

Committee Report: PLANNING & ZONING COMMITTEE (MAY 2022)

This is the May 2022 monthly status report on the two major activities that the Planning & Zoning Committee has identified as its priorities for the balance of this term of the current FLCA Board of Directors.

I.

Board of Zoning Adjustment Case

D.C. Board of Zoning Adjustment. Since February of 2020 the FLCA has been a party to a zoning case, *In Re: Fort Lincoln-Eastern Avenue, LLC*, BZA Case No. 20184. In that case a private developer is asking the D.C. Board of Zoning Adjustment to make an exception to the zoning laws to allow it to cram 51 townhomes into the 2-1/2 acres of grass and woods extending from Pineview Court down to Bladensburg Road.

The FLCA opposes that request for a number of reasons. The major legal reason is that it was illegal for the D.C. government to sell the 1.3 acres of that public land to a private developer without D.C. Council approval, in the first place. That makes the land transfer void *ab initio*. Because the D.C. government is involved, the case is very political. And so there was immense pressure on the Board of Zoning Adjustment (most members of whom are appointed, and re-appointed, by the Mayor) to ignore the law and to orally grant the developer's zoning application. Fortunately, an oral vote does not have legal effect until the BZA issues a formal written decision that explains the factual and legal basis for its vote. On June 25, 2021, the FLCA's Board of Directors approved the FLCA taking an appeal if the BZA issues a written decision for the developer.

We recruited an attorney (Andrea Ferster), who specializes in zoning law and has considerable political acumen, to handle the potential appeal. Ms. Ferster advised the FLCA on zoning law while the case was before the BZA. She is willing, subject to actually reviewing the final decision of the BZA, to handle an appeal for a flat fee of \$5,000.00 if the FLCA elects to appeal. And so the Board asked each housing development along Fort Lincoln Drive and Commodore Joshua Barney Drive to request that their HOA Board or Condo Board vote to contribute \$850.00 towards that fee. And it asked each housing development along Banneker Drive to request that their Condo Board vote to contribute \$500.00 towards that fee. We set a target date of July 31, 2021. However, we have not taken steps to actually collect that amount because there appears to be a chance that the BZA is not bold enough to simply ignore the law. And so, at the FLCA's Board meeting on September 20, 2021, the Planning and Zoning Committee asked only that the contributing housing developments stand ready to make their contribution, should it prove necessary.

One housing development, Summit Court, "did not get the memo," however, and sent its \$850.00 contribution to us on October 1, 2021. We will retain it pending an appealable decision by the BZA.

If and when a decision is handed down, and IF it is unfavorable, it will be our Committee's responsibility at that point (whenever that is) to discuss the BZA's written decision with

attorney Andrea Ferster, after she has reviewed the decision and is prepared to give us her opinion on the merits of an appeal.

The odds that the BZA would push out a decision ticked up slightly in early December of 2021. That month the D.C. Office of Attorney General ceased providing legal services to the BZA and attorneys in the Office of Zoning took over that responsibility. The lawyers in the Office of Zoning are much less independent than attorneys in the Office of Attorney General. And so, much more political pressure can be placed on them to issue a Decision ruling as the BZA instructs them to, whether there is a legal basis for the ruling or not. See: <https://dcist.com/story/21/12/03/dc-attorney-general-housing-advocacy/> On the other hand, that change means that the D.C. Office of Attorney General is now free to provide appellate counsel to ANC's (and hopefully civic associations) in appealing BZA decisions. See: <https://oag.dc.gov/sites/default/files/2021-12/ANC-Outreach-Letter-LU-Public-Interest-Mission-12-2-21-.pdf>

Given that now, 22 months have passed since the July 1, 2020 hearing in the case, it seems clear when the committee's April 19 committee report that the BZA could not find a legal rationale to support the vote the BZA orally took to approve the developer's zoning application. And so, the committee report concluded that for all practical purposes, the zoning application had been denied.

However, on May 2, 2022, the BZA issued a Decision in which it formally granted the developer's zoning application. The committee chair sent a copy of it to our zoning law expert. We also sent an email to the D.C. Office of Attorney General inquiring if they were able to provide appellate counsel to civic associations in appealing BZA decisions. As of May 9, 2022, we have received no response. And after speaking with the zoning law expert we concluded that it would be better to file a lawsuit for a declaratory judgment than appealing the BZA decision. The committee should consider recommending that course of action to the full Board, should the FLCA receive a commitment of funding from Premium Distributors in the fall.

