

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17837 of Hillcrest Homes LP, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the maximum number of building stories under § 400, a variance from the lot area and width requirements under § 401, a variance from the rear yard requirements under § 404, a variance from the side yard requirements under § 405, a special exception to permit two or more principal buildings or structures on a single subdivided lot under § 2516, and a variance from the requirement of § 2516.5 that theoretical lots allowed pursuant to § 2516 provide open space in front of the building entrances to construct a new residential development consisting of 54 one-family detached dwellings in the R-1-B District at premises north side of Southern Avenue, S.E., just west of Branch Avenue, S.E.,¹ (Parcels 208/4, 208/61, 208/64, 208/65, and 215/27).

HEARING DATE: November 18, 2008
DECISION DATE: November 18, 2008

DECISION AND ORDER

This application was submitted on June 2, 2008 by Hillcrest Homes Associates LP (“Applicant”), the owner of the property which is the subject of this application – Parcels 208/4, 208/61, 208/64, 208/65, and 215/27, all located within a roughly triangular swath of land bordering on the northern side of Southern Avenue, S.E. (“subject property”). The self-certified application requests variance and special exception relief necessary to permit construction of a new development consisting of 54 one-family detached dwellings.

The Board held a public hearing on the application on November 18, 2008 and decided, at the close of the hearing, to approve the application, with certain conditions, by a vote of 5-0-0.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated June 4, 2008, the Office of Zoning (“OZ”) sent notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 7B, the ANC within which the subject property is situated, the Single Member District member for 7B05, and the Council Member for Ward 7. Pursuant to 11 DCMR § 3113.13, OZ

¹Whether or not specifically stated, all roadways referred to herein are located in the Southeast Quadrant of the District of Columbia, and therefore, the names of such roadways when referenced herein should be read as if followed by the designation “S.E.”

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published notice of the public hearing on the application in the *D.C. Register*, and sent such notice to the Applicant, ANC 7B, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 7B was automatically a party to this case and appeared in opposition to the application. The Board also granted opposition party status to a neighbor, Mr. Julius Fleischman. Mr. Fleischman expressed concerns with increased traffic and soil erosion. In addition, he also complained of the density of the proposed development, potential decreased property values and interference with the neighborhood's "bucolic and pastoral" setting.

Applicant's Case. Several people testified on behalf of the application. A representative of the developer discussed the history of the proposal, the site as a whole, and the design of the individual dwellings. The Applicant's architect testified as to the specifics of the project and addressed the special exception and variance tests. The Applicant's land use expert testified in greater detail concerning the two tests and how the application met all their requirements. The Applicant's traffic expert was also at the hearing, but did not testify.

Government Reports. The Office of Planning filed a report with the Board dated November 11, 2008 recommending approval of the application, subject to certain conditions. OP first laid out the variance relief required by the different building sites and then analyzed each type of variance request in the context of the three-pronged variance test. OP also opined that variance relief might be necessary for four of the lots for minimum parking requirements. Next, OP addressed the special exception relief requested, and ended by recommending approval of all the requested relief, with three conditions. The three conditions are: (1) there be no gate or fence restricting entry to the private road or alley, (2) the Applicant should clarify the management of the open space area, and (3) that any retaining walls in the development should adhere to certain suggested design standards.

The D.C. Department of Transportation filed a report with the Board dated November 10, 2008. DDOT analyzed various aspects of the proposed development, including the extension of Southern Avenue by the Applicant, expected trip generation levels, parking, access and circulation, and the proximity of public transportation. The DDOT report noted that the development will provide 100 parking spaces when only 54 are required and that the Applicant is providing a complimentary Smartrip Card and car sharing subsidy with each home sales agreement. DDOT also noted that the Applicant will dedicate approximately 128,259 square feet of land to the District for the Southern Avenue right-of-way. DDOT had no objections to the proposed development.

The District Department of the Environment ("DDOE") filed a report with the Board dated October 3, 2008, which made several suggestions concerning environmental aspects of the proposed development. DDOE recognized the topographical challenges of the site and recommended more stringent erosion control and stormwater management measures than might otherwise be undertaken. DDOE commended the Applicant for deciding to maintain the northern portion of the site in its wooded state, and recommended formalizing this decision.

DDOE also opined that the development should rely heavily on public transit and should reduce the number of parking spaces provided.

The D.C. Fire and Emergency Services Department filed a report with the Board dated September 15, 2008 stating that the Department had no objections to the proposed development, as long as it complied with all applicable codes and laws.

ANC Report. ANC 7B filed a submission with the Board on November 10, 2008, which consisted of a package including the ANC's statement in opposition to the application (called a "Work Sheet"), the minutes from the September, 2008 ANC meeting at which the application was addressed, and at least 111 letters in opposition from individuals in the surrounding community. The ANC also submitted a resolution from 2005 in opposition to an earlier iteration of the proposed development. According to the ANC representative at the hearing, because both iterations raised the same/similar issues, the ANC, in 2008, re-adopted the 2005 resolution.

In its statement, the ANC voices concerns about increased erosion, as well as increased traffic and related air pollution due to the development, which will be exacerbated, according to the ANC, by a concomitant reduction in trees and open space. The ANC expresses concerns about the density of the development and claims that the multiple variances requested amount to a "back door rezoning." Exhibit No. 33, ANC Work Sheet dated November 6, 2008, at 2. The ANC also fears an increase in crime in the Hillcrest Neighborhood with the opening of Southern Avenue, S.E. between Branch Avenue and Naylor Road.

FINDINGS OF FACT

The subject property and the surrounding area

1. The subject property consists of five parcels, Parcels 208/4, 208/61, 208/64, 208/65, and 215/27 in an R-1-B zone district in the Southeastern quadrant of D.C.
2. The subject property is an oddly-shaped, roughly triangular site, and has approximately 12.59 acres, or 547,592 square feet, of land area.
3. The property is situated along the District's southern border with Prince George's County, Maryland ("P.G. County") and lies between Branch Avenue and Naylor Road.
4. The property is currently heavily wooded and is characterized by severe topography, with a rise of more than 100 feet from the southeast to the northwest.
5. The property has no existing access from any public street and has only 70 feet of street frontage along Branch Avenue, S.E. Southern Avenue runs along the boundary between the District and P.G. County, but ends at Branch Avenue before reaching the property.

6. The Applicant intends to devote approximately three acres to complete a public extension of Southern Avenue which will run along the southern boundary of the property. The Applicant intends to construct the portion of this extension which will be necessary to serve the development and to dedicate approximately 128,259 square feet to the District to complete the extension and connect Southern Avenue with Naylor Road, S.E.
7. To the south/southeast of the property, across what would be the continuation of Southern Avenue, is a large apartment building, with over 300 units, called the Marlborough House. It is situated in P.G. County, and, by virtue of an easement, part of its surface parking lot extends onto the property and will remain after the property is developed.
8. To the west and northwest of the property, in an R-5-A zone district, is Naylor Gardens, a large multifamily residential development containing 45 garden apartment buildings with approximately 800 units.
9. An area of woods is located along the southwest boundary of the property.
10. To the north of the property is a 20-foot wide public alley and a neighborhood of one-family dwellings within the same R-1-B zone district as the subject property.
11. The property is approximately 1,500 feet from the Naylor Road Metrorail Station, which is in P.G. County and is served by 10 Metrobus routes. Two Metrobus routes also run along Southern Avenue.

The Applicant's Project

12. The Applicant purchased the property in 2005 with the intention of constructing a medium-to high-density residential development.
13. The Applicant's original plan proposed a zone change and the construction of 171 townhouses, but that plan underwent significant change between 2005 and 2008, partially due to neighborhood desire for detached one-family dwellings on the site. The Applicant's final plan proposes no zone change and 54 detached one-family dwellings.
14. After the dedication of a portion of the property to the District for roadway purposes, the remaining 419,333 square feet of land area will be subdivided into one record lot.
15. The new record lot will then be divided into 54 theoretical building sites ranging in size from 1,955 square feet to 3,385 square feet.
16. Each theoretical building site will be improved with a detached one-family dwelling containing between 1,700 and 2,300 square feet of floor area.
17. The side yards of the dwellings will range in width from approximately five feet to 6.17 feet.

