

October 22, 2025

VIA IZIS

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Frederick L. Hill, Chairperson
Board of Zoning Adjustment
441 4th St., NW, STE 200S
Washington D.C. 20010

**Re: BZA Case # 21314
Intervenor's Motion in Limine**

Dear Chairperson Hill and Honorable Members of the Board:

Pursuant to Subtitle Y § 408.1(d)–(e) of the Zoning Regulations, the Department of General Services (“DGS”) respectfully moves to strike from the record, and preclude further reference to, matters that are not germane to the issue on appeal. *See* Form 150, attached hereto as **Exhibit A**. Under these provisions, the presiding officer at a public hearing has express authority to “rule upon offers of proof and receive relevant evidence” and to “exclude unduly repetitious, immaterial, or irrelevant testimony.”

The purpose of this motion is to ensure that the October 29, 2025 hearing remains focused and efficient by limiting the hearing record to matters that bear directly on the Zoning Administrator’s March 7, 2025 determination that lighting poles are not “structures” under 11 DCMR § B-100.2 and therefore are not subject to the setback requirements of § D-203.5. DGS seeks to limit the hearing record in two respects: (1) to exclude discussion of the 2020 interagency transfer of Ellington Field and related case law, and (2) to exclude internal, pre-decisional Department of Buildings (“DOB”) email communications predating the March 7 determination. These materials are not relevant to the issue on appeal and risk expanding the hearing into matters beyond the Board’s authority. DGS therefore submits the following in support of this motion:

1. Irrelevant Discussion of Property Transfer and Case Law

The Appellant’s filings devote significant attention to matters that have no bearing on the Zoning Administrator’s March 7, 2025 determination, including discussion of the 2020 transfer of Ellington Field from the District of Columbia Public Schools (“DCPS”) to the Department of Parks and Recreation (“DPR”) and extended references to *Commissioners of the District of Columbia v. Shannon & Luchs Construction Co.*, 17 F.2d 219 (D.C. Cir. 1927). Those topics concern property ownership and agency management, not the Zoning Administrator’s March 7, 2025 interpretation of the Zoning Code’s text. The Board’s appellate jurisdiction under D.C. Code § 6-641.07(g)(1) is limited to “any order, requirement, decision, determination, or refusal” made by an administrative officer in the enforcement of the zoning regulations. The Board is not empowered to adjudicate questions of property ownership, agency

control, or the District's internal management of real estate assets, because those matters do not involve the enforcement or interpretation of the Zoning Regulations. The Board's focus and attention should be on whether the Zoning Administrator's interpretation of § B-100.2 was correct as applied to the lighting poles. Thus, because the Appellant's arguments about the 2020 transfer and the precedential value of the *Shannon & Luchs* opinion neither illuminate nor affect that interpretation, they are immaterial within the meaning of Subtitle Y § 408.1(d).

2. Pre-Decision Agency Communications Outside the Appealable Action

The Appellant has also attached and discussed various preliminary or internal email exchanges that pre-date the March 7 determination. Those communications are not part of the appealable action because they do not represent any "order, requirement, decision, determination, or refusal" of the Zoning Administrator within the meaning of D.C. Code § 6-641.07(g)(1). The Board's review authority extends only to the Zoning Administrator's final, operative determination made in the enforcement or interpretation of the Zoning Regulations. Internal discussions or informal DOB staff correspondence that precede the final agency determination are by definition, pre-decisional and carry no independent legal effect. To treat them as appealable would convert every internal comment or draft into a reviewable zoning interpretation, expanding the Board's jurisdiction far beyond what statute allows. The only decision and email at issue is the Zoning Administrator's final interpretation communicated on March 7, 2025. Discussion of earlier drafts or staff deliberations risks turning this zoning appeal into a generalized inquiry into agency process, which is neither relevant nor appropriate under Subtitle Y § 408.1(d).

* * *

These materials and arguments do not inform the Board on the Zoning Regulations at issue and serve only to broaden the record into topics outside the Board's authority; thus, they should be stricken or disregarded pursuant to Subtitle Y § 408.1(d)–(e). The District therefore requests that the Board limit the October 29 hearing to the Zoning Administrator's March 7, 2025 decision and the supporting permit record, and exclude any argument or evidence relating to the 2020 DCPS–DPR transfer, the *Shannon & Luchs* opinion, or preliminary DOB email correspondence unrelated to the March 7 final determination.

Sincerely,

COZEN O'CONNOR



Meridith H. Moldenhauer

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of October, 2025 a copy of the foregoing Motion in Limine 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
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Attorney for Appellant

Advisory Neighborhood Commission 2E
Gwendolyn Lohse, Chairperson
Kishan Putta, SMD 2E01
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Burleith Citizens Association
2336 Wisconsin Avenue NW
PO Box 32262, Calvert Station
Washington, D.C. 20007
bca@burleith.org
Appellant



Meridith Moldenhauer

Exhibit A



BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA



FORM 150 – MOTION FORM

THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.:

Motion of:

☐ Applicant

☐ Petitioner

☐ Appellant

☐ Party

☐ Intervenor

☐ Other _____

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Points and Authorities:

On a separate sheet of 8 ½" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

Consent:

Did movant obtain consent for the motion from all affected parties?

☐ Yes, consent was obtained by all parties

☐ Consent was obtained by some, but not all parties

☐ No attempt was made

☐ Despite diligent efforts consent could not be obtained

Further Explanation: _____

CERTIFICATE OF SERVICE

I hereby certify that on this

D

D

day of

Month

,

Y

Y

Y

Y

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via:

☐ Mailed letter

☐ Hand delivery

☐ E-Mail

☐ Other _____

Signature:

Print Name:

Address:

Phone No.:

E-Mail: