

**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 DISMISS APPEAL FOR LACK OF JURISDICTION**

Respondent, District of Columbia Department of Buildings (“DOB”), through its undersigned counsel, files this Motion to Dismiss the appeal filed by Appellants Friends of the Field, Gladys Austin, Kenneth Austin, Claudia Russell, Sylvie Tanoh, Thierry Tanoh, Nancy Voisin, and David Patton (collectively “Appellants”) for lack of jurisdiction, and in support states as follows:

**I. Background**

Appellants have appealed DOB’s approval of BCIV Permit BCIV2300110 issued on November 27, 2023 (Ex. 1) (“BCIV Permit”) related to a project at 5901 Utah Avenue NW (“Property”)(See Page 1 of Appellants’ appeal). Appellants’ appeal specifically states “[I]n this case, Appellants are appealing Permit #BCIV2300110, issued on November 27, 2023...” Appellants claim that the BCIV Permit was issued in error (See Appellants’ Statement of Issues).

The BCIV Permit application was not reviewed by DOB’s Office of Zoning Administration (“OZA”) prior to its issuance. Generally, BCIV permits are used to streamline reviews for civil work requiring sister agency reviews (DDOT, DOEE and DC Water). This may include grading, in-ground connections, and landscaping. In short, there is nothing for the BZA to decide because the scope of the BCIV Permit did not implicate the zoning regulations nor did the BCIV Permit

undergo any review by OZA<sup>1</sup>. Appellants’ appeal of DOB’s issuance of the BCIV Permit must be dismissed.

## **II. Argument**

### **1. DOB’s Issuance of the BCIV Permit Cannot be Appealed to the BZA**

“The BZA shall hear and decide zoning appeals where it is alleged by the appellant that there is an error in any order, requirement, decision, determination, or refusal made by the Zoning Administrator or any administrative officer or body, including the Mayor, in the administration or enforcement of the Zoning Regulations.” 11-X DCMR § 1100.2. And while DOB did, indeed, issue the BCIV Permit, the BCIV Permit does not touch on administration or enforcement of the Zoning Regulations. The BCIV Permit was simply not subject to a zoning review at DOB prior to issuance.

The BZA’s jurisdiction is further limited by 11-X DCMR § 1100.3. “The Board of Zoning Adjustment has no jurisdiction to hear and decide any appeal or portion of any appeal where the order, requirement, decision, determination, or refusal was not based in whole or in part upon any zoning regulation or map.”

A plain reading of 11-X DCMR § 1100.3 requires the conclusion that Appellants’ appeal is outside the BZA’s jurisdiction, because the BCIV Permit was not issued based in whole or in part upon any zoning regulation or map.

Moreover, permits are issued under the authority of 12-A DCMR, and it is this provision that specifies how, when, and where to appeal a permit. 12-A DCMR § 112.3 specifically states:

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<sup>1</sup> DOB is not aware of another instance where a BCIV permit has been appealed to the BZA.

The applicant for, or holder of, a Permit or Certificate, or any *person* directly affected or aggrieved in a materially adverse manner by a final decision or order of the *Zoning Administrator*, including a revocation of a Permit or Certificate, may appeal those aspects of the final decision or order that are based upon the *Zoning Regulations* to the *Board of Zoning Adjustment (BZA)* of the District of Columbia, pursuant to D.C. Official Code § 6-641.07 (2018 Repl.).

12-A DCMR § 112.3 (*italics in original*). The issuance of this BCIV Permit was not based on a decision or order of the Zoning Administrator, nor was its issuance based upon the Zoning Regulations. The issuance of the BCIV Permit cannot be appealed to the BZA per 12-A DCMR § 112.3.

Further, 11-Y DCMR § 100.4 states:

The Board [of Zoning Adjustment], pursuant to § 8 of the Zoning Act, D.C. Official Code §§ 6-641.07(f) and (g)(1), shall also hear and decide zoning appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by any administrative officer or body, including the Mayor, *in the administration or enforcement of the Zoning Regulations*, Title 11 DCMR.

A determination in the administration or enforcement of the Zoning Regulations was not made by DOB relative to the BCIV Permit.

Lastly, 11-Y DCMR § 302.1 states:

Any person aggrieved or any officer or department of the government of the District of Columbia or the federal government affected by an order, requirement, decision, determination, or refusal made by an administrative officer or body, including the Mayor of the District of Columbia, *in the administration or enforcement of the Zoning Regulations may file a timely zoning appeal with the Board.*

Again, the issuance of the BCIV Permit did not implicate the administration or enforcement of the Zoning Regulations, and there is no decision or determination to appeal from.

The problem with Appellants’ appeal of the BCIV Permit to the BZA is made even more obvious when attempting to figure out the timeliness of their appeal. Pursuant to 11-Y DCMR § 302.2, “[a] zoning appeal shall be filed within sixty (60) days from the date the person appealing the administrative decision had notice or knowledge *of the decision* complained of...” (Emphasis added.) Here, Appellants contend that their appeal is timely because it was “made within 60 days of permit issuance.” However, the issuance of the BCIV Permit did not involve a *decision* under the Zoning Regulations. Without such a decision having occurred, there is nothing to which an appeal’s timeliness can be tied relative to the issuance of the BCIV Permit.

In summary, the BCIV Permit did not undergo review by OZA, and there is no decision under the Zoning Regulations to trigger an appeal to the BZA. The BZA therefore does not have jurisdiction to review DOB’s issuance of the BCIV Permit, and the appeal must be dismissed as a result.

## **2. Conclusion**

DOB respectfully requests that the BZA grant DOB’s Motion to Dismiss for Lack of Jurisdiction and dismiss this appeal.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on July 10, 2024 a copy of the foregoing was sent via electronic mail and/or electronic filing via IZIS to:

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