II.

Relocation Of Fire Engine Company No. 26

Fire Station In Fort Lincoln. In June of 2021 the FLCA learned that D.C. Fire and Emergency Medical Services was considering relocating Fire Engine No. 26 from 1340 Rhode Island Avenue, N.E. to one of two potential locations. In a zoom call, hosted by former ANC Commissioner Pierre Hines in June of 2021, the Director of the D.C. Department of General Services stated that both potential locations were in the Fort Lincoln community. Shortly thereafter, the Deputy Chief of the D.C. Fire and Emergency Medical Services wrote in an email to the FLCA's Planning and Zoning Committee that only one of the potential locations is in Fort Lincoln. That location is the 3-acres of grass next to the outdoor swimming pool at the Theodore Hagens Cultural Center. The Planning and Zoning Committee began looking into this issue. And it was surprised to learn that the relocation process has been underway since at least 2018 (and FEMS says the process began in 2007). And FEMS has invested more than \$1.8 million dollars into that exploratory process. FEMS expects to make a decision on the feasibility of the

location next to the outdoor swimming pool at the Theodore Hagens Cultural Center by the first quarter of 2022.

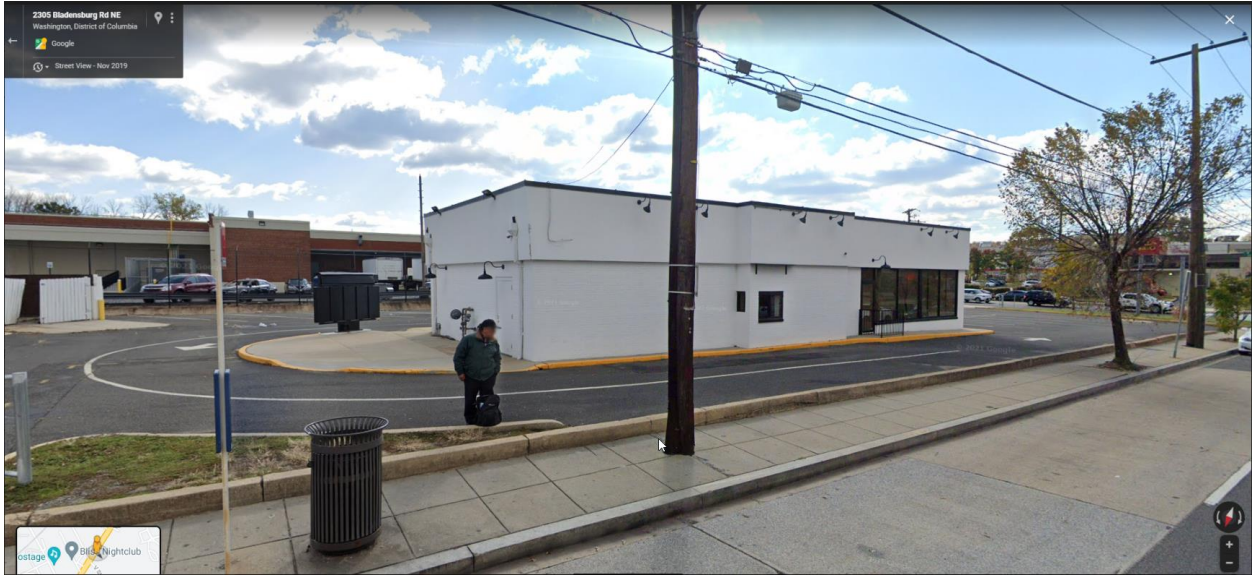
There appears to be geographically superior options to any place in Fort Lincoln. The first option the Planning & Zoning Committee looked into for a Fire Engine station was the southwest corner of Bladensburg Road and Eastern Avenue. Unfortunately, D.C.'s on-line zoning map states that that land is owned by the United States Government (likely the National Park Service). And FEMS presumably did not consider it for that reason. The Planning and Zoning Committee reached out to James D. Hanson, the Deputy Fire Chief who appears to be responsible for making the final site determination. Initially we asked what criteria they are using and what locations they have eliminated. And we specifically asked if, and why, the southwest corner of Bladensburg Road and Eastern Avenue had been eliminated from consideration. Mr. Hanson emailed us that the relocation effort preceded his employment and referred our inquiry to a former DGS employee (Sean McCarthy) who would be aware of the history, and who now works for FEMS. In a September 9, 2021 email, Mr. McCarthy basically said that there had been no **formal** consideration of any other locations. And he left it at that. He did not even copy Deputy Fire Chief Hanson on his email to us.

On September 22, 2021, the Planning and Zoning Committee reached out to the Woodridge Civic Association to gauge their feelings about having a fire engine company located at the southwest corner of Bladensburg Road and Eastern Avenue. Their President, Drew Hubbard, told our chairperson that he would raise the topic at the Woodridge Civic Association's October 5, 2021 meeting. However, since then, he has not responded to our chairperson's inquiries about their position. [Mr. Hubbard's day job is as the Interim Director of the D.C. Department of Housing & Community Development. That may compromise his ability to engage on issues involving other D.C. agencies.]

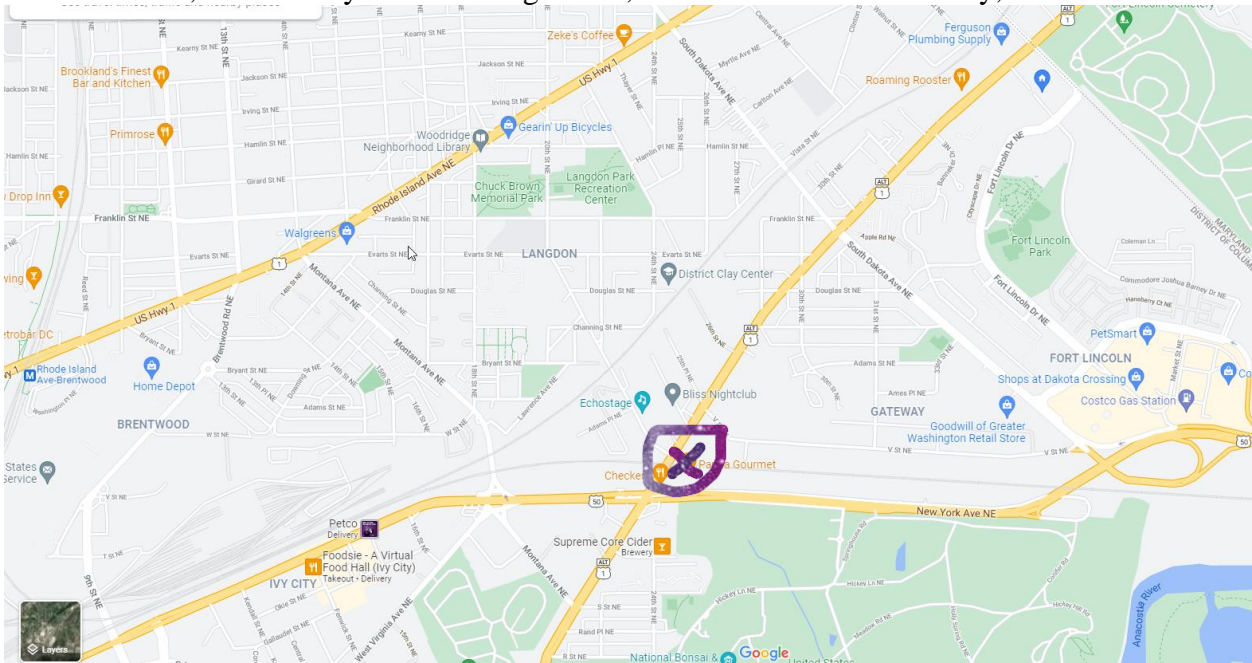
The Committee voted to recommend that the full FLCA Board adopt a Resolution opposing the relocation of the Fire Engine Company No. 26 to anywhere in Fort Lincoln, and to instead recommend that it be relocated to the southwest corner of Bladensburg Road and Eastern Avenue.

