

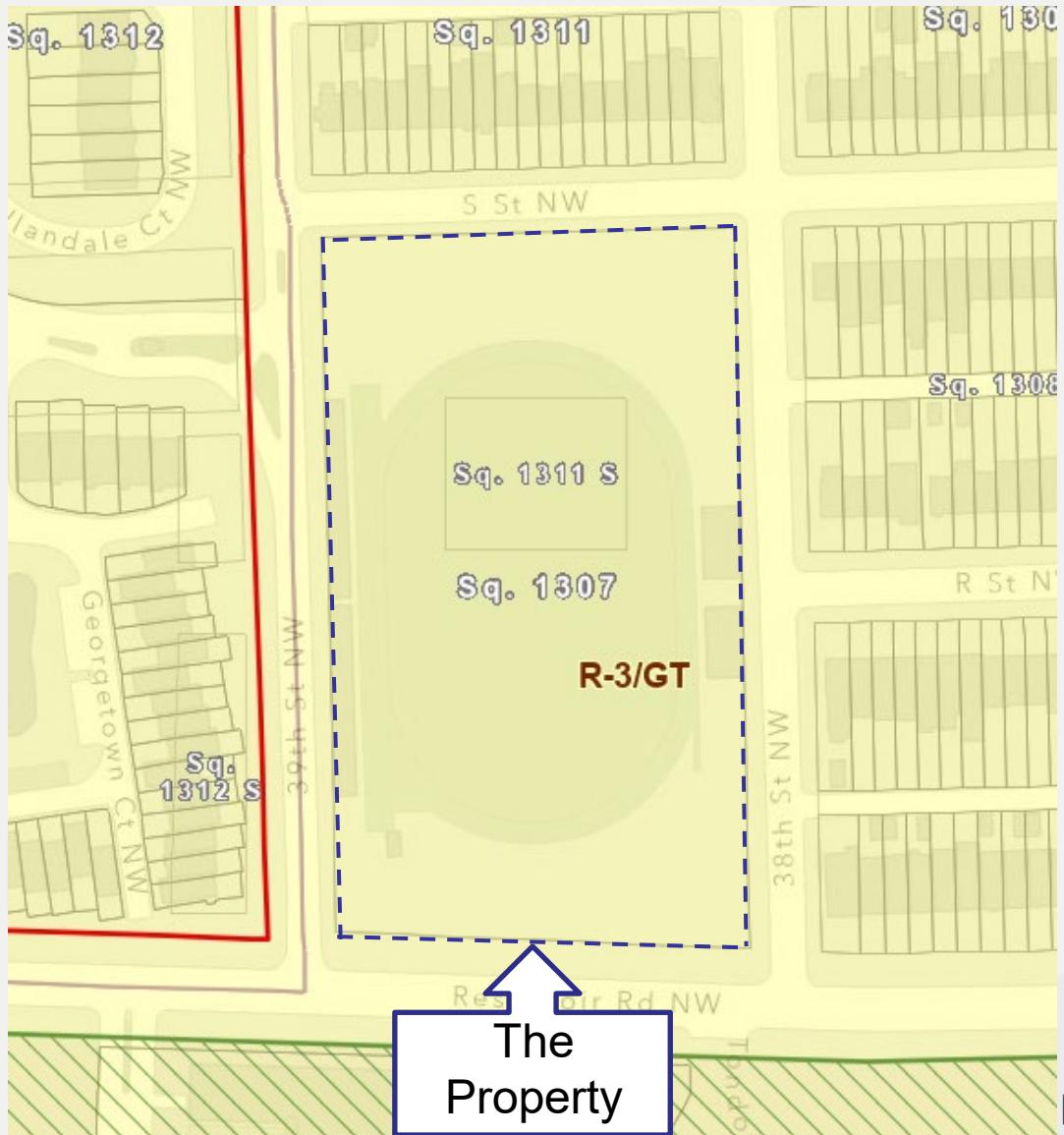
# **BZA Appeal No. 21314**

## **Intervenor's Presentation**

**1700 38th Street, NW (Square 1307, Lot 859)**  
**Presenter: Meridith Moldenhauer**  
**Hearing Date: October 29, 2025**

# Context

- **Location:** 1700 38th Street NW, Georgetown, R-3/GT zone.
- **Ownership:** District of Columbia, managed by DGS.
- **Use:** Athletic field and running track, historically for Duke Ellington School of the Arts and other DCPS programs.
- **Transfer:** In 2020, Ellington Field transferred from DCPS to DPR. ANC 2E voted unanimously in support with a request for renovation funds.



# The Project

- **Scope:** Modernize field houses, upgrade track and field, install new lighting, soil stabilization, fencing, seating, water fountains, and potential dog park.
- **Timeline:** Groundbreaking in April 2025; completion expected late Winter/early Spring 2026.

## RENOVATION PLAN:

- 1 BICYCLE RACKS
- 2 RUNNING TRACK
- 3 HIGH JUMP
- 4 LONG JUMP
- 5 SHOT PUT
- 6 SOCCER FIELD
- 7 EXISTING BLEACHERS
- 8 RELOCATED EQUIPMENT SHED
- 9 FITNESS EQUIPMENT
- 10 FIELD LIGHTS
- 11 WATER FOUNTAIN
- 12 EXISTING FENCE
- 13 FIELD HOUSES
- 14 NEW ADA ACCESS
- RESTROOMS



# Public Involvement

- **Community Engagement:** Multiple meetings since 2021, including presentations and fixture reviews.  
<https://dgs.dc.gov/page/field-houses-and-track-duke-ellington-field-phase-ii>
- **Materials Published:** FAQs, concept designs, traffic and parking studies, photometric study.
- **Direct Engagement:** DGS/DPR addressed BCA's inquiries on traffic, parking, scheduling, maintenance.
- **Ongoing Opposition:** BCA and its representative in his personal capacity have consistently taken issue the use and proposed operation of the Property by DPR.

## Presentations :

- [Duke Ellington Track and Field Project - Project Update : October 2025](#)
- [Duke Ellington Field Houses & Track Renovation FAQs](#)
- [Exhibit 1 - Parking Occupancy Permit 39th Street](#)
- [Exhibit 2 - Public Space Occupancy Permit 38th Street](#)
- [Duke Ellington Field - Photometric Study](#)
- [Duke Ellington Field Community Meeting Presentation - September 12, 2024](#)
- [Parking Data Collection Memo](#)
- [Parking Data Collection Appendix](#)
- [Duke Ellington Field Community Meeting - September 7, 2023 \(Video Recording\)](#)
- [Duke Ellington Field Community Meeting Presentation - September 7, 2023](#)
- [Traffic Statement - August 31, 2023](#)
- [Concept Design Package](#)
- [Traffic Statement](#)
- [Arborist's Report - Tree Survey](#)
- [Geotechnical Report](#)
- [Duke Ellington Field Community Meeting Presentation - November 15, 2021](#)
- [Duke Ellington Field Community Meeting Presentation, November 15, 2021 - Chat Box attachment](#)
- [Duke Ellington Field Community Meeting Park Renovation - September 29, 2021 \(Video Recording\)](#)
- [Duke Ellington Field Community Meeting Presentation - September 29, 2021](#)
- [Duke Ellington Field Community Meeting Presentation - July 21, 2021](#)
- [Duke Ellington Field - Park Renovation Presentation - April 6, 2021](#)

# The Appeal

- **Appellant:** Burleith Citizens Association
- **Challenge:** DOB's issuance Building permit # B2308807 and ZA's March 7, 2025 interpretation that light poles are not "structures." See below excerpt from Appellant's Prehearing Statement, Ex. 3 at 1

This appeal seeks to reverse the March 7, 2025 determination of the Zoning Administrator Kathleen Beeton (Exhibit A) and Permit #B2308807 (Exhibit B) insofar as both exempt new-proposed-to-be-added 80-foot lighting poles at Ellington Track and Field from the definition of "structure" within the Zoning Regulations and thereby the attendant setback requirements. Structure is defined broadly in the Zoning Regulations, in pertinent part, as:

**"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."**

–11 DCMR § B-100.2 (emphasis added).

# How to Interpret the Definition

- A provision must be interpreted in light of the entire text, giving effect to every word and harmonizing related provisions so that the statute or regulation functions as a coherent whole.<sup>1</sup>
- Flag poles are included for their symbolic/ceremonial nature and dynamic function. Light poles, by contrast are static utility fixtures. If the Zoning Commission intended to regulate light poles, it would have said so explicitly.<sup>2</sup>
- The Zoning Regulations expressly reference “light poles” in the definition of “stealth structure” (structures designed to conceal antennas) but omit “light poles” from the general definition of “structure.” When particular language is included in one section but omitted in another, courts presume the omission was intentional.<sup>3</sup>
- Read together with the definition of “use,” the phrase “the use of which requires permanent location on the ground” limits “anything constructed” to improvements whose function or occupancy depends on being permanently fixed to the land.

**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 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.

**Use:** The purpose or activity for which a lot or building is occupied. Use shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied, offered for occupancy."

<sup>1</sup> *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988)

<sup>2</sup> *In re Paul*, 292 A.3d 779, 785 (D.C. 2023).

<sup>3</sup> *Odeniran v. Hanley Wood, LLC*, 985 A.2d 421, 427 (D.C. 2009).

# Regulatory Context and Longstanding Practice

For decades, DC has not treated light poles as “structures” regulated by zoning. Instead, they are governed by the DC Building Code and operational rules.

- **Supporting Statutes:**
  - D.C. Code § 10-307: Mayor adopts rules for recreation facilities, including lighting.
  - D.C. Code § 10-304(a): Authorizes partnerships for parks, including lighting improvements.
- **Office of Planning’s Proposed Amendment:** The pending text amendment (ZC Case 25-12) proposes to expressly exclude light poles from the definition of “structure” generally and allow up to 90 ft. height with no setback for public recreation facilities.
- **Agency Deference:** That clarification is necessary is evidence of ambiguity. The Office of Planning’s interpretation is entitled to “great weight” under D.C. Code § 6-623.04.
- **Examples:** The following Public and private developments in residential zones with setback requirements similar to Duke Ellington Field have permitted light poles without classification as “structures” under zoning regulations.

## 3. LIGHT POLE FOR DISTRICT RECREATION FACILITIES SUBTITLE B § 100; SUBTITLES D, E, & F §§ 203, 212, 4904

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

SCOPE – Would apply to a District owned recreation field as part of a public school or recreation facility within the R, RF and RA zones, which are located in all parts of the city.

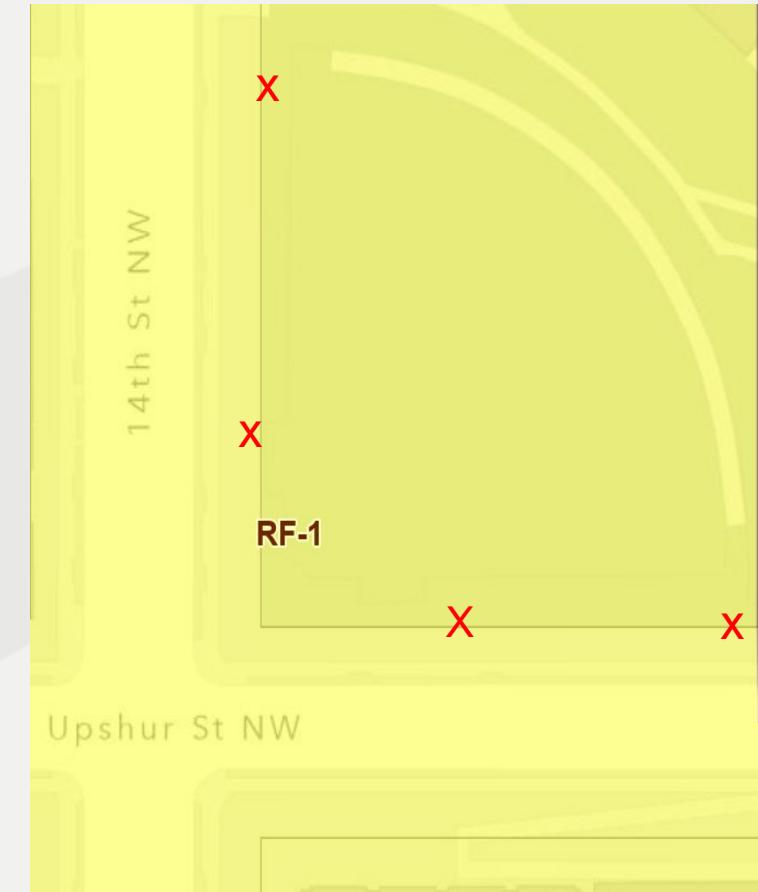
ORIGIN –Department of Buildings, but also included discussions with DPR staff.

POLICY DIRECTION –Would further policy related to clarifying regulations and adding greater certainty and ease of use and administration, as well as facilitation of District owned sites for recreational use by all residents of the District.

# Definition of “Structure” in DC Zoning

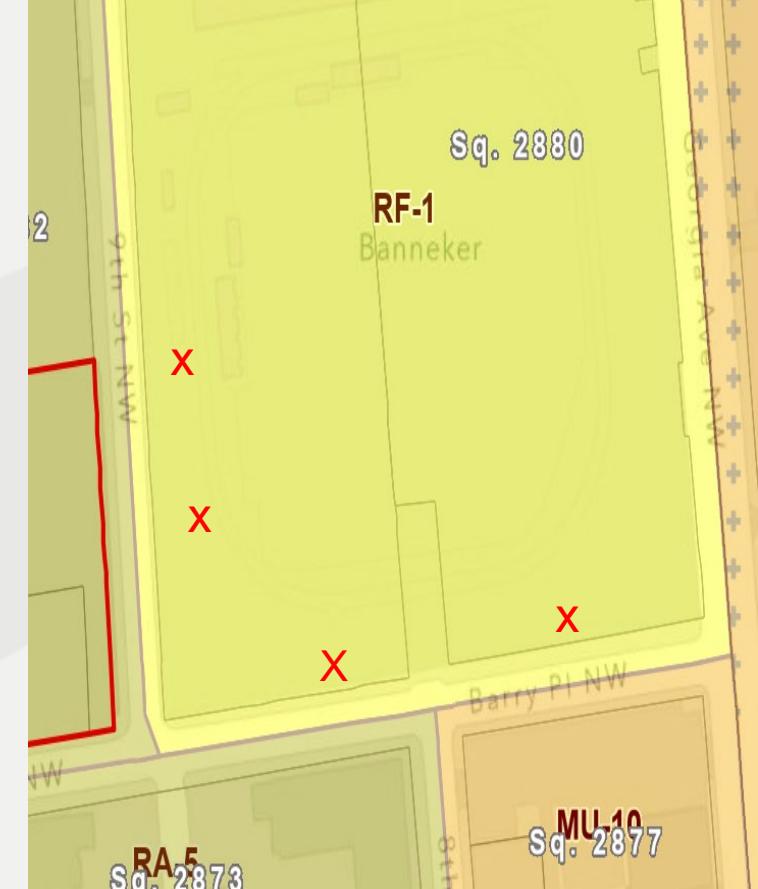
Structure: Anything constructed, including a building, the use of which requires permanent location on the ground, or anything attached to something having a permanent location on the ground and including, among other things, radio or television towers, reviewing stands, platforms, flag poles, tanks, bins, gas holders, chimneys, bridges, and retaining walls. The term structure shall not include mechanical equipment, but shall include the supports for 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.

# 4216 14<sup>TH</sup> St. NW- Upshur Baseball Field



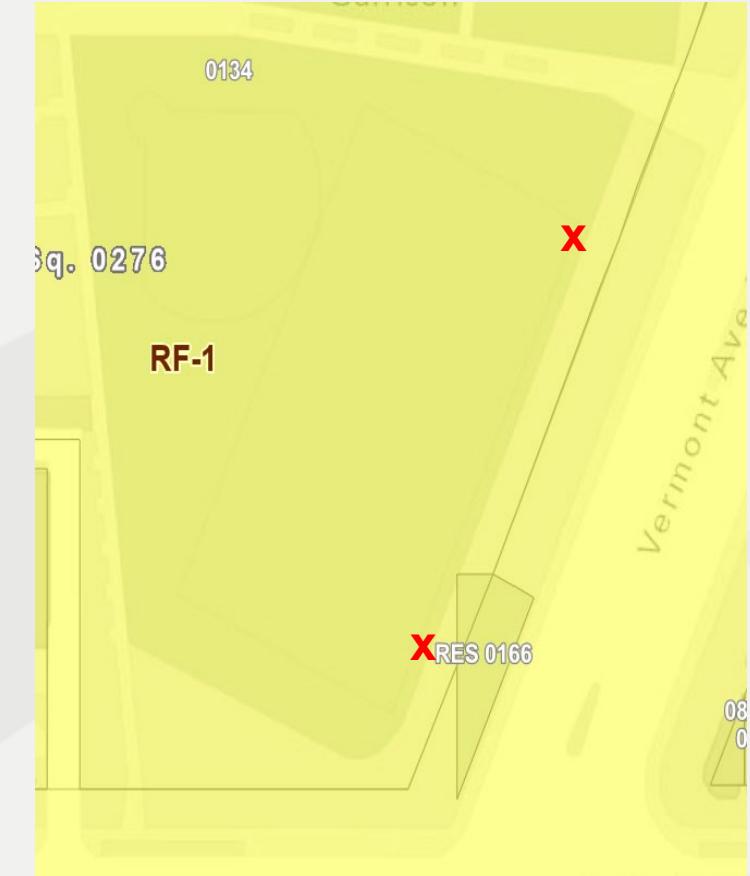
\*Locations marked by red "X"s are approximate and shown for illustrative purposes only.

# 2500 Georgia Ave Nw-Maury Willis Field



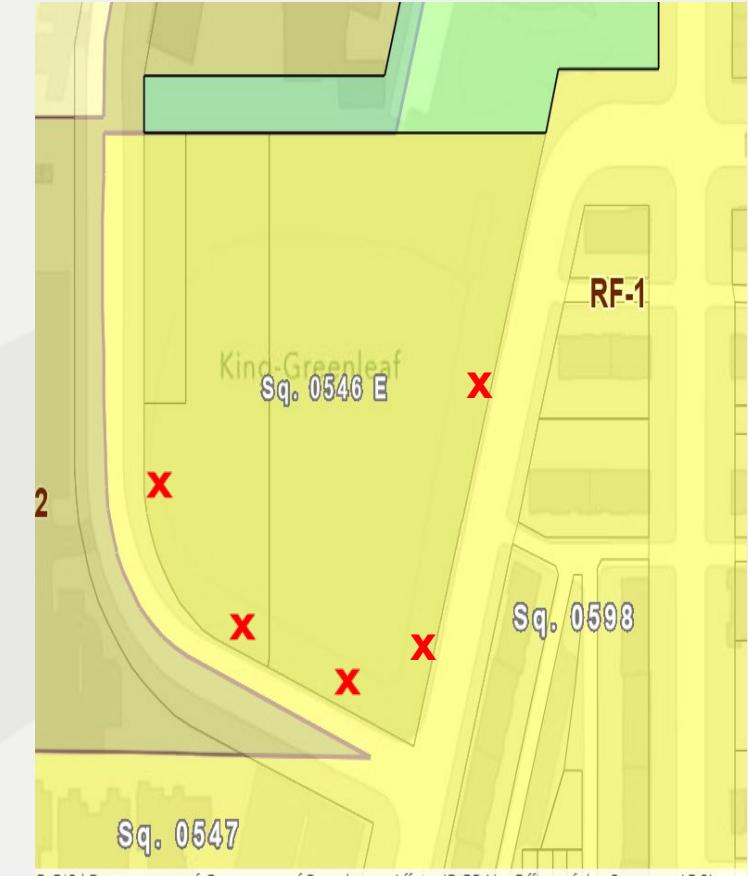
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# 1200 S Street NW-Garrison Elementary



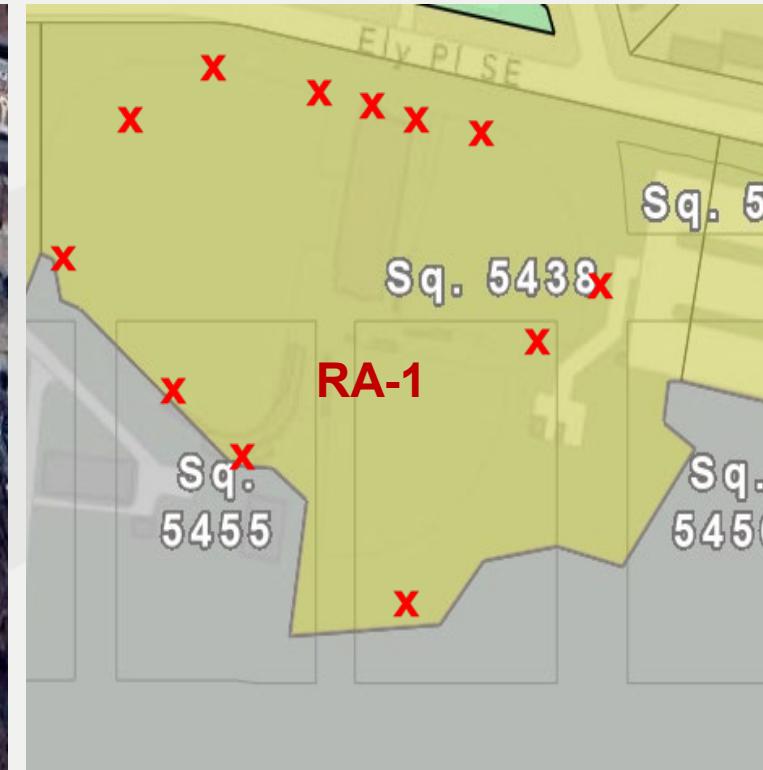
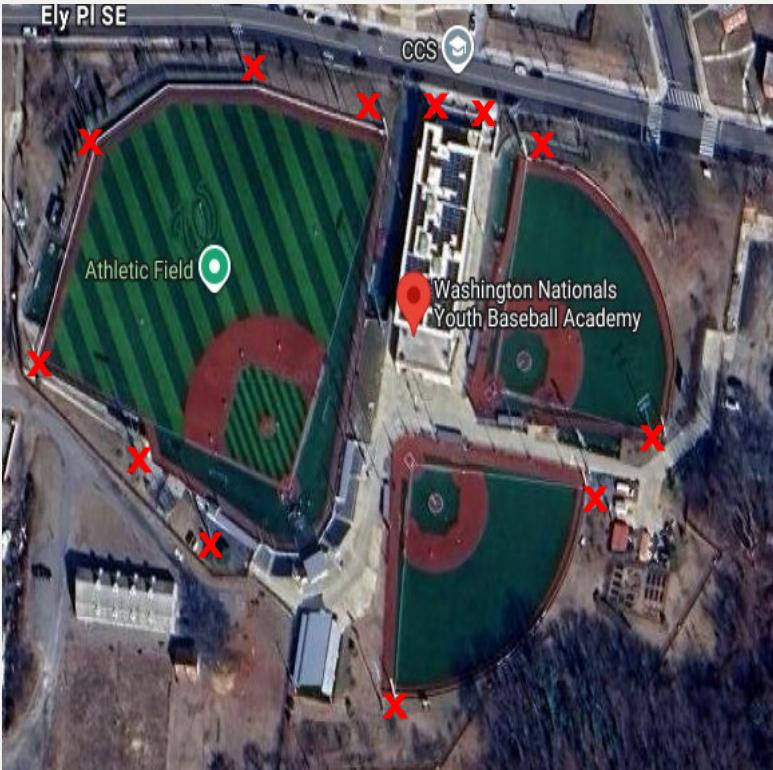
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# 201 N St. SW- King Greenleaf Rec. Center



