BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF **BZA CASE NO.21231**
COURTNEY BOLIN AND WILLIAM GABLER **HEARING DATE: APRIL 23, 2025**

PROPERTY OWNERS' RESPONSE TO APPELLANTS' SUPPLEMENTAL MATERIALS

INTRODUCTION

On April 3, 2025, the Board granted Appellants' Motion to Reopen the Record, permitting Appellants to file a supplemental submission to address what they allege were "new arguments and evidence" presented during the March 12, 2025 hearing. In their supplemental filing, Appellants raise a series of objections, including several specifically directed at the Property Owners. This response addresses only those points concerning the Property Owners, as the Department of Buildings has separately responded to the arguments raised against it.[1]

As explained below, the arguments Appellants now seek to challenge do not alter or expand the Property Owners' position and do not support the relief Appellants seek. These statements were made in direct response to questions posed by the Board or to arguments first raised by Appellants themselves. Nothing presented by the Property Owners at the hearing constitutes new legal theories or evidence, nor does any of it affect the underlying zoning analysis, which remains unchanged. The Building Permit issued complies fully with the applicable provisions of the Zoning Regulations, and Appellants' continued disagreement with the outcome does not transform appropriate and responsive hearing participation into reversible error.

[1] Appellants identify eleven alleged "new" arguments, attributing numbers 1–5, 10, and to DOB and assigning numbers 6–9 to the property owners and 11 to both DOB and the Property Owners. Motion at 2–8. DOB has addressed each of the arguments attributed to it in its opposition to the Appellants'. DOB Opposition to Appellants' Motion to Reopen or Motion to Strike.

ARGUMENT

I. THE CITED BZA CASES WERE PROPERLY REFERENCED IN RESPONSE TO QUESTIONS FROM THE BOARD

In their supplemental filing, Appellants argue that BZA Case Nos. 21170, 21248, and 21141 are not comparable to the present matter and suggest that the Property Owners improperly introduced those cases at the March 12, 2025 hearing. *See* Appellants' Supplemental Filing at 4-5. This characterization misrepresents the context and raises new arguments that were not previously briefed by Appellants.

The Property Owners referenced these cases solely in response to a direct question from Commissioner Wright. March 12, 2025 Hearing Transcript at 136:8-9 ("[H]ave there been examples of entirely new construction cases which have been built with a zero lot – line setback?). In response, Ms. Vitale confirmed that such cases existed and explained that this interpretation had been applied consistently over time. *Id.* at 136:11-15. In response to Commissioner Wright's request for examples, the Property Owners referenced BZA Case Nos. 21170, 21248, and 21141 to illustrate how the Zoning Regulations have been applied in similar contexts. See Hearing Transcript at 6:46–6:48. The Appellant plainly points out that these cases did not get permitted by right, which is self-evident as they are BZA applications seeking some degree of relief. The cases were submitted to the Board for reference as examples of similar interpretation by OP of the regulations and construction face on line with property lines. These cases were not introduced to expand the Property Owners' zoning theory or as binding precedent, but were offered in direct response to a Board member's factual question. That type of responsive participation is entirely appropriate in a public hearing and well within the procedural norms of the Board.

Appellants did not object at the time, nor did they raise any challenge to the relevance or procedural posture of these cases during the hearing. Instead, they now attempt—after the record

has been reopened—to distinguish those cases and discredit their relevance. In doing so, Appellants themselves raise new arguments. Their effort to reframe a live, Board-prompted exchange as improper "new evidence" is both procedurally and substantively misplaced. The Board is fully capable of reviewing the cited cases and determining their relevance to the Building Permit at issue. Nothing about their mention at the hearing was improper, and they provide useful context consistent with how the Zoning Regulations have been interpreted and applied over time. Their inclusion was both appropriate and responsive, and falls squarely within the type of informed discussion the Board routinely engages in when assessing how the Regulations have been applied in practice.

