

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 20184 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, NE (Square 4325, Lots 802 and 44, and Parcel 0174/15).¹

HEARING DATES: June 24 and July 1, 2020
DECISION DATES: September 16 and November 4, 2020²

DECISION AND ORDER

This self-certified application was filed October 22, 2019 on behalf of Fort Lincoln-Eastern Avenue LLC (“Applicant”), the contract purchaser of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application.

Preliminary Matters

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing, by letters dated December 2, 2019, to the Applicant, the Office of Planning (“OP”), the District Department of Transportation (“DDOT”), the National Park Service, Advisory Neighborhood Commission (“ANC”) 5C, the ANC in which the subject property is located, and Single Member District ANC 5C03, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 5 as well as the Chairman of the Council and the at-large members of the D.C. Council, and the owners of

¹ This caption has been modified to reflect that the application was amended to delete two aspects of the request for zoning relief. In addition to special exceptions for a theoretical lot subdivision and a new residential development, the application originally also requested special exception relief from penthouse requirements of Subtitle C § 1500.4 and a variance from the vehicle access requirements of Subtitle C § 305.3(b). The latter two requests were withdrawn by the Applicant after the proposal was revised. (Exhibits 47, 59.)

² On November 4, 2020, the Board denied a motion by the Fort Lincoln Civic Association, a party in opposition to the application, to reopen the record (Exhibit 103). The Board did not find good cause to receive the materials submitted by the party in opposition after the record was closed at the conclusion of the public hearing (see Subtitle Y §§ 602.1, 602.6.).

441 4th Street, N.W., Suite 200/210-S, Washington, D.C. 20001

Telephone: (202) 727-6311

Facsimile: (202) 727-6072

E-Mail: dcoz@dc.gov

Web Site: www.dcoz.dc.gov

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all property within 200 feet of the subject property. On January 17, 2020, the Office of Zoning referred the application to the Office of the Deputy Mayor for Education and the Department of Parks and Recreation. Notice was published in the *District of Columbia Register* on November 22, 2019 (66 DCR 15408) and June 19, 2020 (67 DCR 7758) as well as through the calendar on the Office of Zoning website.³

Parties. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 5C were automatically parties in this proceeding. At a public meeting on January 15, 2020, the Board granted a request for party status submitted by 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.⁴ At a public meeting on February 12, 2020, the Board waived the filing deadline and granted an untimely request for party status in opposition to the application filed by the Fort Lincoln Civic Association, Inc.

Applicant's Case. The Applicant presented evidence and testimony from Cellerino Bernardino, vice president of development and construction at Fort Lincoln New Town Corporation, the managing partner in Fort Lincoln-Eastern Avenue, LLC, Kyle Oliver, a civil engineer, and Brian Ruhl, a landscape architect. The Applicant requested approval of two special exceptions needed for the development of 51 townhouse dwellings configured as eight buildings in a theoretical lot subdivision at the subject property.

OP Report. By report dated March 20, 2020, the Office of Planning recommended approval of the amended application. (Exhibit 56.)

DDOT Report. By memorandum dated January 31, 2020, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 43.) In a supplemental report dated August 31, 2020, DDOT reiterated its recommendation of approval of the application after assessing the traffic report submitted by the Applicant. (Exhibit 81.)

ANC Report. By letter dated November 20, 2019, ANC 5C stated that, at a public meeting on the same date with a quorum present, the ANC voted to support the revised application. (Exhibit 47C.)

Party in Support. Thanh-Thuy Nguyen, president of the Pineview Association, testified in support of the application, stating that the Applicant's revised proposal had addressed the association's concerns about traffic and parking.

³ The public hearing was originally scheduled on January 15, 2020 and was postponed to February 26, 2020 at the Applicant's request, and then to April 1, 2020 at the request of the Fort Lincoln Civic Association. The public hearing was postponed indefinitely due to the state of emergency declared March 11, 2020 and then rescheduled to a virtual hearing on June 24, 2020. The Office of Zoning provided notice of the virtual public hearing by memoranda dated May 21 and June 10, 2020. Notice of the virtual public hearing was also posted at the subject property.

⁴ The Pineview Association did not initially designate whether their request was for party status in support of or in opposition to the application. By letter dated February 10, 2020, the Pineview Association indicated their support for the Applicant's revised application. (Exhibit 50.)

