

**DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**  
One Judiciary Square  
441 4th Street, NW  
Washington, DC 20001

**BZA Appeal No. 21100**

**Appellants: Friends of the Field, Gladys Austin, Kenneth Austin, Claudia Russell, Sylvie Tanoh, Thierry Tanoh, Nancy Voisin, and David Patton**

**MOTION TO STRIKE APPELLANTS’ SUPPLEMENTAL STATEMENT OF APPEAL,  
SUPPLEMENTAL APPEAL INFORMATION, AND NEW EXHIBITS**

Respondent, District of Columbia Department of Buildings (“DOB”), through its undersigned counsel, files this Motion to Strike Appellants’ Supplemental Statement of Appeal filed July 12, 2024 (Docket Entry No. 24), Appellants’ Supplemental Appeal Information filed July 15, 2024 (Docket Entry No. 24A) (“Supplemental Filings”), and new exhibits submitted on July 15, 2024, and in support states as follows:

**A. Argument**

Appellants appealed DOB’s issuance of BCIV Permit BCIV2300110 (“BCIV Permit”) on January 25, 2024. The scope of Appellants’ appeal is DOB’s issuance of the BCIV Permit. (See all of Appellants’ filings prior to July 12, 2024). Appellants’ January 25, 2024 Statement of Standing verifies that Appellants were aware that other permits were being processed by DOB when they filed their appeal,<sup>1</sup> but Appellants have not appealed the issuance of those permits, and they cannot now include them in this case.

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<sup>1</sup> Appellants’ January 25, 2024 Statement of Standing states: “Appellants further reserve the right to amend their appeal of Permit #BCIV2300110 to address as-yet-unissued structural permits when they become available.”

DOB issued the Retaining Wall Permit on April 24, 2024 (Retaining Wall Permit: RW2400069)(“RW Permit”). The Sheeting and Shoring Permit was issued on April 10, 2024 (Permit SH2400019)(“SH Permit”) (See Pages 4 and 5 of Appellants’ Supplemental Statement of Appeal Documenting Appellants’ Awareness of the Date of Issuance of the Retaining Wall and Sheeting and Shoring Permits). The time to appeal those permits has expired. (See 11-Y DCMR § 302.2). Appellants cannot circumvent 11-Y DCMR § 302.2 by belatedly adding the RW Permit and SH Permit to this appeal.

Moreover, Appellants were required to file supplemental documents in support of their appeal by or before June 26, 2024, but they did not do so. See 11-Y DCMR § 302.16 (“No later than twenty-one (21) days before the date of the public hearing on the zoning appeal, the appellant shall file with the Board any supplemental documents”)(11-Y DCMR § 302.16 only allows additional documents to be filed in support of an existing appeal.) 11-Y DCMR § 302.16 does not allow new issues to be added, and it certainly does not allow additional permits to be added to the appeal.

An Appellant must identify the issues on appeal at the time of its filing. 11-Y DCMR § 302.12(g). Here, Appellants defined the scope of their appeal as the BCIV Permit. Reserving the right to amend their appeal “to address as-yet-unissued structural permits when they become available” is meaningless when it is contrary to the Board rules.

Moreover, Appellants’ reliance on *Sisson v. District of Columbia Bd. of Zoning Adjustment*, 805 A.2d 964 (D.C. 2002) is misplaced. Indeed, *Sisson* is inapplicable to this case. In *Sisson*, the Appellant moved to add two additional permits to her appeal. *Id.* at 967. BZA utilized the discretion available to it at the time of the *Sisson* case (1998) to allow the addition of the two permits to the appeal. *Id.* At the time of *Sisson*, the:

... BZA regulations required a “timely” appeal. *While there was no time limitation specified in statute or regulation, our case law generally held that the filing had to be within a “reasonable period”* after the appellant was chargeable with notice of the decision that was the subject of the appeal.

*Id.* at 969 (emphasis added). The BZA held that the two permits were appealed within a “reasonable period” utilizing the discretion available to it at the time of *Sisson*. *Id.* at 969-971. Unlike *Sisson*, the regulations now contain specific filing time limitations, and Appellants’ eleventh hour attempt to include the RW and SH Permits in this appeal does not comply with the 2016 Zoning Regulations. Appellants’ Supplemental Filings relative to the RW and SH Permits must be dismissed and/or stricken from this case.

Appellants also belatedly filed new exhibits on July 15, 2024 (“New Exhibits”). The New Exhibits should be struck in accordance with 11-Y DCMR § 302.16.

Lastly, Appellants raise several miscellaneous new arguments or issues in their Supplemental Filings. DOB is not going to address the substance of those issues because the BZA does not have jurisdiction to address them in this appeal of the BCIV Permit.<sup>2</sup>

## **B. Conclusion**

The scope of BZA Appeal No. 21100 is the issuance of the BCIV Permit according to the appeal filed by Appellants on or about January 25, 2024. The BZA lacks jurisdiction to hear an appeal of the BCIV Permit as articulated in DOB’s Motion to Dismiss and Pre-Hearing Statement. Appellants cannot add new issues or new permits to BZA Appeal No. 21100 pursuant to the clear language of the applicable regulations. Even if the RW Permit and SH Permit could be added belatedly to this appeal in contradiction of the regulations, the appeal of those permits must be

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<sup>2</sup> For example, Appellants are now raising neighbor notification as an issue, but this and similar issues now raised by Appellants would be subject to the jurisdiction of the Office of Administrative Hearings, if timely appealed.

dismissed as untimely since issues relative to the RW and SH Permits were not raised by Appellants until July 12, 2024, or approximately 90 days after they were issued.

Respectfully submitted,

ESTHER YONG MCGRAW  
GENERAL COUNSEL

ERIK COX  
DEPUTY GENERAL COUNSEL

/s/ Brent Fuller

Brent Fuller (DC Bar #502983)  
Assistant General Counsel  
Department of Buildings  
Office of the General Counsel  
1100 4th Street, SW, 5th Floor  
Washington, D.C. 20024  
(202) 497-7036 (office)  
Brent.fuller@dc.gov

**CERTIFICATE OF SERVICE**

I certify that on July 16, 2024 a copy of the foregoing was sent via electronic mail and/or electronic filing via IZIS to:

Kathleen Beeton, Zoning Administrator  
Office of Zoning Administration  
Department of Buildings  
[kathleen.beeton@dc.gov](mailto:kathleen.beeton@dc.gov)

David Patton for Friends of the Field  
6007 28th Street NW  
Washington, DC 20015  
[friendsofthefield20015@gmail.com](mailto:friendsofthefield20015@gmail.com)

Jonathan Axelrod/Nancy Voisin  
2832 Rittenhouse Street  
Washington, DC 20015  
[jaxelrod@beinsaxelrod.com](mailto:jaxelrod@beinsaxelrod.com)  
[navoisin@me.com](mailto:navoisin@me.com)

Maret School c/o Paul Tummonds/Goulston & Storrs  
3000 Cathedral Avenue NW  
Washington DC 20008  
[ptummonds@goulstonstorrs.com](mailto:ptummonds@goulstonstorrs.com)

ANC 3G  
[3G@anc.dc.gov](mailto:3G@anc.dc.gov)

Lisa Gore  
[3G01@and.dc.gov](mailto:3G01@and.dc.gov)

Bruce Sherman  
[3G02@anc.dc.gov](mailto:3G02@anc.dc.gov)

*/s/R. Brent Fuller*  
R. Brent Fuller