DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT
Appellant: Burleith Citizens Association
BZA Case No. 21314

REPLY STATEMENT OF APPELLANT BURLEITH CITIZENS ASSOCIATION

I. Summary

Instead of addressing the language of the definition of "structure," Intervenor's new-to-the-case, private-law-firm counsel seeks to raise a host of irrelevancies, misrepresents key facts and legal precedents, and distorts well-settled canons of interpretation beyond recognition, all in an effort to distract this Board from the clear language of the applicable provision:

> "**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."
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> –11 DCMR § B-100.2 (emphasis added).

No reasonable interpretation could exclude light poles from the obvious breadth of this definition. The very first word of the provision is "[a]nything"–not "things," "something," "objects," or "certain items." "Anything" *means* anything: "[a]ny thing whatever; any such thing" per Webster's Dictionary. That the provision goes on to provide a listing of heterogeneous, illustrative examples that are explicitly couched in non-exhaustive language–"including" and "including, among other things"–only serves to accentuate the expansive breadth of the definition. This is the kind of textbook "belt-and-suspenders" approach where you have a broad general term followed by illustrative specifics–*anything from flag poles to gas holders to retaining walls*–that makes clear that the "general term is taken to include the specifics" but is not to be limited by them. Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts (2012) at 204-05 (hereinafter Reading Law); *see* pp. 4-5, *infra*.

The breadth of the definition is intentional: many of the restrictions in the Zoning Regulations apply only to "structures" such as height and setoff restrictions. Without a broad reading, one would need to invent an entirely new, artificial class of "non-structure" *thingamajigs* such as lighting poles, statues, tight-rope poles, artificial trees, and the like that would largely escape any restriction in the zoning regulations and could be erected virtually anywhere. Indeed, that appears to be the expressed view of the Zoning Administrator and Intervenor in this case: "yes, a [midblock row] homeowner like yourself in this zone could erect a 89-foot high light pole in your back yard without meeting the setback requirement of D-203.5." Appellant's Statement Exhibits A, 3/7/2025 6:11 PM Email from Kathleen Beeton, at 1; Intervenor Br. 11. This is nonsense. Where, as here, the language is clear, there is simply no need to adopt such

an unreasonable interpretation belied by the actual text and that leads to absurd results. *See In re Paul*, 292 A.3d 779, 785 (D.C. 2023) ("'In interpreting a statute or rule, we are mindful of the maxim that we must look first to its language; if the words are clear and unambiguous, we must give effect to its plain meaning.'" (quoting *In re Greenspan*, 910 A.2d 324, 335 (D.C. 2006), which in turn quoted *McPherson* v. *United States*, 692 A.2d 1342, 1344 (D.C. 1997)) (cited by Intervenor Br. 6).

It is therefore no surprise that the *only* zoning precedent cited among the three separately filed briefs by Appellant, Appellee, and Intervenor and their respective sets of three different counsel in this case that explicitly analyzed this issue *treated* lighting poles as "structure[s]" in closely analogous circumstances. In BZA Case No. 19293, Gonzaga High School sought approval for the installation of athletic field lighting in excess of the height restrictions applicable to structures under the then-applicable zoning regulations that are substantially similar to those applicable today. As part of that hearing, Gonzaga High School hired outside counsel at Goulston & Storrs, PC who submitted a 13-page statement the majority of which was devoted to seeking an area variance for the lighting. BZA Case No. 19293 Ex. 8. The Office of Planning submitted a three-page report that specifically analyzed the "Variance Relief from § 400.1 and 770.1, Height of Structures" for the four ninety-foot high light poles under the traditional three-part test for area variances. BZA Case No. 19293 Ex. 26. This Board held a hearing where arguments were specifically heard as to whether the lighting poles met the standard for an area variance, including receiving third-party testimony regarding view obstruction, potential insect propagation, increased night time noise, increased traffic and noise from the lights. BZA Case No. 7/19/2016 Tr. 44:22-68:21 (including testimony of local resident). Finally, this Board specifically wrote the following under the heading "Variance Relief" in its summary order (Appellant's Statement Exhibit C at 2): "As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3103.2 for area variances from the height requirements under § 400.1, and the height requirements under § 770.1, to permit the installation of four approximately 90-foot-tall monopole light arrays to serve existing athletic fields on the campus of a private school."