Party in opposition. The Fort Lincoln Civic Association Inc. presented testimony from four residents living near the subject property. The party in opposition objected to the Applicant's plans to build townhouse dwellings on an area that had been park and recreation space, asserting that approval of the requested zoning relief would result in adverse impacts on nearby residents especially relating to pedestrian and vehicular traffic, noise, privacy, and environmental impacts such as the removal of trees.

Persons in opposition. The Board received a letter in opposition to the application from the D.C. Federation of Civic Associations, which raised issues about the acquisition of the subject property by the Applicant.

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, NE, which extends northwest from Fort Lincoln Drive.
2. The subject property is located in Fort Lincoln, which is a predominantly residential area developed with row dwellings, detached dwellings, and apartment houses.
3. The subject property is currently unimproved. The site contains some trees, including some special trees (with a circumference of 44 to 99.99 inches, which may be removed with a permit) but no heritage trees (those with a circumference of 100 inches or more, subject to protection under the Tree Canopy Protection Amendment Act of 2016). The existing trees are in generally poor condition.
4. The property exhibits a change in grade of over 35 feet from the northeastern edge along Fort Lincoln Drive down to the southwestern edge near Eastern Avenue.
5. Eastern Avenue NE has a public right of way of 120 feet. Approximately 54 feet of the right of way is not used for vehicular purposes but contains a sidewalk and vegetation.
6. The subject property is located in the Residential Apartment (RA) zone but is split zoned. The southern portion (Lot 44, approximately 59,391 square feet) is zoned RA-4 and the remainder (Lot 802 and Parcel 174/15, approximately 49,926 square feet) is zoned RA-1.
7. The Applicant proposed to develop the subject property with 51 townhouses grouped into eight buildings. The townhouses will be 16 feet wide and 42 feet long, and configured as three-bedroom dwellings.

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8. Two buildings, containing eight and nine townhouses, will be located in the central portion of the subject property that is zoned RA-1 (Lot 802). These buildings will be three stories and approximately 37 feet in height, where three stories and a maximum of 40 feet are permitted (Subtitle F § 303.1.) The RA-1 portion of the project will have a lot occupancy of 24.52 percent, where a maximum of 40 percent is permitted (Subtitle F § 304.1), and a floor area ratio (“FAR”) of 0.81, where up to 0.9 FAR is permitted (Subtitle F § 302.1).
9. The southern portion of the property (Lot 44), zoned RA-4, will be developed with six buildings, each containing between four and seven townhouse dwellings, for a total of 34 dwellings. These buildings will be approximately 50 feet in height where a maximum of 90 feet is permitted (Subtitle F § 303.1.). The RA-4 portion of the project will have a lot occupancy of 40.76 percent, where a maximum of at least 75 percent is permitted (Subtitle F § 304.1), and a FAR of 1.52, where up to 3.5 FAR is permitted. (Subtitle F § 302.1.)
10. The new development will result in a total lot occupancy of approximately 33.34 percent (including private streets) and a floor area ratio of approximately 1.19, in keeping with applicable zoning requirements. Each of the theoretical lots will meet zoning requirements for side yard and rear yard, consistent with Subtitle C § 305.3(a). (Exhibit 47.)
11. All of the townhouses will have a rear deck addition providing individual outdoor space for each dwelling.
12. Each dwelling will contain one vehicle parking space provided in a garage accessible at the rear of the dwelling.
13. Vehicular access to the dwellings will be provided by a driveway with a curb cut on Eastern Avenue located between the RA-1 portion of the site, to the north, and the RA-4 portion to the south.
14. The driveway will connect with an interior system of private streets providing access to the driveways serving the individual townhouses. The interior streets will satisfy the zoning requirement of a width of 24 feet.
15. Consistent with DDOT requirements, the Applicant provided a sight distance analysis to demonstrate that the location of the curb cut on Eastern Avenue will be a sufficient distance from the curve in the roadway where Fort Lincoln Drive intersects with Eastern Avenue to avoid the creation of unsafe conditions. The driveway entrance to the new development will be approximately 440 feet south of the intersection of Eastern Avenue with Bladensburg Road.
16. In response to comments from the Pineview Association, the Applicant revised its plans to eliminate a connection of the interior street system with Pineview Court, a private street in the adjoining condominium development. Instead, the Applicant will provide three

compact parking spaces at the terminus of the private driveway into the subject property from Eastern Avenue.

