

# BZA Presentation

# Burleith Citizens Association

## Case No. 21314



# Burleith Citizens Association

- Founded in 1925
- 501(c)(4) non-profit civics association composed of over 150 member families or individuals, the majority of which are full-time residents in the neighborhood
- Long history of advocating on behalf of the Burleith neighborhood as its only citizens association
- Numerous members within 200 feet, including at least 6 property owners directly across the street from Ellington Field

\*Appellant's Statement pp. 6-8 & Reply Statement p.8 n.4

# Burleith Citizens Association

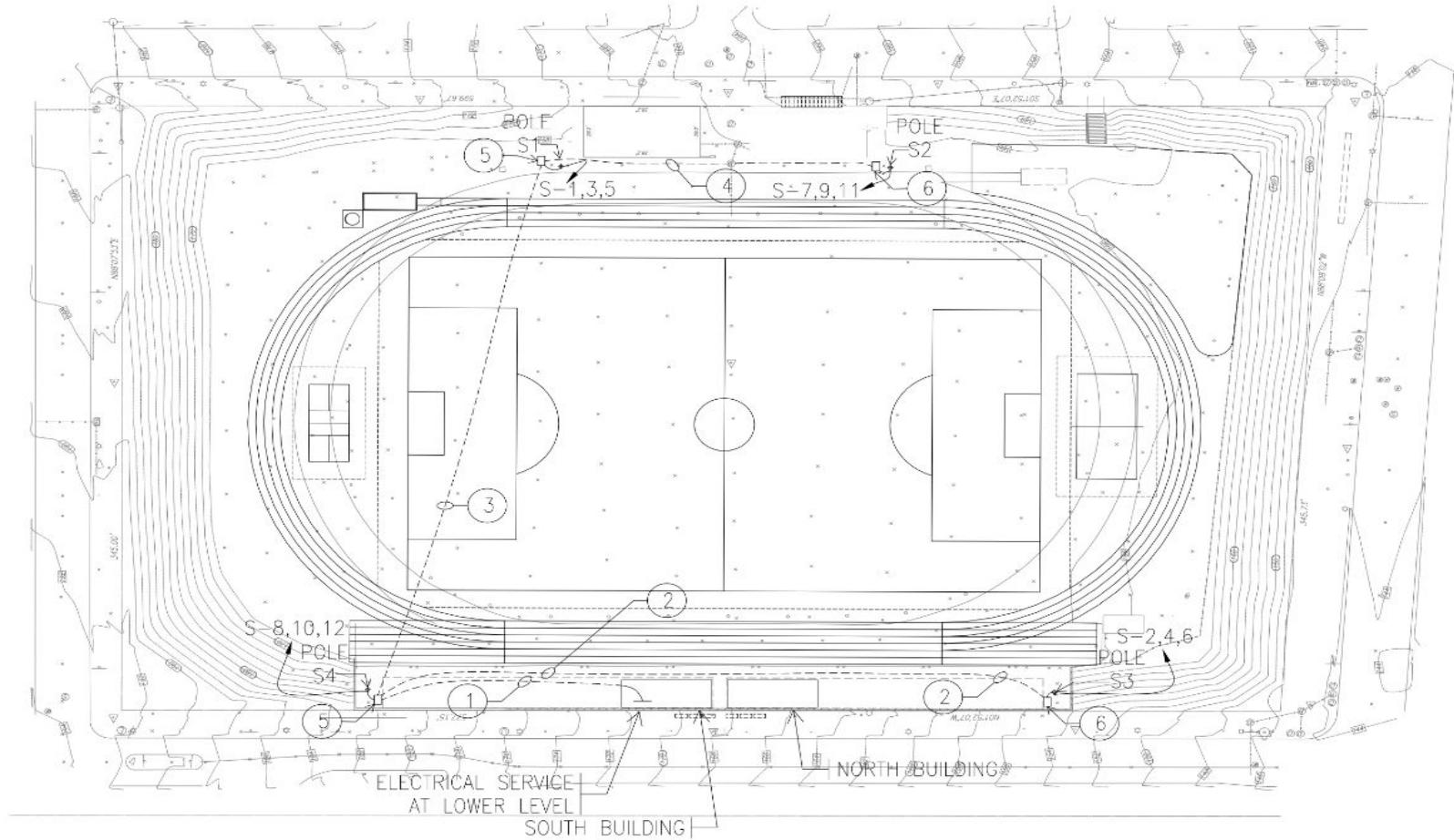
“The Association is organized to promote the social welfare of, and to promote and advocate the interests and rights of, all residents of the Burleith Community; to sponsor or participate in activities that maintain and improve the quality of life within the Burleith Community, including safeguarding the neighborhood’s heritage; and for related purposes. The Association shall not undertake activities or make expenditures that are inconsistent with its status as a social welfare organization exempt from federal taxation under section 501(c)(4) of the Internal Revenue Code of 1986 as amended.”

