

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17724-A of Francis Fabrizio and Glen Thomas, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of eight (8) row dwellings under section 353, in the R-5-A District at premises northwest corner of the intersection of 50th Street and Fitch Place, N.E. (Square 5181, Lots 40-43, 55, and 803).

HEARING DATE: February 26, 2008

DECISION DATE: April 1, 2008

**DECISION ON MOTION
FOR RECONSIDERATION:** May 6, 2008

ORDER DENYING RECONSIDERATION AND REHEARING

On April 15, 2008, the Advisory Neighborhood Commission (ANC) 7C submitted a motion requesting reconsideration and rehearing of the Board of Zoning Adjustment's (Board's) April 7, 2008 order granting a special exception to Francis Fabrizio and Glen Thomas (the Applicant) (Exhibit 35). The special exception allowed the Applicant to build eight row dwellings at the northwest corner of the intersection of 50th Street and Fitch Place, NE, in the R-5-A zone. At a decision meeting on May 6, 2008, the Board denied the ANC's motion, finding that the ANC had not stated a basis for reconsideration or rehearing under the Zoning Regulations.

Procedural Background

The underlying application was filed with the Board on August 31, 2007. (Exhibit 1). In accordance with §§ 3112.7 and 3113.7 of the Zoning Regulations, ANC 7C (the ANC) was notified of the filing and was sent a copy of the application. (Exhibit 12). The ANC was also advised to file a written report detailing its issues and concerns, in accordance with 11 DCMR 3115. (Exhibit 12). On or about December 11, 2007, the Board advised the ANC that a public hearing would take place on February 26, 2008. (Exhibit 19).

The ANC did not appear at the public hearing on February 26. Instead, the ANC indicated its opposition to the application in a letter dated January 18, 2008 (Exhibit 25) and requested a

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postponement of the hearing for “sometime in March 2008” in a letter dated February 14, 2008 (Exhibit 29). Neither the January 18 letter nor the February 14 letter explained why the ANC opposed the application, only that the ANC wished to discuss other possible development with the applicant.

Nor did either letter meet the requirements of Section 13 (d)(3)(A) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (the ANC Act), as restated in § 3115 of the Board’s rules. Section 3115.1 of the Regulations enumerates the information required for ANC reports 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. Except for identifying the application and public meeting date, neither of the ANC’s letters met these requirements. As a result, neither letter was afforded great weight. However, as explained above, no specific issues or concerns were addressed in the letters. Therefore, even were the Board to have waived its rules and afforded the letters great weight, there were no specific issues or concerns to which the Board could give great weight.

Accordingly, the Board deliberated on the application without the benefit of written advice from the ANC, and granted the application for special exception relief in an order dated April 7, 2008. The ANC filed a timely motion for reconsideration and rehearing on April 11, 2008 (Exhibit 35). The motion was heard at the Board’s decision meeting on May 6, 2008.

Request for Reconsideration

The Board’s rules of practice and procedure provide that a “motion for reconsideration shall state specifically all respects in which the final decision is claimed to be erroneous, the grounds of the motion and the relief sought.” 11 DCMR § 3126.4. Although the ANC submission contained alleged “grounds” for reconsideration, it contained no explanation as to why the Board’s decision granting special exception approval was erroneous.

The ANC stated three grounds for reconsideration, namely: (1) the Applicant did not schedule a meeting with the ANC to continue discussions of the project (Exhibit 35); (2) as a result of a misunderstanding, the ANC mistakenly believed the proposed project was in Lincoln Heights instead of the actual location at 50th Street and Fitch Place, NE.; and (3) the ANC did not receive notice of the February 26, 2008 public hearing date (Exhibit 35). As will be explained below, none of these grounds constitute an error in the Board’s final decision or a basis for reconsideration or rehearing.

The first and second ground relate to a dispute and/or misunderstanding between the Applicant and the ANC. They do not relate to a specific error in the Board’s decision. With respect to the third ground alleging lack of notice, the record indicates that, contrary to the ANC’s assertion, the ANC was notified of the February 26 hearing date. As stated, in a letter dated December 11, 2007, the Board notified the ANC that the application would be heard on February 26, 2008

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between 1:00 and 4:00 in the afternoon. (Exhibit 19). Even assuming this letter was not received by the ANC, there is no doubt that the ANC had actual notice of the hearing date because the ANC requested a postponement from that date. (Exhibit 29). Thus, the application should not be reconsidered due to a lack of notice.

To recapitulate, a party seeking reconsideration must allege with specificity why the Board's decision was issued in error. Here, the ANC has made no showing of error whatsoever. Therefore, the Board denies the motion for reconsideration.

Request for Rehearing

Subsection 3126.6 provides that a request for rehearing shall be considered only where new evidence is submitted that could not reasonably have been presented at the original hearing. 11 DCMR § 3126.6. The ANC has not alleged or made any showing that it possesses any new evidence that would warrant a rehearing. As such, the Board also denies the motion for rehearing.

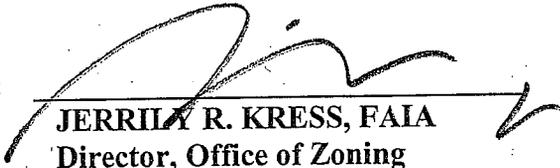
In conclusion, the ANC has not identified any legal or factual errors, or any other basis upon which the Board could reconsider its decision. Nor has the ANC identified any new evidence in support of its request for a rehearing. For these reasons, it is hereby **ORDERED** that the Motion for Reconsideration and Rehearing is **DENIED**.

VOTE: **4-0-1** (Ruthanne G. Miller, Marc D. Loud, Mary Oates Walker, and Shane L. Dettman to deny, no Zoning Commissioner participating)

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

Each concurring member has approved the issuance of this Decision and Order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: NOV 17 2008

PURSUANT TO 11 DCMR 3125.6, THIS DECISION AND ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

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As Director of the Office of Zoning, I hereby certify and attest that on **NOVEMBER 17, 2008**, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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