While of course this Board and the Office of Planning are not bound for all time by their respective summary order and report issued for BZA Case 19293, this Board should not abandon its previous ruling where, as here, the only reasonable interpretation of the text requires lighting poles be treated as "structure[s]." Accordingly, this Board should grant the limited relief requested by Appellant Burleith Citizens Association, which is the modification of the permit to exclude approval of the lighting poles. The practical effect of such an order would be to require DGS and/or DPR to apply for an area variance as it should have done at the outset during which hearing Appellant and the broader community hope that the DGS and DPR will finally be required to provide clear guidance on key unresolved issues such as the hours and days of operation, a proposed plan of usage and intended permittees, and what crowd size, traffic, parking, and sound mitigation measures would be in effect–all of which is still unresolved.

II. Intervenor's misleading attempts to rewrite the definition of "structure" under the guise of interpretation should be rejected.

A. Because the meaning of "structure" is clear and unambiguous, this Board must give effect to its plain meaning

Despite the clarity of the language at issue and the belt-and-suspenders approach used by the drafters, Intervenor DGS attempts to confect ambiguity where there is none in an effort to misapply the "constructionary crutches" of interpretative canons. However, regulatory language is not rendered ambiguous simply because an agency suddenly decides to misinterpret it. Here, as shown above, the language is clear. Intervenor relies (Br. 6) upon the recent case *In re Paul*, 292 A.3d 779, 785 (D.C. 2023), which is in accord:

> "In interpreting a statute or rule, we are mindful of the maxim that we must look first to its language; if the words are clear and unambiguous, we must give effect to its plain meaning." *In re Greenspan*, 910 A.2d 324, 335 (D.C. 2006) (brackets omitted) (quoting *McPherson* v. *United States*, 692 A.2d 1342, 1344 (D.C. 1997)). "Like the rule for statutory construction, `words of a [rule] should be construed according to their ordinary sense and with the meaning commonly attributed to them.'" Id. (alteration in original) (quoting *Washington* v. *United States*, 884 A.2d 1080, 1096 (D.C. 2005)).

So too here. Where, as here, the provision is clear, there is no need to go beyond those words as Intervenor suggests.

B. Even if the definition of "structure" were ambiguous, Intervenor's unprecedented attempt to rewrite the longstanding definition of "structure" should be rejected.

The definition of "structure," in pertinent part, appears to date back to the 1958 Zoning Regulations,[1] and yet Intervenor would have you believe that you cannot rely upon the clear, unambiguous meaning of the words in the text itself, but instead you must adopt a "mass, occupancy, or symbolic purpose" test divined by Intervenor's re-writing of the provision almost 70 years after the definition's drafting. Intervenor cites *zero* precedent for this supposed test: no administrative ruling, BZA order, court ruling, or zoning administrator interpretation that has been issued in the almost 70 years since the definition of "structure" was settled in pertinent

[1] *See, e.g.*, *Hot Shoppes, Inc.* v. *Clouser*, 231 F.Supp. 825, 831 n.3 (D.D.C. 1964) (1964 Case noting definition as "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 mechanical equipment, but shall include the supports for such equipment.").

part. Nothing. Indeed, it is not even the basis upon which the Zoning Administrator determined in this case that lighting poles were not "structure[s]." *See* Appellant's Statement Exhibit A at 1-2. It is totally made up for the purposes of this case alone and should be rejected.

