COZEN O'CONNOR

September 18, 2025

Meridith H. Moldenhauer
Direct Phone 202-747-0763
mmoldenhauer@cozen.com

Zachary R. Bradley
Direct Phone 202-280-6451
zbradley@cozen.com

Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th Street NW, Suite 200s
Washington, DC 20010

Re: BZA Appeal No. 21314
Intervenor D.C. Department of General Services' Prehearing Statement

Chairperson Hill and Honorable Members of the Board:

On behalf of the Intervenor D.C. Department of General Services ("DGS"), agent for the owner of the property located at 1700 38th Street, NW (Square 1307, Lot 859), please find enclosed a Prehearing Statement as to the merits of the subject appeal. This appeal is scheduled to be heard by the Board on October 29, 2025.

Sincerely,

COZEN O'CONNOR

Meredith H. Moldenhauer

Zachary R. Bradley

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of September, 2025 a copy of the foregoing Prehearing Statement with attachments was served, via electronic mail, on the following:

District of Columbia Department of Buildings
Attention: Esther Yong McGraw, Esq., General Counsel
1100 4th Street SW, Ste. 5266
Washington, DC 20024
Esther.mcgraw2@dc.gov
Attorney for DOB

Michael McDuffie
3723 R Street NW
Washington, D.C. 20007
Micahel.mcduffie@gmail.com
Attorney for Appellant

Advisory Neighborhood Commission 2E
Gwendolyn Lohse, Chairperson
Kishan Putta, SMD 2E01
2E06@anc.dc.gov
2E01@anc.dc.gov

Burleith Citizens Association
2336 Wisconsin Avenue NW
PO Box 32262, Calvert Station
Washington, D.C. 20007
bca@burleith.org
Appellant

Zachary R. Bradley

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF **BZA CASE NO. 21314**
BURTLEITH CITIZENS ASSOCIATION **HEARING DATE: OCTOBER 29, 2025**

PREHEARING STATEMENT OF D.C. DEPARTMENT OF GENERAL SERVICES

The Intervenor, D.C. Department of General Services ("DGS"), submits this prehearing statement in opposition to the appeal filed by the Burleith Citizens Association ("Appellant" or "BCA"), which challenges the Zoning Administrator's ("ZA") decision to issue Building Permit No. B2308807 ("Building Permit") to the District of Columbia for the property located at 1700 38th Street, NW (Square 1307, Lot 859) ("Ellington Field").[1] Appellant takes issue with the ZA's March 7, 2025 interpretation, in which the ZA clarified the longstanding, city-wide practice of classifying light poles as excluded from the definition of "structure" in the Zoning Regulations.

As detailed below, the ZA's decision is consistent with the Zoning Regulations, reflects decades of practice and avoids unworkable results. Development standards, including the setback requirements of Subtitle D § 203.5, do not apply to light poles as they are not, nor have they ever been, considered "structure[s]" under the Zoning Regulations. This exclusion is reflected by the many light poles illuminating parks, recreational fields and large sites in the District. Light poles are not "structures" because they have minimal mass, no symbolic purpose, and no occupancy; their impacts are governed by the DC Building Code, not the Zoning Regulations. Accordingly, the Board should affirm the ZA's interpretation and the issuance of the Building Permit.

I. FACTUAL AND PROCEDURAL HISTORY

A. The Property

Ellington Field is in the R-3/GT zone and occupies Lot 859 in Square 1700. Ellington Field is located at the intersection of 38th Street NW and R Street NW in the Georgetown neighborhood.

[1] The Property is owned by the District of Columbia and managed by DGS.

The site is improved with an athletic field and running track historically associated with the Duke Ellington School of the Arts and other D.C. Public Schools ("DCPS") programs.

On February 14, 2020, pursuant to DC Code § 10-551.05, the District of Columbia Property Inventory was revised to remove DCPS as the "user agency" and to designate Department of Parks and Recreation ("DPR") as the "user agency" of Ellington Field.[2] The Transfer of Ellington Field was voted on by ANC 2E on February, 3 2020 at its regularly scheduled public meeting. *See* ANC 2E Ellington Field Transfer Resolution, attached as **Exhibit A**. The ANC voted unanimously in favor of the transfer and requested that funds be made available "to renovate and improve the field and its associated facilities to make Ellington Field a first-class recreational asset." *Id.* Despite the transfer, Ellington Field's use as a public recreation facility did not change. Nonetheless, Appellant has opposed DPR's operation of Ellington Field since before the 2020 transfer.[3]

B. The Project

DGS and DPR seek to modernize the two existing field houses (approximately 3,000 square feet), upgrade the running track and athletic field, install new field lighting, and undertake soil-stabilization to address erosion (the "Project"). Subject to the budget, the Project also includes fencing and access controls, seating, and new water fountains, and evaluate the potential for a new dog-park subject to a separate community application under Department of Parks and Recreation regulations. [4] DGS broke ground on the renovations in April 2025, with the light poles installed soon thereafter. The Ellington Field renovation is expected to be complete by late-Winter/early-Spring 2026.

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[2] *Available at* https://dpr.dc.gov/sites/default/files/dc/sites/dpr/page_content/attachments/Inter-Agency%20Transfer%20Memo%20from%20DCPS%20to%20DPR%20-%20Ellington%20Field.pdf

[3] *Available at* https://washingtoncitypaper.com/article/177412/local-residents-express-outrage-at-dprs-imminent-takeover-of-ellington-field/; While the Appellant's historical opposition to the transfer of agencies is not relevant to the Zoning Regulations, it provides context for the long-standing nature of this dispute.

