

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17603 of Johnson Kunlpe, pursuant to 11 DCMR § 3104.1, for a special exception under § 353 to allow the development of four four-unit apartment buildings in the R-5-A district at premises 5206 and 5208 F Street, S.E. and 5210 and 5212 F Street, S.E. (Square 5316, Lots 25, 26, 805, and 807).

HEARING DATE: May 8, 2007

DECISION DATE: June 5, 2007

DECISION AND ORDER

This self-certified application was submitted December 28, 2006 by Johnson Kunlpe (“Applicant”), the owner of the property that is the subject of the application. The application requested a special exception under § 353 of the Zoning Regulations to allow development of four new apartment buildings, each with four apartment units, in the R-5-A district at 5206, 5208, 5210, and 5212 F Street, S.E. (Square 5316, Lots 25, 26, 805, and 807).

Following a hearing on May 8, 2007 and a public meeting on June 5, 2007, the Board voted 4-0-1 to grant the application.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memoranda dated January 4, 2007, the Office of Zoning provided notice of the application to the Office of Planning, the Department of Transportation, the Department of Housing and Community Development, the State Board of Education, the Councilmember for Ward 7, Advisory Neighborhood Commission (“ANC”) 7E, and Single Member District/ANC 7E01. Pursuant to 11 DCMR § 3113.13, on February 27, 2007 the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, ANC 7E, and owners of property within 200 feet of the subject property. Notice was also published in the D.C. Register on March 16, 2007 (54 DCR 2333).

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Party Status. In addition to the Applicant, ANC 7E was automatically a party in this proceeding. At the public hearing, the Board granted party status in opposition to the application to Rosa Green, the owner of property abutting the subject property.

Applicant's Case. The Applicant presented evidence and testimony from Ike Agbim, an architect, who described the plans to construct four apartment buildings, each containing four apartments. According to the Applicant, approval of the requested special exception would not adversely affect neighboring properties but would allow the construction of apartment buildings that would be compatible with the neighborhood character and with existing uses on the street.

Government Reports. By memorandum dated May 1, 2007, the Office of Planning ("OP") recommended approval of the requested special exception, concluding that the project would satisfy the requirements of sections 353 and 3104.1. According to OP, the Applicant's proposed development would generally further a number of policies and objectives set forth in the Land Use and Far Northeast and Southeast Area elements of the District Elements of the Comprehensive Plan for the National Capital ("Comprehensive Plan"), and would not be inconsistent with the moderate-density residential designation of the subject property in the future land-use map of the Comprehensive Plan.

The OP report also indicated that the District Department of Transportation ("DDOT") had not expressed any concerns regarding the Applicant's proposed parking plan, including the driveway and drive aisles.

By supplemental report dated March 15, 2007, the Office of Planning reiterated its conclusion that the requested special exception would be consistent with the designation of the subject property as moderate-density residential in the future land-use map of the Comprehensive Plan. OP noted that the property is zoned R-5-A, a district designed for a variety of urban residential development types, and stated that the proposed multifamily dwellings would be appropriate in the R-5-A zone. According to OP, the streets in the vicinity of the subject property would provide ample on-street parking for visitors to the new apartment buildings.

By additional supplemental report dated May 23, 2007, the Office of Planning indicated that some residents of the neighborhood in the vicinity of the subject property had called to express their opposition to the Applicant's project, asserting that the new buildings would cause adverse impacts on privacy, light, and air, that the subject property was too small to accommodate the proposed buildings and recreational opportunities, that the

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height and density of the project would not be in character with the neighborhood, and that the project would add to the already high proportion of rental units in the area.

By memorandum dated May 11, 2007, the Department of Housing and Community Development (“DHCD”) indicated its support for approval of the requested special exception. According to DHCD, the “townhouse scale and massing” of the Applicant’s project would be in character with the apartment scale of the surrounding neighborhood.

