

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MATT JESICK
ARTHUR JACKSON
JOHN MOORE
TRAVIS PARKER

This transcript constitutes the minutes from the Special Public Meeting held on January 23, 2007.

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

10:04 a.m.

CHAIRPERSON GRIFFIS: Good

morning, ladies and gentlemen. Let me call to order our Special Public Meeting of the 23rd of January 2007. This is the Board of Zoning Adjustment of the District of Columbia. My name is Geoff Griffis, Chairperson. Joining me today is the Vice Chair, Ms. Miller, and Mr. Etherly, our other esteemed Member of the Board.

Representing the National Capital Planning Commission with us is Mr. Mann and representing the Zoning Commission with us is Mr. Jeffries.

This is a Special Public Meeting. I would ask that everyone turn off their cell phones, beepers at this time as all our proceedings are going to be recorded and then transmitted. I will get into further detail with that when I call to order our hearing.

A Special Public Meeting, of

1 course, is a point at which you will hear the
2 deliberation of the Board based on a case that
3 has already been heard. This case is closed.
4 There is no further information required or
5 able to be submitted to the Board.

6 With that, let me say a good
7 morning to Ms. Bailey with the Office of
8 Zoning, Ms. Monroe with the Office of the
9 Attorney General is with us and Mr. Moy, also
10 with the Office of Zoning will be joining us
11 shortly. We need to move straight into
12 calling the first case for decision this
13 morning, 17537.

14 MR. MOY: Good morning, Mr.
15 Chairman and Members of the Board. The case
16 for decision this morning, January 23, 2007,
17 is Application No. 17537 of Victor Tabbs,
18 pursuant to 11 DCMR 3104.1, for a special
19 exception under section 223, not meeting the
20 lot occupancy requirements, section 403, and
21 pursuant to 3103.2, for a variance from the
22 limitation on the number of stories under

1 subsection 400.1, to construct a four story
2 rear addition to a flat two-family dwelling at
3 premises 740 13th Street, S.E., Square 1045,
4 Lot 97.

5 On December 12, 2006, the Board
6 completed public testimony, closed the record
7 and requested post-hearing documents by
8 January 16, 2007. Let's see, the filings
9 submitted into the record from both the
10 applicant and the ANC-6B, first the applicant.

11 The applicant's first filing was
12 on January 18, 2007. This is a cover letter
13 with a set of revised drawings. Second, there
14 was a second set of filings yesterday, January
15 the 22nd, which also included a set of
16 photographs. And finally, there was a final
17 cover letter that was submitted this morning,
18 which is identified in your case record as
19 Exhibit 47.

20 We have a filing from ANC-6B.
21 This letter is dated December 13, 2006 and is
22 identified as Exhibit 44. This letter

1 addresses the ANC's vote count and quorum
2 needed for great weight, I believe. Finally,
3 because of the late filings from the
4 applicant, the Board should take this matter
5 up as a preliminary matter.

6 Staff is prepared to go over the
7 post-hearing documents that were requested by
8 the Board, but I'll leave it at the Board's
9 decision on that point. So anyway, the Board
10 is to act on the merits of the special
11 exception application request not meeting lot
12 occupancy requirements and variance from the
13 number of story requirements and any
14 amendments to the notice, zoning, relief based
15 on the filing by the applicant. That
16 completes the staff's briefing, Mr. Chairman.

17 CHAIRPERSON GRIFFIS: Excellent.
18 Thank you very much, Mr. Moy. I appreciate
19 that and in terms of the filings, let me hear
20 if any Board Members have any objections to
21 accepting the last filings of which in
22 generality address those elements that we had

1 requested, that being further documentation,
2 also changes that were represented in the
3 proposed construction that came out of the
4 hearing.

5 We have an outside set of the
6 drawings. We have a letter. We also have
7 photographs of the adjacent areas. If there
8 are any difficulties or opposition, I can hear
9 that now. Not noting any opposition, I would
10 say we accept those into the record and move
11 ahead. Mr. Moy, I appreciate the review of
12 the record in this.

