

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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SPECIAL PUBLIC MEETING

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TUESDAY,
APRIL 8, 2008

The Special Public Meeting convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Ruthanne G. Miller, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

RUTHANNE G. MILLER	Chairperson
MARY OATES WALKER	Board Member
SHANE L. DETTMAN	Board Member
	(NCPC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Secretary
BEVERLEY BAILEY	Sr. Zoning Spec.
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from the Special Public Meeting held on April 8, 2008.

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P-R-O-C-E-E-D-I-N-G-S

10:18 a.m.

CHAIRPERSON MILLER: Good morning, ladies and gentlemen. This meeting will please come to order. This is the April 8th Public Meeting of the Board of Zoning Adjustment of the District of Columbia. My name is Ruthanne Miller, I'm the Chair. Joining me today to my left is Ms. Mary Oates Walker and Shane Dettman on the Board. And next to Mr. Dettman is Clifford Moy from the Office of Zoning, Sherry Glazer from the Office of Attorney General and Beverley Bailey from the Office of Zoning.

Copies of today's meeting agenda are available to you and are located to my left in the wall bin near the door. We do not take any public testimony at our meetings unless the Board asks someone to come forward.

Please, be advised that this proceeding is being recorded by a Court Reporter and is also webcast live.

1 Accordingly, we must ask you to refrain from
2 any disruptive noises or actions in the
3 hearing room. Please, turn off all beepers
4 and cell phones.

5 This morning we have a Special
6 Public Meeting in which we will be
7 deliberating on one case. And after this
8 meeting, we will then go into our Public
9 Hearing session.

10 So with respect to the Public
11 Meeting, does the staff have any preliminary
12 matters?

13 MR. MOY: No, Madam Chair.

14 CHAIRPERSON MILLER: In which
15 case, let's proceed with the agenda.

16 MR. MOY: Yes, good morning, Madam
17 Chair and Members of the Board. The first and
18 only case for the Special Public Meeting is
19 Application No. 17741 and this is of Fort
20 Lincoln - Eastern Avenue, LLC, pursuant to 11
21 DCMR 3104.1 and 3103.2, for a special
22 exception under section 353, a new residential

1 development, and section 2516, theoretical
2 lot, and a variance relief from the floor area
3 ratio under section 2516.4, to construct, this
4 is an amended amount, 56 residential dwelling
5 units.

6 This is 28 stacked townhouses and
7 four separate buildings in the R-5-A and R-5-D
8 Districts on property bounded by Bladensburg
9 Road, N.E., Eastern Avenue, N.E., and Fort
10 Lincoln Drive, N.E. This is in Square 4325,
11 Lots 44, 802 and Parcel 174/15.

12 Staff also notes that the
13 applicant has already also amended the
14 application for additional zoning relief,
15 which includes variance from the FAR
16 requirements, which is under section 402 in
17 the proposed lots in the R-5-A District and
18 from the side yard requirements section 405 in
19 one of the proposed lots in the R-5-D
20 District.

21 As the Board will recall, on April
22 1, 2008, the Board completed public testimony,

1 closed the record and scheduled this decision
2 on April the 8th. The Board requested that
3 the applicant provide additional information
4 to supplement the record. That filing was
5 made, Madam Chair, and is identified as
6 Exhibit 29, a filing from the applicant dated
7 April 4, 2008.

8 With that, Madam Chair, the staff
9 is going to conclude its briefing by saying
10 that the Board is to act on the merits of the
11 special exception and multiple variance
12 relief.

13 CHAIRPERSON MILLER: Thank you,
14 Mr. Moy. Why don't we start with the
15 documents that we asked the applicant to file.
16 There was a question with respect to who the
17 owner of the land is in this case. Our
18 regulations at 3113.3 provide that the owner
19 of the property for which the application is
20 made may file an application with the Board.
21 And then 3113.4 allows an authorized agent to
22 file an application.

1 So we do have in the record as
2 Exhibit No. 6, Mr. McClinton-Jackson from the
3 National Capital Revitalization Corporation
4 stating that he was the authorized
5 representative of the owner and that he had
6 authorization to file this.

7 And so we were just following up
8 on how the district had jurisdiction over this
9 property and in response, the applicant filed
10 an excerpt from the Land Disposition Agreement
11 between the District of Columbia Redevelopment
12 Land Agency and Fort Lincoln New Town
13 Corporation.

14 So and then the question is, you
15 know, does that satisfy us with respect to the
16 applicant having authorization to proceed in
17 this case. So does anyone want to address
18 that question?

19 MEMBER WALKER: Madam Chair, the
20 applicant represented that the property was
21 transferred from the Federal Government to the
22 District of Columbia Government and suggested

1 that the Land Disposition Agreement would set
2 out the relationship between the parties, the
3 Federal Government, the D.C. Government and
4 the applicant.

5 And as you mentioned, submitted --
6 they did submit excerpts of the LDA. That
7 document references a Land Transfer Agreement.
8 However, it does not specifically state that
9 the property was transferred to the District
10 Government. And unfortunately, the applicant
11 did not submit the agreement that is
12 referenced as an exhibit to the LDA.

13 CHAIRPERSON MILLER: So it's not
14 exactly conclusive, but do you have an opinion
15 with respect to the authorization of this
16 applicant to go forward in this application?

17 MEMBER WALKER: I think that the--
18 because the document does make reference to
19 the transfer, then we might reasonably assume
20 that the transfer was made, but this
21 particular document is not dispositive.

22 CHAIRPERSON MILLER: Any other

1 opinions?

2 MEMBER DETTMAN: Madam Chair, I
3 concur with everything that Ms. Walker just
4 stated. I'm not sure that the post-hearing
5 filing helped me out too much in terms of
6 clarifying who the current owner is. I'm of
7 the opinion that the actual owner of the
8 property, the deed holder if you will, is
9 still the Federal Government.

10 And I actually raised the question
11 of property ownership, because I was
12 interested to find out what the role of my
13 agency would be in the review of this project.
14 However, given my uncertainty, I don't think
15 that this is any reason to sort of hold up
16 what we need to do here.

17 I think that we can continue to go
18 forward with our analysis and our
19 deliberations and our vote on this project.
20 And if it so happens that NCPC does have some
21 sort of role, whether it be approval or
22 advisory in this project, I think that could

1 be taken up outside of this Board.

2 CHAIRPERSON MILLER: Okay. I
3 would concur also that there is enough
4 evidence in the case that the applicant is
5 authorized to proceed here. It is on behalf
6 of the District, representing the District of
7 Columbia, and no one is contesting that
8 authorization.

9 And also, we have recognized the
10 same entity in a previous BZA case and I know
11 that the Zoning Commission has also dealt with
12 the Fort Lincoln Plan. We will consider the
13 merits of the application.

14 That's Exhibit 25 recommending
15 that the applicant pay \$25,000 towards the
16 upgrade of a traffic signal. And I think we
17 should just discuss that upgrade and the money
18 going towards it in our analysis of the
19 merits. However, I didn't find this
20 particular document necessarily definitive on
21 it.

22 I think we have a situation where

1 we have a part of a document and it's hard to
2 make conclusions based on a part of a
3 document, but I don't think it's necessary, at
4 least for me in my analysis of that issue.

5 And the other item I just want to
6 bring up is a preliminary matter. I think we
7 left the record open for an ANC report. And
8 to the best of my knowledge, that didn't come
9 in. So we can discuss the testimony of the
10 ANC Commissioner, but we won't be in a
11 position to give great weight to any ANC
12 report.

13 Okay. I think that this project
14 raises basically three areas of relief under
15 our regulations. One is special exception
16 relief under 353, because it's a new multi-
17 family residential development in the R-5-A
18 District; special exception relief, because
19 it's a subdivision under 2516; and then third
20 would be the variances from the FAR
21 requirements and the side yard.

22 I think that I would suggest that

1 we start with the special exception 353. I
2 believe it is primarily almost like a
3 reporting section, that they are required,
4 there is a requirement of reports from various
5 agencies for these new residential
6 developments.

7 Well, let me see. Does anybody
8 else want to start with this?

9 MEMBER DETTMAN: Madam Chair, with
10 respect to the special exceptions, I would be
11 happy to sort of take the Board through
12 section 353 as well as 3104. Starting with
13 353.1, requiring that "All new residential
14 developments, except those comprising of all
15 one-family detached and semi-detached
16 dwellings, shall be reviewed by the Board as
17 a special exception."

18 This is a proposal for, and I'll
19 ask my colleagues for assistance in terms of
20 the number of units, because I can't recall
21 off the top of my head, 56.