II. APPELLANTS MISCHARACTERIZE THE "CATASTROPHIC" COMMENT, WHICH WAS A RESPONSE TO DOB'S INTERPRETATION—NOT A NEW ARGUMENT

Appellants' characterization of this exchange is not only inaccurate but incoherent. They assert that the Property Owners represented it would be "catastrophic" for the Board to entertain the "constructive easement placed on Appellants' private property because other zones permit 100 percent occupancy." *See* Appellants' Supplemental Filing at 6 (citing Hearing at 6:18–6:19). This misstates both the content and intent of the Property Owners' remarks. First, no constructive easement has been "placed" on Appellants' property; Appellants merely alleged that one would result from the issuance of the Building Permit. *See* Property Owners Prehearing Statement at 12. Second, the Property Owners did not invoke "100 percent occupancy" to justify any alleged encroachment. *See* March 12, 2025 Hearing Transcript at 158:10-20. Rather, they echoed DOB's testimony that allowing buildings to be constructed up to the lot line is commonplace in several zones. The point was simple: accepting Appellants' legal theory would have far-reaching and destabilizing consequences across the District. That observation was grounded in zoning policy—not new evidence or argument—and was fully consistent with the Property Owners' prehearing

statement. Appellants have alleged a constitutional violation; the Property Owners simply noted what such a theory would mean in practice, where countless by-right projects are built up to lot lines under long-standing interpretations of the zoning code. This was not new evidence, nor an improper argument, but a rhetorical illustration of the broader consequences that would follow from the Board accepting the Appellants' position. Appellants' attempt to recast this rhetorical statement a procedurally improper legal claim is both unfounded and misleading.

In truth, Appellants' objection to the "catastrophic" comment is just another attempt to reframe this zoning dispute as a constitutional matter. As the Property Owners made clear in their Pre-Hearing Statement, claims involving alleged constructive easements and due process violations fall outside the Board's jurisdiction. *See* Property Owners Prehearing Statement at 12. The Board's role, as defined by its governing regulations, is to determine whether the Building Permit complies with the applicable provisions of the Zoning Regulations—not to resolve speculative legal theories that fall outside its jurisdiction and are not grounded in the record before it. *See* Subtitle Y § 100.4; *see also President & Directors of Georgetown Coll. v. District of Columbia Bd. of Zoning Adjustment*, 837 A.2d 58, 63 & 77-78 (D.C. 2003) (The Board should avoid making determinations regarding issues outside of its expertise and area of responsibility in land use). The Board should reject this redundant argumentation and give no weight to this portion of Appellants' supplemental filing.

III. STATEMENTS REGARDING ANC AND NEIGHBOR SUPPORT DO NOT WARRANT FURTHER CONSIDERATION

Appellants contend that the Property Owners introduced new evidence at the hearing by asserting that the ANC supports the project and that other neighbors do not object. *See* Appellants' Supplemental Filing at 5-6. These remarks, however, were made during the Property Owner's introductory comments and were not offered as substantive argument or evidence. They were brief,

informal statements intended to provide context about the Owners' connection to the community—not to establish support for the project as a matter of record. As such, these objections are misplaced and do not warrant any further consideration by the Board.

With respect to the ANC, Appellants mischaracterize the record. The Property Owners did not state that the ANC supported the current project. Rather, they referenced prior support received from the ANC in connection with a previous matter, in the course of explaining their experience with the ANC process. *See* hearing at 6:42:23-6:42:40(expressing a desire to engage with the ANC and referencing prior ANC support for a "another project" to support this proposition). At no point did the Property Owners represent that the ANC had taken a position in support on the Building Permit at issue in this appeal.[2]

As to the comment regarding neighbor support, the Property Owners did state during the hearing that neighboring property owners were not opposed to the project. While no supporting documentation was provided at the time, the Property Owners are now submitting a letter from an adjacent neighbor who confirms their awareness of the scope of the project and affirms that they do not object to its construction. *See* Letter Expressing No Opposition, attached hereto as **Exhibit A**. This letter cures any concern Appellants may have raised and supports the procedural fairness of the record.

These brief comments were neither central to the Property Owners' zoning analysis nor offered to establish any independent legal basis for the permit's approval. They were appropriate in the context of the hearing and do not provide a basis for further action by the Board.

[2] The official transcript is inconclusive as to this point. The phrase "support of their project of us" is nonsensical and does not reflect what was stated. *See* March 12, 2025 Hearing Transcript at 156:7. The Transcript does show that the Property Owners' comments were intended to express a willingness to engage with the ANC, a belief in the value of community input, and that they were unaware of the ANC meeting where this case was discussed. *Id.* at 156:5-12.