18. The rear yards of the dwellings will range in length from approximately 30 feet to approximately five feet, with 42 of the dwellings having a rear yard of at least 23 feet.
19. Some of the theoretical building sites will require the construction of retaining walls due to the slope of the property.
20. All the theoretical building sites, and thus all the new dwellings, will be situated in the southern half of the property, closest to the Metro station, and extending to the property's eastern boundary.
21. The dwellings will be generally arranged in three lines running parallel to the proposed Southern Avenue extension.
22. An area of approximately 202,408 square feet (approximately 4.69 acres) will remain wooded and undeveloped, including most of the northern half of the property, a buffer corridor area along the eastern property boundary, a similar corridor area along the western boundary, and a large pocket at the southwest corner of the property.
23. The new development will include a private ring road with two points of access from the proposed Southern Avenue extension, and a 20-foot wide private alley running through the center of the development and connecting at each end to the private road. Both the private road and alley will be designed to accommodate two-way traffic.
24. No access to the development will be provided from the north.
25. Each building site, except four which front on Southern Avenue, will provide one off-street parking space, as required by 11 DCMR § 2101.1, and a parking lane on the private road will provide another 65 parking spaces, for a total of 119 spaces within the development.

The need for zoning relief

26. The entire property requires special exception relief under § 2516 in order to construct all the dwellings on one single record lot divided into individual theoretical building sites.
27. Leaving much of the property undeveloped and clustering the new dwellings in the southern half of the property results in smaller lot areas and widths than would be possible if the dwellings were spread more evenly throughout the entire property.
28. Different theoretical building sites and the dwellings proposed thereon need different variance relief, but none of the sites/dwellings need relief from the maximum lot occupancy of 40% mandated for this R-1-B zone (11 DCMR § 403) nor from the maximum building height of 40 feet mandated in the zone (11 DCMR § 400).

29. Overall, 23 building sites need variance relief from the maximum number of stories for the dwelling (3), mandated by 11 DCMR §400; 54 (*i.e.*, all) sites need variance relief from the minimum lot area required by 11 DCMR § 401 and the minimum side yard required by 11 DCMR § 405; 50 sites need variance relief from the minimum lot width set forth in 11 DCMR § 401; 25 sites need variance relief from the 25-foot minimum rear yard requirement of 11 DCMR § 404; and 35 sites need variance relief from the “front yard-type” open space requirement imposed by 11 DCMR § 2516.5.²

Special exception relief under 11 DCMR §§ 2516 and 3104

30. The project complies with all of the other specific conditions for approval as stated in § 2516 and the general standard for special exception approval set forth in § 3104.1.
31. The front of each of the proposed 54 dwellings will be the side upon which the primary entrance is located, but only 19 of the dwellings will have open space in front of their entrances equivalent to the rear yard length required in this R-1-B zone, *i.e.*, 25 feet. 11 DCMR § 404. (§ 2516.5(a) & (b)).
32. All of the proposed 54 dwellings will have rear yards, but only 29 of these rear yards will meet the 25-foot requirement of 11 DCMR § 404. (§ 2516.5 (c)).
33. None of the theoretical sites will share any part of its boundary with the rear lot line of the subdivided lot of which it is a part. (§ 2516.5(d)).
34. None of the land area to be used for the private road or alley is included in the area of any of the theoretical building sites. (§ 2516.6(a)).
35. The private road, which provides ingress and egress to all the building sites, will be at least 25 feet wide at all points. (§ 2516.6(b)).
36. The private road will intersect with the proposed Southern Avenue extension at two points, providing two separate entrances/exits to the means of ingress and egress to the building sites. (§ 2516.6(c)).
37. The height of each proposed dwelling has been measured from the finished grade at the middle of the front of the building to the ceiling of the building’s top story and each dwelling complies with the height limitation of 40 feet set forth in 11 DCMR § 400. (§ 2516.7)).
38. For those specific areas where the proposed development will not comply with the substantive provisions of the Zoning Regulations, the Applicant has requested variance relief. (§ 2516.9)). (See Finding of Fact (“FOF”) No. 29).

²The specific variances needed by each separate building site are set forth in a detailed chart at sheet C6.10 of the Applicant’s final plans, Exhibit No. 41.

