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February 19, 2003

By Hand Delivery

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
441 4th Street, N.W.
Second Floor
Washington, DC 20001

Re: BZA Application No. 16970
National Child Research Center
3209 Highland Place, NW; Square 2072, Lot 30

NCRC'S BRIEF REGARDING THE APPLICABILITY OF §2516 OF THE ZONING REGULATIONS TO BZA APPLICATION NO. 16970

Dear Chairman Griffis and Members of the Board:

Pursuant to the request of the Board of Zoning Adjustment ("BZA" or "Board") at its February 11, 2003 public hearing in the above-mentioned case, the National Child Research Center ("NCRC") hereby submits its brief on the applicability of §2516 of the Zoning Regulations to this case. As discussed in greater detail below;

- §2516 of the Zoning Regulations was intended to guide development of multiple housing units on large lots with minimal street frontage, not for child development centers;
- §2516 of the Zoning Regulations has not been applied to private schools in the past by the Board or the Zoning Administrator's Office;
- the Board has not previously applied §2516 of the Zoning Regulations to NCRC's use of its property; and
- the existing playhouse and carriage house are permitted accessory uses and buildings to the principal use of the NCRC property, a child development center.

For these reasons, §2516 of the Zoning Regulations should not be applicable to BZA Application No. 16970.

BZA
Case No. 16970
Exhibit No. 118

Board of Zoning Adjustment
District of Columbia
CASE NO.16970
EXHIBIT NO.118

Legislative History and Adoption of the Current §2516 of the Zoning Regulations

The legislative history of §2516 makes clear that it was never intended to apply to school use. Prior to April 17, 1989, the Zoning Regulations permitted two or more principal buildings or structures to be erected on a single subdivided lot as a matter-of-right, provided that all requirements of the Zoning Regulations (such as use, height, bulk and open spaces) around each building were satisfied. (See §§7615.1 and 7615.2 of the D.C. Zoning Regulations, 1979, EXCEPTIONS TO BUILDING LOT CONTROL, attached as Exhibit A.) On April 17, 1989, the D.C. Zoning Commission adopted an emergency order, Z.C. Order No. 617, which required special exception approval from the Board in order to erect two or more principal buildings or structures on a single subdivided lot. A copy of Z.C. Order No. 617 is attached as Exhibit B. Thereafter, Z.C. Order No. 627 was adopted which enumerates the requirements for special exception approval as the current 11 DCMR §2516, EXCEPTIONS TO BUILDING LOT CONTROL (Residence Districts). A copy of Z.C. Order No. 627 is attached as Exhibit C.

In Z.C. Order No. 771 (Z.C. Case No. 94-3), dated May 12, 1995, the Zoning Commission adopted a procedural amendment to §2516.3 which allows an applicant for special exception approval to submit more detailed grading and architectural plans to the BZA at date later than the date of the original application. It is interesting to note the testimony of the ANC 3C representative at the time of the hearing, Phil Mendelson (now an at-large D.C. Councilmember), regarding the proposed amendment to the text of §2516. In discussing the purpose of the 1989 amendments to §2516, Mr. Mendelson testified that:

> The purpose of the 1989 amendment was to make *speculative development* of large sites into theoretical lots reviewable as a whole, to obtain all representations and commitments at once and to discourage the speculative abuses that were occurring.
> And I should say that, . . . , ANC 3C was involved in the 1989 amendments . . .
>
> (Emphasis added. Tr. of Zoning Commission Public Hearing on Sept. 19, 1994, Z.C. Case No. 94-3, Testimony of Phil Mendelson, p.26.)
> (Copy attached as Exhibit D.)

It is clearly evident that the land use goals and policies that are the bases of §2516 never intended that uses such as child development centers, private schools, or even private colleges or universities would be required to satisfy the requirements of §2516. By their very nature, these types of uses include numerous buildings or structures on a property. As evidence of its legislative intent, the Zoning Commission's resolution in Order No. 617 noted that an emergency rulemaking to adopt an amendment to the text of the Zoning Regulations was necessary for the following pertinent reasons:

> Whereas, 11 DCMR 2516 was originally promulgated to allow for the reasonable development of excessively large lots with a minimal amount of street frontage;
>
> Whereas, 11 DCMR 2516 was promulgated to facilitate the development of multiple unit public housing, albeit the application of the regulations was not limited to such housing;
>
> Whereas, 11 DCMR 2516 is being applied to an increasing degree in circumstances where its application is questionable or problematic, and not for the purpose of developing multiple unit housing;
>
> (See Exhibit B, p. 1).

The District of Columbia Court of Appeals also noted the same underlying rationale for the adoption of §7516 of the Zoning Regulations, the former matter-of-right provisions for multiple buildings on a single subdivided lot. In Daniel v. District of Columbia Board of Zoning Adjustment, 329 A. 2d 773 (D.C. 1974), the Court noted:

> While it is true that s [section] 7516 was promulgated primarily to facilitate the development of multiple unit public housing, the Zoning Advisory Council recognized that '(t)he amendment would not be limited to public housing, since it would prove advantageous . . . occasionally to the individual lot owner who may be faced with the problem of *developing excessively large interior property with only minimal street frontage*.' Report of the Zoning Advisory Council at 6, September 3, 1963. (emphasis added, Daniel v. BZA, at 776.)

A copy of this case is attached as Exhibit E.

As mentioned in our February 11, 2003 submission to the Board, recent cases in which the Board reviewed applications for §2516 special exception relief are related to

new residential development on sites with theoretical lots, such as: BZA Order No. 16637 for construction of four single-family detached dwellings; BZA Order No. 16904 for a new residential development of 96 apartment units; BZA Order No. 16705 for a new residential development with theoretical lots for 25 townhomes; BZA Order No. 16457 for a new residential development of 33 single-family homes and 176 garden apartments in twelve different buildings; and BZA Order No. 15743 for a theoretical lot subdivision for construction of 22 detached single-family dwellings. Copies of these cases are attached as Exhibit F.

Thus it is clear that the legislative intent of §§7516 and 2516 of the Zoning Regulations was always to address those situations where developers intended to develop multiple unit housing on large interior lots that have minimal street frontage. This certainly does not describe the facts of NCRC's 70+ year history of the use of 3209 Highland Place, N.W. as a child development center. In addition, the NCRC property has extensive street frontage along both Highland Place, N.W. and Ordway Street, N.W. The NCRC property does not include a series of "pipe-stem" lots that lead from a single street to numerous homes on a large interior lot. The proposed NCRC property will have a principal building and three accessory structures on a lot that is approximately one acre in size with a lot occupancy of approximately 20%. This is certainly not the type of case that the drafters of the Zoning Regulations intended to be subject to the requirements of §§7516 and 2516.

BZA History of Approving Special Exception Cases of Private Schools

As noted in our February 11, 2003 submission to the Board, we are unaware of any prior decisions of the Zoning Administrator or the Board that have required a private school (which have almost identical fact patterns to this case, i.e. large lots with a principal building and numerous accessory structures that further the school's educational mission) to satisfy the requirements of §2516.

The Washington International School ("W.I.S.") at 3100 Macomb Street, N.W., in close proximity to the NCRC site, was originally granted approval to operate a private elementary, junior high and high school for 300 students in 1978 on a single assessment and taxation ("A & T") lot. In an application to the BZA in 1986, W.I.S. noted that it had seven structures on its campus[1]. Subsequent to April 17, 1989, the date on which the

[1] See BZA Application No. 14523, p. 1 paragraph 4. Copy attached as Exhibit G.

Zoning Commission adopted the requirement for special exception approval for multiple buildings or structures on a single subdivided lot, W.I.S. has returned to the BZA on four occasions for special exception approval and has received approval in each application. All of these Orders of the BZA are attached as Exhibit G. In each instance, W.I.S. only requested relief from Section 206[2] of the Zoning Regulations.

In 1997, W.I.S. sought and received approval to construct an athletic and arts/music center on its existing campus, as well as an increase in student enrollment from 350 to 425. See BZA Order No. 16189, part of Exhibit G. The BZA, in Order No. 16189, noted that:

> 6. The original development plan approved by this Board in 1978 in BZA Order No. 12576 provided for the construction of a multipurpose building that would provide both a gymnasium and classroom space. However, the School, in BZA Order 14523 dated December 17, 1986, sought and was granted permission to (i) revise the concept of a single unified, multipurpose building and (ii) plan for the construction of two *separate* buildings. One building was to be a classroom building (which was approved pursuant to BZA Order No. 14523). *The construction of the second building*, a gymnasium, was to be pursued at a later date. This conceptual change resulted from a determination by the School *that one building large enough to accommodate both a gymnasium and a large number of classrooms was not as appropriate for the site as two structures in different locations* and, furthermore, that two smaller buildings would be more compatible with the historic Tregaron Estate.
>
> 10. The athletic center will consist of a gymnasium, a platform, locker rooms, weight room, training room, accessory office and storage facilities. The gymnasium, which will be located on the north side of the new building, will have retractable bleachers and a seating capacity of 220 persons. *The portion of the building located on the south side will house the music space and classrooms for choral and instrumental music, practice facilities, a departmental office and instrumental storage space. The arts*

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[2] Section 206 of the Zoning Regulations outlines the requirements for special exception approval for a private school in a residential district.

> *facility will consist of classrooms, a kiln room, darkroom, a departmental office and storage facilities.* (Emphasis added.)
>
> (BZA Order No. 16189 at p. 2.)

Neither the Zoning Administrator nor the Board ever required W.I.S. to obtain special exception approval in accordance with §2516 of the Zoning Regulations.

Similarly, the Maret School, located at 3000 Cathedral Avenue, N.W., has numerous buildings and structures located on a single A & T Lot and has not been required to obtain special exception relief from § 2516 in applications to the BZA since 1989. Attached as Exhibit H are copies of BZA Order No. 15527, dated August 2, 1991, and BZA Order No. 16313 (and a building plat indicating the numerous buildings and structures located on the A & T Lot), dated April 3, 1998. In addition, in regards to BZA Application No. 16313, we have attached the zoning confirmation memo from the Chief of the Zoning Review Branch of the Building and Land Regulation Administration ("BLRA"), who works under the authority of the Zoning Administrator's Office, to the BZA that identified the appropriate areas of relief that were identified by the Zoning Review Branch. Once again, neither the BZA nor the Zoning Administrator's Office required a private school that clearly had multiple buildings and structures on a single subdivided lot to obtain special exception relief under § 2516 of the Zoning Regulations.

