GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 17381 of AGG International, Inc. pursuant to 11 DCMR § 3104.1, for a special exception to permit new residential development under § 353 and for multiple buildings to be considered a single building under § 410, in the R-5-A District, located at the 1400 block of Rock Creek Ford Road, NW (Square 2726, Lot 810).

HEARING DATE: November 8, 2005
DECISION DATE: December 6, 2005

DECISION AND ORDER

AGG International, Inc., the property owner (the "owner" or the "applicant") of the subject premises, filed an application with the Board of Zoning Adjustment (Board) on June 14, 2005[1], for a special exception under §§ 353 and 410 to permit new residential development of four row dwellings in the R-5-A zone. Following a hearing on November 8, 2005, the Board voted to approve the special exception.

Preliminary Matters

Self-Certification The original owner submitted a "self-certification" form with the Board describing the zoning relief that is requested above (Exhibit 9). Attorneys for the applicant submitted a revised application form and letter reflecting the change in ownership (Exhibit 21).

Notice of Public Hearing Pursuant to 11 DCMR 3113.13, notice of the hearing was sent to the applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission (ANC) 4A, and the District of Columbia Office of Planning (OP). The applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect (Exhibit 29).

ANC Report In its report dated October 7, 2005, ANC 4A indicated that, at a regularly scheduled monthly meeting with a quorum present, it voted "not to support" the application. The ANC also indicated that it had not received sufficient information about the project from the applicant. ANC Commissioner Habieba Snow-Israel testified at the public hearing in opposition to the application, stressing that the ANC lacked information about the character of the project and the proposed materials, parking, and green space at the project. The applicant maintained that, although this information had been provided during ANC meetings, it would meet with the ANC again.

[1] The application was filed on behalf of the original owner, AMM Development, Inc., but was amended on or about July 21, 2005, to reflect a transfer of ownership to AGG International, Inc.

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EXHIBIT NO. 34

Party Status Requests There were no requests for party status. However, the ANC is automatically a party to this application.

Persons in Support/Opposition One community member testified in opposition to the application, claiming that the proposed off-street parking was inadequate.

Government Reports
Office of Planning (OP) Report OP's report stated that the application should be approved, subject to the applicant's filing a revised plan showing that the second floor would not be "cantilevered" into public space (Exhibit 31). As will be explained in the Findings of Fact, the applicant filed revised plans, and OP testified at the public that it supported the special exception.

Department of Transportation (DDOT) Report DDOT's report stated that it had "no objections" to the proposed project (Exhibit 20).

Department of Housing & Community Development (DHCD) Report DHCD's report stated that it would support the application if the plans were modified and the townhouses were "located further back from the front property line. . . so that only the corners of the. . . cantilevered second floor bedrooms touch[ed] the front property line" (Exhibit 26).

FINDINGS OF FACT

The Site and Surrounding Area

1. The property is known as the 1400 block of Rock Creek Ford Road, NW and is located in Square 2726, Lot 810, in the R-5-A zone district.

2. The property is an irregularly shaped undeveloped lot of uneven topography. It is bounded by 15th Street on the east, 16th Street on the west, Fort Stevens Drive on the north, and Rock Creek Park and Military Road on the south. The property is bisected by Rock Creek Ford Road, and has frontage on both Rock Creek Ford Road and Fort Stevens Drive.

3. To the north of the property are Fort Stevens Drive and the Rittenhouse Apartments. To the east are multiple family dwellings. To the south are Rock Creek Ford Road and additional multiple family dwellings. To the west is vacant land and the Jewish Primary Day School.

4. The immediate neighborhood is characterized by multi-family residences, including the Rittenhouse Apartments, and semi-detached row and garden apartment homes.

5. There are several recreational opportunities in the vicinity, including Rock Creek Park to the west of the property.
The Application

6. The owner seeks a special exception to permit new residential development of four two-story row dwellings. The project has a maximum floor area ration (FAR) of 0.85 and includes four surface parking spaces. All four dwellings will be erected at the same time from the ground up, and have a building height at 20 feet, measured from the curb at the center of each row dwelling.

7. The R-5-A zone permits matter-of-right development of single-family residential uses for detached and semi-detached dwellings. However, row dwelling developments, such as the one proposed, must seek special exception approval under § 353 of the Zoning Regulations. Because the four structures will be located on one record lot, the applicant seeks to have the structures deemed one building under § 410 of the Zoning Regulations.

