GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 18553 of Hashim Hassan, pursuant to 11 DCMR § 3104.1, for a special exception under § 353 to allow construction of a four-unit apartment house in the R-5-A District at premises 4529 MacArthur Boulevard, N.W. (Square 1363, Lot 954).

HEARING DATE: May 21, 2013
DECISION DATE: June 11, 2013

DECISION AND ORDER

This self-certified application was submitted on March 1, 2013 by Hashim Hassan ("Applicant"), the owner of the property that is the subject of the application, seeking a special exception under § 353 of the Zoning Regulations to allow a four-unit apartment house in the R-5-A Zone District at 4529 MacArthur Boulevard, N.W. (Square 1363, Lot 945). Following a public hearing, the Board voted to approve the application, subject to conditions.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated March 7, 2013, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation ("DDOT"); the Department of Housing and Community Development; the District of Columbia State Board of Education; the Councilmember for Ward 3; Advisory Neighborhood Commission ("ANC") 3D, the ANC in which the subject property is located; and the Single Member District/ANC 3D09. Pursuant to 11 DCMR § 3112.14, on March 15, 2013, the Office of Zoning mailed letters providing notice of the hearing to the Applicant, ANC 3D, and the owners of all property within 200 feet of the subject property. Notice was published in the *D.C. Register* on March 15, 2013 (60 DCR 3572).

Party Status. The Applicant and ANC 3D were automatically parties in this proceeding. There were no requests for party status.

Applicant's Case. The Applicant and Michael Greigg, an architect, provided testimony and evidence describing the Applicant's plans to construct a four-unit apartment house at the subject property, which is now improved with a one-family detached dwelling.

OP Report. By memorandum dated May 14, 2013, OP recommended approval of the application, subject to "the installation of properly installed and maintained tree protection fencing to ensure existing trees along MacArthur Boulevard and the perimeter of the site are preserved throughout the construction process." (Exhibit 28.)

DDOT Report. By memorandum dated May 13, 2013, the District Department of Transportation ("DDOT") indicated no objection to the application. According to DDOT, the planned apartment house would have no adverse impacts on travel conditions of the District's transportation network despite the potential to generate minor impacts to on-street parking conditions in the area.

ANC Report. By letter dated May 14, 2013, ANC 3D indicated that, at a regular public meeting, held May 1, 2013 with a quorum present, the ANC voted 6-2-1 to oppose the application. According to the ANC, its opposition reflected neighbors' objections to "changing a single family house into a small apartment building," citing a petition signed by neighbors opposed to the application and the opposition of the Foxhall Community Citizens Association.

Persons in support. The Board received letters in support of the application from residents of the neighborhood around the subject property. The persons in support stated generally that the planned apartment house would fit in contextually with adjacent buildings and uses, and commented favorably on the Applicant's plans for landscaping and parking.

Persons in opposition. The Board received letters and heard testimony in opposition to the application from the Foxhall Community Citizens Association and several persons living in the vicinity of the subject property. The persons in opposition generally contended that changing the use of the subject property from one-family dwelling to an apartment house would have a detrimental effect on the neighborhood, and especially on nearby one-family dwellings, due to the decrease in single-family housing stock in the neighborhood, increased density, and greater likelihood of the development of additional apartment buildings along Q Street. The persons in opposition also asserted that negative impacts would arise due to increased traffic and demand for parking and the design of the proposed apartment house, especially its proposed height coupled with the existing elevation of the subject property above the sidewalk level and its "modern" style, described as not in keeping with neighborhood design. The persons in opposition also claimed that development of the planned apartment house would create adverse impacts on a bus stop located in front of the subject property and would diminish the value of adjoining properties, in part by creating limits on green space and by obstructing light and air.

FINDINGS OF FACT

The Subject Property

1. The subject property is a corner lot located at the intersection of MacArthur Boulevard and Q Street, N.W. (Square 1363, Lot 945). The property is generally rectangular with approximately 33 feet of frontage along MacArthur Boulevard and approximately 129 feet along Q Street. The lot ranges in width from 33.33 feet (along MacArthur Boulevard) to 43.9 feet (at the rear). The lot area is 4,915 square feet. A public alley, 16 feet wide, abuts the property along its rear lot line, where it intersects with Q Street.

2. The subject property is improved with a two-story one-family detached dwelling. The lot is landscaped and provides one parking space. The dwelling is set back approximately 29 feet from MacArthur Boulevard.

