

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Board of Zoning Adjustment



**Application No. 17679 of Jemal's TP Land LLC**, pursuant to 11 DCMR § 3104 1, for special exceptions under sections 353 and 2516, and under section 411 regarding roof structures, to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District at premises 6923-6953 Maple Street, N W and 6916-6926 Willow Street, N W (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843).

**HEARING DATE:** November 13, 2007  
**DECISION DATES:** January 8, 2008 and February 5, 2008

**DECISION AND ORDER**

On June 11, 2007, Jemal's TP Land LLC (the "Applicant"), the owner of the property that is the subject of this application (the "subject property"), filed an application with the Board of Zoning Adjustment (the "Board") pursuant to 11 DCMR § 3104 1 for special exception relief pursuant to Sections 353, 411, and 2516 of the Zoning Regulations to allow the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District on the subject property. The Board held a public hearing on the application on November 13, 2007. After the hearing, the record was closed, except to allow submission of a revised landscape plan from the Applicant and proposed orders from the Applicant and the party in opposition.

The Board received the requested post-hearing submissions and, at its public meeting on January 8, 2008, voted 3-0-2 to approve the application.

**PRELIMINARY MATTERS**

**Self-Certification** The zoning relief requested in this case was self-certified pursuant to 11 DCMR § 3114.2.

**Notice of Application and Notice of Public Hearing** By memoranda dated June 13, 2007, the Office of Zoning sent notice of the filing of the application to the D.C. Office of Planning ("OP"), the D.C. Departments of Transportation and Housing and Community Development, the Deputy Mayor for Education, Advisory Neighborhood Commission ("ANC") 4B, the ANC within which the subject property is located, the Single Member District member for 4B07, and the Council Member for Ward 4. Pursuant to 11 DCMR § 3113 1, notice of the hearing was

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BOARD OF ZONING ADJUSTMENT

District of Columbia

CASE NO. 17679

EXHIBIT NO. 46

Board of Zoning Adjustment  
District of Columbia  
CASE NO. 17679  
EXHIBIT NO. 46

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published in the *D C Register* and sent to the Applicant, all individuals and entities owning property within 200 feet of the subject property, ANC 4B, and OP. The Applicant posted placards at the subject property providing notice of the public hearing and submitted an affidavit to the Board to this effect (Exhibit 40).

**Request for Party Status** The Board received an opposition Party Status request from Mr. Jack Werner, who resides at 6908 Willow Street, N W (Exhibit 26) Mr Werner indicated that he and a number of other neighbors would be affected by the application for the following reasons a) potential flooding, b) traffic and street parking, c) an absentee landlord, d) crowding of existing homes and noise, and e) loss of green space The Board found that Mr. Werner, who lives within 200 feet of the project, would be more significantly affected by the proposed development than those in the general public and therefore granted his request for party status However, during the course of his testimony, Mr. Werner agreed that the Applicant met all of the legal requirements for the requested zoning relief, and that most of his concerns would be dealt with during the permitting process (T p. 194, 196)

**Other Persons in Opposition/Support** The Board heard testimony in support of, and in opposition to, the application. Two individuals testified in support of the application, and two individuals testified in opposition to the application.

**The Applicant's Case** The Applicant presented testimony from Paul Millstein of Douglas Development Corporation, an expert in urban development and historic renovation; George Myers of GTM Architects, an expert in urban residential architecture; Steven E. Sher of Holland & Knight LLP, an expert in zoning and land use planning; and Huy Tran of Kimley-Horn and Associates, Inc, an expert in civil engineering and stormwater management design. The Applicant also submitted a memorandum prepared by O.R George & Associates, Inc., experts in traffic engineering and transportation planning (Exhibit 39).