17. The theoretical lots in the RA-1 portion of the project will include a vehicular easement to allow vehicular access to each driveway. The interior private street system in the RA-4 portion will not cross any of the theoretical lots.
18. Pedestrian access will be provided to and within the Applicant's new development by sidewalks connecting to the public sidewalk network on adjacent streets and in nearby residential developments.
19. Approximately 41,794 square feet of the subject property will be reserved as green space. A bioretention area/rain garden will be provided on the northern portion of the subject property (Parcel 174/15) abutting Bladensburg Road where site grading and drainage will reduce the peak flow rate of stormwater and treat the stormwater before it leaves the property.
20. The Applicant's landscaping plan calls for the replacement of trees at the subject property by planting two trees for every one tree that is removed. The replacement trees will be two and a half to three-inch caliper trees. The Applicant has begun coordinating with the Urban Forestry Division of DDOT on the proposed removal of existing trees and the planting of new trees, and the Applicant's landscape architect testified that the Applicant will consult with the Urban Forestry Division when selecting the preferred species of trees to plant at the new development, especially in public space. The Applicant will generally select native and drought-tolerant trees and shrubs to plant at the site.
21. The new development will exceed the applicable Inclusionary Zoning ("IZ") requirement by providing approximately 13,250 square feet of IZ gross floor area, where approximately 11,255 square feet is required. The Applicant identified the planned location of five IZ dwelling units, all in the southern portion of the project.
22. By summary order issued April 9, 2008, the Board approved a prior application under the 1958 Zoning Regulations for a similar project at the subject property (Application No. 17741). That application sought special exceptions for a new residential development and for a theoretical lot subdivision as well as area variance relief from requirements for side yard and floor area ratio to allow 56 new dwellings (28 stacked townhouses in four buildings), which was later modified to 54 dwellings (27 stacked townhouses in four buildings) (Application No. 17741-A; summary order issued February 5, 2010). However, the zoning approval eventually lapsed and the project was not built. The Applicant testified in this proceeding that the project was delayed by title issues related to the transfer of ownership of a portion of the site from the federal government to the D.C. government, which have since been resolved.

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23. In July 2013, the National Park Service (“NPS”) conducted an environmental assessment in connection with the transfer of jurisdiction and ownership of 0.91 acres of NPS land, then managed by the District of Columbia, to the federal Department of Housing and Urban Development, and then to the District, and ultimately to a developer to facilitate residential development within the Fort Lincoln New Town community. The NPS property, described as bounded by Bladensburg Road, Eastern Avenue, and Fort Lincoln Drive and comprising the RA-1 portion of the Applicant’s site (Lot 802), was then expected to be developed with approximately 50 stacked townhouses and open space. NPS completed an environmental assessment and made a finding of no significant impact (“FONSI”). The FONSI concluded that the transfer of the subject property to the Applicant and the then-proposed development of approximately 50 townhouses “will not have a significant effect on the human environment” and that “There are no significant impacts on public health, public safety, threatened or endangered species, sites or districts listed in or eligible for listing in the [National Register of Historic Places], or other unique characteristics of the region.” (Exhibit 47B, page 8.)
24. The subject property is located in a predominantly residential area. The Pineview Court Condominiums are located immediately to the west, and the Washington Overlook Condominiums are located to the south, across Fort Lincoln Drive. A former elementary school (closed in 2014) is located to the south, and several detached dwellings are located to the southwest of the subject property. A cemetery is located across Eastern Avenue to the east, in Maryland.
25. Other nearby developments include commercial projects such as the Shops at Dakota Crossing (430,000 square feet of retail space) and residential projects including the Villages at Dakota Crossing (332 townhouse dwellings), the Reserves at Dakota Crossing (118 townhouse dwellings and 236 apartments), and Banneker Ridge (42 townhouse dwellings).
26. Properties to the north, across Bladensburg Road, are located in a Production, Distribution, and Repair (PDR) zone and are developed with commercial uses.
27. The subject property is within the boundaries for attendance at public schools at the elementary, middle, and high school levels. Some public charter schools are also within the boundaries.
28. Fort Lincoln Park is located within walking distance southwest of the subject property. The park contains a swimming pool and offers a variety of recreational and sports activities.
29. The Residential Apartment (RA) zones permit urban residential development and compatible institutional and semi-public buildings, and are designed to be mapped in areas identified as moderate- or high-density residential areas suitable for multiple dwelling unit development and supporting uses. (Subtitle F §§ 100.1, 100.2.) The provisions of the RA zones are intended to: (a) provide for the orderly development and use of land and