39. The significant portion of the property left undeveloped will serve to buffer the already-existing neighborhoods from potential adverse impacts of the development, such as noise and lighting. (§§ 2516.9, 2516.10(d), and 3104).
40. The undeveloped area of the property will also continue to extend the environmental benefits to the surrounding neighborhoods that exist with any undisturbed wooded area, such as less soil erosion, less heat, passive recreation possibilities, wildlife habitat, and aesthetic appeal. (§§ 2516.9, 2516.10(a)(4), 2516.10(d), and 3104).
41. The water and sanitary sewer systems for the proposed development will be constructed to D.C. Water and Sewer Authority ("WASA") standards and specifications and the proposed storm drainage and SWM/BMP systems will be constructed to DOE, DDOT, and WASA standards and specifications. (§§ 2516.9, 3104, and 2516.10(a)(2)).
42. The Applicant is working closely with DDOE to implement a number of positive environmental features on the property, such as rain barrels, rain gardens, retention of a significant number of trees, including shade trees, use of permeable pavers, and other practices designed to reduce the impact of stormwater runoff. (§§ 2516.9, 3104, and 2516.10(a)(2)).
43. The private road and alley will be constructed to DDOT standards and specifications and will provide adequate access for emergency and trash disposal vehicles. (§ 2516.10(a)(1)).
44. The Applicant will work with DDOT to install appropriate signage and/or signalization at the two intersections between its private road and the proposed Southern Avenue extension. (§ 2516.10(a)(1) & (5)).
45. The Applicant's extension of Southern Avenue will be constructed to DDOT standards and specifications and will improve the flow of traffic in the area by connecting Branch Avenue and Naylor Road. (§§ 2516.10(a)(5) and 2516.10(c) & (d)).
46. The proposed development is expected to generate 33 morning peak-hour vehicle trips and 14 non-vehicle trips and 43 afternoon peak-hour vehicle trips and 19 non-vehicle trips. These trips will amount to only approximately two percent of the total future forecast traffic at the intersection of Branch Avenue and Southern Avenue during those peak hours. (§§ 2516.9, 2516.10(a)(5), and 2516.10(c) & (d)).
47. The development will provide more than the number of parking spaces required by the Zoning Regulations. (§§ 2516.10(a)(5) and 2516.10(c)).
48. The property is located within one mile of 3 elementary schools and one D.C. Public Schools Educational Center. (§ 2516.10(a)(3)).

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49. Recreational opportunities are provided by the undeveloped, wooded area, in the yards provided, and at Hillcrest Recreation Center, located less than one-half mile from the property. (§ 2516.10(a)(4)).
50. The clustering of the development on the southern/southeastern half of the property is a reasonable response to the property's topographical constraints as well as to the community's desire to retain open space along the northern boundary of the property. (§ 2516.10(b)).
51. The overall design of the development is pedestrian-friendly, with sidewalks, dwellings close to the street, front porches, street trees, and on-street parking. (§§ 2516.10(a)(6) & (b)).
52. The dwellings are designed with traditional siding or brick exteriors, front porches and gable and hip roofs with dormers, and the façade style and color will be predetermined to ensure an appealing streetscape. (§§ 2516.10(a)(6) & (b)).
53. The one-family dwellings proposed are a matter-of-right use in this R-1-B zone. (§§ 201.1(a) and 3104).
54. Immediately to the west/southwest of the property is the Naylor Gardens apartment complex with approximately 18 units per acre, whereas the proposed development will contain approximately 4.3 units per acre.
55. The overall low density of the development – 54 one-family dwellings where 66 could be constructed without variance relief³ if spread throughout the property – is consistent with the purpose and spirit of an R-1 zone district to provide a quiet residential district. (§ 3104).

Variance relief under § 3103

Exceptional conditions

56. The property has an extreme topography, with elevations ranging from 160 feet at the southern portion to 280 feet at the northern portion.
57. The property is irregularly-shaped, with no means of vehicular ingress and egress, and a street frontage of only 70 feet, minimal in comparison to its perimeter of over 3,000 feet.
58. The existing property contains an unusually large amount of undeveloped open space, which cannot be developed without causing adverse impact and the loss of an important neighborhood amenity.

³Even if no variance relief were needed, special exception relief pursuant to § 2516 would still be necessary to permit more than one principal building on a single lot.