3. As currently improved, the subject property has a lot occupancy of 26%, where a maximum of 40% is permitted (§ 403.2); a floor area ratio ("FAR") of 0.445, where a maximum of 0.9 is permitted (§ 402.4); a rear yard of 48.3 feet, where a minimum of 20 feet is required (§ 404.1); a side yard of eight feet, the minimum required (§ 405.9); and a building height of 26 feet, where maximums of 40 feet and three stories are permitted (§ 400.1).

4. The subject property is zoned R-5-A, as are all properties fronting on MacArthur Boulevard in the immediate vicinity. Properties to the north and south of the R-5-A District, including those fronting on Q Street, are zoned R-1-B.

5. The Hardy Recreation Center and Field is located directly north of the subject property, across from the alley. Three-story apartment houses are located across MacArthur Boulevard to the south and across Q Street to the west. Several neighboring lots to the east of the subject property, including the adjoining lot, are improved with two-story one-family detached dwellings. The surrounding neighborhood contains predominantly multi-family residential buildings west of Q Street and semi-detached and detached dwellings east of Q Street. Several institutional or commercial uses are located on MacArthur Boulevard, including a private school and a neighborhood retail store.

The Applicant's Project

6. The Applicant proposes to demolish the one-family dwelling at the subject property and construct a new three-story apartment house, containing four units, on the site. Four off-street parking spaces will be located at the rear of the lot, accessible from the alley.

7. The apartment house will be set back about 33 feet from MacArthur Boulevard, in approximately the same location as the one-family dwelling. After development of the Applicant's project, the subject property will have a lot occupancy of 39.7%, a floor area ratio of 0.894, and a rear yard of 33.5 feet. Building height will be 36 feet at the peak,

and will scale down to 24 feet at the rear. A side yard at least eight feet wide, and as much as 17.5 feet wide, will be provided on the east side of the property.

8. Of the four units in the proposed apartment building, three will contain two bedrooms and two and a half bathrooms in approximately 1,200 square feet, while the top two floors of the building will comprise one apartment with 2,400 square feet. One unit will be accessible to pedestrians from MacArthur Boulevard while the other three, including the top-floor unit, will be reached from Q Street.

9. The apartment house will be constructed using red brick with dark gray window frames, in keeping with nearby buildings along MacArthur Boulevard. The Applicant revised the planned building design, which originally called for stucco with brick and glass, in response to neighbors' concerns about a more modern design.

10. The Applicant plans to eliminate an existing curb cut on Q Street and utilize the public alley to provide access to the four parking spaces at the rear of the subject property.

11. The Applicant will maintain and improve an existing wood fence along the eastern edge of the subject property. The Applicant will also maintain the retaining wall at the front of the lot. The apartment building will not affect operation of the Metrobus stop located on MacArthur Boulevard in front of the subject property.

12. The Applicant will maintain the existing landscaping of the site, including evergreen trees along the perimeter of the lot. The Applicant will enhance the landscaping by planting shrubs and suitable native trees, especially at the rear of the property and along its eastern edge to screen the view from the abutting one-family detached dwelling. The Applicant will also implement measures to protect existing landscaping near the subject property, including a large elm tree in front of the site, and will cooperate with the Urban Forestry Administration on tree protection measures during the construction process.

13. The Applicant will install permeable pavers and blue stone, along with sod, instead of poured concrete, for the parking area at the rear of the subject property.

Harmony with Zoning

14. The subject property is zoned R-5-A, a general Residence District designed to permit flexibility of design by permitting, in a single district, all types of urban residential development that conform to the height, density, and area requirements established for the districts, as well as institutional and semi-public buildings compatible with adjoining residential uses. (11 DCMR § 350.1.) The R-5-A District permits a low height and density. (11 DCMR § 350.2.)

15. The planned apartment house will satisfy applicable zoning requirements with respect to height, floor area ratio, side and rear yards, and parking.

CONCLUSIONS OF LAW AND OPINION

The Applicant requests a special exception under § 353 of the Zoning Regulations to allow a four-unit apartment house in the R-5-A Zone District at 4529 MacArthur Boulevard, N.W. (Square 1363, Lot 945). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, 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 in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.) The Board's discretion in reviewing an application for a special exception under § 353 is limited to a determination of whether an applicant has complied with the requirements of §§ 353 and 3104.1 of the Zoning Regulations. If an applicant meets its burden, the Board ordinarily must grant the application. *See, e.g., Stewart v. District of Columbia Board of Zoning Adjustment,* 305 A.2d 516, 518 (D.C. 1973); *Washington Ethical Society v. District of Columbia Bd. of Zoning Adjustment,* 421 A.2d 14, 18-19 (D.C. 1980); *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981); *Gladden* v. *District of Columbia Bd. of Zoning Adjustment,* 659 A.2d 249, 255 (D.C. 1995).

