



PO Box 41025
Washington DC 20018

February 21, 2025

Via IZIS

Frederick L. Hill, Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street, N.W., Suite 200-S
Washington, D.C. 20001

Re: **Opposition** To Application for a Time Extension of BZA Order Nos.
20184 and 20184-A (Square 4325, Lots 802 and 44, Parcel 0174/15)

Dear Chairperson Hill and Members of the Board:

The Fort Lincoln Civic Association, Inc. (“FLCA”) opposes the application by Fort Lincoln-Eastern Avenue, LLC for a one-year extension of BZA Order Nos. 20184 and 20184-A, until April 20, 2026.

Title 11, Subtitle Y, Section 705.2(a)-(c) of the BZA’s rules state that the Board will only grant an extension of time if **each** of the three requirements set forth in Section 705.2(a)-(c) are met. The FLCA opposes the extension request because it plainly does not meet the second of the three **mandatory** requirements in Section 705.2(b).

Title 11, Subtitle Y, Section 705.2(b) clearly sets forth the requirement that dooms this application for an extension of time:

705.2 The Board may 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; **provided that the Board determines that the following requirements are met**

(b) There is **no substantial change** in any of the material facts **upon which the Board based its original approval of the application** that would undermine the Board’s justification for approving the original application . . . (emphasis supplied).

Board of Zoning Adjustment
District of Columbia
CASE NO.20184B
EXHIBIT NO.6

The Board's April 20, 2022 *Decision And Order*, that granted the original application in this case (following an evidentiary hearing that took place on July 1, 2020), was based on thirty (30) *Findings of Fact. Decision And Order* at 3-7. Two of those findings are material facts that have substantially changed (indeed in one case a vacant lot has been supplanted by the largest public works project in Ward 5 history!) since the Board received evidence, and made findings, regarding them in July of 2020. Either of these changes independently undermine the Board's justification for approving the original application. The Applicant may, of course, file a new application if it believes it can recast its application to reflect, and adapt to, these changed circumstances. We think it will not be able to. But, that is not the issue now before the Board. The issue before the Board is whether either, or both, of two substantial changes in the material facts found by the Board, when it issued its April 20, 2022 *Decision And Order*, **mandate** a denial of the application for an extension of time.

The two material and independently dispositive facts that the Board expressly relied on in its *Findings of Fact* are set forth below. And under each are the indisputable, and **independently** substantial, changes to those facts that exist now that did not exist in July of 2020 when the evidence in this case was presented.

Finding of Fact No. 24

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.

Decision And Order at 6 (BZA April 20, 2022).

Because the Applicant recognizes that this is a finding of **material** fact, at page two of its application for extension of time the applicant assures this Board: "While proposals for the potential redevelopment of the . . . former Thurgood Marshall Elementary school site (which is located to the south of the Property, across Fort Lincoln Drive, NE) have been sought, **no specific development proposals have been made and the redevelopment of th[e] site[] would not significantly impact the Project or the Board's approval of the Project.**" (bolding supplied)

That is an emphatically (and documentably) false statement of material fact. The opposite, and clearly material, fact is true. **Less than one block away**, the construction of an almost \$50 million dollar Community And Early Childhood Education Center (and substantial improvements to the **27 acre** park around it), has been approved and the start of construction is imminent. And it will take at least two years for this huge public works construction project to be completed:

Fort Lincoln Recreation Center



- **Project Website:**
 - www.dgs.dc.gov/page/fort-lincoln-campus-improvement-project
- **Budget:**
 - \$49,548,000
- **Description:**
 - New Facility includes gymnasium, fitness center, arts & crafts room, senior lounge, teen / tech lounge, multipurpose rooms, kitchen, elevated indoor walking track, Early Childhood Education Center. Park improvements include ADA upgrades, hardscape replacement, new playground, lighting upgrades, sport court upgrades, additional parking, and landscaping.
- **Project Status: (Permitting)**
 - Projected Groundbreaking: Late Winter / Early Spring 2025
 - Construction End: Fall 2026 – Spring 2027



(Note the website link, above, for further information regarding this indisputable fact.)¹

Because the Community And Early Childhood Education Center (and the surrounding park) is located just one block (if that) from the proposed luxury housing construction site in BZA Case No. 20184B, its construction, *and then ongoing use and operation*, is a substantial change from the “closed in 2014 former elementary school” that **Finding of Fact No. 24** found occupied that land on April 20, 2022, and that the Board relied on.