59. The Applicant is dedicating approximately 128,259 square feet of the site to the District for the completion of the proposed Southern Avenue extension.
60. The extreme southern boundary of the property is encumbered with the parking lot for the Marlborough House, a use which provides no benefits to the development but reduces the property's buildable area.
61. With no public street infrastructure, a good deal of land area is going to private rights of way, further reducing the buildable area.

Practical difficulties

62. The steep topography, which creates serious difficulties in extending existing streets from the north into the property, as well as the need to retain significant open space on the property, push the development onto the southern half of the property, limiting the total land area available for development.
63. Clustering of the one-family dwellings in the southern half of the property results in smaller building sites, thus the need for variances from § 401.3's minimum lot area and width requirements.
64. Lot area and width variances could be avoided by losing a significant portion of the retained open space, which would increase environmental disturbance and potentially have negative impacts on the surrounding neighborhoods.
65. Retention of the open space in the north of the property also creates the need for variances from the 25-foot rear yard requirement of § 404.1 because not all the rear yards will reach a 25-foot length.
66. The clustering of the dwellings also results in narrower-than-permitted side yards, creating the need for variance relief from § 405.9.
67. Strict compliance with side yard requirements would result in narrow, inefficient, "shotgun" dwellings, which would be incompatible with the surrounding area.
68. Section 2516.5 requires that each dwelling without street frontage provide an open space "front yard" area of a minimum of 25 feet in length.
69. All the dwellings without street frontage will have such front yard areas of between approximately 15 feet to just under 25 feet, necessitating a variance from § 2516.5.
70. Strict application of the 25-foot "front yard" requirement would require the Applicant to reduce the size of the already-small building footprints, or to narrow the private road, the latter of which could then require a variance from § 2516.6(b), merely replacing one variance with another.

71. The slope of the property, combined with the requirement of § 2516.7 that the dwelling height be measured from the finished grade at the middle of the front of the building, results in the height of some of the dwellings exceeding the three-story maximum permitted in the zone under § 400.1.
72. The slope of the property also makes it practically difficult to provide rear parking access to some of the dwellings, necessitating front garage access. The living space taken up by the garages is made up by adding more height to these dwellings, resulting in four stories.

No detriment to public good or impairment of zone plan

73. The proposed development brings into use vacant property within 1,500 feet of a Metro station.
74. The retention of the undeveloped area in the north and west of the property allows the continued existence of an environmental amenity in the area.
75. The proposed extension of Southern Avenue and the resultant connection of Branch Avenue with Naylor Road does not create any detriment to the public good in the sense of unduly increased traffic, but instead improves the street system of the District.
76. The proposed development is substantially less dense than certain surrounding multi-family uses and is buffered from the one-family dwellings to the north by the significant portion of the property to be left undeveloped.
77. The overall current building density to the north of the subject property, including roads, is about 3.9 units per acre; the Applicant is proposing about 4.3 units per acre, and the R-1-B zone permits as many as 8.7 units per acre.
78. The character of the existing housing stock of the Hillcrest neighborhood is diverse, with some large dwellings on large expanses of land, in some cases more than one lot, and with some smaller dwellings located closer to their neighbors.

CONCLUSIONS OF LAW

Special Exception Relief

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, 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. 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, the Applicant also had to meet the requirements of § 2516.

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 determining whether the proposed exception satisfies the ... requirements” of the regulations and “if the applicant meets its burden, the Board ordinarily must grant the application.” *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305A.2d 516, 518 (D.C. 1973)).

Section 2516 sets forth numerous conditions which must be met in order to obtain a special exception permitting more than one principal building on a single record lot in a residential zone district. Section 3104 states two general provisions which all special exception applications must meet, and which are, to a certain extent, subsumed within the § 2516 provisions. The proposed development meets all but one of the requirements of § 2516, and for those that it does not meet, variance relief has been requested.

As to § 2516, its first substantive requirement is that all other requirements of Chapter 25 and certain other provisions must be met, 11 DCMR § 2516.4, which the Board finds to be the case. Subsection 2516.5 (a) requires that the front of any building without street frontage must contain the principal entrance. In addition, such buildings must have an open space “front yard-type” area of 25 feet in length as well as a rear yard. 2516.5 (b).⁴ All the proposed one-family dwellings will have the principal entrance in their front wall face. All the dwellings will also have rear yards, and some “front yard” space as well, but for both of these requirements, variance relief is requested for those rear yards and front areas that will be less than the minimum required 25 feet in length.

