

July 15, 2022

**Via Email to** dcoz@dc.gov  
Frederick L. Hill, Chairman  
Board of Zoning Adjustment  
441 4th St NW, Suite 210S  
Washington, D.C. 20001

**RE: Special Exception Application No. 20594**  
**("Application");**  
**Nezahat and Paul Harrison**  
**("Applicant")**

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Dear Chairman Hill and Members of the Board:

On behalf of my client Deborah Ann Hernandez, a party in opposition to the referenced Application, we are identifying Guillermo Rueda as an expert witness who will be testifying as to the adverse impacts that the proposed project would have on Ms. Hernandez's property at 3009 Albemarle Street, if approved. Mr. Rueda has been accepted as an expert in zoning and architecture by the Board previously. Ms. Hernandez will be presenting a consolidated opposition case along with Mary Lee, another party in opposition, and Mr. Rueda will be testifying as an expert witness for both opposition parties.

In addition, I want to take this opportunity to identify two key deficiencies in the Application. As explained in more detail below, the Application fails to include two types of required zoning relief in conjunction with the requested theoretical subdivision special exception relief. As a result of these deficiencies, the application should be summarily rejected as incomplete, and we request that this be taken up as a preliminary matter by the Board before the hearing.

**A Lot Width Variance is Required in Addition to the Theoretical Subdivision Special Exception**

The requested special exception for a theoretical subdivision also requires a lot width variance for the easternmost proposed lot (*i.e.* lot 2). While the Board may consider that the self certified nature of this application shifts the burden of identifying the correct relief to the Applicant, in this instance, we believe that it is incumbent on the Board to advise the Applicant of the inadequacy of the special exception relief they are seeking.

A review of the history of the theoretical subdivision regulations makes clear that all of the theoretical lots to be created via the special exception process must meet the lot width

requirements. The following short history of the theoretical subdivision process evidences this point.

The theoretical subdivision special exception provision was adopted by the Zoning Commission in 1989 (Z.C. Case No. 89-12) at the request of a number of community groups who contended that the preceding Section 2516 provision of the Zoning Regulations which permitted theoretical subdivision development as a matter of right ran counter to established City building grid patterns and permitted development that intruded into the privacy and back yards of neighboring properties.

At the recommendation of the Office of Planning, the Zoning Commission determined that a public hearing to obtain public and D.C. agency input for theoretical subdivision relief was the best way to prevent such adverse impacts. As a result, the Commission added a public hearing requirement and BZA review to the theoretical lot relief previously permitted as a matter of right. However, the basic elements of the matter of right Section 2516 relief were unchanged.

D.C. Court of Appeals decision in *Daniel v. D.C. Board of Zoning Adjustment*, 329 A.2d 773 (D.C. 1976), involving a challenge to the predecessor Section 2516, best established those elements as a matter of law. In *Daniel*, the Court confirmed that theoretical subdivision relief only provided relief from the record lot and lot frontage requirements of the Zoning Regulations. All other zoning requirements and standards of the applicable zone district must be met. (See the highlighted sections of the attached *Daniel* case attached hereto as Exhibit A.)

Clearly in adopting the new special exception requirement for theoretical subdivisions, it was not the Commission's intention to provide more zoning relief than the record lot and lot frontage relief provided with Section 2516. (See the attached Washington Post article at the time written by Roger Lewis, architect and urban planner who has previously been qualified as an expert in these areas by the Zoning Commission Exhibit B.) Rather, the whole thrust of the of the Commission's action was to rein in the application of Section 2516 relief. In fact, the new text adopted by the Commission in ZC No. 89-12 included the following identical language from Section 2516 regarding compliance with all other applicable zoning standards:

“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 .... are met).”

The Zoning Commission order in 89-12 (a copy of which is attached hereto as Exhibit C) provides further support for the fact that the sole intention and effect of the new special exception provision for theoretical lot subdivisions was to provide for discretionary zoning review of proposed developments that sought to place multiple principal dwellings on a single lot. Nowhere in the Order is there any discussion of exempting theoretical subdivision developments from compliance with any other zoning standards. This interpretation is confirmed by the fact that there are numerous BZA precedents for lot width variances in conjunction with theoretical special

exceptions. They include BZA Nos. 17837, 16086, 15340, 15078, and 14931. (Copies of all are attached hereto as Exhibit D.)

The current version of the theoretical subdivision relief in ZR16, on which the Applicant relies, does not change the requirement for compliance with all other zoning standards. A review of the record of the 2016 Zoning Regulations update did not reveal any intention on the part of the Zoning Commission to limit the requirement of zoning standards compliance to only the development standards specifically called out in Section 305.3 (*i.e.* side and rear yards). Such a change surely would have precipitated a substantial discussion and rationale in the record.

The width of the easternmost lot at issue in the Application at 16.3 feet does not meet the 75 foot minimum lot width requirement of D, Section 502.1. Therefore a variance from the minimum lot width standard is required. And we concur with the Office of Planning report's conclusion that the proposed 16.3 lot width does not meet the variance criteria. Therefore, the application must be denied.

**An Ingress/Egress Width Variance or a Driveway Width Special Exception is Also Required in Addition to the Theoretical Subdivision Special Exception**

The 16.3 foot wide pipestem portion of the proposed easternmost lot is not a driveway but closer in nature to a private alley to the point where it intersects the rear lot lines of the adjacent properties at 3009 and 3005 Albemarle Street N.W. Both 3009 and 3005 have right of way easements over the pipestem which provides access to their garages. As the means of vehicular ingress and egress to each of the lots principal buildings, Subtitle C, Section 305.3(b) of the theoretical lot provisions apply: "Each means of vehicular ingress and egress to any principal building shall be at least twenty-four feet (24 ft.) in width, exclusive of driveways".

The purpose of the foregoing provision is to ensure adequate fire, emergency and trash access since theoretical lots typically do not have street frontage. In fact, all of these services will need to access the proposed House 2 via the lengthy 180 foot long pipestem. Given that the pipestem does not meet the 24-foot width requirement, a variance from this section is required in addition to the special exception for building lot control with serious consideration given to the adequacy of the pipestem to support these services to the proposed House 2 as well as the impacts on the adjacent properties at 3009 and 3005 Albemarle Street.

In the alternative, if the 16.3-foot wide pipestem is considered a driveway, a second special exception in addition to the theoretical subdivision special exception is required because it exceeds the maximum width standard for theoretical development driveways under Subtitle C, Section 711.5:

"Except as provided in Subtitle C § 711.11, within twenty feet (20 ft.) of all street lot lines, a driveway shall be at least eight feet (8 ft.) wide and not more than ten feet (10 ft.) wide if it:

- (a) Provides access to parking spaces serving a single dwelling unit or flat;

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- (b) Provides access to no more than two (2) parking spaces for any use; or
- (c) Provides shared access across public or private property to no more than three single dwelling units or flats.” (emphasis added)

Subtitle C Section 711.11 provides that the BZA may grant full or partial relief from the foregoing provision as a special exception. Twenty feet back from Albemarle Street, the pipestem is only 16.3 feet wide but the Applicant has not requested a special exception for this deviation of the 10 foot maximum width standard.

### **Conclusions**

The subject application is self-certified and the Applicant has not requested the variances or additional special exception identified above in conjunction with the requested special exception. Although the Applicant assumes the risk that a building permit for the project will be denied due to the lack of this additional relief, in order to avoid wasting the BZA's and parties' time in considering the Application, as is, we respectfully request that the BZA reject the Application as incomplete at this time.

Sincerely,



Cynthia A. Giordano

cc: Deborah Ann Hernandez

## Certificate of Service

I certify that on July 14, 2022, an electronic copy of this submission was served to the following:

Elisa Vitale, D.C. Office of Planning  
via email: elisa.vitale@dc.gov

Nezahat and Paul Harrison, Applicants  
via email: paul@3lobos.com

ANC3F and Chair Claudette David  
via email: commissioners@anc3f.com & 3f05@anc.dc.gov

ANC3F03 SMD Commissioner Dipa Mehta  
via email: 3f03@anc.dc.gov

Party Mary Lee via attorney Andrea Ferster  
via email: aferster@railstotrails.org

Party David Brown  
via email: brown@knopf-brown.com



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Cynthia A. Giordano

# **EXHIBIT A**

329 A.2d 773

District of Columbia Court of Appeals.

