

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 12815 of Horning Brothers, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3105.42 for a new residential development to permit a theoretical sub-division and new residential development comprising forty-one row dwellings, twenty-six semi-detached dwellings and five detached apartment houses in the R-5-A District at the premises 222-490 Taylor Street, N.E., (Square 3664, Lot 819).

HEARING DATES: November 22, 1978 and January 10, 1979
DECISION DATE: January 10, 1979

FINDINGS OF FACT:

1. The subject lot 819 is bounded by Hawaii Avenue, Taylor Street, Varnum and Second Streets, N.E. It is in an R-5-A District.
2. The applicant proposes to construct sixty-seven fee simple townhouses and 150 apartment units. This development will be in conjunction with the development of a 13,000 square foot neighborhood convenience shopping facility located at the intersection of Hawaii Avenue and Taylor Street, N.E.
3. By Zoning Commission Order No. 259 effective January 26, 1979, the Commission APPROVED the applicant's request for a change in zoning for R-5-A to C-1 for the aforementioned neighborhood shopping facility.
4. The overall project, to be called "The Heights", is proposed for approximately thirteen acres of the former Marist Seminary property which totalled sixteen acres. The Seminary has retained three acres of their former campus. Of the thirteen acres, 11.2 will be developed with the residential use and 1.8 with neighborhood convenience shopping facilities.

5. The 13.1 acre site of "The Heights" development is heavily wooded and slopes generally downward toward Hawaii Avenue. The 1.8 acre commercial site is situated at the lowest elevation and has the steepest gradient of the entire site.

6. The campus of Catholic University adjoins the subject property to the east and south. The main campus is located directly across Taylor Street from the subject property and continues southward to Michigan Avenue. The University owned property across Hawaii Avenue from the site is now vacant, but is proposed for use as a future athletic facility. North of Varnum Street and west of 2nd Street are semi-detached homes and garden apartments. This neighborhood is zoned R-5-A although the majority of dwellings are semi-detached.

7. Located some 600 feet east of this site are the Baltimore and Ohio railroad and the Red Line of the Metro system. The Brookland Metro station is located approximately one half mile south of this site while the Fort Totten station lies an equal distance to the north. South of Taylor Street to the east of Brookland Avenue are a number of business establishments including Capital City Liquor Wholesalers, a food warehouse, a moving and storage company, and a D.C. Department of Human Resources storage facility. All of these businesses are located in the C-M-1 zoned area east of the railroad tracks.

8. The R-5-A District allows a maximum FAR of 0.9, a maximum lot occupancy of forty percent and a maximum height of forty feet and three stories. In addition to single family and multiple dwellings, other uses such as hospitals, nursing homes, dormitories, sorority and fraternity houses, museums and art galleries, and private clubs are permitted as a matter of right.

9. In the R-5-A District, all new residential developments except for one family detached and semi-detached dwellings are subject to review by the Board of Zoning Adjustment in accordance with Sub-section 3105.42 of the Zoning Regulations. An apartment building of up to ninety feet in height may be constructed in the R-5-A District provided such building are removed from all lot lines a distance equal to the height of the building above the natural grade. Such developments would be subject to BZA review. Apartment houses may also contain certain commercial uses which

are designed to supply tenants daily living needs as apartment house adjuncts. Such uses must also be approved by the Board of Zoning Adjustment under Sub-section 3105.43 of the Zoning Regulations.

10. A review of Zoning Commission records indicate that there have been no zoning actions on this site nor any in the immediate vicinity since the adoption of the Zoning Regulations in 1958. A review of BZA records indicates cases heard by the Board in this area in recent years have concerned Catholic University, Providence Hospital, the Kennedy Institute and area variance requests for residential properties. In 1974, the Board approved a proposal for 648 dwelling units for property located at Puerto Rico Avenue and Buchanan Streets (Case No. 11631). However, the developer opted to build semi-detached dwellings as a matter of right and that development is under construction.

11. The bulk of land in the immediate vicinity of the subject site is zoned R-5-A as a result of the number of institutions in this section of the city. This site is, in fact, surrounded by R-5-A zoning. The nearest lower density residential zoning, R-3 is found to the north between Allison and Crittenden Streets, N.E. east of North Capitol Street. An R-2 District is found north of Buchanan Street, east of the Metro tracks, A C-M-1 (Commercial and Light Manufacturing District) lies east of Brookland Avenue and the railroad line between Taylor Street and Michigan Avenue. A General Industry (M) district is located approximately one half mile to the north of this site.

12. The townhouses will each have three bedrooms, two and one half bathrooms, and a full basement. The apartments will be comprised of seventy two bedroom units, forty one bedroom and den units, and forty one bedroom units. The price of the townhouses is projected to be approximately \$70,000 and the apartments will rent for \$350 to \$450 a month, including utilities.

13. The density for the residential portion of the site is approximately nineteen units per acre, with an FAR of 0.54 and a lot occupancy of approximately fifteen per cent.

14. The three segments of the proposed development (townhouses, apartments and commercial) are served by separate access. Both access points for the residential segments are from Taylor Street while the access to the commercial is from Hawaii Avenue.

15. Parking for the residential portion of the project totals 217 spaces at the rate of one per dwelling unit. Fifty six spaces are provided for the commercial center. Approximately nineteen of the townhouses will have garages.

16. Approximately sixty-five percent of the site is devoted to green space and a thirty to sixty foot green buffer will be maintained around the entire site. An undisturbed green area has been preserved between the townhouses and apartment units which will provide passive recreation space for the project. In addition, a picnic area of three quarters acre is also provided on the site for recreational purposes. By leaving as much of the natural topography as possible, the majority of townhouses are only two stories high on one side and the apartment buildings are three stories on one side, four stories on the other.

17. The applicant has indicated that this project will have a total population of approximately 517 persons, of which approximately 107 are expected to be children.

18. This site is approximately one-half mile from both the Brookland and Fort Totten Metro stations. There is one Metrobus route which is located on Taylor Street.

19. The entire project, including the commercial, will be constructed in one phase.

20. The applicant's traffic expert testified that the proposed development would create no adverse impact. At the two intersections that would be affected by this development, Taylor Street and Hawaii Avenue and Taylor Street and Harewood Road, at both morning and evening peak hours, there are A levels of service. The H8 bus which comes directly past the subject property on Taylor Street connects with the Brookland Metrorail station. Adding the traffic that would be generated from the total development, including both the residential and the commercial, to the existing traffic would leave the level of service unchanged. The Board so finds.

21. As required under Paragraph 3105.42 of the Zoning Regulations the application was referred to the D.C. Board of Education, the Department of Housing and Community Development, the Office of Planning and Development and the Department of Transportation for their comments and recommendations.

22. By memorandum, dated November 3, 1978, the Superintendent of Schools reported that there will be no impact upon the school facilities in the area caused by the construction. The Board so finds.

23. By memorandum dated August 18 and October 26, 1978, the Director of Environmental Services reported, in summary, that water and sewer service are adequate to support the entire project. The Department indicated that it believes that the majority of people patronizing the proposed neighborhood shopping area will drive in. The additional trips generated could have a negative impact on both air quality and noise in the surrounding area. The Department stated that more efficient emission controls on the newer automobiles should help improve air quality in the future and the proposed buffer strips adjacent to the shopping area should minimize the increase in noise levels. The Department's disposal facilities have capacity to handle the additional solid waste that would be generated at the site. The Board so finds.

24. The Municipal Planning Office by report dated November 21, 1978, stated that the proposed development is an appropriate one for this site. With the campus of Catholic University to the south and a large vacant tract to the east, the only residential area lies to the west and north of this property. There are both semi-detached homes and garden apartments in this neighborhood. With a density of less than twenty units per acre, this project will be of similar character to the residential uses found in the immediate vicinity.

The MPO believed that the mixture of housing types proposed, the attention to the terrain of the site, and the large amounts of green space will provide a quality living environment for the residents of "The Heights" and continue the existing quality of residential development.

The MPO noted that with the exception of the Department of Transportation's concern with the intersection of Taylor Street and Harewood Road, hereinafter addressed, comments from city agencies have been favorable. This project will (1) provide a significant addition to the city's overall housing stock, (2) will not result in displacement of existing residents or businesses, and (3) will not cause undue adverse impacts on nearby properties, streets or community facilities.

The Municipal Planning Office recommended, that this application be approved subject to the condition (1) that development of this project proceed in accordance with the plans and other documents submitted with the application in this case, (2) appropriate residential links to the commercial portion of this project be provided, and (3) collection and storage of trash related to the shopping center activities shall be screened from the residential portion and street frontage of the site. The Board finds that the applicant has substantially complied with the conditions imposed by the MPO. It, accordingly, concurs in the MPO recommendation.

25. The Department of Transportation, by memorandum dated December 6, 1979, reported as follows:

The intersections considered to receive the greatest impact from traffic generated by the proposed development are: Taylor Street/Harewood Road and Taylor Street/Hawaii Avenue. The Department's capacity analysis indicates that all approaches of these intersections are now operating at level of service A during both the a.m. and p.m. peak hours. The maximum cumulative effect of residential and commercial traffic on the external streets will occur during the p.m. peak hour. The predominant share of the generated traffic will be received by the Taylor Street/Harewood Road intersection. In distributing traffic according to directional demand the critical approach is northbound Harewood Road. The capacity analysis, incorporating the effect of traffic generated by the proposed development, indicates that this intersection will continue to operate at level of service A. Of the sixty-five vehicle trips generated by the shopping center, sixty-five percent or forty-two vehicles are assumed to approach the site on Hawaii Avenue from the north. The remaining twenty-three vehicles will pass through the intersection of Taylor Street and Hawaii Avenue. The level of service at this intersection is expected to remain at A.

The applicant proposes two driveways off Taylor Street to serve the residential development. The one serving the apartment units appears satisfactory. The driveway to and from the townhouse portion of the development is proposed to be located opposite Harewood Road at its intersection with Taylor Street. It's design is unsatisfactory.

The Taylor Street/Harewood intersection is controlled by a signal system incorporating unusual multiple phasing. Configuration of the intersection legs is likewise unusual. Addition of another leg as proposed for driveway purposes would result in an inefficient and unmanageable configuration. Exiting vehicles on the driveway would be controlled by a stop sign. Drivers desiring to go south on Harewood Road would be required to make a reversed curve maneuver across Taylor Street into the short southbound leg into the face of northbound traffic.

The problem is to incorporate the driveway into the intersection system in the safest and most efficient manner, thereby precluding complicated maneuvers and directional errors. The only acceptable solution involves movement of the proposed driveway approximately forty feet westward, and modification of the short southbound intersection leg by moving it approximately ten feet eastward. This would align the driveway with the short southbound leg and would accomplish the operational and safety objectives. Implementation of this design would necessitate the purchase of a portion of the adjacent property by the applicant. Modifications of the signal system and intersection would be accomplished strictly for benefit of the development; therefore, we would expect the applicant to bear the costs of the modifications. Development of the final designs of the driveway and modification elements must be coordinated with this Department. The two proposed driveways connecting Hawaii Avenue to serve the commercial development appear satisfactory.

As to the pedestrian circulation a pedestrian way linking the residential facility to the commercial activity is not provided. The absence of such a facility would discourage pedestrian flow between the residential units and the shopping complex. DOT recommends that this pedestrianway be included as an integral part of the total development. DOT recommends further that the BZA Order require commitment by the developer to bear the cost of the sidewalks proposed in public space. These sidewalks will also be important incentives for pedestrian trips.

As to parking, the parking provided for both commercial and residential development is slightly above the zoning regulation minimum requirements. Parking is not allowed on Taylor Street or Harewood Road. DOT concurs with the provision of the additional parking to accommodate the needs of visitors and shoppers and to prevent overspill on adjacent streets.

As to public transportation the site is served by Metrobus. The H-8 originates at Adams Mill Road and Kenyon Street in N.W. and terminates at the Rhode Island Avenue Metrorail station. This bus route also links the site to the Brookland Metrorail station which is an intermediate stop. Currently, service is provided at approximately fifteen minute intervals during weekday periods, thirty minute intervals during weekday off-peak periods, and forty minute intervals on Saturdays and Sundays.

26. Since the DOT report was received by the Board at its meeting to decide the case, and since the applicant and other parties had not had an opportunity to present testimony as to that issue, a further hearing was held on this application on January 10, 1979 limited to the issue of the DOT report and related matters. At that public hearing the DOT reported that since the submittal of its December 6 memorandum, it had developed an alternative design for the driveway which is also satisfactory, and will not require the private purchase of additional land. This alternative design provides for a driveway, that is three lanes wide for a length of approximately 100 feet and that the lanes are channeled at Taylor Street for directional guidance and safe and efficient movement of traffic. DOT reported that the applicant has agreed to implement one of the alternative designs and to assume the related costs of modifying the signal system and other intersection elements. The applicant confirmed that at the January 10, 1979 hearing.

DOT recommended that the Board consider approval of the project on the condition that one of the alternative driveway configurations is subsequently submitted to the Department for review. The Board concurs in the DOT reports.