Subsection 2516.6 contains four paragraphs, only two of which apply here ((a) & (b)) and which go more to the overall development than to each individual building site. Section 2516.6(a) requires that the land forming the means of ingress/egress cannot be included in any of the theoretical lots, and (b) states that such means of ingress/egress must be 25 feet in width. Both of these provisions are met by the proposed development. (Findings of Fact (“FOF”) Nos. 34 & 35) The application also complies with § 2516.7, which states that the height of each dwelling must be measured from the finished grade at the middle of the front of the building.

Section 2516.9 consists of two clauses, the first of which states that the proposed development must comply with the substantive provisions of the Zoning Regulations. The development does not do so, and therefore various types of variance relief have been requested. The second clause of § 2516.9 echoes the general mandate in § 3104 of not adversely affecting neighboring property, and will be discussed below.

⁴ The subsection also includes a requirement as to placement of the theoretical lot’s rear boundary, which does not apply to any of the theoretical building sites in this application

The last subsection of § 2516 is § 2516.10, which lays out a series of aspects of the development to be reviewed and reported on by the D.C. Office of Planning. All of these aspects of the development were addressed by OP and the Applicant. The Board has also independently considered all the issues listed in § 2516.10, and concludes that none of them undermine the approval of the application. The first issue is safety, particularly from a police and fire standpoint. The development will be serviced by a ring-road and an alley, both of which will be wide enough for use by emergency and trash vehicles. The road will have two appropriately-signed and -signalized intersections with Southern Avenue. Environmental issues are next in the § 2516.10 list, and the development's low density and retention of a large area of wooded land, along with the other proposed environmental amenities (FOF Nos. 40 & 42), satisfy the Board that these issues have been successfully addressed by the application.

The development poses no problems from either a public education or recreation perspective, with adequate schools and recreational opportunities available. *See*, FOFs Nos. 48, and 40 & 49, respectively. Nor does it pose problems from a parking and traffic perspective. More-than-adequate parking is being provided and with the wooded land surrounding the development, its relative isolation will not lead to spill-over parking in the area. The isolation of the development also means its street and alley do not connect with any others except at the two intersections with Southern Avenue, therefore, no new traffic through nearby neighborhoods will be caused by the development. The development will allow Southern Avenue to be "completed" to connect Branch Avenue and Naylor Road, improving traffic flow, and any increased traffic due specifically to the development will be minimal. The report from DDOT states that "traffic generated by this project will have no significant impact in terms of capacity and level of service on the surrounding intersections." Exhibit No. 35, at 2.

With regard to considerations of site planning such as the density, open space, and the size, location, and screening of the dwellings, the development has been thoughtfully laid out and designed. The total of 54 one-family dwellings is significantly lower than the 66 dwellings that could be permitted without variance relief and represents a reasonable density of development. A large swath of open, wooded area is being left undeveloped, with the Applicant agreeing to this in perpetuity. Some of the yards around the dwellings are smaller than required, but in the context of the overall development, each of the dwellings is surrounded by sufficient open space and greenery. The design of the dwellings themselves is harmonious with other one-family dwellings in the area and is street-friendly, with front porches overlooking small front yards ending at sidewalks.

This order recites in detail the many facets of the development regulated by §§ 3104 and 2516. These sections also, as a general principle, require that the development be in harmony with the purpose and intent of the Zoning Regulations (§ 3104) and "not likely [to] have an adverse effect on the present character and future development of the neighborhood," (§ 2516.9 & 2516.10(d)) nor "tend to affect adversely the use of neighboring property" (§ 3104). The proposed development meets all these standards. It furthers the purpose of the R-1-B district to provide a "quiet residential area" with matter-of-right one-family dwellings and a large amount of green space. Although the dwellings are clustered in a compact area, the development is not overly

dense for the property, with only 54 units on approximately 12 acres. The development is not likely to have any adverse effects on the neighborhood, but instead brings vacant land near a Metro station into use and, ironically, with the Southern Avenue extension, may improve traffic flow in the area. The Applicant's expert appraiser's submission concerning the impact on the stability of the existing neighborhood concluded that the addition of the 54 new dwellings "would be expected to have a positive impact on the values o[f] the single family neighborhood immediately [to] the north." Exhibit No. 42, at 13.

