

**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

**PRE-HEARING STATEMENT OF
THE DISTRICT OF COLUMBIA DEPARTMENT OF BUILDINGS**

NOW COMES, District of Columbia Department of Buildings (“DOB”) in response to Appellants’ Friends of the Field, Gladys Austin, Kenneth Austin, Claudia Russell, Sylvie Tanoh, Thierry Tanoh, Nancy Voisin, and David Patton (collectively “Appellants”) appeal, and it states as follows:

I. INTRODUCTION

Appellants appeal DOB’s issuance 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 claim DOB issued the BCIV Permit in error.¹ To the contrary, DOB appropriately issued the BCIV Permit.² Moreover, the Office of Zoning Administration did not review the BCIV Permit application because the Zoning Regulations were not implicated by the application for, or issuance of, the BCIV Permit.

¹ DOB incorporates by reference as if fully stated herein its Motion to Dismiss Appellants’ Appeal.

II. ARGUMENT

As articulated in more detail in DOB’s Motion to Dismiss, the BZA does not have jurisdiction to determine if DOB erred when issuing the BCIV Permit. The Office of Zoning Administration did not review the BCIV Permit application, and the scope of the BCIV Permit application did not require a determination relative to the Zoning Regulations. As a result, there is no zoning determination for BZA to review relative to the BCIV Permit and this appeal. The appeal should be dismissed.

DOB did, however, issue a retaining wall permit related to the subject project and Property on April 24, 2024 (Retaining Wall Permit: RW2400069) (“RW Permit”), which was subject to a review by the Office of Zoning Administration. The issues raised by Appellants in this appeal were at issue in the RW Permit, and the Office of Zoning Administration determined that the retaining wall plans complied with the Zoning Regulations. However, the RW Permit is not the subject of this appeal nor has the RW Permit been appealed. Moreover, the time to appeal the RW Permit has expired. (See 11-Y DCMR § 302.2).

There is nothing for DOB to address in this case because the BCIV Permit was not subject to zoning review nor did it implicate a zoning determination. The RW Permit has not been appealed nor can it be at this point. Because the RW Permit is not at issue in this appeal, DOB will not address any zoning determinations made regarding that permit. However, should the BZA order briefing or a hearing on zoning issues relevant to the un-appealed RW Permit, DOB will comply with any such written order.

III. CONCLUSION

For the above reasons, and the reasons articulated in DOB’s Motion to Dismiss, DOB requests that the BZA 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 the electronic filing system (IZIS) to:

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