Intervenor's totally unprecedented test of "mass, occupancy, or symbolic purpose" appears to rely *sub silentio* on what courts refer to as the "constructionary crutch" of *ejusdem generis*. *See* Br. 5 *citing Nat'l Ass'n of Postmasters of U.S.* v. *Hyatt Regency*, 894 A.2d 471, 476 (D.C. 2006) (explicitly acknowledging its application of *ejusdem generis*). As described by *Hyatt Regency* case relied upon by Intervenor, *ejusdem generis* sets forth the idea that: "'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.'" *Id.* at 476 (quoting *Edwards* v. *United States*, 583 A.2d 661, 664 (D.C. 1990)). However, as *Edwards* makes clear (*id.* At 664, citation omitted): "Latin maxims will only take us so far, however; `[t]he crux of the matter is that the rule of ejusdem generis is only a constructionary crutch and not a judicial ukase in the ascertainment of legislative intention.'" Indeed, "[t]he doctrine [of ejusdem generis] is not a rule of substantive law: it is merely a rule of construction to be used as an aid to interpretation *when intention is not otherwise apparent*." *Zenian* v. *District of Columbia Office of Employee Appeals*, 598 A.2d 1161, 1164 (D.C. 1991) (quoting *Hodges* v. *United States Fidelity & Guar. Co.*, 91 A.2d 473, 476 (D.C.1952) and rejecting the application of *ejusdem generis* where the non-exhaustive language "need not be limited to" was used). Here, the text is clear and unambiguous and intent is clear, so there is no need to resort to the "crutch" of *ejusdem generis*.

Intervenor urges its unprecedented and unworkable test because the items listed–unlike lighting poles–are supposedly "illustrations of improvements with features that implicate zoning concerns." Br. 6. Of course, lighting poles obviously implicate zoning concerns. The extension of the use of a property into the night and attendant noise, light pollution, traffic, parking, trash, and other externalities of course implicate zoning concerns that extend beyond the property itself. So instead Intervenor engages in pernicious Monday morning quarterbacking of the long-standing definition of "structure": Intervenor says (Br. 6) that the drafters could have used the term "all poles" instead of "flag poles" if they wanted to include lighting poles. But this fundamentally ignores how the definition is structured: the non-exhaustive, illustrative examples serve to show the expansive breadth of its application, not to limit its application. The drafters back in the middle of the 1900s had the essential humility to realize that they could not conceive of every potential example of a structure and sought to have a broad definition that could be used into the future..

Moreover, Intervenor fails to cite any authority for the proposition that a definition like that here that begins with a broad general word ("[a]nything") and then is followed by illustrative examples explicitly couched in non-exhaustive language ("including" or the more definitive "including, among other things") has ever been subject to the application of *ejusdem generis*. Indeed, as noted in Reading Law, "[t]he vast majority of cases dealing with the doctrine–and all the time-honored cases–follow the species-genus pattern" not present here. Reading Law at 204. And for good reason:

> Following the general terms with specifics can serve the function of making doubly sure that the broad (and intended-to-be-broad) general term is taken to include the specifics. Some formulations suggest or even specifically provide this belt-and-suspenders function by introducing the specifics with a term such as *including* or even *including without limitation* ("all buildings, including [without limitation] assembly houses, courthouses, jails, police stations, and government offices"). But even without those prefatory words, the enumeration of the specifics can be thought to perform the belt-and-suspenders function.
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> –Reading Law at 204-05.

Contrary to Intervenor's assertion that the proper interpretation would "strip[] the illustrative lists of meaning" (Br. 10), the inclusion of the examples both ensures that the reader understands that the broad term is not some generalized term incapable of being applied to specific examples and also serves the additional step of illustrating the intentional breadth of the provision: *anything from flag poles to gas holders to retaining walls*. This is exactly the textbook "belt-and-suspenders" approach advocated by Justice Scalia and legal writing expert Bryan Garner noted above to make clear that *ejusdem generis* does not apply: begin with a broad general term and then couch the illustrative examples in explicitly non-exhaustive language of "including"" and "including, among other things."