At the October 2021 FLCA Board meeting, the representative of a senior building along Bladensburg Road, in particular, had problems with that recommendation, and so the proposed Resolution to place it at Bladensburg Road & Eastern Avenue, N.E. died when no vote was taken and the time for all Board members to vote was extended for a week. [Turns out the FLCA bylaws only authorize absentee voting, when a Board member is not present at a meeting, and has pre-arranged to do so by proxy. And so votes may not be accepted after a Board meeting.]

Following the October Board meeting, in emails copied to all FLCA Board members, there was discussion about a location at Bladensburg Road & V Street, N.E.. across from the Wells Fargo Bank and the metro bus yard:



After soliciting feedback from all Board members, and comments that came in as a result of a posting on the online message board for The Village at Dakota Crossing, the Committee was persuaded that the central location of this site would benefit all neighborhoods east of Rhode Island Avenue, N.E. And yet it is a straight shot, less than five minutes away, from Fort Lincoln.



And so the committee voted to present the following Resolution to the FLCA Board of Directors for consideration at its November 18, 2021 meeting:

FORT LINCOLN CIVIC ASSOCIATION, INC. RESOLUTION NO. 2021-1

Whereas, the D.C. Fire and Emergency Medical Services (“FEMS”) is considering relocating Fire Engine No. 26 from 1340 Rhode Island Avenue, N.E. to 3 acres of park land next

to the outdoor swimming pool at the Theodore Hagens Cultural Center in the Fort Lincoln community (near 31st & Fort Lincoln Drive, N.E.), which is directly across from residential housing for more than one thousand Fort Lincoln residents;

Whereas, the park land next to the Theodore Hagens Cultural Center is a historic site, because it was one of the locations for the civil war forts in **Fort** Lincoln. And so, while its current vacant status in a park is appropriate, it would be inappropriate to convert it into a governmental building housing a 24-7 fire station. That would utterly wipe out any memory of the civil war forts, or opportunity to memorialize them. It would also compromise the recreational nature of a park which, because it is on a hill, already has limited level areas that the surrounding 6,000 person community can make use of. And, of course, it would destroy the nighttime serenity of thousands of Fort Lincoln residents;

Whereas, the last time a fire station was built in a residential neighborhood in the District of Columbia was in **1908**; and, instead, for more than one hundred years since then, *every* fire station in the District of Columbia has been built on a commercial corridor, like Bladensburg Road, N.E.;

Whereas, the ideal location for a Fire Engine station near the Fort Lincoln community clearly is the already paved -- with existing utility lines for water, electricity and sewer -- lot, with separate exits from it to both V Street, N.E. and Bladensburg Road, N.E., at 2301 Bladensburg Road, N.E.,

Whereas, at that location Fire Engine Co. No. 26 could respond equally quickly to potential fires and other emergencies in both Fort Lincoln and in other parts of its service area (which extends west beyond Rhode Island Avenue, N.E., and south to the Rhode Island metrorail station and Rhode Island Shopping Center, in northeast D.C.);

Whereas, D.C. Code § 16-1311 specifically authorizes the D.C. government to exercise its power of eminent domain to condemn the vacant lot and building at 2301 Bladensburg Road, N.E. for use as a fire station, and the property although privately owned, has never been successfully operated as a retail business and so is now vacant, and has no residential dwellings near it;

Whereas, the FEMS has budgeted \$10.6 million dollars for the relocation of Fire Engine No. 26, and the approximately \$8.6 million remaining from that budget will easily cover the condemnation and construction at the already cleared and building-ready lot at 2301 Bladensburg Road, N.E.; now, therefore, be it

RESOLVED, that the Fort Lincoln Civic Association, Inc., by vote of its Board of Directors on November 18, 2021:

1. opposes any study or planning to relocate, or the actual relocation, of Fire Engine Company No. 26 from 1340 Rhode Island Avenue, N.E. to **any** site in the Fort Lincoln community, including the 3-acre historic site next to the Theodore Hagens Cultural Center (near 31st & Fort Lincoln Drive, N.E.); and

2. instead, supports the relocation of Fire Engine Company No. 26 to the already paved - with existing utility lines for water, electricity and sewer -- lot with separate exits from it to both V Street, N.E. and Bladensburg Road, N.E. at 2301 Bladensburg Road, N.E., where it could respond equally quickly to potential fires and other emergencies in both Fort Lincoln and in other parts of its service area (which extends west beyond Rhode Island Avenue, N.E. and south to the Rhode Island metrorail station and Rhode Island Shopping Center, in northeast D.C.); and

3. directs the FLCA's Planning and Zoning Committee to communicate the FLCA's opposition to further study of, potential relocation or actual relocation of Fire Engine Company No. 26 to any site in the Fort Lincoln community, to: (a) Councilmember Kenyan McDuffie, (b) Mayor Bowser, (c) the Deputy Mayor for Public Safety and Justice (Christopher Geldart), (d) the D.C. Fire Chief (John Donnelly), (e) the chair of the D.C. Council Committee on the Judiciary and Public Safety (Charles Allen), and (f) any other persons or entities who could assist in ensuring the Fort Lincoln community is not the only residential neighborhood in the District of Columbia, in over *113 years*, to suffer the placement of a fire engine company in its midst – particularly when there is a far superior alternative location on a commercial street within five minutes of Fort Lincoln, at 2301 Bladensburg Road, N.E.

Voted On And Approved by the Fort Lincoln Civic Association, Inc.
Board of Directors on this __st day of November, 2021.

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Following the Committee's vote to recommend this Resolution to the full FLCA Board, a copy of the Resolution was emailed to Drew Hubbard, President of the Woodridge Civic Association, for consideration at their next meeting. On November 18th the full FLCA Board approved the Resolution. The next day, it (along with our background research on the issue) was emailed to SMD 5C03 Commissioner Pierre Hines with the request that he consider placing it on the December 2021 Agenda of ANC 5C for consideration of a Resolution of support. And, early the following morning, it was emailed to SMD 5C04 Commissioner Jacqueline Hines (along with our background research on the issue), again with the request that she consider placing it on the December 2021 Agenda of ANC 5C for consideration of a Resolution of support. ANC 5C did not meet in December 2021, and we were told that their January 19 and February 16 meetings were devoted to internal organizational matters. Also, Commissioner Hines moved from Fort Lincoln in early January 2022, and so had to resign his position as an ANC Commissioner. So, we should not expect that the issue will reach their Agenda.

On November 20th, our Resolution (along with our background research on the issue) was emailed to (a) Councilmember Kenyan McDuffie, (b) Mayor Bowser, (c) the Deputy Mayor for Public Safety and Justice (Christopher Geldart), (d) the D.C. Fire Chief (John Donnelly) and (e) the chair of the D.C. Council Committee on the Judiciary and Public Safety (Charles Allen), with the request for “the prompt issuance of a letter assuring the Fort Lincoln community that no further consideration of relocating Fire Engine Company No. 26 within Fort Lincoln will take place.”

On November 23, 2021, the FEMS responded to our email to the above governmental officials with an unsigned email stating: “The Fire and Emergency Medical Services Department is in receipt of your email. It is being reviewed and we will respond.”

Four and a half months passed with no further response from the Fire and Emergency Medical Services Department

And so on April 10, 2022, the committee sent a follow up email, drawing the FEMS’s attention to their promise, the 4-1/2 months that have passed with no follow up, and we concluded by renewing our request for “the prompt issuance of a letter assuring the Fort Lincoln community that no further consideration of relocating Fire Engine Company No. 26 within Fort Lincoln will take place.”

On April 25, 2022, the chair of this committee received a telephone call from Sean McCarthy of FEMS. He was responding to my email and wanted to schedule a conference call for later this week re: the possibility of relocating Fire Engine Company No. 26 within Fort Lincoln. I asked that he respond, instead, in writing to our email-letter. In that way I could share it with other members of the FLCA’s Planning & Zoning Committee without having to: (1) schedule a conference call and then (2) sit down and summarize that conference call for committee members. Mr. McCarthy said he would send me an email this week, instead. [He never did.] In summary, he said that FEMS was waiting for an analysis of three locations that it was considering, only one (next to Hagans Cultural Center) of which is in Fort Lincoln. He said FEMS would not consider 2301 Bladensburg Road, N.E. because it was not owned by the District of Columbia. And they were considering properties the D.C. government already owned.