In each of these cases, the same conclusion is reached. Private schools have not been required to obtain relief from §2516 in order to erect numerous buildings and structures that exist on a single subdivided lot. This conclusion is also consistent with the D.C. Court of Appeals decisions in the Georgetown University, George Washington University and American University applications to the BZA and the Zoning Commission, all of which approved buildings on university campuses in residential districts as accessory buildings on the same lot as the principal use, without the additional requirement for special exception review under §2516. (*See, e.g., Citizens Coalition v. DC BZA,* 619 A.2d 940 (DC 1993), which approved construction of a power plant on the Georgetown University campus as an accessory use.)

The implications of requiring NCRC to obtain special exception relief pursuant to §2516 will have far reaching and precedential implications for every private school, child development center, and college or university in the District of Columbia and is contrary to the decisions of the DC Court of Appeals as discussed herein.

BZA History of Approval for NCRC

It is also important to note that the last time NCRC was before the Board in 1998, neither the Board nor the Zoning Administrator's Office required NCRC to obtain special exception relief in accordance with §2516. In 1998, NCRC utilized the main building and the playhouse for classroom purposes. The playhouse was clearly a separate structure from the main building, yet in its approval of BZA Application No. 16307, the Board did not require special exception relief from §2516. The present application is entirely similar to the previous application in this regard. The carriage house is a new accessory structure, just like the playhouse, that will be used for classroom purposes, in addition to indoor motor play space and areas for parent/teacher conferences.

The Existing Playhouse and the Proposed Carriage House are Permitted Accessory Structures to the Principal Building and Use of the Property

NCRC is not required to obtain relief from §2516 in BZA Application No. 16970 because the proposed use of the carriage house and the continued use of the playhouse are clearly accessory uses to the main classroom building on the NCRC property. The past decisions of the Board, relevant case law decided by the D.C. Court of Appeals, and general land use theory support this argument.

The issue of permitted accessory uses in a private school case was recently addressed by the Board in BZA Application No. 16433. This 1999 case approved the construction of a new athletic facility for the National Cathedral School ("NCS"). A copy of Order No. 16433 is attached as Exhibit I. In that case, NCS proposed the construction of a new 83,160 square foot athletic facility, two associated grass fields, a 4,360 square foot entry pavilion and a 16,000 square foot parking garage on the same lot as an existing NCS building that included NCS classrooms for its upper school and most of its administrative offices. It is interesting to note that, just as in the W.I.S. and Maret School cases, NCS was not required to obtain special exception relief from §2516 of the Zoning Regulations.

In BZA Order No. 16433, the opposition to NCS's application claimed that the proposed athletic facility required a use variance, and not special exception relief pursuant to §206. In response to this issue, the Board noted that:

> Additionally, to approve an expansion of a special exception, the use must also be either part of, or accessory to, the existing special exception principal use. Thus, the use must be characterized as either principal or accessory.

> The Board concludes that the athletic facility is an extension of the principal use. Athletics is a form of education, and thus the athletic facilities are educational facilities. It, therefore, follows that the applicant need only meet the standard for a private school special exception.
>
> (BZA Order No. 16433 at p.8.)

In discussing what constitutes an accessory use, the Board stated:

> The Zoning Regulations define "accessory use" as: 'a use customarily incidental and subordinate to the principal use, and located on the same lot as the principal use.' 11 DCMR §199.1.

The Board's decision in the NCS case was upheld by the D.C. Court of Appeals in National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment, 753 A.2d 984 (D.C. 2000). (See also, Neighbors on Upton Street v. D.C. Bd. of Zoning Adjustment, 697 A.2d 3 (D.C. 1997) in which the Court of Appeals upheld the Board's decision to approve construction of a 300 seat performance auditorium for the Levine School of Music based on the fact that the auditorium was an accessory use to the school, "the proposed addition to the existing building, including the auditorium, contributes to the educational mission of the Levine School." *Id.* at p. 9.) (Copies of these decisions of the D.C. Court of Appeals are attached as Exhibit J.) (See also Rathkopf, The Law of Zoning and Planning, §30.13 Educational Facilities and Accessory Uses, which states "By implication, permission to operate a school includes permission to locate upon the property those accessory uses which are customarily engaged in by students." Also attached as part of Exhibit J.)

Applying the rationale used by the Board in the NCS case to the present case, it is readily apparent that NCRC's proposed use of the carriage house and the playhouse for classrooms, indoor motor play space and meeting space for parent/teacher conferences is clearly related to the educational mission of the school and are uses that are customarily engaged in by students and parents of child development centers. The indoor motor play space to be included in the new carriage house building is the functional equivalent of an athletic facility for children that range in age from 2½ - 5 years of age and furthers the educational mission of NCRC. Certainly the additional and enhanced classroom space furthers the educational mission of NCRC and providing appropriate space for teachers and parents to discuss how a student is progressing furthers the educational goals of NCRC as well.

In addition, the Board's long standing practice and rationale to allow school facilities to be located in numerous structures and buildings on a single lot is certainly appropriate and allows for the more efficient use of the property. For example, there is a significant benefit to allowing schools to have one centralized parking and loading facility. A single centralized location for such uses allows more area to be devoted to open space, playing fields and passive recreation space. If the Board were to require that all private schools obtain special exception approval for a lot subdivision for each building or structure located on a school's property, such a requirement would also require that portion of the school's facilities to satisfy its specific parking and loading requirements. Therefore, on a large school property such as the Maret School or W.I.S., the school would be required to have numerous parking lots and loading facilities which would most likely have a significant detrimental impact on the aesthetic and environmental quality of the school's property, as well as the surrounding properties.

To the extent that CPN or any other party tries to use the definition of accessory uses for public schools included in 11 DCMR §199 as an analogy to the present case, that argument was specifically addressed and denied by the Board in the NCS case. The Board, in Order No. 16433, included a footnote that discussed the definition of accessory uses to public schools. The Board noted:

> The definition of "public school" contained in 11 DCMR §199 is not helpful to this analysis. The preamble to the 1968 rulemaking that established the definition stated that the definition was intended to "permit the District of Columbia Board of Education greater flexibility in the location and design of public school buildings in residential zones. . . " 15 DCR 29. This language it makes clear [sic.] the definition was devised to favor the unimpeded development of public schools as matter of right uses. *Thus, the definition was intended to be narrowly applied and not expanded by analogy to other uses.* (emphasis added.)
>
> (BZA Order No. 16433 at p. 9., See Exhibit I.)

This Board should address CPN's arguments on this same issue in a similar manner. If the Board were to accept CPN's argument that because the carriage house and playhouse include classroom space (thus constituting a principal use, rather than an accessory use) special exception relief pursuant to §2516 is required, a number of problems would be created. First, such a bifurcation of the definition of a principal or accessory use of a structure on a specific property will require the Board to create a system whereby a gym, performing arts center or even a parking garage would not trigger §2516 special exception review, while the proposed construction of a new classroom

building would trigger such review. Second, such a determination would require the Board to delve into the minutiae of the internal operations of all uses that come before it. Third, the Board would be faced with the vexing question of what to do about facilities that include a mixture of uses, including a structure that has performing arts spaces, classrooms, rehearsal studios and a theater space. Would this be a building devoted to a principal use, because of the classroom and rehearsal spaces, or would it be a building devoted to an accessory use, because of the performing arts and theater space? The Board can avoid this morass by following the clearly established guidelines of its previous decisions that have been upheld by the D.C. Court of Appeals. Once the BZA has granted special exception approval for the child development center or private school use, the construction of any new buildings or structures that further the educational mission of the school or child development center are deemed to be accessory uses to the school or child development center and §2516 of the Zoning Regulations is not applicable.

CONCLUSION

For the foregoing reasons, NCRC requests that the BZA determine that §2516 of the Zoning Regulations is not applicable to BZA Application No. 16970.

Respectfully submitted,

SHAW PITTMAN, LLP

Maureen E. Dwyer

Paul A. Tummonds, Jr.

Attachments

cc: See attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing documents were sent by hand delivery[1] this 19th day of February 2003, to the following parties:

Advisory Neighborhood Commission (ANC) 3C
c/o Nancy MacWood, Chairperson
3417 Woodley Road, N.W.
Washington, D.C. 20016

The Friends of NCRC
c/o Anne Large
3520 35th Street, N.W.
Washington, D.C. 20016

The Cleveland Park Neighbors
c/o Richard Nettler, Esq.
Robins, Kaplan, Miller & Ciresi, LLP
Suite 1200
1801 K Street, N.W.
Washington, D.C. 20006

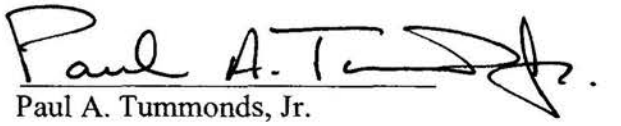
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Henry P. Little
The Nature Conservancy
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Steven R. Hunsicker
Baker Botts, LLP
The Warner
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Washington, DC 20004



Paul A. Tummonds, Jr.

Document #: 1306766 v.1

[1] Mr. Little, who resides in San Francisco, was served by Federal Express.

7614.24 An open arcade shall be not less than 9 feet in height at any point within the arcade,

7614.25 An open arcade shall have its floor at the same level and continuous with the sidewalks, and shall connect to existing adjoining open arcades or shall be so constructed as to permit such connection in the future, provided however, where the existing arcade is at a different elevation, the new arcade connection shall be made in a barrier-free manner.

7614.26 The use of the area within an open arcade shall be essentially restricted to pedestrian uses, and vehicular access to or through an open arcade shall be minimized.

7614.27 In commercial buildings, an open arcade shall include retail and service uses fronting on at least 60% of the arcade, with such uses directly accessible from the open arcade.

7614.3 The additional gross floor area permitted under Sub-section 7614.1 shall not be counted in determining the number of off-street parking spaces or loading berths.

SECTION 7615 - EXCEPTIONS TO BUILDING LOT CONTROL

7615.1 This section is designed to permit two or more principal buildings or structures to be erected on a single Sub-divided lot.