Intervenor's citation to *National Association of Postmasters of the United States* v. *Hyatt Regency Washington* well illustrates the contrast. There, the National Association of Postmasters contended that a change in the scheduling of a Rural Mail Count due to a modification of a collective bargaining agreement allowed it to cancel its contract to host two conferences under a *force majeure* clause. 894 A.2d at 473-74. Unlike the definition of "structure" here, the clause there started with a specific listing of examples followed by a catch-all term "any other emergency": "[t]he parties' performance under this Contract is subject to acts of God, war, government regulation, terrorism, disaster, strikes, civil disorder, curtailment of transportation facilities, or any other emergency beyond the parties' control. . ." *Id* at 475. The use of the terminology "any other" makes clear that "emergency" is to be understood with reference to the listing that *precedes* it. Therefore, the Court correctly determined that a mere rescheduling issue was not like the other kinds of emergencies. *Id.* at 476-77.

Finally, even if one were to accept Intervenor's apparent view that the provision is ambiguous *and* that one should attempt to go through and determine if there is some common thread between all of the explicitly non-exhaustive, illustrative examples, Intervenor's unsupported and unworkable effort actually serves to show why *ejusdem generis* does not apply here. As noted by leading scholars Scalia and Garner, "[S]ometime the specifics do not fit into any kind of definable category–'the enumeration of the specific items is so heterogeneous as to disclose no common genus.' [Citation omitted], With this type of wording, the canon does not

apply." Reading Law at 209. Here, the three category test of mass, occupancy, or symbolic does not provide sufficient commonality between a retaining wall, flag pole, and gas holder. Retaining walls, for example, often do not have much mass, occupancy, or symbolism whereas 80 foot metal lighting poles that had to be erected using massive machinery do have substantial mass. It just leads to a ridiculous and unnecessarily complicated morass.

Finally, Intervenor–having failed to come to grips with the clear and unambiguous language in the definition of "structure"–urges this Board to look to amendments made in 2008 as part of Zoning Case 01-02 to regulate antennas, which changes are unrelated to the present situation. These non-contemporaneous amendments–made some 50 years after the adoption of the definition of "structure" relevant here–cannot serve as a basis for finding that the original adoption intentionally omitted reference to light poles. Indeed, to the precise contrary, why would the Zoning Commission feel the need to reference "light poles" if they were not "structure[s]"? During the lengthy discussions and comment process prior to the 2008 adoption as part of Zoning Case 01-02, lighting poles were repeatedly referred to as "structures."[2]

C. The proposed text amendments to the definition of "structure" have no legal effect on this case and actually serve to undermine Intervenor's position by explicitly defining lighting poles serving public recreation and community centers as "structures."

As an initial matter, Intervenor does not contend–nor could it–that proposed text amendments have any legal effect on this case. Instead, Intervenor tries to argue (Br. 8) that the proposed text amendments somehow "codify the historic treatment of light poles as not subject to the Zoning Regulations." It is dangerous, however, to refer to proposed text amendments as they are often subject to revision as is the case in the current Zoning Case 25-12. Indeed, the Office of Planning on October 16, 2025 filed amendments to its proposed amendments after Intervenor filed its brief in this case, which amendments-to-the-amendments include the significant change recognizing that "[l]ight poles serving public recreation and community centers shall be considered structures." Zoning Case 25-12, Exhibit 15 at 14-16. While the revised proposed text amendments currently also exempt lighting poles *not* "serving public recreation and community centers" from the definition of "structure," the inclusion of "light poles serving public recreation and community centers" as being "structure[s]" entirely undermines Intervenor's argument. Why would lighting poles serving public recreation and community centers be explicitly recognized to be "structure[s]" if lighting poles were never, even meant to be treated as "structure[s]" as Intervenor contends?