structures in areas characterized by predominantly moderate- to high-density residential uses; (b) permit flexibility by allowing all types of residential development; (c) promote stable residential areas while permitting a variety of types of urban residential neighborhoods; (d) promote a walkable living environment; (e) allow limited non-residential uses that are compatible with adjoining residential uses; (f) encourage compatibility between the location of new buildings or construction and the existing neighborhood; and (g) ensure that buildings and developments around fixed rail stations, transit hubs, and streetcar lines are oriented to support active use of public transportation and safety of public spaces. (Subtitle F § 100.3.)

30. The purposes of the RA-1 and RA-4 zones are to: (a) permit flexibility of design by permitting all types of urban residential development if they conform to the height, density, and area requirements established for these districts; and (b) permit the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and that are excluded from the more restrictive residential zones. (Subtitle F § 300.1.) The RA-1 zone provides for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments. (Subtitle F § 300.2.) The RA-4 zone provides for areas developed with predominantly medium- to high-density residential. (Subtitle F § 300.4.)

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks special exceptions, pursuant to 11 DCMR Subtitle X, Chapter 9, for a new residential development in the RA-1 zone under Subtitle U § 421 and for a theoretical lot subdivision under Subtitle C § 305 to allow 51 townhouse dwellings in the RA-1 and RA-4 zones at a property bounded by Eastern Avenue, Bladensburg Road, and Fort Lincoln Drive, NE (Square 4325, Lots 802 and 44, and Parcel 0174/15). The Board is authorized under § 8 of the Zoning Act (D.C. Official Code § 6-641.07(g)(2) (2012 Repl.)), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (See 11 DCMR Subtitle X § 901.2.)

Subtitle U § 421. Pursuant to Subtitle U § 421, the portion of the Applicant's project located in the RA-1 zone, as a new residential development not comprising all one-family detached or semi-detached dwellings, requires approval by the Board as a special exception in accordance with the specified standards. As required, the application was referred to various agencies for comment and recommendation, and the Applicant submitted the documents necessary to support the request for zoning relief, including a site plan, a set of typical floor plans and elevations, a grading plan (existing and final), a landscaping plan, and a plan for all new rights of way and easements. (See Exhibits 47A1 through 47A4.)

Based on the findings of fact, the Board concludes that the Applicant has satisfied the requirements for a special exception in accordance with Subtitle U § 421. The Applicant proposed to construct

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a total of 51 townhouses, of which 17 will be located in the RA-1 zone. The 17 townhouses will be configured in two buildings of similar size; the individual townhouses will also be similarly sized. The Applicant demonstrated that the planned construction will meet applicable development standards.

The Board concludes that existing area schools will be sufficient to accommodate the number of students who can be expected to reside in the 17 townhouses. The area is served by several public and charter schools serving students from elementary school through high school. With respect to recreation and other services to accommodate the residents who can be expected to reside in the townhouses, the Board notes that the project was designed to maintain open space on the property and to satisfy yard requirements for each of the new dwellings. A large park is located nearby, providing additional sports and recreation opportunities. For the reasons discussed below with respect to the entire proposed development, the Board concludes that the new residential development of 17 townhouse dwellings in the RA-1 zone meets applicable zoning requirements with respect to vehicular and pedestrian access, the arrangement of buildings, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the surrounding neighborhood.

Subtitle C § 305. The Applicant also requested a special exception pursuant to Subtitle C § 305 to allow multiple primary buildings on a single record lot. The application included satisfactory evidence that the requirements for a theoretical lot subdivision were met based on a plan where individual theoretical lots served as boundaries for assessment of compliance with the Zoning Regulations. (See especially Exhibit 47A3.) The application provided other materials required by Subtitle C § 305.4, including site plans showing a plat, the location of proposed streets and easements, existing and proposed grading, a landscaping plan, and typical floor plans of the proposed dwellings.

