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

RESPONSE TO MOTION *IN LIMINE* OF INTERVENOR DGS

In an unusual effort to exclude certain evidence and argument before a seasoned, quasi-judicial tribunal as opposed to the typical context for such motions of a potentially impressionable jury, Intervenor DGS has filed a motion *in limine* (Ex. 19) seeking to "strike from the record, and preclude further reference to" (1) "discussion of the 2020 interagency transfer of Ellington Field" and what it terms "related case law," and (2) "internal, pre-decisional [DOB] email communications predating the March 7 determination." Br. 1. This is purportedly all in an effort 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." Br. 1.

Regarding item (1), Appellant notes that both Intervenor (Ex. 17 Br. 1-2) and DGS (Ex. 20 Br. 2-4) discuss certain aspects of the property history, so it is odd that Intervenor DGS now wishes to "strike from the record," and "preclude further reference" to, only the aspects of the property's history that Appellant discusses and that Intervenor DGS apparently finds objectionable. This is simply not a principled basis on which to exclude evidence and entirely strike it from the record, especially where, as here, there is little potential for prejudice before a seasoned quasi-judicial tribunal. Moreover, the facts of the *Commissioners of the District of Columbia* v. *Shannon & Luchs Construction Company*, 17 F.2d 219, 219 (D.C. Cir. 1927) (Appellant's Statement Exhibit H)–bear on the issue of standing, which Intervenor and DOB still contest (Ex. 17 Br. 4). This is a peculiar case in that the District condemned the land at issue via eminent domain, which was contested by Burleith landowners, including on the basis of nuisance. *See id.* It was only because the District contended that "the proposed athletic field is being acquired for use accessory to and a part of the Western High School" that the DC Court of Appeals reversed the decision of the trial justice to dismiss the petitions. *Id.* at 220. While Appellant cannot agree to "strike from the record" only the aspects of the property's history that Intervenor does not like, Appellant sees no need to make further reference to these issues if Intervenor and DOB will concede Appellant has standing to pursue the appeal.

Regarding item (2), Intervenor fails to identify the supposed "internal, pre-decisional" DOB communications to which it refers. Indeed, Appellant is only aware of one document that has been submitted by any party that meets the criteria that is both "internal" and "pre-decisional": Appellant's Statement Exhibit E. If instead Intervenor is seeking "strike from the record" and "preclude further reference" to any communication from Office of Zoning Administrator staff that pre-dates the Zoning Administrator's March 7, 2025, there is simply no basis for such a broad exclusion. That Office of Zoning Administration staff communicated to third-parties that a zoning violation had been found (Appellant's Statement Ex. G at 1) is both relevant to show the unusual and flawed process by which the March 7, 2025 administrative decision was ultimately reached as well as rebut Intervenor's repeated assertion that there was

some “[l]ongstanding, city-wide practice” (*see, e.g.*, Ex. 17 Br. 7) of not treating light poles as “structure[s].”

Appellant believes that this seasoned, quasi-judicial board is able to determine what evidence and arguments are relevant to this appeal without the resort to the sort of broad preclusions more typical in the context of an impressionable jury. There are certainly many additional matters raised by Intervenor and DOB that Appellant believes are of little or no evidentiary value or where the potential for prejudice outweighs the argument’s or evidence’s probative value, including, for example, proposed text amendments that have no retroactive effect, were filed after this appeal, and have already been amended; supposed examples of properties with analogous lighting poles offered without any detail, context, or zoning analysis; and the like. But broad preclusion and striking them from the record is not the appropriate manner to address these issues in this context.

Finally, Appellant does agree with Intervenor that the primary focus of tomorrow’s hearing should be on the interpretative issue of whether lighting poles constitute “structure[s]” for the purposes of 11 DCMR § B-100.2 and will be mindful of such in its presentation.

Respectfully Submitted

/s/ Michael J. McDuffie
DC Bar # 241789
Date: October 28, 2025