7615.2 The number of principal buildings permitted hereunder shall not be limited, provided the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations such as use, height, bulk and open spaces around each building as provided by Sub-sections 8103.2 and 8103.3 will be complied with.

7615.3 Where a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the front of such building shall be the side upon which the principal entrance is located. Open space in front of such entrance shall be provided equivalent to the required rear yard in the district in which such building is located; but a rear yard shall be required.

7615.31 Where not in conflict with the Act of June 1, 1910, (36 Stat. 452) as amended, the height of a building hereunder, in all districts, shall be measured from the finished grade at the middle of the front of the building.

7615.4 The provisions of this section shall also apply to buildings erected under the terms and conditions of Section 3307.

Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 617
Case No. 89-12
(Text - Theoretical Building Site Provision)
EMERGENCY ORDER
April 17, 1989

On April 17, 1989, the Zoning Commission for the District of Columbia considered the petition of Brandywine Street Project, Friends of Springland, and Foxhall Community Citizens Association that the Zoning Commission initiate a rulemaking case and set an expedited hearing to consider amendment of 11 DCMR 2516, which allows the construction of two or more principal structures on one lot. The Commission also considered the recommendation of the Director of the Office of Planning ("OP"), dated April 13, 1989, that the Zoning Commission adopt an emergency rule to require special exception approval of theoretical building sites.

Having considered the April 11, 1989 letter from the petitioners, including attached correspondence from petitioners to the Zoning Administrator and the OP Director; the April 13, 1989 memorandum from the OP Director; correspondence dated April 17, 1989, from the firm of Wilkes, Artis, Hedrick, and Lane in opposition to emergency action; and a number of letters in support of the position of the petitioners, the Commission decided to effect emergency rulemaking, for the following reasons:

Whereas, 11 DCMR 2516 was originally promulgated to allow for the reasonable development of excessively large lots with a minimal amount of street frontage;

Whereas, 11 DCMR 2516 was promulgated to facilitate the development of multiple unit public housing, albeit the application of the regulation was not limited to such housing;

Whereas, 11 DCMR 2516 is being applied to an increasing degree in circumstances where its application is questionable or problematic, and not for the purpose of developing multiple unit housing;

Whereas, The construction of more than one principal structure on a single subdivided lot will, under certain circumstances, cause irreparable injury to the stability of residential neighborhoods, contrary to the purpose and intent of the Zoning Regulations;

Whereas, Review by the Board of Zoning Adjustment, pursuant to the special exception process and standards, of the proposed construction of more than one principal structure on a single lot would provide reasonable protection to the stability of neighborhoods;

Whereas, Review by the Board of Zoning Adjustment would not altogether prohibit such construction, but would allow it to proceed, albeit subject to a hearing, rather than as a matter of right;

Whereas, Section 1 of the Zoning Act (Act of June 20, 1938, 52 Stat. 797, also cited as Section 5-413 of the D.C. Code) authorizes the Zoning Commission to adopt regulations "to promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia"; and

Whereas, Section 1-1506 of the District of Columbia Code authorizes the Zoning Commission to take emergency action for a period not to exceed 120 days "for the immediate preservation of public peace, health, safety, welfare, or morals";

Therefore: The Zoning Commission resolves that there exists an emergency that requires the immediate amendment of the Zoning Regulations of the District of Columbia to protect the public welfare; and therefore, it is hereby and ordered that, effectively immediately on April 17, 1989, at 8:45 P.M., and for a period not to exceed 120 days beginning on April 17, 1989, 11 DCMR 2516 is amended to read as follows:

2516 EXCEPTIONS TO BUILDING LOT CONTROL

2516.1 If approved by the Board of Zoning Adjustment in accordance with the conditions set forth in section 3108 of this title, two (2) or more principal buildings or structures may be erected on a single subdivided lot, subject to the provisions of Subsections 2516.2 through 2516.7 of this section.

2516.2 The number of principal buildings

permitted by these regulations shall not be limited; Provided, that the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations (such as use, height, bulk, and open spaces around each building) as provided by Subsections 3202.2 and 3202.3 shall be complied with.

2516.3 Where a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the front of the building shall be the side upon which the principal entrance is located. Open space in front of the entrance shall be provided equivalent to the required rear yard in the district in which the building is located; but a rear yard shall be required.

2516.4 Where not in conflict with the Act of June 1, 1910, (36 Stat. 452), as amended, the height of a building governed by the provisions of this section, in all districts, shall be measured from the finished grade at the middle of the front of the building.

2516.5 The provisions of this section shall also apply to buildings erected under the terms and conditions of Section 410.

2516.6 The substantive provisions of this title shall be complied with, and the proposed development shall not be likely to have an adverse effect on the present character and future development of the neighborhood.

2516.7 The Board may impose conditions with respect to the size and location of driveways; side and rear yards; net density; design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations.

This emergency rulemaking was adopted by the Commission at the special public meeting on April 17, 1989, by a vote of 5-0: (Lindsley Williams, Maybelle Taylor Bennett, Lloyd D. Smith, John G. Parsons, and Elliott L. Carroll to approve).

In accordance with D.C. Code Section 1-1506(c) (1981), this emergency rule became effective immediately upon adoption on April 17, 1989.

ATTESTED BY: _____
EDWARD L. CURRY
Executive Director
Zoning Secretariat

zcorder617/BJW37

Government of the District of Columbia

ZONING COMMISSION

ZONING COMMISSION ORDER NO. 627
Case No. 89-12
(Text - Theoretical Building Site Provision)
July 31, 1989

The Zoning Commission for the District of Columbia initiated this case in response to the petition of Brandywine Community Project, Friends of Springland, and Foxhall Community Citizens Association that the Commission initiate a rulemaking case and set and expedited hearing to consider amendment of 11 DCMR 2516, which allows the construction of two or more principal structures on one lot.

At a meeting on April 17, 1989, having considered the petition, as well as the recommendation of the Director of the Office of Planning ("OP"), dated April 13, 1989, that the Zoning Commission adopt an emergency rule, the Commission decided to adopt emergency rulemaking to be effective immediately on that date and for a period not to exceed 120 days, that is through August 14, 1989.

On June 15, 1989, having furnished the required notice, the Commission held a public hearing to consider the adoption of amendments to become effective on or before the expiration of the emergency order. Based upon the testimony at the hearing, and written submissions received before the record closed at noon on June 19, 1989, the Commission met at 7:00 P.M. on June 19, 1989, to consider proposed action in this case.

The Commission determined to promulgate a revised notice of proposed rulemaking, and that notice appeared in the D.C. Register on June 30, 1989. The final action that is effected by this order is based upon consideration of the entire record, including all comments that were received before 12 noon on July 31, 1989.

The Commission is persuaded that the development of two or more structures on one lot in or near a residential zone presents special issues and problems that require consideration at a public hearing.

The District of Columbia has developed at a pace and to an extent that increases the incentive of developers to maximize the use of land that is either vacant or not as

fully developed as the zoning envelope would allow. To a substantial degree, it is in the overall interest of the District of Columbia to increase the opportunity for persons to live in the District.

However, the trend to maximize development potential produces as a corollary a greater potential for negative impact on adjacent dwellings. Thus, the response to an increase in the density of residential buildings cannot reasonably allow only for the increase, but must also allow for appropriate controls and review.

The Commission remains persuaded, after the hearing and upon consideration of the entire record, that the Board of Zoning Adjustment should review multiple building construction on a single lot, that is proposed in or near a residential zone. Thus, as the Commission said in Order No. 617, review by the Board of Zoning Adjustment, pursuant to the special exception process and standards, of the proposed construction of more than one principal structure on a single lot, would provide reasonable protection to the stability of residential neighborhoods; and would not altogether prohibit such construction, but would allow it to proceed, albeit subject to a hearing, rather than as a matter-of-right.

The notice of proposed rulemaking included as an alternative, a proposed rule that would apply the provisions of 11 DCMR 2517 to construction on a site that was subject to a Large Tract Review that was completed before June 15, 1989. The alternative rule would have exempted projects on such sites from the requirement for review by the Board of Zoning Adjustment. Although the Commission had reservations about any such exemption, it proposed the alternative to allow for the submission of comments. Having considered the comments in favor of and in opposition to such an exemption, the Commission has determined not to adopt an exemption for any project in a residential zone district. The Commission believes that the review process adopted by this Order is reasonable, and will have no adverse impact on any reasonable proposed project. The Commission notes that the Board of Zoning Adjustment has procedures that are available to allow for the expedited filing or hearing of applications when there is good cause.

In further response to the comments, the Commission states as follows:

1. The Commission has determined to require a twenty-five foot buffer from a residence zone as the basis for allowing matter of right construction pursuant to 11 DCMR 2517. The requirement of a specific distance provides a desirable level of certainty.

2. The Commission has determined not to provide a general exemption for additions to structures within previously-approved projects. Such an exemption would be too open-ended.

3. Where appropriate, the Commission has clarified and corrected several provisions.

4. The Commission has added an explicit reference to the height of structures as an element that the Board may address pursuant to subsection 2516.11.

5. The Commission has adhered to the decision not to delegate to the Board the obligation that is vested in the Commission to assure that the Zoning Regulations are not inconsistent with the Comprehensive Plan.

Finally, the Commission does not believe that there is a legal barrier to the application of the rule, as originally adopted on April 17, and as amended and finally adopted by this order, to construction for which no building permit had been issued before April 17, 1989.

The Commission transmitted the proposed rules to the National Capital Planning Commission ("NCPC") on April 26, 1989, and again, as revised, on June 23, 1989. By comments transmitted on June 2, 1989 and July 28, 1989, NCPC reported that the amendments would not have an adverse impact on the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, are not inconsistent with the Comprehensive Plan for the National Capital, and will appropriately implement and advance the objectives and policies established in the Comprehensive Plan.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations to require review by the Board of Zoning Adjustment of construction of more than one building on a single lot in or near a residential zone district. The specific amendments to the Zoning Regulations are as follows:

1. Amend the text of the Zoning Regulations by adopting a revised version of 11 DCMR 2516, to read as follows:

2516 EXCEPTIONS TO BUILDING LOT CONTROL (Residence Districts)

2516.1 If approved by the Board of Zoning Adjustment in accordance with the conditions set forth in section 3108 of this title, two (2) or more principal buildings or structures may be erected on a single subdivided lot, subject to the provisions of this section.