Variance Relief

Different types of variance relief are needed for different theoretical building sites within the proposed development, but the test remains the same for all of them. The first prong of the test requires an exceptional condition of the property, out of which arises the second prong -- practical difficulties in complying with the Zoning Regulations. The last prong of the test requires that the granting of the relief will not cause a substantial detriment to the public good or a substantial impairment of the intent and purpose of the zone plan. § 3103.

The subject property meets all three prongs of the variance test. The property is irregularly shaped and wooded, necessitating a design to comport with the shape and the clearing of the portion of the property on which development will occur. The southernmost portion of the property already contains part of the parking lot of the Marlborough House, but that is the only area of the property currently paved. There is no existing street infrastructure.

The property has a significant grade differential, with a rise of more than 100 feet from the southeast to the northwest. The southern portion of the property is somewhat flatter, while the northern portion is much steeper. This topographical condition limits the land area available for development, creating practical difficulties in complying with the Zoning Regulations, thereby resulting in a somewhat more tightly-packed development, with smaller lot areas and lot widths than required, and smaller rear, side, and "front" yards than would otherwise be possible. Because the lot areas and lot widths are constrained by the difficult topography, some of the dwellings will exceed the three-story limit imposed by the Zoning Regulations, although none of them will exceed the actual height limit of 40 feet. The unusual topography also creates practical difficulties in connecting to the existing street network to the north, resulting in the need for the Applicant to construct a continuation of Southern Avenue in order to connect the development to existing streets.

To protect the one-family neighborhood to the north of the property, the Applicant has also agreed to a less-dense development than could otherwise be possible. As an outgrowth of less density, a large portion of the land area will remain undeveloped, providing a significant screening and environmental benefit to the community, but constraining the Applicant with regard to lesser buildable area. The buildable area of the property is further reduced by the Applicant's need to provide a roadway infrastructure and by the dedication to the District of land to construct the continuation of Southern Avenue. The "completion" of Southern Avenue will benefit the local area and the District, but constrains the Applicant.

A development with zoning compliant yards, lot areas, and lot widths would obviate the need for variance relief, but could not obviate the need for the special exception pursuant to § 2516. Without variance relief, a maximum of 66 one-family dwellings could be constructed on the property, spread throughout the site. Construction activities on the northern portion of the property, however, could only be accomplished with greatly increased effort and expense on the part of the Applicant because the area would have to be selectively cleared of trees and significantly re-graded. Developing the entire property would destroy the environmental benefits provided by the large amount of undeveloped land that is part of this application and could also exacerbate the traffic impact of the development as the streets to the north would likely be connected to the streets in the development. Constructing fewer dwellings which did not need variance relief could leave some undeveloped land intact, but could create financial difficulties for the Applicant.

All in all, constructing the maximum number of dwellings possible without variance relief creates environmental, topographical, and financial problems and constructing some smaller number of dwellings creates financial difficulties as well. The Applicant has thus demonstrated practical difficulties in complying with the zoning regulations.

The development proposed by the application will not cause a substantial detriment to the public good or a substantial impairment of the zone plan. The application furthers the zone plan, as well as the Comprehensive Plan for the Nation's Capital, by developing vacant land near a Metro station with a low-density development of zone-appropriate one-family dwellings. The application will develop a large piece of vacant land, while leaving a significant part of that land as undeveloped green space. In this way, the surrounding neighborhoods receive benefits due to the development – such as the completion of Southern Avenue – as well as the obvious environmental and aesthetic benefits due to the green space. Although the individual building sites are smaller than required in the R-1-B zone, the overall density of the development is less than that permitted in the zone. The one-family dwellings to the north are buffered from the development and are not connected to it by any streets. This buffering and the clustered design of the sites near Southern Avenue will likely result in no impacts whatsoever on these more northerly one-family dwellings. The greater public good is also positively impacted by this development in that it makes possible the connection of Branch Avenue and Naylor Road through the completion of Southern Avenue.