ANC Report. By letter dated April 23, 2007, Advisory Neighborhood Commission 7E submitted a list of “possible considerations” regarding the Applicant’s proposal. The ANC raised concerns pertaining to a potential retaining wall or fence around the apartment complex, parking, arrangements for trash collection, the siting of the buildings, use of a public alley between two of the lots, and possible adverse lighting impacts. By letter dated May 21, 2007, ANC 7E indicated that, at a public meeting on May 8, 2007 with a quorum present, the ANC voted 2-1-2 not to support the application, citing a concern about the construction of apartments rather than one-family dwellings.

Party in Opposition to the Application. The party in opposition argued that the subject property should not be developed with apartment buildings, citing concerns about population density, traffic, safety, and a lack of recreational opportunities in the neighborhood. According to the party in opposition, one-family detached dwellings would be more compatible with the character of the neighborhood.

Persons in Opposition. The Board heard testimony or received letters in opposition to the application from several persons living in the vicinity of the subject property. The persons in opposition generally cited a desire for development of one-family dwellings rather than apartments and concerns about decreased air flow, stormwater runoff, and a potential loss of privacy.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property comprises four lots located at 5206, 5208, 5210, and 5212 F Street, S.E. (Square 5316, Lots 25, 26, 805, and 807), on the north side of F Street between 51st and 53rd Streets, S.E. Three of the lots – Lots 805, 25, and 26 – are contiguous; an unimproved public alley, 16 feet wide, separates Lots 805 and 807. Each lot is rectangular and has a depth of 100 feet; lot widths are either 32 feet (Lots 807 and 805) or 40 feet (Lots 25 and 26).
2. The site is relatively flat and is currently unimproved.

3. The subject property is located in Ward 7 in the Marshall Heights neighborhood, in an area developed primarily with small apartment buildings and one-family detached dwellings.
4. Other properties in the immediate vicinity of the subject property are developed with one-family detached dwellings and apartment buildings. The abutting property to the west is undeveloped.
5. The subject property is located near several recreation sites and public facilities, including three public schools and a community center.

Applicant's Project

6. The Applicant planned to construct four new apartment buildings, one on each lot comprising the subject property. Each building will be approximately 38 feet in height, with three stories and a cellar. Each building will contain four apartments, one two-bedroom unit per floor. The floor area ratio of each building will be 0.9, and lot occupancy on each lot will be 30 percent.
7. Each building entrance will be located on F Street and each building will be set back six feet from the front property line, although the buildings on Lots 25 and 26 will be slightly larger than the buildings on Lots 805 and 807. The buildings on Lots 805 and 807 will abut the public alley and have side yards 12 feet wide on the opposite sides of the buildings; the rear yards will be 46 feet deep. The buildings on Lots 25 and 26 will have nine-foot side yards on both sides, and rear yards 40 feet deep.
8. The building located on Lot 26, the easternmost parcel, will not have any windows facing the abutting property, a one-family dwelling at 5214 F Street, S.E.
9. The project will provide one parking space for each dwelling unit, for a total of 16 parking spaces on the subject property. Each building will provide four parking spaces in the rear yards. Access to the parking spaces on Lots 805 and 807 will be provided through the public alley; the parking spaces on Lots 25 and 26 will be reached via a planned driveway, approximately 18 feet wide, running between the two buildings to the street.
10. Each building will provide trash storage in a six-foot-high enclosure, with a gate, located in the side yards near the front of each building. The trash enclosures will be accessible via a paved walkway from the sidewalk along F Street.

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11. The Applicant's landscaping plan includes a six-foot-high fence along the rear and both sides of the subject property, with additional fencing along the front of a central landscaped area, and the planting of evergreen hedges around the rear of the property, screening the parking area. Shade trees, smaller trees such as magnolias, and grass will also be planted. Three recreational areas will be provided within the landscaped portions of the subject property.
12. The Applicant's lighting plan provides for the installation of lights that will minimize spillover light effects on neighboring properties.
13. The Board credits the testimony of the Office of Planning that the locations of the buildings on the lots will not restrict light and air to future occupants of the apartments or to residents on adjacent properties, and that the scale of the buildings will be compatible with other apartment buildings in the neighborhood.

