

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Request for Modification of Approved Plans of Application No. 17741-A of Fort Lincoln – Eastern Avenue LLC, pursuant to 11 DCMR §§ 3103.2 and 3104.1, for a special exception under Section 353 (New Residential Development) and Section 2516 (Theoretical Lot) and variance relief from the floor area ratio under Section 2516, to construct 54 residential dwelling units (27 stacked townhouses in four separate buildings) in the R-5-A and R-5-D Districts on property bounded by Bladensburg Road, N.E., Eastern Avenue, N.E. and Fort Lincoln Drive, N.E. (Square 4325, Lots 44, 802 and Parcel 174/15).¹

ORIGINAL HEARING DATE:	April 1, 2008
ORIGINAL DECISION DATE:	April 8, 2008
FINAL ORDER ISSUANCE DATE (original application):	April 9, 2008
MODIFICATION DECISION DATE:	February 2, 2010

SUMMARY ORDER ON MODIFICATION

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 2113.2. (Exhibit 5).

Background.

On April 8, 2008, the Board of Zoning Adjustment (Board or BZA) approved Fort Lincoln – Eastern Avenue, LLC’s (the Applicant) request for special exception approval under Section 353 (New Residential Development) and Section 2516 (Theoretical Lot)

¹ Due to the Board’s approval of the modification of plans, the relief requested and granted has changed, resulting in elimination of the request for side yard relief and decreasing the number of residential dwelling units to 54, from 56, and the number of stacked townhouses to 27, from 28. Accordingly, the caption for the case has been altered to reflect these changes.

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and variance relief from the floor area ratio and side yard requirements under Section 2516, to construct 56 residential dwelling units (28 stacked townhouses in four separate buildings) in the R-5-A and R-5-D Districts. Given that there were no opposing parties, the Board authorized a bench decision and summary order, which was issued on April 9, 2008 (BZA Order No. 17741). (Exhibit 31).

The Modification.

On January 5, 2010, the Applicant filed with the Board a request for minor modification of the plans approved in BZA Order No. 17741. The project proposed in the minor modification application will create a community of stacked townhouse condominiums with 54 units (in 27 stacked townhouse condominiums), compared to the 56 units approved in the original application. The proposed minor modifications do not impact the vehicular and pedestrian circulation patterns of the originally approved project and do not impact the bioretention areas/raingardens or the tot lot proposed in the originally approved project.

The zoning relief requested in the minor modification application is the same as in the original application, except that the BZA-approved side yard relief for one of the theoretical lots in Order No. 17741 is no longer necessary. The Applicant is seeking special exception approval in order to construct 28 residential units in two buildings, consisting of 14 stacked townhouse condominiums, on the portion of the property that is located in the R-5-A Zone District, pursuant to Section 353 (the remaining 26 units are located in the R-5-D Zone District, and are not subject to Section 353). In addition, on the entire property, the Applicant is seeking special exception approval in order to construct more than one building on a single record lot pursuant to 11 DCMR § 2516. The Applicant is seeking variance relief from Subsection 2516.4 regarding the requirement that each theoretical lot satisfy all bulk requirements. The proposed lots in the R-5-A Zone District do not satisfy the maximum FAR requirement (Section 402).

The Office of Planning (OP) submitted a report in support of the minor modification application. The OP report noted that:

The proposed modifications are not significant and are consistent with the intent of the original application and BZA approval. The proposed modification would continue to meet the variance from the FAR requirement and Special Exception requirements. OP therefore has no objection to the changes being processed as a minor modification.

(Exhibit 34).

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The site of this application is located within the jurisdiction of ANC 5A. ANC 5A, which supported the project approved in BZA Order No. 17741, was the only party in the original application. A copy of the minor modification application was served on ANC 5A on January 5, 2010. ANC 5A did not participate in this application. Accordingly, a decision by the Board to grant this minor modification 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 for minor modification approval enumerated in 11 DCMR § 3129. The Board finds that the minor modification application was filed in a timely manner, on the appropriate parties, and does not change the material facts upon which the Board based its original approval of the application.

Pursuant to 11 DCMR § 3100.5, 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 (pursuant to Exhibits 9 and 33C – Plans) be **GRANTED**.

VOTE: (April 8, 2008) APPROVING APPLICATION 17741:

4:0:1 (Ruthanne G. Miller, Shane L. Dettman, Mary Oates Walter, and Michael G. Turnbull, to approve. No other Board member participating or voting.)

VOTE: (February 2, 2010) APPROVING MODIFICATION OF PLANS:

3:0:2 (Marc D. Loud, Shane L. Dettman, and Meridith H. Moldenhauer, to approve. No other Board members participating or voting.)

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

A majority of Board members approved issuance of this order.

ATTESTED BY: 
JAMISON L. WEINBAUM
Director, Office of Zoning

FINAL DATE OF ORDER: FEB 05 2010

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment**



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FEB 05 2010

As Director of the Office of Zoning, I hereby certify and attest that on _____, 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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UNDER 11 DCMR § 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL BECOME EFFECTIVE 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 § 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. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.