

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 17557 of Erie Homes, Inc.,** pursuant to 11 DCMR § 3104.1, for a special exception under § 353 to allow construction of five flats (two-family row dwellings) in the R-5-A zone district at premises 122-130 50<sup>th</sup> Street, S.E. (Square 5327, Lot 800).

**HEARING DATE:** January 23, 2007  
**DECISION DATE:** March 6, 2007

**DECISION AND ORDER**

This self-certified application was submitted September 15, 2006 by Erie Homes, Inc. (“Applicant”), the owner of the property that is the subject of the application. The application requested a special exception under § 353 of the Zoning Regulations and a variance from floor area ratio (“FAR”) requirements under § 402 to allow development of five new flats (two-family row dwellings) in the R-5-A district at 122 – 130 50<sup>th</sup> Street, S.E. (Square 5327, Lot 800).<sup>1</sup>

Following a hearing on January 23, 2007 and a public meeting on March 6, 2007, the Board voted 5-0-0 to grant the application.

**PRELIMINARY MATTERS:**

Notice of Application and Notice of Hearing. By memoranda dated September 19, 2006, the Office of Zoning provided notice of the application to the Office of Planning, the Department of Transportation, the Department of Housing and Community Development, the Board of Education, Advisory Neighborhood Commission (“ANC”) 7E, and Single Member District/ANC 7E05. Pursuant to 11 DCMR § 3113.13, on October 31, 2006 the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, ANC 7E, and owners of property

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<sup>1</sup> At the public hearing, the Applicant modified the application to request only a special exception under § 353, indicating that the original proposal had been revised so that variance relief from the floor area ratio requirement under section 402 was no longer necessary.

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within 200 feet of the subject property. Notice was also published in the D.C. Register on November 10, 2006 (53 DCR 9183).

Party Status. In addition to the Applicant, ANC 7E was automatically a party in this proceeding. At the public hearing, the Board granted party status in opposition to the application to Lonnie Lowe on behalf of himself and his mother, Dareather Lowe, the owners of several parcels abutting the subject property.

Applicant's Case. The Applicant presented evidence and testimony from Ike Agbim, an architect, who described the plans to construct five attached buildings, each containing two two-level dwellings. According to the Applicant, approval of the requested special exception would not adversely affect the use of neighboring property because the project would provide one off-street parking space for each dwelling, and would not create problems related to soil erosion or water runoff.

Government Reports. By memorandum dated January 16, 2007, the Office of Planning ("OP") recommended approval of the requested special exception, concluding that the project would satisfy the requirements of sections 353 and 3104.1, and citing "substantial policy support in the Comprehensive Plan for new infill housing and for new low density housing in the Marshall Heights community." OP noted that "an adequate number of public schools" were located within a mile of the proposed development to accommodate future students who might reside there.

By memorandum dated December 29, 2006, the Department of Housing and Community Development ("DHCD") indicated its support for approval of the requested special exception. According to DHCD, the Applicant's project would provide two units of greatly needed affordable homeownership housing in townhouse buildings whose scale and massing would be in character with the row houses and small garden apartment buildings in the surrounding neighborhood.

By memorandum dated January 19, 2007, the District Department of Transportation ("DDOT") indicated no objections to the Applicant's proposal. According to DDOT, the proposal would not reduce on-street parking or create dangerous traffic conditions since the Applicant proposed to provide a shared driveway at the rear of the site to provide access to the parking pads.

ANC Report. Advisory Neighborhood Commission 7E did not submit a written report in this proceeding. Naomi Robinson, ANC 7E chairperson, testified at the public hearing that the Applicant had made a presentation at a public meeting of the ANC held on January 9, 2007 but that the ANC had not taken a vote on the proposal. The ANC

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chairperson requested that the record in this proceeding be kept open until February 13, 2007 so that the ANC could submit a report into the record; however, no submission was received from the ANC.

Party in Opposition to the Application. The party in opposition argued that the subject property should be developed with one-family dwellings because the neighborhood was already saturated with apartments. The party in opposition also contended that approval of the requested special exception would cause adverse impacts on the use of neighboring property because of an insufficient number of parking spaces, noise, poor air quality, and pedestrian safety concerns associated with the Applicant's proposed curb cut on Astor Place and the parking area at the rear of the proposed development.

**FINDINGS OF FACT**

**The Subject Property and Surrounding Area**

1. The subject property is located at 122-130 50<sup>th</sup> Street, S.E., on the east side of 50<sup>th</sup> Street at its intersection with Astor Place (Square 5327, Lot 800). The lot is rectangular and has an area of 8,000 square feet, with 80 feet of frontage on Astor Place and 100 feet along 50<sup>th</sup> Street.
2. The site is unimproved and slopes sharply from south to north, with a grade change of at least 20 feet from Astor Place to the north property line on 50<sup>th</sup> Street.
3. The subject property is located in Ward 7 in the Marshall Heights neighborhood, which is developed primarily with moderate-density rowhouses, garden apartments, and low-density one-family housing. The subject property is located near a branch library and three public schools.
4. Square 5327 is developed mostly with one-family detached dwellings. The parcel abutting the subject property to the north is undeveloped. The abutting property to the east, which is uphill from the subject property, is developed with a one-family dwelling sited approximately 35 feet from the property line.
5. The future land-use map of the Comprehensive Plan designates most of Square 5327 as low-density residential along the 50<sup>th</sup> Street and Astor Place frontages. A small area designated moderate-density residential is located at the eastern end of the square, at 51<sup>st</sup> Street and Astor Place.
6. Both 50<sup>th</sup> Street and Astor Place are local streets serving two-way traffic. Both handle low volumes of traffic, including during morning and evening peak

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periods. The subject property is located three blocks south of East Capitol Street, a major route served by Metrobus.

