

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

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TUESDAY
NOVEMBER 6, 2007

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The Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER, Chair
MARC D. LOUD, Mayoral Appointee
SHANE DETTMAN, NCPC

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.
MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Public Meeting held on November 6, 2007.

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

10:10 a.m.

CHAIR MILLER: This meeting will please come to order.

Good morning, ladies and gentlemen. This is the November 6th Public Meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Ruthanne Miller. I'm the Chair of the BZA. With me today is Marc Loud, Mayoral Appointment, Shane Dettman representing NCPC on the BZA, Mr. Clifford Moy from the Office of Zoning, Mary Nagelhout from the Office of Attorney General and Ms. Beverley Bailey from the Office of Zoning.

Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door.

We do not take any public testimony at our meetings unless the Board asks someone to come forward.

1 Please be advised that this
2 proceeding is being recorded by a court
3 reporter and is also webcast live.
4 Accordingly, we must ask you to refrain from
5 any disruptive noises or actions in the
6 hearing room. Please turn off all beepers and
7 cell phones.

8 Does the Staff have any
9 preliminary matters?

10 MR. MOY: Good morning, Madam
11 Chair and Members of the Board. Staff -- we
12 could handle this on a case-by-case basis.

13 CHAIR MILLER: Okay. Thank you.
14 Then let's proceed with the agenda.

15 MR. MOY: The first case for
16 decision is Application Number 17611 of Jon
17 and Julie Mitchiner pursuant to 11 DCMR 3104.1
18 for a special exception to allow a garage
19 addition serving an existing single-family row
20 dwelling under Section 223 not meeting the lot
21 occupancy requirements (Section 403) in the R-
22 4 District at premises 314 12th Street, N.E.

1 That's in Square 986, Lot 53.

2 The Staff notes that the Applicant
3 at its hearing on May 22nd had amended the
4 application for variance relief, but the Board
5 noted at that hearing that it may test for
6 special exception relief.

7 On May 22nd, 2007, the Board
8 completed public testimony, closed the record
9 and scheduled its decision on September 4,
10 2007. Subsequently, the Board rescheduled its
11 decision to November 6.

12 The Staff also notes for the
13 record that on October 5th, 2007, that the
14 Office of Zoning issued Zoning Commission
15 Order Number 07-15. That was as I said on
16 October 5th. The Board -- for the merits of
17 the application as advertized as under special
18 exception relief.

19 The Staff will also note for the
20 record that -- for the transcript that there
21 is a sign interpreter for this proceeding on
22 this case and that completes the Staff's

1 briefing, Madam Chair.

2 CHAIR MILLER: Thank you very
3 much, Mr. Moy. Mr. Moy gave a good synopsis
4 of this case and excuse me if I'm a little bit
5 redundant. I just to highlight some things as
6 well about this case.

7 In this case, the Applicant sought
8 special exception relief originally from the
9 lot occupancy requirements pursuant to Section
10 223 to allow the construction of a garage and
11 the appeal was filed December 21st, 2006 and
12 a hearing was on May 22nd, 2006. At that time
13 -- oh, 2007. Sorry. At that time, 223 only
14 applied to, thank you, additions and not to
15 accessory structures and, therefore, Office of
16 Planning had stated that variance relief was
17 required and the Board concurred basically.

18 However, at that time, OP had also
19 put forward before the Zoning Commission a
20 text amendment that would extend 223 to apply
21 to accessory structures not just additions and
22 this particular garage would fall in that

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1 category.

2 So, what happened was we had the hearing
3 on the case, but then we postponed the
4 consideration of the application until the
5 next text amendment went into effect so that
6 it could be considered as a special exception
7 not as a variance.

8 So, now since the order went into
9 effect on October 5th, 2007 expanding 223 to
10 cover accessory structures, we are now
11 considering it under 223 and I would note that
12 it was advertised as a special exception
13 originally and at the hearing, Office of
14 Planning was noting how it really didn't meet
15 the variance test because it wasn't unique and
16 there wasn't a uniqueness that gave rise to
17 practical difficulty in complying with the
18 regs and, in fact, this was somewhat of a --
19 becoming a not uncommon issue in the District
20 and that's why there was this text amendment.
21 Because the Board was seeing this and Office
22 of Planning was seeing cases where there were

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1 no adverse impacts from additions of this
2 sort, but they weren't considered additions
3 because they weren't attached.

4 So, basically, the Applicant did
5 submit a burden of proof statement showing how
6 it meets the special exception under 223 and
7 I just want to highlight some of the aspects
8 of that. There is no opposition that was
9 filed in this case. In fact, the ANC
10 submitted a letter in support and it met the
11 great weight requirements and that's Exhibit
12 Number 24 and Capitol Hill Restoration Society
13 also submitted a letter in support. That's
14 Exhibit Number 22.

15 So, because there's no opposition,
16 I don't think we need to go into detail for
17 every element that it meets, but I do want to
18 highlight certainly the basics.

19 It comes within 223 because the
20 lot occupancy with the addition does not
21 exceed 70 percent. It increases lot occupancy
22 from 52.9 percent I believe to 69.7 percent.

