GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17276-C of Phillips Park, LLC, pursuant to 11 DCMR 3104.1, for a special exception from section 2516 of the Zoning Regulations to allow the construction of a theoretical lot subdivision for thirty-five single-family homes in the R-1-A zone district at 2101 Foxhall Road, NW, Square 1346, Lot 822.

HEARING DATES:	February 15, 2005, February 22, 2005, and March 8, 2005
DECISION DATE:	April 5, 2005
DECISION DATE ON RECONSIDERATION & MINOR CORRECTION:	September 13, 2005
DECISION DATE ON MINOR MODIFICATION:	June 5, 2007

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17276
EXHIBIT NO. 80

DECISION AND ORDER ON MODIFICATION OF APPROVED ORDER[1]

By order dated July 26, 2005, the Board of Zoning Adjustment ("Board") approved Application No. 17276, of Phillips Park, LLC ("Applicant").

On September 13, 2005, the Board denied the motion for reconsideration of its decision filed by Friends of Whitehaven. Final Order No. 17276-A was issued on November 3, 2005.

On September 13, 2005, the Board also decided to correct its original order by clarifying the Applicant's obligations under 11 DCMR § 2516.6(b). The Corrected Decision and Order No. 17276-B, was issued on November 3, 2005. The original order approving the application, as well as the corrected order (17276-B), contained 16 conditions.

FINDINGS OF FACT

1. On May 1, 2007, the Applicant filed a request for minor modification to Condition No. 4 of BZA Order No. 17276-B, and a waiver of Section 3129.3, the six-month time limit for filing such requests. The Applicant served the motion on the parties to the Application.

[1]This Order is an addendum to Board of Zoning Adjustment Order No. 17276-B. All provisions of Order No. 17276-B remain in effect except as specifically modified herein.

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2. Condition No. 4 provides as follows:

> "The proposed dwellings shall be constructed behind the building setback lines shown on the Preliminary Grading Plan contained in Exhibit 50, Tab 1 of the record. Pools shall be constructed within building setback lines. With the exception of lots abutting parkland or the 44th Street right-of-way (lots A-10, A11, A29, A30, A12, A13, A34 and A35), patios at grade and decks at or below the main floor shall be permitted between the building setback line and the individual lot lines."

3. The Applicant stated that it does not seek to alter the condition as it applies to those lots abutting parkland or the 44th Street right-of-way. However, the Applicant argues, the language relating to the location of pools, on interior lots, is inconsistent with the Zoning Regulations and would preclude in-ground pools from being constructed, should a homeowner express a desire to do so.

4. In line with this reasoning, the Applicant proposes the following language for Condition No. 4:

> "The proposed dwellings shall be constructed behind the building setback lines shown on the Preliminary Grading Plan contained in Exhibit 50, Tab 1 of the record. With the exception of lots abutting parkland or the 44th Street right-of-way (lots A-10, A-11, A-29, A-30, A-12, A-13, A-34 and A-35), in-ground pools, patios at grade and decks at or below the main floor shall be permitted between the building setback line and the individual lot lines."

5. The Applicant pointed out that the architectural guidelines that it offered to the Board, which included the pool limitations, were aimed at addressing the National Park Service concern that pools not encroach on the buffer rear yards against the Park. Consistent with that, decks and patios were permitted between the building setback line and the individual lot lines, with the exception of the lots specifically identified in Condition #4 of the Board's Order, i.e. lots abutting parkland or the 44th Street right-of-way. The Applicant was interpreting the language as restricting all pools within the entire development to be within building setbacks. However, it was the Applicant's intent that the restriction on in-ground swimming pools for interior lots be identical to the restrictions on decks and patios. Thus, the proposed change to Condition No. 4 was requested.

6. Section 3129.7 of the Zoning Regulations (11 DCMR) provides that approval of requests for modification of approved plans shall be limited to minor modifications that do not change the material facts the Board relied upon in approving the application. The Applicant maintains that the modification in this case is minor and well within the Board's authority to approve under § 3129 of the Zoning Regulations.

7. There was no filing in support or opposition to the modification voiced by any parties to the Application within the required 10-day period, pursuant to Section 3129.4

CONCLUSIONS OF LAW

At its public meeting on June 5, 2007, the Board waived the 6-month time requirement of 11 DCMR § 3129.3 and decided to accept, and address, the Applicant's request. After reviewing the Applicant's motion for modification, the Board concludes that the modification requested is minor and does not change the material facts upon which the Board relied in approving the application. *See,* 11 DCMR § 3129.7. Therefore, the Board concludes that the Applicant's request for a revision of the order, as indicated above, meets the requirements set forth in the regulations for a minor modification and it is hereby **ORDERED** that the motion is **GRANTED.** Consistent with the designation of lots abutting parkland or the 44th Street right-of-way, the Board has added lots A-31, A-32 and A-33 to Condition No. 4. Pursuant to this approval, **Condition No. 4** shall read as follows:

4. "The proposed dwellings shall be constructed behind the building setback lines shown on the Preliminary Grading Plan contained in Exhibit 50, Tab 1 of the record. With the exception of lots abutting parkland or the 44th Street right-of-way (lots A-10, A-11, A-12, A-13, A-29, A-30, A-31, A-32, A-33, A-34 and A-35), in-ground pools, patios at grade and decks at or below the main floor shall be permitted between the building setback line and the individual lot lines."

VOTE: **4-0-1** (John G. Parsons, Curtis L. Etherly, Jr., John A. Mann II, and Ruthanne G. Miller to grant; Geoffrey H. Griffis not voting, no longer sitting on the Board)

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

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

FINAL DATE OF ORDER: JUN 27 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-

YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

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

D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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