**Applicant's Project**

7. The Applicant plans to construct five new attached buildings, with each building containing two two-level dwellings. Each building will be 30 feet in height above finished grade. The floor area ratio of the project will be 0.89. Lot occupancy will be approximately 38 percent.
8. Pedestrian access to the buildings will be provided from 50<sup>th</sup> Street, through front yards measuring approximately seven by 16 feet. A rear yard setback of 45.5 feet will be provided.
9. The Board credits the testimony of the Office of Planning that the provision of air and light to the flats and to neighboring properties will not be hindered due to the design and orientation of the project and the north slope of the subject property.
10. Because of the topography of the site, the Applicant will construct three retaining walls on the subject property. Planter boxes will be built in front of each of the five buildings to articulate changes in grade.
11. The Applicant's landscaping and lighting plans call for the planting of shrubs and the installation of lights along the walkways at the front of the project and in the parking area. Some trees will be planted along the perimeter of the site.
12. The subject property lacks access to an alley. The Applicant proposed to install a curb cut along Astor Place to provide access to parking spaces at the rear of the property. The parking spaces will be accessible through a 15-foot driveway.
13. The project will provide one parking space for each dwelling unit, for a total of 10 parking spaces on the subject property.

**Harmony with Zone Plan**

14. The R-5 districts are general Residence districts designed to permit flexibility of design by permitting, in a single district, all types of urban residential development if they conform to the height, density, and area requirements. 11 DCMR § 350.1. The R-5-A district permits a low height and density. 11 DCMR § 350.2.
15. The Applicant's proposal will satisfy matter-of-right requirements in the R-5-A zone for parking and for building height, setbacks, and floor area ratio.

## **CONCLUSIONS OF LAW**

The Applicant seeks a special exception under § 353 of the Zoning Regulations to allow development of five new flats (two-family dwellings) in the R-5-A district at 122 – 130 50<sup>th</sup> Street, S.E. (Square 5327, Lot 800). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001), to grant special exceptions, as provided in the Zoning Regulations. Subsection 3104.1 of the Zoning Regulations (Title 11, DCMR) authorizes the Board to the grant special exceptions listed therein if the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions.

Pursuant to 11 DCMR § 353, the new residential development proposed by the Applicant must be reviewed by the Board as a special exception under § 3104.1. The Applicant is required to submit site plans, typical floor plans and elevations, and plans showing the project's grading, landscaping, and rights of way and easements. 11 DCMR § 353.5. The Board is required to refer the application to the Board of Education for comment and recommendation as to the adequacy of existing and planned area schools to accommodate the numbers of students that can be expected to reside in the project, to the Departments of Transportation and Housing and Community Development for comment and recommendation as to the adequacy of public streets, recreation, and other services to accommodate the residents of the project and the relationship of the proposed project to public plans and projects, and to the Office of Planning for comment and recommendation on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the future residents of the project and the surrounding neighborhood. 11 DCMR §§ 53.2 – 353.4. All of the requirements of § 353 were satisfied in this proceeding.

The Board concludes that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The R-5-A zone district permits the development of multi-family dwellings, and the Applicant's project will comply with applicable zoning requirements with respect to height, bulk, and setbacks as well as with respect to parking. The Board finds that the neighborhood around the subject property contains a mixture of dwelling types, from one-family detached dwellings to garden apartment buildings. The proposed development of flats on the subject property will thus be in character with the surrounding community.

The Board also concludes that the requested special exception will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and

Zoning Map. The Board was not persuaded by the party in opposition that the proposed flats will cause adverse impacts on the use of neighboring property because of parking, noise, poor air quality, or pedestrian safety concerns. The Board credits DDOT's conclusion that the Applicant's project will not create dangerous traffic conditions or reduce the supply of on-street parking. The provision of air and light to the flats and to neighboring properties will not be obstructed, given the topography of the site, the project design, and the location of the dwelling on the abutting lot approximately 35 feet from the property line shared with the subject property.

Under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Code § 1-309.10(d)(3)(a)), the Board must give great weight to the issues and concerns raised in the written report of the affected Advisory Neighborhood Commission. As noted, ANC 7E did not submit a written report.

Based on the above findings of fact, and having given great weight to the recommendation of the Office of Planning, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception under § 353 to construct five new flats (two-family dwellings) in the R-5-A district at 122 – 130 50<sup>th</sup> Street, S.E. (Square 5327, Lot 800). Accordingly, it is therefore **ORDERED** that the application is **GRANTED**.

**VOTE:**      **5-0-0** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II, and Gregory Jeffries (by absentee vote) to grant the application).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring Board member approved the issuance of this order.

**ATTESTED BY:**

  
**JERRILY R. KRESS, FAIA**

**Director, Office of Zoning** 

**FINAL DATE OF ORDER:** OCT 10 2007

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PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1 of the D.C. CODE. SEE D.C. CODE § 1-2531 (2001). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
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As Director of the Office of Zoning, I hereby certify and attest that on **OCTOBER 10, 2007**, 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 and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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
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