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District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council passes Law 26-128, to mandate an increase in the subsidy rate provided to grandparents and other close relative caregivers, and to require that the subsidy be adjusted annually for inflation
- D.C. Council passes Law 26-130, to require the Department of Youth Rehabilitation Services to provide prenatal and postpartum care to pregnant youth in its care
- D.C. Council schedules a public hearing to consider requiring the Department of Health to maintain a public dashboard of rodent population estimates and rodent abatement efforts, and to prepare a report with recommendations for rodent management (Bill 26-492)
- D.C. Council schedules a public hearing to discuss a pilot framework for providing grants to Business Improvement Districts and Main Streets for rodent-proof dumpsters (Bill 26-707)
- Office of Employee Appeals publishes employee appeals
- Office of Planning schedules a public hearing to discuss the Notice of Availability of the Draft RFK Campus Master Plan for Public Comment
- Office of the State Superintendent of Education updates eligibility criteria for priority populations, in alignment with federal regulations, to preserve the operations of the Child Care Subsidy Program

DISTRICT OF COLUMBIA REGISTER

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DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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ADMINISTRATOR

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-126

"Mu Lambda Foundation, Inc. Real Property Tax Exemption Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-221 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Following the signature of the Mayor on April 24, 2026, pursuant to Section 404(e) of the Charter, the bill became Act 26-307 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006821). Act 26-307 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-307 is now D.C. Law 26-126, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-127

"First Responder Retention Efforts Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-358 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Following the signature of the Mayor on April 22, 2026, pursuant to Section 404(e) of the Charter, the bill became Act 26-315 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006840). Act 26-315 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-315 is now D.C. Law 26-127, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-128

"Increasing Support for Grandparent and Close Relative Caregivers Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-398 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Pursuant to Section 404(e) of the Charter, the bill became Act 26-308 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006823). Act 26-308 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-308 is now D.C. Law 26-128, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-129

"Statutory Neglect Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-400 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Following the signature of the Mayor on April 24, 2026, pursuant to Section 404(e) of the Charter, the bill became Act 26-309 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006825). Act 26-309 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-309 is now D.C. Law 26-129, effective June 11, 2026.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-130

"Safe Pregnancy, Delivery, and Postpartum Care for Youth at DYRS Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-404 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Following the signature of the Mayor on April 24, 2026, pursuant to Section 404(e) of the Charter, the bill became Act 26-310 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006828). Act 26-310 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-310 is now D.C. Law 26-130, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-131

"Strengthening Capacity and Transparency at DYRS Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-407 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Following the signature of the Mayor on April 24, 2026, pursuant to Section 404(e) of the Charter, the bill became Act 26-311 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006831). Act 26-311 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-311 is now D.C. Law 26-131, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-132

"Promoting Parental Engagement at DYRS Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-408 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Following the signature of the Mayor on April 22, 2026, pursuant to Section 404(e) of the Charter, the bill became Act 26-299 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006789). Act 26-299 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-299 is now D.C. Law 26-132, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-133

"Empowering Parents in CFSA Investigations Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-409 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Following the signature of the Mayor on April 24, 2026, pursuant to Section 404(e) of the Charter, the bill became Act 26-312 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006834). Act 26-312 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-312 is now D.C. Law 26-133, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-134

"Child Fatality Review Committee Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-411 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Following the signature of the Mayor on April 22, 2026, pursuant to Section 404(e) of the Charter, the bill became Act 26-300 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006791). Act 26-300 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-300 is now D.C. Law 26-134, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-135

"Holding Company System Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-426 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Following the signature of the Mayor on, pursuant to Section 404(e) of the Charter, the bill became Act 26-301 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006793). Act 26-301 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-301 is now D.C. Law 26-135, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-136

"Rental Housing Registration Data Integrity Temporary Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-611 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Pursuant to Section 404(e) of the Charter, the bill became Act 26-302 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006801). Act 26-302 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-302 is now D.C. Law 26-136, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-137

"Archdiocese of Washington Parish Real Property, Deed Recordation, and Transfer Tax Exemption Temporary Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-613 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Following the signature of the Mayor on April 22, 2026, pursuant to Section 404(e) of the Charter, the bill became Act 26-303 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006803). Act 26-303 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-303 is now D.C. Law 26-137, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-138

"Full Accountability in Arrest Reporting Temporary Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-615 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Pursuant to Section 404(e) of the Charter, the bill became Act 26-304 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006810). Act 26-304 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-304 is now D.C. Law 26-138, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 26-139

"Body-Worn Camera Transparency for Use of Force Temporary Amendment Act of 2026"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 26-617 on First Reading and Final Reading, on March 3, 2026, and March 31, 2026, respectively. Following the signature of the Mayor on April 22, 2026, pursuant to Section 404(e) of the Charter, the bill became Act 26-305 and was published in the May 1, 2026 edition of the D.C. Register (Vol. 73, page 006812). Act 26-305 was transmitted to Congress on April 29, 2026 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 26-305 is now D.C. Law 26-139, effective June 11, 2026.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
April	29,30
May	1,4,5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF RESCISSION OF PUBLISHED ADOPTED CEREMONIAL RESOLUTIONS

Adopted Ceremonial Resolutions (ACR) 26-130, 26-131, 26-132, 26-133 and 26-134 were published in D.C. Register, Volume 73, Issue 13 on March 27, 2026.

The ACRs were inadvertently republished in DC Register Volume 73, Issue 24 on June 12, 2026. The text of the ACRs published in both Registers is the same.

This notice rescinds Adopted Ceremonial Resolutions 26-130, 26-131, 26-132, 26-133 and 26-134 published on June 12, 2026. The public is advised to use the Adopted Ceremonial Resolutions published in D.C. Register, Volume 73, Issue 13 on March 27, 2026 for citation purposes. This notice provides the appropriate citations for the ACRs published on March 27, 2026.'

ACR 26-130, Reverend Jesse Jackson, Sr. Posthumous Recognition Resolution of 2026 (Ceremonial Resolution 26-133) (73 DCR 5089, pub. March 27, 2026)

ACR 26-131, Bernice Fonteneau Senior Wellness Center 15th Anniversary Recognition Resolution of 2026 (Ceremonial Resolution 26-134) (73 DCR 5019, pub. March 27, 2026)

ACR 26-132, Chinese Lunar New Year 4724, Year of the Horse Recognition Resolution of 2026 (Ceremonial Resolution 26-135) (73 DCR 5093, pub. March 27, 2026)

ACR 26-133, Dr. Janice M. Davis Recognition Resolution of 2026 (Ceremonial Resolution 26-136) (73 DCR 5095, pub. March 27, 2026)

ACR 26-134, Allen Iverson Ceremonial Resolution of 2026 (Ceremonial Resolution 26-137) (73 DCR 5097, pub. March 27, 2026)

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than 15 days. Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after its introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004, Telephone: 724-8050 or online at http://www.dccouncil.gov.

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

B26-0704 Public Trust in Utility Regulation Act of 2026

Intro. 06-15-2026 by Councilmembers Lewis George, T. White, Parker, and Nadeau and referred to the Committee on Transportation and the Environment

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B26-0705 William “Spence” Spencer, IV Way Designation Act of 2026

Intro. 06-17-2026 by Councilmember Frumin and referred to the Committee of the Whole

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B26-0706 Kindergarten and Pre-Kindergarten Enrollment Flexibility Act of 2026

Intro. 06-18-2026 by Chairman Mendelson and referred to the Committee of the Whole

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B26-0707 Rodent Education and Management Yields ("REMY") Results Amendment Act of 2026

Intro. 06-22-2026 by Councilmembers Henderson, Frumin, Lewis George, Allen, and Pinto and referred to the Committee on Health

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PR26-0745 District of Columbia Board of Elections Michael Wakefield Confirmation Resolution of 2026

Intro. 06-09-2026 by Chairman Mendelson and referred to the Committee on Executive Administration and Labor

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PR26-0746 Commission on the Arts and Humanities Demetrius Butler Confirmation Resolution of 2026

Intro. 06-15-2026 by Chairman Mendelson and referred to the Committee of the Whole

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PR26-0747 Public Charter School Board Ahnna K. Smith Confirmation Resolution of 2026

Intro. 06-17-2026 by Chairman Mendelson and referred to the Committee of the Whole

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PR26-0748 Testing Integrity and Security Rulemaking Approval Resolution of 2026

Intro. 06-22-2026 by Chairman Mendelson and referred to the Committee of the Whole

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Council of the District of Columbia
COMMITTEE ON PUBLIC WORKS AND OPERATIONS & COMMITTEE ON HEALTH
NOTICE OF JOINT PUBLIC HEARING
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

COUNCILMEMBER BRIANNE K. NADEAU, CHAIRPERSON
COMMITTEE ON PUBLIC WORKS AND OPERATIONS

AND

COUNCILMEMBER CHRISTINA HENDERSON, CHAIRPERSON
COMMITTEE ON HEALTH

ANNOUNCE A JOINT PUBLIC HEARING ON

B26-492, THE "RODENT ABATEMENT AND TRANSPARENCY (RAT) AMENDMENT ACT OF 2025," AND B26-707, THE "RODENT EDUCATION AND MANAGEMENT YIELDS ('REMY') RESULTS AMENDMENT ACT OF 2026"

Monday, July 13th, 2026, 1:30 p.m.
John A. Wilson Building, 1350 Pennsylvania Ave., N.W., Room 123 and virtual via Zoom.

To Watch Live:
https://www.youtube.com/@dccouncilpublicworks

On **Monday, July 13th, 2026,** Councilmember Brianne K. Nadeau, Chairperson of the Committee on Public Works and Operations, and Councilmember Christina Henderson, Chairperson of the Committee on Health, will convene a joint public hearing to consider B26-492, the "Rodent Abatement and Transparency (RAT) Amendment Act Of 2025," and B26-707, the "Rodent Education and Management Yields ('REMY') Results Amendment Act Of 2026." The hearing will be held in person in room 123 of the John A. Wilson Building and virtually via the Zoom platform beginning at 1:30 p.m.

Councilmember Janeese Lewis George introduced B26-492, the Rodent Abatement and Transparency (RAT) Amendment Act of 2025, on November 19, 2025. This bill would require the Department of Health ("DC Health") to maintain a public dashboard of rodent population estimates and rodent abatement efforts, and prepare a report with recommendations for rodent management; allow the District to recoup rodent abatement costs from parties whom the government finds responsible for infestations, in the form of a tax penalty; require the Department of Public Works (DPW) to give Advisory Neighborhood Commissions an opportunity to object to public litter can removals; and require DPW to share rodent activity tips with DC Health as part of its public space enforcement work.

Councilmember Henderson introduced B26-707 on June 22, 2026. This measure would establish a pilot framework for grants to Business Improvement Districts and Main Streets for rodent-proof dumpsters; establish training and certification requirements for the use and sale of certain rodent poisons, with the goal of preventing accidental poisoning of children, pets, and wildlife; and direct DC Health to provide public education on rodent abatement.

Those who wish to testify must register using the Council's Hearing Management System at https://lims.dccouncil.gov/hearings by **5:30 p.m. Thursday, July 9th.** Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals (and any subsequent representatives of the same organizations) will be allowed a maximum of three minutes. Witnesses who anticipate needing spoken language interpretation, or require sign language interpretation, are requested to inform the Committee office of the need as soon as possible but no later than five business days before the proceeding by emailing publicworks@dccouncil.gov. We will make every effort to fulfill timely requests. Witnesses will receive instructions on how to participate by Zoom or in person prior to the hearing. If you have additional questions, please email publicworks@dccouncil.gov.

Testimony should be submitted through the Council's Hearing Management System, https://lims.dccouncil.gov/hearings, in advance of the hearing. Testimony will be publicly accessible upon Committee review. If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Statements for the record should be submitted through the Hearing Management System.

The record will close at 5:30 p.m. on Monday, July 27th, 2026.

COUNCIL OF THE DISTRICT OF COLUMBIA

CONSIDERATION OF TEMPORARY LEGISLATION

B26-663, Fiscal Year 2026 Revised Local Budget Temporary Act of 2026, was adopted on first reading on June 23, 2026.

This temporary measure was adopted on June 23, 2026. A final reading on this measure will occur on June 30, 2026.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Grant Budget Modifications

Pursuant to the Consolidated Appropriations Act of 2017, approved May 5, 2017 (P.L. 115-31), the Council of the District of Columbia gives notice that the Mayor has transmitted the following Grant Budget Modification (GBM).

A GBM will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a GBM will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Room 5 Washington, D.C. 20004. Copies of the GBMs are available in the Legislative Services Division, Room 10.
Telephone: 724-8050

GBM 26-0056 Grant Budget Modification as of June 4, 2026

RECEIVED: 14-day review begins June 17, 2026

GBM 26-0057 Grant Budget Modification as of June 10, 2026

RECEIVED: 14-day review begins June 17, 2026

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s).

A reprogramming will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a reprogramming will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, NW, and Room 5 Washington, D.C. 20004. Copies of reprogramming's are available in Legislative Services, Room 10.
Telephone: 724-8050

Reprog. 26-0133: Request to reprogram Capital funds budget authority and allotment in the amount of $320,574 from the Department of General Services (DGS) to the District of Columbia Public Schools (DCPS) was filed in the Office of the Secretary Tuesday June 16, 2026. This reprogramming will fund costs related to HVAC system replacement at Mckinley High and Turner Elementary Schools.

RECEIVED: 14-day review begins Wednesday June 17, 2026

Reprog. 26-0134: Request to reprogram Capital funds budget authority and allotment in the amount of $2,000,000 from the Office of the Deputy Mayor for Planning and Economic Development (DMPED) to the Department of Health Care Finance (DHCF) was filed in the Office of the Secretary Wednesday June 17, 2026. This reprogramming will fund backup power and HVAC systems for the Cedar Hill Regional Medical Center facility, due to the cancellation of federal funding.

RECEIVED: 14-day review begins Thursday June 18, 2026

Reprog. 26-0135: Request to reprogram Capital funds budget authority and allotment in the amount of $2,159,102 within the Department of General Services (DGS) was filed in the Office of the Secretary Wednesday June 17, 2026. This reprogramming will fund unforeseen costs associated with conditions identified during the design-build phase of the Advanced Technical Center (ATC) Phase 2 project that were not identified in the project's original as-built documents.

RECEIVED: 14-day review begins Thursday June 18, 2026

Reprog. 26-0136: Request to reprogram Fiscal Year 2025 Local funds budget authority in the amount of $673,434 within the Office of the Attorney General (OAG) was filed in the Office of the Secretary Wednesday June 17, 2026.The funds are needed to align the personnel services budget with planned expenditures.

RECEIVED: 14-day review begins Thursday June 18, 2026

Reprog. 26-0137: Request to reprogram Fiscal Year 2026 Special Purpose Revenue funds budget authority in the amount of $600,214 within the Department of Energy and Environment (DOEE) was filed in the Office of the Secretary Wednesday June 17, 2026. The funds are needed to ensure sufficient funding for the Stormwater Fee's billing and collection costs.

RECEIVED: 14-day review begins Thursday June 18, 2026

Reprog. 26-0138: Request to reprogram Capital funds budget authority and allotment in the amount of $1,485,510 within the Office of the Deputy Mayor for Planning and Economic Development (DMPED) was filed in the Office of the Secretary Monday June 22, 2026. This reprogramming will fund RFK stadium planning and construction, supplementing the existing RFK Campus budget to cover additional anticipated costs required for storm water relocation and flood plain mitigation on the stadium site.

RECEIVED: 14-day review begins Tuesday June 23, 2026

Reprog. 26-0139: Request to reprogram Fiscal Year 2026 Local funds budget authority in the amount of $10,200,000 within the Department of General Services (DGS) was filed in the Office of the Secretary Monday June 22, 2026. This reprogramming will fund RFK stadium planning and construction, supplementing the existing RFK Campus budget to cover additional anticipated costs required for storm water relocation and flood plain mitigation on the stadium site.

RECEIVED: 14-day review begins Tuesday June 23, 2026

Reprog. 26-0140: Request to reprogram Fiscal Year 2026 Special Purpose Revenue Funds budget authority in the amount of $503,407 within the Department of Motor Vehicles (DMV) was filed in the Office of the Secretary Monday June 22, 2026. Budget authority is needed to support the base year of a new contract necessary to implement comprehensive, consolidated services at the Inspection Station.

RECEIVED: 14-day review begins Tuesday June 23, 2026

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 26, 2026
Protest Petition Deadline:	August 10, 2026
Roll Call Hearing Date:	August 31, 2026
Protest Hearing Date:	October 7, 2026
License No.:	ABRA-134450
Licensee:	Bourbon Expedition, LLC
Trade Name:	Bourbon Expedition
License Class:	Retailer's Class "A" Internet
Address:	301 New York Avenue, N.E.
Contact:	Frank Knizner: (571) 895-2853, frank.knizner@bevlaw.com

WARD 5 ANC 5D SMD 5D01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 31, 2026 at 10 a.m., Suite 4200-B, 899 North Capitol Street N.E., Washington, DC, 20002**. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the Petition deadline. The **Protest Hearing date** is scheduled on **October 7, 2026 at 1:30 p.m.**

NATURE OF OPERATION

New Class "A" Internet Retailer selling beer, wine and spirits online only for off-premises consumption. The location will not be open to the public.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 6am – 1am

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 26, 2026
Protest Petition Deadline:	August 10, 2026
Roll Call Hearing Date:	August 31, 2026
Protest Hearing Date:	October 7, 2026
License No.:	ABRA-136190
Licensee:	KEJ Collective, LLC
Trade Name:	Charcuteria
License Class:	Retailer's Class "C" Restaurant
Address:	2104 Vermont Avenue, N.W.
Contact:	Eugene Beckley: (202) 417-4133, evbeckley@gmail.com

WARD 1 ANC 1B SMD 1B04

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 31, 2026 at 10 a.m., Suite 4200-B, 899 North Capitol Street N.E., Washington, DC, 20002**. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the Petition deadline. The **Protest Hearing date** is scheduled on **October 7, 2026 at 1:30 p.m.**

NATURE OF OPERATION

New Retailer's Class "C" Restaurant with an interior seating capacity of 27, a Summer Garden with 26 seats, and a Total Occupancy Load of 53. Entertainment Endorsement is requested to provide Live Entertainment both indoors and outdoors. Alcohol Carry-out and Delivery Endorsement.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES AND FOR THE SUMMER GARDEN

Sunday 9am – 9pm, Monday – Closed, Tuesday through Thursday 9am – 10pm, Friday and Saturday 9am – 11pm

HOURS OF LIVE ENTERTAINMENT FOR INSIDE PREMISES AND FOR THE SUMMER GARDEN

Sunday 12pm – 9pm, Monday – Closed, Tuesday through Thursday 6pm – 10pm, Friday 6pm – 11pm, Saturday 12pm – 11pm

HOURS OF ALCOHOLIC BEVERAGE CARRY-OUT AND DELIVERY

Sunday 9am – 9pm, Monday - Closed, Tuesday through Thursday 9am – 10pm, Friday and Saturday 9am – 11pm

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 26, 2026
Protest Petition Deadline:	August 10, 2026
Roll Call Hearing Date:	August 31, 2026
License No.:	ABRA-129515
Licensee:	HMJJJ, LLC
Trade Name:	Chicatana Fine Mexican Cuisine
License Class:	Retailer's Class "C" Restaurant
Address:	1400 Meridian Place, N.W.
Contact:	Ana De Leon: (202) 246-7601, adeleonfirm@gmail.com

WARD 1 ANC 1A SMD 1A02

Notice is hereby given that this licensee has requested to transfer their license to a new location under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 31, 2026 at 10 a.m., Suite 4200-B, 899 North Capitol Street N.E., Washington, DC, 20002**. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the Petition deadline.

NATURE OF OPERATION
Applicant requests to Transfer License from 3903-3905 14th Street, N.W, to a new location at 1400 Meridian Place, N.W. Licensee is a Class "C" Restaurant with an Entertainment Endorsement and Sidewalk Café.

HOURS OF OPERATION INSIDE PREMISES
Sunday through Thursday 7am – 2am, Friday and Saturday 7am – 3am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE PREMISES
Sunday through Thursday 10am – 2am, Friday and Saturday 10am – 3am

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR THE SIDEWALK CAFÉ
Sunday through Saturday 10am – 12am

HOURS OF LIVE ENTERTAINMENT FOR INSIDE PREMISES
Sunday through Thursday 6pm – 11:59pm, Friday and Saturday 6pm – 1am

HOURS OF LIVE ENTERTAINMENT FOR OUTSIDE IN SIDEWALK CAFÉ
Sunday through Saturday 6pm – 10pm

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 26, 2026
Protest Petition Deadline:	August 10, 2026
Roll Call Hearing Date:	August 31, 2026
Protest Hearing Date:	October 7, 2026
License No.:	ABRA-136460
Licensee:	2605 24th Street NW, LLC
Trade Name:	El District 24
License Class:	Retailer's Class "C" Tavern
Address:	2605 – 2609 24th Street, N.W.
Contact:	Ana De Leon: (202) 246-7601, adeleonfirm@gmail.com

WARD 3 ANC 3C SMD 3C02

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 31, 2026, at 10 a.m., Suite 4200 - B, 899 North Capitol Street, N.E., Washington, DC 20002**. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the Petition deadline. The **Protest Hearing date** is scheduled for **October 7, 2026, at 1:30 p.m.**

NATURE OF OPERATION

New Retailer's Class "C" Tavern with a Seating Capacity of 150, Total Occupancy Load of 150, and a Sidewalk Café with 32 Seats. The Licensee is also requesting the Alcohol Carry-out and Delivery Endorsement, and an Entertainment Endorsement to provide Live Entertainment inside the premises.

HOURS OF OPERATION INSIDE PREMISES AND FOR THE SIDEWALK CAFE

Sunday through Thursday 6am – 2am, Friday and Saturday 6am – 3am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE PREMISES

Sunday through Thursday 8am – 2am, Friday and Saturday 8am – 3am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE SIDEWALK CAFE

Sunday through Saturday 8am – 12am

HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES

Sunday through Thursday 6pm – 2am, Friday and Saturday 6pm – 3am

HOURS OF ALCOHOLIC BEVERAGE CARRY–OUT AND DELIVERY

Sunday through Saturday 6am – 1am

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

NOTICE OF PUBLIC HEARING

****READVERTISEMENT**

Placard Posting Date:	** June 26, 2026
Protest Petition Deadline:	** August 10, 2026
Roll Call Hearing Date:	**August 31, 2026
Protest Hearing Date:	**October 7, 2026

License No.:	ABRA-136156
Licensee:	2032 P St, LLC
Trade Name:	Emissary
License Class:	Retailer's Class "C" Restaurant
Address:	2032 P Street, N.W.
Contact:	Pablo Osorio: (240) 375-1338, mvalverde@tcce.biz

WARD 2 ANC 2B SMD 2B02

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on **August 31, 2026 at 10 a.m., Suite 4200-B, 899 North Capitol Street N.E., Washington, DC, 20002**. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the Petition deadline. The **Protest Hearing date** is scheduled on ****October 7, 2026, at 1:30 p.m.**

NATURE OF OPERATION

New Retailer's Class "C" Restaurant with seating for 44 and a Total Occupancy Load of 93 indoors. **Sidewalk Café Endorsement with a Total Occupancy Load of 34 and seating for 34. Carry-out and Delivery Endorsement.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE THE PREMISES

Sunday through Wednesday 7:30am – 10pm, Thursday through Saturday 7:30am – 2am

****HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR THE SIDEWALK CAFÉ**

Sunday through Wednesday 7:30am – 10pm, Thursday through Saturday 7:30am – 2am

HOURS OF ALCOHOLIC BEVERAGE CARRY-OUT AND DELIVERY

Sunday through Wednesday 7:30am – 10pm, Thursday through Saturday 7:30am – 1am

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date:	** June 5, 2026
Protest Petition Deadline:	**July 20, 2026
Roll Call Hearing Date:	**August 10, 2026
Protest Hearing Date:	**September 23, 2026

License No.:	ABRA-136156
Licensee:	2032 P St, LLC
Trade Name:	Emissary
License Class:	Retailer's Class "C" Restaurant
Address:	2032 P Street, N.W.
Contact:	Pablo Osorio: (240) 375-1338, mvalverde@tcce.biz

WARD 2 ANC 2B SMD 2B02

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on **August 10, 2026 at 10 a.m., Suite 4200-B, 899 North Capitol Street N.E., Washington, DC, 20002**. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the Petition deadline. The **Protest Hearing date** is scheduled on ****September 23, 2026, at 1:30 p.m.**

****NATURE OF OPERATION**

New Retailer's Class "C" Restaurant with seating for 44 and a Total Occupancy Load of 93.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION

Sunday through Wednesday 7:30am – 10pm, Thursday through Saturday 7:30am – 2am

HOURS OF ALCOHOLIC BEVERAGE CARRY-OUT AND DELIVERY

Sunday through Wednesday 7:30am – 10pm, Thursday through Saturday 7:30am – 1am

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 26, 2026
Protest Petition Deadline:	August 10, 2026
Roll Call Hearing Date:	August 31, 2026
Protest Hearing Date:	October 7, 2026

License No.:	ABRA-136167
Licensee:	Kahama West LLC
Trade Name:	N/A
Registration/License Type:	Medical Cannabis Retailer
Address:	2208 Wisconsin Ave N.W.
Contact:	John McGowan;202-846-7148:jmcgowan@kinnermcgowan.com

WARD 3 ANC 3B SMD 3B02

Notice is given that the above-named medical cannabis retailer applicant has requested a new license to be located at **2208 Wisconsin Ave N.W.** Pursuant to Title 22-C of the DCMR (Medical Cannabis Program) objectors are entitled to be heard regarding the new license application. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the petition deadline. The **Roll Call Hearing is scheduled for August 31, 2026, at 10 a.m., Suite 4200-A, 899 North Capitol Street N.E., Washington, DC, 20002**. The **Protest Hearing date** is scheduled for **October 7, 2026, at 1:30 p.m.** All hearings before the Board are conducted virtually.

NATURE OF OPERATION

The medical cannabis retailer applicant is requesting to locate its operations at **2208 Wisconsin Ave N.W.** The proposed facility with approximately 2000 square feet of space will provide cannabis flowers, cannabis concentrates, and a line of edible products and home delivery services to registered patients in Washington, D.C. The applicant is requesting delivery endorsement.

HOURS OF OPERATION FOR RETAILER

Sunday – Saturday 7 am – 11 pm

HOURS OF RETAILER SALES OPEN TO THE PUBLIC

Sunday – Saturday 7 am – 11 pm

HOURS OF DELIVERY FOR RETAILER

Sunday – Saturday 8 am – 10 pm

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 26, 2026
Protest Petition Deadline:	August 10, 2026
Roll Call Hearing Date:	August 31, 2026
Protest Hearing Date:	October 7, 2026
License No.:	ABRA-136462
Licensee:	CASA MAJANO, LLC
Trade Name:	MaJanos Tex Mex & Bar
License Class:	Retailer's Class "C" Restaurant
Address:	1439 11th Street, N.W.
Contact:	Rita Hardy: (202) 327-3494, rehardy@verizon.net

WARD 2 ANC 2G SMD 2G02

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 31, 2026 at 10 a.m., Suite 4200-B, 899 North Capitol Street N.E., Washington, DC, 20002**. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the Petition deadline. The **Protest Hearing date** is scheduled on **October 7, 2026 at 1:30 p.m.**

NATURE OF OPERATION

New Retailer's Class "C" Restaurant with seating for 29 and a Total Occupancy Load of 34. Sidewalk Café with 40 seats.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES

Sunday through Saturday 11am – 2am

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALK CAFÉ

Sunday through Thursday 11am – 11pm, Friday and Saturday 11am – 12am

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 26, 2026
Protest Petition Deadline:	August 10 , 2026
Roll Call Hearing Date:	August 31, 2026
Protest Hearing Date:	October 7, 2026
License No.:	ABRA-136445
Licensee:	Rus Uz DC, LLC
Trade Name:	Rus Uz
License Class:	Retailer's Class "B" Beer and wine
Address:	2600 Pennsylvania Avenue, N.W. Unit 100
Contact:	Ismoil Rakhmatullaev: (571) 435-5574, ismoilr@gmail.com

WARD 2 ANC 2A SMD 2A03

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 31, 2026 at 10 a.m., Suite 4200-B, 899 North Capitol Street N.E., Washington, DC, 20002**. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the Petition deadline. The **Protest Hearing date** is scheduled on **October 7, 2026 at 1:30 p.m.**

NATURE OF OPERATION

A class "B" Beer and Wine store selling alcoholic beverages for off-premises consumption.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday 12pm – 9pm, Monday – Closed, Tuesday through Thursday 12pm – 9pm, Friday and Saturday 12pm – 10pm

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 26, 2026
Protest Petition Deadline:	August 10, 2026
Roll Call Hearing Date:	August 31, 2026
Protest Hearing Date:	October 7, 2026

License No.:	ABRA-136444
Licensee:	Rus Uz DC, LLC
Trade Name:	Rus Uz
License Class:	Retailer's Class "C" Restaurant
Address:	2600 Pennsylvania Avenue, N.W. Unit 100
Contact:	Ismoil Rakhmatullaev: (571) 435-5574, Ismoilr@gmail.com

WARD 2 ANC 2A SMD 2A03

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 31, 2026 at 10 a.m., Suite 4200-B, 899 North Capitol Street N.E., Washington, DC, 20002**. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the Petition deadline. The **Protest Hearing date** is scheduled on **October 7, 2026 at 1:30 p.m.**

NATURE OF OPERATION

A Class "C" Restaurant with 130 seats inside the premises and an indoor capacity of 161. Summer Garden Endorsement with 20 seats and a capacity of 30. Total Occupancy Load of the entire establishment is 191. The Licensee is also requesting the Alcohol Carry-Out and Delivery Endorsement.

HOURS OF OPERATION, ALCOHOL BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES AND SUMMER GARDEN, AND ALCOHOLIC BEVERAGE CARRY-OUT AND DELIVERY

Sunday 12pm – 9pm, Monday – Closed, Tuesday through Thursday 12pm – 9pm, Friday and Saturday 12pm – 10pm

ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 26, 2026
Protest Petition Deadline:	August 10, 2026
Roll Call Hearing Date:	August 31, 2026
Protest Hearing Date:	October 7, 2026
License No.:	ABRA-136480
Licensee:	Natty & Boom DC, Inc.
Trade Name:	Sorn Thai
License Class:	Retailer's Class "C" Restaurant
Address:	1800 M Street, N.W.
Contact:	Chrissie Chang: (703) 992-3994, chrissiechang@yahoo.com

WARD 2 ANC 2C SMD 2C02

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on August 31, 2026, at 10 a.m., Suite 4200 - B, 899 North Capitol Street, N.E., Washington, DC 20002**. Petitions and/or requests to appear before the ABC Board must be filed electronically to abca.legal@dc.gov on or before the Petition deadline. The **Protest Hearing date** is scheduled for **October 7, 2026, at 1:30 p.m.**

NATURE OF OPERATION

New Retailer's Class "C" Restaurant with a Seating Capacity of 76 inside the premises, a Summer Garden with 12 Seats, and a Total Occupancy Load of 98.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE PREMISES AND FOR THE OUTDOOR SUMMER GARDEN

Sunday through Saturday 10:30am – 10pm

OFFICE OF PLANNING

Notice of Availability of the Draft RFK Campus Master Plan for Public Comment

ACTION: Notice of Availability of the Draft RFK Campus Master Plan for Public Comment.

SUMMARY: The DC Office of Planning (OP) is publishing a draft of the RFK Campus Master Plan ("Master Plan") for public review and comment beginning on June 24, 2026, through August 7, 2026. The Master Plan is an opportunity to reimagine RFK as a vibrant, mixed-use neighborhood anchored by a new, world-class stadium. The plan will establish new land use, zoning, and design guidelines to guide future development of this campus. It will also identify opportunities for new recreational areas and rec facilities, housing, businesses, and improved connections to the Anacostia River.

OP will host an in-person administrative hearing on the Draft Master Plan on Saturday, August 1, 2026, from 10:00am-2:00pm at St. Coletta of Greater Washington (1901 Independence Avenue SE, Washington, DC 20003). At the public hearing, individuals can provide 3 minutes of testimony for the record. The public hearing will be transcribed. Written comments may be submitted into the record via online form at: https://ourrfk.dc.gov/

Hard copies of the Draft Master Plan are available for review at the following locations:

- St. Coletta of Greater Washington: 1901 Independence Avenue SE, Washington, DC 20003
- Benning/Dorothy I. Height Library: 3935 Benning Road NE, Washington DC 20019
- Rosedale Library: 1701 Gales Street NE, Washington, DC 20002
- Martin Luther King Jr. Memorial Library: 901 G Street NW, Washington, DC 20001
- DC Office of Planning: 899 North Capitol Street NE, Washington, DC 20002

This hearing satisfies the legislative requirements of DC Code Section 1-306.03(c)(3). For further information about the hearing or the project, please contact:

Alex Freedman
Lead Community Planner
Planning & Data Visualization Division
DC Office of Planning
899 North Capitol St. NE, Suite 7500, Washington, DC 20002
(202) 442-7618
alex.freedman@dc.gov

Submitted by: Vivian Guerra, Chief of Staff, DC Office of Planning, 899 North Capitol St. NE, Suite 750, Washington, DC 20002 or vivian.guerra1@dc.gov

The Draft Plan is also available online at the DC Office of Planning's website: https://ourrfk.dc.gov/

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF PUBLIC HEARING AND PRELIMINARY FINDING

Re-Registration of the Adams Morgan Partnership Business Improvement District

Notice is hereby given that, pursuant to section 19 of the Business Improvement Districts Act of 1996, effective May 29, 1996 (D.C. Law 11-134; D.C. Official Code § 2-1215.18) ("Act"), the Department of Small and Local Business Development (DSLBD) will hold a public hearing on the recertification of the Adams Morgan Partnership Business Improvement District.

The public hearing will be held at 1:00 pm on Monday, July 13, 2026 in Suite 850N, 441 4th Street NW, Washington, D.C.

DSLBD Director Rosemary Suggs-Evans has informed the Adams Morgan Partnership Business Improvement District that the filing criteria set forth in D.C. Official Code § 2-1215.18 have been met and their application is otherwise in conformity with the Act.

The BID application is available for review by the public during normal business hours on weekdays at 2424 18th Street, N.W., in the offices of the Adams Morgan Partnership Business Improvement District; and by the public online at https://dslbd.dc.gov/noticeofpublichearing.

DSLBD invites the public to testify at the public hearing. Witnesses should bring a copy of their written testimony to the hearing. Additional written statements may be submitted by e-mail to *Lincoln.Lashley@dc.gov* or mailed to: Lincoln Lashley, DSLBD, 441 4th Street, NW, Suite 850N, Washington, DC 20001.

The public hearing record will close ten business days following the conclusion of the hearing, or Monday, July 27, 2026 before 5:00 p.m. Persons submitting written statements for the record should observe this deadline.