8. The owner submitted twenty sets of site plans with its application, including floor plans, elevations, and grading and landscaping plans (Exhibt10). He also submitted photographs, a survey of the property, and an aerial photograph of the vicinity (Exhibits 6, 3, Tab E appended to Exhibit 30). Initial drawings and site plans showed an "overhang" of the second floors of the units into public space. The owner submitted a revised plan in its pre-hearing statement showing that the second floors would no longer be cantilevered into public space (Tab F appended to Exhibit 30).

Proposed Design and Site Plan Review

9. The four row houses will occupy less than forty percent of the total site. All areas not devoted to the building or parking will be appropriately landscaped.

10. The front entrances of three of the units, and the access stairway at the end unit (unit 1) each abut Rock Creek Ford Road, which abuts the lot. The unit 1 front entrance abuts a side yard. None of the rear entrances abut a street, front yard, or front court. There will be no service entrances (Exhibit 31).

11. The one exterior stairway, at the end unit, is entirely within the building area of the site plan and is not shown above the level of the main floor joists (Exhibit 31).

12. Site access will be provided from Rock Creek Ford Road through only two curb cuts. Based on the submitted plans, there is adequate unobstructed access to the street from each of the dwellings, and the rear yard is large enough to allow access to the rear of each unit (Exhibit 31). The design also allows access for pedestrians to and from each dwelling through existing sidewalks (Exhibit 20, 31).

13. The project includes adequate yards and adequate light and air for each dwelling unit. None of the row dwellings has another building between it and a public street. Each unit has a roof terrace that provides additional light and air for the dwellings.

14. Although the original plans showed the second floors "cantilevered" into public space, the revised plans eliminated this "overhang" by locating the units farther back from the property line at Rock Creek Ford Road.

Impacts

15. The Board agrees with DDOT's finding that the project will have a negligible impact on traffic circulation and on-street parking supply (Exhibit 20).

16. The Board concurs with OP's conclusion that the project is compatible in it scale and mass with nearby residential structures and will enhance the residential character of the neighborhood (Exhibit 31).

17. The Board finds that the project will not adversely affect the use of neighboring properties and, specifically, that area public schools would not be adversely affected by the development of four, low density residential structures (Exhibit 31). The Board finds that the proposed project – consisting of only four dwelling units – presents a minimal burden on the public school system. Although the application was referred for comment and recommendation to the DC Board of Education, its analysis was not part of this Board's record. However, OP addressed this issue in its report, and the Board agrees with its analysis.

CONCLUSIONS OF LAW

The Board is authorized under § 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799, as amended; D.C. Official Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicant is seeking a special exception pursuant to 11 DCMR § § 353 to construct a development consisting of four row dwellings in an R-5-A District and a special exception under § 410 to deem the four structures a single building, and thereby permit construction on a single record lot.

The Board can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are granted.

The general tests. First, the requested special exception must "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1. Second, it must "not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map" 11 DCMR § 3104.1. As to these general tests, the Board finds that the project is compatible with nearby residential structures and will not adversely affect neighboring properties in any way (Findings of Fact 16 and 17).

The "special conditions" under sections 353 and 410

Under Section 353.1 of the Zoning Regulations, the Board may grant a special exception for new residential development in the R-5-A district that is not comprised of one-family detached or semi-detached dwellings, subject to the requirements set forth in § 410 and the following requirements under § 353:

353.2 The Board shall refer the application to the D.C. Board of Education for comment and

recommendation as to the adequacy of existing and planned area schools to accommodate the numbers of students that can be expected to reside in the project. This condition has been met (Finding of Fact 17).

353.3 The Board shall refer the application to the D.C. Departments of Transportation (DDOT) and Housing and Community Development (DHCD) for comment and recommendation as to the adequacy of public streets, recreation and other services to accommodate the residents of the project and the relationship of the proposed project to public plans and projects. This condition has been met. DDOT stated that the project will have negligible impact on traffic circulation and on street parking supply (Finding of Fact 15). While DHCD's support was subject to a design change, the applicant made this change (Finding of Fact 8).

353.4 The Board shall refer the application to the D.C. Office of Planning for comment and recommendation on the site plan, arrangement of buildings and structures, provisions of light, air, parking, recreation, landscaping, and grading as they relate to the future residents of the project and the surrounding neighborhood. As stated in the Findings of Fact, OP favorably reviewed these elements of the project. Therefore, this condition has also been met.