27. Single member district, ANC-4D11, in which the subject development is situated, by letter of September, 1978 and testimony at the Public Hearing of November 22, 1978 recommended that the application be approved, on the grounds that the development did not appear to negatively impact existing housing in the subject area and the proposed development will add new housing in the area where a scarcity of housing exists. It also noted that the subject undeveloped property is a dumping ground for all kinds of debris and that the immediate neighborhood provides picnic and recreational areas. Board so finds. The ANC 4D filed no recommendation on this application.

28. Advisory Neighborhood Commission 5A, the nearest boundary of which is across the B & O railroad tracks, opposed the proposed development on the grounds that:

- a. The upper northeast area is already developed to a maximum acceptable density level and the ANC opposed the development of the few remaining green spaces left in the area.
- b. Traffic in the Catholic University/Brookland area, due to the university metro station and major thoroughfares of North Capitol Street and Michigan Avenue, has already created serious problems for residences in the area.
- c. A residential community on the site would destroy what is primarily an institutional setting, so that from an aesthetic point of view, the development would not fit.
- d. The major civic associations in the area and the ANC's are opposed to the development, as are the overwhelming majority of citizens in the area.

29. The Upper North East Coordinating Council recommended that the application be denied for the same reasons enumerated by ANC 5A. It further recommended, in the alternative that if the residential part of the development is granted, that the commercial part should be denied.

30. With respect to the issues and concerns raised by ANC 5A and the UNECC the Board finds as follows:

- a. As set forth in previous findings, the Board finds that the proposed development will not create an adverse impact on the vicinity with respect to its density especially in light of the fact that the property could be developed to a much greater density under the R-5-A regulations. The contention that the area should remain open green space is not a proper issue to raise before this Board, since it is not reasonable to require a private property owner to reserve his property for public benefit under police power regulations.
- b. The Board finds the report of the District of Columbia Department of Transportation and the testimony of the applicant's traffic expert witness that the proposed development will have no unacceptable traffic impacts on the vicinity to be conclusive on that issue.
- c. The Board accepts the testimony of the applicant and various government agencies that development of this site with residential units is compatible with the vicinity.
- d. The fact that local citizens groups and the ANC involved are opposed to the development in and of itself is not a proper basis to deny the application.
- e. The Board finds that it has no jurisdiction over the commercial portion of the property, rezoning for which has already been approved by the Zoning Commission.

CONCLUSIONS OF LAW AND OPINION:

The Board is of the opinion that the applicant has met all of the requirements of Paragraph 3105.42 of the Zoning Regulations as a special exception under Sub-section 8207.2. The site plan provided was duly referred to the departments and agencies specified in Paragraph 3105.42 with no objection to the approval of the project except as to the DOT recommendations which have been met by the applicant and which are hereinafter listed as conditions to the granting of the application. The plans provide new housing in the District of Columbia in a manner of which will be compatible with the surrounding neighborhood. The density provided is far below the density permitted in the R-5-A zoning district. Ample open space, private recreation area, and landscaping are provided on the site. The groupings of the building have been laid out in a way to get maximum use of interior open space. The site plans meet the specific and individual criteria set forth in Paragraph 3105.42. Additionally, the Board finds that the project will be in harmony with the general intent and purposes of the Zoning Regulations and will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Maps.

As to the issues and concerns of the Advisory Neighborhood Commission, the Board notes that it has not received a report from ANC 4-D, the ANC within which the site is located, but has received a report and heard testimony from the single member district ANC 4D11. The Board has addressed the issues and concerns of ANC 5A in its findings and fact. However, in so doing, the Board takes no position on the question of whether it is required by statute to accord to that ANC, which is not the ANC within which the site is located, "great wight " as required by statute. In consideration of the Findings of Fact and Conclusions of Law set forth herin, it is therefore ORDERED that the application is GRANTED SUBJECT to the CONDITION that the applicant revise the plans to incorporate one of the two alternative driveway configurations recommended by the Department of Transportation in its report dated January 10, 1979, marked as Exhibit 44 of the record. The applicant shall further communicate to the Board an indication of which alternative was selected, including the written approval of the Department of Transportation.

VOTE: 4-0 (Ruby B. McZier, Charles R. Norris, Chloethiel Woodard Smith and William F. McIntosh to grant, Leonard L. McCants not voting)

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

ATTESTED BY: Steven E. Sher
STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 2 MAR 1979

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.