13 As we well know, this is a special
14 exception under 223 not meeting the lot
15 occupancy. I believe it is appropriate to
16 move ahead just under the special exception
17 and with great reliance on the analysis of the
18 Office of Planning and also in the furtherance
19 review of the documents that were submitted.

20 To that, under 223 as this Board
21 is well familiar in the dozens, if not
22 hundreds, of special exceptions under 223 that

1 we have done, this is an excellent provision
2 in the regulations that allows for additions
3 to residential buildings that do not meet all
4 of the criterium of the designated zone
5 district in which it is located.

6 This allows for the accommodation
7 of modernization expansion of those within
8 reason and within the parameters. We have
9 seen a variety of different levels of which it
10 evokes review. Obviously, the most critical
11 ones in the 223 is whether this would tend to
12 or would impair the light, use, privacy and
13 enjoyment of the adjacent properties.

14 We also are asked in the 223 to
15 have the applicant submit proper documentation
16 that shows what is being proposed and that
17 goes for a couple of reasons, but I think
18 importantly it goes to whether this would fit
19 within the character of the area of which it
20 is being proposed.

21 I will open it up to discussion
22 from Board Members and I think that as we were

1 looking at how this fit into the massing and
2 the rest of the area on 13th Street, S.E., it
3 was important to look at a PUD that was across
4 the alley in terms of establishing and
5 understanding of the context of which this is
6 being proposed.

7 We have received photographs that
8 illustrate the PUD that is moving forward and
9 is well into construction. We have
10 photographs that show the front of the site
11 property and also the adjacent property and I
12 will open it up to discussion on these
13 elements. Well, there it is. Comments?

14 Very well. Let me run through
15 some of the details on this. I know there was
16 opposition. We have letters of opposition
17 from Capitol Hill Restoration Society, from
18 the adjacent neighbors that had raised
19 elements of concern. We also had the Office
20 of Planning, I thought, articulately raising
21 elements of concern.

22 However, the Office of Planning is

1 in recommendation to approve this application.
2 However, they have pointed out the fact that
3 as proposed construction that created
4 nonconforming courts, the building essentially
5 is set back from the property line an
6 inappropriate distance. I forget what it was,
7 but it was no more than a foot, obviously,
8 making any sort of maintenance repair
9 difficult on the proposed property.

10 There were windows that were also
11 proposed. Those were removed, which is an
12 interesting point. Frankly, I know, Board
13 Members probably share this view, that a big
14 wall is less interesting, maybe that's nicely
15 put, than one that has fenestration on it.
16 However, on a property line those were also
17 removed.

18 Going to the details of what is
19 actually being requested here in this special
20 exception, it is pretty clear and it has been
21 evidenced the fact that the lot occupancy in
22 this zone district, which is in R-4, is 60

1 percent. What is being proposed is 63.8, so
2 about 64 percent lot occupancy.

3 What's intriguing to me about this
4 one is the fact that that's not a huge level
5 of change, as we look at it, and it certainly
6 is not even beginning to be in the realm of
7 what we have seen in special exceptions.
8 However, when you look at the adjacent
9 properties and where they begin and where they
10 end and also in terms of -- well, there that
11 is, and the depth of the site, it puts it into
12 a little bit bigger context of what 64 percent
13 actually appears to be.

14 I have to say I believe
15 fundamentally that the requirements for the
16 special exception that this application is
17 meant to address, the base level of which I
18 believe have been met. I have concern and
19 cause and would enjoy hearing some
20 deliberation from the other Board Members of
21 the other element and the last element of this
22 and that is the context.

1 The impact of what this would be
2 on the character of the row at the front and
3 the rear. We don't often get into design
4 elements in variance scenarios or special
5 exception scenarios, except for those
6 provisions and regulations that allow us to.
7 Meaning, in this 223, that is one of the
8 critical pieces that we are to look at, in
9 combination with all, how this massing fits.

10 Will it together with the original
11 building be in character, scale and pattern of
12 the rest of the block? What's difficult for
13 this one, I guess, in my own mind is that
14 there is an awful lot of character in this
15 area, depending on which side of the street
16 literally you look to.

17 We have an R-5-B across the
18 street. We have a C-2-B across the alley.
19 And this sets within R-4, an eclectic context.
20 But let me hear from others if there is
21 comment.