Based on the findings of fact, the Board concludes that the Applicant has satisfied the requirements for a special exception in accordance with Subtitle C § 305. The application proposed a development of eight buildings at the subject property, where each building will contain between four and nine townhouses, for a total of 51 new dwellings. The application demonstrated that the theoretical lots will meet requirements for side yard, rear yard, FAR, and building height applicable in the RA-1 and RA-4 zones.⁵ As revised, the application proposed a means of vehicular ingress and egress to each principal building that will meet the minimum width required by the Zoning Regulations of 24 feet.

Consistent with Subtitle C § 305.5, the application was referred to the Office of Planning for review and report on specified factors. In light of the evidence in the record and based on the findings of fact, the Board concurs with OP's analysis in recommending approval of the requested special

⁵ Citing an order of the Zoning Commission, the Applicant indicated that individual lots in a theoretical lot subdivision are not required to comply with the FAR requirements of the relevant zone; instead, FAR may be determined on the basis of the entire lot, and in this case, the overall project will comply with FAR requirements of the RA-1 and RA-4 zones, as applicable. *See Zoning Commission Order No. 16-17, Z.C. Case No. 16-17 (EYA Development, LLC; approval of a consolidated planned unit development and related Map amendment; order effective February 2, 2018).*

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exception based in part on the factors listed in Subtitle C § 305.5. The Office of Planning commented favorably on the planned siting and scale of buildings in the Applicant's project, which was designed consistent with the existing grading of the site, will provide a substantial amount of open space, and will ensure sufficient light and air to and through the development. The development will be adequately connected to its surroundings, since most of the new dwellings will be oriented toward either Eastern Avenue or Fort Lincoln Drive, with streets and sidewalks connecting to the surrounding neighborhood. The Board credits OP's testimony that the new development will be consistent with urban design principles by concentrating the dwellings along the periphery of the site so as to maximize engagement with abutting public areas and by providing access to parking from the rear of the dwellings so as to reduce its visibility and minimize the number of curb cuts needed. The Board notes OP's conclusion that the architecture of the planned dwellings will add interest to the project through building form, bay windows, decks, terraces, and color, and concurs that the design and appearance of the new dwellings will be similar to existing residential developments in the area.

The Applicant will provide substantial landscaping especially on the periphery of the site, including large street trees and a mix of deciduous, evergreen, and ornamental trees, shrubs, and grasses. Additional landscaping will be provided as a buffer between the new development and existing residences to the southwest and to facilitate stormwater management throughout the site. The Office of Planning did not express any concerns about the Applicant's grading plan or environmental aspects of the proposed development. As OP noted, the Applicant worked with the District Department of Energy and Environment regarding compliance with applicable environmental standards, including with respect to stormwater management. The Board concurs with OP's assessment on these factors.

The Board concludes that the proposed development will not adversely affect the education and recreation resources available in the vicinity of the subject property, especially considering the relatively small scale of the Applicant's project. The area is served by a number of public and charter schools for students from elementary grades through high school. The new development will maintain some open areas on the site by spacing the new buildings at a distance from each other, by meeting zoning requirements for yard setbacks and other development standards, and by providing a rear deck at each dwelling. Additional recreational and athletic resources are available at a large public park located nearby within walking distance of the subject property.

With respect to public safety, including emergency vehicle access, the Board credits the Office of Planning's testimony that the proposed site plan will facilitate circulation through the site by emergency vehicles, including to those dwellings that will be accessible only via the internal street system, to supplement the access that will be possible directly from the abutting public streets. The Board also agrees with OP that public safety will be enhanced by the project layout, which will ensure that the site will be visually permeable due to the open spaces that will be provided between the buildings.

With respect to traffic, parking, and loading, the Board credits the testimony of OP, DDOT, and the Applicant's traffic engineer in concluding that approval of the application will not cause

adverse impacts on the use of neighboring properties. The Applicant's traffic engineer submitted a report (Exhibit 79A) analyzing the generation of vehicle trips anticipated at the proposed development. Based on an analysis of capacity (level of service) and queuing, the report indicated that the development will not have an adverse impact on the surrounding roadway network, given the relatively low number of trips the project could be expected to generate. The Applicant coordinated with DDOT on the scope of the study, and DDOT concurred with its findings that site-generated vehicle trips will have minimal impact on the adjacent roadway network during commuter peak hours. DDOT concluded that the development might lead to minor increases in vehicle, transit, pedestrian, and bicycle trips on the localized transportation network as well as slightly reduced availability of street parking within the immediate area, but described the potential impacts as minor. In stating no objection to approval of the application, DDOT noted that the new development will accommodate loading and trash pick-up activities on private property with head-in/head-out movements at intersections with public streets, consistent with DDOT standards.