IV. APPELLANTS' ARGUMENT REGARDING THE ANC MEETING DOES NOT WARRANT FURTHER CONSIDERATION

Appellants' final objection concerns a brief follow-up question posed by the Property Owners during their cross-examination of the Appellant, regarding the February 19, 2025 ANC meeting. This exchange was not improper, nor did it introduce new evidence or argument. In fact, it was Appellants—through Ms. Bolin's own testimony—who first raised the topic of the ANC's concerns about property line construction and neighbor engagement. *See* March 12, 2025 Hearing Transcript at 92:11-24. In response to Ms. Bolin's remarks, the Property Owners posed a clarifying question on cross-examination—a routine and appropriate part of live proceedings—seeking to understand whether Appellants had represented the Property Owners' perspective to the ANC or otherwise discouraged their participation. *See Id.* at 103:20-24. The question was directly responsive to Appellants' own testimony about the ANC's concerns and how those concerns were formed. The Property Owners' question on cross examination was a brief response to the Appellants' own testimony and addressed the information (or lack of information) the ANC weighed in issuing their resolution.

V. APPELLANTS' INTERPRETATION CONFLICTS WITH CREDIBLE TESTIMONY AND FAILS TO MEET THEIR BURDEN OF PROOF

Finally, Appellants argue that the Property Owners and DOB inaccurately claimed they failed to meet their burden of proof because they are not attorneys or did not call an architect. See Appellants' Supplemental Filing at 7 (citing Hearing at 6:45–6:47). This misrepresents both the hearing record and the arguments actually made. At no point did the Property Owners suggest that Appellants' arguments were deficient simply because they were self-represented or failed to call an architect as a formality. What was said—and what remains the case—is that Appellants' interpretation of the Zoning Regulations is unsupported by any qualified expert and directly

conflicts with the testimony of the Department of Buildings' Deputy Zoning Administrator. *See* March 12, 2025 Hearing Transcript at 165:21-166:1.

The Property Owners' position, is that Appellants' reading of the zoning text is incorrect, and that the Board should credit the interpretation offered by DOB's Deputy Zoning Administrator, Ms. Vitale.[3] Ms. Vitale provided a clear, consistent explanation of how the relevant regulations—particularly Subtitle D §§ 5001.1 and 5004.1—apply to the ADU Project and confirmed that the Building Permit complies. Appellants, by contrast, called no architect, planner, or zoning expert to support their position. While Ms. Bolin is an attorney, she does not claim specialized expertise in zoning or land use law, and her arguments are not grounded in any authoritative reading of the Regulations. The Appellants' selective references to prior statements made by the Property Owners' architect are hearsay, taken out of context, and unaccompanied by any testimony or sworn evidence that could support their interpretation or withstand scrutiny. *See* Appellants' Supplemental Filing at 7. Where Appellants' position stands in direct opposition to that of DOB's Deputy Zoning Administrator, the Board should defer to the latter. *See Lovendusky v. D.C. Bd. of Zoning Adjustment*, 852 A.2d 927, 932 (D.C. 2004)(finding no support for the petitioners' insistence that the BZA must consider the arguments of adjoining and nearby neighbors as material)(internal quotations omitted). Appellants have not carried their burden to show otherwise.

CONCLUSION

The Appellants' supplemental filing does not raise any new or valid issues that warrant further consideration by the Board. The arguments attributed to the Property Owners were

[3] While Ms. Vitale was not formally qualified as an expert at the hearing, her role as a Deputy Zoning Administrator at the Department of Buildings and her extensive experience interpreting and applying the Zoning Regulations provide ample basis for the Board to treat her testimony as highly qualified and credible. See *Acott Ventures LLC v. D.C. Alcoholic Beverage Control Bd.*, 135 A.3d 80, 96 (D.C. 2016) ("[O]pinion testimony may be admitted at an administrative hearing with or without a witness's formal and fully supported certification as an expert and may be considered as the agency reasonably deems appropriate in making its findings and conclusions on contested matters.")

procedurally proper, made in direct response to Appellants' own claims or Board questions, and introduced no new legal theories or evidence. The record is complete, and the underlying zoning analysis remains unchanged—grounded in the text of the Zoning Regulations and supported by credible testimony from the Department of Buildings. The Board should resolve this appeal based solely on the properly developed record before it.

Respectfully submitted,

COZEN O'CONNOR

Meridith Moldenhauer

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of April, 2025, a copy of the foregoing Property Owners' Opposition to Appellants Motion to Reopen or Motion to Strike was served, via electronic mail, on the following:

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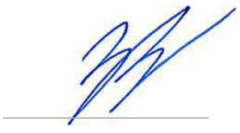

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