1 Pursuant to 223.2, we look at whether it will
2 unduly affect the light and air or privacy of
3 neighboring properties. This proposed garage
4 is a replacement of a previously demolished
5 garage and it is similar in size and style to
6 existing garages on the block.

7 The Applicant did a description of
8 how it does not impact the light and air to
9 the north and the south and the -- the other
10 directions set forth in that burden of proof
11 statement. I don't think that we need to go
12 through that in detail, but shows that there
13 was not an impact on light and air on abutting
14 neighbors and we have no neighbors objecting
15 in the record.

16 Section 223.2 states that the
17 replacement together with the original
18 building when viewed from the street, alley or
19 other public ways shall not visually intrude
20 upon the character, scale and pattern of
21 houses along the subject street frontage. The
22 garage is not visible from the front of house

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1 and it is similar in style and materials to
2 other garages in the alley.

3 So, I think that that basically
4 covers the requirements for 223. Do other
5 Board Members want to add anything?

6 I mean there are certainly other
7 requirements such as they have to demonstrate
8 compliance by submitting graphical
9 representations such as plans and photographs
10 and elevations and they did that. They
11 submitted photos of the existing house and
12 surroundings and the plans and the official
13 plat from the D.C. Office of Surveyors.

14 So, this actually is the first
15 case under the text amendment and I think it
16 demonstrates why it is actually appropriate
17 and shares some of the same kind of concerns
18 that we've heard in other cases such as
19 security and things like that. Why people
20 want to have garages and it shows that there
21 aren't any other negative impacts.

22 So, any other comments?

1 Okay. Then I would move to
2 approve Application Number 17611 of Jon and
3 Julie Mitchiner pursuant to 11 Section -- DCMR
4 3104.1 for a special exception to allow a
5 garage addition serving an existing single-
6 family row dwelling under Section 223 not
7 meeting the lot occupancy requirements.

8 MEMBER LOUD: Madam Chair, I
9 second the motion.

10 CHAIR MILLER: Further
11 deliberation?

12 All those in favor say aye.

13 (Ayes.)

14 CHAIR MILLER: All those opposed?
15 All those abstaining? Mr. Moy, would you call
16 the vote please?

17 MR. MOY: Yes, Madam Chair, the
18 staff would record the vote as 2 to 0 to 1.
19 This is on the motion of the Chair Ms. Miller
20 to approve the application. Seconded by Mr.
21 Loud.

22 Staff also notes, Madam Chair,

1 that we have two absentee ballots from two
2 participating members on the application. One
3 is from Mr. Curtis Etherly and his absentee
4 ballot is to approve the application. The
5 second absentee ballot is from John Parsons
6 and his vote is to also approve the
7 application.

8 So, that would give a resulting
9 vote of 4 to 0 to 1.

10 CHAIR MILLER: Thank you. And I
11 would suggest that this be a summary order as
12 there's no opposition in this case. I believe
13 that's the consensus.

14 MR. MOY: Yes.

15 CHAIR MILLER: Okay. Thank you
16 very much.

17 MR. MOY: The next and last action
18 of the Board is a request for modification of
19 plans and waiver of six-month time requirement
20 of Application Number 17575 pursuant to
21 Section 3129 of the Zoning Regulations. This
22 modification is to the originally approved

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1 application of Nineteenth Street Baptist
2 Church which was pursuant to 11 DCMR 3104.1
3 for a special exception to establish an
4 accessory parking lot under Section 214 in the
5 R-1-B District at premises 4606 16th Street,
6 N.W. That's in Square 2652, Lot 22.

7 On October 11th, 2007, the Board
8 received a request from the Applicant for a
9 modification of approved plans and waiver of
10 the six-month time requirement. This was by
11 letter dated October 9th, 2007 and is
12 identified in your case folders as Exhibit 33.

13 Finally, the Applicant is also
14 requesting a waiver of the six-month time
15 requirement pursuant to Section 3129.3.

16 The final order was issued on
17 April 20th, 2007 and so, the six-month time
18 requirement would be a deadline of October the
19 20th, 2007 which would make the filing -- and
20 the Applicant filed on October the 11th. So,
21 it's the Staff's position that the waiver is
22 not required.

1 There's no other filings from the
2 parties on this application. So, the Board is
3 to act on the merits of the Applicant's
4 request and that concludes the Staff's
5 briefing, Madam Chair.

6 CHAIR MILLER: Thank you, Mr. Moy.

7 Mr. Moy, did you reference -- I
8 believe that we just received this morning a
9 request from the ANC to postpone the hearing
10 because they were not served with the --

11 MR. MOY: I have not, but if you
12 could do that for me, that would be
13 tremendous.

14 CHAIR MILLER: Okay. Okay. I
15 just wasn't sure whether I missed it.

16 Yes, we received this morning a
17 motion -- a request from Advisory Neighborhood
18 Commission 4C to postpone our meeting and
19 deliberation on this motion because they were
20 not served with the motion and they were a
21 party to the case and 3129.4 of our
22 regulations states that "All requests for

1 modifications of plans shall be served on all
2 of the parties to the original application at
3 the same time the request is filed with the
4 Board. A party shall have ten days within
5 which to submit written comments that such
6 party may have concerning the requested
7 modification."

