

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17724 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

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to Advisory Neighborhood Commission (ANC) 7C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 7C, which is automatically a party to this application.

The ANC

The ANC did not participate in the public hearing. However, it submitted a letter signed by Commissioner Catherine Woods, dated January 18, 2008, stating that it was opposed to the application, and also stating that it would submit a “detailed response as required [in] Section 3115.1 [of the Zoning Regulations]. 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.

The ANC submitted a second letter dated February 14, 2008, also signed by Commissioner Woods, stating that the ANC discussed the application with the applicant, and its views had not changed. The letter also requested that the Board postpone the February 26, 2008

BZA APPLICATION NO. 17724
PAGE NO. 2

hearing “pending the outcome of further meeting(s)” between the applicant and the ANC “to discuss other possibilities for the site in question.”

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), (the ANC Act), the Board must give great weight to the issues and concerns raised in the written report of the affected Commission. Except for identifying the application and public meeting date, neither ANC letter met the requirements of the ANC Act (as restated in § 3115 of the Board’s rules) related to the official action of Advisory Neighborhood Commissions. As a result, neither letter was afforded great weight. Further, the letters stated only that the ANC was opposed to the application. The letters did not explain why the ANC was opposed, only that it wished to discuss other possible development with the applicant. Thus, even were the Board to have waived its rules and afforded the letters great weight, there were no specific issues or concerns for the Board to address.

The Office of Planning (OP) submitted a report in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception under section 353. No parties appeared at the public hearing in opposition to this application. Accordingly a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP report, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 353, that the requested relief can be granted, being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3101.6, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application be **GRANTED** per revised plans **Exhibit No. 32** of the record.

VOTE: **4-0-1** (Ruthanne G. Miller, Mary Oates Walker, Shane L. Dettman to approve, Marc D. Loud to approve by absentee ballot; No Zoning Commissioner participating)

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

Each concurring member approved the issuance of this order.

ATTESTED BY:



JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR 07 2008

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.

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.

BZA APPLICATION NO. 17724
PAGE NO. 4

DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED.
VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

TWR

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BZA APPLICATION NO. 17724

As Director of the Office of Zoning, I hereby certify and attest that on **APRIL 7, 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:

Glen Thomas
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Washington, D.C. 20019

Single Member District Commissioner 7C01
Advisory Neighborhood Commission 7C
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BZA APPLICATION NO. 17724
PAGE NO. 2

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ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

TWR