[4] https://dgs.dc.gov/page/field-houses-and-track-duke-ellington-field-phase-ii

C. Public Involvement

The community, including the Appellant, has been aware of the proposed renovation and installation of light poles at Ellington Field dating back to 2021. DGS and DPR hosted multiple rounds of community engagement concerning the Project on the following dates:

- April 6, 2021: Park Renovation Presentation
- July 21, 2021: Community Meeting Presentation
- September 29, 2021: Community Meeting Presentation
- November 8, 2021: Lighting fixture review with community members, ANC, and BCA at Takoma Soccer Field
- November 15, 2021: Community Meeting Presentation
- September 7, 2023: Community Meeting Presentation
- September 12, 2024: Community Meeting Presentation

DGS and DPR have also published extensive Project materials publicly,[5] including:

- FAQs addressing community concerns
- Concept Design Package
- Traffic Statement dated August 31, 2023
- Parking Data Collection Memo and Parking Data Collection Appendix
- Photometric Study for field lighting
- Parking Occupancy Permit for 39th Street NW

In addition to the comprehensive public outreach and the extensive materials posted for community review, DGS and DPR have engaged directly with residents to address specific concerns, including those raised by Appellant's representative, on topics such as traffic, parking, scheduling, and maintenance for the renovated facility. *See* **Exhibit B**. Despite this extensive

[5] The concept design package and photometric study clearly show the location and size of the proposed light poles.

community engagement, the BCA has maintained its opposition to the project throughout the process, reflecting a consistent pattern of objection that has continued into this appeal.

D. The Appeal

This appeal is brought by the Burleith Citizens Association to challenge the Department of Buildings' issuance of the Building Permit for Ellington Field and the Zoning Administrator's March 7, 2025 interpretation that athletic field light poles are not "structures" under Subtitle B § 100.2 of the Zoning Regulations. Appellant states that DOB issued the Building Permit on or about February 14, 2025, but that Appellant learned of the permit around February 17, 2025, saw the permit posted on March 6, 2025, and received the Zoning Administrator's final email determination on March 7, 2025. Based on that timeline, Appellant asserts the appeal is timely because it was filed within 60 days of actual or constructive notice. *See* Appellant's Stmt. at 6. The relief sought is a reversal of the March 7 interpretation and modification of the Building Permit to remove approval of the light poles. *Id.* at 1.

Appellant claims organizational standing as a not-for-profit civic association with members who reside across from and within 200 feet of the field *Id.* at 6-7. While the Board has recognized associational standing in appropriate cases, proximity and generalized allegations of harm do not, by themselves, satisfy the requirement that Citizens Associations be "persons aggrieved." *See Goto v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 917, 929–30 (D.C. 1980) (Kelly, J., concurring [6]) ("A mere 'interest in a problem,' no matter how long standing the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient itself to render an organization 'adversely affected' or 'aggrieved'…);*See also. York Apts. Tenants Ass'n v. D.C. Zoning Comm'n*, 856 A.2d 1079, 1084–85 (D.C. 2004) (YATA's close proximity to the [subject]

[6] The Court expressly declined to decide whether the Citizens Association of Georgetown qualified as a "person aggrieved" under the Zoning Act and Regulations in its majority opinion because the adjoining property owner, intervened and independently satisfied the jurisdictional requirement for standing. *Goto*, 423 A.2d at 922.

property alone does not make every use, or change in use, of the subject property injurious to YATA's members"). Standing typically requires competent evidence of a concrete injury to identified members, such as sworn statements in support of the appeal or other proof of perceptible impact, which is notably absent here. *See e.g.* BZA Appeal No. 19374

II. ARGUMENT

The ZA's interpretation of "structure" to exclude light poles is consistent with the text, context, and purpose of the Zoning Regulations, as well as longstanding administrative practice and sound policy. High-mast lighting has never been treated as a "structure" that is subject to zoning standards for height, setbacks, and more. The ZA's interpretation reflects decades of consistent practice under the Zoning Regulations for schools, playing fields, parks, PUDs, and PDR zones. By contrast, Appellant reduces the definition of "structure" to a catch-all for any object with a footing. This ignores the interpretive value of the enumerated examples, thus rendering it both textually unsupported and practically unworkable.

A. The ZA's Interpretation is Consistent with the Text and Scope of the Term 'Structure' Defined in Subtitle B § 100.2

Although the definition of "structure" under Subtitle B § 100.2 is broad, it is not boundless. The addition of the phrase "includes but is not limited to" does not transform the term into a catch-all. Where a definition contains a non-exhaustive list, that list signals the kinds of entities the regulation was meant to reach. *See Nat'l Ass'n of Postmasters of U.S. v. Hyatt Regency Washington*, 894 A.2d 471, 476 (D.C. 2006) ("Where general words follow specific words in a[n] ... enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words."). The definition of "structure" lists examples that include radio and TV towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls. These examples are not an arbitrary and random

assortment, but illustrations of improvements with features that implicate zoning concerns, such as massing, occupancy, or symbolic presence. Light poles share none of these attributes.

The inclusion of "flag poles" in the definition of structure underscores the point. A "flag pole" - defined by Webster's as "a pole on which to raise a flag" - has a distinct meaning. Although similar in shape to a light pole, flag poles carry dynamic and symbolic elements: flags sway with the wind, risk encroachment if not properly set back, and serve ceremonial, political, religious, or institutional functions. By contrast, light poles are static utility fixtures whose impacts are operational, not symbolic. Had the Zoning Commission intended to regulate light poles, they could have said so expressly or broadened the genus to "all poles." They did not. The deliberate inclusion of flag poles and subsequent omission of light poles demonstrates that light poles were not meant to fall within Subtitle B § 100.2. *See Odeniran v. Hanley Wood, LLC,* 985 A.2d 421, 427 (D.C. 2009) ("when a legislature makes express mention of one thing, the exclusion of others is implied"); *See also Dolan v. U.S. Postal Serv.,* 546 U.S. 481, 486, 126 S. Ct. 1252, 1257, 163 L. Ed. 2d 1079 (2006) (explaining that although a definition read in isolation could sweep broadly, context and statutory structure may require a narrower construction)

That reading is reinforced by the broader regulatory context. When particular language is included in one section but omitted in another, courts presume the omission was intentional. *In re Paul*, 292 A.3d 779, 785 (D.C. 2023). Here, the Zoning Regulations expressly reference "light poles" in the definition of "stealth structure" but omit "light poles" from the general definition of "structure." *See* Subtitle B § 100.2. Read together, these provisions show a deliberate drafting choice: the Commission knew how and when to regulate light poles and did so only when combined with an antenna.

