

**BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA**

In re:

**Appeal of the West End DC
Community Association**

**BZA Case No: _____
Building Permit No. B2401624**

APPELLANT'S STATEMENT PURSUANT TO 11-Y DCMR § 302.12

Pursuant to 11-Y DCMR § 302.1, Appellant West End DC Community Association (“Appellant”) hereby respectfully appeals the issuance of Building Permit No. B2401624 by the Department of Buildings. The grounds for this Appeal are set forth in greater detail in Appellant’s supporting memorandum, which is being filed contemporaneously herewith. In further support thereof and in conjunction with Appeal Form 125, which is also being filed contemporaneously herewith, Appellant provides the following information and statements pursuant to 11-Y DCMR § 302.12:

1. Appellant

West End DC Community Association
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2. Counsel for Appellant

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Pursuant to 11-Y DCMR § 302.10, a letter signed by the Appellant authorizing the above-listed Counsel to act on the Appellant’s behalf with respect to this Appeal is being submitted herewith via the Board’s Interactive Zoning Information System (IZIS).

3. Statement of Decision Appealed

The administrative decision being appealed by Appellant is the decision of the Department of Buildings (DOB) to approve and issue Building Permit No. B2401624 to the Department of General Services (DGS) on August 7, 2024 in connection with the property located at 1129 New Hampshire Avenue, NW.

A copy of Building Permit No. B2401624 is being submitted herewith via the Board's Interactive Zoning Information System (IZIS).

4. Subject Property and Applicable Zone District

The property involved in this Appeal is located at the street address: 1129 New Hampshire Avenue, NW, Washington, DC 20037 (Lot 0007, Square 0072) (hereinafter, the "Property"). The Property is located in the RA-5 zone.

5. Owner of the Subject Property

The owner of the subject Property at issue in this Appeal is the Department of General Services (DGS), which maintains its principal address at:

3924 Minnesota Avenue, NE
Floor 6
Washington, DC 20019

6. Statement on Timeliness of Appeal

This Appeal is timely pursuant to 11-Y DCMR § 302.2 because it is being filed within 60 days from the date that Appellant first had notice or knowledge of the issuance of Building Permit No. B2401624. On its face, the Building Permit reflects an Issue Date of August 7, 2024, while the Department of Buildings' online consolidated database known as Scout indicates that the Building Permit was issued on August 6, 2024.

Appellant first had notice of the issuance of the Building Permit on August 8, 2024. Appellant's counsel had been monitoring the status of the Building Permit through DOB's Scout database and discovered on August 8, 2024 that the Building Permit had been issued. This Appeal is being filed within 60 days thereof.

7. Statement on Appellant's Standing

Appellant has standing to bring this Appeal pursuant to D.C. Code § 6-641.07(f) and 11-Y DCMR § 302.1 because Appellant and its individual members and contributors are "person[s] aggrieved" by the DOB's decision to issue the Building Permit. Appellant has associational standing to bring this Appeal on its own behalf and on the behalf of its members and contributors. Appellant is a not-for-profit civic association that is comprised of, controlled by, and represents the interests of individual owners and occupants of properties in the immediate vicinity of the Property at issue in this Appeal. Appellant's members and contributors include (1) multiple individual owners of units in the condominium building known as 22 West, which is

located at 1177 22nd Street NW, directly across the street and less than 150 feet from the Property; (2) multiple individual owners of units in the condominium building located at 1111 24th Street NW, less than two blocks from the Property; (3) multiple individual occupants of units in the apartment building located at 1110 23rd Street NW, less than two blocks from the Property; and (4) multiple businesses that own or occupy properties in the immediate vicinity of, including properties on the same block as, the Property. Under its Governing Principles, Appellant's membership is limited exclusively to residents and businesses of the West End neighborhood, in which the Property is located, and its stated purposes expressly include "the filing of lawsuits or administrative actions in support of, or in opposition to, matters and projects affecting the West End community."

8. Statement of the Issues on Appeal

A. Appellant raises the following issues in this Appeal:

- i. Whether the Applicant's intended use of the Property constitutes an "Emergency Shelter" as opposed to an "Apartment House" under the Zoning Regulations;
- ii. Whether the DOB erroneously issued Building Permit No. B2401624 to the Applicant, the Department of General Services, where the Applicant indicated the proposed use of the Property is "Apartment Houses – R-2," but where the actual proposed use of the Property is an Emergency Shelter;
- iii. Whether the DOB's issuance of the Permit erroneously approves a special exception use on the Property despite the Applicant's failure to seek and obtain the required special exception approval from the Board, pursuant to 11-U DCMR § 420.1(f), to operate an Emergency Shelter in the RA-5 zone;
- iv. Whether the DOB's issuance of the Permit was clearly erroneous and inconsistent with the Zoning Regulations given that the DOB failed to consider whether the proposed construction contemplated by the Building Permit and the Applicant's intended use of the Property comply with Planned Unit Development (PUD) No. 06-12 and Campus Plan No. 06-11 (hereinafter, the "GWU PUD"); and
- v. Whether the DOB's issuance of the Permit erroneously approves a change in use of a GWU property, as set forth in the GWU PUD, despite the Applicant's failure to seek and obtain Zoning Commission approval, obtained through a second-stage PUD application, for any development project, other than minor renovation projects, that results in a change in the use of any GWU property pursuant to the GWU PUD.

The foregoing issues are more fully addressed in the supporting Memorandum that Appellant is filing contemporaneously herewith.

B. Appellant identifies the following statutory and regulatory provisions as relevant to the legal issues set forth above:

- i. DC Code §§ 4-751.01(29), (40)(B);
- ii. DC Code §§ 4-754.11, .12;
- iii. DC Code § 6-641.07(g);
- iv. DC Code §§ 42-3501.03(36), (33);
- v. 11-A DCMR §§ 101.5, 205.3;
- vi. 11-B DCMR §§ 100.1(g), 100.2, 200.2(aa)(1), (3);
- vii. 11-F DCMR §§ 101.1, 101.2, 101.3, 101.8;
- viii. 11-U DCMR §§ 401.1, 420.1;
- ix. 11-X DCMR §§ 300.3, 310.2, 900.1, 900.2, 901.2, 901.3; and
- x. 12-A DCMR § 105.3.2.

9. Statement of Exhibits and Evidence

Appellant intends to offer in evidence at the public hearing in his Appeal the following exhibits:

- A. Building Permit No. B2401624, the Permit Application, and other materials contained in the Permit Application file maintained by the DOB;
- B. Request for Space, DGS-RFS-DHS-2022-6 (Non-Congregate Housing);
- C. D.C. Council, CA25-0254, Council Real Estate Contract Summary and Proposed Agreement of Sale with The George Washington University;
- D. DHS Presentation to the Aston Community Advisory Team dated March 11, 2024;
- E. DHS Responses to ANC 2A Questions dated July 18, 2023;
- F. DHS Presentation to ANC 2A dated November 15, 2023;
- G. DHS Presentation to ANC 2A dated June 21, 2023;
- H. DHS Presentation to Chairman Mendelson's Quarterly ANC Meeting dated January 29, 2024;
- I. Defendants' First Amended Responses and Objections to Plaintiff's First Set of Interrogatories submitted in the related Superior Court case, captioned *West End DC Community Association v. District of Columbia, et al.*, 2023 CAB 006666;
- J. DHS – Emergency Continuum of Care for Homeless Contract;
- K. Notice CPD-21-10, *Requirements for the Use of Funds in the HOME-ARP Program* (available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-10cpdn.pdf>);
- L. Declaration of Rachel Pierre, Administrator for the Family Services Administration within the District's Department of Human Services (DHS), dated June 14, 2024;

- M. DHS Presentation to the Aston Community Advisory Team dated September 5, 2024;
- N. Zoning Determination Letter from Zoning Administrator, Matthew Le Grant, to Tiwana Hicks, Associate Director of DGS's Portfolio Management Division, dated August 4, 2022; and
- O. Zoning Compliance Letter from Zoning Administrator, Matthew Le Grant, to Cindy Eagle of Answer Title dated August 16, 2023.

Appellant reserves the right to add to this exhibit list as new information becomes available.

10. Summary of Expected Witness Testimony

Undersigned counsel will provide testimony regarding the legal grounds for this Appeal. Sara Blumenthal, one of the Directors on Appellant's three-member Board of Directors, will provide testimony concerning, among other issues, Appellant's standing to bring this Appeal and the detrimental impact that the District's intended use of the Property will have on the surrounding neighborhood as a whole and specifically on the properties in the immediate vicinity of the Property, many of which are owned and/or occupied by Appellant's members and contributors.

Appellant reserves the right to amend this list as needed as new information becomes available.

Appellant reserves the right to supplement the foregoing statements prior to the hearing in this Appeal.

Executed on: October 4, 2024

Respectfully submitted,

KATTEN MUCHIN ROSENMAN LLP

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*Counsel for Appellant West End DC
Community Association*

CERTIFICATE OF SERVICE

Pursuant to 11-Y DCMR §§ 205 and 302.15, I hereby certify that, on this 4th day of October 2024, true and correct copies of the Appellant's Statement Pursuant to 11-Y DCMR § 302.12 and all associated documents filed in the Appeal of Building Permit No. B2401624 were served by first-class mail and email on the following:

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