For the reasons already mentioned or discussed below, the Board concludes that the proposed development will comply with the substantive intent and purpose of the Zoning Regulations and will not be likely to have an adverse effect on the present character and future development of the neighborhood, consistent with Subtitle C § 305.6. The application proposed a residential development consistent in type and scale with existing residential uses in the surrounding neighborhood, without creating adverse impacts on the use of nearby properties.

Subtitle X § 901.2. The Board concludes that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, as is required for approval of the application under Subtitle X § 901.2. Approval of the application is consistent with the Residential Apartment (RA) zoning designation of the subject property, which permits urban residential development in areas identified as moderate- or high-density residential areas suitable for multiple dwelling unit development and supporting uses. In particular, approval of the application is consistent with the intent of the provisions of the RA zones to provide for the orderly development and use of land and structures in areas characterized by predominantly moderate- to high-density residential uses, to permit flexibility by allowing all types of residential development, promote stable residential areas while permitting a variety of types of urban residential neighborhoods, to promote a walkable living environment, and to encourage compatibility between the location of new buildings and the existing neighborhood. The new development will also be consistent with the purposes of the RA-1 and RA-4 zones to permit flexibility of design by permitting all types of urban residential development that conform to applicable development standards for height, density, and area requirements. The density of the Applicant's proposed distribution of dwellings on a split-zoned site is consistent the predominantly low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments, called for in the RA-1 zone as well the predominantly medium- to high-density residential development anticipated in the RA-4 zone.

Approval of the application will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map. The application proposed a new

residential development at a density that will comply with applicable development standards and will be consistent with existing residential development in the surrounding area. The Board credits the testimony of the Applicant and the Office of Planning in concluding that the project will not cause adverse impacts with respect to light, air, or noise on the use of adjoining properties, given the relatively small size of the project, a development of principal dwellings arranged in buildings with adequate space between them to ensure the continued provision of light and air both to the Applicant's property and to nearby residences. The new construction will comply with applicable development standards, including with respect to building height and yard setbacks. Similarly, the new development will not tend to affect the privacy available to any existing dwelling, given the distance between the Applicant's project and any neighboring dwellings, and the landscaping measures that will provide buffers between the new and existing dwellings. The Board credits the study done by the Applicant's transportation engineer and the testimony of DDOT in concluding that the development will not create adverse impacts with respect to traffic, parking, or related safety concerns, especially considering the relatively small size of the new development, its internal system of streets, and the existing capacity of nearby public streets. The development will utilize a single curb cut, thereby avoiding potential danger to pedestrians arising from multiple points of vehicular access to the site. The interior street system will comply with the zoning requirement for width at 24 feet, ensuring adequate access and maneuverability for the residents' vehicles as well as for emergency vehicles, deliveries, and service vehicles including trucks used for the collection of trash and recyclables.

The party in opposition described the subject property as a park and recreation space and objected to potential adverse environmental impacts of the planned development.⁶ The Board does not agree, noting the Applicant's testimony in the record describing the poor condition of the existing trees and a history of dumping at the site as well as OP's description of it as "a vacant property long anticipated for development." (Exhibit 56.) The Applicant will implement several measures to address and mitigate any adverse environmental impacts of the development, including the two-for-one replacement of trees of types selected in collaboration with the Urban Forestry Division and the reservation of almost 42,000 square feet of the site as green space, notably including the establishment of bioretention area/rain garden in the northern portion of the subject property.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.).) For the reasons discussed above, the Board agrees with OP's recommendation that, in this case, the application should be approved.