**Office of Planning (OP) Report** OP submitted a report on November 5, 2007, marked as Exhibit 29 of the record, indicating that OP supported the proposed redevelopment of the subject property and recommending that the Board approve the requested special exceptions Pursuant to the requirements of Section 353, OP opined that the site plan, arrangement of buildings and structures, as well as the provision of parking, recreation, landscaping, and grading, as they relate to the future residents of the project and the surrounding area, would have a positive impact on the immediate neighborhood OP also analyzed the requirements of Section 2516 and indicated that the Applicant met its burden of proof with respect to each required element for approval of special exception relief to permit the construction of two or more principal buildings or structures on a single subdivided lot. With respect to the requested roof structure relief, OP recommended that the requested relief relating to setbacks (§ 411 2), more than one enclosure (§ 411 3), and enclosures of unequal heights (§ 441 5) should be granted since the proposed roof structures comply with the intent of the Zoning Regulations, would not hinder the light and air of adjacent property owners, and their location and design minimized their massing and visibility.

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**District Department of Housing and Community Development ("DHCD") Report**

DHCD submitted a report, dated November 5, 2007 and marked as Exhibit 30 of the record, indicating that DHCD reviewed the application and supported the requested special exceptions

**District Department of Transportation ("DDOT") Report**

DDOT submitted a report, dated November 7, 2007 and marked as Exhibit 41 of the record DDOT supported the application and indicated that the development will not have an adverse traffic impact on the neighborhood

**ANC 4B Report**

ANC 4B was automatically a party to this application. The ANC filed a letter and resolution, dated November 5, 2007 and marked as Exhibit 31 of the record, indicating that, at its regularly scheduled, properly-noticed meeting on October 25, 2007, with a quorum present, it voted 6-2 in support of the application

**FINDINGS OF FACT**

**Background**

- 1 The subject property consists of Lots 26-29, 40, 808, 811, 814, 815, 818-820, 824, 825, 840 and 843 in Square 3357.
2. The subject property is located in the center of the block bounded by Maple, Willow and Carroll Streets and Sandy Spring Road, N.W. The subject property has approximately 420 feet of frontage on Maple Street and approximately 407 feet of frontage on Willow Street.
3. The subject property has a land area of approximately 101,879 square feet
4. The northern end of the property is currently improved with 3 detached single family dwellings and a commercial parking lot which serves a building to the north, which is not located on the property. The remainder of the property is vacant.
- 5 The subject property is zoned R-5-A and is also located within the Takoma Park Historic District

**The Applicant's Proposed Project**

- 6 The Applicant seeks to develop the subject property with two new multiple-dwelling buildings, each containing 38 dwelling units. Each building will be three stories with a maximum height of 40'-0" as measured from the finished grade level at the middle of the front of each building to the ceiling of the top story Each building contains approximately 41,631 square feet of gross floor area.

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- 7 The three existing single family dwellings currently on the property will be renovated and relocated to new lots at the south end of the site. Each of these dwellings will be provided with off-street parking.
8. Seventy-six surface parking spaces will be provided within the development
- 9 Vehicular access from both Maple and Willow Streets will be provided at the northern end of the site via a 25-foot wide drive aisle, which will not encroach into any of the required yards.
10. The project also includes a bicycle storage area with 20 stalls
- 11 Each proposed multi-family building includes a zoning-compliant loading dock and zone, as well as a trash room.
12. Each proposed multi-family dwelling will provide rooftop recreation space
- 13 The southern portion of the lot is shielded from the neighbors' view by screening and closely-planted evergreens.
- 14 The project includes a combined total of approximately 25,611 square feet of green space around the multi-family buildings
- 15 The design of the new multi-family buildings incorporates details from traditional Washington, D.C. apartment buildings from the early part of the 20<sup>th</sup> century. A belt course and decorated cornice line are included to visually reduce the mass of the buildings.
- 16 Both buildings are parallel to the street which they front (*i.e.*, Maple Street, N W. and Willow Street, N W ) and are set back about 20 feet from the curb. This setback is consistent with the established building line of the adjacent houses on Maple and Willow Streets.

