

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13128, of Barrett M. Linde and Management and Development Associates (Waverly Taylor, Owner), pursuant to Paragraph 8207.2 of the Zoning Regulations, for a special exception under Section 3105.42 and 3307.2 to permit a new residential development in the R-5-A District comprising 29 flats (58 units) with common division walls from the ground up to be considered as 14 buildings at the premises 4603-4631 MacArthur Boulevard, N.W. (Square 1368, Lots 818, 819 and 825).

HEARING DATE: December 19, 1979  
DECISION DATE: February 6, 1980

FINDINGS OF FACT:

1. The subject property is located on the northwest side of MacArthur Boulevard between Reservoir Road to the north and Q Street to the south, in an R-5-A zone district at premises known as 4603-4631 MacArthur Boulevard, N.W.
2. The subject site is presently vacant. The property fronts on MacArthur Boulevard and has a total land area of approximately 64,000 square feet. MacArthur Boulevard at this location has two way traffic with on-street permit parking from 7:00 a.m. to 6:30 p.m., Monday through Friday on the northwest side.
3. The applicants propose to construct twenty-nine flats containing fifty-eight units, in fourteen buildings in a fashion similar to that of row dwellings. Each flat will have a one-bedroom unit on the first floor and a two-bedroom unit on the second and third floors, with the built-in option to combine these two units into one large unit. No variances are requested.
4. To the north of the subject site is a single family dwelling in the R-1-B District; followed by 47th Place. To the east is MacArthur Boulevard, followed by the Georgetown Reservoir. To the south abutting the site is a U.S. Government water pumping station house, enclosed in a six foot high chain link fence. This house is followed by a succession of red brick apartment houses in the R-5-A District. To the west is an undeveloped wooded lot in the R-1-B District, followed by Charlestown Terrace and single family detached dwellings, which are at a much higher elevation than the subject site.

5. The average lot area per unit is approximately 1100 square feet. Open space exceeds the minimum requirements of the R-5-A District and the lot occupancy is approximately thirty per cent of the site.

6. The rear yard required is twenty feet in the R-5-A District and the applicants provide such a rear yard. Parking required is one space per unit and applicants comply with this requirement with an additional six spaces on site available for guest parking, for a total of sixty-four off-street parking spaces.

7. Access to the property will be from MacArthur Boulevard and vehicular access to all buildings will be provided by means of a private parking area. The underlying fee to the roadway will eventually be held by a condominium association or homeowners' association. Each unit will be assigned a parking space.

8. All utilities are in place to serve the property. The applicants have shown a landscape treatment of the buildings which calls for additional plantings and a wooden stockade screen fence to the rear of the west parking area. Each unit will have a separate patio and balcony.

9. The proposed development will be in keeping with the present character or future development of the neighborhood. The proposed use of the property for apartment units is compatible in an area containing mixed residential uses including the Foxhall Mews R-5-A development and a C-1 commercial district.

10. The site enjoys excellent transportation access by way of MacArthur Boulevard and is served by the D-3, D-4, D-8 and D-9 bus routes.

11. There are public recreational facilities located at the Palisades Recreational area and Hardy and Key Elementary Schools which are available to the residents of the site.

12. The parking layout provides for an aisle width of eighteen to twenty feet with ample turning radius for all cars. There are two dumpster locations for trash pickup with ample space for the trash trucks to maneuver into position. The applicant testified that each unit will also have a trash compactor.

13. Under Paragraph 3105.42 of the Zoning Regulations for the R-5-A District, the Board is required to review all new residential developments other than one-family detached or semi-detached dwellings and make findings with the standards set forth in that paragraph of the Zoning Regulations. Accordingly, the Board makes the following findings:

- a. The application was referred to the District of Columbia Board of Education for comment and recommendation on November 1, 1979. The Board of Education report indicated no objection to the project, and reported that the proposed construction will have no impact upon school facilities serving the area.
- b. The application was referred to the Department of Transportation on November 1, 1979. The Department, by memorandum dated December 14, 1979, reported two issues of concern. The Department was concerned that the width of driveway aisles and certain parking spaces were insufficient, and that trash pick-up spaces are also inadequate. The Board has addressed those issues in Finding of Fact No. 12. The Department also reported that the proposed development will not have a reasonable adverse impact on traffic operations on MacArthur Boulevard Boulevard.
- c. The application was referred to the Department of Housing and Community Development by the Board for comment and recommendation on November 11, 1979. No report from the Department was received.
- d. The Board referred the application to the Office of Planning and Development for comment and recommendation on November 11, 1979. In a memorandum to the Board dated December 17, 1979, the Office of Planning and Development recommended approval of the application subject to the condition that the applicant submit for BZA review the underground water conditions at the site and information on what if any impact the development of this site would have on the underground water as it relates to the surrounding properties including the Georgetown Reservoir.
- e. The applicants have met all filing requirements and have submitted plans to the Board as required by the Zoning Regulations.

15. The applicant's architect testified that all ground water and storm water run-off problems have been addressed in the design of the project, and that if unforeseen conditions developed during construction, they would be addressed at that time. The architect testified that he anticipated no adverse effects on ground water or storm water run-off.

16. There was no opposition to the granting of this application.

CONCLUSIONS OF LAW AND OPINION:

Based on the above finding of facts and the evidence of record, the Board is of the opinion that the applicant has met all the requirements of Paragraph 3105.42 and Sub-sections 3307.2 and 8207.2 of the Zoning Regulations. The site plan was duly referred to the departments and agencies specified in Paragraph 3105.42 with either no comment, no objection or approval recommended by each of the departments or agencies, with the exception of the Department of Transportation. The site plan meets the specific criteria set forth in Paragraph 3105.42 and Sub-section 3307.2. Additionally, the Board finds that the project will be in harmony with the general intent and purpose of the Zoning Regulations and will not adversely effect the use of the neighboring property in accordance with the Zoning Regulations and Maps.

