

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



Application No. 20594 of Nezahat and Paul Harrison, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9 for a special exception under Subtitle C § 305 to allow a theoretical lot subdivision or, alternatively, pursuant to Subtitle X § 1002, for a variance from the lot dimension requirements of Subtitle D § 502, to allow two new detached principal dwellings in the R-8 zone at 3007 Albemarle Street, N.W. (Square 2041, Lot 818).^{1,2}

HEARING DATES: December 22, 2021, May 18, 2022, and July 20, 2022
DECISION DATES: July 27, 2022 and October 18, 2023

DECISION AND ORDER

This self-certified application was filed on August 21, 2021 by Paul and Nezahat Harrison (together, the “Applicant”), the owners of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application for a special exception and deny the request for an area variance.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the original and amended application and of the public hearing by memoranda dated September 27, 2021 or March 11, 2022 to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Office of Advisory Neighborhood Commissions, the Department of Consumer and Regulatory Affairs,³ the

¹ This caption has been revised to reflect an amendment to the application. The Applicant originally requested variances from the lot frontage requirements of Subtitle C § 303.2 and the minimum lot dimensions of Subtitle D § 302.1 to allow a subdivision of the subject property into two record lots to allow a new detached principal dwelling on each new lot (Exhibit 6). The application was subsequently amended to seek a special exception under Subtitle C § 305 in lieu of the variances originally requested. (Exhibit 77.) The application was amended again to add a request, in the alternative, for a variance from Subtitle D § 502. (Exhibit 85.)

² By orders issued August 25, 2023, the Zoning Commission approved text amendments that established new zone names and amended some of the regulations applicable to the Applicant’s proposal. (See Zoning Commission Orders No. 18-16 and 19-27.) This order reflects the zoning provisions in effect at the time of the Board’s vote at the conclusion of the public hearing.

³ As of October 1, 2022, the zoning functions formerly performed by the Department of Consumer and Regulatory Affairs were assumed by the new Department of Buildings. (See D.C. Official Code § 10-561.01 *et seq.*)

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Department of Public Works, the Metropolitan Police Department, the Fire and Emergency Medical Services Department, DC Water, the Department of Energy and Environment, the Department of Parks and Recreation, the Office of the State Superintendent of Education, the Office of the Attorney General, the Councilmember for Ward 3 as well as the Chairman and three at-large members of the D.C. Council, Advisory Neighborhood Commission (“ANC”) 3F, the ANC in which the property is located, Single Member District ANC 3F03, and the owners of all property within 200 feet of the subject property.⁴ Notice was published in the *D.C. Register* on September 24, 2021 (68 DCR 10090).

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 3F were automatically parties in this proceeding. At a public meeting on December 22, 2021, the Board granted requests for party status in opposition to the application submitted by Deborah Ann Hernandez (Exhibit 27), Mary Lee (Exhibits 28, 28A), and John Baringer (Exhibit 30), the owners of properties abutting the Applicant’s lot on Albemarle or 30th Street.

Applicant’s Case. The Applicant provided evidence and testimony, including from Catarina Ferreira, an expert in architecture, in support of the application for the zoning relief to allow two new detached principal dwellings at the subject property.

OP Report. By memorandum dated May 4, 2022, the Office of Planning recommended approval of the special exception requested by the Applicant and denial of the requested variance. (Exhibit 99.)

DDOT Report. By memorandum dated December 10, 2021, the District Department of Transportation indicated no objection to the Applicant’s proposal. (Exhibit 32.)

ANC Report. ANC 3F submitted a report indicating that a vote was taken at a public meeting on November 16, 2021, with a quorum present, but did not reflect the nature of the vote or state any issues or concerns. (Exhibit 111.) The Board received letters in support of the application from three commissioners of ANC 3F, including the commissioner for SMD 3F03, where the subject property is located, which stated that the ANC voted to approve the variance relief initially requested by the Applicant and asserted that the Applicant’s decision to amend the relief requested “[did] not impact ANC 3F’s conclusions.” (Exhibit 111A.) The other letters in support, from SMD 3F01 and SMD 3F04, reiterated the ANC’s support for the Applicant’s plan to build two detached dwellings at the subject property. (Exhibits 158, 166.)