Cushing DANIEL et al., Petitioners,  
v.  
DISTRICT OF COLUMBIA BOARD OF  
ZONING ADJUSTMENT, Respondent,  
Battery Associates, Intervenor.

No. 8215.

|  
Argued July 9, 1974.

|  
Decided Dec. 16, 1974.

### Synopsis

Certain property owners appealed for review of an order of the board of zoning adjustment which upheld issuance of building permits for construction of 15 single-family detached dwellings on a single record lot with 12 more houses to be built later. The Court of Appeals, Yeagley, J., held that the zoning ordinance permitting under specified conditions the erection of two or more principal buildings on a single subdivided lot is not invalid on the ground that it is devoid of standards for administrative implementation, that it grants an unconstitutional breadth of discretion to zoning administrator or that it is a special exception or variance which requires prior approval of the board.

Affirmed.

**Procedural Posture(s):** On Appeal.

### Attorneys and Law Firms

\*773 Gilbert Hahn, Jr., Washington, D. C., for petitioners.

Leo N. Gorman, Asst. Corp. Counsel, Washington, D. C., with whom C. Francis Murphy, Corp. Counsel, Louis P. Robbins, Principal Asst. Corp. Counsel, and Richard W. Barton, Asst. Corp. Counsel, Washington, D. C., were on the brief, for respondent.

Whayne S. Quin, Washington, D. C., with whom Norman Glasgow and John F. McCabe, Jr., Washington, D. C., were on the brief, for intervenor.

Before NEBEKER, YEAGLEY and HARRIS, Associate Judges.

### Opinion

YEAGLEY, Associate Judge:

This is an appeal by certain property owners (petitioners)<sup>1</sup> for review of an order \*774 of the Board of Zoning Adjustment (Board) which upheld the issuance of building permits to Battery Associates (Battery) for the construction of 15 single family detached dwellings in an R-1-B zone, on a single record lot consisting of 192,000 square feet. Twelve more houses are to be built later. The lot abuts two roughly parallel portions of University Terrace and Chain Bridge Road in northwest Washington and has a total public street frontage thereon of only 304 feet. The building permits were issued by the zoning administrator who found that the development proposed by Battery met the requirements of s 7516 of the Zoning Regulations.

The approved plan provides for single family detached houses to be constructed along a semi-circular private access road which leads off of University Terrace and runs through the lot. The development pattern normally required by the Zoning Regulations in an R-1-B zone consists of single family detached dwellings built on individually recorded lots,<sup>2</sup> each with a minimum lot area of at least 5,000 square feet, a width of at least 50 feet and a minimum public street frontage of 20 feet.<sup>3</sup> The instant plan comports with all of those requirements except as to street frontage and a separate recorded lot for each structure. The several lots, or construction sites, are not recorded but are considered as theoretical lots within the one large recorded lot.

Petitioners (appellants below) contend that the planned development of this land as an interior lot is impermissible, being in violation of the foregoing two R-1-B Zoning Regulations. They do not contend that the planned development failed to comply with any of the requirements of s 7516 under which the building permits were issued. Their argument in essence is that it was not intended that s 7516 should be interpreted to avoid the requirements of the foregoing two Zoning Regulations unless it is administered as a variance or special exception.

The relevant provisions of s 7516 are as follows:

7516.1. This Section is designed to permit two or more principal buildings or structures to be erected on a single subdivided lot.


7516.2. The number of principal buildings permitted hereunder shall not be limited, provided the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations such as use, height, bulk and open spaces around each building as provided by Paragraphs 8103.2 and 8103.3 will be complied with.

7516.3. Where a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the front of such building shall be the side upon which the principal entrance is located. Open space in front of such entrance shall be provided equivalent to the required rear yard in the district in which such building is located; but a rear yard shall be required. (Emphasis omitted.)

Petitioners contend that this section is so devoid of standards for administrative implementation that it must have been intended by the drafters to be a 'variance' or a 'special exception' within s 8207<sup>4</sup> of the Zoning Regulations so that a public hearing and Board approval would be required \*775 for every s 7516 development. Petitioners view the lack of standards as rising to the level of a constitutional defect. The Board's interpretation of s 7516 is also attacked by petitioners on the ground that the section was never intended to apply to R-1 zoning districts.

The Board rejected petitioners' arguments and found that the Zoning Regulations provided adequate standards for the administrative application of s 7516, that the section was an alternative to the normal development pattern provided for in the Zoning Regulations which could be employed by any qualifying developer, and that s 7516 was not to be implemented as a 'variance' or 'special exception'.

In reviewing such regulations we recognize that 'our only task is to determine whether the Board's interpretation is plainly erroneous or inconsistent with the regulations.'

 Taylor v. District of Columbia Board of Zoning Adjustment, D.C. App., 308 A.2d 230, 232 (1973). We find the pertinent regulations to be abundantly clear and the Board's interpretation thereof fully warranted.


## I

We do not agree with petitioners' contention that s 7516 lacks adequate standards for its administrative implementation. Paragraph 2 thereof expressly conditions its authorization of

multiple buildings on a single lot upon compliance with all of the applicable building permit requirements of ss 8103.2 and 8103.3 of the Zoning Regulations. Consequently, the zoning administrator must determine, among other things, whether the applicant's development plan meets the use, height, bulk and open space requirements for the appropriate zoning districts. Petitioner does not contend that those requirements were not met by Battery in this case. The s 7516 developer essentially avoids only two criteria of the normal building permit applicant-the mandate of s 8103.3 of one record lot for each structure, and the minimum street frontage requirement of s 3301.6 which would normally be applicable to each building site. However, he incurs an additional front yard requirement under s 7516.3 for each proposed building. Consequently, the zoning administrator issues a s 7516 building permit under criteria which are substantially the same as those he employs in issuing any other building permit. For from having an unconstitutional breadth of discretion, the zoning administrator has no discretion in this regard. Section 7516 is an elective section to be instituted at the option of the developer, and the only function of the zoning administrator is to make certain that the building permit applicant has met all of the requirements of the section under which he chose to file his application.<sup>5</sup>

## II

Petitioners' argument that s 7516 constitutes a 'special exception' or 'variance' which cannot be obtained without the prior approval of the Board is unconvincing. That section is a development procedure expressly provided for in the Regulations. A 'variance', on the other hand, is an authorization to a property owner to depart from the literal requirements of the Zoning Regulations in utilization of his property in cases in which the strict enforcement of the Zoning Regulations would cause undue hardship. D.C.Code 1973, s 5-420(3); D.C. Zoning Regulations, s 8207.11. See

 Clerics of St. Viator v. District of Columbia Board of Zoning Adjustment, D.C.App., 320 A.2d 291 (1974); 

\*776 Palmer v. Board of Zoning Adjustment, D.C.App., 287 A.2d 535 (1972). Nor is there anything in the Zoning Regulations to indicate that s 7516 is a 'special exception' requiring approval of the Board. The section appears on its face to be self-executing. It deals with the prerequisites to the issuance of a building permit which is a matter administered by the zoning administrator, and it is not among the 'special



exceptions' listed under s 8207.2 of the Zoning Regulations. See 3 Anderson, *American Law of Zoning* s 15.01-02 (1968).

In the words of the Zoning Advisory Council at the time that it recommended adoption of s 7516, it 'is an elective regulation which will be optional with the developer . . . .' Report of the Zoning Advisory Council at 7, September 3, 1963. There is nothing to suggest that the Board is to intervene in the normal application of s 7516 or that the subsequent adoption of s 3301.6 changed the nature of its function. The same is true of s 8103.3, a fortiori, because that section explicitly provides for the independent operation of s 7516.

### III

We find nothing in the language or legislative history of s 7516 to indicate that it was not intended to apply to every zoning district in the city. While it is true that s 7516 was promulgated primarily to facilitate the development of multiple unit public housing, the Zoning Advisory Council recognized that '(t)he amendment would not be limited to

public housing, since it should prove advantageous . . . . occasionally to the individual lot owner who may be faced with the problem of developing excessively large interior property with only minimal street frontage.' Report of the Zoning Advisory Council at 6, September 3, 1963. This is precisely the type of project which has been undertaken by Battery. Section 7516.3 clearly recognizes that some of the building sites for such interior developments may have no public street frontage and attempts to compensate for this fact by adding an extra front yard requirement.

We find unconvincing the other arguments advanced by the petitioners. Accordingly, we conclude that there is nothing in the record before us to indicate that the interpretation of the Board was plainly erroneous, inconsistent with the Zoning Regulations or contrary to law.