⁶ The party in opposition also argued that the request for zoning relief must be denied for reasons including that the Applicant lacked the legal authority to file the application and that the development would not meet applicable requirements for rear yard and lot occupancy. The Board was not persuaded by these assertions, which were in some respects outside the Board's purview in this proceeding and in other respects were inconsistent with the Zoning Regulations (such as the allegations about insufficient rear yard setbacks) or were contravened by the testimony and evidence submitted by the Applicant, the Office of Planning, and DDOT.

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The Board is also required to give “great weight” to the issues and concerns raised by the affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.)); *see also* Subtitle Y § 406.2.) In this case, ANC 5C submitted a letter in support of the amended application, without stating any issues or concerns about the proposal. For the reasons discussed above, the Board concurs with ANC 5C that the revised application should be approved.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions under Subtitle C § 305.1 for a theoretical lot subdivision and under Subtitle U § 421 to allow a new residential development of 51 townhouse dwellings in the RA-1 and RA-4 zones at property bounded by Eastern Avenue, Bladensburg Road, and Fort Lincoln Drive, NE. (Square 4325, Lots 802 and 44, and Parcel 0174/15). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown at Exhibit 47 of the record.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Anthony J. Hood 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: April 20, 2022

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.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, 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 SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING

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THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, 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.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



**BZA Application No. 20184-A
Fort Lincoln-Eastern Avenue, LLC
Property bounded by Eastern Avenue, Bladensburg Road, and
Ford Lincoln Drive, N.E. (Square 4325, Lots 802 and 44, and Parcel 0174/15)**

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

**SUMMARY ORDER ON REQUEST FOR
ONE-YEAR TIME EXTENSION**

ORIGINAL APPLICATION. In Application No. 20184, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Fort Lincoln-Eastern Avenue LLC (the “Applicant”) 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. The Board issued Order No. 20184 on April 20, 2022 (the “Order,” Exhibit 3). Pursuant to Subtitle Y § 604.11, the Order became effective ten days after issuance. Pursuant to Subtitle Y § 702.1, the Order was valid for two years from the time it became final.

REQUEST FOR ONE-YEAR TIME EXTENSION. On March 29, 2024, the Applicant submitted a request that the Board grant a one-year extension of Order No. 20184. (Exhibits 1-4.)

NOTICE OF THE REQUEST. Pursuant to Subtitle Y §§ 705.2(a), the Applicant provided proper and timely notice of the request for time extension to the parties to the underlying case. (Exhibit 4.)

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission (“ANC”) 5C.

ANC REPORT. The ANC did not submit a report to the record regarding this time extension request.

OFFICE OF PLANNING (“OP”) REPORT. OP submitted a report recommending approval of the time extension. (Exhibit 6.)

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DISTRICT DEPARTMENT OF TRANSPORTATION (“DDOT”) REPORT. DDOT did not submit a report to the record regarding this time extension request.

CONCLUSIONS

This request for extension is pursuant to Subtitle Y § 705 of the Zoning Regulations, which permits the Board to extend the time periods in Subtitle Y § 702.1 for good cause shown upon the filing of a written request by the applicant before the expiration of the approval.

Pursuant to Subtitle Y § 705.2(a), the Applicant shall serve on all parties to the application and all parties shall be allowed 30 days to respond. Pursuant to Subtitle Y § 705.2(b), the Applicant shall demonstrate that there is no substantial change in any of the material facts upon which the Board based its original approval of the application. Finally, under Subtitle Y § 705.2(c), good cause for the extension must be demonstrated with substantial evidence of one or more of the following criteria: (1) An inability to obtain sufficient project financing due to economic and market conditions beyond the applicant’s reasonable control; (2) an inability to secure all required governmental agency approvals by the expiration date of the Board’s order because of delays that are beyond the applicant’s reasonable control; or (3) the existence of pending litigation or such other condition, circumstance, or factor beyond the applicant’s reasonable control.

Based upon the record before the Board and having given great weight to the appropriate recommendations and reports filed in this case, the Board finds that the Applicant has met the criteria of Subtitle Y § 705.2 to extend the validity of the underlying order.

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

DECISION

It is therefore **ORDERED** that the request for a one-year time extension to the validity of the Board’s approval in Order No. 20184 is hereby **APPROVED**, and the Order shall be valid until **APRIL 20, 2025**.

VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Anthony J. Hood to APPROVE)

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

A majority of the Board members approved the issuance of this order.

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ATTESTED BY:


SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: June 26, 2024

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.

