

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17837-A of Hillcrest Homes LP, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a variance from the maximum number of building stories under § 400, a variance from the lot area and width requirements under § 401, a variance from the rear yard requirements under § 404, a variance from the side yard requirements under § 405, a special exception to permit two or more principal buildings or structures on a single subdivided lot under § 2516, and a variance from the requirement of § 2516.5 that theoretical lots allowed pursuant to § 2516 provide open space in front of the building entrances to construct a new residential development consisting of 54 one-family detached dwellings in the R-1-B District at premises north side of Southern Avenue, S.E., just west of Branch Avenue, S.E., (Parcels 208/4, 208/61, 208/64, 208/65, and 215/27).

HEARING DATE: November 18, 2008
DECISION DATE: November 18, 2008
DATE OF DECISION
ON RECONSIDERATION: July 28, 2009

DECISION ON RECONSIDERATION

On July 2, 2009, Julius Fleischman, party-opponent to this application, filed a timely motion for reconsideration of Board of Zoning Adjustment Order No. 17837, of Hillcrest Homes, issued on June 23, 2009. Exhibit No. 57. ANC 7B, which was automatically a party to this application, and had also opposed it, filed its own timely motion for reconsideration of Order No. 17837 on July 6, 2009. Exhibit No. 58.

The Board addressed each motion at a public meeting on July 28, 2009, and deliberated on the issues raised by the movants. After deliberating, the Board decided to deny both motions, in each case by a vote of 3-0-2.

Motion of party-opponent

The motion for reconsideration of the party-opponent re-hashes the arguments made at the hearing. The party-opponent has alleged, throughout the proceedings in this case, that the application failed to meet the three prongs of the variance test. The Board heard, and has now twice considered, his arguments, but does not agree with his conclusions. The motion for

BZA APPLICATION NO. 17837-A
PAGE NO. 2

reconsideration does not allege that any specific finding of fact or conclusion in the order is erroneous. Instead, it re-states the party-opponent's disagreement with the Board's findings and determinations. These findings and determinations, however, are reasonable and based on substantial evidence in the record. Therefore, notwithstanding the party-opponent's disagreement with them, the Board declines to reconsider its decision to grant the application.

Motion of ANC 7B

ANC 7B's motion for reconsideration, like the party-opponent's, re-states arguments already considered by the Board, but also alleges several procedural deficiencies in the Board's handling of the hearing, the Office of Planning's ("OP") presentation, and the notice given the ANC. As to the latter, the ANC claims that it was not afforded the required 10 days (plus three days for service by mail) to move for reconsideration. 11 DCMR §§ 3126.2 & 3110.3. The allegation is erroneous, as the ANC's motion was filed on the 13th day after issuance of Order No. 17837, and was considered timely, and acted upon, by the Board.

The ANC further claimed that one Board member, Mr. Jeffries, was inappropriately "familiar" with the attorney for the Applicant, sarcastic to the ANC, and bullying to other Board members. The Board is at a loss as to why the ANC makes these allegations. After a thorough re-review of the hearing transcript, no evidence of inappropriate familiarity, sarcasm to the ANC, or bullying can be found.

Mr. Jeffries took a prominent role in the proceedings in this case. He asked many questions and tried to help focus the cross-examination of witnesses. But, he did not show favoritism, bias, or "inappropriate familiarity" with anyone, particularly not with the Applicant's attorney, as alleged by the ANC. At one point during the hearing, Mr. Jeffries quipped "I love Mr. Harps," referring to the appraiser who testified for the Applicant as an expert in real estate valuation. November 18, 2008 Hearing Transcript ("Trans.") at 119, lines 14-15. But Mr. Jeffries' statement was made in the context of his pointed questions to the Applicant as to why it was proffering a valuation expert at all. Mr. Jeffries later explained that Mr. Harps is a "world class appraiser." (Trans. at 326, line 12). His first statement was a general statement of approbation as to Mr. Harps' expertise, not as to his conclusions in this case.