Affirmed.

#### All Citations

329 A.2d 773

### Footnotes

- 1 Petitioners, in order to invoke the jurisdiction of this court under D.C.Code 1973, s 1-1510 and s 11-722, allege that they were parties to the proceedings before the Board adversely affected by the Board's ruling. While we have considerable difficulty in finding that the parties before the Board established that they were persons aggrieved within the meaning of D.C.Code 1973, s 5-420 and of s 8102.1 of the Zoning Regulations, we have decided not to overturn the Board's finding that the petitioners had standing before it.
- 2 D.C. Zoning Regulations, s 8103.3.
- 3 D.C. Zoning Regulations, ss 3301.1 and 3301.6. See also D.C. Zoning Regulations, s 3101.1.
- 4 Section 8207 deals with the authority of the Board to grant variances and special exceptions in accordance with the Zoning Act of 1938, D.C.Code 1973, s 5-420.
- 5 We note that in the minutes of the Board meeting of November 20, 1973, the Board recommended that the Zoning Commission study possible improvements for s 7516. If the elective nature of s 7516 is not desirable from a policy point of view, it is the legislative task of the Commission, not the responsibility of the Board or the courts, to fashion the appropriate relief.

# **EXHIBIT B**

# For Some District Projects, Hearings Would Be Handicap

By Roger K. Lewis

The D.C. Zoning Commission is about to consider amending a relatively obscure portion of the city's zoning regulations that allows the construction of two or more buildings on one record lot. While this change, if adopted, would have little impact on the lives of most residents, it is nevertheless symptomatic of a questionable trend in the process of land use control—design by public hearing.

Initiated by the zoning commission, the amendment requires that building more than one principal structure on a single lot "be subject to review by the Board of Zoning Adjustment (BZA) at a public hearing, pursuant to the special exception process."

In April, the commission adopted emergency rules to require public hearings and BZA approval for use of Section 2516 of the zoning code; the upcoming commission hearing is to make the rule final.

Previously, Section 2516 was a "matter of right" provision, its application governed by explicit zoning criteria and subject to administrative approval by zoning officials. No public hearing was necessary.

The zoning criteria are the same as those that apply to single buildings on single lots within the zone. Uses permitted, minimum lot size and width, lot coverage, yard dimensions, building height and parking are all prescribed. Each building has to occupy its own, unique "hypothetical" lot within the larger record lot, but these hypothetical lots, although drawn on paper, are not actually created or conveyed through subdivision.

Contrary to some impressions, Section 2516 does not allow increases in density. It simply waives street frontage requirements, allowing building sites to be accessed by private drives instead of public roads.

And its primary value is to enable the development of leftover parcels large enough to accommodate two or more buildings consistent with zoning, but whose location and geometrical configuration make subdivision impossible. Not surprisingly, Section 2516 has been invoked mostly in one-family residential zones.

The stated purpose of the proposed amendment is to ensure that Section 2516 is implemented "in accord with a process, and under standards of review, that will assure that the construction will have no adverse impact on the existing character or future development of the surrounding neighborhood." However, the amendment offers no new, specific criteria or standards.

Further, the amendment stipulates that "the board may impose conditions with respect to the size and location of driveways; side and rear yards; net density; 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." In other

words, existing zoning rules may or may not govern.

What's problematic about this seemingly well-intentioned zoning amendment? Consider some of the underlying rationale.

First, the commission's amendment presumes that the existing regulatory and administrative process is inadequate, that zoning officials are not able to enforce specific zoning provisions, and that zoning, building and other safety codes do not sufficiently protect the public interest.

Second, requiring a special exception procedure and public hearing for hypothetical lotting presumes that, somehow, public hearings and the BZA will ensure that development under Section 2516 will be better conceived and less "adverse."

Third, the incredibly open-ended language of the amendment presumes that the BZA can be effective in dealing with Section 2516 petitions only if it has total discretion over all aspects of design. Moreover, it presumes that the BZA is qualified and competent to make judgments about "any matter."

All of these presumptions are worthy of challenge.

Historically, Section 2516 is no worse, or better, than any other matter-of-right provisions of the zoning ordinance. It is not inherently abusive, vague or inconsistent with the intentions of zoning. Like other regulations, it sets forth rules to be followed but is unable to guarantee that every aspect of a specific project design, such as landscaping or building facades, will be aesthetically superb.

Washington's extensive zoning and building codes—predicated on protecting public health, safety, and welfare—are enacted through public hearings and legislation. If regulations are clear in purpose and explicit in content, they can be enforced administratively without case-by-case public hearings.

Likewise, designers and developers must know and play by these rules, which determine how they can develop property consistent with the public interest. Asking them to obey all of these rules and then, in addition, to submit to a "special exception" zoning hearing, which is really a subjective design review process in disguise, is unduly onerous and unnecessary.

A more appropriate strategy for the zoning commission, if it believes that Section 2516 inadequately protects the public interest, would be to clarify or expand hypothetical site planning criteria and ensure proper enforcement.

At best, public hearings are imperfect rituals for carrying out public policy, and they are certainly a dubious means for undertaking serious architectural design review.

Too often, public hearings turn into battlegrounds for special-interest groups fighting over narrow issues and defending hardened positions, rather than forums for discussing more global and critical questions affecting the majority of citizens. Public hearings frequently serve as stages for small but vocal minorities bent on obstructing all proposals, no matter how reasonable, while supporters or sympathizers, who may outnumber opponents, stay quietly at home.

A BZA public hearing on a Section 2516 "special exception" proposal would become such a battleground. In effect, the board would face "stop development!" demonstrations by project neighbors who are the citizens most affected. My guess is that neighbors generally would oppose any and all hypothetical lot proposals, no matter what the aesthetic merits.

Their point of view is understandable, if not defensible. To build several structures on a previously vacant, nearby lot represents intrusive change, perhaps a sharp contrast with what exists. Abutting neighbors may lose privacy, views, pathways, or trees long taken for granted.

Despite policies and rules of zoning permitting more buildings, neighbors typically think of such undeveloped lots as permanent, inviolable open space. Why should more people, more cars, and more construction activity be allowed to encroach on the tranquility of an established neighborhood? These concerns, not design quality or zoning compliance, would be the real agenda for those attending public hearings.

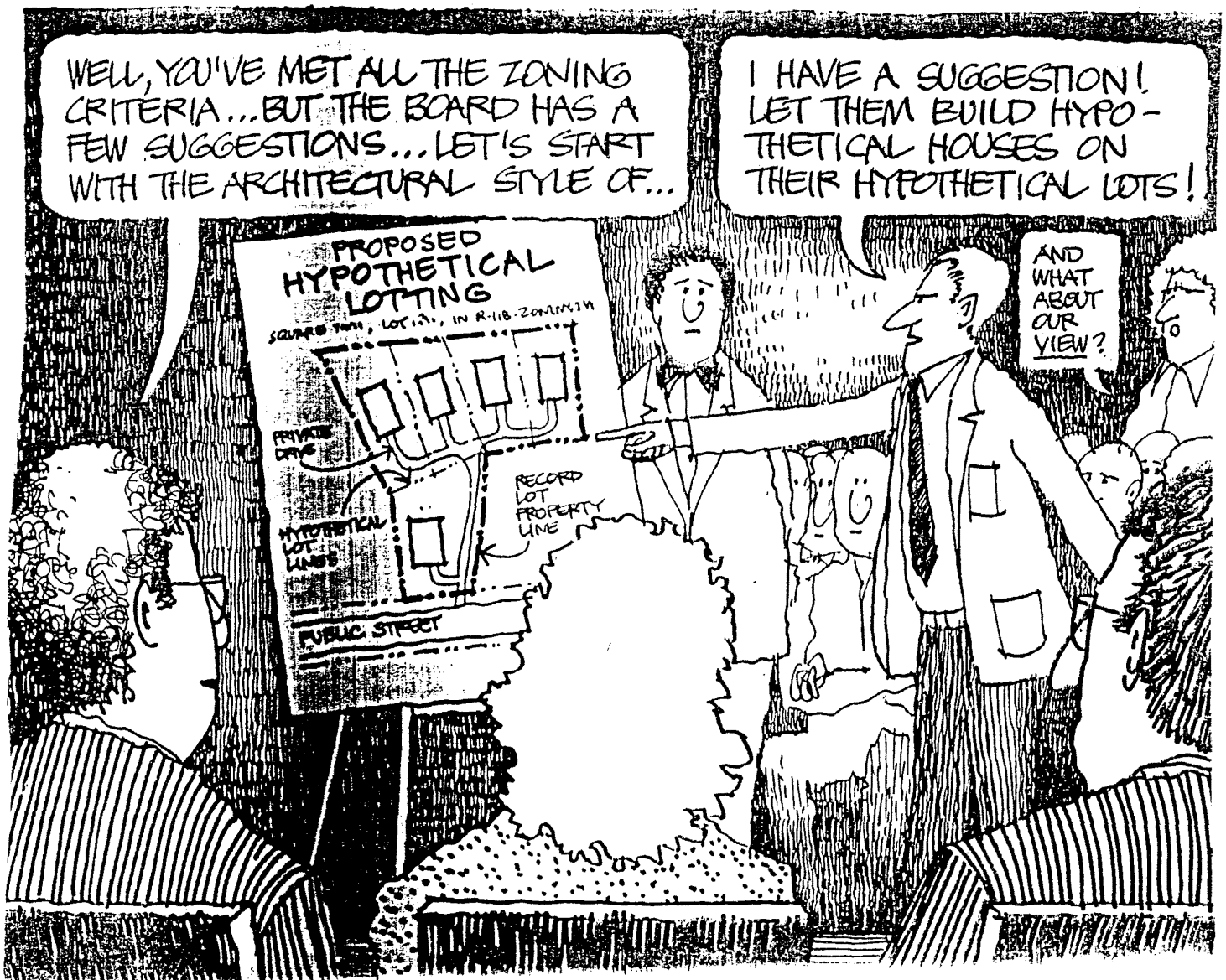
Any developer, property owner, architect, land use attorney or government official will tell you that public hearings are crapsheets, gantlets to be run at great financial risk. Panels, boards, councils or commissions can be overly sensitive to the outcries of witnesses. Sometimes they can be deterred from considering the real and substantive issues when emotional protest upstages more balanced, holistic deliberation.

