

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 20920 of Florence Olajide, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 421.1 to allow a new residential development, a four-unit apartment house in a new three-story (with cellar) detached building, in the RA-1 zone at 1326 Fort Stevens Drive, N.W. (Parcel 87, Lot 570).

HEARING DATES: March 13 and April 10, 2024
DECISION DATE: May 1, 2024

DECISION AND ORDER

This self-certified application was filed on February 21, 2023 on behalf of Florence Olajide (“Applicant”), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application subject to one condition.

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 application and of the public hearing by letters, dated April 6, 2023, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the Department of Buildings, Advisory Neighborhood Commission (“ANC”) 4A, the ANC in which the subject property is located, and Single Member District ANC 4A06, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 4 as well as the Chairman and the at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was also provided to the National Park Service, the Department of Parks and Recreation, and the Office of State Superintendent of Education.¹ Notice was published in the *District of Columbia Register* on April 28, 2023 (67 DCR 14701) and through the calendar on the Office of Zoning website.

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 4A were automatically parties in this proceeding. The Board denied an untimely request for party status in opposition to the

¹ Generally the Board is required to determine whether to grant or deny party status at the opening of the first public hearing on the application and a request for party status is due not less than 14 days before the hearing (Subtitle Y §§ 404.2, 404.3). In this case, the public hearing was originally scheduled for July 12, 2023 and was postponed twice at the Applicant’s request (see Exhibits 23, 25). The request for party status was filed April 2, 2024.

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application submitted by Charlene Evans, the owner of a property abutting the subject property (Exhibits 41, 41A).

Applicant's Case. The Applicant presented evidence and testimony, including from Ramy Ali, the project architect, in support of the request for zoning relief needed to allow a new four-unit apartment house at the subject property.

OP Report. By memoranda dated February 28 and April 3, 2024, the Office of Planning recommended approval of the application subject to conditions related to landscaping and to pedestrian and vehicle access to the subject property. (Exhibits 27 and 42.)

ANC Report. By report dated March 12, 2024, ANC 4A recommended denial of the application, citing “the community’s immense opposition, grounded in grave concerns regarding property line discrepancies and rodents, as well as shadowing potentially caused to the existing residences if the proposed construction were built.” (Exhibit 33.)

Persons in opposition. The Board received letters and heard testimony in opposition to the application from residents living in the vicinity of the subject property. According to the persons in opposition, approval of the application would cause adverse impacts on the use of nearby properties due to loss of light, air, and privacy, and would create problems relating to density, vehicle access, pest control, and safety.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot within the area bounded by Fort Stevens Drive to the north, 13th Place to the east, Peabody Street to the south, and 14th Place to the west, with the address 1326 Fort Stevens Drive, N.W. (Parcel 87, Lot 570).
2. The subject property is irregularly shaped but generally rectangular, approximately 34.4 feet wide and 100 feet deep. The lot area is 3,436 square feet.
3. The subject property has no frontage on any street or alley and is bounded on all sides by a total of seven lots.
4. The subject property is currently unimproved.
5. The Applicant proposed to construct a new building at the subject property for use as an apartment house. The building will be three stories and 35 feet in height where three stories and 40 feet are permitted. (Subtitle F § 203.1). According to the Applicant, the lot occupancy of the project will be 31 percent where a maximum of 40 percent is permitted. (Subtitle F § 210.1.) The floor area ratio will be 0.9 as permitted under Subtitle F § 201.1. The project will provide a rear yard of 20 feet, consistent with the minimum requirement stated in Subtitle F § 207. The new building will be 18 feet wide and provide side yards of eight feet on the east and west sides (see Subtitle F § 208).

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6. The apartment house will contain four units. The apartments will include one unit (1,335 square feet) with three bedrooms and 2.5 bathrooms in the cellar and one unit (1,010 square feet) with two bedrooms and two bathrooms on the first floor. The upper floors will be configured as two two-story units (978 and 1,066 square feet), each with a kitchen, living room, and half-bath on the second floor and two bedrooms and two bathrooms on the third floor. (Exhibit 38.)
7. The first-floor unit will have a rear deck approximately 15 feet deep and 18 feet wide.
8. The two upper-floor units will each have access via a roof hatch to a roof deck of approximately 200 square feet. The decks will set back three feet from the west side wall of the building and at least 6.6 feet from the front and rear walls. The remainder of the roof will be inaccessible. (Exhibit 38.)
9. The new building will have six-foot casement windows on the front (north), rear (south), and east side façades on the first through third floors. The west side will not have any windows. The cellar level will have window wells on the east side. (Exhibit 38; Transcript of April 10, 2024 at 110-111.)
10. Vehicle access to the rear (south) of the subject property is available from Peabody Street via an easement on Lot 809 in Square 2791, the abutting lot to the south of the subject property. The eastern portion of Lot 809 is paved as a driveway, approximately 13.7 feet wide, which provides access to areas for vehicle parking and trash storage in the northern portion of Lot 809. (Exhibit 11.)
11. The Applicant submitted a copy of a signed ingress-egress easement executed May 16, 2020 with the owner of Lot 809 to allow the Applicant's use of the driveway on Lot 809. The easement, which was recorded at the Recorder of Deeds on August 10, 2021, provides unrestricted, non-exclusive access to the subject property by prohibiting any party from "erect[ing] any barriers which would in any way restrict vehicular and/or pedestrian flow" across the easement.² (Exhibit 29.)
12. The subject property will provide three vehicle parking spaces at the rear of the lot, accessible from Peabody Street via the existing easement.
13. An area for the storage of trash and recyclable materials will be provided at the rear of the lot adjacent to the parking area. Collection will occur via the easement from Peabody Street.