The interpretive guidelines for the Zoning Regulations lead to the same conclusion. Subtitle A § 101.1 provides broad instructions that the Zoning Regulations should be construed to promote

conditions favorable to recreation and civic activity. Sweeping light poles into the definition of "structure" would do the opposite. It would create unworkable consequences by requiring setback relief for routine lighting in schools, parks, industrial zones, and major projects. Decades of practice and approved plans confirm that outcome was never intended. *See* Argument, infra § B.

B. The ZA's Interpretation is Consistent with Longstanding City-Wide Practice

For decades, the District has not treated light poles as a "structure" that is regulated by zoning, a practice reflected in both administrative interpretation and the broader regulatory framework. Lighting installations are addressed through primarily through the DC Building Code and other performance standards and operational rules, not bulk or setback controls. For example, D.C. Code § 10-307 directs the Mayor to adopt rules governing the scheduling and use of recreation facilities, including lighting, to ensure equitable access and protect facilities from overuse. Similarly, D.C. Code § 10-304(a) authorizes partnerships and sponsorships for parks and recreation facilities, which routinely include lighting improvements as part of programmatic enhancements. These provisions confirm that light poles are managed as functional elements of recreational infrastructure, subject to operational and safety oversight rather than zoning restrictions on massing or placement.

This long-standing practice is also confirmed by the Office of Planning's proposed "omnibus" text amendment under ZC Case 25-12 (the "Text Amendment"), the relevant portion of which is attached at **Exhibit C**.[7] The Text Amendment proposes to expressly exclude light poles for public recreation facilities from the definition of "structure." The preamble to the proposed revision states "light poles or standards are not specifically regulated in the zoning regulations." Accordingly, the Text Amendment proposes revision to the definition of "structure"

[7] The Text Amendment has been "set down" by the Zoning Commission but a hearing has not been scheduled as of the filing of this brief.

under Subtitle B § 100.2 to state that it "shall not include light poles." The Text Amendment also proposes to exempt light poles up to 90 feet in height from setback requirements, acknowledging that setback requirements are "practically difficult without diminishing the utilization of these important amenity spaces to families in DC."

Therefore, the Text Amendment would codify the historic treatment of light poles as not subject to the Zoning Regulations. As the District's expert land use agency, OP's interpretation is entitled to "great weight" under D.C. Code § 6-623.04, and its recognition that the Text Amendment merely memorializes long-standing practice reinforces the reasonableness of the ZA's interpretation.

This historic practice is further illustrated by numerous approved projects across the District where light poles were installed without being treated as structures requiring setback relief[8]:

- **Garrison Elementary School** – 1200 S Street NW: Field lighting and netting/poles for soccer backstop constructed in 2024 under Building Permit B2405451.
- **Banneker Baseball Field** – 2500 Georgia Avenue NW: Lighting constructed in 2009 under Building Permit B0900355.
- **Cardozo High School** – 1200 Clifton Street NW: Lighting constructed in 2009 under Building Permit B0800942.
- **Dunbar High School** – 101 N Street NW: Lighting constructed in 2012 under Building Permit B1206276

Appellant argues that that the Zoning Regulations have been consistently misinterpreted. *See* Appellant's Stmt. at 15. To accept that argument, the Board would have to assume that countless permits for school fields, parks, recreation centers, PUDs, and other projects with large-scale lighting were issued in error. Doing so would create immediate uncertainty, render existing

[8] In addition to those listed above where lighting was explicitly permitted there are a multitude of projects city wide, both public and private, that include tall, freestanding light poles where zoning relief was not contemplated including: Marie Reed Field, Walter Reed Town Center Plaza, Shaw Dog Park and Skatepark (Benjamin Banneker High School site), Volta Park Tennis Court Lights, and McMillan Community Park.

installations nonconforming, and trigger a surge of variance applications that the Commission may soon make unnecessary. To that end, treating a light pole as a "structure" with accordant height restrictions and setback requirements would make it extremely challenging to install light poles on many sites throughout the city. Most light poles – particularly those that illuminate recreational fields – are exceedingly tall, upward of 90 feet in height. Yet, the sites on which many light poles are installed are not large enough to allow for an effective lighting scheme with setbacks equal to the height of a light pole – potentially 90 feet.

The far more plausible explanation is the one the ZA has applied here: light poles have never been treated as "structures" and the definition does not include them. This interpretation is grounded in the text, confirmed by decades of permitting practice, and now reinforced by the Office of Planning's proposed Text Amendment. The sensible course is to affirm the ZA's interpretation, preserve continuity, and allow the Commission to complete its clarification.

C. Appellant's Interpretative Canons do not Justify Rewriting Subtitle B § 100.2

To begin, Appellant begins with an obvious red herring asserting that "The Zoning Administrator here has adopted an impermissibly narrow interpretation of the word 'structure' that is at odds with the plain meaning of definition and the evident intent of the drafters to ensure that "structure" was interpreted broadly." Appeal Stmt. at 9. The question is not whether the definition is broad in the abstract, but how it applies in this context. Moreover, "structure" is not a term left to its "plain meaning" as the Appellant asserts; it is expressly defined in Subtitle B § 100.2, so the Board's task is to apply that definition; not to engage in a generic "plain meaning" analysis.

Appellant's reliance on a "most restrictive" reading stumbles out of the gate. Appeal Stmt. at 12. The Board cannot decide which rule is "more restrictive" until it determines whether a light pole is a "structure" in the first place. Subtitle A § 101.3 presupposes two standards that both apply, instructing the ZA only to select the more restrictive among them. It does not answer the threshold

question of applicability, which turns on the definition of "structure" under Subtitle B § 100.2. What's more, Appellant has failed to identify any "statute" or other municipal regulation" that conflicts with the Zoning Regulations. Instead, it simply offers its own restrictive reading of "structure" and insists it must prevail because it is stricter. *Id.* That misstates the function of § 101.3, which only operates when the Zoning Regulations compete with some external legal standard. Where, as here, no such competing statute or regulation exists, § 101.3 has no role to play.

