

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



Application No. 20829 of JAG Real Estate LLC, pursuant to 11 DCMR Subtitle X § 901.2, for a special exception under Subtitle U § 421 to allow a new residential development (a 12-unit apartment house) in the RA-1 zone at 945 52nd Street, NE (Square 5199, Lot 0803).

HEARING DATE: December 21, 2022

DECISION DATE: December 21, 2022

DECISION AND ORDER

This self-certified application was filed August 26, 2022 by JAG Real Estate, LLC (the “Applicant”), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application.

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 September 15, 2022, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), Advisory Neighborhood Commission (“ANC”) 7C, the ANC in which the subject property is located, and Single Member District ANC 7C04, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 7 as well as the Chairperson of the Council and three at-large members of the D.C. Council, the Department of Consumer and Regulatory Affairs,¹ the D.C. Department of Parks and Recreation, the D.C. Office of the State Superintendent of Education, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on September 30, 2022 (69 DCR 0011728).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 7C were automatically parties in this proceeding. The Board did not receive any requests for party status.

Applicant’s Case. The Applicant provided evidence and testimony in support of the application from Joey Yaffe, representing the owner, and Joanna Witt, the project architect. The Applicant

¹ 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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requested approval of a special exception to allow a twelve-unit apartment house in a new three-story building at the subject property.

OP Report. By report dated December 9, 2022, the Office of Planning recommended approval of the application. (Exhibit 20.)

DDOT Report. By memorandum dated December 1, 2022 the District Department of Transportation indicated no objection to approval of the application. (Exhibit 19.)

ANC Report. By letter dated December 20, 2022, ANC 7C stated that, at a regularly scheduled meeting on November 10, 2022, with a quorum of five members present, the ANC adopted a motion to oppose the Applicant's request for zoning relief. (Exhibit 32.) ANC Commissioner Anthony Lorenzo Green (SMD 7C04) testified at the public hearing about concerns regarding inadequate parking.

Persons in support. The Board received letters in support of the application from persons living near the Applicant's property.

Persons in opposition. The Board heard testimony from an adjacent neighbor who expressed concerns about the number of vehicle parking spaces proposed by the Applicant.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the east side of 52nd Street, NE, between its intersections with Sheriff Road, NE and Just Street, NE, with an address of 945 52nd Street, NE (Square 5199, Lot 0803).
2. The subject property is a rectangular lot, approximately 50 feet wide and approximately 125 feet deep. The lot area is 6,250 square feet.
3. The subject property abuts a public alley, 15 feet wide, along its rear (east) lot line.
4. A building restriction line extends 15 feet from the 52nd Street frontage on the west.
5. The subject property is unimproved.
6. The Applicant proposed to construct a new detached building at the subject property for use as an apartment house.
7. The apartment house will be configured as 12 dwelling units, including at least one Inclusionary Zoning ("IZ") unit.² The units will be configured as three apartments per

² See Subtitle C, Chapter 10 (Inclusionary Zoning).

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- floor (cellar through the third floor) and will comprise eight two-bedroom and four one-bedroom apartments.
8. The entrance to the building will be on the south side, with walkways to provide pedestrian access to 52nd Street at the front and the parking area at the rear of the subject property.
 9. Balconies will be provided on the north and south sides of the building.
 10. The planned building will measure 36 feet, five inches and three stories in height, where three stories and 40 feet are permitted. (Subtitle F § 303.1.)
 11. The new building will result in a lot occupancy of approximately 39 percent, where a maximum of 40 percent is permitted. (Subtitle F § 304.1.)
 12. The floor area ratio (“FAR”) will be 1.05, including the IZ bonus density of 20 percent, where a maximum of 1.08 FAR is allowed under Subtitle F § 302.2.
 13. The building will provide two side yards at 9 feet, 5.5 inches (north) and 10 feet, 1.5 inches (south), consistent with Subtitle F § 306.1.
 14. The rear yard will be approximately 34 feet deep, where a minimum of 20 feet is required. (Subtitle F § 305.1.)
 15. The project will provide five vehicle parking spaces at the rear of the lot, accessible from the public alley. The zoning requirement for the project is a minimum of three spaces. (Subtitle C §§ 701.5, 702.1(c).)
 16. The building will contain a bicycle storage room in the cellar to provide four long-term bicycle parking spaces. Four short-term bicycle parking will be provided outside the building in the south side yard. (Exhibits 6, 8, 19.)
 17. The portion of the rear yard used for vehicle parking will also contain an enclosure for trash storage. Trash collection will occur via the public alley.
 18. The Applicant will implement a landscaping plan at the subject property that includes a green roof on the new building as well as plantings around the perimeter of the building. (Exhibit 18B.)
 19. The application did not propose any new rights of way or easements.
 20. The subject property is “in boundary” for public schools including Burrville Elementary, Kelly Miller Middle School, and H.D. Woodson High School. (Exhibit 20.)