The public hearing process can greatly extend the time required to plan a project, add substantially to development costs and ultimately compromise or destroy serious attempts to innovate. Often designs get watered down or abandoned, not because of rigorous aesthetic assessment by qualified judges, but rather because of pressures to placate and settle.

Design review of projects affecting the public interest is a good idea when the review is purposeful, timely, well-managed and conducted by qualified reviewers. But Section 2516, if amended only as proposed, will provide little more than a public hearing platform for irate neighbors and another costly hurdle in the risky business of design and development.

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*Roger K. Lewis is a practicing architect and a professor of architecture at the University of Maryland.*



# **EXHIBIT C**

ZONING COMMISSION ORDER NO. 627  
Case No. 89-12  
(Text - Theoretical Building Site Provision)  
July 31, 1989

The Zoning Commission for the District of Columbia initiated this case in response to the petition of Brandywine Community Project, Friends of Springland, and Foxhall Community Citizens Association that the Commission initiate a rulemaking case and set and expedited hearing to consider amendment of 11 DCMR 2516, which allows the construction of two or more principal structures on one lot.

At a meeting on April 17, 1989, having considered the petition, as well as the recommendation of the Director of the Office of Planning ("OP"), dated April 13, 1989, that the Zoning Commission adopt an emergency rule, the Commission decided to adopt emergency rulemaking to be effective immediately on that date and for a period not to exceed 120 days, that is through August 14, 1989.

On June 15, 1989, having furnished the required notice, the Commission held a public hearing to consider the adoption of amendments to become effective on or before the expiration of the emergency order. Based upon the testimony at the hearing, and written submissions received before the record closed at noon on June 19, 1989, the Commission met at 7:00 P.M. on June 19, 1989, to consider proposed action in this case.

The Commission determined to promulgate a revised notice of proposed rulemaking, and that notice appeared in the D.C. Register on June 30, 1989. The final action that is effected by this order is based upon consideration of the entire record, including all comments that were received before 12 noon on July 31, 1989.

The Commission is persuaded that the development of two or more structures on one lot in or near a residential zone presents special issues and problems that require consideration at a public hearing.

The District of Columbia has developed at a pace and to an extent that increases the incentive of developers to maximize the use of land that is either vacant or not as fully developed as the zoning envelope would allow. To a substantial degree, it is in the overall interest of the District of Columbia to increase the opportunity for persons to live in the District.

However, the trend to maximize development potential produces as a corollary a greater potential for negative impact on adjacent dwellings. Thus, the response to an

4. The Commission has added an explicit reference to the height of structures as an element that the Board may address pursuant to subsection 2516.11.
5. The Commission has adhered to the decision not to delegate to the Board the obligation that is vested in the Commission to assure that the Zoning Regulations are not inconsistent with the Comprehensive Plan.

Finally, the Commission does not believe that there is a legal barrier to the application of the rule, as originally adopted on April 17, and as amended and finally adopted by this order, to construction for which no building permit had been issued before April 17, 1989.

The Commission transmitted the proposed rules to the National Capital Planning Commission ("NCPC") on April 26, 1989, and again, as revised, on June 23, 1989. By comments transmitted on June 2, 1989 and July 28, 1989, NCPC reported that the amendments would not have an adverse impact on the federal establishment or other federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, are not inconsistent with the Comprehensive Plan for the National Capital, and will appropriately implement and advance the objectives and policies established in the Comprehensive Plan.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations to require review by the Board of Zoning Adjustment of construction of more than one building on a single lot in or near a residential zone district. The specific amendments to the Zoning Regulations appear elsewhere in this edition of the D.C. Register.

Vote of the Zoning Commission at the June 19, 1989 public meeting: 4-0 (Maybelle Taylor Bennett, William L. Ensign, Lloyd D. Smith and Lindsley Williams to approve; and John G. Parsons not present, not voting).

On a preliminary motion at the special meeting on July 31, 1989, the Commission determined not to adopt an exemption for any project in a residence zone, by a vote of 3-1 (Maybelle Taylor Bennett, Lloyd D. Smith, and Lindsley Williams, in favor of the motion not to adopt an exemption; William L. Ensign, opposed to the motion; and John G. Parsons, not voting not having participated in the case.)

increase in the density of residential buildings cannot reasonably allow only for the increase, but must also allow for appropriate controls and review.

The Commission remains persuaded, after the hearing and upon consideration of the entire record, that the Board of Zoning Adjustment should review multiple building construction on a single lot, that is proposed in or near a residential zone. Thus, as the Commission said in Order No. 617, review by the Board of Zoning Adjustment, pursuant to the special exception process and standards, of the proposed construction of more than one principal structure on a single lot, would provide reasonable protection to the stability of residential neighborhoods; and would not altogether prohibit such construction, but would allow it to proceed, albeit subject to a hearing, rather than as a matter-of-right.

The notice of proposed rulemaking included as an alternative, a proposed rule that would apply the provisions of 11 DCMR 2517 to construction on a site that was subject to a Large Tract Review that was completed before June 15, 1989. The alternative rule would have exempted projects on such sites from the requirement for review by the Board of Zoning Adjustment. Although the Commission had reservations about any such exemption, it proposed the alternative to allow for the submission of comments. Having considered the comments in favor of and in opposition to such an exemption, the Commission has determined not to adopt an exemption for any project in a residential zone district. The Commission believes that the review process adopted by this Order is reasonable, and will have no adverse impact on any reasonable proposed project. The Commission notes that the Board of Zoning Adjustment has procedures that are available to allow for the expedited filing or hearing of applications when there is good cause.

In further response to the comments, the Commission states as follows:

1. The Commission has determined to require a twenty-five foot buffer from a residence zone as the basis for allowing matter of right construction pursuant to 11 DCMR 2517. The requirement of a specific distance provides a desirable level of certainty.
2. The Commission has determined not to provide a general exemption for additions to structures within previously-approved projects. Such an exemption would be too open-ended.
3. Where appropriate, the Commission has clarified and corrected several provisions.



Zoning Commission Order 627  
Case No. 89-12  
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This Order was approved by the Zoning Commission at the public meeting on July 31, 1989, by a vote of 4-0 (Maybelle Taylor Bennett, William L. Ensign, Lloyd D. Smith, and Lindsley Williams, to approve; John G. Parsons, not voting not having participated in the case.