Parties in opposition. The parties in opposition provided testimony, including from Guillermo Rueda, an expert in zoning and architecture, arguing that the Applicant’s proposal would be inconsistent with the purpose and intent of the R-8 zoning because the “[v]olume and size of houses, structure and site improvements are significantly greater than the immediate neighbors.” (Exhibit 147.)

⁴ The public hearing was originally scheduled for December 22, 2021 and was rescheduled at the request of the Applicant or a party in opposition, ultimately to July 20, 2022. (Exhibits 29, 82, 110.)

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Persons in support. The Board received letters and heard testimony in support of the application from persons living near the subject property, who stated generally that the Applicant's project would not adversely affect the use or value of nearby properties and commented favorably on the Applicant's stormwater management and landscaping plans.

Persons in opposition. The Board received letters in opposition to the application from residents living near the subject property, who generally objected to the creation of "a new pipestem lot" that is "currently prohibited" by the Zoning Regulations and asserted that the Applicant's proposal would be inconsistent with the low-density residential neighborhood, would adversely affect privacy available to existing dwellings, and would decrease property values in the area.

FINDINGS OF FACT

1. The property that is the subject of this application is a through lot on the north side of Albemarle Street between 30th and 32nd Streets, N.W., with the address 3007 Albemarle Street, N.W. (Square 2041, Lot 818).
2. The subject property is a generally rectangular lot with a pipestem extending south to Albemarle Street. Its north lot line extends 216.3 feet; the west lot line extends 130.25 feet. The east lot line extends 280.25 feet, including a pipestem that is 16.3 feet wide and 150 long. The south lot line, west of the pipestem, extends 200 feet. The lot area is 30,618 square feet.
3. The pipestem, which was created in 1924, is improved with a gravel driveway that provides vehicle and pedestrian access to the subject property. The pipestem is subject to right-of-way easements for two adjoining properties – Lot 2 (to the east, 3005 Albemarle) and Lot 3 (to the west, 3009 Albemarle) – to provide pedestrian and vehicle access to the dwellings and accessory structures on those properties.
4. The northwest corner of the subject property has approximately 75 feet of frontage on Appleton Street near the corner of Appleton Street and 31st Street.
5. The subject property is improved with a detached principal dwelling located in the northwestern portion of the site. A driveway extends across the subject property from the pipestem to the dwelling.
6. The existing dwelling is set back approximately 10.25 feet from Appleton Street and 237.3 feet from Albemarle Street. The existing lot occupancy is 4.3 percent.
7. The Applicant proposed to configure the subject property in a theoretical subdivision as two new lots, known as Lot 1 (west) and Lot 2 (east), and to construct a new detached principal dwelling on each lot. The existing dwelling will be removed.

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8. Lot 1 will be approximately square, 141.3 feet wide and 130.25 feet deep, with a lot area of 18,404 square feet.
9. The western dwelling, located generally on the site of the existing dwelling, will be 39.9 feet and three stories in height, where 40 feet and three stories are permitted. (Subtitle D § 503.1.)
10. The western dwelling will result in 11.5 percent lot occupancy on Lot 1, where a maximum of 30 percent is permitted. (Subtitle D § 504.1.)
11. The front of the western dwelling will be set back 17.5 feet from Appleton Street, where a distance in the range of 17.5 feet to 19.9 feet is required. (Subtitle D § 505.1.)
12. The western dwelling will have side yards of 42 feet (west) and 39.8 feet (east) where two side yards at least eight feet deep are required. (Subtitle D § 507.1.)
13. The western dwelling will have a rear yard 67.9 feet deep, where a minimum of 25 feet is required. (Subtitle D § 506.1.)
14. The western dwelling will have access from Appleton Street via a leadwalk to the main entrance and via a driveway for vehicle access to two parking spaces in a garage in the lower level of the dwelling.
15. On October 28, 2021, the Public Space Committee granted design concept approval for the curb cut proposed by the Applicant on Appleton Street, subject to approval of a subdivision so that the new curb cut would be needed to provide access to a dwelling on Lot 1.
16. The portion of Appleton Street near the subject property does not have a sidewalk abutting the Applicant's lot and does not permit curbside parking.
17. The lower level of the western dwelling will provide access to a deck and a new swimming pool located at grade in the rear yard.
18. Lot 1 will have approximately 23 percent impervious surface.
19. The eastern lot (Lot 2) will be generally rectangular. Its north lot line will extend 75 feet; the west lot line (shared with Lot 1) will extend 130.25 feet. The east lot line will extend 280.25 feet south to Albemarle, incorporating the existing pipestem, which will remain 16.30 feet wide. The south lot line will extend 58.7 feet west of the pipestem. The lot area will be 12,214 square feet.
20. The eastern dwelling will be 35.7 feet and three stories in height.
21. The eastern dwelling will result in 14.7 percent lot occupancy on Lot 2.