22 CHAIRPERSON MILLER: Right, 56.

1 MEMBER DETTMAN: Okay. 56
2 dwelling units in 28 stacked townhouses in
3 four separate buildings. Again, in the Fort
4 Lincoln area, which is currently Zoned R-5-A/
5 R-5-D. The property is split-zoned. So this
6 is appropriately before the Board as a special
7 exception.

8 353.2, "The Board shall refer the
9 application to D.C. Board of Education." The
10 application was referred to the Board of
11 Education on October 4th. To date, no report
12 has been filed with the Board or with DCOP, as
13 indicated in the report.

14 353.3, "The application shall be
15 referred to DDOT and DHCD," which it has been.
16 It was referred to DHCD on October 4th. No
17 report was filed.

18 CHAIRPERSON MILLER: And --

19 MEMBER DETTMAN: Yes?

20 CHAIRPERSON MILLER: -- I think
21 the report was filed after this report,
22 perhaps. You're talking about the DDOT

1 report? Because that's the report that asked
2 for the \$25,000 contribution.

3 MEMBER DETTMAN: That's -- I was
4 mentioning the DHCD report.

5 CHAIRPERSON MILLER: Oh, I'm
6 sorry.

7 MEMBER DETTMAN: Yeah.

8 CHAIRPERSON MILLER: I jumped the
9 gun. Okay.

10 MEMBER DETTMAN: Housing Community
11 Development did not submit a report. However,
12 as you stated earlier, DDOT did submit a
13 report on March 24th and DDOT is recommending
14 that the applicant contribute \$25,000 towards
15 the future upgrades at the intersection of
16 Eastern Avenue and Bladensburg Road, that's
17 Exhibit 25.

18 CHAIRPERSON MILLER: So will we
19 talk about that now then?

20 MEMBER DETTMAN: Sure.

21 CHAIRPERSON MILLER: I think
22 that's the really the only controversial piece

1 of the 353 relief that is being sought. As we
2 stated that DDOT has recommended that the
3 applicant contribute \$25,000 to the design and
4 upgrade of the traffic signal at Eastern
5 Avenue and Bladensburg.

6 And in their report, they say that
7 the rationale is "With the proposed
8 development of the condominiums, this
9 intersection would experience a serious
10 degradation as it relates to level of service
11 and delay." And they say that "We're asking
12 the developer to absorb all the cost to
13 mitigate the projected delay of this
14 intersection."

15 And the applicant has opposed
16 this. They have a traffic impact study that
17 shows that the condominium development will
18 have a minimal impact on the intersection.
19 And their projection is that it will account
20 for less than 1 percent of total traffic at
21 the intersection.

22 DDOT, as far as I can see, did not

1 address or challenge applicant's assessment of
2 the impact. And they didn't send a
3 representative to our hearing, who could be
4 cross examined or who could explain the
5 rationale further.

6 You know, usually in a lot of
7 these cases we deal with relief first and then
8 conditions. But I think the way that this is
9 set up with the different analyses under the
10 different provisions of the regs, we ought to
11 address this condition here on the assumption
12 that we were to grant the application.

13 When we impose a condition, we
14 need to assess what the adverse impact is that
15 the condition is supposed to address. And
16 based on my understanding of court opinions,
17 plus common sense, I don't think it's fair to
18 necessarily have an applicant bear the burden
19 of a total traffic problem if, in fact, their
20 project's contribution is only a minimal
21 amount.

22 It is different from a PUD where

1 the Zoning Commission can impose certain
2 amenities, but that's not what this is here.
3 So we need to determine whether this \$25,000
4 contribution is to mitigate the applicant's
5 contribution to a projected traffic problem.
6 Comments?

7 MEMBER DETTMAN: Madam Chair, the
8 way I read the DDOT report, it is requiring a
9 \$25,000 contribution to sort of mitigate the
10 impacts to these intersections that are
11 associated with not only this development, but
12 also other developments that are going on in
13 Fort Lincoln. I think during the hearing when
14 this issue came up, we had inquired about
15 other projects that are currently going on
16 inside Fort Lincoln.

17 It was mentioned that Thurgood
18 Marshall Middle School has a project going on,
19 Dakota Crossing, the Village at Fort Lincoln,
20 Wesley House and the Washington Gateway, many
21 of these, there is a substantial commercial
22 project. I think that's the Washington

1 Gateway. But also, there are a fair number of
2 residential units that are going into Fort
3 Lincoln as well.

4 And so while I think that
5 understanding, you know, with shrinking
6 budgets and a need to sort of for DDOT to try
7 to find funding sources that will help them
8 with upgrades to transportation infrastructure
9 in areas that are experiencing increased
10 development, which is a lot of areas in the
11 city, I'm not so sure that requiring this
12 particular applicant to cover all of the
13 transportation impacts for all of the
14 developments is appropriate.

15 I wouldn't be against this
16 applicant contributing towards their fair
17 share, but not to cover \$25,000 for all of the
18 impacts for all of the projects. And I don't
19 want the Board to think that I'm indicating
20 that there is a number that we need to
21 identify. I just don't think that this is an
22 issue that the Board needs to take up and

1 incorporate in their order.

2 MEMBER WALKER: Madam Chair, I
3 agree. I would also like to point out that
4 the applicant submitted an excerpt of the LDA
5 addressing public improvements and suggesting
6 that the LDA established that the Government
7 is responsible. But again, the particular
8 provision that was submitted is incomplete.
9 It references a development area plan and does
10 not include that plan. So it's impossible for
11 us to rest our decision on this particular
12 provision.

13 CHAIRPERSON MILLER: Okay. I
14 mean, I would agree with both of you. I don't
15 think we should look to the LDA really on
16 this. And I don't think there is evidence in
17 the record, you know, showing that a certain
18 contribution or anything like that is required
19 to mitigate an adverse impact.

20 So I think we can reject the DDOT
21 recommendation and then move on to the rest of
22 our analysis, which I think remains here. The

1 next one talks about referring the application
2 to the Office of Planning, which Office of
3 Planning clearly had the referral and has
4 given us a very comprehensive report, which is
5 somewhat of a road map in this case. So we
6 are giving it great weight as we are
7 deliberating right now.

8 And then the next provision goes
9 to submitting site plans and floor plans,
10 landscaping plans and plans for all new rights
11 of way easements. And, Mr. Dettman, do you
12 have a comment on that, in particular, that
13 whether the record is full? The Office of
14 Planning has stated that the applicant has
15 provided all the required plans.

16 MEMBER DETTMAN: Yes, with respect
17 to 353.5 and the filing requirements, it
18 appears that the applicant has fulfilled that
19 criteria. I did want to bring up and step
20 back to 353.4 for a second, because DCOP in
21 their report, Exhibit 24, they are
22 recommending approval.

1 But they did mention one thing
2 with respect to 2516.6 and the question came
3 up of whether or not the means of ingress and
4 egress were counted towards the calculations
5 for FAR. And I thin it was just FAR. So I
6 didn't know if this was an appropriate time to
7 bring up that discussion or wait until we get
8 into the variance analysis.

9 CHAIRPERSON MILLER: Well, I would
10 say I was thinking that we are about to move
11 into 2516 special exception analysis.

12 MEMBER DETTMAN: Okay.

13 CHAIRPERSON MILLER: And that I
14 believe they have met the requirements for
15 353. We can move into 2516.

16 MEMBER DETTMAN: Okay.

17 CHAIRPERSON MILLER: Now, I just
18 want to say this also that 2516 is kind of
19 lengthy and I don't know that we need to
20 address every single one or whether we might,
21 you know, say that we agree with Office of
22 Planning's analysis.

1 MEMBER DETTMAN: Yeah.

2 CHAIRPERSON MILLER: And then
3 highlight ones that we want to discuss, such
4 as the one you're about to discuss.

5 MEMBER DETTMAN: I would agree
6 with that. I think the applicant, based on my
7 analysis of the application, meets the
8 requirements of 2516. And I agree with DCOP's
9 report.

10 Looking at 2516.6, which states
11 "In providing for net density pursuant to
12 2516.11, the Board shall require at least the
13 following: (A) The area of land that forms a
14 covenanted means of ingress or egress shall not
15 be included in the area of any theoretical
16 lot, or in any yard that is required by this
17 title." I think that's the one provision that
18 the applicant and DCOP sort of differed in
19 their interpretation.

20 On page 9 of the DCOP report, OP
21 states that "The access egress and ingress
22 area is included within the area of each lot

1 by the applicant." The applicant has
2 submitted that these requirements are only
3 applicable to single-family development that
4 includes a private road servicing many homes,
5 rather than the present case. And DCOP goes
6 on to talk about how they think that it should
7 not be included in the calculations for FAR.
8 I believe that's the only one that we are
9 concerned with here.