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[2] *See, e.g.*, Case ZC 01-02, Ex. 130, at 4-5 (Office of Planning Memorandum) (emphasis in original) ("*Stealth Structure: More information on the types of stealth structures and what could be deemed pre-approved by means of number, set back, height, physical appearance, etc.*

Stealth Structures can be almost anything that fits the design of an antenna. Stealth structures that have been approved during the past three years in the District include two modified church steeples, three flag poles between 80 and 130 in height, and a stealth penthouse structure that mimicked the roof form and shielded 18 antennas. Other potential stealth structures could include church crosses, fake trees, building cupolas and other architectural features, as well as ball field lights, and fence supports.).

While these proposed text amendments are clearly misguided and seemingly self-contradictory in that there is now also make reference to lighting poles requiring special exception relief (Zoning Case 25-12 Ex. 15, at 14-16), the lesson to be drawn here is that Intervenor's repeated claims that there is some consensus in the Office of Planning or elsewhere that lighting poles are not structures is clearly not the case.

D. Intervenor's disingenuous effort to conflate Article III Standing for the purposes of court litigation with administrative standing does not undermine this Board's longstanding recognition of the standing of citizens associations to challenge zoning determinations.

In its Appellant's Statement, Appellant cited (Br. 8 & n.11) numerous cases in which this Board has found that citizens associations had standing to pursue a zoning appeal in similar circumstances to the present appeal, including BZA Case #19374 involving the Dupont Circle Citizen's Association. Instead of attempting to address or distinguish these cases in any way, Intervenor disingenuously attempts to challenge the Burleith Citizens Association's standing by seeking to conflate Article III standing necessary for court litigation and the "more relaxed" standard[3] for standing required for the purposes of pursuing a zoning appeal.

Intervenor sheepishly buries in a footnote (Br. 4 n. 6) that the *Goto* case upon which it seeks to rely did not rule on the issue of whether the Citizens Association there had standing despite purporting to rely upon the case to establish Appellant does not have standing for the purposes of this appeal. And the *Goto* decision actually went further to specifically note that "[a]dministrative appeals do not necessarily depend on the elements of standing that judicial review would require." *Goto* v. *BZA*, 423 A.2d 917, 929-30 n.8 (D.C. 1980). In addition, *York Apartment Tenants Association* v. *District of Columbia Zoning Commission*, 856 A.2d 1079, 1084-85 (D.C. 2004) was explicitly determining standing for the purposes of a court challenge to a Zoning Commission ruling and was not addressing whether the tenants association had standing for the purposes of pursuing an administrative zoning appeal as is at issue here. Intervenor cites no case where standing was rejected in the circumstances such as those present here and makes no effort to address the numerous cases cited by Appellant in support of its standing here.

As was stated in Appellant's Statement (Br. 8), there is no reason to depart from this Board's long-standing acceptance of citizens association standing in this case. Indeed, the fact of a citizens association ability to seek a zoning appeal is specifically acknowledged by the regulation and form permitting "[a] citizens' association or association created for civic purposes that is not for profit" to file an "[a]ppeal of any decision of the Zoning Administrator" without paying a fee. *See* 11 DCMR § 1600.1(a). Intervenor likewise fails to address this provision.

[3] *Economides* v. *BZA*, 954 A.2d 427, 434 (2008) (specifically noting "the more relaxed standard of standing enjoyed by those who appeal administrative decisions rather than those of the courts").

For the economy of presentation, it makes sense to permit such appeals especially where, as here, numerous separate property owners would have standing in light of the concerns raised by lighting poles that creates externalities that exceed the bounds of Ellington Field itself, including view obstruction, nighttime noise, light pollution, traffic, parking, and trash concerns. Indeed, as noted, there are at least six Burleith Citizens Association members that live directly across from the field and many more that live within 200 feet of the property.[4] Moreover, this is an unusual case where the property at issue was originally intended to be part of the Burleith neighborhood and was actually taken by the government via eminent domain over the objection of landowners. *See Com'rs of Dist. of Columbia* v. *Shannon & Luchs Const. Co.*, 17 F.2d 219, 219 (D.C. Cir. 1927) (Appellant's Statement Exhibit H).