2516.2 The provisions of this section shall apply to construction on a lot that is located in, or within twenty-five (25) feet of, a residence district as designated in section 105 of this title.

2516.3 In addition to other filing requirements, the applicant shall submit to the Board, with the application, four site plans and two sets of typical floor plans and elevations, grading plans (existing and final), landscaping plans, and plans for all new rights-of-way and easements.

2516.4 The number of principal buildings permitted by these regulations shall not be limited; Provided, that the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations (such as use, height, bulk, open spaces around each building, and limitations on structures on alley lots pursuant to section 2507), as provided by sub-sections 3202.2 and 3202.3, shall be complied with.

2516.5 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the following provisions shall apply:

(a) The front of the building shall be the side upon which the principal entrance is located;

(b) Open space in front of the entrance shall be required that is equivalent either to the required rear yard in the district in which the building is located or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater;

(c) A rear yard shall be required; and

(d) If any part of the boundary of a theoretical

lot is located in common with the rear lot line of the subdivided lot of which it is a part, the rear yard of the theoretical lot shall be along the boundary of the subdivided lot.

2516.6 In providing for net density pursuant to sub-section 2516.11 of this section, the Board shall require at least the following:

(a) The area of land that forms a covenanted means of ingress or egress shall not be included in the area of any theoretical lot, or in any yard that is required by this title;

(b) Notwithstanding any other provision of this title, each means of vehicular ingress or egress to any principal building shall be twenty-five (25) feet in width, but need not be paved for its entire width;

(c) If there are not at least two entrances and/or exits from the means of ingress or egress, a turning area shall be provided with a diameter of not less than sixty (60) feet; and

(d) The requirements of paragraphs (b) and (c) of this sub-section may be modified if the Board finds that a lesser width and/or diameter will be compatible with, and will not be likely to have an adverse effect on, the present character and future development of the neighborhood; Provided, the Board shall give specific consideration to the spacing of buildings and the availability of resident, guest, and service parking.

2516.7 Where not in conflict with the Act of June 1, 1910, (36 Stat. 452), as amended, the height of a building governed by the provisions of this section, in all districts, shall be measured from the finished grade at the middle of the front of the building.

2516.8 The provisions of this section shall also apply to buildings erected under the terms and conditions of section 410 of this title.

2516.9 The substantive provisions of this title shall be complied with, and the proposed development shall not be likely to have an adverse effect on the

present character and future development of the neighborhood.

2516.10 Before taking final action on an application under this section, the Board shall refer the application to the District of Columbia Office of Planning for coordination review, and report, which coordination, review, and report shall consider the following:

(a) The relationship of the proposed development to the overall purpose and intent of the Zoning Regulations, and other planning considerations for the area and the District of Columbia as a whole, including the plans, programs, and policies of other departments and agencies of the District government; Provided that the planning considerations that are addressed shall include, but not be limited to the following:

(1) Public safety relating to police and fire concerns;

(2) The environment, relating to water supply, water pollution, soil erosion, and solid waste management;

(3) Public education;

(4) Recreation;

(5) Parking, loading, and traffic;

(6) Urban design; and

(7) As appropriate, historic preservation, and visual impacts on adjacent parkland;

(b) Considerations of site planning; the size, location, and bearing capacity of driveways; deliveries to be made to the site; side and rear yards; density and open space; and the location, design and screening of structures;

(c) Considerations of traffic to be generated and parking spaces to be provided, and their impacts;

(d) The impact of the proposed development on neighboring properties; and

(e) The findings, considerations, and recommendations of other District government agencies.

2516.11 The Board may impose conditions with respect to the size and location of driveways; net density; height, design, screening, and location of structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations.

2. Provide for matter of right review of the construction of more than one building on a single lot that is not located in, or within twenty-five (25) feet of, a residence district, by adopting a new 11 DCMR 2517, to read as follows:

2517 EXCEPTIONS TO BUILDING LOT CONTROL (Other than Residence Districts)

2517.1 This section is designed to permit two (2) or more principal buildings or structures to be erected as a matter of right on a single subdivided lot that is not located in, or within twenty-five (25) feet of, a residence district.

2517.2 The number of principal buildings permitted by these regulations shall not be limited; Provided, that the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations (such as use, height, bulk, and open spaces around each building), as provided by sections 3202.2 and 3202.3 of this title, shall be complied with.

2517.3 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the front of the building shall be the side upon which the principal entrance is located. Open space in front of the entrance shall be provided equivalent to the required rear yard in the district in which the building is located; but a rear yard shall be required.

2517.4 Where not in conflict with the Act of June 1, 1910, (36 Stat. 452), as amended, the height of a building governed by the provisions of this section, in all districts, shall be measured from the finished grade at the middle of the front of the building.

3. Consistently renumber existing sections 2517 through 2519, and all references thereto in Title 11, as 2518 through 2520, respectively.

Vote of the Zoning Commission at the June 19, 1989 public meeting: 4-0 (Maybelle Taylor Bennett, William L. Ensign, Lloyd D. Smith and Lindsley Williams to approve; and John G. Parsons not present, not voting).

On a preliminary motion at the special meeting on July 31, 1989, the Commission determined not to adopt an exemption for any project in a residence zone, by a vote of 3-1 (Maybelle Taylor Bennett, Lloyd D. Smith, and Lindsley Williams, in favor of the motion not to adopt an exemption; William L. Ensign, opposed to the motion; and John G. Parsons, not voting not having participated in the case.)

This Order was approved by the Zoning Commission at the public meeting on July 31, 1989, by a vote of 4-0 (Maybelle Taylor Bennett, William L. Ensign, Lloyd D. Smith, and Lindsley Williams, to approve; John G. Parsons, not voting not having participated in the case.

In accordance with 11 DCMR 3028, this Order is final and effective upon publication in the D.C. Register, that is, on AUG 11 1989.

MAYBELLE TAYLOR BENNETT
Vice Chairperson
Zoning Commission

EDWARD L. CURRY
Executive Director
Zoning Secretariat

zcorder627/LJP51

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION

OCT -3 P2:57

In re:	:	
Text Amendment 11 DCMR 2516.3	:	Case No. 94-3

One Judiciary Center
Second Floor Conference Room
Suite 210
441 Fourth Street, N.W.
Washington, D.C. 20001

Monday, September 19, 1994

The above-captioned matter convened, pursuant to Notice, at 7:00 p.m.

BEFORE:

MAYBELLE T. BENNETT
Chairperson, Zoning Commission

JERRILY R. KRESS
Vice Chairperson

WILLIAM ENSIGN
Commissioner

WILLIAM B. JOHNSON
Commissioner

proposal, and I think the gist of it is that we're concerned about the bifurcation of this process, and where this would lead.

On one level, the propsal makes a certain amount of sense -- I think we will concede that -- but we also believe that this might lead to perhaps speculative development, and we're not just talking about the change for the Greystone project itself, but clearly this would affect other developments throughout the city in the future.

I think Mr. Mendelson is well prepared to tell us the details of our position here, and that's all I have to report.

MR. MENDELSON: Thank you. ANC 3-C is satisfied with the current theoretical lot regulations. We do not, therefore, advocate the text change being considered. The proposed change, which would permit bifurcation of applications at the discretion of developers, will enable possible abuse of a planning process that was carefully crafted only five years ago.

Our ANC discussed this matter at great length at our regular monthly meeting in August. While the rationale set forth by Greystone Limited Partnership seems reasonable,

changing the regulations to allow a two-step process of approval could create the potential for manipulation.

We know, because the Historic Preservation Review Board allows a two-step process.

The process being proposed would facilitate, perhaps even encourage, speculative development projects where one person acquires an old estate, subdivides it theoretically with first-step BZA approval, and then sells it, just as apparently the YMCA has tried to do in the Palisades area of the District.

Then a second party would acquire the land. This would be a new player, who would be unfamiliar with the issues, with the promises, and the meaning and nuances behind any compromises that had been made previously by the first developer, or even any understandings that had come out of the first hearing before the BZA.

The community would be disadvantaged. Even the public interest, as embodied in the BZA, would be disadvantaged.

Legitimate issues and concerns would be subsumed and rendered more difficult in a two-step process. First step approval would be somewhat easy, because thorny

concerns could be left to the second step review.

At that later point though, an agressive developer represented by counsel would press the Board, based on the first preliminary okay.

Second thoughts by Board members would be discouraged, and the fiscal impact of any new changes would be emphasized. The developer would stress the commitments and costs that had been incurred, having proceeded from the first-step approval.

We see these disadvantages currently before the HPRB. The situation would be worse with the proposed zoning amendment, because the two HPRB approvals, and the two BZA approvals, could be used to leverage each other; that is, one preliminary approval would be used to encourage the other, which together would be used then to encourage the final approval.

Furthermore, to some extent the proposal promotes governmental inefficiency. To properties like Greystone, which is somewhat unusual, that is designated historic and also being adjacent to Rock Creek Park, then it is possible that there could be at least six hearings; that is, before the HPRB, the Commission on Fine Arts, and now the BZA.

This is absurd. The developers of Greystone could just as well wait and present their subdivision, or subdivisions, as a series, since they already propose to do this for their final development plans for each house.

The purpose of the 1989 amendment was to make speculative development of large sites into theoretical lots reviewable as a whole, to obtain all representations and commitments at once, and to discourage the speculative abuses that were occurring.

And I should say, since neither Adam or I have said this already, ANC 3-C was involved in the 1989 amendments because, as some of you might remember, there were an increasing number of theoretical lot developments that were occurring in the City, primarily in Ward 3, and especially on lots -- wooded lots and hilly lots -- and *that's because those lots* have been the least developable.

And with the pressure on our land use, or the pressure on land, *those sites have become increasingly* economically feasible; but those are the more difficult sites to develop, and there are impacts on the surrounding property owners, as well as community.

That's why we got into these regulations in 1989.

ANC 3-C was involved, and that's really the background from which we come at this.

If the Zoning Commission if favorable to adopting the proposed, advertised amendment, protections must be devised to ensure that any successor-in-interest to the original developer does not, quote, "misunderstand," or, quote, "not know," or otherwise undermine original promises and understandings in connection with the initial theoretical lot approval.