BOARD OF ZONING ADJUSTMENT
NOTICE OF VIRTUAL PUBLIC HEARING

TIME AND PLACE: Wednesday, September 30, 2026, @9:30 a.m.
Via WebEx: https://dcoz.dc.gov/BZA09-30-2026
Via Telephone: 202-860-2110 Access Code: 2309 731 0594
Via YouTube: https://www.youtube.com/c/DCOfficeofZoning
Instructions: https://dcoz.dc.gov/release/virtual-public-hearings
Witness Sign Up: https://dcoz.dc.gov/service/sign-testify

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule but reserves the right to hear items on the agenda out of turn.

WARD THREE

Application of:	**St. Patrick's Episcopal Church and Day School**
Case No.:	**17429B**
Address:	1800 block of Foxhall Road, N.W. (Square 1346, Lot 827); 4700 Whitehaven Parkway, N.W. (Square 1372, Lot 817); 4707 Whitehaven Parkway, N.W (Square 1374, Lot 15) and 4751 & 4753 Whitehaven Parkway, N.W. (Square 1374, Lots 838, and 839)
ANC:	**3D**
Relief:	Modification with Hearing to: • Board of Zoning Adjustment Order No. 17429 (pursuant to Subtitle Y § 704) Special Exceptions under: • The private school use permissions of Subtitle U § 203.1(m) and Subtitle X § 104 (pursuant to Subtitle X § 901.2) • The loading requirements of Subtitle C § 909 (pursuant to Subtitle X § 901.2) Area Variance from: • The height requirements of Subtitle D § 203.6 (pursuant to Subtitle X § 1002)
Project:	To modify Condition 7 of Board of Zoning Adjustment Order Number 17429, and to construct a new, semi-detached, four-story school building to an existing middle and high school campus in the R-1B zone.

WARD FOUR

Application of:	**RSGDCONCORD, LLC**
Case No.:	**21476**
Address:	5906 and 5912 13th Street, N.W. and 1300, 1309 and 1315 Missouri Avenue N.W. (Square 2792, Lot 804)
ANC:	**4A & 4E**
Relief:	Special Exception under: • The new residential development standards of Subtitle U § 421 (pursuant to Subtitle X § 901.2)
Project:	To construct ten additional dwelling units and increase the number of units in each building from 14 to 16 in five three-story plus cellar detached apartment houses in the RA-1 zone.

WARD SIX

Application of:	**Gallery CT, LLC**
Case No.:	**21496**
Address:	I Street, N.E. (Square 775, Lot 829)
ANC:	**6C**
Relief:	Special Exception under: • The new alley record lot requirements of Subtitle C § 306.4 (pursuant to Subtitle X § 901.2)
Project:	To construct a new, detached, four-story plus penthouse, 22-unit apartment house in the MU-5A zone.

PLEASE NOTE:

This public hearing will be held virtually through WebEx. Information for parties and the public to participate, view, or listen to the public hearing will be provided on the Office of Zoning website and in the case record for each application or appeal by the Friday before the hearing date. Visit https://dcoz.dc.gov/watchlive.

The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11.

To review an application and exhibits in the case record, visit the Interactive Zoning Information System ("IZIS") at https://dcoz.dc.gov/CaseRecord.

Individuals and organizations interested in any application may testify at the public hearing via WebEx or by phone and are strongly encouraged to sign up to testify at least 24 hours prior to the start of the hearing on OZ's website at https://dcoz.dc.gov/service/sign-testify or by calling Robert Reid at 202-727-5471. Pursuant to Subtitle Y, Chapter 2, the Board may impose time limits on the testimony of all individuals and organizations.

Individuals and organizations may also submit written comments to the Board by uploading submissions via IZIS at https://app.dcoz.dc.gov/Login.aspx or sent by email to bzasubmissions@dc.gov. Written comments and/or testimony must be submitted to the record at least 24 hours prior to the start of the hearing. If you are unable to use either of these means of submission, please contact Robert Reid at (202) 727-5471 for further assistance.

FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311

Do you need assistance to participate?

Amharic

ለመሳተፍ ዕርዳታ ያስፈልግዎታል?
የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese

您需要有人帮助参加活动吗？
如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov。这些是免费提供的服务。

French

Avez-vous besoin d'assistance pour pouvoir participer ? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

Korean

참여하시는데 도움이 필요하세요?
특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish

¿Necesita ayuda para participar?
Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a

Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese
Quí vị có cần trợ giúp gì để tham gia không?
Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

MICHELLE POURCIAU - CHAIRPERSON
JONATHAN GOLDSTEIN - VICE-CHAIRPERSON
MELISSA LINDSJO - MEMBER, NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
KEARA M. MEHLERT, SECRETARY, BOARD OF ZONING ADJUSTMENT
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this hearing to the Office of Open Government at opengovoffice@dc.gov .

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FINAL RULEMAKING

The State Superintendent of Education ("State Superintendent"), pursuant to authority set forth in Sections 3(b)(6A), 3(b)(9), 3(b)(9A), 3(b)(11) of the State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(6A), (b)(9), (b)(9A), and (b)(11)); the Day Care Policy Act of 1979, effective September 19, 1979 (D.C. Law 3-16; D.C. Official Code §§ 4-401 *et seq*.) ("Day Care Act"); Mayor's Order 2009-3, dated January 15, 2009; and pursuant to Section 418(c) of the Social Security Act, approved August 22, 1996 (Pub. L. 104-193; 42 U.S.C. § 618(c)); the Child Care and Development Block Grant Act of 2014, approved November 5, 1990 (Pub. L. 101-508; 42 U.S.C. § 9857 *et seq*.) ("CCDBG Act"), and regulations promulgated thereunder at 45 C.F.R. Parts 98 and 99, hereby provides notice of her adoption of the following amendments to Chapter 2 (Child Development Facilities: District-Subsidized Child Care Services) to Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) of the District of Columbia Municipal Regulations ("DCMR").

I. Purpose

This final rule makes amendments to Chapter 2 (Child Development Facilities: District-Subsidized Child Care Services) of Title 5-A DCMR, which sets the requirements for the administration and enforcement of the District's Child Care Subsidy Program. The purpose of this rulemaking is to update eligibility for priority populations, in alignment with federal regulations, to preserve operations of the Child Care Subsidy Program. The rulemaking is necessary to ensure the continuation of the Child Care Subsidy Program under existing budgetary resources. In order to control future enrollment growth, the program needs to prioritize enrollment of certain populations of children and implement a waitlist for additional families seeking subsidized child care. This final rule is necessary to facilitate implementation of such a waitlist by updating the prioritization in 5-A DCMR § 201.2 to align with eligibility categories as defined under the policies of the child care subsidy program and prioritize children most in need of support.

II. Summary of Final Rulemaking

Subsection 201.2 identifies priority populations for subsidized child care services if there is insufficient funding for the Child Care Subsidy Program and a waitlist is established. OSSE is updating the priority populations consistent with existing eligibility categories, including those federally required at 45 CFR § 98.46. Further, OSSE clarifies that, if funds are insufficient to serve all priority populations, OSSE may further prioritize within the priority categories.

Subsection 202.1 lists the circumstances in which a child's eligibility may be terminated during the minimum twelve (12) month eligibility period. Consistent with federal regulations that allow lead agencies to discontinue subsidies when there are "excessive unexplained absences" (45 C.F.R. § 98.21(a)(5)(i), OSSE will terminate eligibility for a child with nineteen (19) unexcused absences in a single month. OSSE requires child care providers to submit monthly attendance records and to attempt to contact families when children have excessive absences to notify them of a possible termination. OSSE will discontinue subsidy payments following nineteen (19) unexcused absences

in a month and a minimum of two (2) attempted communications with the family. The rulemaking also amends Subsection 202.2 to add nineteen (19) unexcused absences in a single month as an allowable reason to immediately terminate subsidized child care services.

Subsection 204.2 lists families who are exempt from paying a co-payment for services. OSSE is updating this list to include each category of vulnerable children.

Finally, this rulemaking includes changes to the definition of "vulnerable child" to add children of teen parents; children of elder caregivers; children enrolled in Head Start, Early Head Start, or the Quality Improvement Network; children in a family experiencing domestic/family violence; and children with parents participating in addiction recovery programs. It is important that OSSE recognize the most vulnerable children in order to prioritize child care services for those most in need.

III. Notice of Emergency and Proposed Rulemaking

On March 12, 2026, State Superintendent Dr. Antoinette Mitchell adopted a Notice of Emergency and Proposed Rulemaking (NEPRM) for the Child Care Subsidy Program, which adopted on an emergency basis, and proposed to adopt as final rules, revisions to the then-current subsidy regulations (5-A DCMR Chapter 2). The emergency and proposed rule was published in the *District of Columbia Register* on March 27, 2026, at 73 DCR 005155. The public comment period on the proposed rulemaking was open for thirty (30) days and closed April 26, 2026. The State Superintendent received two (2) comments on the NEPRM.

One comment sent on behalf of an early childhood advocacy coalition expressed support for the proposed changes that codified policies adopted in OSSE's 2024 revision of the DC Child Care Subsidy Program policy manual. Additionally, the commenter expressed opposition to the use of emergency rulemaking for the purposes covered in the NEPRM, stating that it does not allow for meaningful public input. OSSE adopted the proposed regulation as Emergency and Proposed Rulemaking to ensure that, even as the emergency regulation went into effect, the public had an opportunity to comment. Further, OSSE first published a draft subsidy waitlist policy in August 2025, offering the public more than six months to provide comment and feedback before a final waitlist policy was adopted.

The commenter also expressed concern regarding the framing of implementation of a subsidy waitlist as a response to the fiscal year (FY) 2026 budget shortfall. The comment requested that OSSE communicate the limited fiscal impact of the waitlist. OSSE has communicated that establishing a waitlist is an important policy mechanism to align the program's costs and budget by limiting program enrollment and associated cost growth. The commenters requested that OSSE refer to this as an enrollment freeze. OSSE is not implementing an enrollment freeze as children who qualify under open priority groups and siblings of currently enrolled children will continue to enroll under the waitlist. The commenter also objected to the regulatory language as written because it is difficult for a public or lay audience to interpret in practice. OSSE understands that regulatory language may be difficult for the public to interpret and, for that reason, has created many resources for the public and early childhood stakeholders in addition to the subsidy regulations and policy manual. This includes the subsidy waitlist policy, frequently asked

questions documents for families and providers, and additional notifications sent directly to stakeholders. The commenter also requested that the regulation make clear that any use of a waitlist will be temporary in nature. The subsidy regulations give OSSE the authority to operate a waitlist when necessary and do not establish whether or not a waitlist is in place and/or a specified timeline. Therefore, OSSE is declining to add such language to the regulation.

Finally, the commenter expressed concern about the change of the reduction of allowable unexcused absences from 30 consecutive days to 19 days in a single month and made recommendations for OSSE's implementation of this policy. While implementation is outside of this rulemaking, OSSE understands the concerns expressed about families that may lose subsidy in this way. OSSE has an established process in place to monitor provider contacts with families with excessive absences to ensure attempts at contact are made and will continue to do so. OSSE proposed this change to ensure that, under limited resources, subsidies are being used for children who attend care.

The second comment received, by an early educator, expressed similar concerns about the implementation of a waitlist, the barriers it would create for families in need of child care, and the impacts for child care providers due to reduced enrollment. OSSE understands the implementation of a subsidy waitlist will create challenges for some families. OSSE is implementing a waitlist to prevent further increases in program costs above budgeted amounts, ensure the program's continued operation, and remain responsible stewards of taxpayer dollars. The proposed regulation updates the categories of prioritization in the event of a waitlist in order to prioritize the District's most vulnerable children.

OSSE has considered the comments received and is not adopting any changes to the regulation as proposed in response to the comments. Subsection 204.2(a)(7) of the final rules, however, includes a correction to its punctuation.

IV. Adoption and Effective Date

The State Superintendent of Education adopted these rules as final on June 12, 2026. These rules shall become effective on the date of publication of this notice in the *District of Columbia Register*.

Chapter 2, CHILD DEVELOPMENT FACILITIES: DISTRICT-SUBSIDIZED CHILD CARE SERVICES, of Subtitle A, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, of Title 5 DCMR, EDUCATION, is amended as follows:

Section 201, ELIGIBILITY DETERMINATIONS, is amended as follows:

Subsection 201.2 is amended to read as follows:

201.2 If there is insufficient funding for the District's subsidized child care program and OSSE establishes a waitlist because there are more applicants than available funds, OSSE shall give priority for subsidized child care services to:

(a) Children of families with very low family income;

(b) Children considered to be a vulnerable child; or

(c) Any subset of the populations identified in paragraphs (a) and (b).

Section 202, TERMINATION OF SUBSIDIZED CHILD CARE SERVICES, is amended as follows:

Subsections 202.1 and 202.2 are amended to read as follows:

202.1 During a twelve (12) month eligibility period, subsidized child care services shall be terminated by the eligibility staff for any of the following circumstances:

(a) Based on an eligibility redetermination for reasons set forth in Subsection 201.5;

(b) The applicant is no longer a resident of the District of Columbia;

(c) The applicant has failed to complete an eligibility review, including providing the required supporting documentation, in a timely manner;

(d) The applicant has been found through investigation to have committed child care eligibility fraud; or

(e) The child has nineteen (19) or more unexcused absences in a single calendar month despite a minimum of two (2) attempts to contact the family.

202.2 Subsidized child care services may be immediately terminated by OSSE, unless a hearing request is filed, for any of the following circumstances:

(a) The applicant is no longer a resident of the District of Columbia;

(b) Substantiated fraud or intentional program violations that invalidate prior determinations of eligibility;

(c) When a child's family income exceeds eighty-five percent (85%) of the state median income (SMI) for more than ninety (90) calendar days;

(d) When a child turns age fourteen (14), or, if the child has a disability, when the child turns age twenty (20); or

(e) The child has nineteen (19) or more unexcused absences in a single calendar month despite a minimum of two (2) attempts to contact the family.

Subsection 204, SCHEDULE OF PAYMENTS BY FAMILIES, is amended as follows:

Subsection 204.2 is amended to read as follows:

204.2 The following parent(s) and guardian(s) shall be exempt from co-payment:

(a) Parents and guardians who are:

(1) Temporary Assistance to Needy Families ("TANF") recipients;

(2) TANF payees;

(3) Parent(s) or guardian(s) with a disability;

(4) Unemployed parent(s) or guardian(s) engaged in job search;

(5) Teen parent(s);

(6) Elder caregivers;

(7) SNAP Employment and Training participants;

(8) In addiction recovery programs; and

(9) Working parent(s) or guardian(s) with incomes below one hundred fifty percent (150%) of the FPL; and

(b) Parents and guardians of:

(1) Children under protective services;

(2) Children in foster care;

(3) Children experiencing homelessness;

(4) Children with disabilities;

(5) Children enrolled in Head Start, Early Head Start, or the Quality Improvement Network (QIN); and

(6) Children in families experiencing domestic/family violence.

Section 299, DEFINITIONS, is amended as follows:

A new definition of "elder caregiver" is added to read as follows:

Elder caregiver – a legal guardian, other than a parent, or individual standing in loco parentis or who has responsibility for the day-to-day care and supervision of a child and is age sixty-two (62) or older or receives Social Security disability benefits or Supplemental Security Income payments.

The definition of "vulnerable child" is amended to read as follows:

Vulnerable child – For the purposes of eligibility:

(a) A child with documented special needs;

(b) A child experiencing homelessness;

(c) A child in foster care;

(d) A child under protective services;

(e) A child of elder caregivers;

(f) A child of a parent(s) with a disability;

(g) A child of teen parents;

(h) A child enrolled in Head Start, Early Head Start, or the Quality Improvement Network;

(i) A child in a family experiencing domestic/family violence; or

(j) A child with parents participating in addiction recovery programs.

OFFICE OF OPEN GOVERNMENT

NOTICE OF FINAL RULEMAKING

The Director of Open Government (Director), of the Office of Open Government, pursuant to the authority set forth in Section 205c(a)(3) of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective October 30, 2018 (D.C. Law 19-124; D.C. Official Code § 1–1162.05c(a)(3) (2016 Repl. & 2018 Supp.)), hereby gives notice of the adoption of the following amendments to Chapter 104 (Office of Open Government) to Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking creates a new Section 10411, that sets forth the procedural requirements public bodies must follow to enter into closed sessions of meetings covered by the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code §§ 2-571 *et seq*. (2016 Repl.)). Additionally, the rulemaking makes clarifying and conforming amendments consistent with the Open Meetings Act. An initial Notice of Proposed Rulemaking was published in the *District of Columbia Register* on January 16, 2026 at 73 DCR 000518. A Notice of Second Proposed Rulemaking published in the *District of Columbia Register* on May 15, 2026 at 73 DCR 007607. These previous versions of this rulemaking contained a new subsection that authorized votes to enter into closed session of a public meeting at a previous board meeting. In response to the Second Proposed Rulemaking, the Office of Open Government received several comments that this subsection was problematic and may compromise the spirit of the Open Meetings Act. To address those comments, the final rules do not include that subsection, and the Office of Open Government will take up that matter in a separate Rulemaking. Technical changes were made to adjust the numbering due to the removal of the subsection authorizing a pre-approved closed meeting.

The Director adopted the rules as final on June 16, 2026. The rules became effective after publication of a Notice of Final Rulemaking in the *District of Columbia Register* on June 26, 2026.

Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Chapter 104, OFFICE OF OPEN GOVERNMENT, is amended as follows:

Subsection 10400.6 of Section 10400, FILING AND PRESENTATION OF COMPLAINTS, is amended to read as follows:

10400.6 Complaints may be submitted anonymously. If the Complainant requests anonymity, the Director shall honor Complainant's request to remain anonymous.