E. Intervenor and DOB's listing of existing lighting pole examples without meaningful details does not change the correct analysis here.

Having failed to address the clear language of the definition of "structure" and misapplied various interpretative canons that only come into play in the presence of genuine ambiguity, Intervenor and DOB seek to cite examples of supposed situations where lighting poles were installed at various District locations DGS Br. 8 & DOB Br. 3. At no point, however, does Intervenor or DOB cite a single instance in which anyone–DGS, DOB, the Zoning Administrator, or some person off the street–analyzed the issue of whether those lighting poles were "structure[s]" in connection with these examples. Even if there were some supposed District-wide practice–which, as noted, is not the case, *see* BZA Case No. 19293–that practice cannot serve as a justification to ignore the plain meaning of the definition of "structure." And, as noted, the precedent on which Intervenor itself has relied makes clear that this Board should not "rewrite or supply omissions to regulations to achieve a preferred policy outcome." Intervenor Br. 11 (citing *Chagnon* v. *BZA*, 844 A.2d 345, 349 (D.C. 2004)). While insufficient information is provided by DGS and DOB to determine whether these examples are indeed analogous situations, the failure to cite *any* consideration of the issue makes these examples irrelevant. And despite Intervenor's claims that reversing the Zoning Administrator here would create some unworkable situation, it is worth reminding this Board that each zone has an often generous by-right height for structures; it is only lighting poles that exceed that height *and* are built too close to the lot lines like those at issue here that would be deemed non-conforming.

III. Intervenor DGS's Factual Misstatements

Intervenor DGS's Prehearing Statement and, by extension, DOB's supplemental response are littered with factual misstatements that Appellant will address here to ensure that the Board is not left with any misimpression:

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[4] BCA members have properties at the following locations right directly across the street from Ellington Track and Field: 3835 S ST NW (Garbrick), 3833 S ST NW (Snyder), 3823 S ST NW (Emery), 3813 S ST NW (Kenney), 3805 S ST NW (Edwards), 3734 R ST NW (Frei), 1601 38th St NW (Scholle). *See* Burleith Bell listing of members in *Burleith Bell*, p. 16, *available at* https://static1.squarespace.com/static/543940e3e4b03c56171e6ce6/t/68cd8d9e10e13938f5f65cef/1758301598535/092025.pdf.

First, and perhaps most egregiously, Intervenor repeatedly attempts to mislead this Board by asserting that lighting poles have "never" been treated as a "structure" for the purposes of the Zoning Regulations (emphases added):

- Intervenor Br. 5: "High-mast lighting has *never* been treated as a 'structure' that is subject to zoning standards for height, setbacks, and more."
- Intervenor Br. 9: "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."
- Intervenor Br. 1 (emphasis added): "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"

These statements are demonstrably false. As part of BZA Case No. 19293, both this Board and the Office of Planning specifically treated light poles as "structure[s]." If lighting poles were not "structure[s]" but mere *thingamajigs* not subject to zoning restrictions, why would Gonzaga High School have been "required" to get an area variance to install them? And why would the Office of Planning recommend approval of an area variance under the heading "Variance Relief from §§ 400.1 and 770.1, Height of Structures" if lighting poles were not actually "structure[s]"? Why would Gonzaga High School have had to go through the time and expense of hiring counsel and pursuing an area variance that all the while was supposedly unnecessary? It strains credulity. Intervenor's efforts to gaslight continue with its assertion (Br. 12) that, in connection with BZA Case No. 19293, "[a]t no point in the Order or the Office of Planning were the lights at issue referred to as 'structures.'" While again, both the BZA Order and the Office of Planning Report substantively treat lighting poles as structures, the Office of Planning explicitly analyzes the three-part area variance relief standard under the heading "Variance Relief from §§ 400.1 and 770.1, Height of **Structures.**" BZA Case No. 19293 Ex. 26, at 2 (emphasis added). Why would the Office of Planning be analyzing non-structure *thingamajigs* under a heading referring only to "Structures" if the Office of Planning was of the view that light poles were "non-structure" *thingamajigs*?[5]