Pursuant to § 353, all new residential developments in an R-5-A District, except those comprising only one-family detached and semi-detached dwellings, are subject to review by the Board as a special exception. (11 DCMR § 353.1.) Consistent with the requirements of § 353, the application was referred to the District of Columbia 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 could 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 OP 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. The Board received reports from OP and from DDOT in support of the application, and received nothing from the other agencies mentioned in the Zoning Regulations that would indicate the application should not be approved. Also as required by § 353, the Applicant submitted documents illustrating the proposed apartment house, including a site plan, typical floor plans, and landscaping plan.

Based on the findings of fact, the Board concurs with the Applicant and OP that the requested special exception to allow a four-unit apartment house satisfies the requirements of §§ 353 and 3104.1. The planned apartment house will satisfy zoning requirements with respect to use, height, floor area ratio, side and rear yards, and parking. The Board does not find that the planned design of the building would create adverse impacts on the use of neighboring property, including on the light and air available to neighboring properties, or have an objectionable impact on the character of the surrounding neighborhood. The planned apartment house will be consistent with the varied nature of the surrounding location, which presently contains several

similar apartment houses in the vicinity along MacArthur Boulevard, some of them larger than the building planned by the Applicant, as well as some one-family detached and semi-detached dwellings and some nonresidential uses. The apartment house will be located on the site with adequate setbacks in the front, side, and rear yards, and the Applicant has proposed to maintain and improve certain aspects of the existing parcel, including the landscaping and a fence along the eastern property line. The Board was not persuaded by the persons in opposition that approval of this application would increase the likelihood of the development of additional apartment buildings along Q Street, particularly since Q Street properties in the vicinity of the subject property are zoned R-1-B, which does not permit apartment houses as a matter of right.

The Board is required to give "great weight" to the recommendation of OP. (D.C. Official Code § 6-623.04 (2001).) In this case, as discussed above, the Board concurs with OP's recommendation that the application should be approved. The Board declines to adopt the condition recommended by OP, which related to protection of existing trees during the construction process, and is not needed to mitigate any adverse impact associated with approval of the special exception. The Board notes that the Applicant has pledged to employ measures to protect existing trees on and near the subject property both during and after construction.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (Section 13(d) 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) (2001)).) In this case, ANC 3D voted to oppose the application based on neighbors' objections to "changing a single family house into a small apartment building." The Board fully credits the unique vantage point that ANC 3D holds with respect to the impact of the proposed apartment house on the ANC's constituents. However, the Board concludes that the ANC has not offered persuasive advice that would cause the Board to find that the apartment house would be contrary to the Zoning Regulations and would adversely affect the use of neighboring property. ANC 3D did not express any specific issues or concerns but based its opposition to the application on objections raised by persons living in the vicinity of the subject property. The Board also heard objections from some neighbors, concerning especially the change in use from one-family dwelling to apartment house; increased density, traffic, and parking demand; and the building design. For the reasons discussed above, the Board was not persuaded that the objections raised by the persons in opposition – presumably the same concerns raised to the ANC – require denial of the application as inconsistent with the requirements of the Zoning Regulations.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for a special exception under § 353 of the Zoning Regulations to allow a four-unit apartment house in the R-5-A Zone District at 4529 MacArthur Boulevard, N.W. (Square 1363, Lot 945). Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT** to Exhibit 10 – Plans, as amended by Exhibit 39 – Revised Plans, and the following **CONDITIONS**:

1. The project shall be developed in keeping with the revised plans submitted by the Applicant, with a maximum building height of 36 feet and with the elimination of the existing curb cut on Q Street.

2. The Applicant shall install and maintain additional landscaping on the subject property, including additional plantings of trees and shrubs on the east side and in the rear yard to provide sufficient screening of the apartment house.

VOTE: **3-0-2** (Lloyd J. Jordan, Jeffrey L. Hinkle, and Marcie I. Cohen (by absentee ballot) to Approve; S. Kathryn Allen not present, not voting; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

ATTESTED BY: _____
SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: October 10, 2013

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.

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 PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

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. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE

BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS 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.