Section 410.1 of the Zoning Regulations states:

> In an R-5 district, if approved by the Board of Zoning Adjustment, a group of one-familydwellings, flats, or apartment houses, or a combination of these buildings, with division walls erected from the ground up or from the lowest floor up, may be erected and deemed a single building for the purpose of this title; *provided, that the requirements of §§ 410.2 through 410.11 shall be met.* (Emphasis added).

The Board therefore reviewed the project for compliance with §§ 410.2 through 410.11.

410.2 All buildings in the group of buildings shall be erected simultaneously. The four row dwellings comprising the building will be erected simultaneously (Finding of Fact 6).

410.3 All front entrances of the group shall abut a street, front yard, or front court. The front entrances of three of the row dwellings abut Rock Creek Ford Road. The front entrance of unit 1 abuts a side yard (Finding of Fact 10).

410.4 No rear or service entrance shall abut a street, front yard, or front court unless below the main floor. There are no service entrances (Finding of Fact 10). Therefore, this condition is inapplicable.

410.5 No exterior stairway shall be constructed above the level of the joists of the main floor unless located entirely within the building area. No exterior stairways are above the level of the joists of the main floor (Finding of Fact 11).

410.6 No subdivision of the property shall be authorized until the Board has determined that the following requirements are met:

(a) There shall be adequate free access to the street from each separate dwelling, group of dwellings, or buildings resulting from the subdivision. All front entrances directly abut Rock Creek Ford Road, providing adequate free access (Finding of Fact 12).

(b) Adequate access for fire protection and other purposes shall be provided by easement, fee, alley, or street. The project provides adequate access for fire protection and other purposes through the surrounding street system (Finding of Fact 12).

(c) There shall be adequate yards, courts, light, and air for each dwelling, group of dwellings, or group of buildings resulting from the subdivision. The project includes adequate yards and light and air for each dwelling unit. Each unit includes a roof terrace that provides additional light and air for the dwellings (Finding of Fact 13).

410.7 The height of an individual building in a group of buildings may be measured as follows:

(a) Any building that does not have another building between it and a public street shall be considered to front on the street, and the building height shall be measured from the curb at the center of the front of the building; There is no building that has another building between it and a public street. The height of the building has been measured from the curb at the center of each row dwelling (Findings of Fact 13, 6).

(b) Any building that has another building between it and the public street may have its height measured from the proposed finished grade at the center of the front of the building, and the front shall be that side of the building providing access to the majority of the dwelling units within the building. This condition is inapplicable.

410.8 The front entrances of not more than four (4) one-family dwellings, nor more than four (4) dwelling units per floor, shall face any street that abuts the lot. No more than four entrances are proposed. Three of the front entrances face Rock Creek Ford Road, which abuts the lot. The unit 1 front entrance abuts a side yard (Finding of Fact 10).

410.9 All front entrances of the group shall abut a street, front yard, or front court; provided, that a front entrance may abut a side yard if all one-family dwellings or dwelling units to which the entrance is appurtenant are located no nearer a street upon which the lot abuts than the rear of any part of the group having a front entrance abutting a street, front yard, or front court. This condition has been met. (See above).

410.10 No rear or service entrance shall abut a street, front yard, or front court, unless located below the main floor. No rear entrances abut a street, front yard or front court (Finding of Fact 10).

410.11 No exterior stairway shall be constructed above the level of the joists of the main floor,

unless located entirely within the building area of the group. This condition duplicates the special condition in § 410.5.

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations.

Although the ANC did not support the project, the Board is not persuaded by the reasons the ANC presented. The ANC stated, in its report and in its testimony, that the owner had not supplied enough information for the ANC to have even accessed the application. However, the Board finds that the owner was forthcoming with the specific information which the ANC claims to have lacked. Nevertheless, the Board gave the ANC ample opportunity to submit post-hearing materials in support of its position but it did not do so. As discussed above, the Board is satisfied that the owner has met its burden of proof with respect to each of the regulatory criteria.

In reviewing a special exception application, the Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive.

For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under §§ 353 and 410 of the Zoning Regulations.

Therefore, for the reasons stated above, the application for a special exception is granted.

VOTE: 5-0-0 (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II, and Gregory Jeffries (by absentee ballot) in favor of the motion to grant, and none opposed)

Vote taken on December 6, 2005

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

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

FINALA DATE OF ORDER: MAR 14 2006

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.