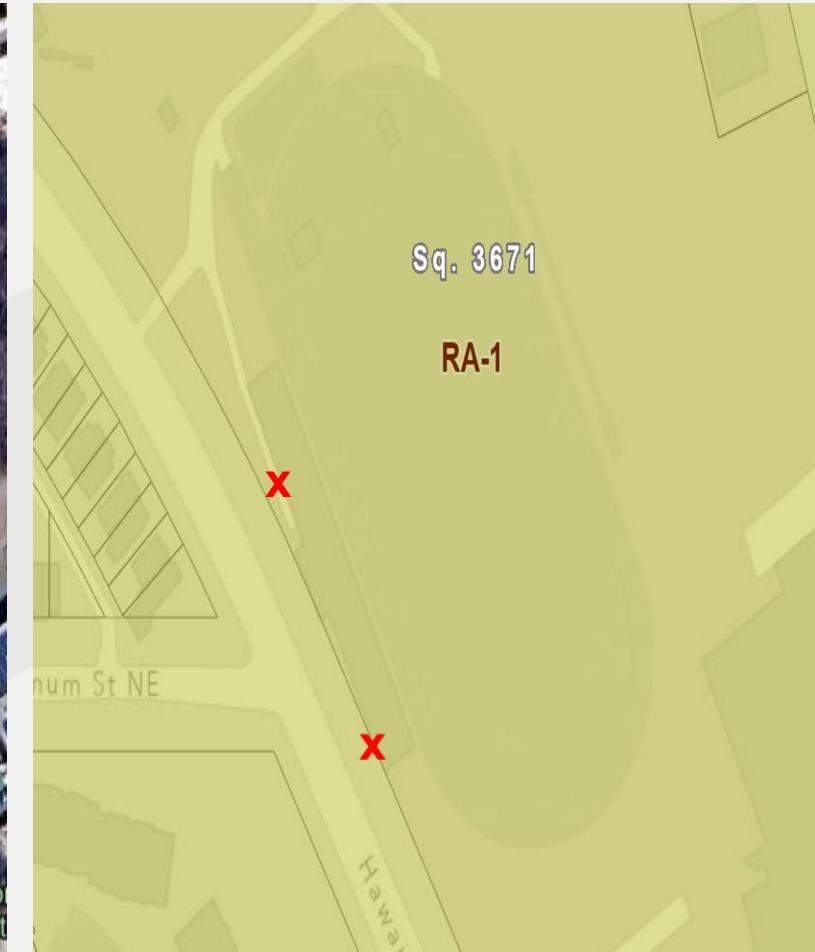
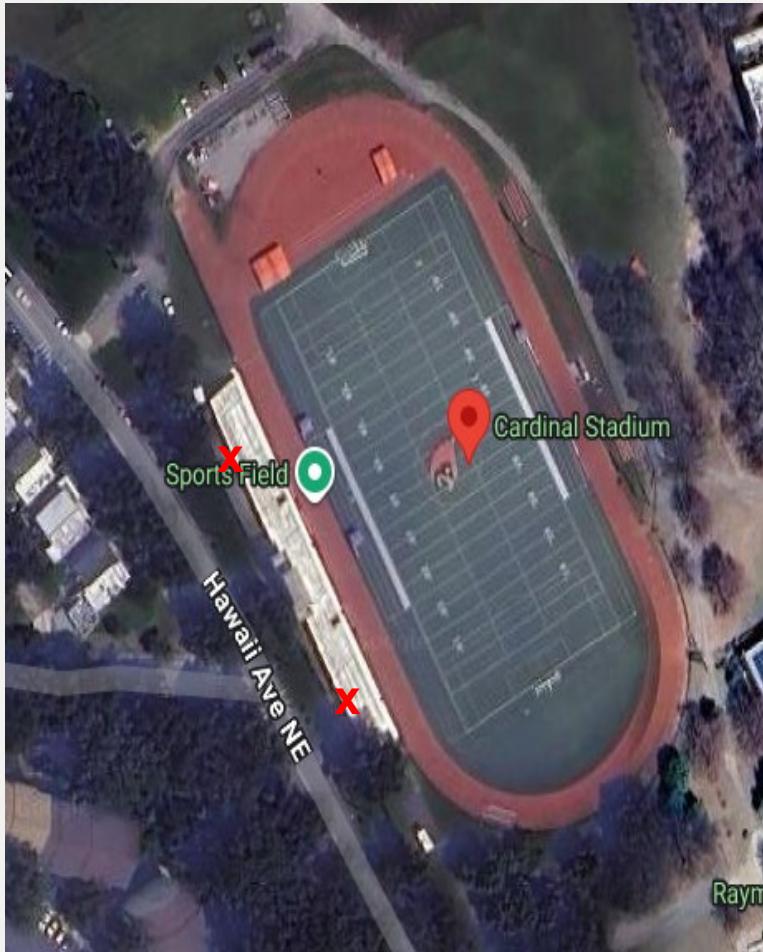
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# 3675 Ely Pl. SE- Washington Nationals Youth Baseball Academy



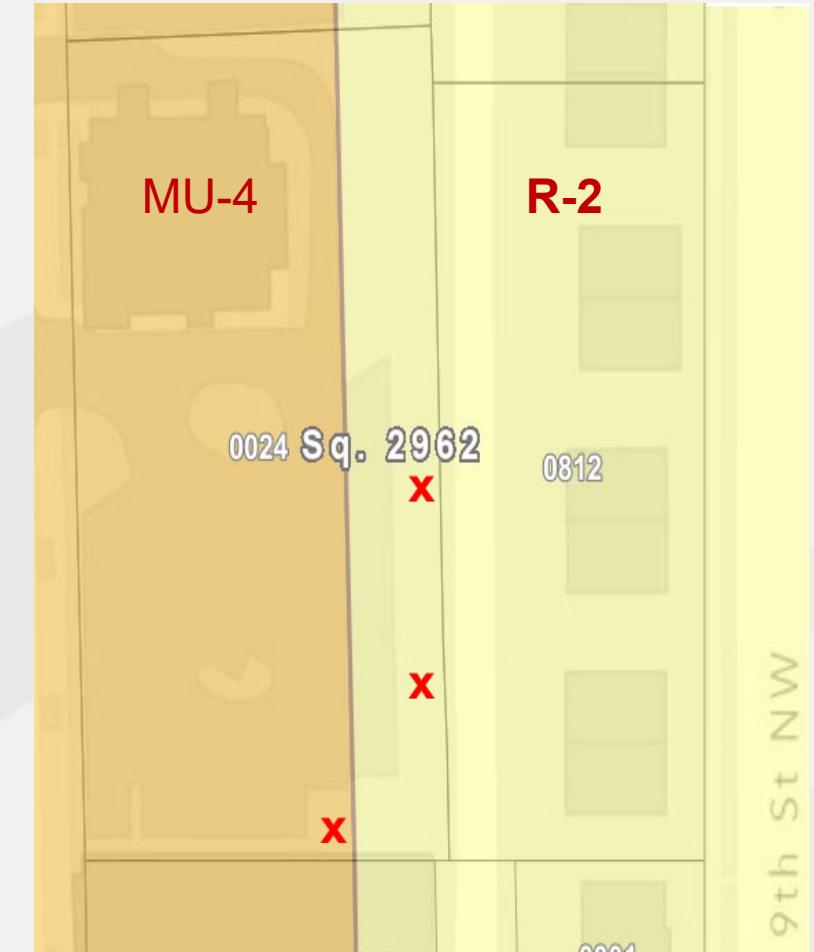
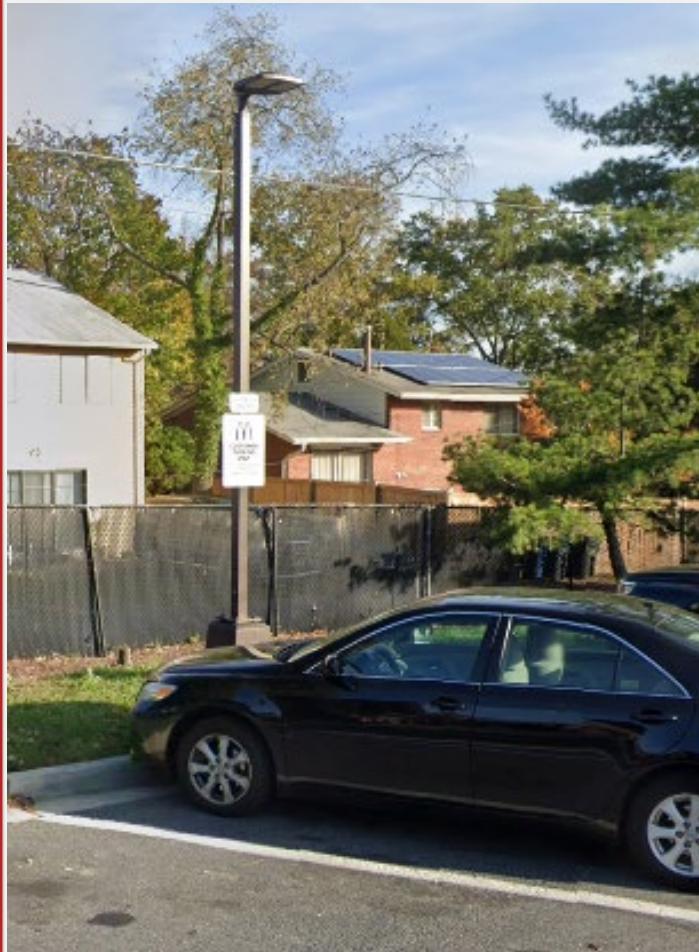
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# Varnum St NE - CUA Cardinal Stadium



