

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17562 of W Street, SE 38-42-43, LLC, pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under section 2116, and pursuant to 11 DCMR § 3104.1, for a special exception to construct six (6) three-unit row dwellings under section 353, in the R-5-A District at premises 1749-1759 W Street, S.E. (Square 5755, Lots 38-43).

HEARING DATES: January 30, 2007 and April 10, 2007

DECISION DATES: March 6, 2007 and April 10, 2007

DECISION AND ORDER

This Application was submitted on September 28, 2006 by W Street, SE 38-42-43, LLC (the “Applicant”), the owner of the property that is subject of the Application. A revised Application was submitted on October 3, 2006 and an amended Application was submitted on January 19, 2007. The Applicant sought variance and special exception relief from the Board of Zoning Adjustment (the “Board” or “BZA”) to allow the construction of six (6) three-unit row dwellings and to allow parking in the front yard. The Board held hearings on this Application on January 30, 2007 and April 10, 2007. At the conclusion of the April 10, 2007 hearing, the Board voted 3-0-2 to approve a revised Application.

PRELIMINARY MATTERS

Self-Certification. The zoning relief requested in this Application is self-certified pursuant to 11 DCMR § 3113.2.

Notice of Public Hearing. Pursuant to 11 DCMR § 3113.3, notice of the hearing was sent to the Applicant, all persons or entities owning property with 200 feet of the Applicant’s site, Advisory Neighborhood Commission (“ANC”) 8A, and the Office of Planning (“OP”). The Applicant posted placards at the property regarding the Application and public hearing and submitted an affidavit to the Board to this effect.

ANC 8A. The subject site is located within the area served by ANC 8A, which is automatically a party to this Application. The ANC filed a letter in opposition dated January 30, 2007. However, the letter does not set forth the information required for ANC reports as set forth in 11 DCMR § 3115.1, to be afforded great weight by the Board, notably if and when the ANC meeting was held, if the meeting was publicly noticed, a vote on a motion to adopt the report to the Board, and whether a quorum of commissioners was present at the meeting. The letter is

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signed by the commissioner for the affected single member district, but not by the Chair of ANC 8A. The affected single member district commissioner, Ms. LaTasha Hudson, also provided oral testimony at the hearing on January 30, 2006. Her opposition to the Application and that set forth in the ANC letter concerned the parking in the front yard, spillover parking on the street and a preference for single-family detached homes.

Office of Planning Report. OP filed a report dated January 23, 2007 that supported the development of new residential units on the vacant site and recommended approval of the six (6) three-unit row houses, but OP did not recommend approval for allowing the required parking spaces to be located in the front yard. OP also raised concerns about grading, landscaping, storm water management and area for recreation. OP filed a supplemental report dated February 23, 2007 in support of the Applicant's revised development plans for five (5) row dwellings, but raised concerns about an increase in the number of units to 20. OP indicated that it would be supportive of an alternative proposal for two-story duplex units combining the cellar and ground floor units which would result in a total of 15 units – a reduction of five units. OP also anticipated a corresponding decrease in the number of parking spaces and an increase in rear yard unpaved area. OP was supportive of the relocation of on site parking to the rear yard, replacement of the existing front retaining wall, consistency of the building line of the row dwellings with other structures on the 1700 block of W Street, S.E., the landscaping plan and the storm water management plan.

District Department of Transportation (“DDOT”) Report. DDOT filed a report dated January 26, 2007 which opposed the location of the on site parking in the front yard and suggested that parking be provided in the side or rear yards.

Department of Housing and Community Development (“DHCD”) Report. DHCD filed a report dated January 31, 2007 in support of the Application as being consistent with the agency's housing objectives.

D.C. Board of Education Report. The Board of Education did not file a report. However, OP in its report was able to use data provided by the District of Columbia State Data Center and noted that there are an adequate number and range of public schools within one mile of the proposed development to accommodate future students who will reside at the proposed development.

Requests for Party Status. ANC 8A is automatically a party. The Board did not receive any requests for party status.

