

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17646 of District-Properties.com, LLC, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a new twelve (12) unit¹ apartment building under § 353, in the R-5-A District, at premise 5126 Bass Place, S.E. (Square 4310, Lots 22, 23, and 24).

HEARING DATE: July 24, 2007
DECISION DATE: July 31, 2007

DECISION AND ORDER

This application was filed on March 23, 2007 by District-Properties.com, LLC, (“Applicant”), the owner of the property that is the subject of this application (“subject property”). The Applicant filed this application with the Board of Zoning Adjustment (“Board” or “BZA”) because it received a March 9, 2007 letter from the Deputy Zoning Administrator at the Department of Consumer and Regulatory Affairs (“DCRA”) informing it that it needed a special exception from the Board to construct its proposed apartment building. The application, therefore, requests a special exception, pursuant to §§ 3104 and 353 of the Zoning Regulations to permit the Applicant to construct its proposed project.

The Board held a hearing on the application on July 24, 2007, and at its conclusion, the Board requested further information, specifically, revised plans, from the Applicant. Such plans were submitted timely, and the Board held a decision meeting on the application on July 31, 2007, at which it voted 3-1-1 to grant the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 26, 2007, the Office of Zoning (“OZ”) gave notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Board of Education, the D.C. Departments of Transportation and Housing and Community Development (“DHCD”), Advisory Neighborhood Commission (“ANC”) 7E, the ANC within which the subject property is located, the Single Member District member for ANC 7E06, and the Council Member for Ward 7. Pursuant to 11 DCMR 3113.13, OZ published

¹The application was originally for a sixteen (16) unit apartment building, but, during the proceedings on the application, the number of units was reduced to twelve (12).

BZA APPLICATION NO. 17646
PAGE NO. 2

notice of the hearing in the *D.C. Register*, and on May 9, 2007, sent such notice to the Applicant, ANC 7E, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 7E was automatically a party to this proceeding. There was also a request for party status from a neighbor which was withdrawn in favor of testifying as a person in opposition.

Applicant's Case. The Applicant presented his own case and testified as to how the project satisfied the special exception test.

Government Reports. The Office of Planning filed a report with the Board dated July 24, 2007 recommending approval of the application. OP had worked with the Applicant and was satisfied with the design and siting of the building, the provision of light and air for the units within the building and for neighboring buildings, and the landscaping and parking arrangements.

During the hearing, the Board requested additional comments from OP on the 10-foot wide driveways proposed on both sides of the building. OP filed a Supplemental Report with the Board dated July 26, 2007, stating that 12-foot wide driveways were required per 11 DCMR § 2117.8(c)(2), and that the Applicant, after being informed of this, had changed its plans to provide 12-foot wide driveways. The Supplemental Report, therefore, stated that the proposed project met the 12-foot width requirement of § 2117.8(c)(2).

The Department of Housing and Community Development submitted a report to the Board dated July 6, 2007 recommending approval of the application. DHCD opined that the size of the proposed building was consistent with the small apartment and townhouse scale of the neighborhood.

ANC Report. The ANC filed a letter with the Board dated July 16, 2007 indicating that, at a regularly-scheduled and properly-noticed meeting on July 10, 2007, the ANC voted 2-1-2 to recommend denial of the application. The ANC's major concern was that the Applicant's proposed building would not be in keeping with the character of existing property on the street. The ANC preferred single-family dwellings on the subject property in accordance with past use of part of the property.

The ANC was also concerned with the potential parking and traffic impacts of the proposed 16 units. The ANC's letter, however, was filed before the Applicant reduced the number of units in the final proposed project to 12, and no new ANC letter was submitted after the change. Therefore, the Board cannot know whether the reduction in the number of units would have affected the ANC's recommendation.

BZA APPLICATION NO. 17646
PAGE NO. 3

FINDINGS OF FACT

The Subject Property and the Surrounding Neighborhood

1. The subject property is located in the Marshall Heights Neighborhood of Ward 7, in an R-5-A zone district, at address 5126 Bass Place, S.E. (Square 5310, Lots 22, 23, & 24).
2. The property is currently made up of three rectangular vacant lots, each of which is 40 feet wide by 100 feet long.
3. The Applicant proposes to consolidate the three vacant lots into one large lot with a lot width of 120 feet, and a lot area of 12,000 square feet.
4. The neighborhood surrounding the subject property consists of a mixture of small apartment buildings and single-family detached dwellings.
5. To the north of the subject property is a surface parking lot, the rear of which abuts the rear of the subject property. Single-story single-family detached dwellings are located on either side of the subject property.

The Applicant's Proposed Project

6. The Applicant proposes to construct a three-story building containing twelve apartment units, accessed from a central interior lobby area.
7. The building will be set back from Bass Place a minimum of ten feet, will have side yards of 15 feet, six inches, and a rear yard of approximately 45 feet, more than complying with the Zoning Regulations' requirements for side and rear yards in R-5-A zone districts. *See*, 11 DCMR §§ 404.1 & 405.9.
8. The height of the building will be 39.6 feet, in compliance with the maximum permitted 40 feet. *See*, 11 DCMR § 400.1.
9. The lot occupancy of the proposed building on the total of 12,000 square feet will be approximately 31.46 %, under the 40% permitted. *See*, 11 DCMR § 403.2.
10. The floor area ratio of the proposed building will be .88, and the maximum permitted is .9. *See*, 11 DCMR § 402.4.
11. There will be 12 parking spaces at the rear of the lot accessed by a one-way circulating drive aisle, which will be between 12 and 20 feet wide, as required by the Zoning Regulations. The driveway/drive aisle will have an entrance on Bass Place on the west side of the building, will continue behind the building, and will have an exit on Bass Place on the east side of the building. Both the number of parking spaces and the driveway width comply with the requirements of the Zoning Regulations. *See*, 11 DCMR § 2101.1, 2117.5, & 2117.8(c)(2).
12. The parking lot and driveway area will meet the required 5% threshold for landscaping, with 586 feet, or 8.8% of the area devoted to parking, landscaped with trees and bushes. *See*, 11 DCMR 2117.11.