² A similar ingress-egress easement was executed on January 21, 2019 by the owner of Lot 809 and the owner of Lot 165 in Parcel 87, which abuts the subject property to the west and is improved with a detached principal dwelling. That easement also allows unrestricted, non-exclusive access to the driveway on Lot 809 and prohibits any party from "erect[ing] any barriers which would in any way restrict vehicular and/or pedestrian flow" across the easement. (Exhibit 44A.)

14. The Applicant submitted a signed easement executed January 12, 2019 with the owner of Lot 240 in Parcel 88, which abuts the subject property to the north, to allow pedestrian and utility access to the Applicant's property. (Exhibits 30, 32.)
15. The subject property is generally flat. The Applicant did not propose any changes in grading. (Exhibit 16.)
16. The Applicant will implement a landscaping plan for the new development, with a six-foot-high wood fence to screen the parking and trash storage areas as well as the ground-floor rear deck. A brick walkway will extend along the south side of the lot to provide pedestrian access to the front of the building. Plantings will include grass along both sides of the subject property as well as evergreens. (Exhibit 45.)
17. The subject property is located within a half-mile of Metrobus routes along 16th Street and along 13th Street to the east of Fort Stevens Drive. Other Metrobus routes in the vicinity serve 14th Street and Georgia Avenue. A Metrorail station (Red line) is approximately 1.2 miles from the subject property. (Exhibits 8, 27.)
18. The subject property is located within a half-mile of Rock Creek Park to the west and the Emery Heights Recreation Center across Georgia Avenue to the east. The Peabody Community Garden is located on Peabody Street three blocks east of the subject property.
19. The subject property is served by "in-boundary" schools operated by D.C. Public Schools for students at the elementary, middle, and high school levels. According to information published on the website of the Deputy Mayor for Education, the in-boundary schools for the subject property are Brightwood Elementary School (at 98-percent capacity during the 2022-2023 school year, including 75 percent in-boundary students), Ida B. Wells Middle School (at 94-percent capacity, including 68 percent in-boundary students), and Coolidge High School (at 73-percent capacity, including 43 percent in-boundary students). (Exhibit 27.)
20. The abutting property to the west of the subject property contains a two-story detached principal dwelling. Two of the three lots abutting the subject property to the north contain two-story apartment houses fronting on Fort Stevens Drive.³ Two lots to the east of the subject property contain four-story apartment houses fronting on 13th Place as well as parking spaces. Lot 809, the abutting property to the south of the subject property, contains a four-story apartment house fronting on Peabody Street. (Exhibit 11.)
21. The surrounding neighborhood is developed primarily with apartment houses. (Exhibits 27, 32.)

³ Lot 240, located between Lots 234 and 237 in Parcel 88, is approximately eight feet wide and is unimproved.

22. The subject property is located in a Residential Apartment (RA) zone, RA-1. The RA zones are intended to (a) permit flexibility by allowing all types of residential development, (b) promote stable residential areas while permitting a variety of types of urban residential neighborhoods, (c) promote a walkable living environment, (d) allow limited non-residential uses that are compatible with adjoining residential uses, (e) encourage compatibility between the location of new buildings or construction and the existing neighborhood, and (f) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle F § 300.1.)
23. The purposes of the RA-1 zone are (a) to permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for the RA-1 district and (b) to permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones. (Subtitle F § 300.1.)
24. The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments. (Subtitle F § 300.2.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests a special exception under Subtitle U § 421.1 to allow a four-unit apartment house in a new building in the RA-1 zone at 1326 Fort Stevens Drive, N.W. (Parcel 87, Lot 570). 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, where, 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 U § 421, the proposed apartment house – as a new residential development in the RA-1 zone that is not a principal dwelling – requires approval by the Board as a special exception in accordance with the specified standards. As required, the application was referred to various agencies for comment and recommendation, and the Applicant submitted the documents necessary to support the request for zoning relief. The Applicant submitted a site plan, floor plans, elevations, and a landscaping plan. No significant changes in grade were planned in connection with the new apartment house.

Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the issues and concerns stated by ANC 4A, the Board concludes that the Applicant has satisfied the requirements for the requested special exception. The Applicant proposed to build a new three-story detached building for use as an apartment house containing four two- or three-bedroom apartments. Given the relatively small number of new units in the

building and the number of public schools located in the surrounding neighborhood, which serve children from kindergarten through high school, the Board concludes that the number of students who can be expected to reside in the new apartment house can be accommodated at the existing area schools and would not have a significant impact on the public schools.

The Board also concludes that the public streets, recreation, and other services can accommodate the residents who are expected to reside in the new building. The subject property is accessible to public transportation options, including several Metrobus routes within walking distance, and a Metrorail station less than 1.5 miles away. The project will provide three vehicle parking spaces, consistent with the zoning requirement. The subject property is within walking distance of several parks and other recreational areas.

Subtitle X § 901.2. 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. The Board agrees with the Applicant and the Office of Planning that approval of the application will be consistent with the intent of the Residential Apartment zones to permit flexibility by allowing all types of residential development, promote stable residential areas while permitting a variety of types of urban residential neighborhoods, promote a walkable living environment, and to encourage compatibility between the location of new buildings and the existing neighborhood. Approval of the application will be consistent with the purposes of the RA-1 zone by allowing the development of a type of urban residential development, a four-unit apartment house in a new three-story detached building that will conform to the height, density, and area requirements established for the RA-1 district.

Approval of the application will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The planned apartment house was designed to minimize potential impacts relating to light and air by meeting the applicable development standards, including with respect to building height, lot occupancy, and side and rear yard setbacks. The Applicant submitted a sun study (Exhibit 28) demonstrating that the planned building will not significantly change shadow impacts on neighboring properties compared to existing conditions. The Board credits the testimony of the Office of Planning that the new building is not likely to create adverse impacts on light and air available to neighboring properties, especially considering the three-story height of the building and the provision of side and rear yards.

The Board concludes that approval of the requested zoning relief will not adversely affect the use of neighboring properties with respect to privacy. The new building will not have any windows on the west façade, and windows on the other portions of the building will not be in close proximity to existing dwellings on any adjoining lot. Views to and from the subject property at the ground level, including the rear deck, will be obstructed by a privacy fence that the Applicant will install in conjunction with a landscaping plan. The Board concludes that views available from the planned roof decks will not adversely affect the privacy of any nearby property. The two roof

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decks will be relatively small, and most of the roof of the new building will be inaccessible. The roof decks will be set back from the west side of the building, thereby precluding views of the existing principal dwelling on the abutting lot to the west. The Applicant submitted a site study view showing the prospective sight lines available from the planned roof decks, which indicated that views from the decks will be limited and not intrusive into the privacy of adjoining properties (see Exhibit 37A).

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.

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 4A submitted a report indicating that, at a public meeting on March 5, 2024 with a quorum present, the ANC voted to oppose the application in light of “immense opposition ... from community members.” According to ANC 4A, the opposition was “grounded in grave concerns regarding property line discrepancies and rodents, as well as shadowing potentially caused to the existing residences if the proposed construction were built.” (Exhibit 33.) The Board credits the ANC’s concerns regarding the potential impact of the proposed development on the ANC’s constituents. However, the Board concludes that the ANC has not offered persuasive advice that would cause the Board to determine that approval of the application would be contrary to the Zoning Regulations or would adversely affect the use of neighboring property. For the reasons discussed above, the Board did not agree with ANC 4A that the new apartment house will cause adverse impacts concerning the use of neighboring properties due to light or privacy impacts. Some of the issues and concerns stated by the ANC, such as those relating to property boundaries and construction matters, were unrelated to zoning and therefore were outside the scope of the Board’s jurisdiction in this proceeding. The Board is required to accord “great weight” only to the issues and concerns of the affected ANC that are legally relevant to the application at issue. *See Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993), citing *Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 180 (D.C. 1981) (the “great weight” requirement extends only to “issues and concerns that are legally relevant”).

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under Subtitle U § 421 to allow a new residential development, a four-unit apartment house in a new three-story detached building, in the RA-1 zone at 1326 Fort Stevens Drive, N.W. (Parcel 87, Lot 570). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown at Exhibit 38 and subject to the following **CONDITION**:

1. The Applicant shall install and maintain the landscaping and site plans as shown in Exhibit 45.


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VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Robert E. Miller voting to approve)

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: April 22, 2025

PURSUANT TO 11 DCMR 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 11 DCMR 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 11 DCMR 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.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITION IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF

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ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITION 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