As we explain, below, this change is a dramatic and material one that clearly undermines and upends the Board’s justification for approving the original application.

First, for context, we note that the luxury housing construction project proposed in BZA No. 20184B is entirely new construction. That means it, necessarily, will require: (1) deforestation of the many trees on one acre of the designated lot, (2) laying water, sewer, gas, electric and optic cable lines for the luxury town homes and (3) shutting down traffic

¹ At a virtual February 10, 2025, *Ward 5 Capitol Project Update Meeting* the Department of Parks and Recreation announced that the only remaining pre-construction step is the approval, by the D.C. Council, of any construction contracts that exceed \$1 million dollars. See D.C. Code §1-204.51. “[T]he Council shall be deemed to approve a contract if — (A) during the 10-day period beginning on the date the Mayor submits the contract to the Council, no member of the Council introduces a resolution approving or disapproving the contract.” D.C. Code §1-204.51(2)(A).

There is no reason to believe that the contract(s) will not be deemed approved within that ten day period. Thus, the DGS website states: “Projected Groundbreaking: Late Winter/Early Spring 2025.”

altogether to permit heavy construction equipment and materials to be trucked in, and trees cut, logged and carried out. And because the land has a huge valley in it, and is not level, many tons of dirt would have to be trucked in to level it out. And steel or wooden trenches would have to be pneumatically pounded in (with the echoes reverberating for blocks around), as a retainer wall is constructed, to keep the soil from collapsing along the circumference. See <https://www.slackdavis.com/blog/trench-collapses/>

Second, and more importantly, if the application for an extension of time is granted, that means while this supposedly **three year** long luxury home construction project is on-going, for at least two of those three years, just one block away, a much larger public works construction project (costing almost \$50 million dollars as opposed to \$31 million dollars for this project) will be noisily commandeering those same surrounding streets in an effort to keep that huge project on its very ambitious (and likely unrealistic) two-year schedule, by working long hours and (at least) six days a week. It will be the largest combined Community and Early Childhood Education Center ever built in the District of Columbia. Accordingly, because of its unilateral ability to dominate all surrounding streets, the District of Columbia has the ability to make it a priority over any competing construction project.

The resulting consequence is that, if an extension of time were granted, two major construction projects would be going on, within one block of each other, in a **residential** neighborhood, for at least two of the next THREE YEARS (and likely more if construction of both are attempted simultaneously). That is a hugely unaddressed and material change from the shuttered, non-traffic generating, closed (and demolished in 2019) elementary school that was at that site, and whose non-existence the Board expressly cited and relied on, as *Finding of Fact No. 24* in its April 20, 2022 *Decision And Order*.

The FLCA is of the view that even a newly filed Application has no hope of ameliorating this reality. If both the estimated \$31 million luxury housing project proposed in BZA 20184B, and the almost \$50 million Community Center/Early Childhood Education Center are completed (after a new and radically revised application is filed for the site in this case), the impact on the neighborhood would then be compounded, into perpetuity. The surrounding narrow streets will be packed with cars as Ward 5 residents arrive in the morning to drop off their children at the only **free** Early Childhood Education Center in the District of Columbia. They will then turn right around and attempt to leave down those same narrow streets (as employees of the Community And Early Childhood Education Center, and Ward 5 residents, report to work or arrive to use the **free**, state-of-the-art fitness center before or after work). And that will be repeated at 5 or 6 pm when parents have to pick up their toddlers. Except that, just as in the morning, they will be joined by the up to 51 households driving in and out of the single, combined exit/entrance to and from the proposed 51 townhome development. And they, in turn, will be joined by traffic from the newly expanded (since the hearing in this case in July 2020) Shops at Dakota Crossing – all attempting to merge into the same two lanes of traffic, which requires navigating around a curve on Fort Lincoln Drive, then proceeding straight downhill on Eastern Avenue in snowy, icy and rainy conditions as all of those construction and other vehicles barrel down that incline and directly towards the only entrance/exit from the proposed development.