\*Burleith Citizens Association Bylaws Art. I § 3 (Appellant’s Statement p. 7)

# Western High School Athletic Field now known as Ellington Track and Field

- The property located at 1700 38th Street NW was part of the originally planned Burleith neighborhood
- The District condemned the property via eminent domain over the nuisance objections of landowners: the Court specifically noted that “the proposed athletic field is being acquired for use accessory to and a part of the Western High School”

\*Appellant's Statement pp. 4-6 & *Com'rs of Dist. of Columbia v. Shannon & Luchs Const. Co.*, 17 F.2d 219, 220 (D.C. Cir. 1927) (Appellant's Statement Ex. H)



**\*Excerpt of Appellant's Statement Exhibit K**

## Definition of “Structure” (11 DCMR § D-100.2)\*

“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 mechanical equipment.”

\*In pertinent part

## 11 DCMR § D-203.5

“A building or other structure may be erected to a height not exceeding ninety feet (90 ft.) with no limit on number of stories; provided that the building or structure shall be removed from all lot lines of its lot a distance equal to the height of the building or structure above the adjacent natural or finished grade, whichever is the lower in elevation.”

## Definitions\*

**Anything**— “[a]ny thing whatever; any such thing”

**Including**— “to place, list, or rate as a part or component of a whole or of a larger group, class, or aggregate.”

**Among other things**— “in addition to things that are not specifically mentioned.”

\*See 11 DCMR § 100.1(g) & Appellant's Statement Br. 1, 10-11.

## Definition of “Structure” (11 DCMR § D-100.2)\*

**“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 mechanical equipment.”

\*In pertinent part; emphases added

## Selected Timeline of Excerpted OZA Communications

July 18, 2023: Building Permit B2308807 filing (DC Scout)

June 10, 2024: “I have reviewed the the [sic] proposed lighting pole and am in agreement with you for potentially violating the provisions of D-203.5. I have asked for Zoning to be added back to the pending permit and will ask for the permit applicant to demonstrate compliance with the section above.”\*

\*Appellant’s Statement Exhibit D at 1, 6/10/2024 9:18 AM Email from Supervisory Zoning Technician to Michael McDuffie

## Selected Timeline of Excerpted OZA Communications

February 27, 2025: “A Zoning Enforcement case has been opened and may include soliciting information/documents for our review, investigations, and site visits, which can be lengthy. We will follow up to provide an update once a Zoning determination has been made.”\*

\*Appellant’s Statement Exhibit F, at 1, 2/27/25 3:44 PM Email from Program Analyst to Michael McDuffie.

## Selected Timeline of Excerpted OZA Communications

March 4, 2025: “Thank you for taking the time to speak with me this morning. . . . OZA is collaborating with DPR and DGS to alert them of the zoning violation and provide a compliance patch to ensure the project complies with 11 DCMR Subtitle D § 203.5.”\*

\*Appellant’s Statement Exhibit G, at 1, 3/4/25 8:24 AM Email from Program Analyst to Michael McDuffie et al.

## Selected Timeline of Excerpted OZA Communications

March 7, 2025, 11:34 AM: “Because the definition of ‘structure’ does not include light poles among the items specifically listed, the Office of Zoning Administration does not consider the proposed light poles to be structures and therefore are not subject to the setback requirements of D-203.5.”\*

\*Appellant’s Statement Exhibit A, at 1-2, 3/7/25 Email from Zoning Administrator to Michael McDuffie.

## Selected Timeline of Excerpted OZA Communications

March 7, 2025 12:37 PM: “[I]f a mid-block row homeowner--like myself--in the same zone as 1700 38th Street NW (R-3/GT) wanted to erect 89-foot lighting poles in their backyard, is it OZA’s position that 11 DCMR D-203.5 does not apply because the lighting poles do not fit within the definition of structure and thus the homeowner may do so by right even if they could not meet the setback requirement of 203.5?”

March 7, 2025 6:11 PM: “[Y]es, a 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.”\*

\*March 7, 2025 Email exchange between Michael McDuffie and Zoning Administrator (Appellant’s Statement Exhibit A at 1)

## Intervenor's Interpretation

“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.”

\*Prehearing Statement of D.C. Department of General Services, Ex. 17 at 11.

## BZA Case No. 19293 Summary Order

“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.”

\*BZA Case No. 19293-A Corrected Order (Appellant’s Statement Exhibits C)

## The BZA Can Issue the Narrow Relief Requested

“In exercising its zoning appeal powers, the Board of Zoning Adjustment may reverse or affirm, wholly or partly, or **may modify the order, requirement, decision, determination, or refusal appealed from, or may make such order as may be necessary to carry out its decision or authorization, and to that end shall have all the powers of the officer or body from whom the appeal is taken.**”

\*D.C. Code § 6-641.07(g)(1) and (4) (emphasis added).