New Section 10411, CLOSED MEETINGS, is added to read as follows:

10411 **CLOSED MEETINGS**

10411.1 Public bodies, as defined in D.C. Official Code § 2-574(3), may close a meeting or portion of a meeting for the purposes described in Section 405(b) of the Open Meetings Act.

10411.2 Before a meeting or portion of a meeting may be closed, the public body shall meet in a public, open session at which a majority of the members of the public body present vote in favor of closure.

10411.3 The public vote in favor of closure shall immediately precede the closed meeting or closed portion of a meeting.

10411.4 (a) Prior to entering closed session pursuant to D.C. Official Code § 2-575(b), the presiding officer shall:

i. Publicly identify the specific statutory exemption authorizing closure; and

ii. Provide a general description of the specific subject matter to be discussed.

(b) The description required under subsection (a)(ii) shall:

i. Be stated in general terms sufficient to inform the public of the nature of the matter under consideration;

ii. Avoid disclosure of confidential, privileged, or otherwise protected information; and

iii. Identify the particular issue, proceeding, or category of matter within the applicable exemption, where feasible.

(c) Merely reciting or tracking the statutory language of the exemption, without additional description of the specific matter to be discussed, shall not, by itself, satisfy the requirement to state the subjects to be discussed.

(d) Nothing in this section shall be construed to require disclosure of information that is privileged, confidential, or exempt from public disclosure under District or federal law.

(e) A copy of the vote to enter into closed session and the statement shall be provided in writing and made available to the public.

10411.5 A public body that meets in closed session shall not discuss or consider matters other than those matters listed under D.C. Official Code § 2-575(b) for which the presiding officer gave the public notice of prior to closure.

10411.6 Upon conclusion of the closed session, the public body shall reconvene in open session to put on the record any official action taken during the closed session.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF SECOND PROPOSED RULEMAKING

Underground Storage Tank Regulations

The Director of the Department of Energy and Environment ("DOEE" or "the Department"), pursuant to the authority set forth in Section 107 of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07); the District of Columbia Underground Storage Tank (UST) Management Act of 1990, effective March 8, 1991 (D.C. Law 8-242; D.C. Official Code § 8-113.01 *et seq.*) ("UST Act"); Sections 11 and 21 of the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.10 and 8-103.20); and Mayor's Order 2006-61, dated June 14, 2006, hereby provides notice of his intent to adopt the following amendments to Chapter 57 (Underground Storage Tanks – New Tank Performance Standards) and Chapter 60 (Underground Storage Tanks – Release Detection) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR) in no less than thirty (30) days after the publication of this notice in the *District of Columbia Register*.

Through this rulemaking, the Department is proposing to amend the requirements regarding underground storage tanks over thirty (30) years old. The current requirement is to remove the tank from the ground. Instead of removal, the Department is proposing to allow owners and operators the option to continue to operate these tanks, provided that the tank does not fail a tank tightness test, which would be required every three (3) years. If the UST fails the tank tightness test, then the owner or operator must permanently close the UST within one (1) year of the date of the test failure.

On September 12, 2025, an initial Notice of Proposed Rulemaking was published in the *District of Columbia Register*, at 72 DCR 010040, which provided a thirty (30) day comment period. The Department received three (3) sets of comments during the public comment period. DOEE is making changes to the proposed regulations in response to comments from stakeholders.

Timeline for Triennial UST Tightness Testing

DOEE received several comments related to the ninety (90)-day deadline for UST owners and operators to conduct the first triennial tightness test. Specifically, commenters noted that the current large universe of tanks over thirty years of age could lead to limited contractor availability. To alleviate this issue, DOEE has revised the rule to allow the submittal of any tank tightness test that has been performed within 35 months preceding the promulgation of the final rulemaking to meet the requirements of Subsection 5700.11(b). UST owners and operators shall conduct subsequent tightness tests within three (3) years of the last test date in accordance with subsection 5700.11(a). The Department has also clarified in Subsection 5700.11(a) that the test results must be submitted to DOEE within thirty (30) days of the test date.

Clarification on Tightness Testing Technical Requirements

The Department received a comment requesting clarification of the technical requirements for tank tightness testing. Section 6007 describes the requirements for all tank tightness testing, which is not a new method for release detection. Owners and operators should continue to conduct tightness tests in accordance with this section and UST manufacturer specifications.

Exemption from Triennial Testing for Double-Walled, Interstitially Continuously Monitored USTs

The Department received a comment requesting a triennial tank tightness testing exemption for double-walled USTs with interstitial monitoring. These tanks provide continuous monitoring of the inner and outer tank walls, notifying the UST owner/operator immediately if there is a release. The commentor noted that this exemption would eliminate additional costs and provide an incentive to replace older, single-walled USTs.

DOEE agrees that double-walled tanks with continuously monitored interstitial spaces, such as brine-filled interstices, provide enhanced leak detection capabilities. If the interstitial space is continuously monitored, a tightness test will not be required. Facilities must maintain documentation demonstrating that continuous monitoring is active and compliant. Double-walled tanks without continuous monitoring must be tightness-tested triennially in accordance with UST manufacturer specifications.

Effect of Rulemaking on Facilities with Testing and Reporting Requirement Extensions

DOEE received two (2) comments requesting clarification for facilities currently operating under Department-approved tank closure extension letters. The promulgation of the final rulemaking will supersede all provisions in previously issued extension letters. Accordingly, those facilities must initiate their triennial tightness testing cycle based on the third anniversary of the last tank tightness test and follow the new Section 5700 requirements.

Requirements for Tanks Installed After November 12, 1993

The Department has also opted to modify the language in Section 5700.4(b) to require that UST systems installed after November 12, 1993, like those installed on or before that date, must comply with the requirements of Section 5700, including the tightness test requirements for USTs over 30 years old.

Chapter 57, UNDERGROUND STORAGE TANKS – NEW TANK PERFORMANCE STANDARDS, of Title 20 DCMR, ENVIRONMENT, is amended as follows:

Section 5700, EXISTING AND NEW UST SYSTEMS – GENERAL PROVISIONS, is amended as follows:

Subsection 5700.4(b) is amended to read as follows:

(b) For UST systems installed after November 12, 1993, the requirements of this section and §§ 5703 through 5706.

Subsection 5700.10 is amended to read as follows:

5700.10 Each owner or operator of an UST that is more than thirty (30) years old that was required by the version of this subsection that was in effect prior to [the effective date of this rule] to be removed within five (5) years of February 21, 2020, may continue to operate the UST provided the owner or operator complies with § 5700.11.

Subsection 5700.11 is amended to read as follows:

5700.11 (a) Each owner or operator of an UST that is more than thirty (30) years old shall perform a tank tightness test every three (3) years in accordance with § 6007 and submit the results to the Department within thirty (30) days of the test date.

(b) The first such test of an UST under paragraph (a) shall be performed within ninety (90) days after the UST reaches the age of thirty (30) years or, if the UST is more than thirty (30) years of age on [the effective date of this rule], then the first such test of the UST shall be performed within ninety (90) days after [the effective date of this rule]. Each subsequent test under paragraph (a) shall be performed within three (3) years after the date the prior test under paragraph (a) was performed or should have been performed.

(c) An owner or operator may use a tightness test required by 20 DCMR § 6007 that was performed within the thirty-five (35) months preceding [the effective date of this rule] to meet the initial triennial testing requirement and shall submit the results of that test to the Department within thirty (30) days of [the effective date of this rule].

(d) If an UST fails a tank tightness test at any time, the owner or operator shall permanently close the UST within one (1) year of the date of the test failure, following the rules in 20 DCMR 6101 and all other applicable regulations.

(e) Nothing in this section shall preclude the Department from requiring permanent closure of a UST system as part of an approved corrective action plan for an open LUST case.

Subsection 5700.12 is amended to read as follows:

5700.12 (a) Double-walled USTs with continuously monitored interstitial spaces as the primary method of release detection are exempt from the requirements of § 5700.11.

(b) Each owner or operator of a UST that is exempt from the requirements of § 5700.11 under paragraph (a) of this subsection shall maintain

documentation demonstrating that the required continuous monitoring is active and submit all available monitoring reports for the twelve (12) months prior to [the effective date of this rule] to the Department within thirty (30) days after [the effective date of this rule].

(c) If the UST fails any part of the continuous monitoring test, the owner or operator shall perform a tank tightness test within thirty (30) days after the test failure and shall comply with § 5700.11(d) if applicable.

Chapter 60, UNDERGROUND STORAGE TANKS – RELEASE DETECTION, is amended as follows:

Section 6007, TANK TIGHTNESS TESTING, is amended as follows:

A new Subsection 6007.6 is added to read as follows:

6007.6 An owner or operator of an UST that is more than thirty (30) years old shall perform tank tightness testing in accordance with this section pursuant to § 5700.11, subject to the exemption in § 5700.12.

Comments on this second proposed rulemaking should be submitted in writing no later than thirty (30) days after the publication of this notice in the *District of Columbia Register.* Comments may be sent by mail or hand delivery to "DOEE UST Proposed Rule Comments," Department of Energy and Environment, 1200 First Street NE, 5th Floor, Washington D.C. 20002, or by email to fianna.phill@dc.gov with the subject indicated as "DOEE UST Second Proposed Rule Comments." A copy of the proposed rulemaking may be requested by calling 202-535-2600 or sending an email to fianna.phill@dc.gov.

DISTRICT OF COLUMBIA PUBLIC LIBRARY

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Public Library Board of Trustees, pursuant to the authority set forth in An Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896, as amended (29 Stat. 244, Ch. 315, § 5; D.C. Official Code § 39-105 (2012 Supp.)); Section 3205 (jjj) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 39-105 (2012 Supp.)); Section 2 of the District of Columbia Public Library Board of Trustees Appointment Amendment Act of 1985, effective September 5, 1985 (D.C. Law 6-17; D.C. Official Code § 39-105 (2012 Supp.)); and the Procurement Reform Amendment Act of 1996, effective April 12, 1997, as amended (D.C. Law 11-259; 44 DCR 1423 (March 14, 1997)); Section 156 of An Act Making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 1999, and for other purposes, approved October 21, 1998 (112 Stat. 2681, Pub. L. 105-277; codified at D.C. Official Code § 39-105 (2012 Repl.)); hereby gives notice of its intent to amend Chapter 9 (Organization and Procedures of Board of Library Trustees) of Title 19 (Amusements, Parks, and Recreation) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the rulemaking is to amend 19 DCMR §§ 900 - 911 to update the Library's Organization and Procedures of Board of Library Trustees.

The Board of Library Trustees approved these rules on May 27, 2026, and intends to take final rulemaking action to adopt the rules as final in not less than thirty (30) days after the date of publication of this notice in the *District of Columbia Register*.

Chapter 9, ORGANIZATION AND PROCEDURES OF BOARD OF LIBRARY TRUSTEES, of Title 19 DCMR, AMUSEMENTS, PARKS, AND RECREATION is renamed and amended to read as follows:

Chapter 9 BOARD OF LIBRARY TRUSTEES
DISTRICT OF COLUMBIA PUBLIC LIBRARY

900 AUTHORITY

900.1 The Board of Library Trustees shall exercise its authority through the official acts of its members taken while the Board is in session and when quorum is present as specified in 906.

900.2 The official acts of the Board of Library Trustees shall be recorded in the Board's minutes which shall be maintained by the Secretary.

900.3 The Board of Library Trustees shall not be bound in any way by any action or statement of an individual member or group of members of the Board, except when that action or statement is authorized by an official act of the Board.

901 OFFICERS OF BOARD

901.1 The officers of the Board shall consist of a Chair, a Vice Chair, and the Chief Librarian or Executive Director of the DCPL (or their designee).

901.2 The Chief Librarian or Executive Director (or their designee) shall serve as an ex officio, nonvoting member of the Board and also serve ex officio as Secretary and Treasurer of the Board.

901.3 All elected Officers shall serve for a two (2) year term from date of election until the first meeting two (2) calendar years later, or until their successors are elected.

901.4 In case of need, such as absence or disability of both the Chair and Vice Chair of the Board, the Board member with the most years of service on the Board (the Senior Board Member) shall act as Presiding Officer at Board meetings. The name of the Senior Board Member who may serve as Presiding Officer in case of need shall be announced by the Chair-Elect of the Board when elections take place, every two years at the first meeting of the calendar year, and by the Chair of the Board whenever there is a change in the Board member with the most years of service on the Board.

902 VACANCY IN THE OFFICES OF CHAIR AND VICE CHAIR

902.1 All members of the Board, including outgoing officers, are eligible for election.

902.2 The Chair of the Board shall appoint a Nominating Committee of three (3) members to recommend a slate of Officers upon the expiration of the regular terms of officers. The Nominating Committee shall present its recommended slate of candidates to the Board and Board members shall have the opportunity to accept the slate or make nominations from the floor. If there are nominations from the floor, the election shall be by secret ballot.

902.3 A vacancy in the office of Chair before the expiration of the appointment term shall be filled by the Vice Chair for the remainder of the existing term.

902.4 A vacancy in the office of the Vice Chair before the expiration of the appointment term shall be filled at a regular meeting by election, or at a special meeting called for the purpose, by election, pursuant to the requirements of 906.3 for the remainder of existing term. The Chair may choose to refer this vacancy to the Nominating Committee to bring forth a slate.

903 DUTIES OF THE OFFICERS

903.1 It shall be the duty of the Chair to preside at all meetings of the Board, to appoint committees not otherwise provided for, and to sign all papers, communications, and

instruments which may require the Chair's official signature. The Chair shall exercise a general supervision over the affairs of the Library Board of Trustees and shall be an ex officio member of all committees. The Chair may vote in the election of officers and in the appointment or removal of the Chief Librarian or Executive Director. The Chair may also vote on other issues if the vote would change the result or if the vote is taken by secret ballot.

903.2 In the absence of the Chair, the Vice Chair shall preside at all meetings of the Board and shall generally discharge all duties of the Chair in case of the latter's absence from the District of Columbia or inability to act.

903.3 The duties of the Chief Librarian or Executive Director as Secretary of the Board shall be to keep permanent record of the meetings of the Board, to have custody of the records and general papers of the Board, and to perform the other functions usual to the office. The duties of the Chief Librarian or Executive Director as Treasurer of the Board shall be to keep the financial accounts of the Library.

904 APPOINTMENT AND REMOVAL OF THE CHIEF LIBRARIAN OR EXECUTIVE DIRECTOR

904.1 The Board of Library Trustees shall appoint by secret ballot a Chief Librarian or Executive Director for the District of Columbia Public Library at a regular meeting or at a special meeting called for the purpose.

904.2 The Board may, at any time, remove the Chief Librarian or Executive Director for cause.

905 MEETINGS OF THE BOARD OF LIBRARY TRUSTEES

905.1 All meetings of the Board shall be open to the public in Accordance with D.C. Code § 2–575 except as provided in 905.5. All regularly scheduled Board meetings are public meetings.

905.2 The Board of Trustees shall hold six (6) regular meetings each year. The schedule of the regular Board meetings shall be proposed by the Chair of the Board and approved by the Board. Notices of regular meetings shall be sent to each member of the Board at least five (5) calendar days before the meeting.

905.3 The Chair of the Board may, and upon request of any three (3) members shall, call a Special Meeting. At least three (3) days' notice (excluding Saturdays, Sundays, and District of Columbia and federal holidays) shall be given in writing, stating the purpose of the meeting. No business except that relating to the specified purpose shall be transacted.

905.4 At the first regular meeting held every other calendar year commencing in the first year upon adoption of this ruling, the Chair and Vice Chair shall be elected.

905.5 The Chair of the Board may call executive meetings as needed for the purpose of dealing with legal or personnel matters. Any action proposed in an executive session must be voted on in an open session of the Board of Trustees.

906 **QUORUM AND VOTING**

906.1 Quorum is determined as half the total of trustees plus one (1).

906.2 Except as provided in 906.3 and 906.4, the decisions of the Board shall be taken by a simple majority of votes cast by those present and voting at a meeting.

906.3 A quorum in favor is required for the election of the Chair and Vice Chair of the Board and for the adoption of rules and regulations of the Board and those of the Library requiring Board approval.

906.4 A quorum plus one (1) in favor is required for the appointments of the Chief Librarian or Executive Director and for the removal of the Chief Librarian or Executive Director for cause.

907 COMMITTEES

907.1 The standing committees of the Board shall be the Executive Committee, the Finance and Budget Committee, the Facilities Committee, the Programs, Partnerships, and Performance Committee, the Nominating Committee, and the Contracts Review Committee.

907.2 The Executive Committee shall consist of the Chair, the Vice Chair, the Secretary Treasurer, and one Board member appointed by the Chair for a period of one (1) year.

907.3 The Executive Committee shall act for the Board in emergencies when a Special Purpose or full Board meeting cannot be called, and its actions shall be binding until acted on by the Board at its next regular meeting.

907.4 The Finance and Budget Committee shall review the Library budget and expenditures in both personnel and operating categories, shall review plans to seek public appropriations, and shall otherwise develop ways and means for raising money for Library needs.

907.5 The Facilities Committee shall review facilities maintenance and construction plans.

907.6 The Programs, Partnerships, and Performance Committee shall provide guidance to the Chief Librarian or Executive Director on the Library's program of services,

including review of specific initiatives, assessment of performance metrics, and partnerships with third-party organizations.

907.7 The Nominating Committee shall develop a slate of prospective officers every two years at the first meeting of the calendar year, or as needed in the event of a vacancy in the office of Chair per Sections 902.3 and 902.4.