The Fort Lincoln Civic Association is confident the BZA does not want the consequences of that looming catastrophe on its conscience.

In summary, there is an obvious reason why the Applicant “overlooked” acknowledging, much less addressing, this mind boggling change in the facts found and relied on by the Board in its April 20, 2022 *Decision And Order*. And the reason is that its material impact cannot be explained away and, more importantly, Title 11, Subtitle Y, Section 705.2(b) makes this material change of the facts, with all of its ramifications, **fatal** to the application for an extension of time.

Finding of Fact No. 25

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) (bolding supplied).

Decision And Order at 6 (BZA April 20, 2022).

Another independently material fact, upon which the Board expressly based its *Decision And Order*, was the presence of the Shops at Dakota Crossing -- **as it existed in July of 2020**, when the only evidentiary hearing in this case took place.

There are two traffic impact studies in the record. One does not address the traffic generated by the Shops at Dakota Crossing **at all**. *Report of the District Department of Transportation* at 2 (Jan. 31, 2020) (analyzing only the impact of the proposed development, **itself**, on “vehicle, transit, pedestrian, and bicycle trips on the localized transportation network . . .”). The other study, funded by the Applicant, did not address the impact that **full** occupancy of the Shops, based on particular types of retail stores (sit down restaurants for example), would have. *See Fort Lincoln Eastern Avenue Townhomes Traffic Assessment* (July 27, 2020). Indeed, in July 2020 (at the height of the Pandemic) it was completely unknown whether the Shops at Dakota Crossing would ever even achieve full occupancy, and if so, what kind of traffic-generating businesses those new occupants would be. And the **historic** traffic volumes that the developer-funded study relied on provided no insight because, historically, the Shops at Dakota Crossing did **not** exist, or certainly was not at full occupancy – far from it.

In July of 2020, when evidence in this case was received, there were only 15 retail businesses at the right-down-the-street Shops at Dakota Crossing. Today, the shopping center supplies the overwhelming majority of the traffic, seven days a week, along every road leading to the proposed development. And that is because, today, there are an additional 12 retail stores, including **seven** sit-down restaurants, that were not at The Shops in

July of 2020. That is almost double the number of public-facing retail establishments that operated in July of 2020. See, below, found at <https://ftlincoln.org/history/#1970s>



(Note: This chart does not capture “Cold Stone Creamery,” which opened Jan. 2023.)

That is a whopping **44% increase** in the number of retail stores that attract thousands of **additional** automobiles throughout the day, in contrast to 2020, when those stores did not exist. Were they not operating successfully, with long term leases, they would not be there. See <https://cbre.stg.propertycapsule.com/p/retail-real-estate-listings/Washington-DC-/theshopsatdakotacrossing#highlights> (“[T]he Shops at Dakota Crossing benefits from easy access and excellent visibility to an average of 100,000+ vehicles per day.”)

CONCLUSION

Had the applicant in BZA 20148B begun construction when its application was approved by the Board on April 20, 2022, construction of the luxury townhomes it has supposedly been planning since at least 2008, would be completed by now. Moreover, in explaining the extraordinary delay, that places it in this position, the applicant has run into a problem of its own creation. In both its first, and now its second application for an extension of time, the applicant blames its lack of forward progress on difficulty in getting the District to convey title to the property to it. So, for example, in its current application for an extension

of time the applicant states that “On December 17, 2024, the Applicant [finally] acquired title to the Property from DMPED.” *Application* at 3 (Jan. 24, 2025).

But this body expressly relied on the exact **opposite** representations to the Board, at the time of the filing of, and at the hearing on, the original application – the Applicant’s assurance that all issues related to title and the transfer of ownership had been **resolved**. And so, in its April 20, 2022 *Decision And Order* in this case the Board found and made this Finding of Fact:

Finding of Fact No. 22

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.**

Decision And Order at 5 (BZA April 20, 2022).