22 BOARD MEMBER MANN: I have a

1 couple of observations regarding that.

2 CHAIRPERSON GRIFFIS: Excellent.
3 Thank you, Mr. Mann.

4 BOARD MEMBER MANN: I think it's
5 actually interesting that when the building
6 was originally constructed prior to any sort
7 of grant of any relief, they have this brick
8 facade which actually might have been a little
9 more aesthetically pleasing than the
10 compromise that they have come up with in
11 order to avoid having to seek certain amounts
12 of relief.

13 But despite the fact that it might
14 not be the most, the absolute most
15 aesthetically pleasing alternative, I do think
16 that what they have come up with, what the
17 applicant has proposed, is acceptable. And I
18 do think that it is in character, particularly
19 when I see the evidence that was introduced
20 regarding the surrounding buildings and the
21 other structures in the vicinity and when I
22 look at the figure ground that was submitted

1 with Office of Planning's report that shows
2 how far other structures along the street do
3 extend into the yard, even though the two
4 immediately adjacent structures don't extend
5 as far into their yards as this does.

6 I don't think that it seems
7 terribly out of character actually and
8 particularly in the context of what's across
9 the alley. So the bottom line is, as far as
10 I'm concerned, I don't believe that there is
11 any impact to the character of the
12 neighborhood.

13 CHAIRPERSON GRIFFIS: Excellent.
14 Thank you. Others? Ms. Miller?

15 VICE CHAIR MILLER: I just want to
16 make a few comments. One is we had a lot of
17 testimony, I think, that went to the question
18 of whether this building was going to be three
19 stories or four and I just want to address
20 that. I think that the Board is of the
21 conclusion that it was measured correctly from
22 grade to ceiling and that in this case we're

1 talking about three stories and that a
2 variance is not required.

3 When we get into the special
4 exception, there was the question of light and
5 air as one of the factors in special exception
6 analysis and the Office of Planning was of the
7 position that it wouldn't unduly impact light
8 and air. And also, of course, their concerns
9 are with the courts and the windows which were
10 addressed by the applicant and they, of
11 course, found that it was not out of character
12 with the neighborhood.

13 I think that's a difficult issue
14 sometimes to discern, maybe more difficult for
15 some than others by photos. And so I guess in
16 my case, I'm relying a lot on the Office of
17 Planning's judgment. But often, and this is
18 in the back on an alley, there are various
19 degrees of jutting out. And so while it
20 doesn't necessarily look 100 percent
21 aesthetically pleasing in the pictures we've
22 seen thus far, I can't myself come to the

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1 conclusion that it is necessarily out of
2 character.

3 CHAIRPERSON GRIFFIS: Excellent.
4 Others? Thank you, Mr. Mann.

5 BOARD MEMBER MANN: At this time,
6 I would then proceed to move that we approve
7 Application 17537 of Victor Tabbs.

8 CHAIRPERSON GRIFFIS: Excellent.
9 Is there a second?

10 BOARD MEMBER ETHERLY: Second, Mr.
11 Chair.

12 CHAIRPERSON GRIFFIS: Thank you
13 very much. We have a motion before us. It
14 has been seconded. Would anyone like to speak
15 to the motion? No comments? Very well. I
16 think Ms. Miller actually put detail to the
17 fact of what was before us under the special
18 exception.

19 I would note the excellent
20 discussion on all those elements of which we
21 are obviously asked to review. If there is
22 nothing further then from any of the other

1 Board Members, we do have a motion before us.
2 Yes, Mr. Moy?

3 MR. MOY: A clarification, sir.

4 CHAIRPERSON GRIFFIS: Turn your
5 mike on.

6 MR. MOY: Staff has a
7 clarification on the motion. Was that to the
8 special exception and the variance or just the
9 special exception?

10 BOARD MEMBER MANN: I was moving
11 just the special exception, which I believe is
12 the only really -- if it's now required,
13 because the variance relief has gone away.
14 I'm not quite certain what the official
15 procedure was, but it had gone away. But it
16 is no longer required.

