

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

APPELLANT BURLEITH CITIZENS ASSOCIATION'S OPPOSITION TO INTERVENOR'S MOTION FOR POSTPONEMENT

As is reflected in Intervenor's December 5th motion (Ex. 29) to once again postpone a substantive hearing in this case, Appellant Burleith Citizens Association does not consent and indeed opposes any effort to delay this case any more than it has already been delayed.

The procedural history matters here: Appellant Burleith Citizens Association originally filed this appeal on or around April 15, 2025. See Ex. 1-6. Due to scheduling conflicts and a busy BZA docket, a hearing for this case was originally scheduled several months later on September 17, 2025. See Ex. 7. In advance of that original September hearing date, in-house counsel for the Department of Buildings ("DOB") requested Appellant Burleith Citizens Association's consent to a postponement, which the Appellant agreed to out of professional courtesy and in the hope that the parties could reach a settlement. See Ex. 10. Several hours after Appellant provided its consent to postponement, Ms. Moldenhauer and others from Cozen O'Connor entered an appearance on behalf of the Department of General Services ("DGS") purportedly as Intervenor. See Ex. 9.¹ This Board eventually granted DOB's motion for postponement and scheduled the case to be heard on October 29, 2025. Ex. 16.

In the period between the Board's granting DOB's motion to postponement and the October 29, 2025 re-scheduled hearing date, the three sets of counsel—Appellant's counsel on the one hand and DOB's in-house counsel as well as Intervenor DGS's private law firm counsel on the other—submitted substantial briefing, numerous exhibits, and three sets of presentations as well as briefing on a motion *in limine*. In addition, as reflected in DOB's original motion for postponement as well as Intervenor DGS's present December 5 motion to postpone, the parties also engaged in settlement negotiations over the course of multiple months, which have thus far failed to result in a settlement. Ultimately, on the re-scheduled hearing date of October 29, 2025, this Board felt that it did not have sufficient time remaining in its hearing day after handling most of the busy docket for that day to fully hear the case and rescheduled the case for December 10. See Ex. 28.

Intervenor DGS now seeks to delay this hearing yet again to a future date more than 30 days from the upcoming December 10 hearing. It is no secret that this Board has a busy docket and there is no guarantee that the case could be rescheduled for the next hearing date following the requested 30 day postponement from December 10. In addition, there are simply no grounds for yet another postponement here: the three sets of counsel—including DOB's in-house counsel and Intervenor DGS's private law firm counsel who have largely coordinated

¹ N.B.: In its recitation of the above procedural history, Appellant does not mean to suggest that DOB's in-house counsel was aware at the time of its request for consent to postponement that DGS had retained outside law firm counsel or that it would seek to intervene.

their responses to this appeal—and the sole non-representative witness were all prepared to present to this Board back on October 29, and there is no scheduled future event that has any bearing on this case. Moreover, after months of communications as well as briefing back and forth about the light poles on a single athletic field, the terms of settlement would hardly be some difficult affair if there were sufficient common ground for agreement. Suffice it to say, DGS, DOB, and their respective sets of counsel have Appellant's counsel's number and a simple resolution could be drafted and filed quickly assuming, of course, that there were sufficient common ground for such an agreement.

On November 25, 2025, the Zoning Commission held its public deliberations on numerous proposed zoning regulation amendments, including the Office of Planning's proposed amendment to remove light poles from the definition of "structure" in 11 DCMR § B-100.2 and also exempt light poles serving public recreation and community centers from the 1:1 setback requirement otherwise applicable to structures (ZC Case No. 25-12, Ex. 15, at 13-16). While the end result of those deliberations was that the Office of Planning decided on the record to withdraw the proposed light pole amendments, all three Commissioners—either explicitly or implicitly by referring to testimony opposed to the light pole amendments as persuasive—expressed concerns with the proposed light pole amendments, including specifically the ability to erect up to 90-foot light poles with no setback by right.² Intervenor DGS's counsel was well aware of the case, having specifically relied upon the originally proposed language in its briefing before this Board (Ex. 17, 7-8) and also having presented numerous recommendations and testimony regarding the amendments in Zoning Case 25-12 itself (see ZC Case No. 25-12 Ex. 62), so the idea that DOB, DGS, or its counsel were somehow unaware of the developments on November 25 seems unlikely and, in any event, no such contention is made in Intervenor DGS's motion to postponement. And, even if this Board determines that it is necessary to obtain additional information or briefing regarding the approximately 10-minute deliberations that will have happened two weeks prior to the upcoming December 10 hearing date, then the Board can always keep the record open and request those materials.

This case is ripe for resolution and this Board should not delay this case any more than it has already been delayed. Deadlines sharpen the mind.

Respectfully Submitted

/s/ Michael J. McDuffie
Date: December 8, 2025

² See 11/25/25 Commissioner comments in Zoning Case 25-12, Video 3:41:29-3:46:07, available at <https://www.youtube.com/watch?v=IPJMzcaawA8> (including comments from Chair Hood referring to testimony from ANC 6C Commissioner Ecklenwiler—who was opposed to the light pole amendments (see, e.g., ZC Case No. 25-12, 10/30/25 Hearing Tr. 64:7-69:15)—as “persuasive”).