10 I would tend to agree with DCOP.
11 I think that when 2516.6 talks about a
12 covenanted means of ingress or egress and given
13 the fact that nowhere in the regulations can
14 we find these types of definitions, I would
15 consider a private road, an entrance or exit,
16 an alley, all of these are sort of lumped
17 underneath what I would consider to be means
18 of ingress and egress. And that they should
19 not be included in the calculations.

20 CHAIRPERSON MILLER: I would
21 agree. And then we asked at the hearing then
22 what does that mean to this application and

1 the answer we got was, I think you probably
2 just made reference to this anyway, that it
3 increases the degree of variance relief that
4 they would need from the FAR requirements.

5 But Office of Planning didn't say
6 that it increased it to any degree that would
7 cause them to change their position with
8 respect to supporting the application. I
9 think we also need to address, unless there
10 are any other comments on that issue, the next
11 two provisions, because I think that they need
12 modification by the Board.

13 (B) goes to, it says, "Not
14 withstanding any other provision of this
15 title, each means of vehicular ingress or
16 egress to any principal building shall be 25
17 feet in width, but need not be paved for its
18 entire width."

19 And Office of Planning report
20 represents that the entrance/exit and alleys
21 would be 20 feet. And then there is no
22 turnaround provided, which is set forth in

1 (C). It says that "If there are not at least
2 two entrances or exits from the means of
3 ingress or egress, a turning area shall be
4 provided with a diameter of not less than 60
5 feet."

6 (D) says that "The Board can
7 modify the requirements of (B) and (C) if we
8 find that they are not likely to have an
9 adverse effect on the present character and
10 future development of the neighborhood,
11 provided that the Board shall give specific
12 consideration to the spacing of buildings and
13 the availability of resident, guest and
14 service parking."

15 And Office of Planning goes on to
16 analyze this finding that there is no impact
17 in those areas and I would concur with that.
18 And DDOT didn't find any issue with these
19 provisions.

20 Okay. With respect to adopting
21 the provisions that we are not specifically
22 discussing in the OP report, I think I want to

1 say that 2516.4 references five lots, "that
2 the property would be subdivided into five
3 lots," but I think the plans now changed and
4 then there are four lots. So I want to make
5 sure that's accurate.

6 I'll just make a comment on
7 2516.9. There's a reference in the recreation
8 area to tot-lots and we had a very brief
9 discussion on whether or not the plan
10 indicating tot-lots would mean that the area
11 would be frozen forever for tots and when the
12 kids got older, they couldn't use it for play
13 area.

14 And I just want to say that it's
15 certainly my intent, I think probably the
16 intent of the Board, that that not be read so
17 rigidly, that this area could be used for play
18 area as the kids got older. But I don't think
19 it requires a condition in this case. It will
20 be in the record. If you all agree to that?
21 Okay.

22 Okay. I just want to make one

1 other comment with respect to the traffic,
2 because I did see this in the applicant's
3 traffic report as well. But it says that the
4 study recommends optimizing signal timing at
5 Bladensburg Road/Eastern Avenue during the
6 a.m. peak hour to mitigate the impact from the
7 development.

8 I mean, I assume that's to be
9 worked out with DDOT. And that is what was
10 identified as the applicant's assessment of
11 how to mitigate the impact from their
12 development. Okay. Any other comments on
13 2516? OP has recommended approval of that
14 relief.

15 And so now, we can go to the
16 variance relief. The applicant is seeking
17 variances from the FAR requirements and from
18 side yard. I think I'm going to separate
19 them, but there is an overlap to a certain
20 extent, but I think we can start with the FAR.

21 I think, to me, we heard a lot of
22 different statements as to how this property

1 was exceptional, but what I found most
2 compelling was the fact that it's split-zoned
3 between the R-5-A and the R-5-D, which have
4 very different FAR requirements and that that
5 was an exceptional situation.

6 And it leads to the practical
7 difficulty in this case of creating a
8 development that reads as one, as opposed to
9 if the applicant were to comply strictly with
10 both, they would be very different looking in
11 each part.

12 So basically, the applicant needs
13 relief in the R-5-A Zone, which permits an FAR
14 of 0.9. And the proposed lots in the R-5-A
15 area include FAR of .93 and 1.02. Now, these
16 were the calculations based on not counting
17 the ingress/egress. We don't have any
18 evidence in the record that it is going to
19 make a huge difference in our analysis here.

