

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17607 of Ike Agbim, pursuant to 11 DCMR § 3104.1, for a special exception under section 353 to construct a four-unit apartment building in the R-5-A district at premises 721 49th Street, N.E. (Square 5179, Lots 60 and 61).

HEARING DATE: May 15, 2007

DECISION DATE: July 3, 2007

DECISION AND ORDER

This self-certified application was submitted January 8, 2007 by Ike Agbim (“Applicant”), the owner of the property that is the subject of the application. The application requests a special exception under section 353 of the Zoning Regulations to allow development of a new four-unit apartment building in the R-5-A district at 721 49th Street, N.E. (Square 5179, Lots 60 and 61).

Following a hearing on May 15, 2007 and a public meeting on July 3, 2007, the Board voted 4-0-1 to grant the application.

PRELIMINARY MATTERS:

Notice of Application and Notice of Hearing. By memoranda dated January 10, 2007, the Office of Zoning provided notice of the application to the Office of Planning, the Department of Transportation, the Councilmember for Ward 7, Advisory Neighborhood Commission (“ANC”) 7D, and Single Member District/ANC 7D01. By memoranda dated February 13, 2007, the Office of Zoning provided notice of the application to ANC 7C, the ANC in which the subject property is located, and to Single Member District/ANC 7C01. Pursuant to 11 DCMR § 3113.13, on March 1, 2007 the Office of Zoning mailed letters or memoranda providing notice of the hearing to the Applicant, ANC 7C, and owners of property within 200 feet of the subject property. Notice was also published in the D.C. Register on March 9, 2007 (54 DCR 2100).

Party Status. In addition to the Applicant, ANC 7C was automatically a party in this proceeding. At the public hearing, the Board granted party status in opposition to the application to Thomas K. Stevenson, the owner of two apartment buildings located on adjoining lots next to the subject property at 711 and 719 49th Street N.E.

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17607

PAGE NO. 2

Applicant's Case. The Applicant presented evidence and testimony describing plans to construct a four-unit apartment building, with four parking spaces provided in a lot at the rear of the property. The Applicant indicated an intent to pave a portion of the public alley at the rear of the subject property, consistent with the requirements of the District Department of Transportation, to provide vehicular access to the parking lot. According to the Applicant, approval of the requested special exception would improve the current condition of the subject property and would not adversely affect the use of neighboring property.

Government Reports. By memorandum dated May 8, 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. OP cited policy support in the District Elements of the Comprehensive Plan for the National Capital ("Comprehensive Plan") for new infill housing, and noted that "an adequate number of public schools" were located within a mile of the proposed development to accommodate future students who might reside there.

By memorandum dated July 3, 2007, the District Department of Transportation ("DDOT") indicated no objections to the Applicant's proposal, provided that the Applicant would construct the public alley at the rear of the subject property to DDOT standards to give access to the project's parking lot. DDOT noted that the alley is currently unimproved and not in a condition suitable for automobile traffic.

ANC Report. Advisory Neighborhood Commission 7C did not submit a written report in this proceeding or testify at the public hearing. It therefore could not be given great weight by the Commission.

Party in Opposition to the Application. The party in opposition argued that the Applicant's proposed four-unit apartment building would be too large for the subject property and would block the view of tenants living in the apartment building on the abutting lot. The party in opposition also contended that approval of the requested special exception would cause adverse impacts on the use of neighboring property due to traffic congestion and insufficient parking.

Person in Opposition. A resident of 49th Street living across the street from the subject property testified in opposition to the application, stating that the property should be developed with a one-family dwelling rather than an apartment building.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is located at 721 49th Street, N.E., on the east side of 49th Street near its intersection with Hayes Street (Square 5179, Lots 60 and 61). The parcel is trapezoidal and has an area of 4,091 square feet, with approximately 50 feet of frontage on 49th Street. The parcel extends 100 feet deep and is almost 32 feet wide at the rear lot line.
2. A public alley, 15 feet wide, abuts the subject property at the rear. The alley extends through the square from Hayes Street on the north to Nannie Helen Burroughs Avenue on the south.
3. The site is unimproved and often contains parked or abandoned vehicles.
4. The subject property is located in Ward 7 in the Deanwood neighborhood. The area in the vicinity is developed primarily with moderate-density apartment buildings, one-family detached dwellings, and row dwellings. Two apartment buildings on adjoining lots directly south of the subject property, located at 719 and 711 49th Street N.E., contain seven and 14 units, respectively. An irregularly shaped vacant lot abuts the subject property to the north. Several public elementary, middle, and high schools are located within a mile of the subject property.
5. Nannie Helen Burroughs Avenue, located one block south of the subject property, is a major traffic arterial and is served by Metrobus routes that provide connections to the Minnesota Avenue and Deanwood Metrorail stations.
6. The future land-use map of the Comprehensive Plan designates the subject property as moderate-density residential, characterized predominantly by row dwellings and garden apartments as well as a mix of one-family detached dwellings and low-rise apartment buildings.