Next, Appellant misapplies the concept of "surplusage." That interpretive canon requires courts to give effect to all words, *read in context*, not to elevate one phrase at the expense of the rest. *See Czajka v. Holt Graphic Arts, Inc.*, 310 A.3d 1051, 1061 (D.C. 2024) (explaining that there is a strong preference for giving each word independent effect). Appellant's interpretation strips the illustrative lists of meaning. If "anything constructed" and "anything attached" already cover every possible object, then the additional phrases "including a building" and the detailed list of towers, platforms, flag poles, tanks, and the like would serve no purpose. If the Board adopted Appellant's reading, the list becomes meaningless which is counter to what the law dictates for such situations. The ZA's interpretation avoids that problem. It gives effect both to the broad opening clause and to the list of examples, treating the latter as guideposts that clarify the kinds of improvements the Regulations intended to regulate as "structures." This reading harmonizes the text, preserves the independent function of every phrase.

Finally, Appellant's "absurdity" argument amounts to little more than a slippery slope designed merely to raise alarm rather than engage the actual issue before the Board. The Zoning Regulations are not the only regulatory scheme that governs construction in the District. Building, electrical, historic preservation, public space, and permitting requirements all provide independent safeguards against such outlandish scenarios. The Zoning Administrator reasonably concluded that

some objects, specifically light poles, fall outside the Zoning Regulations' scope. That determination is not only rational but essential to a workable regulatory system. There is no record of any pending application for an 89-foot residential light pole, and no decision applying the ZA's interpretation to such a case. The Board is not tasked with resolving abstract "what ifs" untethered from the actual dispute before it. To the extent Appellant believes the Regulations should impose setback requirements on light poles or similar facilities to avoid such a scenario, the proper vehicle for that policy concern is a text amendment. It is not the role of the Board to rewrite Subtitle B § 100.2 under the guise of interpretation. See *Chagnon v. BZA*, 844 A.2d 345, 349 (D.C. 2004) (holding that the Board may not "rewrite or supply omissions to regulations to achieve a preferred policy outcome.")

In short, it is Appellant, not the ZA, who asks the Board to depart from the regulatory text. The ZA's interpretation gives full effect to the text, respects the enumerated examples, and preserves the regulatory scheme as intended. Appellant's contrary approach would collapse the definition into a limitless category and rewrite the code to achieve a policy outcome the Zoning Commission never adopted.

D. BZA Case 19293 was a Case-Specific Grant of Variances, not a Precedential Interpretation of Subtitle B § 100.2

The Board's summary order in BZA Case No. 19293 simply articulated that the applicant in that case had satisfied the requirements for area variances for the proposed 90-foot light arrays. *See* BZA No. 19293, Ex. 37. That reflects how the application was framed and pursued in that case record. Therefore, Appellant's premise is wrong: Gonzaga was not "require[d]" to seek variance relief. *See* Appellant's Stmt. at 12, 15. Rather, Gonzaga self-certified and pursued relief out of caution, and the Board granted what was requested. The order contains no analysis of Subtitle B § 100.2 and no holding that all light poles fall within the definition of "structure."

Treating BZA Case No. 19293 as binding precedent on this definitional question conflates the Board's granting of an entitlement with a finding that such relief was legally necessary, a distinction the Board explicitly points out in its order. *See id.* at 1 ("in granting the certified relief, the Board of Zoning Adjustment made no finding that the relief is either necessary or sufficient"). Appellant identifies no passage where the Board interprets the term "structure" or resolves the definitional issue. *See* Appellant's Stmt. at 14-15. At no point in the Order or the Office of Planning report were the lights at issue referred to as "structures." *See Generally* BZA No. 19293, Ex. 37 (Order); BZA 19293, Ex 26. Summary orders routinely resolve the relief sought without deciding broader questions of regulatory construction, BZA Case No. 19293 is no different. It cannot be read as a rule of general applicability, and it provides no basis for overturning the Zoning Administrator's interpretation here.

III. Conclusion

For all these reasons, the Zoning Administrator's interpretation is the most reasonable and consistent reading of the Zoning Regulations. It reflects the text and structure of Subtitle B § 100.2, aligns with the purpose of the Zoning Regulations, and is supported by decades of permitting practice and agency interpretation. It avoids the uncertainty and disruption that would follow from adopting Appellant's approach and is consistent with the pending text amendment that will clarify this point going forward. Nothing in the record or in prior Board decisions compels a different result. The Board should affirm the ZA's interpretation and the validity of Building Permit No. B2308807.

Sincerely,
COZEN O'CONNOR

Meredith H. Moldenhauer

Zachary R. Bradley

Exhibit A

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Advisory Neighborhood Commission 2E

Representing the communities of Burleith, Georgetown, and Hillandale
3265 S Street, NW • Washington, DC 20007
(202) 724-7098 • anc2e@dc.gov

February 5, 2020

Mayor Muriel Bowser
Mayor
Government of the District of Columbia
1350 Pennsylvania Avenue NW
Washington, DC 20004
muriel.bowser@dc.gov

Chancellor Lewis Ferebee
Chancellor
District of Columbia Public Schools
1200 First Street NE
Washington, DC 20002
Lewis.Ferebee@k12.dc.gov

Mr. Delano Hunter
Director
Department of Parks and Recreation
1275 First Street NE, 8th Floor
Washington, DC 20002
delano.hunter@dc.gov

RE: Proposed Transfer of Ellington Field to the Department of Parks and Recreation

Dear Mayor Bowser, Chancellor Ferebee, and Director Hunter,

On February 3, 2020 ANC 2E held its regularly scheduled public meeting, which was properly noticed and attended by eight commissioners, constituting a quorum. At this meeting the Commission adopted the following resolution by a vote of (8-0-0) with regard to the above-referenced matter:

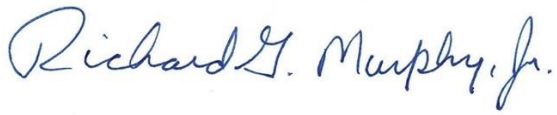
> ANC 2E believes that Ellington Field is an important resource for ANC 2E and nearby communities.
>
> ANC 2E understands that neighbors and parents of students at nearby public schools have expressed opposition to the transfer of administrative responsibility for Ellington Field from the District of Columbia Public Schools (DCPS) to the Department of Parks and Recreation.
>
> ANC 2E believes that regardless of which agency of the DC Government is charged with responsibility for management of Ellington Field, the following principles should be applied:

1. Public school students and, in particular, students of (in no particular order) Hardy Middle School, School Without Walls, Duke Ellington School of the Arts, and Hyde-Addison Elementary School should have first priority access to the field at no cost to the respective schools. Specifically, no agreements should be entered into with any non-public organization that would deny or reduce access to the field to DCPS students for school-related activities,

2. The DC Government should make adequate funds available to renovate and improve the field and its associated facilities to make Ellington Field a first-class recreational asset; and

3. Going forward, before any significant decisions concerning management or future use of Ellington Field are made, a proposed usage plan that includes analysis of potential traffic, environmental, and lighting issues should be made available for public review and comment and the responsible agency should engage in active outreach to, and discussions with, residents and/or schools who may be impacted by the proposed usage plan, and the views of the potentially impacted residents and/or schools should be given great weight.

Respectfully submitted,



Rick Murphy
Chair, ANC 2E

Exhibit B

From:	Michael McDuffie
To:	Dyer, Christopher (DPR)
Cc:	Burleith (new); Freeman, Thennie (DPR); Toppin, Gina (DPR); Caspari, Amy (DPR); Nohrden, Peter (DPR); Jones, Tommie (DPR); VanHouten, Theodore (DDOT); Gore, Wayne (DGS); Hulick, Genevieve (Council); Velasco Rodriguez, Pablo (Council)
Subject:	Re: Letter re Ellington Track and Field
Date:	Thursday, October 5, 2023 9:10:54 AM
Attachments:	image001.png

Mr. Dyer:

Thank you for clarifying your latest response in the email below.

(1) I appreciate DPR's agreement to conduct traffic **and** parking studies. For the reasons set forth in item (2), the first step for such studies is actually a proposed schedule of use: you can't conduct proper studies without knowing how the track and field are proposed to be used in light of the material changes that are being proposed (principally making the field capable of hosting organized sports and the proposed addition of lights). With respect to the parameters of the studies, I would strongly encourage you to get community input **prior to their design and execution**. Again, this will serve to further engage the community and hopefully help avoid some of the glaring errors present in your traffic consultant's prior work as has been pointed out in past communications from the community.

(2) As to the proposed schedule of use, there is apparently some confusion here: the community is not asking for DPR to publish the current or future schedule of actually issued permits for Ellington Field on a weekly basis; we're perfectly capable of going to the DPR web site (assuming it is accurate) and seeing what permits have or have not been issued. Instead, as I think is pretty clear from my August letter and prior requests from other members of the community, the community has asked and continues to ask how DPR proposes to permit out the track and field **once the facility is renovated and the field is made capable of hosting organized sporting events (which the field really is not in its current state)**. A proposed schedule of use for the renovated facility and identity of proposed permittees is necessary for a variety of reasons including to properly conduct the traffic and parking study mentioned in item (1). For example, if DPR intends to propose permitting out the field to adult track and sports teams (to the extent actually permissible in light of the applicable legal restrictions), then that would require a different traffic and parking study than if the intent is to limit permits to Ellington marching band practice, DCPS track practices, and DCPS soccer matches. The kind of activity, hours of use, and identity of the intended users matters, and such a proposed schedule is an essential starting point for developing a proper traffic and parking study (instead of just assuming that there would be no increase in peak vehicular traffic primarily based upon DPR's say-so as the prior work has done). In other words, the first step is actually the proposed schedule of use, not the traffic and parking studies.

(3) As to maintenance, regardless of what DPR's standard practice is, the community needs something more than your written assurance that DPR and DGS are committed to maintaining the facility as a prerequisite to renovation to avoid creating hazardous conditions and public nuisance. One of the principal reasons proffered by DME Kihn, then-DPR Chief of Staff Ely Ross, and others from DPR for the purported transfer of control of the Ellington Track and

Field from DCPS to DPR back in February 2020 was that maintenance would be improved. That didn't happen. And that didn't happen even in the face of multiple pointed requests with respect to potentially hazardous conditions on the field. The Burleith Citizens Association and/or the local ANC2E are potential suitable counterparties for such an agreement, and I would imagine that relatively non-controversial terms of such an agreement would include a monthly walkthrough with the assigned park ranger and a schedule of required cleaning and maintenance with respect to the proposed-to-be-added bathroom facilities and the grass and surrounding plantings for which there was a substantial investment made c. 2011.

Sincerely,
Michael McDuffie

On Tue, Oct 3, 2023 at 3:24 PM Dyer, Christopher (DPR) <christopher.dyer@dc.gov> wrote:

> Dear Mr. McDuffie:
>
> Thanks for your follow-up to my response to your questions about Ellington Field. Here is an updated response to your questions.
>
> 1. DPR will be conducting an additional traffic study. This will also include a parking study as well.
> 2. DPR will not publish a weekly list of activities at Ellington Field. However, we do list all permitted activities on the DPR website. As stated in our previous e-mail, Information about permits for all DC fields/parks can be found at https://dpr.dc.gov/DPRcalendar. Please click here for a specific listing of the current permit activity at Duke Ellington Field.
> 3. DPR will not enter into a specific maintenance agreement about Duke Ellington Field. This is not a standard practice for our agency and it is unclear from your email who this agreement would be entered into. Please note, DPR does enter into partnership agreements with community groups who are interested in becoming park partners or "Adopt-A-Park" groups. Please visit https://dpr.dc.gov/partner for information on our partnership program.
>
> Again, thanks for sharing your concerns about the field at Duke Ellington. Please let me know if you have any additional questions or concerns.
>
> Chris
>
> Christopher Dyer
>
> Community Engagement Manager
>
> Department of Parks and Recreation
>
> 1275 1st Street NE
>
> Washington DC 20002
>
> (202) 702-9453 (cell)
>
> dpr.dc.gov