907.8 The Contracts Review Committee (CRC) is required as part of the District of Columbia Public Library's Procurement Regulations. The Committee shall review and approve all Library contracts of one million dollars ($1,000,000) or more prior to submission to the District of Columbia City Council for approval. The Committee shall consider protests, disputes, appeals, debarment, and suspension decisions made by the Library's Chief Contracts Officer (CCO).

907.9 The Chair may appoint special committees and task forces and shall do so if the Board so directs.

907.10 The Chair shall appoint chairs of each committee and, in consultation with then, additional members of the committee.

907.11 The Chair shall serve as an ex officio member of each committee.

907.12 The Chief Librarian or Executive Director shall serve as an ex officio, nonvoting member of the Executive Committee, Finance and Budget Committee, Facilities Committee and Programs, Partnerships and Performance Committee and as an ex officio voting member of the Contracts Review Committee.

907.13 The Chair may adjust the purview of committees after consultation with the relevant committee and shall inform the Board in a written manner.

908 STAFF PARTICIPATION

908.1 The Chief Librarian or Executive Director shall select and appoint representatives of the Administration to participate in the work of the Board committees, as needed.

909 ORDER AND CONDUCT OF BUSINESS

909.1 In conducting its business the Board shall follow the latest edition of Robert's Rules of Order in matters not covered by these rules.

909.2 The Chair of the Board may appoint a Parliamentarian on the basis of pertinent experience and other qualifications. The Parliamentarian shall serve at the Chair's pleasure.

909.3 At the beginning of each Board meeting, the roll will be called to establish a quorum and an agenda will be presented for adoption by the Board. A portion of the meeting shall be reserved for comments from the public.

910 DUTIES

910.1 Trustees shall faithfully execute the responsibilities entrusted to them as members of the Board of Library Trustees.

910.2 Trustees shall maintain the confidentiality of matters considered confidential by the Board in Executive Sessions.

910.3 Trustees shall recognize their responsibility to participate actively in Board discussions and decisions and shall not publicly repudiate policies adopted by the Board.

910.4 Trustees shall faithfully attend Board meetings as a primary responsibility of trusteeship.

910.5 Trustees shall accept that the Board acts only as a body and that the Chair shall act and speak on behalf of the Board. Other Trustees shall act on behalf of the Board only when authorized by the Board or Chair.

911 AMENDMENTS TO THE RULES

Any member may propose amendments to these rules by submitting in writing a copy of the proposed amendments at a regular meeting of the Board. The Board may take action on the proposal at its next regular meeting.

Any person desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *District of Columbia Register*. Comments should be submitted to J. Kevin Mcintyre, DCPL, General Counsel, via e-mail at General.Counsel@dc.gov or by mail to Martin Luther King Jr. Memorial Library, 901 G Street, N.W., 4th Floor, Washington, D.C. 20001. Telephone: (202) 727-1134. Copies of the proposed rulemaking may be obtained by writing to the address stated above.

DEPARTMENT OF LICENSING AND CONSUMER PROTECTION

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Licensing and Consumer Protection ("DLCP"), pursuant to the authority set forth in D.C. Official Code § 47-2853.10(a)(11) and (12), Mayor's Order 2000-70, dated May 2, 2000, and Mayor's Order 2022-149, dated September 29, 2022, hereby gives notice of her intent to adopt the following amendments to Chapter 15 (Professional Engineers and Land Surveyors) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations ("DCMR") in not less than thirty (30) days after the date of publication of this notice in the *District of Columbia Register.*

On August 14, 2024, the National Council of Examiners for Engineers and Surveyors (NCEES) in the United States (U.S.) signed a Mutual Recognition Agreement (MRA) with the Engineering Council in the United Kingdom (UK). See https://ncees.org/wp-content/uploads/2024/04/Completed-MRA-8.13.2024.pdf. The U.S.-UK MRA provides a streamlined pathway, without compromising professional standards, to: (i) a UK-Chartered Engineer title for a professional engineer licensed by a participating U.S. licensing authority that has adopted the MRA and (ii) a professional engineer license for a UK-chartered engineer issued by a participating U.S. licensing authority. Presently fifteen (15) states have signed onto the U.S.-UK MRA, including Delaware and Maryland, and several others have committed to doing so, including Virginia.

Interested in enhancing professional mobility and the pathways to professional licensure, the D.C. Board of Professional Engineering (Board) unanimously voted on November 20, 2025, to adopt the U.S.-UK MRA. The Board's action was formalized on February 18, 2026, when Board Chairman Michael Jelen and DLCP Director Tiffany Crowe signed onto the U.S.-UK MRA at a signing ceremony held at the British Embassy. Notwithstanding the signing of the agreement, amendments to the regulations are necessary to allow the Board to approve applications from UK-chartered professional engineers. This proposed rulemaking seeks to do just that.

Specifically, the proposed rulemaking would update 17 DCMR § 1504 regarding applications for licensure as a professional engineer and a professional land surveyor from foreign applicants and persons with degrees from foreign schools. It would amend 17 DCMR § 1504.4 to add that the Board would use a NCEES licensure record meeting the requirements of a MRA between NCEES and a foreign jurisdiction (NCEES MRA) to assess applicants who are applying through a NCEES MRA. The rulemaking would also amend 17 DCMR § 1504.5 to add a streamlined pathway to licensure for applicants who are applying through a NCEES MRA. Finally, the proposed rulemaking would amend the definitions section to add a definition of "NCEES" and make technical amendments to incorporate the new definition.

The DLCP Director gives notice of her intent to adopt the rules as final no earlier than thirty (30) days after the rulemaking is published in the *District of Columbia Register*. Directions for submitting comments on this proposed rulemaking are provided at the end of this notice.

Chapter 15, PROFESSIONAL ENGINEERS AND LAND SURVEYORS, of Title 17, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, of the DCMR is amended as follows:

Section 1503, APPLICATIONS, is amended as follows:

Subsection 1503.3 is amended to read as follows:

1503.3 For applicants for licensure by reciprocity or endorsement pursuant to D.C. Official Code § 47-2853.12(b), the Board shall accept licensure records which have been compiled, verified, and submitted by NCEES. Copies of documents contained in the NCEES licensure record shall be accepted in lieu of original or certified documents which would otherwise be required. Applicants remain responsible for providing any additional required documentation or information.

Section 1504, APPLICATIONS FROM FOREIGN APPLICANTS AND PERSONS WITH DEGREES FROM FOREIGN SCHOOLS, is amended as follows:

Subsections 1504.4 and 1504.5 are amended to read as follows:

1504.4 The Board shall evaluate foreign degrees in consultation with NCEES. The following shall serve as the Board's guide for assessment:

(a) For applicants who are not applying through a Mutual Recognition Agreement (MRA) between NCEES and a foreign jurisdiction (NCEES MRA): a transcript evaluation submitted pursuant to § 1508.7; and

(b) For applicants who are applying through a NCEES MRA: a NCEES licensure record meeting the requirements of the applicable NCEES MRA.

1504.5 An applicant possessing a current Professional Engineer license or Professional Land Surveyor license issued by an appropriate licensing authority of a foreign jurisdiction may obtain a license in the District of Columbia if the applicant provides either of the following to the satisfaction of the Board:

(a) For applicants who are not applying through a NCEES MRA, evidence that the applicant otherwise qualifies for licensure under this chapter, has passed an examination acceptable to the Board, and has completed education and training requirements for licensure in the foreign jurisdiction that were substantially equivalent at the time they were received by the applicant to the education and experience requirements of this chapter; or

(b) For applicants who are applying through a NCEES MRA, a NCEES licensure record meeting the requirements of the applicable NCEES MRA.

A new Subsection 1504.6 is added to read as follows:

1504.6 The U.S.UK MRA is incorporated by reference into this rulemaking and is publicly available at https://ncees.org/wp-content/uploads/2024/04/Completed-MRA-8.13.2024.pdf.

Section 1511, EXAMINATIONS, is amended as follows:

Subsection 1511.2 is amended by striking the lead-in language and inserting the following lead-in language in its place:

1511.2 The following engineering examinations prepared and furnished by NCEES meet the requirements of the District of Columbia for licensure as a Professional Engineer:

Section 1512, CLASSIFICATIONS AND DISCIPLINES OF ENGINEERING AND LAND SURVEYING, is amended as follows:

Subsection 1512.1(d) is amended to read as follows:

(d) Professional Engineers may be licensed in a discipline not listed in (c) above if an engineering examination for that discipline has been prepared and furnished by NCEES, and the applicant meets the requirements of the District of Columbia for licensure as an engineer.

Section 1599, DEFINITIONS, is amended as follows:

Subsection 1599.1 is amended as follows:

The following new definition of "NCEES" is added in alphabetical order to read as follows:

NCEES - the National Council of Examiners for Engineering and Surveying.

All persons desiring to comment on the subject matter of this proposed rulemaking should submit comments in writing to the Department of Licensing and Consumer Protection's Legislative Director, April R. Randall, at dlcp.legislativeaffairsdivision@dc.gov no later than thirty (30) days after publication of this notice in the *District of Columbia Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-8062. Copies of the proposed regulations can be obtained at www.dcregs.dc.gov.

DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

The Director of the District Department of Transportation (DDOT), pursuant to the authority set forth in Section 105(a)(1) of the District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.05(a)(1)) and Mayor's Order 2019-060, dated June 20, 2019, hereby gives notice of her intent to adopt the following amendments to Chapter 26 (Civil Fines for Moving and Non-Moving Infractions) of Title 18 (Vehicles and Traffic) of the District of Columbia Municipal Regulations ("DCMR").

These proposed rules would clarify the intended speed at which each monetary penalty for speeding applies. This clarification is necessary because the current fine table for speeding may be unclear and create confusion for drivers.

The Director also gives notice of her intent to take final rulemaking action to adopt these amendments as final in not less than thirty (30) days after the date of publication of this notice in the *District of Columbia Register*.

Chapter 26, CIVIL FINES FOR MOVING AND NON-MOVING INFRACTIONS, of Title 18, VEHICLES AND TRAFFIC, of the DCMR, is amended as follows:

Section 2600, CIVIL FINES FOR MOTOR VEHICLE MOVING INFRACTIONS, is amended as follows:

Subsection 2600.1 is amended as follows:

The following infraction categories under "Speeding**" are amended to read as follows:**

Up to 10 mph in excess of limit [§ 2200]	$50.00
More than 10 up to 15 mph in excess of limit [§ 2200]	$100.00
More than 15 up to 20 mph in excess of limit [§ 2200]	$150.00
More than 20 up to 25 mph in excess of limit [§ 2200]	$200.00
More than 25 mph in excess of limit on controlled access roadways [§ 2200]	$400.00
More than 25 mph in excess of limit on non-controlled access roadways [§ 2200]	$500.00

All persons interested in commenting on the subject matter in this proposed rulemaking may file comments in writing, no later than thirty (30) days after the publication of this notice in the *District of Columbia Register*, with Catherine Kaufman, Senior Policy and Legislative Analyst, Policy and Legislative Affairs Branch, Office of the Director, 250 M Street S.E., 8th Floor, Washington, D.C., 20003. Comments may also be sent electronically to publicspace.policy@dc.gov. Copies of this proposed rulemaking are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the District Department of Transportation's website at ddot.dc.gov.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2026-094
June 18, 2026

SUBJECT: Appointment — Interim Chancellor of District of Columbia Public Schools

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93 198, D.C. Official Code § 1-204.22(2), and pursuant to section 105 of the District of Columbia Public Schools Agency Establishment Act of 2007, effective June 12, 2007, D.C. Law 17-9, D.C. Official Code § 38-174, it is hereby **ORDERED** that:

1. **DR. KIM JACKSON** is appointed as Interim Chancellor of the District of Columbia Public Schools and shall serve in that capacity at the pleasure of the Mayor.

2. This Order supersedes Mayor's Order 2022-009, dated January 11, 2022.

3. **EFFECTIVE DATE:** This Order shall become effective June 19, 2026.

MURIEL BOWSER
MAYOR

ATTEST: Kimberly A. Bassett
KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

CARLOS ROSARIO INTERNATIONAL PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Commercial Design-Build Firms

Carlos Rosario International Public Charter School (CRIPCS) is seeking proposals from qualified commercial Design-Build firms to provide engineering, permitting, procurement, and construction services for the installation of a high-performance operable partition wall with advanced acoustic separation. The project will split an existing large classroom space at our Sonia Gutierrez Campus (SGC) into two distinct, fully functioning, independent instructional classrooms. The selected vendor will manage the entire turn-key delivery method, including structural overhead engineering, DC Department of Buildings (DOB) permitting and plan review, coordination of manufacturing lead times, structural rigging, partition installation, and post-installation life-safety/acoustic verification. For further information and specifications, please contact Randy Asbury at rasbury@comcapital.org. All proposals are due by 5pm on Thursday, July 9, 2026.

CRIMINAL JUSTICE COORDINATING COUNCIL

NOTICE OF PUBLIC MEETING

Prearrest diversion task force meeting

AGENDA
Wednesday, June 24, 2026 | *3:00 pm – 4:00 pm* |
Meeting location: *Microsoft Teams*

PURPOSE OF THE PREARREST DIVERSION TASK FORCE

Duties of the Prearrest Diversion Task Force:

1. Reviewing and assessing best practices for prearrest diversion;
2. Making recommendations for prearrest diversion of certain misdemeanor offenses, and certain categories of persons;
3. Making recommendations regarding the programs, facilities, personnel, and funding that are necessary to implement prearrest diversion;
4. Making recommendations for any legislative changes that are necessary to enable prearrest diversion;
5. Implementing prearrest diversion of certain misdemeanor offenses, and categories of persons identified by the Task Force as being appropriate for diversion;
6. Identifying any potential improvements in police training or procedures relating to police interactions with individuals impacted by homelessness, mental or behavioral health issues, or substance abuse; and
7. Identifying individuals who frequently interact with police, are frequent mental health consumers, or have suffered from chronic homelessness, and ensure that those individuals are connected to social services.

Please note: the Prearrest Diversion Task Force is subject to the Open Meetings Act.

PRESENTERS
Meeting Facilitator: Kelly O'Meara, Chairperson, MPD and Adam Schutzman, Policy Analyst, CJCC

Meeting topics	Presenter
Welcome and Introduction	**Kelly O'Meara, MPD**

1. Roll Call
2. Approval of meeting minutes

Discussion

1. Review and discussion of the prearrest diversion report – first draft — **All**

ATTACHMENTS

Please read the following documents included in the email with this agenda prior to attending the Task Force meeting.

- **May meeting minutes**
- **Prearrest Diversion Report – First Draft**

Previous Meeting Action Items	**Person/Agency**	**Deadline**
Come prepared to discuss prearrest diversion report		

Direct any questions to Adam Schutzman at adam.schutzman@dc.gov

Please note: the Prearrest Diversion Task Force is subject to the open meetings act

The agenda for the meeting is subject to change up until the day before the meeting. Please check the CJCC website for the most up-to-date agenda.

E.L. HAYNES PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Architect Services

E.L. Haynes Public Charter School is seeking proposals from architects to support space usage updates at their campuses. For more information and to request the full RFP, email contracts@elhaynes.org. For best consideration, proposals must be received by ELH before 5:00 pm on July 10, 2026. Proposals received later than the date and time specified may not be considered. Proposals will be accepted by email only, submitted to contracts@elhaynes.org.

E.L. HAYNES PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Strategic Planning

E.L. Haynes Public Charter School is seeking proposals to facilitate the development of their next multi-year strategic plan. For more information and to request the full RFP, email contracts@elhaynes.org. For best consideration, proposals must be received by ELH before 5:00 pm on July 31, 2026. Proposals received later than the date and time specified may not be considered. Proposals will be accepted by email only, submitted to contracts@elhaynes.org.

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCY

In accordance with D.C. Official Code § 1-309.06(d)(2), the District of Columbia Board of Elections hereby gives notice that a vacancy exists in the office of Advisory Neighborhood Commissioner for the following Single Member District:

1E05

Pursuant to D.C. Official Code § 1-309.06(d)(1), vacancies on Advisory Neighborhood Commissions cannot be filled when the vacancies occur within the 6-month period prior to a general election. As this vacancy occurred within the 6-month period prior to a general election, no petitions will be made available for the purposes of filling it at this time, and the office shall remain vacant for the remainder of the term of office.

For more information, the public may contact the D.C. Board of Elections via the information below:

D.C. Board of Elections
1015 Half Street SE, Suite 750
Washington, DC 20003

Phone: 202-727-2525

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
	OEA Matter No.: 1601-0017-26
EMPLOYEE[1],	
Employee	
	Date of Issuance: May 26, 2026
v.	
	Michelle R. Harris, Esq.
D.C. METROPOLITAN POLICE DEPARTMENT,	Senior Administrative Judge
Agency	

Daniel J. McCartin, Esq., Employee Representative
Michelle G. Hersh, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On December 11, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the Metropolitan Police Department's ("Agency" or "MPD") decision to suspend her from service for fifteen (15) days. Following a letter from OEA dated December 11, 2025, requesting an Answer in this matter, Agency filed its Answer on January 9, 2026. This matter was assigned to the undersigned Senior Administrative Judge ("SAJ") on January 9, 2026. On January 13, 2026, I issued an Order convening a Prehearing Conference for February 17, 2026. Prehearing Statements were due by or before February 10, 2026. On February 10, 2026, Agency filed a Motion to Dismiss/Motion for Summary Judgment and its Prehearing Statement. Employee's Prehearing Statement was filed on February 18, 2026, and Employee filed an Opposition to Agency's Motion to Dismiss/Motion for Summary Judgement on February 19, 2026.

Both parties appeared for the Prehearing Conference on February 17, 2026, as required. During the conference the undersigned determined that an Evidentiary Hearing was warranted. It was noted during that conference that additional time would be provided for the parties to ascertain all witnesses. A Post Prehearing Conference Order was issued that same day which required the parties to provide information regarding witnesses prior to March 12, 2026. Additionally, that Order scheduled a Status Conference for March 12, 2026, and preliminarily set a date of May 19,

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

2026, for an Evidentiary Hearing. On March 6, 2026, Employee, by and through her counsel, filed a Consent Motion to continue the Status Conference due to a schedule conflict. On March 10, 2026, I issued an Order granting the Motion and rescheduled the Status Conference to March 17, 2026. Both parties appeared on March 17, 2026. During that conference the undersigned approved all witnesses for the Evidentiary Hearing and issued an Order Convening an Evidentiary Hearing in this matter for May 19, 2026. On April 23, 2026, Agency filed a Consent Motion to Continue the Evidentiary Hearing. Agency cited therein that there was an issue with the availability of a witness and noted that the parties agreed to May 20, 2026, as the alternate hearing date. On April 24, 2026, I issued an Order granting the Motion and rescheduled the Evidentiary Hearing to May 20, 2026.

On May 14, 2026, the undersigned communicated with the parties regarding an issue with the HVAC in the OEA hearing rooms. The undersigned provided the option for the hearing to be held virtually via Webex on May 20, 2026. The parties responded and indicated that they would prefer to hold the hearing in person and requested dates to reschedule the matter for in-person. The undersigned provided dates and advised the parties that an Order would be issued rescheduling the matter once a new date had been determined. On May 19, 2026, Employee's attorney emailed the undersigned and cited that the parties had reached a settlement in this matter. The undersigned advised the parties that upon the receipt of a withdrawal/motion to dismiss, the matter would be dismissed due to the parties' settlement of the matter. On May 21, 2026, Employee filed a Notice of Dismissal citing the parties had reached a settlement and requested this matter be dismissed. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this appeal should be dismissed based on the parties' settlement of this matter.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

D.C. Official Code § 1-606.06 (b) (2001) states in pertinent part that:

"If the parties agree to a settlement without a decision on the merits of the case, a settlement agreement, prepared and signed by all parties, shall constitute the final and binding resolution of the appeal, and the [Administrative Judge] shall dismiss the appeal with prejudice."

In the instant matter, Employee filed a Notice of Dismissal on May 21, 2026, citing therein that the parties had reached a settlement agreement and requested that this matter be dismissed before this Office. For these reasons, and pursuant to the aforementioned code provision, I find that Employee's Petition for Appeal should be dismissed.

ORDER

It is hereby **ORDERED** that the Petition for Appeal in this matter is **DISMISSED with PREJUDICE**.

FOR THE OFFICE:

/s/ Michelle R. Harris
Michelle R. Harris, Esq.
Senior Administrative Judge

Notice: This decision may be formally revised before it is published in the District of Columbia Register and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	OEA Matter No. 1601-0022-25R26
Employee	)	
v.	)	Date of Issuance: May 26, 2026
	)	
D.C. FIRE AND EMERGENCY	)	
MEDICAL SERVICES DEPARTMENT,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
	)	

Philip Andonian, Esq., Employee's Representative
Connor Finch, Esq., Agency's Representative

INITIAL DECISION ON REMAND

INTRODUCTION AND PROCEDURAL HISTORY

On January 31, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the D.C. Fire and Emergency Medical Services Department's ("Agency" or "FEMS") decision to terminate him from his position as a Firefighter Paramedic effective January 18, 2025. OEA issued a Request for Agency's Answer to Employee's Petition for Appeal on February 3, 2025. Agency filed its Answer to Employee's Petition for Appeal on February 26, 2025.

This matter was assigned to the undersigned Senior Administrative Judge ("SAJ") on February 27, 2025. I issued an Order on March 10, 2025, Convening a Status/Prehearing Conference in this matter for April 1, 2025. Both parties were present at the scheduled conference. During the Status/Prehearing Conference, the undersigned was informed that an Adverse Action Panel Hearing was convened in this matter on August 20, 2024, August 21, 2024, and October 24, 2024. As such, OEA's review of this appeal was subject to the standard of review outlined in *Elton Pinkard v. D.C. Metropolitan Police Department,* 801 A.2d 86 (D.C. 2002).

Subsequently, on April 1, 2025, I issued a Post Status/Prehearing Conference Order, requiring the parties to submit written briefs. Agency's brief was due by May 6, 2025; Employee's brief was due by June 3, 2025; and Agency had the option to submit a sur-reply by June 17, 2025. On April 30, 2025, Agency filed a Consent Motion to Supplement and Clarify the Administrative

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

Record. Agency timely submitted its brief on May 6, 2025. However, Employee did not submit his brief by the June 3, 2025, deadline. Accordingly, on June 9, 2025, the undersigned issued an Order for Statement of Good Cause wherein, Employee was ordered to explain his failure to respond to the April 1, 2025, Order. Employee had until June 23, 2025, to respond to the Statement of Good Cause Order. Following Employee's failure to comply with the Statement of Good Cause Order, on June 25, 2026, the undersigned issued an Initial Decision dismissing Employee's Petition for Appeal for failure to prosecute.

Employee filed a Petition for Review with the OEA Board on July 25, 2025. Thereafter, on October 28, 2025, Agency filed an Answer to Employee's Petition for Review. The OEA Board issued an Opinion and Order ("O & O") on Petition for Review on December 18, 2025, remanding this matter to the undersigned "for consideration on the merits of the case." Accordingly, on January 5, 2026, I issued an Order setting briefing schedules for the parties. Employee's brief was due by January 27, 2026, and Agency's Sur-reply was due by February 11, 2026. On January 22, 2026, Employee filed an Unopposed Motion for Modification of Briefing Schedule. The undersigned issued an Order on January 27, 2026, granting Employee's Motion and adjusted the briefing schedule. Employee's brief was now due by February 10, 2026, and Agency's Sur-reply was due by February 25, 2026. On February 10, 2026, Employee filed a second Unopposed Motion for Modification of Briefing schedule, requesting that Employee's brief submission deadline be extended to February 13, 2026, and Agency's Sur-reply submission deadline be extended to March 2, 2026. I issued an Order on February 13, 2026, granting Employee's Motion. Both parties have timely filed their respective briefs. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

1) Whether the Trial Board's decision was supported by substantial evidence;
2) Whether there was harmful procedural error;
3) Whether Agency's action was done in accordance with applicable laws or regulations.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

> the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[2]

OEA Rule § 631.2 *id.* states:

> For appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

STATEMENT OF THE CHARGE(S)

According to Agency's Answer to Employee's Petition for Appeal[3], Employee's adverse action was predicated on the following charges and specifications, which are reprinted in pertinent part below:

Charge 1 Violation of D.C. Fire & Emergency Medical Services Department Order Book Article VI, § 6 (Conduct Unbecoming an Employee), which states:

> Conduct unbecoming an employee includes conduct detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or any conduct that violates public trust or law of the United States, any law, municipal ordinance, or regulation of the District of Columbia committed while on–duty or off–duty.

Further violation of D.C. Fire and Emergency Medical Services Department Bulletin No. 3 (Patient Bill of Rights), which states:

> As our patient, you have the right to expect competent and compassionate service from us.
>
> * * *
>
> You may expect:
>
> * * *
>
> 2. To receive a timely medical assessment and determination of an appropriate level of medical care.
>
> * * *

[2] OEA Rule § 699.1.
[3] Agency Answer at Tab 27 (February 26, 2025).

> 11. That all of our personnel will be polite, compassionate, considerate, empathetic, respectful, and well mannered.

Further violation of D.C. Fire and Emergency Medical Services Department Bulletin No. 0 (Mission Statement, Vision Statement and Core Values), § 2.3, which states:

> The fundamental beliefs of the District of Columbia Fire and Emergency Medical Services Department are defined in our Core Values. The Core Values guide the Department in our behavior, training and our ability to complete our mission. Our Core Values are:
>
> * * *
>
> 2.3.3 *Safety* — we are uncompromising in our fundamental commitment to safety for ourselves and our community; creating operational excellence.
>
> * * *
>
> 2.3.5 *Compassion* —we respect and treat every person with dignity, empathy and equity.

This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII, § 2(f)(3), which states: "Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations, to include: Neglect of Duty." See also 16 DPM § 1603.3(f)(3) (rev. 08/27/2012); see also 16 DPM § 1605.4(e) (rev. 06/12/2019).

Specification 1 Specifically, in her Final Investigative Report (dated 02/01/2024), EMS Captain Melonie C. Barnes describes FF/P [Employee's] misconduct as follows:

> **CHRONOLOGICAL NARRATIVE SECTION**
>
> On or about November 8, 2023, the Office of Internal Affairs received a complaint regarding Firefighter Paramedic [Employee] and his actions while rendering patient care on the scene of a medical response at Union Station on October 30, 2023.
>
> EMS Battalion Chief Derek Weinroth forwarded a complaint through the Medical Director regarding Firefighter Paramedic [Employee] administering a patient intramuscular (IM) Narcan

through multiple layers of clothing. This complaint was forwarded to the Office of Internal Affairs for review.

* * *

INVOLVED MEMBER(S) STATEMENT(S)

On January 23, 2024, Firefighter Paramedic [Employee] reported to the Office of Internal Affairs regarding the complaint initiated by the Amtrak Police Department. [. . .]

During his interview in part, [FF/P] [Employee] related he was working on Medic 2, and they were dispatched from quarters, with Ambulance 16 to Union Station. He related that they were initially placed in service, and then requested to come to the scene for a patient with a low heart rate.

[FF/P] [Employee] stated Medic 2 arrived on the scene and parked behind Ambulance 16. [FF/P] [Employee] related when he arrived on the scene, he saw a male patient sitting in a wheelchair slumped over and an officer was holding his head. He related that he sent his partner to see what was going on while he grabbed his ALS equipment. Before he got to the patient, he suspected that it was an overdose. [FF/P] [Employee] said he took a quick look at the patient, and he was unresponsive and wasn't really with it, altered, and had pinpoint pupils.

[FF/P] [Employee] related from there, he remembered that the patient's sleeve was rolled all the way up and he needed to give the patient vital signs, some medication, and some oxygen. [FF/P] [Employee] recalled that the ambulance said he had a heart rate of 40, so he felt the patient was not good. [FF/P] [Employee] related that the patient had a heart rate of 90, and he administered a dose of Narcan, and slightly after that, he became more responsive.

[FF/P] [Employee] related after that, he remembers bending over and talking with the patient and begging him to go to the hospital telling him he wasn't breathing.

[FF/P] [Employee] said he practically begged the patient to go to the hospital but refused. At that point, he asked the basic unit to get the refusal.

He related that the ambulance did not feel comfortable getting the refusal, so they called for an EMS Supervisor. He said the EMS Supervisor came to the scene and had a conversation with him and

Ambulance 16 separately. He said he came back and told him that the basic unit should've gotten the refusal. Afterward, they went back in service.

* * *

[FF/P] [Employee] [said that] when he and his partner arrived on the scene, he remembered telling her that this patient looked kind of messed up, so as they were walking towards him, he related that he was going to go back and get his stuff. [FF/P] [Employee] related that he grabbed his monitor and all of his equipment. He said Ambulance 16 had their oxygen on the patient, so he didn't bring his. [FF/P] [Employee] related that [FF/EMT Tarkeyia] Peterson walked up to him and told him the patient was altered, and not responsive, and the basic unit said his heart rate was 40.

[Employee] related that he does not remember directing his partner to do anything, but he remembers taking a good look at the patient and he recognized he was unresponsive, or slow to respond, and had pinpoint pupils. He related that he believed that he had taken his vitals. [FF/P] [Employee] said that he performed an assessment and gave him Narcan and his left deltoid.

[FF/P] [Employee] related that he checked his blood pressure, his heart rate, his blood sugar, and his oxygen saturation. He related that the patient had a response to the Narcan after a few minutes. [FF/P] [Employee] related that he does not know if he received any Narcan before their arrival because he did not receive a report, that he did, however, he admitted to seeing citizen Narcan on the ground near the patient. [FF/P] [Employee] related that he did not speak to the police or asked if they gave Narcan, he just went with the signs and symptoms of the unresponsive patient. [FF/P] [Employee] said he completed the [electronic Patient Care Report (ePCR)] run sheet for this call.

* * *

[FF/P] [Employee] was asked why the basic unit was expected to get the refusal when he gave the medication, and he stated that Narcan is a basic drug and the supervisor sided with him, that the primary responding unit should get the refusal.

* * *

[FF/P] [Employee was] asked if he administered the Narcan through the patient's clothing, and he related that he did not remember, but

if he did, he was scared because the patient had a heart rate of 40 and was unresponsive. [FF/P] [Employee] stated that he does not remember doing such a thing, but if there was a document that said he did, it was because he was afraid.

[FF/P] [Employee] says he never administered Narcan through a person's clothing before. He related that he doesn't remember if the patient at Union Station's heart rate was 40, or if he gave it before he checked the heart rate, but he administered the medication in an emergent manner based on the signs and symptoms of an overdose.

[FF/P] [Employee] was asked if he knew the administration routes of Narcan and he related that he did. He also noted the worst thing that can happen by administering IM medication through multiple layers of clothing is infection. He was asked if infections can kill people, and he related that infection does kill people if it's left untreated. [FF/P] [Employee] was asked if he was taught to administer medication through clothing in paramedic school, and he said no.

[FF/P] [Employee] was given an opportunity to view the body–worn camera footage associated with this incident.

The body–worn camera footage shows [FF/P] [Employee] walking up to the patient and saying nothing to him or performing an assessment. He immediately stuck him in the arm and administered an IM dose of Narcan through multiple layers of clothing.

After viewing the video, [FF/P] [Employee] was asked if the video was consistent with what occurred on the scene, and he said yes. **The video revealed [FF/P] [Employee] did not check pupils or perform an assessment**. [FF/P] [Employee] related that the patient was so emergent that he gave the medication through his clothes. [FF/P] [Employee] was asked if the patient was so emergent, why didn't he administer any oxygen to him. He had no response. [FF/P] [Employee] related that he should have administered the medication using an aseptic technique, and this practice was not consistent with what he learned in paramedic school or consistent with this agency's protocols.

FF/P [Employee's] serial failures to follow instructions and careless / negligent work habits constitute neglect of duty. Accordingly, this termination action is proposed.

Charge 2 Violation of D.C. Fire and Emergency Medical Services Department Order Book Article VI, § 4 (Arrests, Indictments, Convictions and Investigations), which states:

> When being questioned by superior officers in connection with matters relating to official business of the Fire & EMS Department, members shall respond truthfully to all questions posed during their interview. Additionally, during the course of an investigation all members shall respond truthfully to questions by any investigator or official of the Office of Internal Affairs (OIA), even if the investigator is not of a superior rank. All OIA investigators act on behalf of the Department and the Fire Chief and as such are authorized to conduct any and all activities within the scope of their duties in the furtherance of an investigation.
>
> Any member who willfully and knowingly makes untruthful statements of any kind, or who refuses, or fails to make truthful statements in a verbal or written report pertaining to his official duties as a Fire & EMS Department employee is subject to disciplinary action, including dismissal.

Further [violation] of D.C. Fire and Emergency Medical Services Department Rules and Regulations, Article VI (**General Rules of Conduct**), which states:

> **Section 8**. Members shall refrain from immoral conduct, deception; violation or evasion of law or official rule, regulation, or order; and from false statements.

This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII, § 2(f)(3), which states: "Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations, to include: Neglect of Duty." See also 16 DPM § 1603.3(f)(3) (rev. 08/27/2012); see also 16 DPM § 1605.4(e) (rev. 06/12/2019).

Specification 1 Specifically, in her Final Investigative Report (dated 02/01/2024), EMS Captain Melonie C. Barnes describes FF/P [Employee's] misconduct as follows:

FINDINGS

> During this investigation and the Administrative Interview, it was revealed that Firefighter Paramedic [Employee] was willfully misleading, contradictory, and untruthful in most of his statements

to investigators. The following are a few false and misleading statements that were made. In his interview:

[FF/P] [Employee] related when he arrived on the scene, he saw a male patient sitting in a wheelchair slumped over and an officer was holding his head. This was **FALSE**. In the BWC footage, no officer was holding the head of the patient.

[FF/P] [Employee] said he took a quick look at the patient, and he was unresponsive, wasn't really with it, altered, and had pinpoint pupils. This was **FALSE**. In the BWC, [FF/P] Ahmed never looked at the patient in the face, asked him a question, or made contact with him, until he stuck him with a syringe through his clothing.

[FF/P] [Employee] related from there, he remembered that the patient's sleeve was rolled all the way up and he needed to give the patient some medication, oxygen, and get vital signs. This was **FALSE**. In the BWC, you can see the patient's sleeve was not rolled up, nor did [FF/P] [Employee] administer oxygen to the patient.

[FF/P] [Employee] related that the ambulance did not feel comfortable getting the refusal, so they called for an EMS Supervisor. He said the EMS Supervisor came to the scene and had a conversation with him and Ambulance 16 separately. He said he came back and told him that the basic unit should've gotten the refusal. This was **FALSE**. Per Captain Drucker's interview and Special Report, he did not side with either party regarding who should get a refusal.

[FF/P] [Employee] firmly disputed ever administering IM medication through the clothing of patients until the video evidence was presented. He seemingly changed and gave an excuse that he only does this when it’s an emergency or when he doesn't have the proper equipment. [FF/P] [Employee] even goes on to say that the worst thing to happen to a patient is that they get an infection secondary to receiving an IM injection through clothing.