Persons in Opposition. The Board received two letters in opposition from neighboring property owners, John and Diane James and Kenneth and Pauline Chapman as well as a petition signed by 15 neighboring property owners. The letters generally cited potential adverse impacts from parking in the front yard, a lack of street parking due to the seven (7) apartment buildings on W Street, and a desire for single family homes with landscaped front yards.

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Persons in Support. The Board did not receive letters in support.

Applicant's Case. Anthony Washington, principle of W Street, SE 38-42-43, LLC, testified on behalf of the Applicant.

Closing of the Record. The Board considered the Applicant's supplemental filing of February 14, 2007 at the Board's public meeting of March 6, 2007. At that meeting, the Board agreed to allow the Applicant to file revised plans, and the record was held open until April 4, 2007 for that purpose. An additional limited hearing was held on April 10, 2007, and on that date the Board approved the application.

FINDINGS OF FACT

1. The subject property is located in the Anacostia neighborhood of Ward 8 at 1749-1759 W Street, S.E. V Street bounds the 1700 block to the north, Fort Stanton Park to the east, Galen Street to south and 16th Street to the west.
2. The site is currently a vacant parcel of approximately 19,122 square feet. The property is on the south side of W Street, with an unimproved paper alley in the rear that does not run the full length of the property. The site slopes up from the street, and slopes sharply down in the rear.
3. The area housing is predominately moderate density row houses, garden apartments and single-family dwellings.
4. The Applicant originally proposed a development of six (6) three-unit row dwellings with parking in the front yard. In response to issues raised by OP, the ANC and neighbors, the Applicant filed a supplemental statement on February 14, 2007 and a supplemental statement and plans on April 4, 2007, which reduced the project to five (5) three-unit row dwellings with parking in the rear yard.
5. The relocation of the on-site parking to the rear yard eliminated the need for variance relief for parking.

CONCLUSIONS OF LAW

The Board of Zoning Adjustment is authorized under section 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 799; D.C. Code § 5-524 (g)(2)), to grant special exceptions as provided in the Zoning Regulations. The Applicant applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 353 for new residential development in the R-5-A district.

The Board may grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular exception are met. First, the requested special exception

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must “be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps.” 11 DCMR § 3104.1. Second, it must “not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.” 11 DCMR § 3104.1.

Under Section 353 of the Zoning Regulations, the Board may permit new residential development in the R-5-A district subject to the provisions set forth in 353.1 through 353.4:

353.1 In the R-5-A Districts, all new residential development, except those comprising all one-family detached and semi-detached dwellings, shall be reviewed by the Board of Zoning Adjustment as special exceptions under § 3104.1.

The Board finds that the Applicant is before the BZA with a row dwelling residential development as required by Section 353.1

353.2 The Board shall refer the application to the D.C. Board of Education for comment and recommendation as to the adequacy of existing and planned area schools to accommodate the number of students that can be expected to reside in the project.

The Board finds that although no response was received from the Board of Education, the assessment provided by OP in its January 23, 2007 report is sufficient to conclude that an adequate number and range of public schools exist within one mile of the proposed development to accommodate future students who will reside at the proposed development.

353.3 The Board shall refer the application to the D.C. Department of Transportation and Housing and Community Development for comments and recommendation as to the adequacy of public streets, recreation, and other services to accommodate the residents of the project and the relationship of the proposed project to public plans and projects.

The Board finds that based on the reports from DDOT and DHCD the existing street system of W Street, S.E. and Good Hope Road, S.E. are adequate for the volume of traffic which could be generated by the project and that the close proximity of Fort Stanton Park will supplement the project for any recreation needs of the project residents.

353.4 The Board shall refer the application to the Office of Planning for comments and recommendation on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the future residents of the project and the surrounding neighborhood.

