

**BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application of Hillcrest Homes Associates LP

PRELIMINARY STATEMENT OF COMPLIANCE WITH BURDEN OF PROOF

I. Background

The Subject Property consists of Parcels 208/4, 208/61, 208/64, 208/65 and 215/27 in Southeast Washington, D.C. The Subject Property is located along the District's southeastern border with Prince George's County, Maryland approximately 1,500 feet from the Naylor Road Metrorail station. The Subject Property is currently vacant and located in a R-1-B zone district.

Hillcrest Homes Associates LP (the "Applicant") proposes to construct a new residential development containing 54 single-family detached dwellings. The Applicant intends to dedicate approximately 128,259 square feet of land to the District for the purpose of extending Southern Avenue to Naylor Road. The remainder of the Subject Property will be subdivided into a single record lot.

In order to proceed with the contemplated construction, the Applicant seeks approval by the Board of Zoning Adjustment (hereinafter "Board") of 1) special exception relief to permit two or more principal buildings or structures on a single subdivided lot (§2516.1); 2) variance relief from the maximum number of building stories requirement (§400.1); 3) variance relief from the lot area and lot width requirements (§401.3); 4) variance relief from the rear yard requirement (§404.1); 5) variance relief from the side yard requirement (§405.9); and 6) variance relief from the requirement to provide open space in front of the building entrances (§2516.5).

Pursuant to §3113.8 of the Zoning Regulations, the Applicant will file its Statement of the Applicant with the Board no fewer than 14 days prior to the public hearing for the present Application. In said Statement, and at the public hearing, the Applicant will provide testimony to meet its burden of proof to obtain the Board's approval of the requested special exception and variance relief. Following herein, as required by the Board's application process, is a statement indicating how the Applicant will meet said burden of proof.

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II. Burden of Proof – Special Exception Relief

The Applicant meets the criteria for two or more principal buildings or structures to be erected on a single subdivided lot as follows:

A. This section applies to construction on a lot that is located in, or within 25 feet of, a Residence District. (§2516.2)

The Subject Property is located in a R-1-B zone district.

B. In addition to other filing requirements, the applicant shall submit to the Board, with the new application, four site plans for all new rights-of-way and easements, and existing and preliminary landscaping and grading plans with approximate building footprints, provided: (§2516.3)

1. The applicant shall also submit, either with the original application or at a later time, final landscaping and grading plans and two sets of typical floor plans and elevations; and

2. If the applicant elects to submit the plans referenced above at a later date, the Board's original approval shall be conditional, subject to a later public hearing and final decision on the project as a whole.

All required plans are submitted with this application.

C. The number of principal buildings permitted by this section shall not be limited; provided, that the applicant for a permit to build submits satisfactory evidence that all the requirements of this chapter (such as use, height, bulk, open spaces around each building, and limitations on structures on alley lots pursuant to Section 2507 and 3202.2 and 3202.3 are met. (§2516.4)

As set forth herein, the Applicant is seeking relief from the number of building stories, lot area, lot width, rear yard, side yard, front yard requirements in order to proceed with the proposed development.

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

This provision is not applicable as all theoretical building sites will have street frontage.

E. In providing net density pursuant to Section 2516.11, the Board shall require at least the following: (§2516.6)

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

The area of land that forms a covenanted means of ingress or egress is not included in the area of any of the theoretical lots or in any yard.

2. Notwithstanding any other provision of this title, each means of vehicular ingress or egress to any principal building shall be 25 feet in width, but need not be paved for its entire width;

Portions of the vehicular ingress and egress are less than 25 feet in width.

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

Following the dedication of Southern Avenue, there will be at least two entrances or exits from the means of ingress or egress.

4. The requirements of paragraphs (1) and (2) above may be modified if the Board finds that a lesser width or diameter will be compatible with, and will not be likely to have an adverse effect on, the present character and future development of the neighborhood; provided, that the Board shall give specific consideration to the spacing of buildings and the availability of resident, guest, and service parking.

As noted above, the proposal requires modification from the requirements of paragraphs (1) and (2).

F. Where not in conflict with the Act to Regulate the Height of Buildings in the District of Columbia, the height of a building governed by the provisions of this section, in all zone districts, shall be measured from the finished grade at the middle of the front of the building. (§2516.7)

The building heights have been measured from the finished grade level at the middle of the front of the building to the ceiling of the top story.

G. The provisions of this section shall also apply to buildings erected under the terms and conditions of Section 410, relating to a group of one-

family dwellings, flats, or apartment houses, or a combination of such buildings. (§2516.8)

This provision was repealed in conjunction with the deletion of Section 410.

H. The proposed development shall comply with the substantive provisions of this title and shall not likely have an adverse effect on the present character and future development of the neighborhood. (§2516.9)

Except as set forth herein, the proposed development complies with the substantive provisions of the zoning regulations. The development will not have an adverse effect on the present character and future development of the neighborhood, as it will provide a high-quality residential development that will contribute to the vitality of the immediate community. The development includes landscaping and sidewalks that will create an attractive and accessible site.

I. Before taking final action on an application under this section, the Board shall refer the application to the D.C. Office of Planning for coordination, review, and report, including: (§2516.10)

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

- (a) Public safety relating to police and fire concerns;
The project will meet all standards for public safety.
- (b) The environment, relating to water supply, water pollution, soil erosion, and solid waste management;
The project will meet all environmental standards.
- (c) Public education;
The site is sufficiently served by public education facilities, including Winston Educational Center and Anacostia Senior High School.
- (d) Recreation;
The site is sufficiently served by public recreation facilities.
- (e) Parking, loading, and traffic;

Adequate parking is provided on-site pursuant to the Zoning Regulations. The additional dwelling units will not negatively impact the traffic patterns on surrounding streets.

- (f) Urban design; and
The site has been designed to be compatible with the existing neighborhood patterns. The site is attractively landscaped and designed to be pedestrian accessible.
- (g) As appropriate, historic preservation and visual impacts on adjacent parkland.
The Subject Property is not located in an Historic District.

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

As noted above, the site has been planned to be compatible with the existing neighborhood patterns. Appropriate landscaping and screening has been provided. The driveways provide convenient access to the residents and are located so as to minimize conflict or disruption.

3. Considerations of traffic to be generated and parking spaces to be provided, and their impacts.

Parking is provided at a minimum one-to-one ratio as required by the Zoning Regulations. The addition of the proposed dwelling units will not negatively impact the surrounding traffic patterns.

4. The impact of the proposed development on neighboring properties; and

As noted above, the development will not have a negative impact on neighboring properties due to adequate landscaping, the placement of driveways, and the compatibility of the proposed residential use with the surrounding community.

5. The findings, considerations, and recommendations of other District government agencies.

J. The Board may impose conditions with respect to the size and location of driveways; net density; height, design, screening, and location of

structures; and any other matter that the Board determines to be required to protect the overall purpose and intent of the Zoning Regulations. (§2516.11)

III. Burden of Proof – Variance Relief

The test for variance relief is three-part: (1) demonstration that a particular piece of property is confronted with some exceptional condition or situation; (2) such that, without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) that the relief requested can be granted without substantial detriment to the public good or zone plan.

A. Exceptional Condition or Situation:

The Applicant will demonstrate that the Subject Property is exceptionally large, containing over twelve and one half acres of land area. As shown on the attached plans it is also unusually and irregularly shaped with limited access to existing rights-of-way. In addition, the Subject Property is constrained by extreme topography, rising more than 100 feet from southeast to northwest. Finally, as noted above, the Applicant intends to dedicate approximately 128,259 square feet of land to the District for the purpose of extending Southern Avenue to Naylor Road – significantly reducing the land area of the Subject Property. These factors combine to constitute an existing and exceptional condition that cannot be modified with the proposed project.

B. Resulting Practical Difficulty:

The Applicant will demonstrate that the strict interpretation of the Zoning Regulations will result in a practical difficulty upon the Applicant.

1. Number of Building Stories (Section 400.1)

While the proposed single family dwellings will adhere to the maximum permitted height of 40 feet, some of the units will include four stories. As shown on the Conceptual Elevations included with the plans, the front-loaded styles will consist of four stories in order to provide for a garage entrance on the ground level.

2. Lot Area and Width (Section 401.3)

Strict adherence to the Zoning Regulations would require that all theoretical building lots provide a minimum area of 5,000 square feet and minimum width of 50 feet. The proposed lots range in area from 1,956 square feet to 3,385 square feet and in width from 33.97 feet to

54.43 feet. It is not feasible to provide the permitted residential development while adhering to these minimum lot requirements. Doing so would substantially reduce the number of dwelling units provided and the amount of area to be dedicated to the District for the extension of Southern Avenue.

3. Rear Yard (Section 404.1)

Strict adherence to the Zoning Regulations would require each lot to provide a 25-foot rear yard. The project provides for rear yards ranging from 5 feet to over 27 feet. Due to the property's unusual shape and topography, it is not reasonable to provide the full rear yard for each lot while providing the required access.

4. Side Yard (Section 405.9)

Strict adherence to the Zoning Regulations would require each lot to provide an 8-foot side yard. The development provides side yards ranging from 4.92 feet to 6.17 feet. As noted above, it is not reasonable to provide the full side yard within the configuration of this residential development on this site.

5. Front Yard (Section 2516.5)

This section requires the provision of open space in front of the entrance equivalent either to the required rear yard in the zone district in which the building is located or to the distance between the building restriction line recorded on the records of the Surveyor of the District of Columbia for the subdivided lot and the public space upon which the subdivided lot fronts, whichever is greater. The rear yard requirement in this zone district is 25 feet. The project provides front yards ranging from 15.08 feet to 24.48 feet. As above, it is not reasonable to provide the full front yard in this configuration for single family homes.

C. No Harm to Public Good or Zone Plan:

The Applicant will demonstrate that requested relief can be granted without harm to the public good and without threat to the integrity of the zone plan. With respect to the public good, a new residential development will be a positive addition to this area of the City.

The lot and building layouts provide a highly functional residential development with adequate light and air for each dwelling unit. Adequate parking is provided and the site is highly accessible.