http://recforall.com/

From: Michael McDuffie <michael.mcduffie@gmail.com>
Sent: Wednesday, September 27, 2023 1:00 PM
To: Dyer, Christopher (DPR) <christopher.dyer@dc.gov>
Cc: Burleith (new) <burleith@groups.io>; Freeman, Thennie (DPR) <thennie.freeman@dc.gov>; Toppin, Gina (DPR) <gina.toppin@dc.gov>; Caspari, Amy (DPR) <amy.caspari@dc.gov>; Nohrden, Peter (DPR) <peter.nohrden@dc.gov>; Jones, Tommie (DPR) <tommie.jones@dc.gov>; VanHouten, Theodore (DDOT) <theodore.vanhouten@dc.gov>; Gore, Wayne (DGS) <Wayne.Gore@dc.gov>; Hulick, Genevieve (Council) <GHulick@dccouncil.gov>; Velasco Rodriguez, Pablo (Council) <pvelascorodriguez@dccouncil.gov>
Subject: Fwd: Letter re Ellington Track and Field

Mr. Dyer:

Thank you for responding to my seven-page letter sent almost a month ago regarding Ellington Track and Field with the brief response below. In my August letter, I requested four items: (1) a parking study (which DPR's own consultant recommended back in 2021), (2) a realistic traffic study, (3) a proposed weekly schedule and agreement regarding permitted use, and (4) an agreement on maintenance. If I'm reading your response correctly, it appears that DPR is refusing to provide three of those items (including the parking study recommended by DPR's own consultant), but is willing to conduct "an additional voluntary traffic study." **Please confirm that DPR is refusing to provide items (1), (3), and (4) requested in my August letter.** As noted, these items are prerequisites to moving forward with the renovation, so I would strongly urge DPR to reconsider its view, especially given that the community's cooperation and/or permission will likely be required for a few facets of DPR's apparent plans (e.g., zoning approval for the addition of lights, DPR's apparent plan to use the field for purposes other than public education).

With respect to the "additional voluntary traffic study" that you mention below, I would highly recommend that you consult with the community about its parameters, which in addition to engaging the community would also be an easy way to make sure you address the community's concerns. As I've detailed previously, the prior work of your traffic consultant contained several errors or totally unrealistic assumptions and has failed to comply with even the relatively minimal requirements that apply to a traffic statement required by DDOT's guidelines. I am happy to discuss this with you at a mutually

convenient time to make sure we get it right this time.

Finally, I am concerned--to put it mildly--by your statement that "DPR is committed to working with the community and DGS to address all maintenance requests." As you know, the field has had broken and unrepaired equipment on it for years under DPR's purported period of control. I have personally raised this with you and other officials at DPR and DGS on several occasions over the past few years without resolution; indeed, I am still waiting for a response regarding Work Order # 732282, which dates back to January of this year (eight months ago) and to which I received no substantive response despite following up six times now. Most egregiously, I raised the issue of broken equipment being on the field with you personally this month and the response I received--with respect to a field used daily by children--was that cleaning up broken equipment would have to wait for an as-of-yet unscheduled renovation. Ignoring DPR's role and clout in being able to request maintenance from DGS is a major error and DPR's recent conduct in this regard further confirms the necessity of an agreement regarding maintenance with the community.

Sincerely,

Michael McDuffie

---------- Forwarded message ---------
From: **Dyer, Christopher (DPR)** <christopher.dyer@dc.gov>
Date: Tue, Sep 26, 2023 at 3:47 PM
Subject: RE: Letter re Ellington Track and Field
To: Michael McDuffie <michael.mcduffie@gmail.com>

Mr. McDuffie:

Thank you for reaching out to the DC Department of Parks and Recreation (DPR) with questions about the renovation of the Duke Ellington Field. We would like to acknowledge receipt of your e-mail and provide the following response to your questions about the parking study, schedule of use for the field, and maintenance.

In regards to your question about the parking study, DPR and the Department of General Services (DGS) worked closely with the Department of Buildings (DOB) and the District Department of Transportation (DDOT) to ensure we follow all requirements in regard to parking and traffic studies.

To that end, DPR and DGS have engaged a traffic consultant to provide a Traffic Statement for the Duke Ellington Track and Athletic Field renovation as required in the DDOT Guidance for Comprehensive Transportation Review (CTR) for developments.

There were two assessments conducted in 2021 and 2023 to ensure we had accurate counts on the vehicular impacts that the neighborhood currently experiences during a school day, post-pandemic. DPR will also work with our design team to conduct an additional voluntary traffic study and will share those results with the community upon completion.

Regarding your question about public use of the track. As a part of our transfer agreement with DC Public Schools regarding Ellington Field, DPR manages both permitted access of the track and field with the area Ward 2 public schools and provides community access times for Ellington track and field outside of school activities Please visit

https://dpr.dc.gov/DPRcalendar to see the current schedule of permits issued at the Duke Ellington Field.

In regards to your question about maintenance, the Department of General Services (DGS) is responsible for the maintenance of all DPR properties including the Ellington Field. DPR is committed to working with the community and DGS to address all maintenance requests.

Thanks again for reaching out to the DC Department of Parks and Recreation (DPR). Please feel free to e-mail me if you have any additional questions or concerns.