17 CHAIRPERSON GRIFFIS: Right. I
18 think we can take it as a consensus of the
19 Board, unless anyone would want to discuss
20 that further that we have taken this under a
21 special exception based on the documents that
22 were submitted and also based on the analysis

1 of the Office of Planning and therefore are
2 pursuing just the special exception, noting
3 that the variance relief in this as has been
4 documented would not be required.

5 Actually, it's an interesting
6 point, because that was, I think, one of the
7 most detailed elements, certainly the Capitol
8 Hill Restoration Society in their letter bring
9 it up in terms of the number of stories. The
10 ANC also addressed it. I think it goes to the
11 substantive facts of what we have looked at
12 and that is how it sets into the character of
13 this.

14 But I do agree with the Board as
15 we're going in that direction that it was
16 calculated correctly. Even if I would recall
17 in this file, the Zoning Administrator
18 referred this for a special exception, but not
19 the additional stories. Either case, I think
20 we are appropriately under the guise of
21 section 223.

22 If there is nothing further then,

1 any other comments, deliberations from the
2 Board?

3 COMMISSIONER JEFFRIES: Just one
4 comment. I'm going to also vote in favor of
5 the special exception here, but I did want to
6 just comment about some concern I have about
7 if you're walking along 13th Street from the
8 north or the south, you know, about how it
9 looks in the context. It might look somewhat
10 unusual given the roof line, but I do think
11 that as it relates to air and light, I don't
12 think that it causes any real impact to the
13 neighbors and so forth.

14 So I just wanted to put that point
15 on the record that I do think there might be
16 some unusualness about how you look at this
17 addition as you walk in perspective and not
18 front on, but beyond that, I don't think it
19 rises to the level that I would vote to deny.

20 CHAIRPERSON GRIFFIS: Excellent.
21 Well said. We appreciate the comments and let
22 me just end by saying I have not been

1 persuaded either way strongly or in any
2 extreme. And I think that it gives me some
3 concern in looking at the section and what was
4 provided, the addition at the rear and the
5 height that is added onto the existing
6 structure.

7 Even the floor levels don't match
8 up. And so it seems to me in section and in
9 detail and also in height that it is moving
10 away from the base massing and, therefore, the
11 character, but how much so, obviously, I hear
12 Board Members in the weight of it, it does not
13 seem to be that extreme.

14 Very well. That being said, is
15 there anything else? Anyone else like to
16 speak to the motion? We do have a motion
17 before us from Mr. Mann, seconded by Mr.
18 Etherly. If there is no further discussion,
19 I would ask for all those in favor to signify
20 by saying aye.

21 ALL: Aye.

22 CHAIRPERSON GRIFFIS: And opposed?

1 Opposed. And abstaining? Very well. Why
2 don't we record the vote?

3 MR. MOY: Yes, sir. Staff would
4 record the vote as 5-0-0. This is on the
5 motion of Mr. Mann to approve Application No.
6 17537 of Victor Tabbs for the special
7 exception under section 223. Mr. Etherly
8 seconded the motion. Also in support of the
9 motion, the Chair, Mr. Griffis, Vice Chair,
10 Ms. Miller, and Mr. Jeffries. And that
11 completes the staff's --

12 CHAIRPERSON GRIFFIS: Actually, I
13 would correct the vote and show it's a 4-1, as
14 I voted in opposition.

15 MR. MOY: Oh, you did?

16 CHAIRPERSON GRIFFIS: Yes.

17 MR. MOY: I'm terribly sorry
18 there.

19 CHAIRPERSON GRIFFIS: It's okay.

20 MR. MOY: Okay. Then the final
21 vote is 4-1-0. Dissenting vote is the Chair,
22 Mr. Griffis.

1 CHAIRPERSON GRIFFIS: Good. Any
2 other business for the Board in the Special
3 Public Meeting, Mr. Moy?

4 MR. MOY: No, sir, that completes
5 the session.

6 CHAIRPERSON GRIFFIS: Excellent.
7 That being said then, let's adjourn the
8 Special Public Meeting of the Board.

9 (Whereupon, at 10:24 a.m. the
10 Special Public Meeting was concluded.)

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