

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**



Application No. 20184-C of Fort Lincoln-Eastern Avenue LLC, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9 for special exceptions under Subtitle U § 421 and under Subtitle C § 305.1 to allow a new residential development of 51 townhouse dwellings in a theoretical lot subdivision in the RA-1 and RA-4 Zones at property bounded by Eastern Avenue, Bladensburg Road, and Fort Lincoln Drive, N.E. (Square 4325, Lots 802 and 44, and Parcel 0174/15).

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| HEARING DATES (20184): | June 24 and July 1, 2020 |
| DECISION DATES (20184): | September 16 and November 4, 2020 |
| ORDER ISSUANCE DATE (20184): | April 20, 2022 |
| DECISION DATE (20184-A): | June 12, 2024 |
| ORDER ISSUANCE DATE (20184-A): | June 26, 2024 |
| DECISION DATE (20184-B): | March 26, 2025 |
| ORDER ISSUANCE DATE (20184-B): | April 1, 2025 |
| DECISION DATE (20184-C): | May 14, 2025 |

**DECISION AND ORDER DISMISSING
MOTION FOR RECONSIDERATION**

By order issued April 20, 2022, the Board granted the zoning relief requested in a self-certified application submitted on behalf of Fort Lincoln-Eastern Avenue LLC (the “Applicant”), then the contract purchaser of the property that was the subject of the application. (Application No. 20184; April 20, 2022.) Parties in this proceeding, in addition to the Applicant, are Advisory Neighborhood Commission (“ANC”) 5C, the ANC in which the subject property is located; a party in support of the application, the Fort Lincoln Condominium 5 Unit Homeowners Association, known as the Pineview Association, representing the owners and residents of 40 condominiums in the Pineview Court development located immediately to the west of the subject property; and a party in opposition to the application, the Fort Lincoln Civic Association, Inc. The Board subsequently granted two requests by the Applicant, pursuant to Subtitle Y § 705, for one-year time extensions of the validity of the original order, which now extends until April 20, 2026.

FINDINGS OF FACT

1. The property that is the subject of this application is an irregularly shaped area of 109,277 square feet (approximately 2.5 acres) bounded by Fort Lincoln Drive on the southeast, Eastern Avenue on the northeast, and Bladensburg Road on the northwest (Square 4325, Lots 802 and 44, and Parcel 0174/15). The southwestern portion of the subject property faces Pineview Court, N.E., which extends northwest from Fort Lincoln Drive.
2. The Applicant proposed to develop the subject property with 51 townhouses grouped into eight buildings. On October 22, 2019, the Applicant submitted a self-certified application for zoning relief for the project, requesting a special exception under Subtitle U § 421 to allow a new residential development and a special exception under Subtitle C § 305.1 to allow 51 townhouse dwellings in a theoretical lot subdivision in the RA-1 and RA-4 zones at the subject property.
3. The Board approved the requested zoning relief by order issued on April 20, 2022 in Application No. 20184. The order became final when it was issued, when the order was filed in the record and served on the parties. (Subtitle Y § 604.7.)
4. Pursuant to Subtitle Y § 702.1, the order was valid for two years, “within which time an application shall be filed for a building permit...” The Board is authorized to extend the time period specified in Subtitle Y § 702.1 provided that an applicant meets specific requirements for a time extension. (Subtitle Y § 705.2.)
5. On March 29, 2024, the Applicant submitted a request pursuant to Subtitle Y § 705.2 for a one-year extension of the order. The Board granted the request, extending the validity until April 20, 2025. (Application No. 20184-A; June 26, 2024.)
6. On January 24, 2025, the Application filed a second request under Subtitle Y § 705.2 for a one-year extension of the validity of the order that granted zoning relief for the Applicant’s project. (Exhibits 1, 4.) ANC 5C submitted a report opposing the request. (Exhibit 10.)
7. By order issued April 1, 2025, the Board granted the second time-extension request, extending the validity of the original order until April 20, 2026. (Application No. 20184-A; April 1, 2025.)
8. On April 12, 2025, ANC 5C submitted a motion for reconsideration of the Board’s order granting the second time extension. (Exhibit 13.)
9. The Applicant submitted a response in opposition to the motion for reconsideration, which urged the Board to deny the motion. The Applicant also asserted that the 10-day period for filing a motion for reconsideration had expired on April 11, 2025 and ANC 5C had not requested a waiver of the deadline. (Exhibit 14.)