20 So I think it's a pretty small
21 amount. And the overall FAR, again this is
22 just, I guess it could be adjusted to be more

1 accurate later, in general, the Office of
2 Planning worked with these figures as well and
3 was projected to be 0.89 under the allowed
4 amount.

5 And when I looked at the regs, it
6 says R-5-D allows 3.5. So the applicant has
7 actually built way below the FAR requirement
8 for the R-5-D section. So we have practical
9 difficulty here of, one, making them read as
10 one and then the representative of the
11 development testified that -- we had talked
12 about what would be the consequence to comply?
13 And it would be the elimination of a couple of
14 these units for each variance.

15 I mean, each unit has a stacked
16 townhouse, so it would be really, you know,
17 two dwelling units each. And we considered
18 the fact that this was work force housing and
19 that that compliance would be the elimination
20 of work force housing and also they said they
21 are also trying to provide a certain amount of
22 housing for teachers in nearby schools.

1 So in evaluating this practical
2 difficulty, we need to weigh the burdens of
3 compliance with the degree of the variance
4 relief. And to me, it looks like a small
5 variance relief and would result in somewhat
6 of a great burden in eliminating this housing.

7 And then we get into whether there
8 is a substantial detriment. And I don't see
9 a substantial detriment, in that the overall
10 FAR is below, for the whole project, the R-5-A
11 maximum, and that the project is consistent
12 with the scale and bulk of neighboring
13 properties. It is consistent with the
14 comprehensive plan. It is consistent with the
15 Fort Lincoln Urban Renewal Plan and it
16 provides work force housing, which is a big
17 need in the city.

18 So I think I'm going to open this
19 up for other comments before going on to side
20 yard.

21 MEMBER WALKER: Madam Chair, I
22 think you covered the issue well. I was

1 persuaded by the fact that the initial design
2 included an additional building and that the
3 plan was actually revised to eliminate one
4 building to take the overall FAR down, and
5 that the overall FAR for the development is
6 .89 is significant.

7 MEMBER DETTMAN: I agree, Madam
8 Chair. I think with respect to the first
9 prong of the test, I think the fact that the
10 property is split-zoned is probably the factor
11 that probably has the most influence on the
12 applicant not being able to meet the zoning
13 requirements.

14 However, during the testimony, I
15 think that the applicant had sort of laid out
16 four different factors that they felt
17 contributed to the first prong of the test.
18 I think one was about the wide right-of-way of
19 Eastern Avenue, which I think that we had
20 decided that may not actually be a factor in
21 preventing them from coming into compliance
22 with the Zoning Regs.

1 Another one was the irregularly-
2 shaped lot. I'm not so sure that I agree
3 that. But the last one, the fourth factor
4 they brought up was the steep grade and the
5 topography of the site. And while the
6 majority of the site seems like it is
7 relatively flat or not impossible to build on,
8 I can agree with the applicant with respect to
9 the grade along Fort Lincoln Drive where it
10 looks like there is a fairly steep grade that
11 may prevent the applicant from building up to
12 Fort Lincoln Drive.

13 And I'm looking at the existing
14 conditions plan and it looks like there is
15 actually a 10 foot building restriction line
16 along Fort Lincoln Avenue. So those two
17 factors look like they could prevent the
18 applicant from building up, so it's pushing
19 their houses further back into the lot, which
20 might make it a little bit more difficult for
21 them to meet the FAR requirements.

22 And so I think that with respect

1 to the first prong, the two factors that are
2 really sort of playing in here are the idea
3 that the property is split-zoned as well as
4 the grade of the property.

5 CHAIRPERSON MILLER: Okay. Thank
6 you. And then last, we have the side yard
7 variance. And it is just next to one of the
8 buildings. And the required side yard for
9 that one is 11 feet and at its narrowest
10 point, the side yard provided is 9.38.

11 The exceptional condition in this
12 case that was represented to us is the, can I
13 say it right, curvelinear lot line adjacent to
14 the proposed theoretical lot. And it is next
15 to a driveway. The only way that they could
16 comply with the regulations, I believe in this
17 case, would be to eliminate one of those
18 units, which contain two townhouses.

19 And so that's the practical
20 difficulty here. It looks to me as if the
21 relief in this case could be characterized as
22 de minimis. It's 1.62 feet and weighed

1 against the burden to the applicant, which
2 would be the elimination of two units, there
3 is no substantial detriment in the sense that
4 it is next to the driveway in the development,
5 so there is no impact on any neighbor.