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22. The eastern dwelling will be set back 192.6 feet from Albemarle Street, where a distance in the range of 22 feet to 217 feet is required.
23. The front of the new eastern dwelling will be approximately 42.6 feet from the abutting property to the south (Lot 3, 3009 Albemarle Street).
24. The eastern dwelling will have a rear yard 42 feet deep to the north of the dwelling.
25. The eastern dwelling will have side yards of 12 feet (west) and 12.6 feet (east).
26. The eastern dwelling will utilize the existing driveway in the pipestem to provide two vehicle parking spaces in a garage in the lower level of the dwelling.
27. After construction of the dwelling, Lot 2 will have approximately 28 percent impervious surface.
28. Construction of the Applicant's project will create a lot occupancy of 12.8 percent at the subject property, where a maximum of 30 percent is permitted.
29. The impervious surface at the subject property will be less than 38.25 percent, where a maximum of 50 percent is permitted. (Subtitle D § 508.1.)
30. The subject property exhibits a change in grade, rising from Albemarle Street toward Appleton Street. The existing Appleton Street frontage is approximately 10 feet higher than the grade of the abutting street.
31. The Applicant will implement stormwater management plans devised in consultation with civil engineer and landscape architecture firms. The stormwater management plans relied on channelization, below-ground retention and infiltration, bioretention, and water-sensitive landscaping. The Applicant will improve the pipestem driveway with an engineered permeable surface and other stormwater retention infrastructure to address concerns about drainage of stormwater from the subject property and nearby properties.
32. The Applicant will implement a landscaping plan calling for the retention of existing trees of significance and new plantings, including mature trees more than 20 feet tall, to provide screening between the new dwellings and around the perimeter of the site to minimize views of neighboring dwellings from the new dwellings.
33. The northeastern portion of the subject property abuts a property improved with a detached dwelling that fronts on 31st Street (Lot 21; 4525 31st Street).
34. The east lot line abuts properties containing detached dwellings that front on 30th Street (Lots 804 and 805). The more northern of the two abutting lots (Lot 804, 4516 30th Street)

- has an accessory structure, located in the rear yard within three feet of the lot line shared with the subject property, that contains an accessory apartment.
35. The south lot line abuts four properties that contain detached principal dwellings that front on Albemarle Street.
 36. Lot 16, the property directly to the west of the subject property, is also a through lot with frontage on Appleton Street and a pipestem providing access to Albemarle Street.
 37. Properties in the vicinity of the subject property are improved with detached dwellings. Large apartment houses and commercial uses are located along Connecticut Avenue to the west.
 38. The subject property and surrounding lots are located in a Residential House (R) zone, R-8, which is one of three Forest Hills Tree and Slope Protection Residential House zones.
 39. The Residential House (R) zones are residential zones, designed to provide for stable, low-to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 100.1.) The provisions of the R zones are intended to (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low-to moderate-density residential development; (b) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right development of existing lots of record; (e) establish minimum lot area and dimensions for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 100.2.)
 40. The purposes of the Forest Hills Tree and Slope Protection Residential House zones (R-8, R-9, and R-10) are to (a) preserve and enhance the park-like setting of designated neighborhoods bounded by Connecticut Avenue and 32nd Street on the west, Rock Creek Park on the east, Fort Circle National Park and Nevada Avenue, N.W. on the north, and Melvin C. Hazen Park [now known as Reservation 630] and adjacent to streams and parks on the south, by regulating alteration or disturbance of terrain, destruction of trees, and the ground coverage of permitted buildings and other impervious surfaces; (b) preserve the natural topography and mature trees to the maximum extent feasible in the Forest Hills neighborhoods; (c) prevent significant adverse impact on adjacent open space, parkland, stream beds, or other environmentally sensitive natural areas; and (d) limit permitted ground coverage of new and expanded buildings and other construction so as to encourage a general compatibility between the siting of new buildings or construction and the existing neighborhood. (Subtitle D § 500.1.)