Applicant's Project

7. The Applicant plans to construct a new four-unit apartment building, three stories with cellar, approximately 38 feet in height. Each floor, including the cellar, will contain a two-bedroom apartment unit. Four parking spaces will be provided in a surface lot at the rear of the property, accessible from the public alley.

BZA APPLICATION NO. 17607

PAGE NO. 4

8. The apartment building will be 22 feet wide and 54 feet long. The property will have a nine-foot side yard on the south side, so that the new building will be located at least 16 feet from the existing apartment building on the lot abutting the subject property to the south. A similar side yard, approximately nine feet at its most narrow, will be provided on the north side of the building. The rear yard will be 46 feet deep.
9. The Applicant will provide landscaping on both sides of the property, including sod ground cover and small trees and shrubbery around the building. The parking area will be screened using an evergreen hedge along the western side and cinderblock walls, four feet tall, along the north and south sides. A six-foot wood fence, topped with a 12-inch lattice panel, will be located along each of the east-west property lines. A trash receptacle will be provided on a concrete pad located at the rear of the building, accessible by a three-foot-wide paved walkway leading to the parking area; trash will be removed through the alley.
10. The Applicant's lighting plan designates low-mounted pole fixtures to avoid adverse light impacts on neighboring property.
11. The Board credits the testimony of the Office of Planning that the new apartment building will have limited impacts on the provision of air and light to adjacent properties.

Harmony with Zone Plan

12. 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.
13. The Applicant's proposal will satisfy matter-of-right requirements in the R-5-A zone for parking and for building height, setbacks, and floor area ratio.
14. 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. The new four-unit apartment building will be in character with the mix of one-family dwellings and small apartment buildings presently located in the vicinity of the subject property.

CONCLUSIONS OF LAW

The Applicant seeks a special exception under § 353 of the Zoning Regulations to allow development of a new four-unit apartment building in the R-5-A district at 721 49th Street, N.E. (Square 5179, Lots 60 and 61). The Board is authorized under § 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07(g)(2) (2001), to grant special exceptions, as provided in the Zoning Regulations (Title 11, DCMR). Subsection 3104.1 of the Zoning Regulations provides that the Board may grant a special exception upon a finding that the proposed use 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.

Pursuant to § 11 DCMR § 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 Board of Education (now 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 §§ 353.2 – 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, 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 multi-family apartment buildings. The proposed development of a small, four-unit apartment building on 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 building will cause adverse impacts on the use of neighboring property because of parking congestion or obstructed views. The Applicant's project will provide four off-street parking spaces, as required under the Zoning Regulations. The Board conditions its approval of the requested special exception as suggested by DDOT, requiring the Applicant to construct the public alley at the rear of the subject property consistent with DDOT standards, thereby ensuring adequate vehicular access to the project's parking lot. The Board credits OP's conclusion that the Applicant's project will be located at a sufficient distance from the existing apartment building on the abutting lot so as not to hinder the provision of light or air to either building.

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 a new four-unit apartment building in the R-5-A district at 721 49th Street, N.E. (Square 5179, Lots 60 and 61). Accordingly, it is therefore **ORDERED** that the application is **GRANTED**, subject to one **CONDITION**:

Prior to the issuance of the first certificate of occupancy for the project, the Applicant shall construct the public alley at the rear of the subject property, as necessary to provide vehicular access to the parking lot, consistent with the requirements and standards of the District Department of Transportation.

VOTE: 4-0-1 (Ruthanne G. Miller, Curtis L. Etherly, Jr., John A. Mann II, and Michael Turnbull (by absentee vote) to grant the application; one Board member not participating, not 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 10 2007

BZA APPLICATION NO. 17607

PAGE NO. 7

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 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 CONDITION 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17607

As Director of the Office of Zoning, I hereby certify and attest that on **DECEMBER 10, 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:

Ike Agbim, RA
1300 Mercantile Lane, #122
Largo, Maryland 20774

Thomas K. Stevenson
4815 Kansas Avenue, N.W.
Washington, D.C. 20011-6120

Chairperson
Advisory Neighborhood Commission 7C
4651 Nannie Helen Burroughs Road, N.E., #2
Washington, D.C. 20019

Single Member District Commissioner 7C01
Advisory Neighborhood Commission 7C
4651 Nannie Helen Burroughs Road, N.E., #2
Washington, D.C. 20019

Chairperson
Advisory Neighborhood Commission 7D
P.O. Box 64052
Washington, D.C. 20019

Single Member District Commissioner 7D01
Advisory Neighborhood Commission 7D
P.O. Box 64052
Washington, D.C. 20019

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

BZA APPLICATION NO. 17607

PAGE NO. 2

Matthew LeGrant, Zoning Administrator
Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
941 North Capitol Street, N.E., Suite 2000
Washington, D.C. 20002

Yvette M. Alexander, City Councilmember
Ward Seven
1350 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20004

Harriet Tregoning, Director
Office of Planning
801 North Capitol Street, N.E., 4th Floor
Washington, D.C. 20002

Jill Stern, Esquire
General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR