

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18765 of Fulton Land Trust, as amended, pursuant to 11 DCMR § 3104.1, for a special exception under § 353 to allow construction of a six-unit apartment house in the R-5-A District at premises 3919 Fulton Street, N.W. (Square 1806, Lot 32).

Application No. 18784 of Observatory Land Trust, as amended, pursuant to 11 DCMR § 3104.1, for a special exception under § 353 to allow construction of a six-unit apartment house at premises 3915 Fulton Street, N.W. (Square 1806, Lot 804), in the R-5-A District.

Note: The applications were amended to eliminate the request for a variance from the lot occupancy requirements under § 403.

HEARING DATES FOR NO. 18765: June 3, 2014¹ and June 24, 2014
HEARING DATE FOR NO. 18784: June 24, 2014
DECISION DATE: July 29, 2014

DECISION AND ORDER

Fulton Land Trust, the owner of 3919 Fulton Street, N.W., and Observatory Land Trust, the owner of 3915 Fulton Street, N.W. (collectively, the “Applicants”), submitted these self-certified applications on March 27, 2014 (No. 18765) and on April 15, 2014 (No. 18784); each application seeking a special exception under § 353 of the Zoning Regulations to allow a 6-unit apartment house on each of the two respective lots in the R-5-A District at premises 3919 Fulton Street, N.W. (No. 18765) and 3915 Fulton Street, N.W. (No. 18784). Following a public hearing, the Board voted to approve the applications, subject to conditions.

PRELIMINARY MATTERS

At the commencement of the hearing on June 24, 2014, the Board consolidated the applications in order to hear and decide them as one application. The two subject properties are adjacent to each other, and the applications shared the same owner’s representative, attorney, and architect, as well as similar designs, and the Board therefore found it appropriate to consolidate the two applications.

¹ At the request of Applicant’s counsel (Exhibit 23), the hearing for Application No. 18765 was postponed from June 3rd to June 24th, the hearing date for Application No. 18784.

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Notice of Application and Notice of Public Hearing. By memoranda dated March 28, 2014 (No. 18765) and April 17, 2014 (No. 18784), the Office of Zoning sent notice of the applications to the Office of Planning (“OP”); the District Department of Transportation (“DDOT”); the Councilmember for Ward 3; Advisory Neighborhood Commission (“ANC”) 3B, the ANC for the area within which the subject properties are located; and the single-member district ANC 3B-01. Pursuant to 11 DCMR § 3112.14, on March 31, 2014 (18765) and April 23, 2014 (18784), the Office of Zoning mailed notice of the hearings to the Applicants, ANC 3B, and the owners of all property within 200 feet of the subject properties. Notice was published in the *D.C. Register* on April 4, 2014 (61 DCR 3545) for Application No. 18765 and on May 2, 2014 (61 DCR 4387) for Application No. 18784.

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

Applicant’s Case. Testimony for the Applicant was provided by the Applicants’ representative, Guy Prudhomme, architect Temple Washington of WHA Architects, and traffic engineer Erwin Andres of Gorove Slade. These witnesses provided evidence and testimony to show that the application satisfied all requirements for approval of the requested zoning relief.

OP Report. By memoranda dated April 16, 2014, and through testimony at the public hearing, the Office of Planning recommended approval of the applications.

DDOT Report. By memoranda dated May 27, 2014 (No. 18765) and June 13, 2014 (No. 18784), DDOT indicated it had no objection to the approval of the applications, noting that the proposal will have no adverse impacts on travel conditions of the District’s transportation network.

ANC Report. ANC 3B held several meetings to consider the applications but in the end did not submit any recommendation to the Board.

Persons in Opposition. The Board received letters and heard testimony in opposition to the applications from several persons living in the vicinity of the subject property. The persons in opposition generally contended that the design of the proposed buildings was not in character with the surrounding neighborhood. Persons also expressed concern about an increase in traffic, a decrease in available on-street parking spaces, the possibility of students renting the units, possible noise from the proposed roof decks, and the removal of trees from the subject properties. The applicants worked closely with a small group of neighbors to revise the design of the proposed buildings. In addition, the applicants committed to reduce the number of bedrooms by a third from the original proposal, replace trees like-for-like, and to agree to offering the units as condominiums and placing restrictions in the condominium documents to restrict the ability to rent some of the units. In addition, the applicants agreed to restricting the RPP permits to one-per-unit. In letters submitted to the Board on July 22, 2014, many of the persons in opposition formally withdrew their opposition, based on these changes made by the applicants.

FINDINGS OF FACT

The Subject Properties

1. The subject properties are located at 3919 Fulton Street, N.W. (Square 1806, Lot 32) and 3915 Fulton Street, N.W. (Square 1806, Lot 804). Each lot has a land area of 7,500 square feet, with a lot width of 60 feet and a length of 125 feet. The two lots are adjacent to each other, with a public alley to the east of 3915 Fulton Street, and an existing apartment house at 3921 Fulton Street to the west of 3919 Fulton Street.
2. The subject properties are each currently improved with a two-story one-family detached dwelling.
3. The subject properties are zoned R-5-A, as are all properties fronting on this block of Fulton Street, and the area to the west of that block.
4. The subject properties are in a transitional area between the lower density R-2 zone to the east and a higher-density R-5-A zone on this block of Fulton Street and to the west.
5. The south side of Fulton Street includes two large apartment houses, one of which is a part of the Russian Embassy. To the east of 3915 Fulton Street, across the public alley, is an 11-unit condominium apartment house, and to the west of 3919 Fulton Street is a property which is currently under renovation to be an eight-unit apartment house.

The Applicants' Projects

6. The proposed structures on each lot will have two main stories and a partial third story. The rear of the structure, at the ground level, has a door that provides access to a utility room. This door provides no access to the English basement unit or to the Applicant's residence in the structure.
7. Each structure will have a maximum height of approximately 36'7". The FAR will be approximately .89. Each of the four side yards will be 9.17 feet in width. The rear yards will be approximately 41.8 feet. There will be six full-sized parking spaces at the rear of each of the properties, accessed from the rear alley. Lot occupancy for each structure will be 40%.
8. Each of the six units in each building will contain two bedrooms. The applicants reduced this from the originally planned three units in response to concerns from neighbors.
9. Each of the apartment houses will be constructed pursuant to the renderings submitted to the record, subject to design changes submitted by the applicants in their post-hearing submissions.

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10. The applicants submitted a green-area-ratio (“GAR”) analysis prepared by a licensed landscape architect, showing that the proposed landscape plan and site plan will comply with GAR requirements for the properties. The applicants agreed to replace trees removed from the properties with trees of the same species, to a size of at least 10 feet.

Harmony with Zoning

11. The subject properties are 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 conforms 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.)

12. Each of the proposed apartment house structures will satisfy applicable zoning requirements with respect to height, floor area ratio, side and rear yards, and parking.

CONCLUSIONS OF LAW

The respective Applicants each request a special exception under § 353 of the Zoning Regulations to allow a six-unit apartment house on their respective lots in the R-5-A Zone District at 3919 Fulton Street, N.W. (Square 1806, Lot 32) and 3915 Fulton Street, N.W. (Square 1806, Lot 804). 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 § 353.31.) 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

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Transportation and Housing and Community Development for comment and recommendations 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 the Office of Planning 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 a landscaping plan.

Based on the findings of fact, the Board concurs with the Applicants and the Office of Planning that the two requested special exceptions to allow a six-unit apartment house on each lot satisfies the requirements of §§ 353 and 3104.1. The planned apartment houses 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 houses will be consistent with the varied nature of the surrounding location, which presently contains several apartment houses in the vicinity on both sides of this block of Fulton Street as well as in the area to the west of the subject properties. The apartment houses will be located on each of the two respective lots with adequate setbacks in the side and rear yards. The Applicants have certified through a landscape architect that the two proposals will meet GAR requirements. The Applicants have also offered to replace removed trees like-for-like to a height of at least 10 feet. The Applicants also agreed to restrict RPP permits to one-per-unit.

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2001).) In these cases, as discussed above, the Board concurs with OP’s recommendation that the applications should be approved.

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 3B did not submit a recommendation to the Board. The Board understands that the ANC facilitated communications between the neighbors and the Applicants, but did not have sufficient votes to support or oppose the applications.

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. Many of those neighbors eventually withdrew their objections, based on revisions made by the Applicants. For the reasons discussed above, the Board was not persuaded

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that the remaining objections were sufficient enough to 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 Applicants have satisfied the burden of proof with respect to the requests for a special exception under § 353 of the Zoning Regulations to allow a six-unit apartment house in the R-5-A Zone District at 3919 Fulton Street, N.W. and a six-unit apartment house at 3915 Fulton Street, N.W. Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT** to the **CONDITIONS** listed below and **SUBJECT** to the **PLANS IN THE RECORD** as follows:

- **for Application No. 18765: Exhibit 29D, as amended by Exhibit 38A1-2**
- **for Application No. 18784: Exhibit 27D, as amended by Exhibit 39A1-2**

CONDITIONS:

1. The Applicants shall include in the initial Declarations of Condominium that no more than three (3) of the six (6) units in each building will be rented.
2. The Applicants shall replace the existing trees which are removed with trees of the same species and to an initial height of at least ten (10) feet.
3. The Applicants shall include in the initial Declarations of Condominium that no more than one Residential Parking Permit (RPP) shall be issued to each condominium unit, and the Applicants shall also notify DDOT and the Department of Motor Vehicles (“DMV”) of this restriction, and shall monitor compliance of this restriction periodically with DDOT and/or DMV.

VOTE: 4-0-1 (Lloyd J. Jordan, Marnique Y. Heath, Jeffrey L. Hinkle, and Marcie I. Cohen to APPROVE; S. Kathryn Allen not present, not voting.)

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 14, 2014

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.

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PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

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

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