Harmony with Zone Plan

14. The R-5 districts are general Residence districts designed to permit flexibility of design by permitting, in a single district, all types of urban residential development if they conform to the height, density, and area requirements. 11 DCMR § 350.1. The R-5-A district permits a low height and density. 11 DCMR § 350.2.
15. The Applicant's proposal will satisfy matter-of-right requirements in the R-5-A zone for parking and for building height, setbacks, lot occupancy, and floor area ratio.
16. The future land-use map of the Comprehensive Plan designates the subject property as moderate-density residential, where row houses and garden apartments are the predominant uses, along with one-family dwellings and low-rise apartment buildings.
17. The Board credits the conclusion of the Office of Planning that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Map, as well as with provisions of the Comprehensive Plan and future land-use map.

CONCLUSIONS OF LAW

The Applicant seeks a special exception under § 353 of the Zoning Regulations to allow development of four new apartment buildings, each with four apartment units, in the R-5-A district at 5206, 5208, 5210, and 5212 F Street, S.E. (Square 5316, Lots 25, 26, 805,

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and 807). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001), 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 § 3104.1.

Pursuant to § 353, the new residential development proposed by the Applicant must be reviewed by the Board as a special exception under § 3104.1. The Applicant is required to submit site plans, typical floor plans and elevations, and plans showing the project's grading, landscaping, and rights of way and easements. 11 DCMR § 353.5. The Board is required to refer the application to the State Board of Education for comment and recommendation as to the adequacy of existing and planned area schools to accommodate the numbers of students that can be expected to reside in the project, to the Departments of Transportation and Housing and Community Development for comment 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, and to the Office of Planning for comment 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. 11 DCMR §§ 53.2 – 353.4. All of the requirements of § 353 were satisfied in this proceeding.

The Board concludes that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The R-5-A zone district permits the development of multi-family dwellings, and the Applicant's project will comply with applicable zoning requirements with respect to height, bulk, lot occupancy, and setbacks as well as with respect to parking. The Board finds that the neighborhood around the subject property contains a mixture of dwelling types, from one-family detached dwellings to small apartment buildings. The proposed development of a four-unit apartment building on each of the four lots comprising the subject property will thus be in character with surrounding community.

The Board also concludes that the requested special exception will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The Board was not persuaded by the party in opposition that the proposed apartment buildings would cause adverse impacts on the use of neighboring property because of population density, traffic, safety, or a lack of recreational opportunities in the neighborhood. The Board notes OP's recommendation to approve the requested special exception as consistent with the requirements of sections 353 and 3104.1, as well as

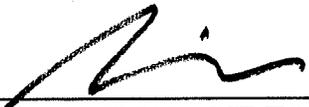
DDOT's support for the Applicant's parking plan. The provision of air and light to the apartments and to neighboring properties will not be obstructed, given the project design and the distance of the buildings from neighboring dwellings.

ANC 7E did not submit a written report adopted by a majority of the ANC. It did submit a letter dated April 23, 2007, in which it raised various considerations about the project. The Board finds that the Applicant has adequately addressed these considerations pertaining to the installation of a fence around the project, parking, trash collection, the siting of the buildings, use of the public alley, and lighting impacts. The ANC also submitted a letter dated May 21, 2007, indicating that the Commissioners were divided on the issues, noting one issue in particular - the construction of apartments rather than one-family dwellings. The ANC did not offer the Board persuasive advice that would cause the Board to find that the requested special exception is contrary to the Zoning Regulations and would adversely affect the use of neighboring property.

Based on the above findings of fact, and having given great weight to the recommendation of the Office of Planning, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception under § 353 to construct four new apartment buildings, each with four apartment units, in the R-5-A district at 5206, 5208, 5210, and 5212 F Street, S.E. (Square 5316, Lots 25, 26, 805, and 807). Accordingly, it is therefore **ORDERED** that the application is **GRANTED**.

VOTE: **4-0-1** (Ruthanne G. Miller, Curtis L. Etherly, Jr., Marc Loud, and John A. Mann II to grant the application; no Zoning Commission member participating or voting)

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

FINAL DATE OF ORDER: DEC 11 2007

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11

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DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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 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.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



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As Director of the Office of Zoning, I hereby certify and attest that on **DECEMBER 11, 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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