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41. The Forest Hills Tree and Slope Protection zones have a significant quantity of steep slopes and stands of mature trees, are located at the edge of stream beds and public open spaces, and have undeveloped lots and parcels subject to potential terrain alteration and tree removal. Few lots are developed on a rectangular grid system. (Subtitle D § 500.2.)
42. The R-8 zone is intended to permit detached houses on large lots. (Subtitle D § 500.3.)
43. The minimum dimensions of lots in the R-8 zone are 75 feet in lot width and 7,500 square feet in lot area. (Subtitle D § 502.1.)
44. The uses permitted as a matter of right in the R-8 zone include a principal dwelling in a detached building. (Subtitle U § 201.1(a)(1).)
45. The subject property is configured as an Assessment and Taxation Lot (Lot 818). The tax lot was created around 1951 when portions of the underlying record lot (Lot 12) were sold to increase the area of some adjoining lots. The Applicant indicated an intent to obtain a subdivision to convert the subject property to a new record lot.

CONCLUSIONS OF LAW

The Applicant seeks a special exception under Subtitle C § 305 to allow two new detached principal dwellings on one record lot in a theoretical subdivision in the R-8 zone at 3007 Albemarle Street, N.W. (Square 2041, Lot 818). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.), to grant special exceptions, as provided in the Zoning Regulations, when, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR Subtitle X § 901.2.)

Pursuant to Subtitle C § 302.1, a subdivision generally must be effected in a manner that will satisfy zoning requirements for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, lot occupancy, parking spaces, and loading berths applicable to the original lot and to the newly created lots. Each new primary building must be erected on a separate lot of record in all R zones, except as provided for in the theoretical lot subdivision regulations of Subtitle C § 305.1. (Subtitle C § 302.2.)

Pursuant to Subtitle C § 305.1, the Board is authorized to grant, as a special exception, a waiver of Subtitle C § 302.1 to allow multiple primary buildings on a single record lot subject to specific requirements.⁵ The number of buildings permitted in a theoretical subdivision is not limited so

⁵ The Board was not persuaded by a party in opposition's contention that Subtitle C § 305.1 authorized the Board to allow more than one principal building per record lot and nothing more. The requirement of a separate record lot for each new primary building in any R zone is stated in Subtitle C § 302.2. The requirements for a record lot subdivision

long as an applicant can demonstrate that specific requirements are met based on a plan of theoretical subdivision where individual theoretical lots serve as boundaries for assessment of compliance with the Zoning Regulations. (Subtitle C § 305.2.) In accordance with Subtitle C § 305.3, the development standards applicable to theoretical lots include that: (a) the side and rear yards must be consistent with the requirements of the zone; and (b) each means of vehicular ingress and egress to any principal building must be at least 24 feet in width, exclusive of driveways.⁶

Preliminary matters. A party in opposition made two motions seeking dismissal of the application or a delay in the Board's consideration of the relief requested.⁷ The Board denied both motions, finding no reason to agree with the party in opposition that the application was premature or too incomplete for the Board's consideration.

At the beginning of the public hearing, the party in opposition argued that the Board should not proceed with the application, which sought a special exception to allow more than one building on a record lot, because the subject property was not a record lot. In response, the Applicant testified that the subject property will be converted to a record lot in a matter-of-right subdivision undertaken in connection with the permitting process for the planned new dwellings. The Board notes that generally "a building permit shall not be issued for the proposed erection, construction, or conversion of any principal structure, ... unless the land for the proposed erection, construction, or conversion has been divided so that each structure will be on a separate lot of record (*see* Subtitle A § 301.3) and that the theoretical subdivision provision (Subtitle C § 305.1), under which the Applicant sought relief, authorizes the Board to grant a waiver allowing more than one primary building on a single record lot. However, the Board does not agree with the party in opposition that Subtitle C § 305.1 requires the existence of a record lot before the Board may consider any application for approval of a theoretical subdivision. Instead, consistent with its typical practice, the Board considered the application for zoning relief on the basis of the Applicant's assertion that a subdivision to create a record lot will be completed before a building permit may be issued for the construction approved in the application.

are stated in Subtitle C § 302.1, which does not address the number of buildings per lot. Under Subtitle C § 305.1, the Board may waive Subtitle C § 302.1 (that is, zoning requirements for yards, courts, other open space, minimum lot width, minimum lot area, floor area ratio, lot occupancy, parking spaces, and loading berths applicable to the original lot and to the newly created lots) subject to the requirements of Subtitle C § 305.1 (which address side yard, rear yard, vehicle access, and building height measurement) to allow the creation of new theoretical lots that will meet side and rear yard requirements applicable in the zone. Subsequent construction on the theoretical lots is governed by the development standards applicable in the zone. The effect of a theoretical subdivision is to allow more than one principal building per record lot, but the requirements for creation of a theoretical lot are separate from the requirements governing buildings and structures constructed on the theoretical lots.

⁶ Subtitle C § 305.3 also states development standards applicable to theoretical lots governing the measurement of building height that were not at issue in this proceeding.

⁷ The other parties in opposition either joined the motion or consented to the request for summary rejection of the application for failure to appropriately request variance relief from lot width development standards. (Exhibits 133, 136.)

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By motion submitted July 15, 2022, a party in opposition asked the Board “to consider as a preliminary matter whether the Application is incomplete and should include additional relief prior to a public hearing on the merits.” (Exhibit 131.) The party in opposition identified “two key deficiencies” in the application, which “fail[ed] to include two types of required zoning relief in conjunction with the requested theoretical subdivision special exception relief,” and argued that “[a]s a result of these deficiencies, the application should be summarily rejected as incomplete.” According to the party in opposition, the Applicant’s proposal required a variance from the lot width requirements for the eastern theoretical lot (Lot 2), citing “the history of the theoretical subdivision regulations,” because the width of Lot 2 “at 16.3 feet does not meet the 75 foot minimum lot width requirement of D, Section 502.1.”⁸ Noting OP’s recommendation of denial of a variance from the lot width requirement, the party in opposition asserted that the application must be denied.

The Board was not persuaded that a variance from the lot width requirements was needed for the eastern theoretical lot (Lot 2). A subdivision to create a new record lot requires compliance with specific zoning requirements, which include minimum lot width. However, the Zoning Regulations authorize the Board to grant a waiver of the subdivision requirements, including minimum lot width, in a theoretical subdivision that meets specific development standards. Minimum lot width is not listed as one of the development standards that must be satisfied in a theoretical subdivision; therefore, the Board is authorized to waive that requirement and a theoretical lot created in a theoretical subdivision is not subject to the same minimum lot width requirement applicable to a new record lot created in a subdivision undertaken in accordance with Subtitle C § 302.1.

The second alleged “deficiency” identified by the party in opposition was that the application failed to request a variance from the 24-foot minimum width requirement of Subtitle C § 305.3 for a means of vehicular ingress and egress to any principal building. According to the party in opposition, the 16.3-foot-wide pipestem of Lot 2 was “not a driveway but closer in nature to a private alley,” especially considering the easements over the pipestem held by owners of two abutting properties. The party in opposition argued, in the alternative, that if the pipestem is considered a driveway, the application should have included a request for a special exception from the maximum width requirement of 10 feet for a driveway under Subtitle C § 711.5.

The Board was not persuaded by either contention related to the pipestem, which has existed at its current width since before the current zoning requirements went into effect. The paved area along the pipestem will function as a driveway to a single principal building in the theoretical subdivision, the new detached dwelling on Lot 2. The Board notes that the pipestem configuration was considered a driveway by DDOT, which recommended “shrinking” the width of the curb cut and driveway to 12 feet or less consistent with DDOT’s Design and Engineering Manual for residential properties (DEM 31.5.3.d). The existing easements over the pipestem do not require a

⁸ The parties in opposition cited various prior decisions of the Board and the D.C. Court of Appeals in support of their arguments about the perceived need for variance relief in addition to the special exception requested. However, none of those decisions addressed the requirements for a theoretical subdivision contained in the 2016 Zoning Regulations.

different result; the pipestem may continue in its current use to provide vehicle access to one principal building on the subject property and to the accessory buildings on two abutting lots, which are not principal buildings or in the theoretical subdivision. The contention that the application should have included a request for relief from the maximum width requirement for a driveway was also unavailing because the width of the driveway could be less than the width of the pipestem.