In accordance with 11 DCMR 3028, this Order is final and effective upon publication in the D.C. Register, that is, on

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This Order was approved by the Zoning Commission at the public meeting on July 31, 1989, by a vote of 4-0 (Maybelle T. Bennett, William L. Ensign, Lloyd D. Smith, and Lindsley Williams, to approve; John G. Parsons, not voting not having participated in the case.

In accordance with 11 DCMR 3028, this Order is final and effective upon publication in the D.C. Register, that is, on

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*register order  
627*

RULEMAKING TRANSMITTAL FORM

RECEIVED  
8/1/89

89-119-3

TYPE OF RULEMAKING ACTION: \_\_\_\_\_ EMERGENCY RULES  
 X  FINAL RULES \_\_\_\_\_ PROPOSED RULES \_\_\_\_\_ COMBINED

AGENCY: Zoning Commission for the District of Columbia

DATE AND TIME RECEIVED  
Office of Documents use only

AGENCY REPRESENTATIVE: Edward L. Curry

ADDRESS: 1350 Pa. Ave., N.W., Dist. Bldg., Rm. 11 TELEPHONE: 727-6311

TITLE AND DESCRIPTION OF RULES:

Amendments to the provisions of the Zoning Regulations that deal with theoretical building sites

If this rulemaking action will amend or repeal existing rules, give a complete citation to the rules being amended or repealed: 11 DCMR 2516 and 2517

FINAL RULES ONLY: Give the D.C. REGISTER citation and date of publication of the Notice of Proposed Rulemaking for these rules: 36 DCR 4623 DATE: June 30, 1989

COMPLETE CITATION to the statute, regulation, or other legal authority which specifically authorizes the issuance of the substance of these rules:

D.C. Code Sec 5-413

LEGAL CERTIFICATION: I certify that I have reviewed the attached rulemaking and, in my opinion, the substance of the text of the rules is legally sufficient.

SIGNED: [Signature] PHONE: 727-6311  

<input checked="" type="checkbox"/>	FINAL	<input type="checkbox"/>	CONDITIONAL
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 NAME: Edward L. Curry TITLE: Executive Director

PROMULGATOR: Name and title of the person legally authorized to adopt and promulgate these rules (or the name of the board or other body authorized to adopt rules by vote):

Zoning Commission for the District of Columbia TITLE: \_\_\_\_\_

COMPLETE CITATION to the statute, regulation, order, or other legal authority that specifically authorizes this person or agency to adopt and promulgate these rules:

D.C. Code Sec 5-413

SIGNATURE OF THE PERSON AUTHORIZED TO ADOPT RULES OR ATTEST TO THE ADOPTION OF RULES

DATE OF APPROVAL OR VOTE: July 31, 1989

APPROVAL OR ATTEST: [Signature]  
Executive Director  
TITLE: Zoning Secretariat PHONE: 727-6311

Office of Documents use only:

THIS NOTICE PUBLISHED AT: VOL \_\_\_\_\_ DCR \_\_\_\_\_ DATE: \_\_\_\_\_

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF FINAL RULEMAKING  
CASE NO. 89-12  
(Text - Theoretical Building Site Provision)

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in the Zoning Act (D.C. Code, Section 5-413, et seq.), having held a public hearing as required, hereby gives notice of adoption of amendments to the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The amendments that were adopted relate to the construction of more than one building on a single lot, by the means of using theoretical building sites. Notice of proposed rulemaking was published in the D.C. Register on June 30, 1989 (36 DCR 4623). These amendments were adopted by the Zoning Commission as a final action at a public meeting held on July 31, 1989. The specific amendments to the Zoning Regulations are as follows:

1. Amend the text of the Zoning Regulations by adopting a revised version of 11 DCMR 2516, to read as follows:
  - 2516 EXCEPTIONS TO BUILDING LOT CONTROL (Residence Districts)
    - 2516.1 If approved by the Board of Zoning Adjustment in accordance with the conditions set forth in section 3108 of this title, two (2) or more principal buildings or structures may be erected on a single subdivided lot, subject to the provisions of this section.
    - 2516.2 The provisions of this section shall apply to construction on a lot that is located in, or within twenty-five (25) feet of, a residence district as designated in section 105 of this title.
    - 2516.3 In addition to other filing requirements, the applicant shall submit to the Board, with the application, four site plans and two sets of typical floor plans and elevations, grading plans (existing and final), landscaping plans, and plans for all new rights-of-way and easements.
    - 2516.4 The number of principal buildings permitted by these regulations shall not be limited; Provided, that the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations (such as use, height, bulk, open spaces around each building, and limitations on

structures on alley lots pursuant to section 2507), as provided by sub-sections 3202.2 and 3202.3, shall be complied with.

2516.5 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:

- (a) The front of the building shall be the side upon which the principal entrance is located;
- (b) Open space in front of the entrance shall be required that is equivalent either to the required rear yard in the 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;
- (c) A rear yard shall be required; and
- (d) If any part of the boundary of a theoretical lot is located in common with the rear lot line of the subdivided lot of which it is a part, the rear yard of the theoretical lot shall be along the boundary of the subdivided lot.

2516.6 In providing for net density pursuant to sub-section 2516.11 of this section, the Board shall require at least the following:

- (a) 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;
- (b) Notwithstanding any other provision of this title, each means of vehicular ingress or egress to any principal building shall be twenty-five (25) feet in width, but need not be paved for its entire width;
- (c) If there are not at least two entrances and/or exits from the means of ingress or egress, a turning area shall be provided with a diameter of not less than sixty (60) feet; and

(d) The requirements of paragraphs (b) and (c) of this sub-section may be modified if the Board finds that a lesser width and/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, the Board shall give specific consideration to the spacing of buildings and the availability of resident, guest, and service parking.

- 2516.7 Where not in conflict with the Act of June 1, 1910, (36 Stat. 452), as amended, the height of a building governed by the provisions of this section, in all districts, shall be measured from the finished grade at the middle of the front of the building.
- 2516.8 The provisions of this section shall also apply to buildings erected under the terms and conditions of section 410 of this title.
- 2516.9 The substantive provisions of this title shall be complied with, and the proposed development shall not be likely to have an adverse effect on the present character and future development of the neighborhood.
- 2516.10 Before taking final action on an application under this section, the Board shall refer the application to the District of Columbia Office of Planning for coordination review, and report, which coordination, review, and report shall consider the following:
- (a) 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 of Columbia 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 the following:
- (1) Public safety relating to police and fire concerns;
  - (2) The environment, relating to water supply, water pollution, soil erosion, and solid waste management;

- (3) Public education;
  - (4) Recreation;
  - (5) Parking, loading, and traffic;
  - (6) Urban design; and
  - (7) As appropriate, historic preservation, and visual impacts on adjacent parkland;
- (b) 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;
  - (c) Considerations of traffic to be generated and parking spaces to be provided, and their impacts;
  - (d) The impact of the proposed development on neighboring properties; and
  - (e) The findings, considerations, and recommendations of other District government agencies.
- 2516.11 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.
2. Provide for matter of right review of the construction of more than one building on a single lot that is not located in, or within twenty-five (25) feet of, a residence district, by adopting a new 11 DCMR 2517, to read as follows:
- 2517 EXCEPTIONS TO BUILDING LOT CONTROL (Other than Residence Districts)
- 2517.1 This section is designed to permit two (2) or more principal buildings or structures to be erected as a matter of right on a single subdivided lot that is not located in, or within twenty-five (25) feet of, a residence district.
- 2517.2 The number of principal buildings permitted by

these regulations shall not be limited; Provided, that the applicant for a permit to build submits satisfactory evidence that all requirements of these regulations (such as use, height, bulk, and open spaces around each building), as provided by sections 3202.2 and 3202.3 of this title, shall be complied with.

- 2517.3 If a principal building has no street frontage, as determined by dividing the subdivided lot into theoretical building sites for each principal building, the front of the building shall be the side upon which the principal entrance is located. Open space in front of the entrance shall be provided equivalent to the required rear yard in the district in which the building is located; but a rear yard shall be required.
- 2517.4 Where not in conflict with the Act of June 1, 1910, (36 Stat. 452), as amended, the height of a building governed by the provisions of this section, in all districts, shall be measured from the finished grade at the middle of the front of the building.
3. Consistently renumber existing sections 2517 through 2519, and all references thereto in Title 11, as 2518 through 2520, respectively.




# Memorandum

Government of the District of Columbia

TO: Alan S. Winter, Director  
Office of Documents

Department, OP  
Agency, Office: Zoning Secretariat

FROM: Edward L. Curry   
Executive Director

Date: August 3, 1989

SUBJECT: Publication

Please publish the following in the Register on Friday,  
August 11, 1989.