Third, Intervenor (Br. 2) claims that "the ANC voted unanimously in favor of the transfer" of control of Ellington Field from DCPS to DPR and even attaches the ANC resolution that purportedly does this as Exhibit A to its statement. Unfortunately, this is a complete misrepresentation belied by the resolution itself. As the resolution makes clear, the ANC voted 8-0-0 in favor of a resolution that took no position on the transfer–explicitly using the terminology "regardless of which agency of the DC Government is charged with responsibility for management of Ellington Field." Intervenor's Ex A, at 1. Instead, the ANC resolution did specifically acknowledge "that neighbors and parents of students at nearby public schools have expressed opposition to the transfer of administrative responsibility for Ellington Field from the

[5] Notably, the full title of sections 400.1 and 770.1 is "Height of Buildings or Structures" yet OP truncated that title by removing "Buildings" in this heading to refer to the fact that lighting poles were indeed "Structures."

District of Columbia Public Schools (DCPS) to the Department of Parks and Recreation." In addition, that 2020 resolution explicitly requested that, "before any significant decisions concerning management of future use of Ellington Field are made" that a "a proposed usage plan" should be provided. Intervenor's Ex. A, at 2. ANC2E and the community have repeated this request numerous times over the intervening five-plus years but have yet to receive a proposed usage plan much less clear answers about basic questions concerning how the lighting would be used.

Fourth, Intervenor claims (Br. 3-4) that "[d]espite this extensive 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." The reason that this conclusory statement has no citation is because at no time has the Burleith Citizens Association nor Appellant's Representative ever expressed "opposition" to the entirety of the Ellington Track and Field renovation. Indeed, both the Burleith Citizens Association and Appellant's Representative in his personal capacity celebrated the prospect of renovations because of DPR and DGS's repeated failure to maintain the property despite community complaints and the long-recognized need for public schools to have access to available field space. This appeal is specifically structured to avoid any undue delay in the project and relates solely to the issue of the lighting poles, not the entirety of the building permit here. And the requested relief is not to bar the District from ever erecting lights on Ellington Field; rather, Appellant's position is that DGS and/or DPR should not be permitted to skip steps and must properly engage with the community as part of an area variance proceeding that has been previously required in closely analogous circumstances.

`*Finally*, DOB makes a mistaken statement regarding DGS and DPR's community engagement. DOB states that "*[a]fter* this extensive outreach, DGS applied for the Building Permit." DOB Br. 3 (emphasis added). This is incorrect: per the DC Scout system, the building permit at issue on this appeal was filed for on July 18, 2023 while DPR and DGS were still supposedly engaging with the community regarding the renovation. Indeed, DPR and DGS did not advise the community until many months later that a building permit had been filed for and declined to share the as-filed plans with the community despite specific requests forcing residents to obtain the documents via FOIA Request.

IV. Conclusion

Appellant Burleith Citizens Association requests the prompt reversal of the Zoning Administrator's determination in this case as it relates to the lighting poles. The net effect of the Zoning Administrator's interpretation is to deny the public the opportunity to participate in an anticipated area variance proceeding that would otherwise be required for the lighting poles and has been required by the Board in a past, closely analogous case. Appellant Burleith Citizens Association does not wish to impede the progress of the other aspects of the ongoing renovation, so it requests that this Board exercise its powers pursuant to D.C. Code § 6-641.07(g)(1) and (4) and 11 DCMR X-1101.1 to modify building permit #B2308807 to remove approval for the lighting poles.

Respectfully Submitted

/s/ Michael J. McDuffie
DC Bar # 241789
Date: October 27, 2025