Chris

Christopher Dyer

Community Engagement Manager

Department of Parks and Recreation

1275 1st Street NE

Washington DC 20002

(202) 702-9453 (cell)

dpr.dc.gov

http://recforall.com/

From: Michael McDuffie <michael.mcduffie@gmail.com>
Sent: Friday, September 8, 2023 10:32 AM
To: Freeman, Thennie (DPR) <thennie.freeman@dc.gov>
Cc: Toppin, Gina (DPR) <gina.toppin@dc.gov>; Caspari, Amy (DPR) <amy.caspari@dc.gov>; Nohrden, Peter (DPR) <peter.nohrden@dc.gov>; Jones, Tommie (DPR) <tommie.jones@dc.gov>; Putta, Kishan (SMD 2E01) <2E01@anc.dc.gov>; ATD EOM DMED <dme.eom@dc.gov>; VanHouten, Theodore (DDOT) <theodore.vanhouten@dc.gov>; Gore, Wayne (DGS) <Wayne.Gore@dc.gov>; bpinto@dccouncil.us; Hulick, Genevieve (Council) <ghulick@dccouncil.gov>; Velasco Rodriguez, Pablo (Council) <pvelascorodriguez@dccouncil.gov>; Dyer, Christopher (DPR) <christopher.dyer@dc.gov>
Subject: Re: Letter re Ellington Track and Field

I write to follow up on my letter of August 31st to which I have yet to receive a response. Given that it is apparent that the DPR community meetings are not the best forum for addressing these issues, it would be helpful to understand whether DPR intends to provide any of the four items referenced in my letter. I am aware that DPR's traffic consultant did another one-day traffic study on what I gather was the last day of the DCPS school calendar and when Georgetown University was out of regular session, but I remain interested in whether DPR intends to conduct a realistic traffic study of normal school-year conditions once the field is made capable of hosting organized sports and the facility is renovated.

On Thu, Aug 31, 2023 at 3:36 PM Michael McDuffie <michael.mcduffie@gmail.com> wrote:

Dear Interim Director Freeman:

Please see the attached letter regarding Ellington Track and Field in anticipation of the upcoming September 7 community meeting sent in my capacity as a Burleith resident and DCPS parent. For the reasons set forth at length in the letter, I am renewing my request for four items relating to the planned renovation and activation of the facility that have not been provided to the community:

(1) A parking study as was specifically proposed by DPR's own consultant to address community concerns, see Exhibit A;
(2) An up-to-date traffic study that makes realistic projections about the use of the improved facility and how users will actually get there;
(3) A proposed weekly schedule and agreement regarding permitted use for the field, including proposed night-time hours, non-DCPS permittees, and frequency of use; and
(4) An agreement on maintenance in light of the repeated failure to properly maintain the field during DPR's purported period of control

Thank you for your time and consideration.

Sincerely,

Michael J. McDuffie

Exhibit C

District of Columbia
Office of Planning

MEMORANDUM

TO: District of Columbia Zoning Commission

FROM: Joel Lawson, Associate Director, Development Review
Joshua Mitchum, Development Review Specialist
Jennifer Steingasser, Deputy Director, Development, Design, Preservation

DATE: June 30, 2025

SUBJECT: **ZC Case 25-++: Setdown Report for an "Omnibus" Zoning Text Petition, to modify and clarify the text of various provisions of the Zoning Regulations**

I. RECOMMENDATION

The Office of Planning (OP) recommends that the Zoning Commission **set down for a public hearing** this Office of Planning petition for various amendments to the Zoning Regulation text to address issues raised by members of the Zoning Commission, the Board of Zoning Adjustment and the public as part of the review of BZA and Zoning Commission cases; to facilitate the removal of impediments to housing and to clarify and simplify regulations and administrative reviews.

The proposed changes are not inconsistent with Comprehensive Plan policy direction, and with direction from the Zoning Commission to address and rectify issues in the zoning regulations, including ones arising from the ZR-16 Zoning Regulations.

This report also serves as the prehearing report required by Subtitle Z § 501.

If set down for a public hearing, OP requests flexibility to work with the Office of Zoning Legal Division on the draft language for the public hearing notice.

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(g) **Notwithstanding subsection (d), ~~Increase~~ increase** by more than two percent (2%) **or one (1) unit, whichever is greater,** the number of dwelling units **or** hotel rooms**~~, or institutional rooms,~~** within the approved square footage; or

(h) Increase or decrease by more than two percent (2%) **or one space, whichever is greater,** the number of parking or loading spaces depicted on the approved plans.

...

SUBTITLE Y AUTHORITY AND APPLICABILITY

CHAPTER 7 APPROVALS AND ORDERS

702 VALIDITY OF APPROVALS AND IMPLEMENTATION

…

702.8 The Zoning Administrator shall not approve a permit application for zoning compliance unless the plans conform to the plans approved by the Board as those plans may have been modified by any guidelines, conditions, or standards that the Board may have applied, subject to the minor deviations permitted by Subtitle Y § 703 **or as provided in Subtitle A, § 304.10.**

702.9 The Zoning Administrator also shall not approve an application for a certificate of occupancy unless the requested use is identical to the use approved by the Board**~~, or is for a use permitted as a matter of right,~~ or as otherwise provided in Subtitle A, § 304.10**.

3. LIGHT POLE FOR DISTRICT RECREATION FACILITIES SUBTITLE B § 100; SUBTITLES D, E, & F §§ 203, 4904

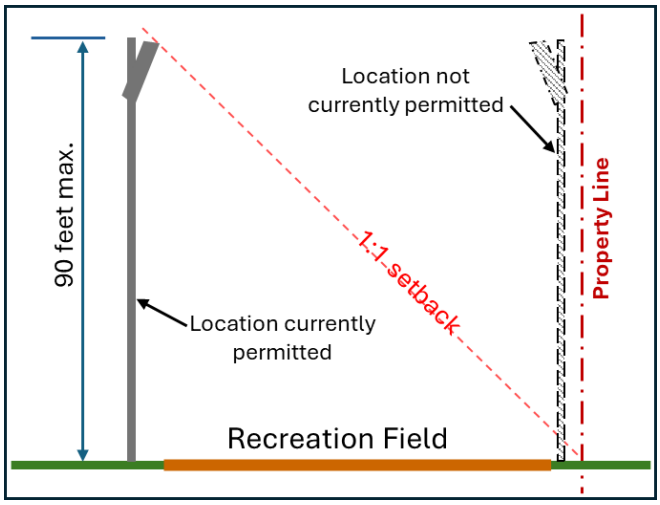
OP is proposing to amend the definition of structure to more clearly address and facilitate light poles for public outdoor athletic fields.

Currently, light poles or standards are not specifically regulated in the zoning regulations. This has led to some confusion regarding the ability of the District to provide lights for public recreation and play fields for evening use of these desired resources for the growing population of DC families.