The Board finds that the Applicant has addressed the concerns raised by OP in its reports. The arrangement of the five (5) rowhouse dwellings is compatible with the building line set backs of other properties across the street. This building line set back, the drive aisle and the parking lot in the rear yard collectively ensure that there will be adequate light and air. The landscaping plan is sufficiently detailed to ensure that there is adequate screening in the front of the property and the Applicant’s retention of the mature trees on the rear slope of the property along with the

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retaining walls in the front and rear provide attractive buffers in both the front and rear. The parking lot in the rear provides more than adequate amount of parking with 21 spaces for 15 residential units. While the amount of parking is more than required, the Board finds that this additional amount responds to a concern raised by the neighbors about on street parking. The amount of recreation space is limited to walkways in front and behind the dwellings and private decks in the rear, but this limitation is offset by the close proximity of Fort Stanton Park. The Applicant's proposed grading of the site and the storm water management plan will ensure water will run into a grate in the parking lot and toward the driveway easement area where the storm water collection system will be located. A trash dumpster will be located at the south end of the driveway easement in the rear of the property, but it will be in a wooden enclosure to buffer its view from neighboring properties.

The Board concurs with OP that the project as set forth in the plans is consistent with the character of the neighborhood and Applicant has assured that all final details will maintain this consistency. The Board concludes that, pursuant to §§ 353 and 3104.1, the special exception relief requested for the new residential development can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map, and that as conditioned by this order, the special exception will not tend to affect adversely the use of neighboring properties in accordance with the Zoning Regulations and Map.

ANC Issues and Concerns.

Under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Code § 1-309.10(d)(3)(a)) ("ANC Act"), the Board must give great weight to the issues and concerns raised in the written report of the affected Commission. Great weight means acknowledgement of the issues and concerns of the affected ANC and an explanation of why the Board did or did not find their views persuasive. The Board is also required, under D.C. Code § 6-623.04, to give "great weight to OP recommendations."

The OP report mentions that the ANC voted to oppose the Application as originally submitted. While the letter from the ANC does not comply with the requirements of the ANC Act (as restated in the BZA rules for an ANC's views to be given great weight, the Board nonetheless considered and responded to the concerns of the ANC, which were echoed by neighboring residents. The Board finds that the Applicant's supplemental filings address the ANC's and the neighbors' concerns about the location of the parking lot by relocating the parking to the rear yard, the landscaping front yard issues by providing a new retaining wall and a five foot landscaping buffer in front of the row dwellings and the number of units by reducing the number of residences from 18 down to 15.

The Board finds that the Applicant's revised proposal also sufficiently addresses the concerns raised by OP in that the Applicant has reduced the number of units, matched the design and configuration of the development so that it is in character with the mix of housing on the block, provided retaining walls and landscaping to buffer the front and rear of the project, and added

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storm water management and grading to ensure runoff will be addressed. Although the Applicant did not reduce the parking to provide additional landscaping and recreational areas, the Board finds that this is reasonable in order to address the concerns raised by neighborhood residents about the need for additional off-street parking which can be made available to those with larger units or to guests.

For the reasons stated above, the Board concludes that the Applicant has met its burden of proof and grants Special Exception relief under § 353 and § 3104.1 **SUBJECT** to the **CONDITION** that the Applicant shall be allowed flexibility by the Zoning Administrator in the final design of the units so that minor adjustments in the dimensions of the modular housing units may be made as long as such flexibility does not exceed the allowable thresholds in the Zoning Regulations for residential structures in the R-5-A zone district.

VOTE: 3-0-2 (Curtis L. Etherly, Jr., Ruthanne G. Miller, and John A. Mann II to grant; Marc D. Loud, not voting not having heard the case; No Zoning Commission Member participating)

VOTE TAKEN ON APRIL 10, 2007

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

Each concurring Board member approved the issuance of this order.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning *J*

FINAL DATE OF ORDER: MAY 29 2007

UNDER 11 DCMR 3125.9, "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 FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE

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CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS 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.

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As Director of the Office of Zoning, I hereby certify and attest that on MAY 29, 2007, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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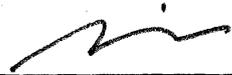
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