F
4401-A Connecticut Avenue, N.W., Box #244
Washington, D.C. 20008-2322

Mary Cheh, Councilmember
Ward Three
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Washington, D.C. 20004

Ted Occhialino
Concerned Citizens of Van Ness
3001 Veazey Terrace, N.W.
Washington, D.C. 20008

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Brian Lederer
Van Ness South Tenants' Association, Inc.
3003 Van Ness Street, N.W., Box 1134
Washington, D.C. 20008

Bennett Rushkoff, Esquire
Acting General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:

A handwritten signature in black ink, appearing to read "Jamison L. Weinbaum", written over a horizontal line.

JAMISON L. WEINBAUM
Director, Office of Zoning

TWR