This proposal would specifically regulate and allow light standards for athletic, recreation, and play fields on District owned properties – public schools and recreation centers. While it establishes a maximum permitted height for these structures, this is a height that is permitted under the existing zoning regulations in these zones when a 1:1 setback is provided from the property line. In the case of lighting for recreation fields, providing this setback can be practically difficult without diminishing the utilization of these important amenity spaces to families in DC. Rather, light poles could be place in sub-optimal locations.

The DC Department of Parks and Recreation (DPR) currently has guidelines for the design, placement, height and orientation of such light poles, generally intended to sure adequate illumination of the play fields for safety of the players, but also to minimize light spill onto any adjacent neighborhood. These standards would remain in effect.

Light poles for recreation fields are also often provided for private school or university recreation or athletic fields. These uses would continue to require a BZA or Zoning Commission public review process, and therefore public review, pursuant to the Campus Plan review requirements. OP is not proposing amendments to the provisions for these uses.



Draft Text Amendment:

SUBTITLE B DEFINITIIONS, RULES OF MEASURMENT, AND USE CATEGORIES

CHAPTER 1 DEFINITIONS

200 DEFINITIONS

…

Structure: Anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground and including, among other things, radio or television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls. The term structure shall not include **light poles** mechanical equipment, but shall include the supports for mechanical equipment. Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) structure.

…

SUBTITLE D RESIDENTIAL HOUSE (R) ZONES

CHAPTER 2 GENERAL RULES OF DEVELOPMENT FOR RESIDENTIAL HOUSE (R) ZONES

203 HEIGHT

…

203.7 Light poles for public school recreation fields and facilities may be erected to a height not exceeding ninety (90 ft.) with no required setback from lot lines.

...

CHAPTER 49 PUBLIC SCHOOLS

4904 HEIGHT

…

4904.2 Light poles for public school recreation fields and facilities may be erected to a height not exceeding ninety (90 ft.) with no required setback from lot lines.

SUBTITLE E RESIDENTIAL RF (RF ZONES

CHAPTER 2 DEVELOPMENT STANDARDS FOR RESIDENTIAL FLAT (RF) ZONES

203 HEIGHT

…

203.9 Light poles for public school recreation fields and facilities may be erected to a height not exceeding ninety (90 ft.) with no required setback from lot lines.

...

CHAPTER 49 PUBLIC SCHOOLS

4904 HEIGHT

…

4904.2 Light poles for public school recreation fields and facilities may be erected to a height not exceeding ninety (90 ft.) with no required setback from lot lines

SUBTITLE F RESIDENTIAL APARTMENT (RA) ZONES

CHAPTER 2 DEVELOPMENT STANDARDS FOR RESIDENTIAL APARTMENT (RA) ZONES

203 HEIGHT

…

203.8 Light poles for public school recreation fields and facilities may be erected to a height not exceeding ninety (90 ft.) with no required setback from lot lines.

…

CHAPTER 49 PUBLIC SCHOOLS

4904 HEIGHT

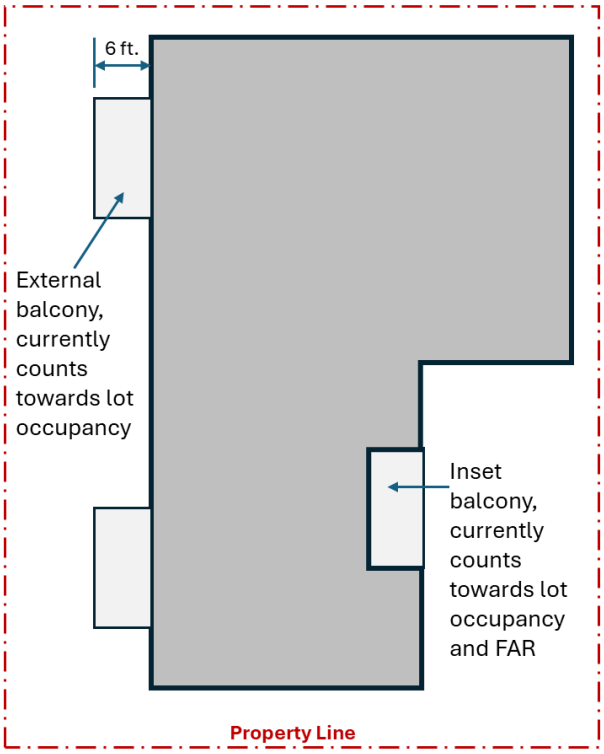
…

4904.3 Light poles for public school recreation fields and facilities may be erected to a height not exceeding ninety (90 ft.) with no required setback from lot lines.

4. BALCONIES AND GROSS FLOOR AREA (GFA) SUBTITLE B § 304

OP is proposing to amend and clarify Gross Floor Area provisions, which determine permitted FAR, to exempt balconies that are inset into the building external façade.

The Rules of Measurement for Gross Floor Area (GFA) of a building (Subtitle B § 304.8) state that balconies projecting out from the building (to a maximum of six feet) do not count towards GFA.



External Balconies: Based on feedback received at one of the ANC open house meetings regarding this zoning initiative, the proposal is to amend the exemption for external balconies from six feet to eight feet, to add flexibility and potentially provide a more usable space for building occupants. These balconies would continue to have to meet setback requirements.

Inset Balconies: The current regulations do not specifically address open balconies that are inset in from the external façade of the building - enclosed on three sides but open on at least one side. The Zoning Administrator (ZA) published an official Interpretation stating that:

> Inset balconies count in the measurement of GFA for the portions of the balcony that are under a roof.
>
> Inset balconies that are not covered by a roof do not count in the measurement of GFA.

Since it would be most typical for an inset balcony to have a roof, even if the roof is the floor of the inset balcony above, this interpretation would render most inset balconies as counting towards GFA and therefore FAR.

OP has received requests from architects, developers and members of the Zoning Commission to provide additional flexibility in the regulations, and to not disincentivize or dissuade the inclusion of all forms of balconies in new building designs. As such, OP is also proposing to exempt inset balconies from GFA, to a depth of eight feet.

Balconies can provide valued amenity space for residents and occupants and can help to provide façade articulation for buildings. Inset balconies can provide this in cases where there is limited