The application at issue in this proceeding was self-certified by the Applicant in accordance with the procedure set forth in Subtitle Y § 300.6. The Board may consider a self-certified application so long as the Board finds a plausible basis to conclude that the relief requested will be sufficient to achieve the applicant's purpose. The Board has consistently held that, in reaching that conclusion, arguments asserting the need for additional or different zoning relief are irrelevant to its consideration of a self-certified application. *See, e.g.*, Application No. 20643 (The Maret School; order issued April 12, 2023); Application No. 19689-A (MIC9 Owner, LLC; order on remand issued January 18, 2023); Application No. 18263-B (Application of Stephanie and John Lester; order on remand issued July 25, 2013) (The self-certification process allows applicants to decide the type of zoning relief needed while acknowledging that an applicant assumes the risk that the property owner might require additional or different zoning relief from the relief specified in a self-certified application in order to obtain, for the desired project, any building permit, certificate of occupancy, or other administrative determination based on the Zoning Regulations and Map.); *contrast* Application No. 19630 (Goirand and Xenophontos; order issued November 20, 2018) (self-certified application for a special exception was dismissed because the Board found no basis to conclude that the requested relief was sufficient under the circumstances, where the special exception provision did not apply to the applicants' proposal and the applicants failed to revise the application to request variance relief). For this reason, the Board has consistently held that assertions of an erroneous certification are irrelevant to its review of applications. *See, e.g.*, Application No. 16974 (Tudor Place Foundation; order issued July 29, 2004) (the most that can be said in response to an argument that a self-certified application was incomplete is that the applicant would also need variance relief; that fact did not require the Board to deny a request for a special exception because the Board's inquiry was limited to the narrow question of whether the applicant met its burden under the general and specific special exception criteria); *accord* Application No. 18250 (Raymundo B. Madrid; order issued May 10, 2012); Application No. 17537 (Victor Tabb; order issued July 27, 2007) ("The question of whether an applicant should be requesting variance relief is not germane to the question of whether a special exception should be granted"). These holdings are consistent with the Court of Appeals' admonition that "[i]n evaluating requests for special exceptions, the BZA is limited to a determination of whether the applicant meets the requirements of the exception sought." *Georgetown Residents Alliance v. District of Columbia Bd of Zoning Adjustment*, 802 A.2d 359,363 (D.C., 2002). In this case, the Board found a plausible basis to decide that approval of the requested special exception under Subtitle C § 305.1 to allow a theoretical subdivision would be sufficient to achieve the Applicant's project.

Special Exception. The Applicant requested approval of a special exception under Subtitle C § 305 to allow two new detached principal dwellings on one record lot in a theoretical subdivision. The Applicant submitted the information required by Subtitle C § 305.4 including a site plan showing

a plat of the proposed record lot, lot lines of the proposed theoretical lots, plans for the location of building footprints, required yards (rear, side, and front), the existing and proposed grading, and a landscaping plan. The application did not propose any new streets or designated fire apparatus roads, or any new easements but recognized the existing easements over the pipestem.

A subdivision to create a new record lot requires the satisfaction, by each lot in the subdivision, of zoning requirements including minimum lot width. (Subtitle C § 302.1.) The Board may approve a waiver of the zoning requirements for a record lot subdivision in a theoretical subdivision where the Board determines that primary buildings in a theoretical subdivision, located on individual theoretical lots, will provide side and rear yards consistent with the requirements of the zone and each means of vehicular ingress and egress to any principal building will be at least 24 feet in width, exclusive of driveways. (Subtitle C § 305.1.) In this case, the Applicant sought a waiver of the minimum lot width requirement for one theoretical lot to allow a new detached dwelling on each of two theoretical lots, where the dwellings would comply with applicable requirements for side and rear yards and no new means of vehicular ingress or egress to any principal building was proposed other than via driveways (one new and one existing). Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning, the Board concludes that the application has met the requirements for approval of the requested special exception.

