

# **BZA Appeal No. 21314**

## **Intervenor DGS's Presentation**

**1700 38th Street, NW (Square 1307, Lot 859)**  
**Hearing Date: February 25, 2026**

# Presenters

## **Thennie Freeman**

Director, DC Department of Parks and Recreation



## **Peter Nohrden**

Landscape Architect/ Project Manager, DPR



## **Meridith Moldenhauer**

Land Use Counsel, Cozen O'Connor



# Directors Testimony



# 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.
- DPR Managed and Operated Field since.



# The Project

## 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



- **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 Spring 2026.

# Aerial View of The Site



# 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.

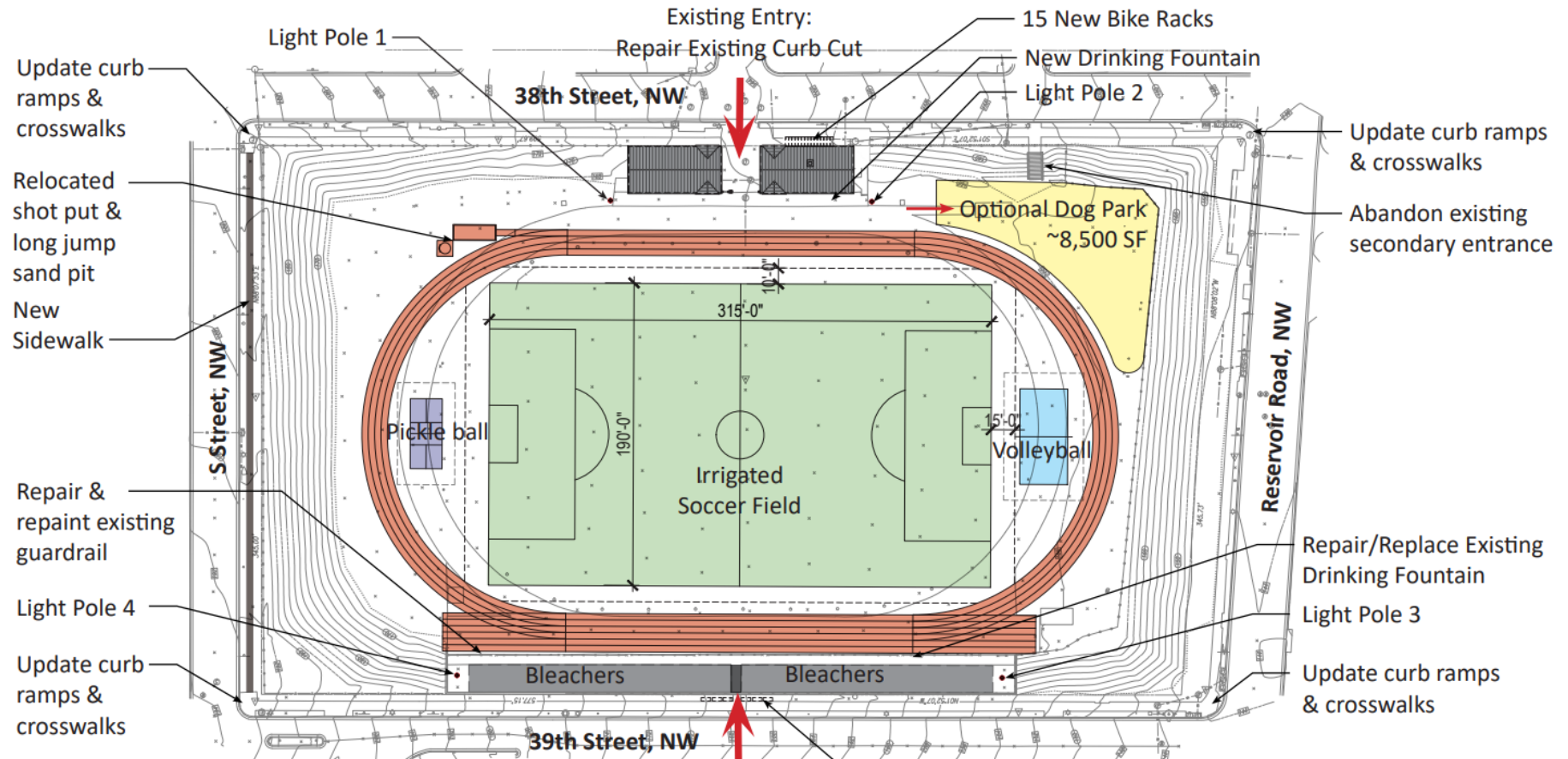
## Presentations :

- [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](#)

# Concept Design

Concept Design for Duke Ellington Field  
1700 38th St. NW

September 30, 2021





# Lighting Installed at Duke Ellington

- Fully shielded, precision-aimed LED luminaires designed for athletic fields, with optical controls that direct light only onto the playing surface, minimize glare, and prevent spillover into surrounding neighborhoods or the night sky
- The lighting systems meet the International Dark-Sky Association's highest standards for light control

## DarkSky Approved Outdoor Sports Lighting Program Duke Ellington Track and Field

DarkSky installation certifications are given only after the field inspection has demonstrated full compliance with the lighting criteria described in the DarkSky Approved Outdoor Sports Lighting Program version 1.3 guidelines. The successful field inspection was performed on November 4th, 2025.

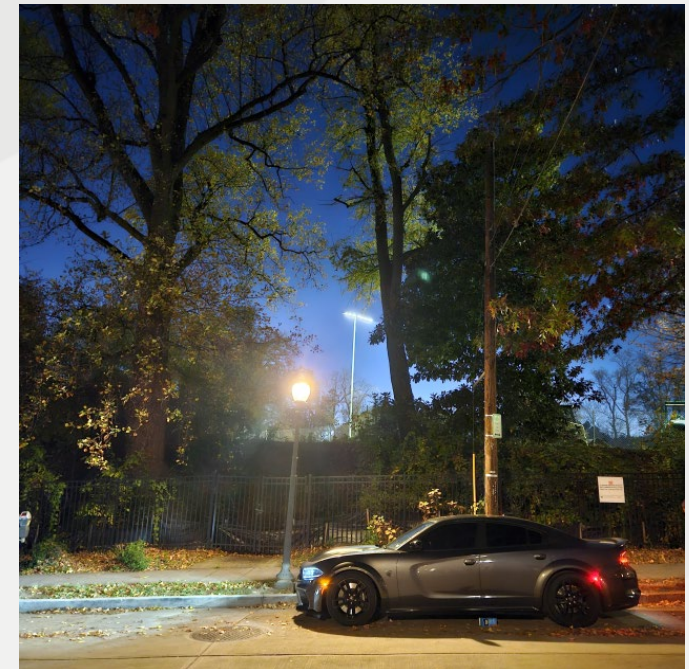
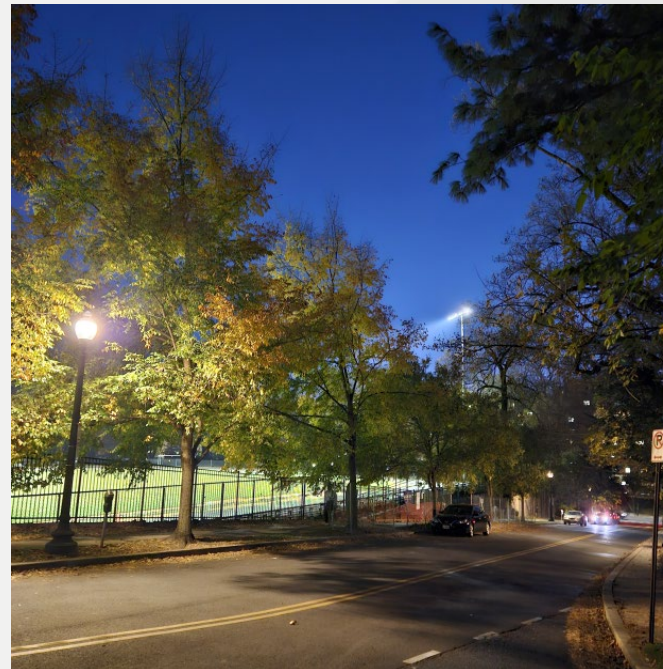
Thank you for your part in the world-wide effort to protect and preserve the natural nighttime environment and our heritage of dark skies.



  
James Brigagliano  
Lighting Program Manager

DarkSky Approved  
Outdoor Sports Lighting

  
Ruskin K. Hartley  
DarkSky Executive Director



# 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."

*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.*

# The Definition of Structure is Ambiguous

- The definition of “structure” can be reasonably interpreted to have more than one reading when applied to light poles
- The Zoning Commission itself observed that applying setbacks to tall light poles, as Appellant’s interpretation would require, “doesn’t make any sense.”
- Given this clear ambiguity the provision must be interpreted holistically, taking account for intent and previous interpretation.
- In that posture, the Board’s task is not to choose the interpretation it believes to be correct, but to determine whether the ZA’s interpretation is reasonable given the ambiguity.

*“But it’s my understanding that this was proposed because there seems to be some confusion as to what — that the existing regulation might require this one-to-one setback, which doesn’t make any sense for a 90-foot light pole, even if it’s adjacent to a residential area, because it — that would cause more light spillage than just a light going up adjacent to the recreational area. So I just wonder, there’s been — apparently, some have been done as a — without going through any review... If we’re seeking clarification, because people don’t know whether it’s allowed by right or whether it has to have this one-to-one setback. [The text amendment is] trying to remove confusion.”*

— Vice Chair Miller, Zoning Comm’n Case No. 25-12, Tr. 101:21-102:13 (Nov. 25, 2025) (Comments regarding proposed text amendment seeking to harmonize the definition of “Structure” with development guidelines for light fixtures).

# Regulatory Context and Longstanding Practice

For decades, DC has not treated light poles as “structures” regulated by zoning. Imposing blunt zoning dimensional requirements would therefore be redundant, misaligned with the regulatory purpose, and unnecessarily disruptive to longstanding practice.

- D.C. Code § 10-307: Mayor adopts rules for recreation facilities, including lighting.
- Green Construction Code § 409 (excerpt pictured): establishes mandatory, enforceable standards for exterior lighting with specific requirements for Athletic fields.
- 19 DCMR § 725: Govern DPRS permitting and operational controls addressing hours of operation, crowd size, activities, noise, and site management.
- DPR conducts photometric studies, and has internal guidelines for managing glare and spill, and evaluating lighting based on safety, functionality, and neighborhood compatibility.

12. Lighting for swimming pools and water features.  
 13. Lighting for the national flag in lighting zones 2, 3 and 4.  
 14. Required exit signs and exterior means of egress illumination.

409.1.1 Exterior lighting zones. The lighting zone for the building site shall be determined from Table 409.1.1 as clarified by *Administrative Bulletins*.

[E] TABLE 409.1.1  
 EXTERIOR LIGHTING ZONES

LIGHTING ZONE	DESCRIPTION
1	Developed areas of national parks, state parks, forest land and rural areas
2	Areas predominantly consisting of residential zoning, neighborhood business districts, light industrial with limited nighttime use and residential mixed use areas
3	All other areas (not included in other zones)
4	High-activity commercial districts

409.2 Uplight. Exterior lighting shall comply with the requirements of Table 409.2 for the exterior lighting zones (LZ) appropriate to the *building site*.  
 Exception: Lighting used for the following exterior applications shall be exempt from the requirements of Table 409.2.

1. Lighting for *building* façades, landscape features, and public monuments in exterior lighting zones 3 and 4.
2. Lighting for *building* façades in exterior lighting zone 2.
3. Lighting installed below canopies.
4. Lighting for flag poles.

TABLE 409.2  
 UPLIGHT RATINGS<sup>a, b</sup>

	LIGHTING ZONE (LZ)			
	1	2	3	4
Maximum luminaire uplight rating	U0	U1	U2	U3

a. Uplight ratings (U) are defined by IESNA TM-15-07 Addendum A.  
 b. The rating shall be determined by the actual photometric geometry in the specified mounting orientation.

409.3 Light trespass and glare. Where luminaires are mounted on buildings with their backlight oriented towards the building, such luminaires shall not exceed the applicable glare ratings specified in Table 409.3(1). Other exterior luminaires shall not exceed the applicable backlight and glare ratings specified in Table 409.3(2).

Table 409.3(1)  
 MAXIMUM GLARE RATINGS FOR BUILDING MOUNTED LUMINAIRES WITH THE BACKLIGHT ORIENTED TOWARDS THE BUILDING<sup>a, b</sup>

HORIZONTAL DISTANCE TO LIGHTING BOUNDARY ( $H_{LB}$ )	LIGHTING ZONE (LZ)			
	1	2	3	4
$H_{LB} > 2 h_m$	G1	G2	G3	G4
$h_m < H_{LB} \leq 2 h_m$	G0	G1	G1	G2
$0.5 h_m \leq H_{LB} \leq h_m$	G0	G0	G1	G1
$H_{LB} < 0.5 h_m$	G0	G0	G0	G1

$h_m$  = Mounting height: The distance above finished grade at which a luminaire is mounted, measured to the midpoint of the luminaire.  
 a. Glare (G) ratings are defined by IESNA TM-15-07 Addendum A.  
 b. The rating shall be determined by the actual photometric geometry in the specified mounting orientation.

Table 409.3(2)  
 MAXIMUM ALLOWABLE BACKLIGHT AND GLARE RATINGS<sup>a, b, c</sup>

HORIZONTAL DISTANCE TO LIGHTING BOUNDARY ( $H_{LB}$ )	LIGHTING ZONE (LZ)			
	1	2	3	4
$H_{LB} > 2 h_m$	B3 G1	B4 G2	B5 G3	B5 G4
$h_m < H_{LB} \leq 2 h_m$	B2 G1	B3 G2	B4 G3	B4 G4
$0.5 h_m \leq H_{LB} \leq h_m$	B1 G1	B2 G2	B3 G3	B3 G4
$H_{LB} < 0.5 h_m$	B0 G1	B0 G2	B1 G3	B2 G4

$h_m$  = Mounting height: The distance above finished grade at which a luminaire is mounted, measured to the midpoint of the luminaire.  
 a. Backlight (B) and glare (G) ratings are defined by IESNA TM-15-07 Addendum A.  
 b. Luminaires located two mounting heights or less from the *lighting boundary* shall be installed with backlight towards the nearest *lighting boundary*, unless lighting a roadway, bikeway or walkway that intersects a public roadway.  
 c. The rating shall be determined by the actual photometric geometry in the specified mounting orientation.

409.4 Color temperature. Maximum color temperature for lights complying with Section 409 shall be 3000 degrees Kelvin or lower.

# 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

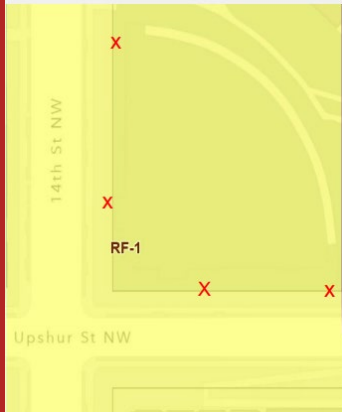
320.1 A required side yard shall be parallel to a side lot line and apply to the entirety of principal buildings and structures. If a required side yard intersects with a required rear yard, the larger yard shall apply for the required distance of the larger yard.

## 324 STRUCTURES IN REQUIRED OPEN SPACES

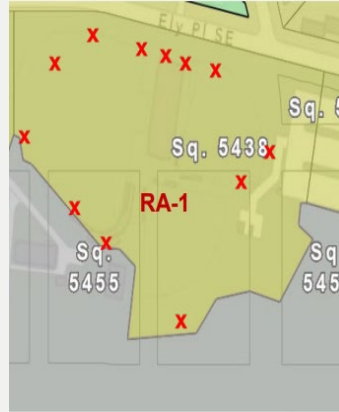
- 324.1 Every part of a yard required under this title shall be open and unobstructed to the sky from the ground up except as follows:
- (a) A structure that is no more than four feet (4 ft.) in height above the grade at any point, may occupy any yard required under the provisions of this title. Any 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).

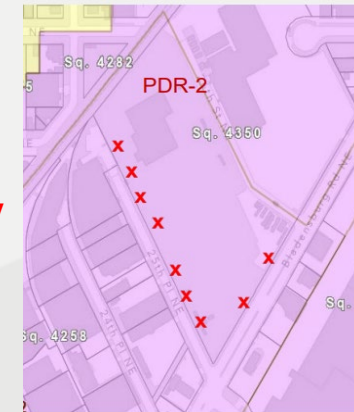
# Continuous Consistent Interpretation



**4216 14<sup>th</sup> NW  
Upshur  
Baseball Field**



**3675 Ely Pl. SE.  
Washington  
Nationals Youth  
Baseball Academy**



**2250 26<sup>th</sup> St. NE.  
Private  
Development**



# Appellant's Interpretative Canons Fail

- **Most Restrictive Reading:** Argument Not Applicable as no conflicting statute or regulation is identified by the Appellant
- **Surplusage:** Appellant's position that "anything" in the definition of structure must include light poles does not 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 insignificant because "anything" must be interpreted as "everything" which cannot be the intent.
- **Absurdity Argument:** Appellant's position opens the door to equally as absurd conclusions and would result in city wide non-conformities, thus confirming the board should uphold the ZA's long standing interpretation.
- **BZA Case No. 19293:** Neither the Board's order nor the OP Report issued in that case analyzed the definition of "structure." The Board's Order explicitly states no finding was made on whether relief was necessary. Summary orders do not decide broader questions of statutory interpretation.

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.

## Fairfax County's Zoning Ordinance on outdoor recreation lighting

### B. Outdoor Recreation Lighting Requirements

#### (1) Applicability

- (a) Illuminated playing fields or courts are subject to the provisions of this subsection if the fields or courts, whether as a principal or accessory use and individually or cumulatively, exceed 10,000 square feet in area, or have associated light poles that exceed 20 feet in height. Playing fields or courts include, but are not limited to, baseball/softball diamonds, soccer, field hockey, football and lacrosse fields, basketball, volleyball or tennis courts, skating rinks, horse riding rings or show areas, running tracks, swimming pools, golf driving ranges, golf courses, miniature golf courses, go-cart tracks, and baseball hitting and archery ranges.
- (b) For the purposes of this subsection, the perimeter area defined in 5109.4.B(3)(b) below must be included in the area of the playing field or court. The playing field or court must be located so that the perimeter area is on the property.
- (c) Other components of playing fields or courts, such as parking lots, administrative offices, restrooms, ticket sales, concession stands, and bleachers or other spectator viewing areas, are not subject to this subsection, but must comply with the other requirements of this section.

#### (2) Sports Illumination Plan

A sports illumination plan is required in accordance with one of the following:

- (a) As part of the submission of a special exception, special permit, development plan, or rezoning application. A sports illumination plan is subject to approval by either the BZA in conjunction with a special permit or the Board in conjunction with a special exception, development plan, or proffered rezoning and a sports illumination plan approved by the BZA or Board must be submitted as part of a site plan submission for the use. Upon a written request with justification, the Zoning Administrator may modify a submission requirement of 5109.4.B(3) below if it is determined that the requirement is not necessary for an adequate review of the sports illumination plan.
- (b) For a facility that is permitted by right in the zoning district in which it is located, as part of the site plan submission, or as a separate submission when site plan approval is not required. Upon a written request with justification, the Director may modify a submission requirement of 5109.4.B(3) below if it is determined that the requirement is not necessary for an adequate review of the sports illumination plan. Such sports illumination plan is subject to review and approval by the Director.

## Not Reasonable to find DC Zoning Regulations intend to regulate lighting

## Montgomery County General Outdoor Lighting Requirements

MD > Montgomery County > Montgomery Count... > Section 6.4.4. General Outdoor Lighting Requirements

### Section 6.4.4. General Outdoor Lighting Requirements

#### A. Exemptions

Routine lighting fixture maintenance, such as changing a lamp or light bulb, ballast, starter, photo control, housing, lens, and other similar component, is not replacement and may be performed if such changes do not result in a higher lumen output.

#### B. Design Requirements

##### 1. Fixture (Luminaire)

To direct light downward and minimize the amount of light spill, any outdoor lighting fixture must be a full or partial cutoff fixture.

##### 2. Fixture Height

A freestanding lighting fixture may be a maximum height of 40 feet in a parking lot with a minimum of 100 spaces; otherwise a freestanding lighting fixture may be a maximum height of 30 feet within a surface parking area and may be a maximum height of 15 feet within a non-vehicular pedestrian area. A freestanding light fixture located within 35 feet of the lot line of any detached house building type that is not located in a Commercial/Residential or Employment zone may be a maximum height of 15 feet. The height of a freestanding lighting fixture must be measured from the finished grade.



##### 3. Light Source (Lamp)

A light source must use only incandescent, fluorescent, light-emitting diode (LED), metal halide, or color-corrected high-pressure sodium, unless the applicable deciding body approves an alternate light source based on new technology.

#### C. Lighting Types

##### 1. Security Lighting

- a. Any building-mounted security light fixture, such as a wall pack, must not project above the fascia or roof line of the building and must be shielded.
- b. Any security fixture, including but not limited to a floodlight or wall pack, must not face ground floor residential uses.
- c. Any security fixture must not be substituted for parking area or walkway lighting, and must be located in a loading, storage, service, or other similar area.

##### 2. Accent Lighting

Only lighting used to accent an architectural feature, landscaping, or art may be directed upward. The accent lighting fixture must be located, aimed, or shielded to minimize light spill and glare.

# Conclusion

- **The Appellant has not carried its burden to demonstrate that the Zoning Administrator's interpretation was clearly erroneous and the ZA's interpretation should be upheld because:**
  1. The ZA's interpretation is reasonable based on a holistic reading of the zoning code, supported by long term permitting practice, and appropriate considering the regulations and policies already in place that regulate light poles
  2. Treating light poles as "structures" would create absurd application of the codes setback and yard provisions
  3. Affirming the ZA's interpretation will maintain the status quo until the Zoning Commission can evaluate a legislative solution, which is the appropriate vehicle for city wide policy changes

**Questions?**