**Special Exception Under Section 353 for New Residential Development in R-5-A District**

- 17 Pursuant to § 353 1 of the Zoning Regulations, in R-5-A Districts, the Applicant's proposed project must be reviewed by the Board as a special exception under § 3104 in accordance with the standards and requirements in § 353
- 18 These requirements either pertain to agency referrals to be made by the Board or submissions to be made by the Applicant, all of which have been complied with

**Special Exception from Roof Structure Requirements of Section 411**

19. The Board may grant special exception relief from the strict requirements for a roof

structure where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and where such compliance would be "unduly restrictive, prohibitively costly, or unreasonable." 11 DCMR §411.11 Also, deviations from the roof structure requirements may not materially impair the intent and purpose of the Zoning Regulations and may not adversely affect the light and air of adjacent buildings. Id.

- 20 The Applicant is seeking roof structure relief because the project incorporates multiple roof structures (§411.3), the roof structures will not be set back from all exterior walls a distance equal to their height above the roof (§411.2), and one of the roof structures will have walls of varying height (§411.5)
- 21 The Applicant proposes to provide a stair tower enclosure near the front façade of each building with a height of 9 feet, and a larger stair/vestibule/storage/elevator override enclosure in the center of the roof that measures 9 feet, but steps up to 15 feet, 6 inches at the portion enclosing the elevator override. The larger enclosure meets the setback requirements on all sides, except the interior parking lot side. Likewise, the stair tower enclosure near the front façade of each building meets the setback requirements on the street side, but not on the loading dock side since, on that side, it is located at the roof edge.

**Relief from Set Back Requirement**

22. The Applicant requests relief from § 411.2 of the Zoning Regulations, which requires that roof structures be set back in accordance with the provisions of the zone district in which the Project is located. The R-5-A District requires a roof structure to be set back from the building's walls a distance at least equal to the roof structure's height above the roof on which it is located.
23. A separate stair tower enclosure must be provided because the Building Code mandates that when residential recreation space is located on the roof of a building, a separate stairwell that leads to the bottom of the building must also be located on the roof. The Building Code also recommends that stair towers be located at the extreme end of a corridor. Thus, the placement of this tower and its resulting setback noncompliance is based on the building code and the internal configuration of the building.
24. Both roof structures are properly set back from the street-facing facades of the multiple-dwelling buildings.

**Relief from Roof Structure Enclosure Requirement**

25. Section 411.3 requires that all penthouses and mechanical equipment be placed in one rooftop enclosure. The Applicant's design calls for two penthouses.

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26. Due to the provision of rooftop recreation space, a separate stairwell leading to the bottom floor of the building, and preferably located near the end of a corridor, must lead to the roof See, Finding of Fact No. 23 The other penthouse is necessary for the additional stair tower and elevator override, for providing access to the roof, and to break up massing on the roof.

**Relief from Walls of Equal Height Requirement**

27 The Applicant requests relief from section 411 5 of the Zoning Regulations, which requires the enclosing walls of a penthouse to be of equal height The project incorporates two different enclosing wall heights on the stair/vestibule/storage/elevator override roof structure

28 Due to the provision of rooftop recreation space, the building code requires that all accessible levels be served by an elevator, which results in an elevator override

29 The portion of the enclosure over the elevator override steps up to 15 feet, 6 inches in order to fully enclose the override, while the walls of the stair tower, vestibule and storage portion of the enclosure have a height of only 9 feet. Therefore, approximately 88% of the roof structure has a height of 9 feet, and the remaining 12% has a height of 15 feet, 6 inches

30. The entire elevator override enclosure could be 15 feet, 6 inches high, but the step down in height reduces the visibility of the roof structure from the surrounding areas

**Special Exception for Theoretical Building Sites (§2516)**

31 Although the three single-family dwellings currently on the property will be re-located and established on individual lots, the two multifamily buildings proposed will be constructed on a single lot

32 Each of these multifamily buildings is a principal building located in a Residence Zone, which, without relief, would require its own lot 11 DCMR § 3202 3.

33 Pursuant to §§ 2516 1 and 3104 of the Zoning Regulations, the Board has the authority to grant relief to permit the construction of two or more principal buildings or structures on a single subdivided lot.