We are skeptical that such protections can be devised adequately.

Thank you for this opportunity to testify.

CHAIRPERSON BENNETT: Thank you, Mr. Mendelson. Let me ask you this. I notice that you mentioned that the HPRB also has a two-step approval process, and we do too, with respect to planned unit developments.

And as I understand it, when a property is conveyed to a new owner, then all of the orders that may attend it, be it a brand new development or whatever the deal is, gets conveyed with it -- it goes with the land.

So that if you have a new owner, they will have what they ostensively would have, the BZA order that gives

C

District of Columbia Court of Appeals.

Cushing DANIEL et al., Petitioners,
v.
DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent,
Battery Associates, Intervenor.

No. 8215.

Argued July 9, 1974.
Decided Dec. 16, 1974.

Certain property owners appealed for review of an order of the board of zoning adjustment which upheld issuance of building permits for construction of 15 single-family detached dwellings on a single record lot with 12 more houses to be built later. The Court of Appeals, Yeagley, J., held that the zoning ordinance permitting under specified conditions the erection of two or more principal buildings on a single subdivided lot is not invalid on the ground that it is devoid of standards for administrative implementation, that it grants an unconstitutional breadth of discretion to zoning administrator or that it is a special exception or variance which requires prior approval of the board.

Affirmed.

West Headnotes

[1] **Zoning and Planning** 605
414k605 Most Cited Cases

In reviewing zoning regulations, court's only task is to determine whether board's interpretation of regulations is plainly erroneous or inconsistent with the regulations.

[2] **Zoning and Planning** 42
414k42 Most Cited Cases

District of Columbia zoning ordinance permitting two or more principal buildings to be erected on a single subdivided lot does not lack adequate standards for its administrative implementation and does not give zoning administrator an unconstitutional breadth of discretion.

[3] **Zoning and Planning** 542.1
414k542.1 Most Cited Cases
(Formerly 414k542)

District of Columbia zoning ordinance authorizing the construction of two or more principal buildings on a single subdivided lot does not constitute a special exception or variance which would require prior approval of zoning board.

[4] **Zoning and Planning** 481
414k481 Most Cited Cases

"Variance" is an authorization to a property owner to depart from literal requirements of zoning regulations in utilization of his property in cases in which strict enforcement of the zoning regulations would cause undue hardship. D.C.C.E. § 5-420(3).

*773 Gilbert Hahn, Jr., Washington, D. C., for petitioners.

Leo N. Gorman, Asst. Corp. Counsel, Washington, D. C., with whom C. Francis Murphy, Corp. Counsel, Louis P. Robbins, Principal Asst. Corp. Counsel, and Richard W. Barton, Asst. Corp. Counsel, Washington, D. C., were on the brief, for respondent.

Whayne S. Quin, Washington, D. C., with whom Norman Glasgow and John F. McCabe, Jr., Washington, D. C., were on the brief, for intervenor.

Before NEBEKER, YEAGLEY and HARRIS, Associate Judges.

YEAGLEY, Associate Judge:

This is an appeal by certain property owners (petitioners)[FN1] for review of an order *774 of the Board of Zoning Adjustment (Board) which upheld the issuance of building permits to Battery Associates (Battery) for the construction of 15 single family detached dwellings in an R-1-B zone, on a single record lot consisting of 192,000 square feet. Twelve more houses are to be built later. The lot abuts two roughly parallel portions of University Terrace and Chain Bridge Road in northwest Washington and has a total public street frontage thereon of only 304 feet. The building permits were issued by the zoning administrator who found that the development proposed by Battery met the requirements of s 7516 of the Zoning Regulations.

FN1. Petitioners, in order to invoke the jurisdiction of this court under D.C.Code

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1973, s 1-1510 and s 11-722, allege that they were parties to the proceedings before the Board adversely affected by the Board's ruling. While we have considerable difficulty in finding that the parties before the Board established that they were persons aggrieved within the meaning of D.C.Code 1973, s 5-420 and of s 8102.1 of the Zoning Regulations, we have decided not to overturn the Board's finding that the petitioners had standing before it.

The approved plan provides for single family detached houses to be constructed along a semi-circular private access road which leads off of University Terrace and runs through the lot. The development pattern normally required by the Zoning Regulations in an R-1-B zone consists of single family detached dwellings built on individually recorded lots,[FN2] each with a minimum lot area of at least 5,000 square feet, a width of at least 50 feet and a minimum public street frontage of 20 feet.[FN3] The instant plan comports with all of those requirements except as to street frontage and a separate recorded lot for each structure. The several lots, or construction sites, are not recorded but are considered as theoretical lots within the one large recorded lot.

FN2. D.C. Zoning Regulations, s 8103.3.

FN3. D.C. Zoning Regulations, ss 3301.1 and 3301.6. See also D.C. Zoning Regulations, s 3101.1.

Petitioners (appellants below) contend that the planned development of this land as an interior lot is impermissible, being in violation of the foregoing two R-1-B Zoning Regulations. They do not contend that the planned development failed to comply with any of the requirements of s 7516 under which the building permits were issued. Their argument in essence is that it was not intended that s 7516 should be interpreted to avoid the requirements of the foregoing two Zoning Regulations unless it is administered as a variance or special exception.

The relevant provisions of s 7516 are as follows:

7516.1. This Section is designed to permit two or more **principal** buildings or **structures** to be erected on a **single subdivided lot**.

7516.2. The number of principal buildings permitted hereunder shall not be limited, provided the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations such as use, height, bulk and open spaces around each building as provided by Paragraphs 8103.2 and 8103.3 will be complied with.

7516.3. Where a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the front of such building shall be the side upon which the principal entrance is located. Open space in front of such entrance shall be provided equivalent to the required rear yard in the district in which such building is located; but a rear yard shall be required. (Emphasis omitted.)

Petitioners contend that this section is so devoid of standards for administrative implementation that it must have been intended by the drafters to be a 'variance' or a 'special exception' within s 8207[FN4] of the Zoning Regulations so that a public hearing and Board approval would be required ***775** for every s 7516 development. Petitioners view the lack of standards as rising to the level of a constitutional defect. The Board's interpretation of s 7516 is also attacked by petitioners on the ground that the section was never intended to apply to R-1 zoning districts.

FN4. Section 8207 deals with the authority of the Board to grant variances and special exceptions in accordance with the Zoning Act of 1938, D.C.Code 1973, s 5-420.

The Board rejected petitioners' arguments and found that the Zoning Regulations provided adequate standards for the administrative application of s 7516, that the section was an alternative to the normal development pattern provided for in the Zoning Regulations which could be employed by any qualifying developer, and that s 7516 was not to be implemented as a 'variance' or 'special exception'.

[1] In reviewing such regulations we recognize that 'our only task is to determine whether the Board's interpretation is plainly erroneous or inconsistent with the regulations.' Taylor v. District of Columbia Board of Zoning Adjustment, D.C. App., 308 A.2d 230, 232 (1973). We find the pertinent regulations to be abundantly clear and the Board's interpretation thereof fully warranted.

I

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[2] We do not agree with petitioners' contention that s 7516 lacks adequate standards for its administrative implementation. Paragraph 2 thereof expressly conditions its authorization of multiple buildings on a single lot upon compliance with all of the applicable building permit requirements of ss 8103.2 and 8103.3 of the Zoning Regulations. Consequently, the zoning administrator must determine, among other things, whether the applicant's development plan meets the use, height, bulk and open space requirements for the appropriate zoning districts. Petitioner does not contend that those requirements were not met by Battery in this case. The s 7516 developer essentially avoids only two criteria of the normal building permit applicant-the mandate of s 8103.3 of one record lot for each structure, and the minimum street frontage requirement of s 3301.6 which would normally by applicable to each building site. However, he incurs an additional front yard requirement under s 7516.3 for each proposed building. Consequently, the zoning administrator issues a s 7516 building permit under criteria which are substantially the same as those he employs in issuing any other building permit. For from having an unconstitutional breadth of discretion, the zoning administrator has no discretion in this regard. Section 7516 is an elective section to be instituted at the option of the developer, and the only function of the zoning administrator is to make certain that the building permit applicant has met all of the requirements of the section under which he chose to file his application.[FN5]

FN5. We note that in the minutes of the Board meeting of November 20, 1973, the Board recommended that the Zoning Commission study possible improvements for s 7516. If the elective nature of s 7516 is not desirable from a policy point of view, it is the legislative task of the Commission, not the responsibility of the Board or the courts, to fashion the appropriate relief.

II

[3][4] Petitioners' argument that s 7516 constitutes a 'special exception' or 'variance' which cannot be obtained without the prior approval of the Board is unconvincing. That section is a development procedure expressly provided for in the Regulations. A 'variance', on the other hand, is an authorization to a property owner to depart from the literal requirements of the Zoning Regulations in utilization of his property in cases in which the strict enforcement of the Zoning Regulations would cause undue hardship. D.C.Code 1973, s 5-420(3); D.C. Zoning Regulations, s 8207.11. See Clerics of St. Viator v. District of Columbia Board of Zoning Adjustment, D.C.App., 320 A.2d 291 (1974); *776Palmer v. Board of Zoning Adjustment, D.C.App., 287 A.2d 535 (1972). Nor is there anything in the Zoning Regulations to indicate that s 7516 is a 'special exception' requiring approval of the Board. The section appears on its face to be self-executing. It deals with the prerequisites to the issuance of a building permit which is a matter administered by the zoning administrator, and it is not among the 'special exceptions' listed under s 8207.2 of the Zoning Regulations. See 3 Anderson, American Law of Zoning s 15.01-02 (1968).

In the words of the Zoning Advisory Council at the time that it recommended adoption of s 7516, it 'is an elective regulation which will be optional with the developer . . ..' Report of the Zoning Advisory Council at 7, September 3, 1963. There is nothing to suggest that the Board is to intervene in the normal application of s 7516 or that the subsequent adoption of s 3301.6 changed the nature of its function. The same is true of s 8103.3, a fortiori, because that section explicitly provides for the independent operation of s 7516.