Thus, the applicant’s claim that it has expended \$295,853.00 on permit fees is not just a consequence of the Board granting its original application. More directly, It is a consequence of the Applicant presenting sworn testimony, that it presented as **fact** to the Board, that turned out not to be true. **And the developer, not the affected community, must bear the consequences of those false (and sworn) assurances to the Board.**

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The narrow, curved, and downhill road parallel to the proposed development site was never intended, and cannot effectively handle, two major and simultaneous construction projects, much less (in perpetuity) the congested and dangerous conditions that would exist thereafter. **For that reason, ANC 5C has withdrawn its support for the original application, *nunc pro tunc*** (yet, another, **material** change in the facts that undermine the Board’s justification). Likewise, and because **half of the proposed site is former National Park Service land** (see Attached update on the funding that has become available for its actual **site-appropriate use**), the Fort Lincoln Civic Association, Inc. (on behalf of our 5,000 person community), opposes the application for what would be a **catastrophic** 2nd extension of time.

Respectfully submitted,

/s/Emma James

Emma James, Representative
Fort Lincoln Civic Association, Inc.
megantoering@gmail.com

PUBLIC FUNDS AVAILABLE TO RETAIN PARK LAND FOR PARK PURPOSES!!



RFK Stadium Site Transfer

A headline in this week's news is the official approval by the Council for the transfer of the RFK Stadium site to District control. As we anticipate what comes next, **it is critical that the Council not serve as a rubber stamp for whatever deal comes our way.** We must prioritize robust engagement with neighbors of the property, including those in **Trinidad** and **Carver Langston** in Ward 5. They will be directly impacted by the trajectory of this site and their voices deserve to be centered.

Furthermore, **future uses of the land must maximize benefits** that accrue to all District residents, including:

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I will be asking the Mayor for details about her commitment to Senator Mike Lee to invest the appraised value of the RFK campus into National Park Service (NPS) properties throughout the District. Many NPS parcels across DC suffer from decades of disinvestment and deferred maintenance. **Just ask neighbors of Fort Circle Parks**, or those near Fort Totten who endeavor to use the NPS-maintained pedestrian trail connecting Fort Totten and North Michigan Park via Galloway and Gallatin St NE. These could be inviting, well-programmed green spaces, but instead unexploded ordinances have been found there, brush fires have spread on unmaintained fields, and NPS has invested little to nothing in recreational facilities that would encourage greater use of these spaces. (Of note, **Congresswoman Norton** recently sent a funding request to the U.S. Department of the Interior for **clean-up of the chemical weapons in Fort Totten Park**, and as I shared in a previous newsletter, NPS is finally taking more meaningful steps forward on the **pedestrian trail**).

What is clear is that this transfer is full of opportunity for the District, even beyond the boundaries of the site itself. Many are focused solely on the conversation about a stadium for the Commanders, and I do not oppose the inclusion of a stadium in the project. However, I continue to emphasize that **I will not support the expenditure of taxpayer dollars on a stadium**, nor will I support any deal that fails to guarantee the District future revenue and sizeable **public benefits**. Now that this land is in the control of DC, it is up to us to ensure we deliver a project that will support the thriving of all neighbors.

**THE PROPOSED LUXURY HOME DEVELOPMENT
CONSISTS, IN PART, OF THE NATIONAL PARK SERVICE'S
HISTORIC FORT CIRCLE PARK**



<https://propertyquest.dc.gov/#> (CREATED BY THE D.C. OFFICE OF PLANNING)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document will be sent by email to the following persons, via their email addresses, on February 21, 2025:

Paul A. Tummonds, Jr.
Goulston & Storrs
1999 K Street, N.W.
Suite 500
Washington, D.C. 20006-1101
PTummonds@goulstonstorrs.com

Tequia Hicks Delgado
5C03@anc.dc.gov

Maxine Brown-Roberts
Jennifer Steingasser
D.C. Office of Planning
1100 4th Street, S.W., Suite 650E
Washington, D.C. 20014
Maxine.BrownRoberts@dc.gov
Jennifer.Steingasser@dc.gov

Aaron Zimmerman
Erkin Ozberk
District Department of Transportation
55 M Street, S.E., Fourth Floor
Washington, D.C. 20003
Aaron.zimmerman@dc.gov
Erkin.Ozberk@dc.gov

Thanh-Thuy Nyguyen
6 Carver Road
Cabin John, Maryland 29818-1618
LLC4mgt@gmail.com

/s/Emma James