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21. The subject property is located one-half mile from Marvin Gaye Park, a public park with improved facilities such as a playground, bicycle trail, and benches. (Exhibit 20.)
22. The abutting property to the north of the subject property contains an apartment house fronting on Sheriff Road, which has a certificate of occupancy dating back to 1952. The abutting property to the south also contains an apartment house, with a certificate of occupancy dating back to 1955.
23. The surrounding area is made up of a mix of residential uses, including low- to medium-density apartment houses as well as detached and semi-detached dwellings to the west across 52nd Street.
24. The subject property is located in a Residential Apartment (RA) zone, RA-1. The Residential Apartment zones are residential zones permit urban residential development and compatible institutional and semi-public buildings, and are designed to be mapped in areas identified as moderate- or high-density residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F §§ 100.1, 100.2.) Provisions of the RA zones are intended to (a) provide for the orderly development and use of land and structures in areas characterized by predominantly moderate- to high-density residential uses, (b) permit flexibility by allowing all types of residential development; (c) promote stable residential areas while permitting a variety of types of urban residential neighborhoods; (d) promote a walkable living environment; (e) allow limited non-residential uses that are compatible with adjoining residential uses; (f) encourage compatibility between the location of new buildings or construction and the existing neighborhood; and (g) 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 § 100.3.)
25. The purposes of the RA-1 zone 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. (Subtitle F § 300.1.) 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 seeks a special exception, pursuant to 11 DCMR Subtitle X § 901, under Subtitle U § 421, to allow a new residential development, a 12-unit apartment house in a new three-story building, in a RA-1 zone at 945 52nd Street, NE (Square 5199, Lot 0803). 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

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with the Zoning Regulations and Zoning Map, subject to specific conditions. (See 11 DCMR Subtitle X § 901.2.)

Pursuant to Subtitle § 421, the proposed apartment house – as a new residential development in the RA-1 zone, not comprising a one-family dwelling – requires approval by the Board as special exception in accordance with specific 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.

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 of the affected ANC, the Board concludes that the Applicant has satisfied the requirements for the requested special exception. The Applicant proposed to build a new three-story apartment house containing 12 one- or two-bedroom apartments, including at least one IZ unit. The Office of Planning reported that “the number of students expected to live within the building is expected to be minimal,” and that the public schools serving the subject property should be “adequate.” (Exhibit 20.) Given the relatively small number of units in the building, the relatively small sizes of the units, and the number of public schools located in the surrounding neighborhood that serve children from elementary school 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 existing and planned area schools.

The Board also concludes that the public streets, recreation, and other services can accommodate the residents who can be expected to live in the new building. The subject property is located on an improved street with alley access at the rear lot, in proximity to larger streets such as Sheriff Road, NE and Division Avenue, NE, and within walking distance of recreational facilities. The new development will provide an enclosure for the storage of trash and recyclable materials, while the alley access will facilitate their collection from the rear of the property.

The new apartment house will satisfy zoning requirements by providing five vehicle parking spaces as well as short- and long-term bicycle parking. The Board credits DDOT’s conclusion that the project might lead to minor increases in vehicular, transit, pedestrian, and bicycle trips as well as minor impacts to on-street parking conditions in the area but will have no adverse impacts on the travel conditions of the District’s transportation network. The Board was not persuaded by ANC 7C’s unsubstantiated claim that the apartment house will generate “a potential of up to 24 cars...on an already congested street that lacks parking.” According to DDOT, “52nd and other nearby streets have no curbside parking restrictions,” (Exhibit 19) and the project will meet or exceed the zoning requirements for both vehicle and bicycle parking on-site, thereby moderating new demand for parking associated with the new apartment house.

To illustrate aspects of the planned development, the Applicant submitted a site plan and a set of typical floor plans and elevations as well as a landscaping plan. The Board credits DDOT’s testimony regarding the “park-like” landscaping expected within the building restriction line along 52nd Street in front of the new building consistent with DDOT’s guidelines for public realm design. The new apartment house will meet applicable development standards with respect to height, lot

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occupancy, floor area ratio, and yards, thereby ensuring the adequate provision of light and air to neighboring properties. No changes in grade or new rights of way or easements are planned in connection with the new apartment house.

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 Office of Planning that approval of the application will be consistent with the purposes of the Residential Apartment zone, which permits urban residential development in an area identified as a moderate-density residential area suitable for a multiple dwelling unit development. Consistent with the provisions of the RA zone, the new apartment house will provide for the orderly residential development and use of land in an area characterized by predominantly moderate- to high-density residential uses, promote a stable urban residential neighborhood and a walkable living environment, and encourage compatibility between the location of a new building 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 low-rise apartment house, 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 will provide new dwelling units in a residential area and was designed to minimize potential impacts relating to light and air consistent with applicable development standards.³

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 7C submitted a report stating that the ANC opposed the application, asserting that the planned development would increase the demand for parking in the area, thereby creating “an additional burden for the existing residents.” (Exhibit 32.) The Board has given great weight to the issues and concerns stated by ANC 7C but, as discussed above, did not find the ANC’s lack of support for the application persuasive in light of DDOT’s testimony and given that the Applicant’s proposal will meet or exceed zoning requirements for vehicle and bicycle parking.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception in accordance with

³ The Board notes that the Applicant executed a “community agreement” with the Deanwood Citizens Association that addressed construction activity among other concerns. (Exhibit 18A.)

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Subtitle U § 421 to allow a new 12-unit apartment house in the RA-1 zone at 945 52nd Street, NE (Square 5199, Lot 0803). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown at Exhibit 18B, dated November 30, 2022.

VOTE: 4-0-1 (Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith, and Joseph S. Imamura to APPROVE; Lorna L. John not participating)

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: August 4, 2023

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.

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

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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.