

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18576 of the Fort Lincoln Banneker Townhouses, LLC¹, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a special exception to construct more than one building on a record lot under § 2516, and variances from the front yard requirements under § 2516.5 and theoretical lot to comply with open space requirements under § 2516.4, to allow the construction of forty-two (42) townhouses in the R-5-D and C-2-B Districts along Fort Lincoln Drive, N.E. and Banneker Drive, N.E. (Square 4325, Lots 29, 31, 813 and 814).²

HEARING DATES: June 28, 2013 and July 9, 2013

DECISION DATE: September 17, 2013

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 4.)

The Board of Zoning Adjustment ("Board" or "BZA") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 5C and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 5C, which is automatically a party to this application. ANC 5C submitted a report dated June 18, 2013, indicating that at a properly noticed public meeting on June 12, 2013 at which a quorum was present, the ANC voted 4:1 to request the Board continue or postpone the hearing to allow it more time to meet with the Applicant. The ANC did not submit a recommendation on the application, nor appear at the hearing.

¹ At the outset of the public hearing, Board member Allen recused herself from the case, since she had a business relationship with the Applicant.

² The Applicant amended the application to add variance relief under § 2516.4 and revised the site plan (Exhibit 34) to address OP's concerns. The Applicant indicated in its pre-hearing statement in which it requested the additional relief that the ANC was made aware of this additional area of relief prior to their vote on the application. (Exhibit 27.) The caption has been amended accordingly.

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BOARD OF ZONING ADJUSTMENT
District of Columbia

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EXHIBIT NO. 39

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The Office of Planning ("OP") submitted a timely report dated June 18, 2013, in which OP stated that it "generally supports the application." OP's report further explained that it was in support of the request for a variance from § 2516.5(b) but could not recommend approval of the requested special exception from § 2516 and recommended denial of the request from side yard requirements under § 405. (Exhibit 24.) At the public hearing on July 9, 2013, OP testified that the Applicant had revised its plans and thereby had addressed OP's concerns and that OP was in support of the revised application. OP also recommended some conditions to which the Applicant agreed. The Applicant proffered two conditions.³ (Exhibit 33.) By its letter dated June 18, 2013, the District Department of Transportation ("DDOT") expressed "no objection" to the application and provided comment on a number of issues attendant to larger planning policies. (Exhibit 26.)

A letter dated June 30, 2013, requesting to intervene in the case and to waive the time limits for making such a request was submitted by the Fort Lincoln Civic Association ("FLCA"). FLCA raised concerns about the amount of notice and community involvement in the review of the application. They asked for a postponement to October. (Exhibit 29.) FLCA appeared at the hearing on July 9, 2013, and withdrew its request for intervention or party status and participated as a person or organization. Prior to the hearing, the Applicant submitted a reply to FLCA's letter and motions. (Exhibit 30.) A letter of concern that requested that a structural and civil impact study be made prior to construction was submitted for the record by Bernard Snowden, Summit Village III of Fort Lincoln. (Exhibit 28.) A letter of opposition to the application was submitted by Andrea B. Jackson and Colin A. Jackson, residents of Summit Village-Fort Lincoln III. (Exhibit 31.)

At the conclusion of the Board's public hearing on July 9, 2013 on the application, the Board requested that the Applicant make a presentation to the FLCA regarding the application. The Applicant made the requested presentation to the FLCA on September 10, 2013 at which approximately 13 people attended, according to the Applicant's post-hearing submission dated September 13, 2013. (Exhibit 37.) The Board gave leave to reopen the record for the September 10 post-hearing submission and accepted it into the record.

Variance Relief

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for variances from the front yard requirements under § 2516.5 and theoretical lot to comply with open space requirements under § 2516.4, to allow the construction of forty-two (42) townhouses in the R-5-D and C-2-B Districts. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

³ The Board added a requirement to the two proffered conditions that they both be made part of the bylaws and placed in a separate document, such as the Townhome Offering Statement or a separate covenant, which would be recorded against the Property in the Land Records in the District of Columbia

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The Board closed the record at the conclusion of the hearing. Based upon the record before the Board, and having given great weight to the OP report⁴ filed in this case, the Board concludes that the Applicant has met the burden of proof pursuant to 11 DCMR § 3103.2 for area variances from §§ 2516.5 and 2516.4, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

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 pursuant to § 3104.1, for a special exception under § 2516. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this 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, pursuant to 11 DCMR §§ 3104.1 and 2516 that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

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. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application be **GRANTED SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 34 AND WITH THE FOLLOWING CONDITIONS:**

1. Private trash removal shall be provided for the 42 townhouses on the property and all trash bins must be removed from the internal street within 18 hours of trash removal. The Applicant shall include this condition in the bylaws and in a document, such as the Townhome Offering Statement or a separate covenant, which will be recorded against the Property in the Land Records of the District of Columbia.
2. All residents and guests shall be prohibited from parking their cars in a driveway in a manner that would block the sidewalk or extend the car into the street. The Applicant shall include this condition in the bylaws and in a document, such as the Townhome Offering Statement or a separate covenant, which will be recorded against the Property in the Land Records of the District of Columbia.

⁴ As the ANC's letter did not make any recommendation, there was nothing to which great weight could be applied.

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VOTE: **3-0-2** (Lloyd J. Jordan, Jeffrey L. Hinkle, and Marcie I. Cohen, to
APPROVE; S. Kathryn Allen, recused; and 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: September 30, 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 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR 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

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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.