6 The closest impact is the building
7 on the other side of the driveway and there is
8 really no impact there. So that's how I see
9 that one. Any comments on that variance?

10 MEMBER DETTMAN: I would agree,
11 Madam Chair. I think with the relative
12 insignificance of the degree of the relief
13 that's necessary from side yard, with
14 consideration to the sort of the standoff that
15 the applicant has required from Fort Lincoln
16 Drive, given the grade along that side, it is
17 sort of pushing the townhouses closer to this
18 driveway.

19 And I guess the idea of
20 eliminating two townhouses, one could sort of
21 just have the response that well, so what?
22 But I think it was well-established by the

1 applicant that the elimination of these two
2 townhouses could jeopardize the economics of
3 the project in total.

4 CHAIRPERSON MILLER: Yeah. I want
5 to say we didn't, you know, pursue that in
6 depth either. We didn't say, you know,
7 provide us the economics on this. But I think
8 it was sufficient, because we have the
9 testimony of the applicant, because of the de
10 minimis nature, really, of the variance
11 relief.

12 I think, yeah, that that would
13 suffice in this case. It wasn't a real
14 question. Oh, and the work force housing,
15 that's what I was trying to think of. That we
16 weren't just taking away for-profit housing.
17 It would actually be removing housing for a
18 great need in this city. So all those three
19 factors, I think, go into that analysis.

20 The other comment I want to make
21 is again that we did hear testimony of
22 Commissioner Robert King from ANC-5A. I think

1 he was a Single Member District Commissioner
2 from 5A12 strongly in support of the
3 application, saying that the community has
4 been waiting for years for this development
5 and welcomes it.

6 I don't believe we have any
7 opposition on the record. Any other comments?
8 Okay. Do we have a motion? Otherwise, I'll
9 do the motion. Okay. I'll move approval of
10 Application No. 17741 of Fort Lincoln -
11 Eastern Avenue, LLC, pursuant to 11 DCMR
12 section 3104.1 and 3103.2, for a special
13 exception under section 353, new residential
14 development, and section 2516, theoretical
15 lot, and variance relief from the floor area
16 ratio under section 2516.4, to construct
17 residential dwelling units in the R-5-A and R-
18 5-D Districts on the property bounded by
19 Bladensburg Road, N.E., Eastern Avenue, N.E.,
20 and Fort Lincoln Drive, N.E.

21 And this is for 56 units. Let me
22 see if I covered everything. I covered

1 variance from the FAR requirement and from the
2 side yard requirement.

3 MEMBER WALKER: Second.

4 CHAIRPERSON MILLER: Okay. Any
5 further deliberation?

6 All those in favor say aye.

7 ALL: Aye.

8 CHAIRPERSON MILLER: All those
9 opposed? All those abstaining?

10 MR. MOY: Madam Chair?

11 CHAIRPERSON MILLER: Can you call
12 the vote, please?

13 MR. MOY: The staff didn't catch
14 the second on the motion. Is there a second
15 on the motion? Ms. Walker? Okay. I'm sorry.
16 Staff would record the vote as 3-0-1 on the
17 motion of the Chair to approve, seconded by
18 Ms. Walker. Also in support of the motion Mr.
19 Dettman. We have no other Board Member
20 participating on this case. 3-0-1.

21 Madam Chair, we also have an
22 absentee ballot from Mr. Turnbull, who also

1 participated on the application. And his
2 absentee vote is to approve the application.
3 The staff could read his very brief comments,
4 which reads:

5 "The relief sought" -- the staff
6 is going to take liberty that Mr. Turnbull is
7 referring to the variance reliefs. "The
8 relief sought is de minimis considering what
9 could be built as a matter-of-right. This
10 project represents a sensitive and rational
11 approach."

12 So that would leave a resulting
13 vote of 4-0-1.

14 CHAIRPERSON MILLER: Thank you.
15 And this can be a summary order, as there is
16 no opposition party in this case.

17 MR. MOY: Very good.

18 CHAIRPERSON MILLER: I believe we
19 don't have anything else on our Special Public
20 Meeting agenda. Is that correct?

21 MR. MOY: That's correct, Madam
22 Chair.

1 CHAIRPERSON MILLER: Okay. Then
2 the Special Public Meeting is adjourned.

3 (Whereupon, the Special Public
4 Meeting was concluded at 10:58 a.m.)
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