Even with a reduced buildable area, all the theoretical building sites, except four, will provide the parking space required by the Zoning Regulations on the site itself. The remaining four sites will each have a parking space on the lot dedicated to their use.

Great Weight

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these

two entities and an explanation of why the Board did or did not find their views persuasive.

The Office of Planning recommended approval of all the relief requested by the application, with three suggested conditions. The Board agrees with OP's recommendation of approval and its proposed conditions.

ANC 7B recommended denial of the application and characterized the variance requests as a "back door rezoning" due to its concern with the density of the development. The Board understands that the density of the proposed one-family dwellings *in relation to each other* is greater than matter-of-right because the yard space around each dwelling is less than required, but does not agree that this amounts to a too-great density on this site, nor to a "back door" rezoning. The overall density of the entire property is actually less than what could be permitted without any variances because of the large amount of land left undeveloped. Further, the open space around each proposed dwelling is not so small as to be inappropriate in terms of urban design. Also, on two sides of the property is much more dense development – Naylor Gardens to the west/northwest, and Marlborough House to the south/southeast.

The ANC also expressed concerns with negative traffic impact and opposed "[o]pening of roads to traffic and crime." Exhibit No. 33, Attached ANC "Work Sheet" at 2. The Board does not agree that the development will cause or exacerbate traffic problems in the neighborhood. The development is not connected to existing neighborhoods except at its intersections with Southern Avenue, a major thoroughfare. Any traffic from the proposed development to or through nearby neighborhoods would have to be via Southern Avenue, with no possibility of drivers from the development "cutting through" existing neighborhoods. The completion of Southern Avenue and connection of Branch Avenue and Naylor Road will open up new travel arteries, providing more options for travelers with the likely result of less congestion. The Board fails to see a connection between the development and the completion of Southern Avenue, and a potential increase in crime in the area.

The ANC also voiced concerns relating to a loss of trees and open space, leading to an increase in erosion and air pollution. Some trees and open space will be lost with the development proposed, but a large amount of open space will also be preserved, and the Applicant has agreed to preserve it permanently. The property is available to be developed, and any development on it will unavoidably result in the loss of some trees and open space. As some loss is unavoidable, the Board concludes that the proposed development strikes a favorable balance between preservation of green space and development and therefore cannot agree with the ANC that the application must be denied.

For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for a special exception pursuant to §§ 2516 and 3104, and with respect to variances pursuant to § 3103 and §§ 400 (number of stories), 401 (lot area and width), 404 (rear yard), 405 (side yard), and 2516.5 ("front yard" area). Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The entry to the private road or alley will not be restricted in any way.
2. No building permit shall be issued for this development until the Applicant has recorded a covenant in the land records of the District of Columbia for the benefit of the District of Columbia that binds the Applicants and all successors in title to preserve, in perpetuity, as undeveloped open space, the northern portion of the property, as well as a portion of the property along its eastern boundary and a portion of the property along the western and southwestern boundaries, all as depicted on the plan at Exhibit No. 53 of the record ("Open Space").
3. The Applicant shall include in the document(s) forming the project's Home Owner's Association a requirement that said Association shall manage and maintain the Open Space for so long as the project is in existence. The document(s) further provide that the Association shall not have the power to rescind or repeal the requirement.
4. Any retaining walls that show an exposed face to a public or private street must adhere to the height standard depicted on Exhibit No. 52 of the record and must be finished with a veneer as depicted on, or substantially similar to a veneer depicted on, Exhibit No. 51 of the record.
5. Four parking spaces, one per dwelling, located somewhere on the lot on which the development is constructed, shall be dedicated in perpetuity for the sole use of each of the dwellings built on theoretical building sites numbers 51, 52, 53, and 54, as depicted on the plans at Exhibit No. 41 of the record, specifically at Sheet C5.00.

VOTE: **5-0-0** (Ruthanne G. Miller, Marc D. Loud, Shane L. Dettman,
Mary Oates Walker and Zoning Commissioner Gregory N. Jeffries
to grant.)

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

A majority of the Board members approved the issuance of this order.

ATTESTED BY:


RICHARD S. NERO, JR.

Acting Director, Office of Zoning

FINAL DATE OF ORDER: JUN 23 2009

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

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.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

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.