The two new theoretical lots will each exceed the minimum requirement for lot area. Each of the new dwellings will meet or exceed applicable development standards with respect to building height, front setback, side yards, rear yard, lot occupancy, and pervious surface. As discussed above, the application does not propose any means of vehicular ingress or egress other than driveways.

The Board does not find that approval of the application will significantly increase the traffic generated or parking spaces provided at the subject property. Each dwelling will provide vehicle access by means of a driveway from a public street, and each will provide two vehicle parking spaces in a below-grade garage. The existing pipestem driveway will continue in use for access to one new dwelling on the subject property as well as to two abutting properties via easement. The Board was not persuaded by the parties in opposition that changes in the configuration of the existing driveway will adversely affect the use of neighboring properties, including through the creation of a bottleneck at the shared pipestem driveway due to the lack of a turnaround space. The Board credits the testimony in the DDOT report that the Applicant's proposal to develop two dwellings at the subject property, only one of which will use the pipestem driveway, "will have no adverse impacts on the District's transportation network." (Exhibit 32.) Similarly, the Board was not persuaded by the unsubstantiated claims of the parties in opposition that the existing driveway is inadequate for service or emergency vehicles, noting that the Office of the Fire Marshal, in the Fire and Emergency Medical Services Department, had no objection to the Applicant's project (*see* Exhibit 8).

The Board concludes that approval of the requested special exception will not adversely affect neighboring properties. The new dwellings will be located at a significant distance from most existing dwellings, which include detached dwellings with rear yards as well as an accessory

apartment in an accessory structure in the rear yard of an abutting property. Both of the new dwellings proposed in the application will provide rear and side yard setbacks that will meet or exceed the applicable zoning requirements. Those distances, coupled with significant new vegetation installed in conformance with the Applicant's landscaping plan, and the presence of accessory structures in the rear yards of the abutting properties, will avoid the creation of any undue privacy impacts or other objectionable conditions affecting other properties. The Board was not persuaded that the new dwelling on the east lot will create any undue impacts on the use of the accessory structure on the abutting lot, given that the Applicant's dwelling will comply with applicable development standards, including the provision of a compliant side yard setback, where the Applicant will install a landscape screening.

The Board concludes that approval of the application will comply with the substantive intent and purpose of the Zoning Regulations and will not be likely to have an adverse effect on the present character or future development of the neighborhood. The Applicant proposed to construct two detached dwellings that will meet applicable zoning requirements except for minimum lot width associated with an existing pipestem driveway on one theoretical lot. The Applicant's proposal is consistent with the Residential House (R) zones, which are designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses, and with the intent of the R zones by providing for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development and by recognizing and reinforcing the importance of neighborhood character, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city. The Applicant's proposal is also consistent with the purpose of the R-8 zone to permit detached houses on large lots, and with the purposes of the Forest Hills Tree and Slope Protection Residential House zones to preserve and enhance the park-like setting of designated neighborhoods by regulating alteration or disturbance of terrain, destruction of trees, and the ground coverage of permitted buildings and other impervious surfaces; to preserve the natural topography and mature trees to the maximum extent feasible in the Forest Hills neighborhoods; to prevent significant adverse impact on adjacent open space, parkland, stream beds, or other environmentally sensitive natural areas; and to limit permitted ground coverage of new and expanded buildings and other construction so as to encourage a general compatibility between the siting of new buildings or construction and the existing neighborhood.

For those reasons, the Board also concludes that approval of the requested special exception will not have an adverse effect on the present character or future development of the neighborhood. In addition to compliance with applicable development standards, including the pervious surface requirement, in developing the property with a permitted use, the Applicant planned to install a stormwater management system that will address existing and potential drainage issues at the subject property. The Board was not persuaded by the parties in opposition that the new dwellings will be out of character with existing dwellings, including with respect to the orientation of the dwelling on the east lot such that its front yard will face the rear yards of neighboring dwellings. The distances between the dwellings, especially with the implementation of the Applicant's landscaping plan, will avoid the creation of any adverse impacts related to privacy, use, or enjoyment on nearby dwellings.

Subtitle X, Chapter 9. For the reasons discussed above, the Board concludes that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, as is required for approval of the application under Subtitle X § 901.2.