III

We find nothing in the language or legislative history of s 7516 to indicate that it was not intended to apply to every zoning district in the city. While it is true that s 7516 was promulgated primarily to facilitate the development of multiple unit public housing, the Zoning Advisory Council recognized that '(t)he amendment would not be limited to public housing, since it should prove advantageous . . . occasionally to the individual lot owner who may be faced with the problem of developing excessively large interior property with only minimal street frontage.' Report of the Zoning Advisory Council at 6, September 3, 1963. This is precisely the type of project which has been undertaken by Battery. Section 7516.3 clearly recognizes that some of the building sites for such interior developments may have no public street frontage and attempts to compensate for this fact by adding an extra front yard requirement.

We find unersuasive the other arguments advanced by the petitioners. Accordingly, we conclude that there is nothing in the record before us to indicate that the interpretation of the Board was plainly erroneous, inconsistent with the Zoning Regulations or contrary to law.

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Affirmed.

329 A.2d 773

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

Application No. 16637 of Alex R. Boyar, pursuant to 11 DCMR 3104.1, for a special exception under Section 2516 to permit a theoretical lot line subdivision to allow the construction of four single-family detached dwellings in an R-1-B District at premises 4427 Potomac Avenue, N.W. (Square 1356, Lots 21 and 22).

HEARING DATE: November 8, 2000
DECISION DATE: November 8, 2000 (Bench Decision)

SUMMARY ORDER

The zoning relief requested in this case is self-certified, pursuant to 11 DCMR 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, by mail to Advisory Neighborhood Commission (ANC) 2E, and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 2E. ANC 2E, which is automatically a party to this application, submitted a report unanimously approving the application.

The Board approved the application at its November 8, 2000 public hearing; however, required that the Applicant provide additional information prior to release of the order. The Board requested the following information:

- A Construction Management Plan;
- An updated Site Plan;
- Letter from the Zoning Administrator's office regarding compliance with lot line orientation pursuant to Section 2516.5(d);
- A copy of the letter that was sent to the National Park Service; and,
- A final landscaping and grading plan.

The Board discussed the Applicant's submissions at a Special Public Meeting on November 21, 2000, and approved the issuance of the Order with the conditions identified herein. The Board also indicated that although the Applicant provided only a 40-foot turning area for vehicles within the property, consistent with Section 2516.6(d), this diameter is acceptable in light of the number of dwellings to be constructed and the amount of parking being provided on-site.

The Applicant provided the requested information to the Board, the Office of Planning and to Advisory Neighborhood Commission 2E. Advisory Neighborhood Commission 2E advised the Board that all of the commissioners reviewed the Construction Management Plan and had no objection to the plan.

As directed by 11 DCMR 3119.2, the Board required the applicant to satisfy the burden of proving the elements, which are necessary to establish the case for a special exception pursuant to 11 DCMR Subsection 3104.1. No person or entity appearing as a party to this case testified in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR Subsection 3104.1 and Section 2516, that the requested relief can be granted in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that the application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

Construction Management

1. The Applicant shall abide by the conditions identified in the Construction Management Plan (Exhibit No. 34). The following shall amend the plan:

    - Exterior construction shall be limited to the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday.

    - The Applicant shall discuss with Advisory Neighborhood Commission 2E the route that will be used for construction traffic. A document identifying the traffic route of construction vehicles is to be filed with the ANC.

    - All vehicles related to on-site construction shall be parked on the premises.

    - There shall be no unnecessary idling of vehicles on neighborhood streets.

    - The hauling route, within two blocks of the site, shall be washed down as needed, and construction debris removed.

- Portable toilets shall be provided on-site.

Community Contact

2. The Applicant shall provide to ANC 2E the name and telephone number of a person to be contacted during construction, regarding complaints or other issues.

Design

3. The dwellings shall be designed to be compatible with the character and style of structures in the Palisades neighborhood. The design of the structures shall be submitted to ANC 2E for review.

Pursuant to 11 DCMR 3101.6, the Board waived the requirement of 11 DCMR 3125.3 that findings of fact and conclusions of law accompany the order of the Board. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4-0 (Rodney Moulden, Sheila Cross Reid, Carol Mitten and Robert Sockwell to approve.)

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

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director

FINAL DATE OF ORDER: DEC - 1 2000

PURSUANT TO D.C. CODE SEC. 1-2531 (1999), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1999), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

BAB/11.29.00

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Office of Zoning

BZA APPLICATION NO. 16637

As Director of the Office of Zoning, I hereby certify and attest that on DEC - 1 2000 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter and who is listed below:

Alex Boyar
4221 38th Street, N.W.
Washington, DC 20016

Peter Pulsifer, Chairperson
Advisory Neighborhood Commission 2E
St. John's Episcopal Church
3265 S Street, N.W.
Washington, DC 20007

Fran Goldstein
SMD Commissioner ANC 2E02
3928 Highwood Court, N.W.
Washington, DC 20007

Councilmember Jack Evans
Ward Two
441 4th Street, N.W., Suite 703
Washington, DC 20001

Toye Bello, Acting Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, DC 20009

ATTESTED BY: Jerrily R. Kress

JERRILY R. KRESS, FAIA
Director

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 16904 of Capitol Apartment Property Associates LP, pursuant to 11 DCMR § 3104.1, for a special exception for a new residential development under section 353, a special exception to allow a group of buildings to be erected and deemed a single building under section 410, and a special exception to allow two or more principal buildings on a single subdivided lot under section 2516, for the construction of 96 apartment units in an R-5-A District at premises 3701-23 4th Street, S.E., 3708-22 2nd Street, S.E., and 200-208 Wilmington Place, S.E. (Square 6092, Lots 25-29).

HEARING DATE: July 30, 2002
DECISION DATE: September 4, 2002

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of public hearing on this application, by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 8C and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 8C. ANC 8C, which is automatically a party to the application, filed a written statement in support of the application. The Office of Planning submitted a report in support of the application. The District Department of Transportation (DDOT) submitted a report having no objection to the application.

As directed by 11 DCMR § 3119.2, the Board has required the applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception pursuant to 11 DCMR §§ 3104.1, 2516, 410 and 353. No person or entity appeared at the public hearing in opposition to the application or otherwise requested to participate as a party to this proceeding. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met its burden of proof, pursuant to 11 DCMR § 3104.1, for a special exception under § 2116, and that the requested relief can be granted as in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore **ORDERED** that the application be **GRANTED.**

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: **4-0-1** (Geoffrey H. Griffis, Curtis Etherly, Jr., Anne M. Renshaw to approve, Anthony J. Hood to approve by proxy, David A. Zaidain not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring member has approved the issuance of this Order.

Attested by: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

Final Date of Order: SEP - 9 2002

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 THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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 14 IN TITLE 2 OF THE D.C. CODE. SEE D.C. CODE SECTION 2-1402.67 (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. NOTE IN SECTION 2-

1401.01 OF THE D.C. HUMAN RIGHTS ACT THAT IT IS THE INTENT OF THE COUNCIL OF THE DISTRICT OF COLUMBIA, IN ENACTING THIS CHAPTER, TO SECURE AN END IN THE DISTRICT OF COLUMBIA TO DISCRIMINATION FOR ANY REASON OTHER THAN THAT OF INDIVIDUAL MERIT, INCLUDING, BUT NOT LIMITED TO, DISCRIMINATION BY REASON OF RACE, COLOR, RELIGION, NATURAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, AND PLACE OF RESIDENCE OR BUSINESS.

rsn

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

BZA APPLICATION NO. 16904

As Director of the Office of Zoning, I hereby certify and attest that on SEP - 9 2002 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:

George R. Keys, Jr., Esq.
Jordan, Keys & Jessamy, LLP
1400 16th Street, N.W.
Washington, D.C. 20036-2217

Mary Cuthbert, Chairperson
Advisory Neighborhood Commission 8C
3125 MLK Avenue, S.E.
Washington, D.C. 20032

Virginia L. Major, Commissioner 8C07
Advisory Neighborhood Commission 8C
3125 MLK Avenue, S.E.
Washington, D.C. 20032

Sandra Allen, City Councilmember
Ward Eight
1350 Pennsylvania Avenue, N.W., Suite 408
Washington, D.C. 20004

Robert Kelly, Zoning Administrator
Building and Land Regulation Administration
Department of Consumer and Regulatory Affairs
941 N. Capitol Street, N.E.
Washington, D.C. 20002

Ellen McCarthy, Deputy Director
Office of Planning
801 North Capitol Street, N.E., 4th Floor
Washington, D.C. 20002

Alan Bergstein, Esq.
Office of Corporation Counsel
441 4th Street, N.W., 6th Floor
Washington, D.C. 20001

rsn

ATTESTED BY: Jerrily R. Kress

JERRILY R. KRESS, FAIA
Director, Office of Zoning

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16705 of Stanton Road Housing, LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1 for special exceptions under section 353 and subsection 2516.5 for a new residential development having theoretical lots and variances under section 402 from the floor area ratio requirements, and under section 403 from the lot occupancy requirements for the construction of 25 townhouses in the R-5-A and R-4 Districts at Stanton and Douglas Roads, S.E. (Square 5870, Lots 65, part of Lots 64, 66, 67, 811, 818, 859 and 860).

HEARING DATE: May 29, 2001
DECISSION DATE: May 29, 2001

SUMMARY ORDER

SELF- CERTIFICATION

The zoning relief requested in this case is self-certified, pursuant to 11DCMR 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to the Applicant, Advisory Neighborhood Commission (ANC) 8A, and to owners of all property within 200 feet of the property that is the subject of this application. The application was also referred to the Office of Planning (OP) for review and report.

