

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Order No. 18801-A of Fort Lincoln Multifamily Housing and Fort Lincoln Joshua Barry Townhouse, LLC, Motion for Modification, pursuant to § 3129 of the Zoning Regulations.

The original application (No. 18801) was pursuant to §§ 3103.2 and 3104.1, for a variance from the loading requirements under § 2201, and a special exception under § 2516, to erect more than one building on a record lot, in order to construct 103 townhouses and three multi-family buildings with a total of 260 units in the R-5-D and C-2-B Districts on the north side of Commodore Joshua Barney Drive, N.E (Square 4325, Parcel 173/149 and a portion of Parcel 1784/4).

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| HEARING DATES (Original application): | July 22, 2014 and July 29, 2014 |
| DECISION DATE (Original application): | July 29, 2014 |
| FINAL ORDER ISSUANCE DATE (Original application): | August 8, 2014 |
| HEARING DATE (Modification): | September 29, 2015 ¹ and October 20, 2015 |
| DECISION DATE (Modification): | October 20, 2015 |

SUMMARY ORDER ON REQUEST FOR MODIFICATION

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4 in the record of Application No. 18801.)

On July 29, 2014, the Board approved Application No. 18801 of Fort Lincoln Multifamily Housing LLC and Fort Lincoln Joshua Barney Townhouse LLC (“the Applicant”), pursuant to §§ 3103.2 and 3104.1, for a variance from the loading requirements under § 2201, and a special exception under § 2516, to erect more than one building on a record lot, in order to construct 103 townhouses and three multi-family buildings with a total of 260 units in the R-5-D and C-2-B Districts.

¹ The motion was originally for a minor modification and was considered at the Board’s public meeting on September 29, 2015. At that time, the Board determined that the modification required a public hearing, and set the request down for a public hearing on October 20, 2015.

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On July 17, 2015, the Applicant submitted a request for minor modification of the plan approved by the Board in order to provide 123 townhomes, instead of the 103 townhomes as depicted in the approved plans, and 240 apartment units, instead of the 260 apartment units as depicted in the approved plans. The proposed revision would also provide the apartment units in one apartment building, rather than in three buildings as depicted in the approved plans. The Applicant accompanied its request for minor modification with proposed plans. (Exhibit 3A.) During the public meeting on September 29, 2015, the Board considered this request and determined that the proposed changes to the approved plans exceed the scope of a minor modification and that the significant architectural changes proposed would require a limited hearing. Accordingly, the Board set the request for modification down for a public hearing on October 20, 2015.

During the public hearing on October 20, 2015, the Applicant submitted a final version of its revised plans. (Exhibit 11.) During the hearing, the Applicant noted this request for modification resulted from engagement with neighbors of the project and revised the proposed plans in response to their comments and suggestions.

Pursuant to § 3129.8 of the Zoning Regulations (Title 11), the scope of the hearing for a request for modification shall be limited to reviewing the impact of that modification on the subject of the original application. The Board held a public hearing on October 20, 2015 on this motion, pursuant to § 3129.7, and heard the request for a modification to the approval for variance and special exception relief.

Pursuant to § 3129.4, all parties are allowed to file comments within 10 days of the filed request for modification. The site of this application is located within the jurisdiction of Advisory Neighborhood Commission ("ANC") 5C, which is automatically a party to this application. The ANC submitted a report on September 28, 2015, which stated that at a regularly scheduled and properly noticed meeting on September 16, 2015, at which a quorum was present, the ANC voted 7-0 in support of the modification request. (Exhibit 7.)

The Office of Planning ("OP") submitted a timely report recommending approval of the request, but noting that further revision of the plans was required to address two issues regarding design and landscaping details. (Exhibit 8.) OP testified in support of the application at the hearing and noted that the revised plans submitted by the Applicant address its prior concerns. The District Department of Transportation ("DDOT") submitted a report of no objection, subject to one condition. (Exhibit 6.) The Applicant testified that it accepted the condition proposed by DDOT.

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 for modification of approval. Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a modification to the original approval in Case No. 18801, the Applicant has met its burden of proof under 11 DCMR § 3129, that the modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval. The only parties to the case were the ANC and the Applicant. No parties appeared at the public hearing in opposition to the

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application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.5, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application for modification of the Board's approval in Application No. 18801 is hereby **GRANTED, SUBJECT TO THE APPROVED MODIFIED PLANS IN EXHIBIT 11, AND SUBJECT TO THE FOLLOWING CONDITION:**

1. The Applicant shall update its loading management plan to reflect the revised plans approved by this Order.

In all other respects, Order No. 18801 remains unchanged.

VOTE: **4-0-1** (Marnique Y. Heath, Frederick L. Hill, Jeffrey L. Hinkle, and Robert E. Miller, to Approve; one Board seat vacant.)

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

A 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 26, 2015

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 § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THEREOF, 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.