34. All submission and referral requirements mandated by § 2516 have been met See, 11 DCMR §§ 2516 3 and 2516.10

35. The property is located in an R-5-A District and, other than the relief approved herein, meets all the applicable zoning requirements of that District. See, 11 DCMR 2516 2 and 2516 4

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36 The height of the two proposed multifamily buildings is being measured from the finished grade at the middle of the front of each building See, 11 DCMR 2516.7

37 All applicable requirements with respect to ingress and egress have been complied with, as illustrated by the plans in the record, particularly Exhibit No. 27, Attachment C, Architectural Plans, at Sheet A101 See, 11 DCMR § 2516 6

### **CONCLUSIONS OF LAW**

Pursuant to section 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in the judgment of the Board, the relief will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps Certain special exceptions must also meet the conditions enumerated in the particular sections pertaining to them. In this case, along with the general requirements of §§ 3104 and 353, the Applicant also had to meet the requirements of § 411 11 for the requested roof structure special exceptions, and those of § 2516 for the project as a whole.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met In reviewing an application for special exception relief, "[t]he Board's discretion ... is limited to a determination of whether the exception sought meets the requirements of the regulations." *First Baptist Church of Washington v District of Columbia Board of Zoning Adjustment*, 423 A 2d 695, 701 (D C 1981) (quoting *Stewart v District of Columbia Board of Zoning Adjustment*, 305 A 2d 516, 518 (D C 1973)) If the applicant meets its burden, the Board must ordinarily grant the application *Id*

### **Roof Structure Relief**

Pursuant to § 411 11 the Applicant is asking the Board to "approve, as a special exception under § 3104, the location, design, number, and all other aspects of such structure regulated under §§ 411 3 through 411 6" A penthouse, such as the two at issue in this application, is among the two types of structures regulated by those three subsections The subsections regulate the "number" of penthouses, by permitting only one, § 411.3, and the design of penthouses, by requiring "enclosing walls from roof level shall be of equal height," § 413 5 The Applicant is seeking special exception approval of two penthouses, one of which will have uneven walls Also, because the penthouses will not meet the 1:1 setback requirement of § 400 7, which applies to the structures by virtue of § 411 2, the Applicant seeks a special exception from this "location" requirement

Subsection 411 11 authorizes special exceptions from these location, design, and number restrictions where meeting the restriction is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area that would tend to make full compliance unduly restrictive, prohibitively costly, or unreasonable "

The need to have two penthouses arises from the Building Code's requirement that when residential recreation space is located on the roof of a building, a separate stairwell that leads to the bottom of the building must also be located on the roof. In addition, a single monolithic structure spanning almost the entire roof is contrary to sound design principles and would likely have a greater adverse effect on the light, air, and view of the neighbors. The Applicant's inability to set back these penthouses on a 1:1 basis from the side walls is a result of its desire to comply with the Building Code's recommendation that this stairwell be placed at the extreme end of a corridor. Further, both roof structures will meet the required setbacks from the street sides of the buildings, thus achieving the goal of largely removing them from view from the street.

The last roof structure special exception, for walls of unequal height on one of the structures, also arises out of an attempt to create a more sound and pleasing design. Approximately 12% of the larger of the two roof structures will be 15 feet, 6 inches high to enclose the elevator override, but the other approximately 88% will be stepped down to a height of 9 feet because it does not enclose the taller elevator override. The Board concludes that it would be contrary to the intent of the Zoning Regulations to force the Applicant to make the entire structure 15 feet, 6 inches high, resulting in a much larger and more intrusive structure.

**Special Exception for New Residential Development in an R-5-A District with More than One Principal Building on a Single Lot**

The Applicant also requests special exceptions pursuant to §§ 353 and 2516. Section 353 applies to all new residential development in R-5-A Districts, except one-family detached and semi-detached dwellings, and sets forth both the referral requirements for this Board and the types of plans to be submitted to the Board by the Applicant. It does not, however, set forth any specific criteria to be met by the application. Those criteria are to be found, generally, in § 3104.