1. Zoning Commission Notice of Final Rulemaking  
Case No. 89-12
2. Zoning Commission Order No. 627

This final rulemaking must be published before emergency  
rulemaking expires on August 15, 1989.

Please Acknowledge:



89 AUG -3 11:44

OFFICE OF THE SECRETARY

ZONING COMMISSION

CASE No. \_\_\_\_\_

EXHIBIT No. 254

# **EXHIBIT D**

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.,<sup>1</sup> (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

<sup>1</sup>Whether 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.”

441 4<sup>th</sup> Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: [dcoz@dc.gov](mailto:dcoz@dc.gov)

Web Site: [www.dcoz.dc.gov](http://www.dcoz.dc.gov)

BOARD OF ZONING ADJUSTMENT  
District of Columbia

CASE NO. 17837

EXHIBIT NO. 55

Board of Zoning Adjustment  
District of Columbia  
CASE NO. 17837  
EXHIBIT NO. 55

## **BZA APPLICATION NO. 17837**

### **PAGE NO. 2**

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.

**BZA APPLICATION NO. 17837**

**PAGE NO. 4**

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.

**BZA APPLICATION NO. 17837**

**PAGE NO. 5**

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.<sup>2</sup>

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).

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<sup>2</sup>The 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)).

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 relief<sup>3</sup> 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.

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<sup>3</sup>Even 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.

**BZA APPLICATION NO. 17837**

**PAGE NO. 9**

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).<sup>4</sup> 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.

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<sup>4</sup> 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 16086 of the District of Columbia Department of Housing and Community Development and IDS/Turner Limited Partnership, as amended, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 2516 to allow a theoretical lot subdivision, and a variance from the minimum width of lot requirements (Subsection 401.3) for the construction of 32 single-family detached dwellings in an R-1-B District at premises 2401-2419 17th Street, N.E., 2400-2412 18th Street, N.E., 2501-2509 17th Street, N.E. and 2500-2516 18th Street, N.E. [Square 4120, Lots 6-37 and 801 (800)].

HEARING DATE: November 1, 1995  
DECISION DATE: November 1, 1995 (Bench Decision)

SUMMARY ORDER

The original application requested and was advertised for a special exception under Section 2516 for a theoretical lot subdivision and variances from the provisions of Subsection 401.6 to allow street frontage of a lot to be less than forty percent of the required minimum width of lot and the provisions of Subsection 401.3, the minimum width of lot requirement. By memorandum dated October 10, 1995, Edgar T. Nunley, Chief, Zoning Review Branch submitted revised computations eliminating the variance from the provisions of Subsection 401.6. The Board proceeded to hear the application under the provisions of 11 DCMR 2516 and 401.3.

The Board provided proper and timely notice of public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 5B and to owners of property within 200 feet of the site.

The site of the application is located within the jurisdiction of ANC 5B. ANC 5B, which is automatically a party to the application, filed a written statement recommending support for the application.

As directed by 11 DCMR 3324.2, the Board has required the applicant to satisfy the burden of proving the elements which are necessary to establish the case for a variance from the strict application of the requirements of 11 DCMR 401.3 and a special exception pursuant to Section 2516. One neighbor of the site appeared at the hearing and was granted party status in opposition to the application. The neighbor cross-examined witnesses, however, he did not provide direct testimony or participate in the hearing and any other manner. The Board finds that the neighbor

BZA

Board of Zoning Adjustment  
District of Columbia  
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EXHIBIT NO. 44

CASE No. \_\_\_\_\_  
EXHIBIT No. 44

failed to carry out his responsibilities as a party participating in the public hearing. He failed to provide direct testimony and to submit to cross examination on the record. Therefore, the Board finds that no party, person or entity testified at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board, the Board concludes that the applicant has met the burden of proof, pursuant to 11 DCMR 3107, that there exists an exceptional or extraordinary situation or condition related to the property which creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Board further concludes that the applicant has met the burden of proof pursuant to 11 DCMR 3108, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. It is therefore ORDERED that the application is GRANTED, SUBJECT to the CONDITION that construction shall be in accordance with plans marked as Exhibit Nos. 9 through 12 as amended by Exhibit No. 36-A and B of the record.

Pursuant to 11 DCMR 3301.1, the Board has determined to waive the requirement of 11 DCMR 3331.3 that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party, and is appropriate in this case.

VOTE: 4-0 (Laura M. Richards, Susan Morgan Hinton, Jerrily R. Kress and Craig Ellis to grant; Angel F. Clarens not present, not voting).

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

ATTESTED BY:

  
MADELIENE H. DOBBINS  
Director

FINAL DATE OF ORDER: \_\_\_\_\_

NOV 20 1995

BZA APPLICATION NO. 16086  
PAGE NO. 3

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "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 BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

ord16086/TWR/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16086

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on NOV 20 1995 a copy of the order entered on that date in this matter was mailed postage prepaid to each person who appeared and participated in the public hearing concerning this matter, and who is listed below:

Andy Botticello  
IDS/Turner Limited Partnership  
1025 Vermont Avenue, N.W., Suite 1110  
Washington, D.C. 20005


Albert Edgecomb  
5177 Columbia Road  
Columbia, Maryland 21044

Anthony J. Hood  
1859 Channing Street, N.E.  
Washington, D.C. 20018

Stephen A. Monroe  
1713 Douglas Street, N.E.  
Washington, D.C. 20018

George A. Boyd, Chairperson  
Advisory Neighborhood Commission 5B  
1355-57 New York Avenue, N.E.  
Washington, D.C. 20002

Merrick Malone, Director  
D.C. Dept. of Housing & Community Development  
51 N Street, N.E.  
Washington, D.C.

  
MADELIENE H. DOBBINS  
Director

Date: NOV 20 1995

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15340 of N.V. Ltd. Partnership pursuant to 11 DCMR 3108 and 3107.2, for a special exception under Section 2516 to allow two or more buildings on a subdivided lot, a variance to allow open space in front of the entrance to each principal building to be less than the required rear yard [Paragraph 2516.5(b)], a variance from the provision that ingress or egress shall not be included in the area of any theoretical lot, or in any yard [Paragraph 2516.6(a)], a variance from the provision that each means of vehicular ingress or egress to any principal building shall be twenty-five feet in width [Paragraph 2516.6(b)], a variance from the provision that a turning area shall be provided with a diameter of not less than sixty feet [Paragraph 2516.6(c)], a variance from the side yard requirements (Sub-section 405.9), a variance from the rear yard requirements (Sub-section 404.1), a variance from the lot width requirements (Sub-section 401.3) for a theoretical lot subdivision and construction of thirty-four single-family detached dwellings in an R-1-A District at premises in the 2500 Block of 49th Street, N.W., (Square 1397, Lots 888, 889, 892-917 and 968-992).

HEARING DATE: July 25, 1990  
DECISION DATE: July 25, 1990 (Bench Decision)

DISPOSITION: The Board GRANTED the application by a vote of 4-0 (John G. Parsons, Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to grant; Paula L. Jewell not present, not voting).

FINAL DATE OF ORDER: August 17, 1990

ORDER

The Board granted the application by its Order dated August 17, 1990. By letter dated February 19, 1990, counsel for the applicant filed a timely request for modification. The requested modification would result in the permitted flexibility of the applicant to phase the development of the project over a period of up to ten years. There would be no change in the configuration of the project as originally approved by the Board. The applicant proposes to construct a model home at this time and to construct the remaining approved dwellings as individual purchase contracts are executed. It is not economically feasible, given the current real estate market, to construct all the approved dwellings at one time. The requested modification will allow the applicant to sell and construct approximately three or four dwellings per year in accordance with the pace of actual market absorption. There was no opposition to the proposed modification.



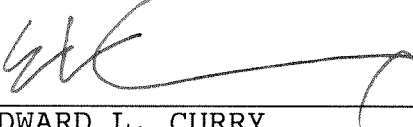
Upon consideration of the request for modification, the record in the case, and its final order, the Board concludes that the proposed modification does not alter the nature, size, shape and configuration of the project as initially approved by the Board. No additional zoning relief is required. The material facts relied upon by the Board in approving the application are still relevant. There was no opposition to the request for modification. Accordingly it is hereby ORDERED that the proposed MODIFICATION is APPROVED, SUBJECT to the CONDITION that construction of the project may be phased over a period of TEN YEARS. In all other respects the Order of the Board dated August 17, 1990 shall remain in full force and effect.

DECISION DATE: March 6, 1991

VOTE: 3-0 (Charles R. Norris, Carrie L. Thornhill and John G. Parsons to approve; Paula L. Jewell and Sheri M. Pruitt not voting, not having heard the case).

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

ATTESTED BY:

  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: \_\_\_\_\_

APR 19 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "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 BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15340Order/SS/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



**BZA APPLICATION NO. 15340**

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 19 1991 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Cynthia A. Giordano  
Linowes & Blocher  
Techworld Plaza  
800 K Street, N.W.  
Suite 800  
Washington, D.C. 20001

Geoffrey P. Gitner  
1800 K Street, N.W.  
Suite 600  
Washington, D.C. 20006

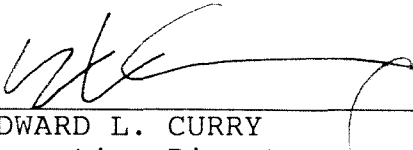
John Patrick Brown, Jr. Esquire  
Wilkes Artis Hedrick & Lane  
1666 K Street, N.W.  
Suite 1100  
Washington, D.C. 20006

Peter Rinkek  
8381 Old Courthouse Road  
Vienna, Virginia 22180

Frederick W. Kunkle  
6835 McLean Province Circle  
Falls Church, Virginia 22043

Leslie Briggs  
2501 - 49th Street, N.W.  
Washington, D.C. 20007

Joyce Waid, Chairperson  
Advisory Neighborhood Commission 3-D  
P.O. Box 40846  
Washington, D.C. 20016

  
\_\_\_\_\_  
EDWARD L. CURRY  
Executive Director

DATE: APR 19 1991

15340Att/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 15078 of Cheryl Y. Reed, as amended, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 2516 to allow a theoretical lot subdivision, a variance from the provision that 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 [Paragraph 2516.6(a)], a variance from the provision that each means of vehicular ingress or egress to any principal building shall be 25 feet in width [Paragraph 2516.6(b)], a variance from the provision that a turning area be provided with a diameter of not less than 60 feet [Paragraph 2516.6(c)], a variance from the requirement that open space in front of the entrance shall be equivalent to the required rear yard [Paragraph 2516.5(b)], a variance from the rear yard requirement [Paragraph 2516.5(c) and Sub-section 404.1], a variance from the lot area and width of lot requirements (Sub-section 401.3), and a variance to allow a row dwelling (sub-section 301.1) for a theoretical lot subdivision and construction of two semi-detached and one row dwelling in an R-2 District at premises 3400, 3402, and 3404 - 5th Street, S.E., (Square 5969, Lot 2).

HEARING DATES: June 28, 1989 and June 20, 1990  
DECISION DATES: July 28 and September 6, 1989, and May 2 and September 5, 1990

**FINDINGS OF FACT:**

1. The application was originally scheduled and heard at the public hearing of June 28, 1989. At its public meeting of July 28, 1989, the Board deferred consideration of the application until its public meeting of September 6, 1989, to allow the inclusion of the Advisory Neighborhood Commission's post-hearing submission into the record. Subsequent to the public meeting of July 28, 1989, the Zoning Commission amended the Zoning Regulations relative to theoretical building site controls by its Order No. 627, which became effective on August 11, 1989. At its public meeting of September 6, 1989, the Board deferred consideration of the application and directed the staff to submit the application to the Zoning Administrator for further review to determine the appropriate relief pursuant to the amended Zoning Regulations. The staff referred the application to the Zoning Administrator by letter dated September 14, 1989. At its public meeting of May 2, 1990, staff informed the Board that no response to its request for a review had been received from the Zoning Administrator. The Board directed staff to reschedule the application for public hearing. The application was rescheduled for public hearing on June 20, 1990, for consideration pursuant to the amended provisions of the Zoning Regulations.

2. The property is located on the east side of 5th Street, just south of the intersection of 5th and Trenton Streets and is known as premises 3400, 3402 and 3404 5th Street, S.E. It is zoned R-2.

3. The property is irregularly shaped and has no direct frontage on 5th Street except for a small "dogleg" approximately 15 feet in width and 48 feet in length. The site widens in increments to 34 feet in width for a depth of approximately 42 feet and to 100 feet in width for a depth of approximately 75 feet. The site contains approximately 9,648 square feet of lot area.

4. The R-2 District permits matter-of-right development of single-family detached and semi-detached dwellings with a minimum lot area of 3,000 square feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories and 40 feet.

5. The applicant proposes to theoretically subdivide the lot into three lots measuring 3,033, 3,060, and 3,000 square feet, respectively. Each of the three theoretical lots would be developed with a single-family residence. Two of the proposed residences would be semi-detached units. The center unit would be a row dwelling.

6. The area surrounding the site is generally developed with a mixture of residential uses including detached, semi-detached dwellings and low-rise apartment buildings. The property is bounded by an R-5-A District developed with condominium apartments to the south, east and west. The intersection of Alabama and Martin Luther King Jr. Avenues is situated approximately two blocks north of the subject site. St. Elizabeth's Hospital is located approximately 1/2 mile to the north. There is a large expanse of U.S. Government property south of Mississippi Avenue and the Oxon Run Parkway.

7. The proposed dwellings will be two-story plus basement, three bedroom homes with a one-car garage at the basement level. Access to the homes will be via an easement across the 15 foot wide "dogleg" from 5th Street.

8. The R-2 District does not allow row dwellings as a matter-of-right. A variance from the use provisions is therefore required for construction of the proposed center unit.

9. The development of the subdivided lots as proposed would comply with all the area requirements of the R-2 District.

10. The applicant testified that the property is affected by an extraordinary situation due to its irregular shape and its lack of direct access to the public street. The applicant further testified that she would suffer a practical difficulty if the

proposed relief is denied because the unusual public street access of the site would make utility hook-ups to the site difficult and expensive.

11. The applicant further testified that three dwelling units on the subject site represent the best use of the land because of its size, the surrounding apartment developments, the market value of neighborhood properties, and the expense of developing the site due to existing lot constraints and lack of convenient public street access.

12. The applicant testified that the proposed development would benefit the area in that it would provide moderate income housing, promote stable vs. transient occupancy, and enhance the appearance of the neighborhood by eliminating the existing vacant lot and problems of unsightly trash accumulation.

13. By memoranda dated June 21, 1989 and June 15, 1990, the Office of Planning recommended that the application be denied. The OP was of the opinion that the proposed development would adversely impact the immediate area in terms of limited access, parking, and overall density. The OP was further of the opinion that there is no undue hardship or practical difficulty which would prevent the applicant from developing the site in a manner consistent with the R-2 District and that the introduction of a row house, which is not permitted in the R-2 District, would seriously impair the intent, purpose and integrity of the Zoning Regulations.

14. Advisory Neighborhood Commission (ANC) 8C, by correspondence dated June 21 and July 21, 1989 and June 14, 1990, opposed the granting of the application based on the following:

- a. The proposal would threaten the character of the area and create a density problem.
- b. The proposed access drive would create a traffic problem at the intersection of 5th and Trenton Streets, S.E.
- c. The added population would cause traffic and parking problems.
- d. The added units may adversely impact the City's sewage and drainage system.

The ANC recommended that the applicant consider revising the plans and construct only two dwellings on the site.

15. The record contains several letters from nearby property owners in opposition to the proposed development.

16. At the conclusion of the public hearing on June 20, 1990, the Board left the record open for the applicant to submit a possible alternative development scheme for the subject site. By correspondence dated August 21, 1990, the applicant submitted a proposed subdivision which would allow for the development of two single-family dwellings on the site. The applicant indicated that several alternatives were considered but were rejected as detrimental to the neighborhood or too risky for the developer. The applicant reasserted her contention that the development of the site for three dwellings as originally proposed would be the most efficient and best use of the site.

**CONCLUSIONS OF LAW AND OPINION:**

Based on the foregoing findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, area variances and a use variance. As to the use variance, the Board concludes that the applicant has not met the requisite burden of proof. There is no evidence that the strict application of the Zoning Regulations would result in an undue hardship upon the owner. The Board further concludes that the introduction of a use which is not permitted as a matter-of-right would impair the intent, purpose and integrity of the Zoning Regulations.