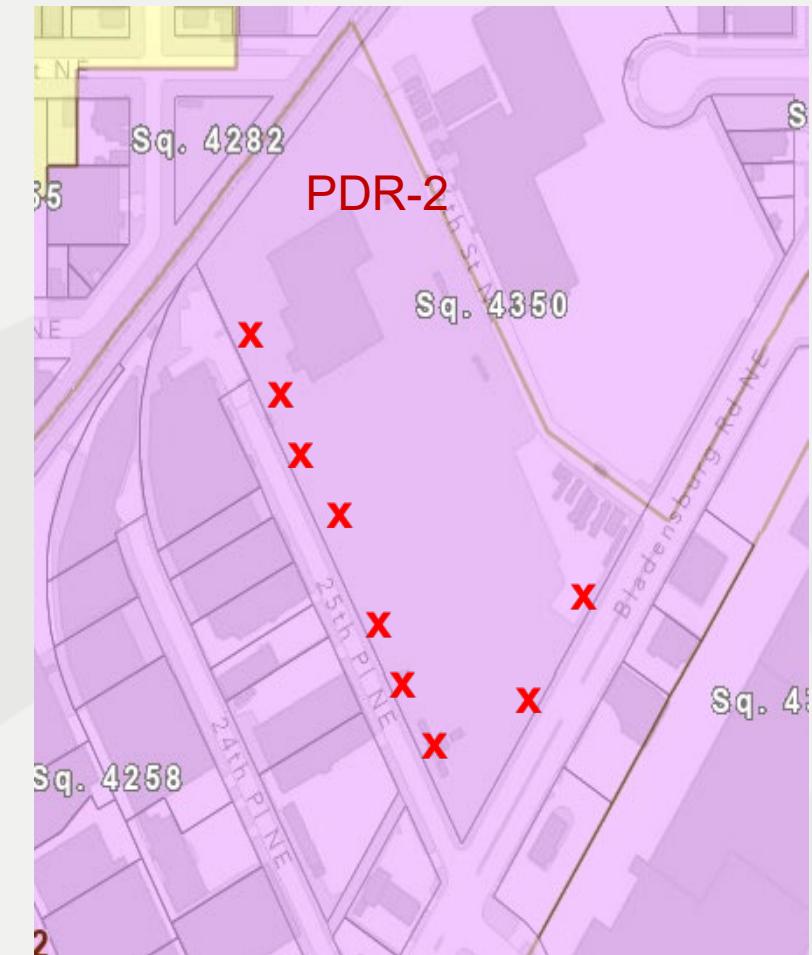
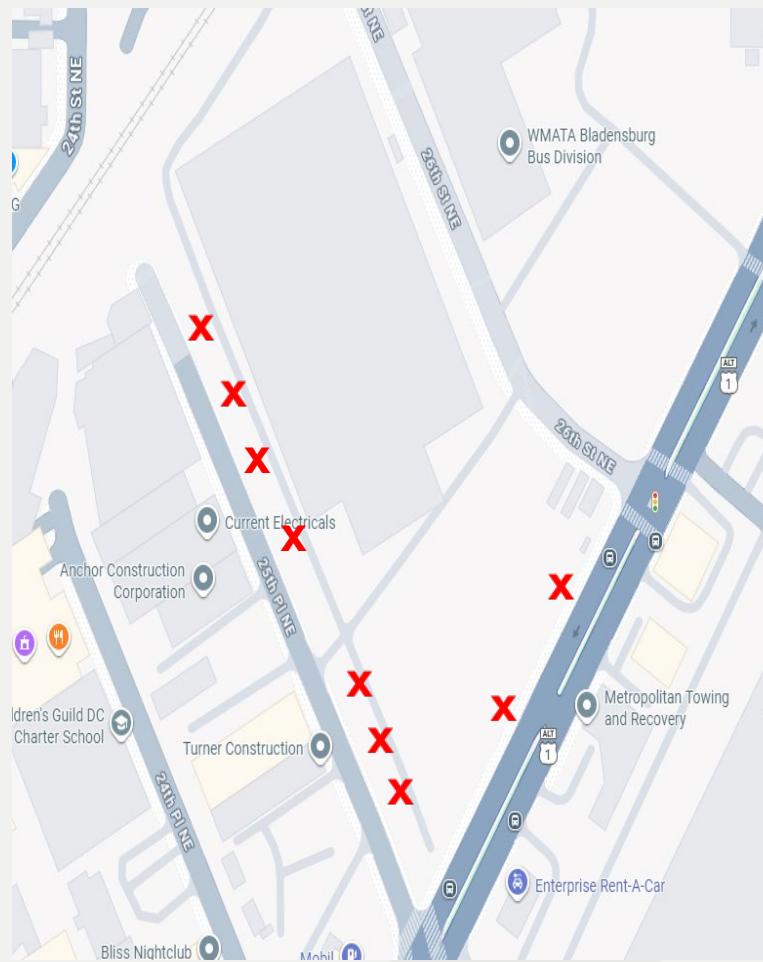
\*Locations marked by red "X"’s are approximate and shown for illustrative purposes only.

# 7425 Georgia Ave NW- McDonald's



\*Locations marked by red "X"’s are approximate and shown for illustrative purposes only.