BZA APPLICATION NO. 17646
PAGE NO. 4

13. A 45-inch high brick wall will run along the rear and both sides of the property. A four-foot high metal fence, complemented with shrubbery, will run along the front of the property.
14. Pole-mounted lighting will be erected near the perimeter of the property to ensure adequate lighting for the driveway, parking lot, and trash enclosure, while minimizing light spill onto adjacent properties.

The Special Exception

15. The adjacent single-family dwellings flanking the subject property also have side yards.
16. The windows on the sides of the proposed building will be positioned so as not to align with the windows in the adjacent dwellings.
17. The size and design of the proposed building are in keeping with the neighborhood.
18. The building design includes brick-cladding, façade articulation, and horizontal banding, as well as a roof-level architectural embellishment, at the front of the building. The sides and rear of the building will be finished with complementary-colored vinyl siding.
19. The property is situated near public park space, such as Fort Dupont Park and Fort Chaplin Park.
20. The proposed building will provide infill development of three currently vacant lots, removing the negatives associated with vacant lots, such as trash and vermin.

CONCLUSIONS OF LAW

The Board is authorized to grant a special exception where, in its judgment, 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.” 11 DCMR § 3104. Certain special exceptions must also meet the conditions enumerated in the section(s) pertaining to them. In this case, the application had to meet the requirements of § 3104 and the requirements of § 353. Section 353, however, has no specifically-applicable provisions. Instead, it directs the Board to refer the application to the D.C. Board of Education, the D.C. Departments of Transportation and Housing and Community Development, and the D.C. Office of Planning, for review and comments in the areas of those agencies’ expertise. All the referral requirements were met in this case, but no reports were received from the Board of Education or the Department of Transportation.

With no specifically-applicable provisions set forth in § 353, the Board reviews this application under the general special exception standard set forth in § 3104. The proposed building is placed on the property, and its windows aligned, so as not to interfere with the use and enjoyment of neighboring property. The building meets all the dimensional requirements of the R-5-A zone, providing adequate side and rear yards, and therefore adequate access to air and light both for its

BZA APPLICATION NO. 17646
PAGE NO. 5

units and for the adjacent structures. The project will provide the required number of parking spaces on-site in a landscaped rear parking lot, easily accessed off Bass Place through an efficient one-way circulation system. The lighting on the property has been placed to avoid negative effects on adjacent properties.

As a special exception use, a new residential development under § 353 is deemed a compatible use in the R-5-A zone district. Although the Board was concerned with the density of this development, its density has been reduced from 16 to 12 units, and there is now nothing about the project that detracts significantly from the presumed compatibility of a special exception use. Therefore, the Board is constrained to grant the application (See, *First Baptist Church v. D.C. Board of Zoning Adjustment*, 432 A.2d 695 (D.C. 1981)), and concludes that it is 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.

Great Weight

The Board is required to give “great weight” to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. OP performed a thorough analysis of all the aspects of the application called for by § 353, and recommended approval of the application, with which the Board agrees.

ANC 7E’s report recommended denial of the application, but it was filed prior to a significant change in the application. When the ANC voted to deny the application, the project included 16 units and 16 parking spaces, 4 of which were located against the rear of the building. The application was subsequently changed to reduce the number of units and parking spaces to 12, with all parking spaces lined up along the rear of the property. The ANC did not file a second report after the change in the application and so, was unable to provide the Board with a recommendation as to the final project design. In addition, the ANC’s argument that the proposed project would not be in character with the existing property on the street was based on 11 DCMR Section 410.12(b) which stated that a development “shall not affect adversely the present character or future development of the neighborhood.” That provision was formerly referenced in § 353, but was subsequently repealed by Zoning Commission Order No. 06-05, effective April 6, 2007, and accordingly is no longer a standard that this Board may apply to this application. Finally, the ANC’s written report was not signed by the Chairperson or Vice-Chairperson as required by 11 DCMR §3115.1(i), but it was clear from the contents of the report that it spoke for the ANC as a whole. The Board decided to grant the ANC’s written report great weight (at least as to the project’s original design), while keeping these shortcomings in mind.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception pursuant to §§ 3104 and 353, to construct a new residential development in the R-5-A district. Therefore, it is hereby

BZA APPLICATION NO. 17646

PAGE NO. 6

ORDERED that this application is **GRANTED, SUBJECT TO THE FOLLOWING CONDITION:**

1. The windows on the east side of the proposed building must be positioned so as not to permit an intrusion into the privacy of the adjacent structure to the east of the proposed building.

VOTE: 3-1-1 (Ruthanne G. Miller, Marc. D. Loud, and John G. Parsons, to grant; John A. Mann II to deny. No Zoning Commission member participating)

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 07 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 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

BZA APPLICATION NO. 17646
PAGE NO. 7

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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BZA APPLICATION NO. 17646

As Director of the Office of Zoning, I hereby certify and attest that on DECEMBER 7, 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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BZA APPLICATION NO. 17646

PAGE NO. 2

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