10. ANC 5C then filed a request to extend the deadline to submit a motion for reconsideration, stating that the ANC filed the motion at “11:59 pm on the 10th day (April 11, 2025)” and served a copy of the motion on the other parties “via email at 12:31 am on April 12, 2025.” ANC 5C asked the Board to accept the motion for reconsideration as timely, albeit with a slight delay, consistent with Subtitle Y § 204.5, which authorizes the Board to extend the time for filing a motion for good cause. (Exhibit 15.)
11. At a public meeting on May 14, 2025, the Board voted to dismiss the motion for reconsideration submitted by ANC 5C.

CONCLUSIONS OF LAW AND OPINION

Pursuant to Subtitle Y § 700.2, “[a]ny party may file a motion for reconsideration or rehearing of any decision of the Board *granting or denying an application or appeal*, provided that the motion is filed ... within ten (10) days from the date of issuance of a final written order by the Board...” (emphasis added.) The same provision states further that “No motion to reconsider any other decision may be filed.” (Subtitle Y § 700.2.)

The issue before the Board is not whether ANC 5C met the 10-day deadline for filing a motion for reconsideration or whether the 10-day deadline should be waived, but whether the Board may deliberate on a motion to reconsider a decision that granted a time extension. An order that grants a request for a time extension will extend the validity of a decision of the Board to grant an application but is not itself a decision granting an application. Instead, the application was previously granted, albeit subject to a time limit. In extending that time limit, the Board does not revisit its initial decision to approve the application but decides only whether the requirements for a time extension have been met. Therefore, a decision granting a time extension is not a decision granting an application that could be subject to a motion for reconsideration or rehearing pursuant to Subtitle Y § 700.2.

The Board is authorized to waive Subtitle Y § 700.2 but does not find good cause to do so under the circumstances of this motion for reconsideration of a decision to grant a time extension. (See Subtitle Y § 101.9.) Generally, an order of the Board becomes final when it is issued (i.e., filed in the record and served on the parties) but the order does not take effect until 10 days after it becomes final. (Subtitle Y §§ 604.7, 604.11.) The 10-day period between the time an order becomes final and when it becomes effective coincides with the 10-day deadline for the filing of a timely motion for the Board’s reconsideration of an order granting or denying an application or appeal. By contrast, an order granting a time extension becomes final and effective at the same time; that is, when that order is filed in the record and served on the parties. (Subtitle Y § 705.4.)

Under the circumstances, the Board does not find good cause for a waiver of Subtitle Y § 700.2 to allow the Board to deliberate on a motion for reconsideration of the decision to grant a time extension. Moreover, such a waiver would prejudice the rights of the other parties in this

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proceeding, in particular the Applicant, by allowing reconsideration of a decision that is not expressly subject to requests for reconsideration or rehearing. A waiver of Subtitle Y § 700.2 under these circumstances would be counter to an applicant's reasonable expectation that an order granting a time extension is final and effective when the order is issued, creating unwarranted uncertainty about the finality of the Board's decision.

Based on the findings of fact and conclusions of law, the Board concludes that the motion submitted by ANC 5C for reconsideration of the Board's decision to grant a second one-year time extension is not permitted under the Board's Rules of Practice and Procedure. Accordingly, it is **ORDERED** that the motion for reconsideration of the order in Application No. 20184-B is **DISMISSED**.


VOTE: 4-0-1

(Frederick L. Hill, Carl H. Blake, Chrishaun S. Smith, and Tammy M. Stidham voting to DISMISS; 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 25, 2025

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

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

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