As a first responder practicing pre-hospital paramedicine in a 911 System, all of the responses and calls for service are emergent, and as providers, we expect to operate effectively within the agency's guidelines during emergencies, especially when you have a multitude of additional resources at your disposal.

Having what appeared to be a cavalier attitude and stating the worst that could happen to a patient who receives an IM injection through their clothing is an infection, is a direct contradiction to our agency's

> core values of compassion, service, and integrity. Numerous people die from infections.
>
> FF/P [Employee's] provision of misleading, inaccurate, and untruthful information constitutes neglect of duty. Accordingly, this termination action is proposed.

On August 20, 2024, August 21, 2024, and October 24, 2021, Employee appeared before a Fire Trial Board. Employee was represented by counsel, and he pled Not Guilty to Charge 1 and Charge 2.[4]

SUMMARY OF THE TESTIMONY[5]

On August 20, 2024, August 21, 2024, and October 24, 2024, Agency held a three (3) day Trial Board Hearing. During the hearing, testimony and evidence were presented for consideration and adjudication relative to the instant matter. The following represents what the undersigned has determined to be the most relevant facts adduced from the findings of fact, as well as the transcript (hereinafter denoted as "Tr."), generated and reproduced as part of the Trial Board Hearing.

Vol. 1 – August 20, 2024

Employee's Case-in-Chief

1) Tarkeyia Peterson ("FF/EMT Tarkeyia")– Tr. Vol. I. pgs. 29-46

Firefighter/EMT Tarkeyia Peterson works at Agency. She confirmed that she and her partner, Employee, were present at a call for an overdose at Union Station on October 30, 2023. FF/EMT Peterson noted that once they arrived at the scene, she was the first to go to the patient, and she asked the crew that was already on the scene what they had and what they needed. FF/EMT Peterson stated that she then hooked the patient to a monitor to get baseline items. She affirmed that she assessed the patient when she first encountered the patient and she relayed that information to Employee before he administered Narcan to the patient. FF/EMT Peterson cited that while she could not recall the patient's exact vitals, she informed Employee that the patient's heart rate was fine, but they had 'pinpointed pupils.' Tr. Vol. I. pgs. 29-30.

FF/EMT Peterson recalled Employee administering Narcan to the patient. She stated that she was not sure if she was paying attention when Employee was administering the Narcan because she was still tending to the patient. She noted that she did not specifically see Employee administer the Narcan. FF/EMT Peterson reiterated that she approached the patient first, took his vitals and conveyed the information to Employee. She testified that before arriving at the scene, they communicated with the crew on the scene via radio, and based on the information they received, Employee advised her before they exited the unit at the scene that he needed to retrieve more Narcan from the back of the unit. FF/EMT Peterson asserted that prior to arriving at the scene,

[4] *Id*.
[5] *Id*. at Tabs 26, 22 and 21.

they knew the call was for an overdose. Tr. Vol. I. pgs. 31-33. FF/EMT affirmed that both she and Employee were paramedics and that in general, she would defer to Employee's medical assessment. She stated that she did not recall reviewing the EPCR report. Tr. Vol. I. pgs. 33 –34.

Referencing Agency's Exhibit 5 (video recording), starting at timestamp 13:45:30 to 14:01:00, FF/EMT Peterson confirmed taking the patient's vital once. She asserted that she did not conduct any patient assessment prior to taking the vitals because she asked Ambulance 16 and they had conducted the assessment. She identified herself in the video recording as standing to the left with braids/locks in her hair and talking to the patient. FF/EMT Peterson stated that this was when she first laid eyes on the patient and she was attempting to get the patient to sit back in the wheelchair, so he didn't fall forward. She confirmed that this happened shortly after she arrived at the scene. She stated that she spoke to the FF/EMT on the scene who verified the information they had before coming on the scene. Tr. Vol. I. pgs. 35-39.

Referring to timestamp 13:49:30 to 13:50:09 in Agency's Exhibit 5, FF/EMT Peterson explained that while FF/EMT 2 can't be seen on camera, he could be heard telling FF/EMT Peterson something about the patient's heart rate. Tr. Vol. I. pg. 40. FF/EMT Peterson acknowledged that there were instances where the camera was pointing away from the patient and that it was during that period that she arrived and was informed about the patient's heart rate by FF/EMT 2. She also confirmed that she took a good look at the patient at that point. FF/EMT Peterson testified that it appeared that Employee was standing right there with them at that time. Tr. Vol. I. pgs. 41-42.

When asked what the protocol for administering Narcan was, FF/EMT Peterson testified that from an EMT standpoint, it is done intranasally. She asserted that while it is protocol to talk to the patient before administering medication in the field, in the current incident, no one talked to this patient. FF/EMT Peterson also cited that if a paramedic treats a patient, the ALS provider was responsible for getting a refusal. Tr. Vol. I. pgs. 44-45.

Agency's Case-in-Chief

2) Kevin Dauphin ("Sgt. Dauphin") – Tr. Vol. I. pgs. 46 -60

Sergeant Kevin Dauphin is a Control Sergeant employed with the Amtrak Police Department since November 2005. He stated that in this role, he supervises officers within the District of Columbia, Maryland and Virginia. Sgt. Dauphin testified that Amtrak has jurisdiction over any crimes against Amtrak, its property, or patrons while within the system. He also asserted that Amtrak has a Memorandum of Understanding ("MOU") with the D.C. Metropolitan Police Department that covers Union Station, to New York Avenue and out to the D.C. line. Tr. Vol. I. pgs. 47-48.

Sgt. Dauphin recalled the October 30, 2023, incident involving an apparent overdose patient around Union Station. He testified that he received a call about an individual who fell off his wheelchair and was blocking the entrance to the west loading dock. Sgt. Dauphin stated that he and a few other officers arrived at the scene. Tr. Vol. I. pgs. 48-49.

Sgt. Dauphin identified Agency's Exhibit 4, Bates number 22-23, as an Amtrak Police Report. He noted that he was not the author of the document. He affirmed that he reviewed the document and based on his recollection, it was an accurate representation of the October 30, 2023, incident. Sgt. Dauphin explained that when they saw the individual who fell off his wheelchair, they noticed that he was under the influence of unknown narcotic, so they contacted Agency to respond, which they did with two (2) ambulances – a regular ambulance and a paramedic unit. Tr. Vol. I. pgs. 49-51.

Sgt. Dauphin testified that both ambulance units arrived around the same time. He explained that he noticed the "ambulance driver kind of waved off the paramedic unit, because they haven't evaluated them yet, so they weren't sure exactly what was wrong." He explained that when he and the officers first arrived at the scene, Officer Mawn, who had a firefighter background, evaluated the patient and administered some Narcan before calling Agency. Sgt. Dauphin cited that when the ambulance unit arrived, they evaluated the patient and they decided that they needed the medic/EMS unit to return because either the patient's pulse or blood pressure was low. He confirmed that the medic unit returned to the scene. Tr. Vol. I. pgs. 51-52.

Sgt. Dauphin testified that the medic unit had a male and female paramedic. He explained that once the unit arrived at the scene, the female paramedic came out first, while the male paramedic then came out with an 'AED' or defibrillator pack. He cited that the male paramedic placed the 'AED' on the ground and set up a syringe. Sgt. Dauphin stated that because it was cold, the patient was wearing many layers of clothing. He testified that the male paramedic "just gave him a shot right through all of his layers of clothing." Sgt. Dauphin stated that male paramedic told the patient he looked bad, asked him a few questions and if he wanted to go to the hospital. Tr. Vol. I. pgs. 52 -53.

Sgt. Dauphin stated that he did not recall any conversation with the medic unit when they arrived, other than the fact that they were advised that one (1) dose of Narcan had been administered to the patient. He cited that the male paramedic touched the patient's body before administering the Narcan. He stated that none of the members of the medic unit spoke to the patient before administering the Narcan. Tr. Vol. I. pgs. 53-55. Sgt. Dauphin identified Agency's Exhibit 5 as Officer Mawn's Amtrak body worn camera ("BWC"). Tr. Vol. I. pgs. 55-56.

Sgt. Dauphin cited that he was not familiar with Agency's protocols for when Narcan should be administered to a patient in the field. Tr. Vol. I. pg. 59. He cited that he had never seen Narcan administered to a patient through his clothes prior to the current incident or a provider treating a patient without asking questions. Tr. Vol. I. pg. 60.

3) Melonie Barnes ("Cpt. Barnes") – Tr. Vol. I. pgs. 62-136

Captain Melonie Barnes has been employed with Agency for twenty-seven (27) years. She currently works in the Office of Internal Affairs ("OIA") as an Investigator/Record Captain. As an Investigator, her duties include the investigation of egregious misconduct or criminal activities among the Department's members. Cpt. Barnes testified that she has worked with patient care as a paramedic and EMS supervisor in the quality oversight to field paramedics. Tr. Vol. I. pgs. 62-63.

Cpt. Barnes affirmed that she was asked to investigate a potential misconduct committed by Employee. She explained that they received a complaint from the Office of the Medical Director that Employee improperly administered medication through a patient's clothing. She confirmed that after the investigation, she prepared a final investigative report on the alleged misconduct, marked as Agency's Exhibit 1. Tr. Vol. I. pgs. 64- 65.

Cpt. Barnes identified Agency's Exhibit 2 as a Special Report submitted by Captain Michale Timmins ("Cpt. Timmins") and which she received at the beginning of her investigation. Cpt. Barnes testified that after she received this Special Report, she contacted Amtrak Police to obtain a Police Incident Report and BWC footage. She identified Agency's Exhibit 4 as the Police Incident Report she received from Amtrak Police for the current incident. Cpt. Barnes identified Agency's Exhibit 5 as the BWC footage of the Amtrak Police Officer on the scene of the incident in question that she received from the Amtrak Police Department. Cpt. Barnes identified Agency's Exhibit 3 as the initial complaint they received through the Medical Director's Office regarding Employee's patient care on the day of the incident. She cited that she reviewed the documents and BWC footage as part of her investigation. Tr. Vol. I. pgs. 66-69.

Cpt. Barnes confirmed that during her investigation, she interviewed Firefighter Tu Nguyen, his partner, Firefighter Tolliver, Captain Drucker, Firefighter Peterson, and Employee. Cpt. Barnes stated that she interviewed Employee last. She asserted that she directed Captain Drucker to submit a Special Report, but she did not request that Employee submit a Special Report. Cpt. Barnes affirmed that all the interviews were recorded. She also stated that she showed Employee the BWC footage at some point during his interview. Tr. Vol. I. pgs. 70, 72, 92-96. Cpt. Barnes stated that she showed Firefighters Tolliver and Peterson the BWC footage when they got to her office for the interview, and before she questioned them about the incident at Union Station. Tr. Vol. I. pgs. 98-100.

Cpt. Barnes identified Agency's Exhibit 8 as the recording of the administrative interview she had with Employee. She identified Agency's Exhibit 2 as the staff roster which highlights who was working on a particular day. Cpt. Barnes cited that she reviewed the staff roster to determine who was assigned to the particular units on that day. Tr. Vol. I. pgs. 76-78.

Cpt. Barnes explained that as part of her investigation, she reviewed all evidence. She stated that the "ZOLL audio recording came from the ZOLL database website." Cpt. Barnes asserted that the ZOLL audio came from Medic 2, which was the unit Employee was on. Tr. Vol. I. pgs. 78-79.

Cpt. Barnes identified Agency's Exhibit 14 as the event chronology of the incident she received from the Office of Unified Communications ("OUC"). She affirmed that she reviewed this document during her investigation. Cpt. Barnes identified Agency's Exhibit 15 as "… a document with the Office of the Medical Director that indicates each time that [Employee] administered naloxone or Narcan to a patient between a certain time period for this period." Tr. Vol. I. pgs. 79-81. Cpt. Barnes testified that Employee operated outside of FEM's protocol when he administered Narcan on October 30, 2023. Tr. Vol. I. pgs. 82.

Cpt. Barnes defined the term 'willfully misleading' to mean "that [Employee] knew what occurred and he gave me something other than what occurred until he reviewed the evidence." She noted that thereafter, Employee changed his statement. Cpt. Barnes cited that one false statement during an interview is sufficient to consider an individual to be 'willfully misleading'. Tr. Vol. I. pgs. 87-92, 130, 134. Cpt. Barnes identified the following statements made by Employee that she considered in her investigative report to be 'willfully misleading:'

> "Firefighter [Employee] relayed that when he arrived on the scene, he saw a male patient sitting in a wheelchair slumped over and that officer was holding his head. This was not in the BWC footage. No officer was holding the head of the patient." Tr. Vol. I. pg. 101.

Upon review of the BWC footage at the 3 minutes and 2 seconds (3:02) mark, Cpt. Barnes affirmed that she could see the Officer's hand in the lower left-hand corner holding onto the patient's shirt. She also affirmed that at the 15 minutes and 38 seconds mark on the BWC footage, the Officer lets go of the patient and the patient's head slumps down and forward at that moment. Cpt. Barnes confirmed that she could hear one of the officers in the BWC video footage state that the patient had been falling over since they got him. Cpt. Barnes testified that while she reviewed the video footages during the investigation, she does not necessarily review them closely. She reiterated that her finding that Employee was 'willfully misleading' was based on Employee's statement. Cpt. Barnes stated that she did not see the officer holding the patient's head up. Tr. Vol. I. pgs. 102-106.

Reading from her report, Cpt. Barnes stated that "[Employee] said he took a quick look at the patient and he was unresponsive. Wasn't really with it. Altered and had pinpoint pupils. This was both in the BWC file [but Employee] never look at the patient in the face, asked him a question or made contact with him until he stuck him with a syringe through his clothing." Tr. Vol. I. pgs. 107. Referencing the above statement, Cpt. Barnes testified that according to the BWC video footage, Employee is seen "walking up to the patient, saying nothing to them nor performing an assessment, … he literally stuck him in the arm and administered a dose of Narcan through the multiple layers of clothing." Upon review of the BWC video footage at time stamp 1448, Cpt. Barnes confirmed that the camera is pointed away from the patient and it stays pointed away from the patient until at least time stamp 1524. Cpt. Barnes also stated that she could also not see Employee on the video footage at this point, but she identified Firefighter Peterson approaching the patient. She further stated that Employee cited during the interview that his partner approached the patient first. Tr. Vol. I. pgs. 107-110.

Reviewing the BWC video footage at timestamp 15 minutes and 45 seconds (15:45), on the very left-hand side of the screen, Cpt. Barnes testified seeing fingers which she could not identify whom they belonged to because that was her first time seeing the fingers. She stated that she could not tell if the fingers belonged to Employee. Cpt. Barnes testified that almost everyone on the scene was wearing blue gloves, including Employee. Cpt. Barnes asserted that when Employee arrived at the scene, he had a bag of what appeared to be Narcan with him. Tr. Vol. I. pgs. 110-113.

Cpt. Barnes noted that based on the BWC video footage, while Employee was standing next to the patient, both Firefighter Peterson and the other officers were asking the patient questions. Tr. Vol. I. pg. 114. Upon review of the BWC video footage time stamp 1617, Cpt. Barnes acknowledged seeing EMT Nguyen give the patient a series of squeezes around his shoulder. Cpt. Barnes testified that if a paramedic is responsible for administering medication, that paramedic is the one responsible for ensuring that the patient meets the requirements for said medication. Tr. Vol. I. pgs. 114 -116.

Following her review of the video footage in Agency's Exhibit 8, at time stamp 1005, Cpt. Barnes testified that she did not see Employee or her partner, Firefighter Peterson, having a conversation. She stated that she did not recall where Employee told her he parked the Ambulance. Cpt. Barnes confirmed that she was aware that medic units have external facing dash cameras. Tr. Vol. I. pgs. 121 – 123. When asked if she pulled the CCTV footage from the scene, Cpt. Barnes testified that "… I believe I was aware of the CCTV footage, however, when I was speaking with Amtrak Police, the timing and everything was off and there was no audio. Therefore, the Amtrak Police gave me the body-worn camera footage instead of the CCTV." Tr. Vol. I. pg. 124.

Cpt. Barnes stated that she could not recall if anyone stated during her interview that the patient did not have pinpoint pupils. Tr. Vol. I. pgs. 125. Referring to the Stipulated Exhibit 19, at page 3, Cpt. Barnes confirmed that the document stated that "left pupil pinpoint, right pupil pinpoint." Tr. Vol. I. pg. 126.

When asked about stating in her report that Employee lied about making contact with the patient prior to administering Narcan, Cpt. Barnes stated that from her recollection of the video, she did not see Employee "… make contact until the administration of the medication." She stated that she could not recall if Employee told her that he made physical contact with the patient, but she recalled being told by Employee that he assessed the patient. Tr. Vol. I. pgs. 126 – 127.

4) Marcus Drucker ("Cpt. Drucker") – Tr. Vol. I. pgs. 137-166

Captain Marcus Drucker is currently employed at Agency as an EMS Captain assigned to EMS 7. He has been in this position for approximately six (6) years, and his duties include clinical oversight of any medical incident. Cpt. Drucker asserted that he knew Employee in a professional capacity and that he was not Employee's direct supervisor. Tr. Vol. I. pgs. 137 – 138.

Cpt. Drucker recalled the October 30, 2023, incident where he was dispatched to Union Station. Cpt. Druker testified that he was requested to the scene by Ambulance 16 because they had some concerns and needed a supervisor to come to the scene. He cited that this request was made through OUC and he was dispatched to the scene due to his proximity to the Union Station. Cpt. Druker asserted that he did not recall seeing the patient when he got to the scene. Cpt. Drucker stated that he checked in with the medic unit and ambulance to hear their sides of the issue. Tr. Vol. I. pgs. 139-141.