The subject property is located within the jurisdiction of ANC 8A. ANC 8A, which is automatically a party to this application, did not participate in this case. The OP submitted a report recommending conditional approval of the application. The Department of Public Works submitted a report stating that it had no objection to the application. The Department of Housing and Community Development submitted a letter in support of the application.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a variance under § 3103.2 and for a special exception under § 3104.1. No person or entity appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the Office of Planning reports filed in this case, the Board concludes that the applicant has met the burden of proof, under 11 DCMR §§ 3103.2, 402, and 403 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose,

and integrity of the zoning plan as embodied in the Zoning Regulations and Map. The Board further concludes that the Applicant has met the burden of proof under 11 DCMR §§ 3104 .1, 353, and 2516.5 that the granting of the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, It is therefore **ORDERED** that the application be **GRANTED.**

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4-0-1 (John G. Parsons, Susan M. Hinton, Sheila Cross Reid, and Geoffrey H. Griffis to approve; Anne M. Renshaw abstaining)

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

Each concurring member has approved the issuance of this Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

Final Date of Order: JUN 19 2001

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 (1999). 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
BOARD OF ZONING ADJUSTMENT

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BZA APPLICATION NO. 16705

As Director of the Office of Zoning, I hereby certify and attest that on JUN 19 2001 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class, postage prepaid or sent by inter-agency mail, to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

George R. Keyes, Jr., Esquire
Jordan & Jessamy
1400 16th Street, N.W., Suite 700
Washington, D.C. 20036 - 2217

Alan Bergstein, Esq.
Office of Corporation Counsel
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Charles H. Wilson, Chairperson
Advisory Neighborhood Commission 8A
2427 MLK Avenue, S.E.
Washington, D.C. 20020

Wanda D. Glover, Commissioner
Single Member District Commissioner 8A06
2712 Douglas Place, S.E.
Washington, D.C. 20020

Sandy Allen, Councilmember
Ward Eight
441 4th Street, N.W. Room 707
Washington, D.C. 20001

Michael D. Johnson, Zoning Administrator
Department of Consumer & Regulatory Affairs
941 North Capitol Street, N.E., Suite 2000
Washington, D. C. 20002

Ellen McCarthy, Deputy Director
Office of Planning (4TH floor)
801 North Capital Street, N.E.
Washington, D.C. 20002

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

ATT/16705anc8A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16457 of Kass MA, L.L.C., as amended, pursuant to 11 DCMR 3108.1 (new 3104.1), for special exceptions under Subsections 410 and 2516 to allow the construction of 33 new single-family detached dwellings with garages in a theoretical lot subdivision and 176 luxury garden apartments in the R-5-A and R-5-B Districts at premises bounded by Good Hope Road, SE, between 24th Street, SE to the east, and 18th Street, SE to the west (Square 5735, Parcels 219/96, 220/31 and Square 5765, Lot 804 and Parcel 219/138).[1]

HEARING DATE: May 5, 1999
DECISION DATE: June 2, 1999

ORDER

SUMMARY OF EVIDENCE:

A. Record of Evidence

The application was advertised for the construction of 33 single-family dwelling units; however, the project consists of 37 single-family units. Four units would be constructed on record lots, as a matter-of-right.

The site is located in the Southeast quadrant of the District of Columbia, on the south side of Good Hope Road, SE, between 24th Street to the east and 18th Street, SE to the west. The site (15.8 acres) consists of two parcels of land: the East Parcel and the West Parcel. A portion of Fort Stanton Park that fronts on Good Hope Road separates the two parcels.

The East Parcel consists of Square 5735, Parcels 219/96 and 220/31. The East Parcel contains 355,227 square feet (8.15 acres) of land area. This parcel is rectangular in shape and has a frontage along Good Hope Road of approximately 535 feet. The East Parcel is currently vacant with virtually no vegetation and abuts Fort Stanton Park on its western and southern boundaries. The East Parcel is located entirely in the R-5-A District.

The West Parcel consists of Square 5765, Lot 804 and Parcel 219/138. The West Parcel is vacant, irregularly shaped, and contains approximately 332,365 square feet (7.63 acres) of land area. The West Parcel has a frontage of 760 feet along Good Hope Road and 360 feet along U Street. The West Parcel abuts Fort Stanton Park on its southern and eastern boundaries. The

[1] The application was corrected to reflect the correct square and parcel numbers.

West Parcel is split-zoned with approximately two-thirds in the R-5-B District and one-third in the R-5-A District.

The subject property is located in the Fairlawn/Woodland neighborhoods. The East Parcel is located in Ward 8 and the West Parcel is located in Ward 6. A mix of housing types characterizes the area surrounding the site. To the north and west of the site are single-family dwellings. To the north, northeast and southeast of the site are garden and high-rise apartment buildings. The multi-family dwellings include: the 672-unit Marbury Plaza high-rise building; the 213-unit Skyland Garden Apartments; and, the 231-unit Park Naylor Apartments. The Good Hope Marketplace Shopping Center, which is located at Good Hope Road and Alabama Avenue, is the nearest commercial area to the site. Ketcham Elementary School is located to the west of the site at 15th and U Streets, SE, and the Anacostia Branch Public Library is located directly to the north of the site at 18th Street and Good Hope Road. Metrobus provides transportation service to the area.

The proposed development is referred to as "Woodmont". The Applicant indicated that the firm, KSI Services, Inc, has developed similar planned communities throughout the Washington Metropolitan Area and manages all of its properties. The planned residential community consists of two components: the development of 37 single-family detached homes and 176 units of apartments in six multi-family buildings. The Applicant indicated that the project is economically feasible, only if the multi-family component is constructed. Without construction of the apartments units, the single-family component would not be possible. The Applicant committed to long-term ownership and control (25 years or more) of the apartment component. The following information identifies key features of each component:

- Single-Family Homes at Woodmont (West Parcel)

  1. Construction of 37 units - 33 units on a theoretical subdivision and four units on record lots.
  2. The owner-occupied homes would be constructed on approximately 7.6 acres.
  3. Combined lot occupancy would be 15 percent (40 percent permitted).
  4. Floor area ratio .3 (.9 permitted).
  5. The size of each lot would range from 5,500 s.f. to 7,500+ s.f.
  6. Construction of a 25-foot wide private roadway, Wagner Street SE. Access to 33 dwelling units would be from the private street. Four units would have access from Good Hope Road.
  7. One or two-car garages for each unit.
  8. Construction of a new private roadway from 18th Street.
  9. Establishment of a homeowners/tenants association.

- Apartment Houses at Woodmont (East Parcel)

1. 176 rental units
   40 two-bedrooms/two-bathrooms (925 square feet)
   76 two-bedrooms/two-bathrooms (1010 square feet)
   60 three-bedrooms/two-bathrooms (1175 square feet)

2. Twelve garden apartment buildings constructed on approximately 8.1 acres.

3. Construction of a private roadway from Good Hope Road.

4. Height of buildings - 3 and 4 stories.

5. Floor area ratio .64 (.9 permitted).

6. Lot occupancy 20 percent (40 percent permitted).

7. 176 parking spaces – to include spaces for visitors and physically challenged persons.

8. Gated community with controlled access.

9. Operated by a management company.

10. 48 units are ADA (American With Disabilities Act) accessible.

11. Amenities – pool, fitness center, clubhouse, after-school enrichment and computer training and children's play area. Initiation of the Rent-To-Buy Program. Residents would accrue equity in their apartment units that would eventually go toward the purchase of a home.

Zoning

The Applicant indicated that both components of the project are matter-of-right uses and that the project meets all zoning requirements of the R-5-A and R-5-B districts. No variances or other deviations from the Zoning Regulations are required. The Board, however, is required to review theoretical lot subdivisions, under Section 2516 of the Zoning Regulations, and site plan review of anything but single-family detached dwelling units in the R-5-A District, under Section 410. Accordingly, two Special Exceptions are required by the Zoning Regulations for the type of development, which is proposed.

Traffic/Parking

The Applicant submitted a Traffic Impact Analysis (Exhibit 33, Tab D). The study concluded that the area surrounding the site would be adequate to accommodate the proposed development. Minor capacity deficiencies would occur at two intersections (AM peak hour only) due to congestion along the major commuter routes. The proposed development, however, would not create any significant capacity, safety, or operational deficiencies within the study area road network, and would not adversely impact the health, safety and general welfare of roadway users.

The major findings of the traffic study are:

a) The key intersections within the study area currently operate at acceptable Levels of Service, with the exception of Good Hope Road at 25th Street, SE during the morning peak hour period.

The intersection is signalized, and a solution to the problem could be making minor adjustments in the signal timing and phasing. The result would be additional capacity and greater efficiency of the intersection, depending on the time of day and the directional flow of traffic.

b) The traffic levels of usage for all key roadways considered have remained generally stable over the past several years; and on some roadways, traffic volumes have decreased.

c) A study (license plate survey) conducted along Good Hope Road, SE within vicinity of the study area indicates that over 75 percent of the vehicles are registered out-of-state. In conjunction, travel time surveys along Pennsylvania Avenue between Southern Avenue, I-295, and Branch Avenue show extreme levels of congestion.

d) Analysis of traffic volumes projected to the year 2001 shows that levels of service will continue to be acceptable with the exception of Good Hope Road at 25th Street, SE during the morning peak.

e) It is projected that the parking supply for the proposed development would be adequate.

f) Transit service along the Good Hope Road corridor has adequate capacity to accommodate potential demand from the proposed development.

The Applicant is proposing to provide 216 parking spaces. Of the total number of spaces, 176 would be provided for the apartments and 40 for the single-family homes. The Applicant indicated that based on a study of the area and similar types of projects the firm has constructed, the number of proposed parking spaces would be sufficient to satisfy the project's parking needs.

Environmental Evaluation

A portion of Fort Stanton Park, divides the single-family homes and the garden apartments. The Applicant indicated that concerns regarding storm water drainage and treatment were discussed with the DC Department of Public Works, Storm Water Management Branch. As a result of those discussions, the Applicant was informed that the Park Service property would not be impacted by storm water from the site. Specifically, storm water would be collected from the site, held in a storm water detention vault, and piped out through a closed conduit system under Good Hope Road. In addition, every effort would be made to assure adequate pest management control.

The Applicant indicated that extensive work was undertaken on environmental issues at the site. The work included a wetland delineation completed on both properties, which meets federal standards, and discussions were held with the District's Department of Health, Division of Environmental Services.

B. Report of Government Agencies

Council member Sharon Ambrose, indicated in correspondence dated May 5, 1999, that she supports the citizens of the Fairlawn community in their opposition to the application. Councilmember Ambrose stated that the citizens are very concerned that the density of the apartment buildings being proposed will erode the basic residential character of their community. The Fairlawn community suffers from a growing number of badly maintained and some abandoned multi-family buildings. The Council member indicated that while the townhouses are compatible with the development objectives of the Comprehensive Plan, the proposed apartments move the community in a different direction.

The DC Department of Housing and Community Development (DHCD), by memorandum dated April 12, 1999, supported the application. DHCD indicated that the multi-family garden apartment buildings would add to the stability of the existing garden apartment community. The proposed development complies with Sections 410 and 2516 of the Zoning Regulations. The single-family dwellings will add, needed, high quality, housing to East of the River housing stock. The opportunity for home ownership and the tax base of Wards 6 and 8 will be increased. The development will be in harmony with the general purpose and intent of the Zoning Regulations and Map (Exhibit 31).

The Department of Public Works (DPW) stated that the proposed development can be accommodated within an acceptable level of service -- the roadway system can handle traffic generated by the development (Exhibit 53). DPW stated that the 216 parking spaces that the Applicant is proposing are in compliance with the requirements of the Zoning Regulations. However, it appears that the proposed upscale development would generate more parking demand. To accommodate both residents and their guests and to minimize parking spillover into the neighboring residential area, the Applicant should be required to provide 1.1 parking spaces per dwelling unit, or 22 additional parking spaces.

C. Advisory Neighborhood Commission (ANC) Comments

The single-family component of the project would be located in Ward 6 (ANC 6C) and multi-family component would be located in Ward 8 (ANC 8B). Advisory Neighborhood Commission 6C did not submit any comments on the application.

Advisory Neighborhood Commission 8B submitted a letter stating that the Commission is not opposed to the plan for construction of the 176 apartment units; however, the Commission has some reservation (Exhibit No. 37). In the past, properties have been developed in the community, only to be deserted by developers after profits were received. The deserted developments have become havens for crime and other uses. The Commission wants some assurance that the Applicant will manage the properties for at least 25 years. Commission

members would prefer to have single-family homes built on the site to build the economic tax base needed to improve schools, encourage new businesses, and improve the area's job market.

D. Testimony of Opponents

Thelma E. Jones represented herself and the Fairlawn Citizens Association. By correspondence dated April 26, 1999, the Fairlawn Citizens Association voted, unanimously, to oppose the application. The citizens' association representative stated that the Applicant made a presentation on the proposed project at its January 19, 1999 meeting. Plans were presented and information given to the Board at the public hearing that was not discussed with the community. In addition, at the community meeting, residents stringently voiced their objection to any more apartment buildings being built in the community; however, they welcomed and supported single-family dwellings (Exhibit 56).

The Fairlawn Citizens Association submitted a petition, on behalf of approximately 150 residents, indicating that the community is strongly opposed to the project (Exhibit 39). The petition indicates that the residents would prefer to have single-family homes constructed on the site because rental apartment units would increase the density of the area, create congestion, and stretch limited community services (to include overcrowding at Ketcham Elementary School). Ms. Jones indicated that residential projects have been constructed in close proximity to the site where there is deterioration, absentee ownership, vandalism, lack of maintenance, abuse and drug infestation. In addition, the Skyland Apartments, Altamont Apartments, and Marlbury Plaza are apartment complexes that have a high vacancy rate.

Ms. Jones and four other community residents testified that the Applicant did not satisfactorily address the community's concerns about soil erosion and water runoff. Specifically, when rain falls heavily, there is approximately two to four-feet of water that build up on some parts of Good Hope Road. Within the vicinity of the site, water seeps up from an underground stream. There is water leakage into the basement of homes that are located close to the site.

The community residents testified that there is a significant amount of existing traffic congestion in the neighborhood. Local traffic, when intermingled with commuter traffic, causes a negative impact on the local roadways. If the neighborhood's population were significantly increased, current traffic bottlenecks would spillover onto local roadways.

The Frederick Douglass Community Improvement Council presented testimony in opposition to the application because the project would cause increased congestion in the community (Exhibits 34 and 52). The Council's president, Carolyn Johns Gray, supported the position taken by the Fairlawn Citizens Association.

The National Park Service testified that the site is problematic because it contains major environmental and design problems. The Park Service representatives indicated that they did not receive an updated set of plans on the project until the day prior to the hearing; therefore, their review was based on plans that were initially filed. In order for the project to not have a negative impact on Park Service land, more substantive information about how the Applicant would treat the site so that it is more environmentally sensitive would be required.

The property abuts Fort Stanton Park. The parkland is a part of the Fort Circle Park system, which is essential to the Nation's Capitol for many reasons, including preservation of the wooded forest ridge that creates the topographic bowl of the city. The elevation in the vicinity of the site is very high (an average of 200 feet). The tree cover on top of that is approximately 90 feet. Therefore, from a marketing perspective, the proposed development would have significant views. The Park Service representatives indicated that approximately 50 feet of the buildings would be visible above the treetop or the tree line of the ridge. This would be of detriment to the sight line of the parkland. Further, the height of the apartment buildings would be 62 feet, which means that these buildings would be visible from the Anacostia Freeway - one of the areas that becomes the viewing point for this wooded ridge around the Potomac River.

The apartment complex would be constructed on substantially fill land and there is massive erosion on the site. The Park Service representatives indicated that the rubble site has been a source of problem since 1986. They were dissatisfied with submitted plans concerning the stability of the rubble fill, how erosion and water run-off from the rubble would be treated, and whether the site is capable of sustaining the level of development that is proposed. The Park Service representatives indicated that it would be the Applicant's responsibility to screen the site with the appropriate vegetation.

The Fort Circle Parks are contiguous to or adjoining wetlands. The single-family homes would be constructed on wetlands and the District government requires preservation of wetlands. The Park Service representatives stated that they were not sure how much of the wetlands in that area could be disturbed. In addition, the site is of great concern because there is a potential for rare and endangered plants and animals to be destroyed.

The project would cost more than one million dollars; therefore, based on the District's Department of Health requirements, an Environmental Assessment would be required, and possibly an Environmental Impact Statement. Important design elements to be considered for this project are: placement and orientation of the buildings, height, and screening capabilities. The Park Service is not necessarily opposed to the project in principle; however, more specific plans are required. For example, plans would be required to show how the slopes between the garden apartments and the Park Service property would be treated, and what mitigation efforts would be used to offset any potential adverse impacts.

FINDINGS OF FACT:

The Board finds that significant environmental concerns exist at the site. The Applicant at the public hearing did not satisfactorily address these concerns, nor did the Board receive post-hearing submissions from the Applicant or the Park Service to allay the environmental concerns. The Applicant did not address the specific environmental concerns of the National Park Service. Information was not provided concerning how the vistas from the apartment buildings would affect the sight line from Federal parklands, to include Fort Stanton Park and the wooded ridge around the Potomac River. The apartment buildings would be constructed on land that is a rubble fill and there is on-site erosion. There are slopes between the garden apartments and the Park Service property. The single-family dwellings would be constructed on wetlands. There are rear species of invertebrates and vegetation on Park Service land that could be affected by the proposed development. Plans were not filed by the Applicant to identify how the aforementioned problems with the site would be treated, and to ensure the Board that these problems would not have negative impacts on the surrounding residential neighborhood.

The Board finds that if an Environmental Assessment report were required for this project that process is not within its purview; it is under the auspices of the District of Columbia Department of Health.

The Board finds that residential developments have been constructed along other Federal parklands without negative impacts. However, reasonable and appropriate mitigation measures have been used so that these developments do not have a detrimental impact the abutting communities. The Board was not convinced that the Applicant explored all appropriate environmental mitigation measures at the site.

The Board supports and encourages the single-family residential component of the project. However, the Board finds troubling the density of the project's multi-family component. The Board received substantial testimony from community residents that, in the vicinity of the site, there are many apartment buildings that have a high vacancy rate; that commuter traffic, when mingled with local traffic, causes congestion on the area's roadways; and, if not managed properly, on-site parking would spill-over onto the streets. As such, if the area's residential population were significantly increased, existing difficulties would be exacerbated. In addition, the Board takes note of Council member Sharon Ambrose's comment, which states that the proposed apartment development moves the community away from the objectives of the Comprehensive Plan for the Fairlawn neighborhood.

The Board finds that the application meets the zoning requirements for specific items such as lot occupancy, floor area ratio, and setbacks. However, the Board does not agree with the Applicant that the project is a matter-of-right development. The Zoning Regulations require that the Board review all residential developments in the R-5-A and R-5-B districts, except single-family detached and semi-detached dwelling units.

The Board considered the views of ANC 8B but was unable to give "great weight" to the ANC's position. The ANC's written report did not follow the requirements identified by Section 3307 the Zoning Regulations. Specifically, the report did not indicate: that the ANC gave proper

notice of the public hearing to the community; when the ANC's meeting was held to consider the application; if a quorum was present at the public meeting; and, the vote on the motion to adopt the report to the Board.

CONCLUSIONS OF LAW AND OPINION:

Based on the evidence of record and findings of fact, the Board concludes that the Applicant is seeking special exceptions under Subsections 410 and 2516 to allow the construction of 33 new single-family detached dwellings with garages, and construction of 176 garden apartment units on theoretical lot subdivisions. The special exceptions must meet the criteria set forth in Section 3108.1 (new 3104.1) of the Zoning Regulations which requires that the application be in harmony with the general purpose and intent of the Zoning Regulations and Map and not tend to affect adversely the use of neighboring property. The Board is of the opinion that there are significant environmental issues that were not addressed by the Applicant. Those issues would have serious negative impacts on the community. The Board is of the opinion that the density of the proposed apartments would cause negative impacts on the community, as a result of additional vehicles associated with traffic and parking. For these reasons, the Board concludes that the Applicant has not met the burden of proof. It is therefore **ORDERED** that the application be **DENIED**.

VOTE: 3-1 (Sheila Cross Reid, Anthony Hood and Betty King to **DENY**; Jerry Gilreath opposed to the motion.)

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

ATTESTED BY: _____
JERRILY R. KRESS
DIRECTOR

FINAL DATE OF ORDER: NOV - 5 1999

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

10.29.99/BAB

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16457

As Director of the Office of Zoning, I hereby certify and attest that on NOV - 5 1999 a copy of the order entered on that date in this matter was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

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Washington, DC 20020

Hope B. Etienne, Chairperson
Advisory Neighborhood Commission 8B
MPD 7th District
1809 Savannah Street, SE
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Thelma E. Jones
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Washington, DC 20020

ATTESTED BY: _____
JERRILY R. KRESS
DIRECTOR