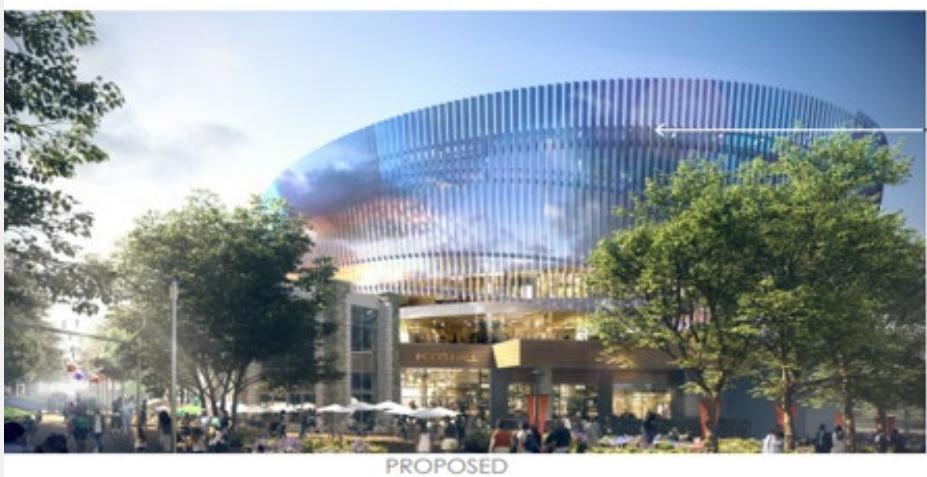
# 2250 26<sup>th</sup> St NE



\*Locations marked by red "X"s are approximate and shown for illustrative purposes only.

# Approved PUD's

Art Place



McMillan



# Rebuttal to Appellant's Interpretative Canons

- **Most Restrictive Reading (Prehearing Statement, p. 10)** : Subtitle A § 101.3 only applies when two standards both govern; it does not answer whether light poles are “structures.” No conflicting statute or regulation is identified.
- **Surplusage Principle (Prehearing Statement, pp. 11–12)** : The surplusage canon requires courts to give effect to all words in context. *Czajka v. Holt Graphic Arts, Inc.*, 310 A.3d 1051, 1061 (D.C. 2024). The Zoning Administrator’s reading harmonizes the broad clause and the list of examples, using the list as guideposts. Appellants reading renders the list to be nothing more than an arbitrary assortment of constructed entities that can be considered “structures”.
- **Absurdity Argument (Prehearing Statement, pp. 12–13)** : Other regulatory schemes (building, electrical, historic preservation) provide safeguards that would prevent a homeowner from building an 89 ft light pole on their property. The Board is not tasked with resolving abstract hypotheticals; policy concerns should be addressed by text amendment, not reinterpretation. *Chagnon v. BZA*, 844 A.2d 345, 349 (D.C. 2004)
- **BZA Case No. 19293:** The Board’s summary order granted variances but did not analyze or decide the definition of “structure.” The order explicitly states no finding was made on whether relief was necessary. Summary orders do not decide broader questions of statutory interpretation .

# Additional Implications for the Zoning Code

- **Required yards:** Appellant's interpretation would treat every constructed object as a "structure" creating a required side yard for innumerable slender fixtures ( light poles, posts, bollards, kiosks). Each object would require its own yard application "to the entirety" of that structure, multiplying measurements on a single site.
- **Retroactive nonconformity and enforcement difficulty :** Existing, lawfully installed fixtures instantly become "structures" and would violate Subtitle B § 324. Light poles are not except from yard's open space requirements because they are not deemed to be structures.

## 320 RULES OF MEASUREMENT FOR SIDE YARDS

320.1 A required side yard shall be parallel to a side lot line and apply to the entirety of principal buildings and structures. If a required side yard intersects with a required rear yard, the larger yard shall apply for the required distance of the larger yard.

## 324 STRUCTURES IN REQUIRED OPEN SPACES

324.1 Every part of a yard required under this title shall be open and unobstructed to the sky from the ground up except as follows:

- (a) A structure that is no more than four feet (4 ft.) in height above the grade at any point, may occupy any yard required under the provisions of this title. Any railing required by the D.C. Construction Codes Supplement, Title 12 DCMR, shall not be calculated in the measurement of this height. This section shall not be used to exclude any portion of a building from lot occupancy calculations pursuant to Subtitle B § 312;
- (b) A fence or retaining wall constructed in accordance with the D.C. Construction Codes Supplement Title 12 DCMR may occupy any yard required under the provisions of this title; and
- (c) Uncovered stairs, landings, and wheelchair ramps that serve the main floor may occupy any yard required under provisions of this title. Any railing required by the provisions of the D.C. Construction Codes Supplement Title 12 DCMR shall be permitted.

324.2 Projecting elements or structures shall not interfere with any driveway leading to a required parking space.

SOURCE: Final Rulemaking & Order No. 08-06A published at 63 DCR 2447 (March 4, 2016 – Part 2); Final Rulemaking & Order No. 22-23 published at 71 DCR 1527 (February 9, 2024).

# Conclusion

- The Appellant has not carried its burden to demonstrate that the Zoning Administrator's interpretation was erroneous
- Decades of permitting practice and agency interpretation confirm that light poles have not been regulated as "structures" under zoning regulations.
- Treating light poles as "structures" would require impractical setbacks, disrupt public and private facilities citywide.
- The pending text amendment will codify this approach, ensuring clarity and continuity for public and private developments.
- The Zoning Administrator's interpretation is reasonable, consistent with the text and purpose of the regulations, and supported by longstanding practice.
- The Board should affirm the ZA's determination and uphold the validity of Building Permit No. B2308807.

# Questions?