

**BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA**

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.: 20184B

Motion of: Party

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Reconsider

Points and Authorities:

Please state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form.

See Attachment

Consent: No attempt was made

Further Explanation:

CERTIFICATE OF SERVICE

I hereby certify that on this 11 day of April, , 2025

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via: (email)

Signature: Tequia Hicks Delgado

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Board of Zoning Adjustment

District of Columbia

CASE NO.20184B

EXHIBIT NO.13



Government of the District of Columbia

Advisory Neighborhood Commission 5C

Arboretum | Brentwood | Fort Lincoln | Gateway | Langdon | Woodridge

April 9, 2025

DC Board of Zoning Adjustment (BZA)
(transmittal via bzasubmissions@dc.gov)

BZA case 20184B; Fort Lincoln-Eastern Avenue, LLC

MOTION TO RECONSIDER

On March 26, 2025, the BZA voted 3-0-2 to approve BZA 20184B, a “Modification without Hearing” application, a second one-year time extension to build 51 townhomes on Square 4325, Lots 44, 802 and Parcel 174/15, in ANC 5C02.

The ANC 5C respectfully moves the BZA reconsider its order entered on April 1, 2025, for the following reasons:

The BZA’s decision overlooked critical evidence and misapplied the law, which would have resulted in a different ruling had the correct information been considered.

On March 20, 2025 the ANC 5C filed a report in opposition to BZA 20184B (Exhibit 10, BZA case 20184B) citing surrounding transportation changes that were not included in the original and sole traffic study (Exhibit 79A, BZA case 20184) that the BZA based its initial and previous decisions on (BZA cases 20184 and 20184A). The documented transportation changes from 2018-2024 include: 1. pandemic restrictions and limitations on obtaining accurate traffic data that are no longer applicable; 2. DDOT implementation of left turn restrictions and installation of “No Turn on Red” signs at the intersection of Bladensburg Road NE and Eastern Ave NE.; 3. WMATA bus route changes (H6 and B2) and eliminations (B8 & B9); and 4. lack of traffic projections in the record beyond the current year, 2025.

- **The BZA overlooked changes to the transportation environment identified in the ANC 5C Report and misapplied the law as it pertains to the ANC’s “great weight.”**

When the BZA met on March 26, 2025 to discuss and decide the subject application, neither Chairman Hill, Mr. Smith, nor Ms. Stidham addressed any of the specific changes to traffic data and the traffic report’s (Exhibit 79A, BZA 20184) accuracy raised in the ANC 5C Report (Exhibit 10, BZA 20184B). The subsequent BZA Summary Report (Exhibit 11, BZA 20184B), also neglected to address the traffic changes that the ANC 5C reported - it simply stated “the ANC voted to oppose the request.”

However, the great weight requirement is tied to the statutory notice requirement. D.C. Code § 1-309.10(d); *Office of People's Counsel v. PSC*, 630 A.2d 692, 698 (D.C. 1993). Affected ANCs must receive notice 30 days in advance of all BZA decision making with or without hearings. Thus, D.C. Code § 1-309.10(d)(3)(A) and (B) apply to this decision.

D.C. Code § 1-309.10 (3)(A) states, “The issues and concerns raised in the recommendations of the [ANC] shall be given great weight ***during the deliberations*** by the government entity. Great weight ***requires*** acknowledgement of the [ANC] as the source of the recommendations ***and explicit reference to each of the [ANC]’s issues and concerns.***” The BZA failed to apply great weight to the ANC 5C’s reported concerns when it failed to mention the specific changes to traffic identified in the report (Exhibit 10, BZA 20184B) during the deliberation at the meeting on March 26, 2025 prior to voting at that same meeting.

D.C. Code § 1-309.10 (3)(B) states, “In all cases the government entity is required to articulate its decision in writing. The written rationale of the decision shall articulate ***with particularity and precision*** the reasons why the [ANC] does or does not offer persuasive advice under the circumstances. In so doing, the government entity must articulate ***specific findings and conclusions with respect to each issue and concern*** raised by the [ANC]. Further, the government entity is required to support its position on the record.” The BZA did not conform to the law in its Summary Report (Exhibit 11, BZA 20184B) when it did not articulate any reasons with particularity and precision as to why the ANC 5C’s issues and concerns did not expose material changes. BZA’s Summary Report further fails to meet the statutory requirements by not articulating specific findings and conclusions regarding the ANC’s concerns about the accuracy of the traffic data.

In neglecting to apply great weight during deliberations and articulate any reasons for opposition to the ANC 5C’s issues and concerns in its Summary Report, the BZA overlooked the critical evidence that would allow deliberation on whether the changes were in fact material. Further, the BZA’s inaction on traffic data fact finding and conclusions exhibits an oversight with possible adverse consequences.

➤ **Changes identified in ANC 5C’s Report are substantial changes to the material facts by which the BZA based its original decision.**

To approve a request for a time extension, the BZA must determine that “[t]here is no substantial change in any of the material facts upon which the [BZA] based its original approval of the application that would undermine the [BZA]’s justification for approving the original application.” 11 DCMR Subtitle Y § 705.2(b). The BZA based its original approval on traffic data supplied in Exhibit 79A (BZA 20184) with a deadline to obtain a building permit within two years. Traffic projections in Exhibit 79A (BZA 20184) reflected a completed project by 2025. However, it is now 2025 and those traffic projections are now obsolete, as they don’t include the changes identified in ANC 5C’s Report, nor do they extend to the dates at which the project will be erected. The ANC 5C’s Report identified four significant changes to the traffic surrounding the subject site: 1. the opportunity for accurate traffic data; 2. DDOT traffic flow changes at the intersection of the proposed development’s entrance and exit; 3. WMATA changes to relevant

bus routes; and 4. the absence of any current and relevant traffic forecasts. The BZA would not support a special exception to which accurate and current traffic data did not exist. Had the BZA known the erection of the property would occur in 2025 or later, they would have demanded traffic projections to that effect, such that approval would not *adversely affect the use of the neighboring property*.

For the foregoing reasons, ANC 5C respectfully requests that the BZA reconsider its order entered on April 1, 2025 and grant such other and further relief:

- Order an updated Traffic Impact Analyses to reveal:
 - forecasts based on current traffic observations on Eastern Ave./Ft. Lincoln Dr. (including the intersection at Commodore Joshua Barney Dr.), and Bladensburg Rd. NE during peek hours (7-9am and 4-7pm) Tuesdays, Wednesday, and/or Thursdays in May 2025.
 - traffic projection/predictions through 2035, if possible, and in conformity with industry practice for accuracy. Otherwise, traffic projection/predictions through 2031 will suffice.
- Obtain a DDOT report on the record.

Feel free to reach out to me at 5C03@anc.dc.gov on this matter.

Dated: April 11, 2025

Respectfully submitted¹,

Tequia Hicks Delgado
Chairperson
Advisory Neighborhood Commission 5C
5C03@anc.dc.gov
(202) 643 - 1861

¹ At a duly noticed meeting with quorum present on February 13, 2025, ANC 5C voted 6-0 to authorize 5C03 Commissioner and Commission Chair Tequia Hicks Delgado to represent ANC 5C on matters related to BZA 20184B, a Modification without Hearing application, for a second time extension to build 51 townhomes on Square 4325, Lots 44, 802 and Parcel 174/15, in ANC 5C02.