8 Accordingly, I would suggest that
9 we postpone consideration of this motion for
10 that reason and that we set a new date after
11 we know that the ANC has been served and then
12 they have ten days to submit a written
13 response.

14 First of all, so, do other Board
15 Members concur with that suggestion?

16 MEMBER LOUD: Yes, I do.

17 CHAIR MILLER: Okay. And then I
18 think we can also make perhaps some comments
19 on what we have here without making any kind
20 of decision in order that perhaps this time
21 period can be put to maybe more effective use
22 even by the Applicant.

1 And I'd just like to comment that
2 this is -- this seems fairly unusual to me
3 that we get a letter like this indicating that
4 DCRA is refusing to -- sounds like really to
5 implement one of our orders. I mean I -- it
6 also seems unusual in that it doesn't seem to
7 me that -- we're not going to decide this
8 today obviously, but this is a minor
9 modification.

10 A minor modification is defined in
11 our rules and it's at 3129.7. It says
12 "Approval of a request for modification of
13 approved plans shall be limited to minor
14 modifications that do not change the material
15 facts the Board relied upon in approving the
16 application."

17 But, let me just step back for a
18 second and say first of all, we're not
19 deliberating this and these are just comments
20 to help the Applicant and the ANC or whatever
21 make use of the time before we do decide.

22 I want to say that I did not, I

1 don't think any of the Board Members here, sit
2 on this case. I did read the record though
3 and pursuant to our regs, that 3129.6, we can
4 vote on this if we have read the record. So,
5 I did read the record.

6 I was also sitting up on the dais
7 when the other Board Members deliberated on
8 this. So, that's -- that's my background on
9 this case.

10 But, it does appear to me that we
11 approved -- the Board approved pervious plans.
12 So, that doesn't appear on its face to be a
13 minor point and it also was something that was
14 recommended by DDOT. But, perhaps Applicant
15 in the meantime can address that issue more
16 thoroughly.

17 And also, this letter doesn't
18 really give the Board a full understanding of
19 what kind of decision was being made at DCRA.
20 It's very general. It says that DCRA has
21 steadfastly refused to grant the building
22 permit and perhaps the Applicant can get

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1 something more specific from DCRA showing how,
2 and or why DCRA is refusing to grant the
3 application.

4 Board Members have other comments?

5 MEMBER LOUD: Just to echo yours,
6 I think that the letter dated October 9 I
7 believe it raises potentially alarming
8 questions, but it's just one side of the story
9 and it's not even clear as to whether the
10 Zoning Administrator did something or a
11 subordinate staff. I think it just says DCRA.
12 So, it begs for more -- for the other side of
13 the story basically and I think by postponing
14 because ANC did not receive notice, you're
15 given an opportunity for the other side of the
16 story to come in so we can make an informed
17 decision.

18 CHAIR MILLER: Right. I'd also
19 say though in these types of motions, it's
20 like the other side would be DCRA and they're
21 not necessarily a party to the case. So, as
22 opposed to if this were an appeal. However,

1 if the Applicant is really seeking this, they
2 can get more information from DCRA. You know,
3 they'll have this opportunity to make their
4 case. So.

5 Yes. Okay. I think that's
6 probably enough said. Okay and so, therefore,
7 this case I guess is continued until a date to
8 be set after the ANC is served and has their
9 ten days to respond.

10 No, I think that concludes this
11 case. Do we have any other items on the
12 agenda, Mr. Moy?

13 MR. MOY: No, Madam Chair. I do
14 have one quick question for the Staff's
15 clarification. So, the Staff is to believe
16 then -- on the original application, Mr.
17 Etherly was the only original participant on
18 the case. So, it's Staff's understanding now
19 that in addition to Mr. Etherly, also
20 participating on this application would Mr.
21 Loud, yourself, the Chair Ms. Miller and Mr.
22 Dettman or not?

1 CHAIR MILLER: Yes.

2 MR. MOY: Just for the record.

3 CHAIR MILLER: Yes.

4 MR. MOY: Thank you. Thank you.

5 CHAIR MILLER: Okay.

6 MR. MOY: There's no other
7 business for the --

8 CHAIR MILLER: And we all have
9 read the record?

10 MR. MOY: Yes.

11 CHAIR MILLER: Okay. And there's
12 no other business.

13 MEMBER LOUD: Did we set a date
14 for the postpone --

15 CHAIR MILLER: No.

16 MEMBER LOUD: Do we have to set
17 it?

18 CHAIR MILLER: We have to set a
19 date when -- it doesn't start until they serve
20 the ANC and the ANC gets ten days to respond.
21 So, we'll set the date after all that happens.

22 Okay. Then there's no other

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1 business on the agenda for this morning.

2 We'll be reconvening this afternoon at 1:00

3 for a hearing and this meeting is adjourned.

4 (Whereupon, the meeting was
5 concluded at 10:29 a.m.)

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