Nor was Mr. Jeffries sarcastic to the ANC. On the contrary, he went to some lengths to help the Chair determine whether the ANC's written submission could be given great weight. Trans., generally, at 277-284. He stated twice, neither time sarcastically, that he was interested in hearing the ANC's testimony. Trans. at 176, lines 11-13 & at 220, lines 15-16. At one point during the hearing, Mr. Jeffries engaged the ANC representative in a colloquy, trying to explain to her that the ANC had to "show more" to make its case in opposition, and that he, Mr. Jeffries, did not feel that it had yet done so. Trans. at 320-334. These were honest statements expressing Mr. Jeffries' opinion and offered as guidance to help direct the ANC's case. They were not delivered in a sarcastic or derogatory tone or manner.

BZA APPLICATION NO. 17837-A
PAGE NO. 3

There is no evidence of “bullying” of other Board members in the transcript either. Instead, the transcript shows that Mr. Jeffries worked with the other Board members to ensure proper conduct of cross-examination, (*see, e.g.*, Trans. at 192, lines 19-22 & 193, lines 1-9) and to move the case along as the time was getting late, (*see, e.g.*, Trans. at 294-296 & at 456, lines 6-13). The allegation of “bullying” not only does a disservice to Mr. Jeffries, but to the other Board members as well, who are fully able to address and/or stand up to, potentially bullying behavior.

Even when read with a view to finding inappropriate behavior by Mr. Jeffries, the transcript demonstrates none. On the contrary, Mr. Jeffries’ active role in the hearing helped move the case along and focus the issues. Throughout the hearing, he engaged in dialogue with the Applicant, the opposition, the ANC, and other Board members, none of which was discourteous or inappropriate. Although the ANC may be unhappy with the outcome of the case,¹ a fair assessment of Mr. Jeffries’ behavior shows nothing on which to base a reconsideration of the Board’s decision to grant the application.

Lastly, the ANC claimed that the representative from the Office of Planning was inexperienced and was not permitted (by his OP colleague, not by the Board) to explain OP’s decision to support the application. The record supports neither of these assertions. In fact, a review of the portion of the transcript in which the OP representatives testified and answered cross-examination questions shows that both OP representatives thoughtfully explained OP’s decision to support the application. *See*, Trans. at 221-274. Nor is either of these assertions germane to whether the Board’s decision was based on substantial evidence in the record and not clearly erroneous as a matter of law. The ANC also claimed that the OP representative did not represent the community’s opinion. It is not, however, OP’s purpose to reflect the community’s opinion, but to provide expert planning advice to the Board. As required by statute, the Board gave great weight to the Office of Planning’s advice and nothing in the record suggests that the Board could or should have done otherwise.

For all the reasons stated above, it is **ORDERED** that the motions for reconsideration filed by both the party-opponent, Mr. Fleischman, and by ANC 7B, are hereby **DENIED**.

VOTE ON RECONSIDERATION
MOTION OF

PARTY-OPPONENT: **3-0-2** (Marc D. Loud, Shane L. Dettman,
Michael G. Turnbull, to deny. Two
seats vacant, so two members not
participating or voting.)

VOTE ON RECONSIDERATION
MOTION OF ANC 7B: **3-0-2**

(Marc D. Loud, Shane L. Dettman,
Michael G. Turnbull, to deny. Two
seats vacant, so two members not

¹An unhappiness that Mr. Jeffries sincerely tried to assuage by addressing the community directly just before the vote on the application – *see*, Trans. at 457-459.

BZA APPLICATION NO. 17837-A
PAGE NO. 4

participating or voting.)

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

A majority of Board members approved the issuance of this order.

ATTESTED BY:



JAMISON L. WEINBAUM

Director, Office of Zoning

FINAL DATE OF ORDER: NOV 20 2009

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



BZA APPLICATION NO. 17837-A

As Director of the Office of Zoning, I hereby certify and attest that on NOV 20 2009, 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:

Whayne S. Quinn, Esq.
Jeffrey Johnson, Esq.
Holland & Knight, LLP
Suite 100
2099 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Single Member District Commissioner 7B05
Advisory Neighborhood Commission 7B
3200 S Street, S.E.
Washington, D.C. 20020

Julius Fleischman
2901 Branch Avenue, S.E.
Washington, D.C. 20020

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

Chairperson
Advisory Neighborhood Commission 7B
3200 S Street, S.E.
Washington, D.C. 20020

Bennett Rushkoff, Esquire
Acting General Counsel
Dept. of Consumer and Regulatory Affairs
941 North Capitol Street, N.E., Suite 9400
Washington, D.C. 20002

ATTESTED BY:


JAMISON L. WEINBAUM
Director, Office of Zoning

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