As to the special exception and area variances, the Board concurs with the opinion of the Office of Planning and Advisory Neighborhood Commission that the proposed construction of three dwellings on the site would adversely impact the area in terms of the over-development of the site and traffic problems which could be created by the use of the limited access by the projected population of the development. The Board concludes that the revised site plan, marked as Exhibit No. 47A of the record, is more in keeping with the intent and purpose of the Zoning Regulations and complies with the provisions of 11 DCMR 2516. In addition, the Board concludes that the property is affected by an exceptional condition due to the unusual configuration of the site and that the owner would suffer a practical difficulty in attempting to develop the site in strict compliance with the provisions of the Zoning Regulations.

Accordingly, it is hereby ORDERED that the application is GRANTED SUBJECT to the CONDITION that development of the site is limited to two semi-detached dwellings.

VOTE: 4-0 (Charles R. Norris, William F. McIntosh, Paula L. Jewell and Carrie L. Thornhill to grant).

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

BZA APPLICATION NO. 15078  
PAGE 5

ATTESTED BY:



EDWARD L. CURRY  
Executive Director

FEB 28 1991

FINAL DATE OF ORDER: \_\_\_\_\_

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "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 BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

bza15078LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 15078

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated FEB 28 1991, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Alethea Campbell  
745 Congress Street, S.E.  
Wash, D.C. 20032

Marion Mills  
3423 5th Street, S.E., #32  
Wash, D.C. 20032

Willie Ickridge, Chairperson  
Advisory Neighborhood Commission 8-C  
3125 M.L. King Avenue, S.E., Suite 2  
Washington, D. C. 20020

Mary J. Cuthbert  
Congress Heights Comm. Assn.  
P.O. Box 6939  
Wash, D.C. 20032

Cheryl Y. Reed  
3017 Vista Street, N.E.  
Wash, D.C. 20018

A handwritten signature in black ink, appearing to read "E. L. Curry".

---

EDWARD L. CURRY  
Executive Director

DATE: FEB 28 1991



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14931 of Stephen B. Shapiro, pursuant to 11 DCMR 3107.2, for a variance from the rear yard requirements (Sub-section 404.1), a variance from the side yard requirements (Sub-section 405.9), a variance from the provision which requires an equivalent front and rear yard for a principal structure which has no street frontage (Sub-section 2516.3), a variance from the off-street parking requirements (Sub-section 2101.1), and a variance from the minimum lot area and width of lot requirements (Sub-section 401.3) for a proposed theoretical subdivision, and second-story addition and conversion of an existing accessory garage to a single-family dwelling in an R-5-A District at premises 2402 and the rear of 2402 - 21st Place, N.E., (Square 4110, Lot 8).

HEARING DATE: February 8 and April 12, 1989  
DECISION DATE: May 3, 1989

FINDINGS OF FACT:

1. The property is located on the west side of 21st Place, between Bryant and Channing Streets, and is known as premises 2402 - 21st Place, N.E. It is zoned R-5-A.
2. The property is rectangular in shape with a frontage of 40 feet along 21st Place and a depth of 108 feet for a total lot area of 4,320 square feet.
3. The property is currently improved with a two-story brick single family detached dwelling and a one-story brick detached four-bay garage which was constructed in approximately 1939.
4. The applicant proposes to construct a second story addition to the existing garage for purposes of converting the structure into a single family dwelling with an interior parking garage for one vehicle. The existing lot would be divided into two theoretical lots, each developed with a single family dwelling.
5. Sub-section 2516.1 of the Zoning Regulations permits the location of two or more principal buildings or structures on a single subdivided lot provided that the use, height, bulk and open space requirements are met. Where a principal building has no street frontage as determined by dividing the subdivided lot into theoretical building sites

for each principal building, the front shall be the side upon which the principal entrance is located. Open space in front of the entrance shall be provided equivalent to the required rear yard in the zone district in which the building is located and a rear yard is also required.

6. The theoretical building site at the rear of the site which would contain the garage conversion would have a total lot area of 2,060 square feet. The proposed dwelling would comply with the permitted lot occupancy and floor area ratio requirements.

7. The Zoning Regulations require the provision of eight foot side yards, a twenty foot rear yard, and an equivalent twenty foot front yard. The garage conversion would provide side yards measuring five and fifteen feet respectively, no rear yard and a ten foot front yard. Variances of 37.5% from the side yard requirement, 100 percent from the rear yard requirement, and 50% from the front yard requirement are therefore necessary for the theoretical building site containing the proposed garage conversion. The applicant amended his original proposal to include an interior parking space for one vehicle eliminating the need for a variance from the parking requirements.

8. The proposed theoretical building site containing the existing single family dwelling would be rendered nonconforming as to the rear yard. The Zoning Regulations require a minimum rear yard of twenty feet; a ten foot rear yard would be provided. In addition, the applicant does not propose to provide a parking space to serve the existing single family structure.

9. The existing garage was constructed approximately fifty years ago and pre-dates the adoption of the Zoning Regulations in 1958. The site abuts a 16 foot wide public alley to the east, a vacant lot to the south, a similarly shaped and sized lot improved with a single family dwelling to the west, and 21st Place to the north.

10. The applicant's representative testified that the configuration of the existing improvements and the inability of the applicant to purchase adjacent property to enlarge the area of the subject site creates a practical difficulty upon the owner. The applicant's representative further testified that the proposal would not adversely impact the use of adjoining and nearby property because there would be no alteration to the footprint of the structure and a currently unused and delapidated garage would be restored to a productive use.

11. The Office of Planning (OP), by memorandum, dated February 1, 1989, recommended that the application be

denied. The OP was of the opinion that the proposed conversion would create negative impacts on the surrounding properties in terms of noise, traffic, building density and access problems. The OP was further of the opinion that the requested relief is excessive and would impair the intent, purpose and integrity of the Zoning Regulations and Map for this section of the city. The Board concurs with the recommendation of the Office of Planning.

12. Advisory Neighborhood Commission (ANC) 5B did not submit a report regarding the subject application.

13. There was no opposition to the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking area variances, the granting of which requires proof through substantial evidence of a practical difficulty upon the owner of the property arising out of some extraordinary or exceptional situation or condition of the property. The Board must further find that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan. The Board concludes that the applicant has not met the burden of proof.


The Board concludes that there is no practical difficulty inherent in the property itself which would sustain the numerous area variances requested. The property, while developed prior to the adoption of the 1958 Zoning Regulations, is currently developed with a conforming single family dwelling and accessory garage. The proposed theoretical lot subdivision and conversion of the existing garage into a single family dwelling would result in the creation of a single family dwelling which does not conform to the front, side and rear yard requirements on the rear portion of the site; and would further render the existing single family dwelling on the front portion of the site nonconforming with regard to the rear yard and parking requirements. While the proposed conversion would not alter the footprint of the existing development on the site, the change in the use from an accessory garage to a principal dwelling unit could have negative impacts on the neighborhood in terms of building density, traffic, and access problems. The applicant's desire to provide additional affordable rental housing in the City is commendable, but it is not sufficient grounds to sustain the granting of the excessive variance relief requested. The Board further concludes that the proposed creation of two nonconforming dwellings on a site currently improved in conformance with the provisions of the Zoning Regulations is not in keeping with the intent and purpose of

the zone plan and map. Accordingly it is ORDERED that the application is hereby DENIED.

VOTE: 5-0 (Charles R. Norris, William F. McIntosh, Paula L. Jewell, and Carrie L. Thornhill to deny; Lloyd Smith to deny by proxy).

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

ATTESTED BY:

  
\_\_\_\_\_  
EDWARD L. CURRY  
Executive Director

FINAL DATE OF ORDER: \_\_\_\_\_

OCT 15 1990

UNDER 11 DCMR 3103.1, "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 BEFORE THE BOARD OF ZONING ADJUSTMENT."

14931order/BHS27

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



APPLICATION NO. 14931

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order in this case, dated OCT 15 1990 has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Stephen Shapiro  
205 - 18th Street, S.E., #C  
Washington, D.C. 20003

Michael Alan Finn  
2402 Chain Bridge Road, N.W.  
Washington, D.C. 20016

George A. Boyd, Chairperson  
Advisory Neighborhood Commission 5-B  
1355-57 New York Avenue, N.E.  
Washington, D. C. 20002

A handwritten signature in black ink, appearing to read "ELC", written over a horizontal line.

EDWARD L. CURRY  
Executive Director

DATE: OCT 15 1990