Variance. The Applicant also requested, in alternative to the special exception for a theoretical subdivision, an area variance from the lot width requirements of Subtitle D § 502 to allow two new detached principal dwellings in a subdivision to create two record lots at the subject property. The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that 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. (See 11 DCMR Subtitle X § 1000.1.)

The Applicant’s proposal would require a significant degree of variance relief, given that a lot width of at least 75 feet is required for a new record lot in the R-8 zone and the proposed lot width was approximately 16 feet (the width of the existing pipestem), resulting in a variance request of almost 80 percent. The degree of relief requested in this application was not *de minimis* in nature. See *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1172 (D.C. 1990) (Board may consider whether a variance is *de minimis* in nature and whether for that reason a correspondingly lesser burden of proof rests on the applicant).

Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning, the Board concludes that the application failed to satisfy the burden of proof with respect to the requested variance. The Board does not find that the subject property is faced with any exceptional situation or condition that would warrant approval of the requested variance. The subject property is unusual in that the lot is irregularly shaped as a through lot with an existing pipestem configuration, is significantly larger than nearby lots, and exhibits changes in topography. However, the Board does not conclude that the subject property faced any exceptional situation or condition for purposes of the request for variance relief because the features of the subject property were not unique in the Forest Hills Tree and Slope Protection zones, which exhibit a significant quantity of steep slopes and stands of mature trees and have undeveloped lots and parcels subject to potential terrain alteration and tree removal, where few lots are developed on a rectangular grid system. The Applicant’s plan to build two detached dwellings at the subject property did not create any exceptional condition, because generally an applicant’s desire to utilize property for a certain use is not by itself sufficient to create an extraordinary or exceptional situation or condition under the zoning regulations. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972).

Nor did the Board conclude that the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Applicant as the owner of the subject property. The Applicant did not demonstrate any practical difficulty except in connection with the plan to redevelop the subject property with two principal dwellings.

The Board does not conclude that approval of the requested variance would result in substantial detriment to the public good. However, the zone plan would be impaired by approval of the requested variance by allowing the creation of a new record lot that would not meet zoning requirements and by failing to apply the zoning relief possible through the theoretical subdivision process. Approval of the requested variance would not be consistent with the intent of the Residential House zones to establish minimum lot dimensions for the subdivision and creation of new lots of record.

Great weight. The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.)) For the reasons discussed above, the Board agrees with OP’s recommendation that, in this case, the application should be approved in part, to grant a special exception for a theoretical subdivision, and denied in part, because the requirements for approval of an area variance from the minimum lot width requirement of Subtitle D § 502 were not met.

The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)).) In this case, ANC 3F did not submit a report stating any issues or concerns pertaining to the zoning relief requested by the Applicant. The Board received a letter from the commissioner for SMD 3F03, representing the area where the subject property is located, stating that ANC 3F voted in support of the Applicant’s proposal to build two new detached dwellings at the subject property. The Board received letters in support for the application from the commissioners for SMD 3F01 and SMD 3F04 who also reported that ANC 3F voted to support the application. (Exhibits 158, 166.) These letters commented favorably on the Applicant’s drainage and landscape plans and described the variety of architectural styles and the range of housing forms and sizes as well as varying lot sizes currently existing in the area surrounding the subject property. The Board notes the lack of issues and concerns stated by ANC 3F and, for the reasons discussed above, agrees with the commissioners that the application has met the requirements for approval of the special exception requested by the Applicant.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof for a special exception under Subtitle C § 305 to allow a theoretical lot subdivision, but failed to satisfy the burden of proof for a variance from the lot dimension requirements of Subtitle D § 502, to allow two new detached principal dwellings in the R-8 zone at 3007 Albemarle Street, N.W. (Square 2041, Lot 818). Accordingly, it is **ORDERED** that the application is **GRANTED** in part, consistent with the plans shown in Exhibit 75 of the record as required under Subtitle Y §§ 604.9 and 604.10, and **DENIED** in part.

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VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Anthony J. Hood voting to approve the requested special exception)

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Anthony J. Hood voting to deny the requested area variance; one Board seat vacant)

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

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

ATTESTED BY:



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 23, 2023

PURSUANT TO SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO SUBTITLE Y § 604, 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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.