In addition, the Applicant is seeking to construct the two new buildings on a single record lot pursuant to § 2516, which includes specific criteria that must be, and in this case, have, been met.

The project will comply with the substantive provisions of Title 11 (§ 2516.9) and as required by § 2516.6, there are two means of ingress and egress to the site, both 25-feet wide and not included in any required yard. See, Findings of Fact Nos. 10 and 42, and Exhibit cited in latter.

Contrary to the claims of the opposition, the Board concludes that the project will not have an adverse effect on the present character and future development of the neighborhood (§§ 2516.9 and 3104) and is in harmony with the Zoning Regulations and Zoning Maps (§ 3104). The primary concerns raised by the party in opposition to the application were increased density and the massing of the buildings on the site, leading to a loss of open space, storm water management

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and drainage, increased traffic and parking problems, inadequate landscaping, inadequate community input, and the effect of an absentee landlord and a transient population.<sup>1</sup>

As the site is now a large swath of undeveloped land except for the three single-family dwellings to be relocated by the Applicant, any development would result in some loss of open space. The density and massing of the proposed development, however, are consistent with the type of development permitted in an R-5-A District, and preserve some open space while also bringing more residential units to the neighborhood. The building height, floor area ratio, and lot occupancy are within those permitted in this R-5-A District. Sufficient open space is being provided around both multiple dwellings, and their fronts are set back 20 feet from the curb to maintain consistency with the established building line of adjacent dwellings.

Landscaping and storm water management issues have been sufficiently addressed by the Applicant as shown in the record. The Applicant revised its landscape plan after the hearing in consultation with community members, resulting in improved buffering between the project and existing residences. See, Exhibit No 42 OP, whose task it is to assess water supply issues, pursuant to § 2516.10, opined that existing water and sewer lines have sufficient capacity to handle the demand generated by the project. Further storm water management issues will be addressed at the building permit stage, and are not within the Board's purview

Nor does the Board conclude that the traffic and parking needs generated by the project will result in adverse impact on the neighborhood. The project will provide adequate parking on-site and, according to the DDOT Report, there is also on-street parking available in the neighborhood. DDOT also notes that existing traffic volume on the adjacent streets is low, and the Board concludes that any traffic increase arising out of the development of the project will readily be absorbed

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations of the Office of Planning. D C Official Code §§ 1-309.10(d) and 6-623.04 (2001) Great weight means acknowledgment of the issues and concerns of those two entities and an explanation of why the Board did or did not find their views persuasive. The Office of Planning and ANC 4B both recommended approval of the application. The Board agrees that the Applicant has carried its burden of proof in meeting the requirements for special exception relief and accords the recommendations of OP and ANC 4B the deference to which they are entitled

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application pursuant to 11 DCMR § 3104.1, for special exceptions under sections 353 and 2516, and under section 411, regarding roof structures, to permit the construction of a new residential development (two multiple dwellings, each containing 38 dwelling units) in the R-5-A District at premises 6923-6953 Maple Street, N W and 6916-6926

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<sup>1</sup>The latter concerns, an absentee landlord and a transient population, are not zoning issues, and therefore, not within the Board's jurisdiction

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Willow Street, N.W (Square 3357, Lots 26, 27, 28, 29, 40, 808, 811, 814, 815, 818, 819, 820, 824, 825, 840 and 843).

Accordingly, it is therefore **ORDERED** that the application be **GRANTED** in accordance with the architectural plans and elevations prepared by GTM Architects included with Exhibit 27 of the record in this case, as modified by the landscape plan submitted on December 27, 2007 and marked as Exhibit No. 42 of the record.

**VOTE:**        **3-0-2** (Ruthanne G Miller, Michael G Turnbull, and Mary Oates Walker to approve, Shane L Dettman abstaining, Marc D Loud not participating or voting)

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

**ATTESTED BY:**

  
**JERILY R. KRESS, FAIA**  
Director, Office of Zoning

**FINAL DATE OF ORDER:** APR 23 2008

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

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IN ACCORDANCE WITH THE 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, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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