Accordingly, it is hereby ORDERED that this application is GRANTED, SUBJECT to the CONDITION that ONE PARKING SPACE shall be SOLD WITH EACH UNIT.

VOTE: 4-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune and Leonard L. McCants to GRANT; Charles R. Norris not present, 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: 7 APR 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13128, of Waverly Taylor, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for special exceptions under Paragraph 3105.42 and Sub-section 3307.2, to allow a new residential development comprising a group of twenty-nine flats and to allow this group of flats with division walls from the ground up to be considered as fourteen buildings in an R-5-A District at the premises 4603-4631 MacArthur Boulevard, N.W., (Square 1368, Lots 818, 819 and 825).

HEARING DATE: December 19, 1979

DECISION DATE: February 6, 1980

FINAL DATE OF ORDER: April 7, 1980

DISPOSITION: The application was GRANTED conditionally by a vote of 4-0 (Walter B. Lewis, William F. McIntosh, Connie Fortune and Leonard L. McCants to grant; Charles R. Norris not present, not voting).

FINDINGS OF FACT:

1. The subject application was filed on November 1, 1979.
2. The final Order on this application was issued on April 7, 1980.
3. On April 17, 1980, Dumbarton Estates Joint Venture, an adjacent property owner to the subject premises, filed a timely motion for a Reconsideration and Rehearing of the application. The grounds for the motion was that DESJV was the owner of abutting property as of October 18, 1979 and accordingly a party as an affected person under Section 1.152 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment and should have received notice of the public hearing under Section 3.322 of the Rules. The movant further alleged that the placement of the buildings as approved by the Board would adversely affect the ability of the movant to sell its property.
4. The deed transferring title from Waverly Taylor to DESJV was recorded on November 2, 1979. The application was filed on November 1, 1979.

5. Notices were sent to the parties by the office of the Zoning Secretariat on November 16, 1979. Among the notices was one sent to the applicant Waverly Taylor, Inc. who was listed in the records of the D.C. Department of Finance and Revenue as the owner of record of the property abutting the subject property on the date the application was filed.

6. The movant acquired the abutting property from Waverly Taylor, Inc., after the application was filed. Waverly Taylor, Inc., never advised the movant of the notice of the public hearing. The Board believes that it is not feasible to require that an applicant constantly update the list of property owners submitted. Nor is it feasible to require an owner who sells property as in the case of Mr. Taylor, to forward the notice of the hearing to the new owner.

7. On April 24, 1980, James I. Schwartz, filed a motion for reconsideration of the Board's final order on the grounds that he was an affected person and entitled to notice under the Rules. He stated that he never received notice.

8. On May 5, 1980, Mr. Schwartz purchased from the Dumbarton Estates lots 50 and 51 which are within 200 feet of the subject property.

9. Record owners of property within 200 feet of the subject property are entitled to receive notice of a public hearing under Section 3.322 of the Rules.

10. Mr. Schwartz examined the poster that had been placed on the subject property. The poster reflected the nature of the application, the name of the applicant, the property involved and the time and date of the public hearing. In one respect the notice was inaccurate. It gave the number of the application as 13138 instead of 13128. Mr. Schwartz made inquiries of the architect for the proposed development.

11. In all other respects, proper notice for the hearing was given.

12. Application No. 13138 was heard by the Board on January 23, 1980. The final order was dated March 24, 1980. The property affected was 1219 Hamlin Street, N.E. The requested relief was to use the property as a pre-school.

13. By letter of June 2, 1980, Dumbarton Estates Joint Venture requested permission to withdraw its motion for Reconsideration and Rehearing.

CONCLUSIONS OF LAW:

Upon consideration of the motion for Reconsideration filed by Mr. Schwartz, the Board concludes that since a motion under Section 5.41 of the Rules is required to be filed within ten days of the date of the final order, in both instances, under application Nos. 13128 and 13138 the motion was untimely filed. The Board also concludes that whereas Mr. Schwartz may not have had direct notice of the hearing through the mail, he did have constructive notice of the public hearing affecting the subject property. Secondly, the Board concludes that Mr. Schwartz is without standing before the Board of Zoning Adjustment. An applicant upon filing an application with the BZA, is required under Section 3.322 of the Rules to provide a list of the names and addresses of the record property owners within 200 feet of the property involved in the application. Mr. Schwartz was not the owner of record at the time the subject application was docketed at the BZA. The Board concludes that to require otherwise would be to place a too cumbersome burden on an applicant. The Board further concludes that Mr. Schwartz had notice of the hearing, that he could have appeared and participated in the proceeding, but that he did not, and therefore he lacks standing as a party to raise new issues after a final Order has been issued. For these two reasons, untimely filing of the motion and the lack of standing before the BZA, the Chairman ruled and it is hereby ORDERED that the Motion for Reconsideration is DENIED.

As to the motion of Dumbarton Estates Joint Venture to WITHDRAW its motion for Reconsideration and Rehearing, the Board notes that DEJV also lacks standing to file a motion for reconsideration. The Board concludes that proper notice for the hearing was given, that DEJV did not appear at the hearing and that it therefore lacks standing to raise new issues after the Board has decided the application. However, since FEJV has withdraw its motion, the Board has no further reason to decide that question.

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

ATTESTED BY:

  
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STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 27 JUN 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."