Cpt. Drucker confirmed that he mostly spoke to Employee while at the scene and they had a cordial conversation as they tried to figure out what the issue was. Cpt. Drucker explained that before he got to the scene, he received a phone call on his work phone from Firefighter Nguyen to

inform him of an issue between them and the ambulance crew. He cited that he discussed patient care with Firefighter Nguyen when he got to the scene. Cpt. Drucker testified that "So there was concern from the ambulance crew that the patient didn't receive their full assessment from the medic unit." Tr. Vol. I. pgs. 142-145.

Cpt. Drucker stated that when he first spoke with Employee, he gathered that Employee felt that this was a call that would have been under the call of Basic Life Support ("BLS"). He highlighted that Employee felt that because the patient received BLS care, the 'refusal of care' should have been handled at the BLS level. Cpt. Druker testified that when he later spoke to Firefighter Nguyen, he reiterated that "medic came over here and just sort of didn't offer the full assessment that I would expect him to and just started kind of treating the patient." He stated that Firefighter Nguyen expressed that since Advance Life Support ("ALS") treated the patient, they were responsible for any decision making at that point. Cpt. Drucker testified that he again spoke to Employee and informed him that once his unit (ALS) became involved in the assessment and the care for the patient, they were responsible moving forward. He cited that Employee understood what he said and he acknowledged that the ALS was responsible to make the call. Cpt. Drucker affirmed that Employee was professional and receptive to the guidance he provided. Cpt. Drucker asserted that he also informed Employee's Lieutenant of the incident, and he stated that that was out of character because Employee was a good employee. Tr. Vol. I. pgs. 146-153.

Cpt. Drucker testified that he was informed by the ambulance crew that when Employee arrived, he did a "shortened assessment and gives the person Narcan." He stated that Employee informed him that he did everything he was supposed to do. Cpt. Drucker affirmed that if he had been aware that Employee administered Narcan through the patient's clothing on that day, he would have referred Employee to peer review as that would have been a reasonable step. When asked if the standard was to administer drugs through clothing even in an emergency, Cpt. Drucker stated that "So if you're asking the protocol answer would be no, under no circumstances." He also explained that "I mean … there's no exception for that in protocol if that's what you're asking." And when asked if he has heard of this practice being taught at Agency, Cpt. Drucker stated that "I'm not familiar with that being taught officially in any DC Fire/EMS capacity." Cpt. Drucker also testified that "it's a nuanced decision, but I think there are instances where getting something through clothing would be appropriate…" Tr. Vol. I. pgs. 154-157, 161, 164-166.

5) David Vitberg ("Dr. Vitberg") – Tr. Vol. I. pgs. 168 -251

Doctor David Vitberg is the interim medical director for Agency and has been in this role since May 30, 2024. He also works part-time in the Emergency Department at MedStar Washington where he practices emergency medicine. Dr. Vitberg previously worked as division chief and medical director of Critical Care Medicine at Greater Baltimore Medical Center in Towson, Maryland and as the deputy medical director for Baltimore County Fire Department. Tr. Vol. I. pgs. 168-171.

Dr. Vitberg confirmed that he was familiar with Agency's pre-hospital treatment protocols. He testified that he reviews these protocols frequently when engaged in his role. Dr. Vitberg asserted that the protocols are introduced to paramedics in multiple ways, such as to the cadets and recruits during their onboarding and initial training; during continuing education; at operations

meetings and via a recent general order notifying Agency's employees of an update made to the protocols. Tr. Vol. I. pgs. 172-175.

Dr. Vitberg testified that if employees are on the scene and need immediate answers regarding protocols, Agency has an application called "Handtevy" which is available on all department phones. He explained that this application provides references to all of Agency's protocols. Dr. Vitberg stated that employees can always request that an EMS supervisor respond if there's a question regarding a protocol or whether to render a treatment. He cited that if the EMS supervisor is unclear on what to do, they can always escalate through the chain of command, typically to a battalion chief of EMS and up the ladder. Dr. Vitberg explained that any time a member has a question about what to do for patient, the member could "get on a radio channel and obtain base station consultation, speak to a physician at really any of our receiving hospitals for guidance or to the particular hospital that they're transporting a patient to." He reiterated that the member could also reference the app on their phone, call their EMS supervisor via phone or via radio or request that EMS supervisor respond to the scene and/or escalate their concerns through the chain of command. Dr. Vitberg stated that all these protocols are geared towards emergency care treatment and transportation. Tr. Vol. I. pgs. 177-180.

When asked if there were exceptions to the protocols, Dr. Vitberg stated that the protocols are a guide for how treatment should be rendered. He cited that "there is not a one size fits all for every single patient in every single situation, so there may be situations in which a paramedic or an EMT has to do something extraordinary … outside of the realm of what can be described or dictated in an EMS protocol. And that just has to be documented and typically discussed within the chain of command and with the medical director after the fact." Tr. Vol. I. pgs. 180-181. Dr. Vitberg affirmed that based on the protocols, there are situations in which once ALS care is administered, the patient can be transferred to BLS care. Dr. Vitberg asserted that an intramuscular injection is an ALS intervention and based on protocol, once it is administered, a patient cannot be transferred to BLS. Tr. Vol. I. pgs. 181-185.

Referring to Exhibit 26, Policy 2.3, Dr. Vitberg explained that this is "a universal policy across every realm of healthcare be it pre-hospital or hospital or outpatient clinic that we are as healthcare providers required when possible to obtain consent from our patients before rendering care." He confirmed that consent can be obtained by talking to the patient if the patient is able and willing to communicate. Dr. Vitberg cited that the policy across healthcare is to obtain informed consent when possible before laying hands on a patient and performing an assessment or doing any sort of treatment. Tr. Vol. I. pgs. 185-188.

Dr. Vitberg identified Exhibit 27, starting at page 91 as the general assessment and universal care protocol that is supposed to be followed to bring EMTs and paramedics through the initial patient encounter. He testified that this protocol provides an organized, methodical way for Agency members across the realm of certification from EMT to paramedics of how to assess a patient comprehensively. Dr. Vitberg testified that when a paramedic arrives at a scene, they are supposed to do a scene survey and then gather information from the crew that was already on the scene, while engaging in their own independent assessment of what's going on. Dr. Vitberg stated that "a lot of times you don't have to lay hands on the patient immediately" but assessments include

getting close to the patient, observing the patient, talking to the patient, often laying hands on the patient, checking their vital signs, and performing a physical. Tr. Vol. I. pgs. 188-192.

Dr. Vitberg testified that Agency uses the 'Alert, responsive to verbal stimulation, responsive to painful simulation, and unresponsive' ("AVPU") scale, as well as other protocols to assess a patient's mental status. He stated that the AVPU assessment can be completed within three (3) to four (4) seconds. Dr. Vitberg asserted that a patient's airway is assessed by "…look, listen, and feel" as they walk towards the patient. He explained that if a patient is sitting upright, holding their head up, and able to speak to them, they will often know that the patient has a patent airway. He noted that apart from that, they must examine the patient's airway to ensure it is open. Dr. Vitberg testified that they also must determine if a patient must be transported, how urgently they need to be transported, and where they need to be transported to. Tr. Vol. I. pgs. 192- 199.

Dr. Vitberg explained that if a patient can communicate, the chief complaint and history may come from the patient. But if it is obvious that the patient is impaired and unable to communicate, that would be their chief complaint. Dr. Vitberg provided an explanation of the primary and secondary assessments and what is included in these assessments such as vital signs, how they are performed and their impact on a patient's health. Tr. Vol. I. pgs. 200-215. Dr. Vitberg asserted that if a patient is obviously intoxicated with opioid and has significant respiratory depression, it would be more appropriate to prioritize the administration of Narcan/naloxone before testing their blood glucose levels. He explained that they did parallel processes with one (1) EMT or paramedic on one hand checking a fingerstick while the other gets the Narcan out and squirts it up the patient's nose. Dr. Vitberg explained that if there was an overwhelming concern for opioid intoxication and the patient has significant respiratory compromise, there should be no delay in administering the Narcan. Tr. Vol. I. pgs. 215-216.

Dr. Vitberg identified Employee's Exhibit 15 as Agency's "treatment protocol for overdose poisoning 9.1." He affirmed that two (2) of the following three (3) indicators must be present for naloxone to administered to the patient: (1) pinpoint pupils, (2) a Glasgow Coma Score of less than 13, and (3) respiratory depression. Dr. Vitberg explained that "[a] Glasgow Coma Score is a score that ranges between 3 to 15 and includes an assessment of the eyes, the patient's ability to speak, and the patient's ability to move; E, V, M. And assigns a number to each of those categories, the lowest number... that patient can get when they're dead is 3. The highest when they're fully alert is 15 and is a general description of their level of neurologic function, alertness. Typically Glasgow Coma Scales are most appropriate when used in the categorization of trauma patients but have been used in the medical realm to help describe or categorize patients with a depressed mental state." Tr. Vol. I. pgs. 216-218, 242-245.

Dr. Vitberg testified that "Respiratory depression involves … look, listen, and feel. Looking at the patient … measuring their respiratory rate. Looking or feeling for the adequacy of chest rise and fall. Listening to their lung sounds to see if air is moving. Popping on a pulse oximeter and seeing what their pulse oximetry reading looks like. Listening to see if they have any snoring i.e. is their mouth closed or is their tongue slid back in their throat obstructing their airway? Inspecting the airway to see if there's any foreign bodies?" Dr. Vitberg asserted that this is a multifactorial assessment which can be done by observing the patient. He cited that they must be in the patient's face when making this assessment. Tr. Vol. I. pgs. 218-220.

Dr. Vitberg testified that Exhibit 29 on page 106, Protocol 14.5.3 – IM ("Intramuscular") Administration (ALS, EMT) provides an eight (8) point guide instructing Agency's ALS members on how to give an intramuscular injection. When asked if it was important to remove clothing from the injection site, Dr. Vitberg testified that "Yeah. You want to … both common sense and according to this protocol, you need to expose the area. We should be wiping the area … So you want to make sure you perform the procedure in a standard cleanly sterile manner. So cleanse the site with alcohol. And in order to do that, you have to expose the site typically at the deltoid or over the thigh." He affirmed that they have to be able to visualize the muscle. Dr. Vitberg explained that "You want to make sure that your needle is actually going where you think it's going, at a 90 degree angle into the muscle bed. It's an intramuscular injection, so typically most of us that do this … will kind of grasp or bunch up the muscle and ensure that the needle goes 90 degrees into the muscular bed." He stated that this procedure is typically performed by paramedics. Dr. Vitberg testified that it is important to cleanse the injection site to avoid pushing bacteria or other contaminants on the skin surface through the skin into the muscle. He also cited that "in worst case scenario, if the tip of the needle where we're giving the injection ends up in a vessel, [it could] introduce bacteria or contaminants on the skin into the vascular space with the potential to create a bloodstream infection and make a patient septic." Tr. Vol. I. pgs. 220 -225.

Dr. Vitberg asserted that Exhibit 30 outlines all the various routes by which naloxone can be administered. He noted that paramedics have the discretion to administer naloxone via intranasal, intramuscular or IV injection after engaging in critical and clinical decision-making. Dr. Vitberg cited that Naloxone and Narcan are used interchangeably. He stated that Naloxone is the generic name and Narcan is the brand name. Tr. Vol. I. pgs. 225-227.

Referring to the sequence chart on Exhibit 17, Dr. Vitberg testified that only one (1) of the three (3) items required by protocol was present before the Narcan was administered at 9:50:58 in the instant matter involving Employee. He asserted that in a perfect world, at least two (2) of the three (3) items must be present before a paramedic administers Narcan. Dr. Vitberg also stated that "I understand the reality of how these things work. A lot of our processes… occur in parallel. People are collecting information, collecting vital signs while performing interventions and assessment. I'm also very aware that medical records don't always reflect what actually happened, that the sequence may be off by a minute or two." Tr. Vol. I. pgs. 227-233, 246. Dr. Vitberg confirmed that while Agency's protocols are important, they are not necessarily one-size-fits-all in the field. Tr Vol. I. pgs. 245.

Upon review of the video recording in Exhibit 5, at the timestamp 13:50:50, Dr. Vitberg was asked if he saw any sort of assessment done prior to the Narcan being administered that was within the meaning of the protocols by the person who administered the needle. Dr. Vitberg responded that "So it looks like there's a woman in our uniform with gloves on and a blue shirt and red lettering to the left of what looks like the police officer, who was interacting very purposefully kind of with the patient, talking to him along with the police officer. The patient seemed to be nodding his head. I think he said Ricardo or something of that effect. And then it looked like the EMT or our provider on the right with the radio also kind of stimulated him a little bit. I think at the very beginning of the video, I saw one of our members in a red jacket. I don't know if it's anybody in this room, but in a red jacket, almost kind of touch the patient's left side before approaching the patient with the injection." Tr. Vol. I. pgs. 233-235.

When asked if the injection was administered consistent with the protocols, Dr. Vitberg responded with "[a]bsolutely not." He testified that "It looked like the person performing the injection had kind of one hand on the syringe and needle, pushed it through layers of clothing. It looked like the patient was in a jacket. I don't really know where that needle landed. It looked like it probably went into the patient by his grimace and kind of reaction, temporarily related to all of that sequence, but not compatible with our protocols." Tr. Vol. I. pgs. 235-236, 252.

After reviewing the video from timestamp 13:46:26 to 14:50:55, Dr. Vitberg testified that the patient appeared to be responding to the female EMS and that the male provider with the radio strap on appeared to have conducted a comprehensive assessment which included a blood glucose at one point. Dr. Vitberg stated that he couldn't hear any of the communication that was happening. He noted that the patient did not look distressed other than his head leaning forward a little bit periodically. Tr. Vol. I. pgs. 236-237.

Dr. Vitberg was asked if after reviewing the video footage, he thought that Employee had enough information before administering the Narcan, to which he responded that he did not know what happened in the other video frames. He stated that he did not know if there was any communication between the other two (2) to three (3) members on the video and Employee. Dr. Vitberg explained that if he showed up as a paramedic to a scene, he would put a lot of faith in what he's told by his colleagues on the scene regarding what was going on and what needed to be done next. He noted that while his ability to analyze the video footage was limited, from what he observed, Employee did not do much in the way of an assessment other than touching the patient's left arm and administering the injection. Dr. Vitberg explained that a reasonable paramedic in a similar situation would have laid eyes on the patient and perform some assessments while listening to the handoff from the other crew that had been on the scene before doing anything. Tr. Vol. I. pgs. 237 – 241. He emphasized that they rely heavily on communications between each other on every scene to which they report. Dr. Vitberg acknowledged that the requirement to perform an assessment on the scene is not so much an individual requirement as a requirement that the team perform together. He cited that he would trust and verify. Tr. Vol. I. pgs. 246-248.

Dr. Vitberg confirmed that sometimes there are emergencies where it's appropriate to interrupt the assessment to intervene and then continue the assessment after the intervention. He affirmed that this would be based on the paramedic's judgment. Dr. Vitberg testified that "Protocols are the guide rails within which our EMTs and paramedics operate, but with the imperative for all members, regardless of level of training, to also engage in some critical decision-making as they navigate through those protocols and treat our patients." He affirmed that if the patient is somewhat responsive, protocol should be followed. Tr. Vol. I. pgs. 249-251.

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Employee's Case-in-Chief

6) Employee - Tr. Vol. II. pgs. 5-156

Employee has been a Firefighter/Paramedic with Agency for approximately three (3) years. He was assigned to Engine Company 26. He is currently detailed to fleet maintenance at the

apparatus division. Prior to working at Agency, Employee worked as a paramedic in Fairfax County. Employee received his paramedic license in 2020 from Virginia. Tr. Vol. II. pgs. 5 – 7. He confirmed that they are taught how to administer injections, including intramuscular injections in paramedic school. Employee confirmed that they were taught the importance of visualizing the muscle before administering an injection as well as the importance of cleaning the injection site. He confirmed that he knew how to do a proper intramuscular injection before he became a certified paramedic. Employee asserted that part of his job at Agency was to administer injections to patients that need it. Tr. Vol. II. pgs. 68-72.

Employee acknowledged that as of October 30, 2023, he had been working as a paramedic for approximately three (3) years and that he was partnered with FF/EMT Peterson on that day as the passenger on the medic unit. Employee described Exhibit 1 as the dispatch for Medic 2, Ambulance 16, for an unconscious overdose at Union Station and that civilian Narcan had been administered. Employee recognized Firefighter Nguyen's voice in the recording as he placed Medic 2 in service. Employee asserted that he took this to mean that they were no longer needed and that they could go back to being available for other runs. Employee stated that a few seconds later, Ambulance 16 requested that Medic 2 return to the scene. He explained that it was not normal for them to get called back, so he thought that something was wrong with the patient. Employee confirmed that he could see the patient from the medic unit when they got to the scene and that the patient was slumped over and unconscious. He noted that the patient was in a wheelchair with an officer holding him up and he was surrounded by other officers and the ambulance crew. Tr. Vol. II. pgs. 8-12, 73-74, 77-78, 81-85.

Employee testified that he went to the back of the medic unit to retrieve his ALS gear and met up with his partner who was with the patient. He stated that while he was getting his gear, he saw his partner standing in front of the patient, and checking the patient, while talking to the ambulance crew. Employee cited that he and his partner then had a conversation about what was going on and his partner informed him that the patient had pinpoint eyes and his heart rate was 42 as recounted by the ambulance crew. Employee stated that this conversation is not captured in the video footage because he was off the screen when the BWC was on. He also testified that before he appeared in the video footage, he had brought his equipment, set it down, put on his gloves and stood next to the police officer. Employee explained that his assessment of the patient started from the moment they were dispatched to the scene, canceled and dispatched again and continued until he visualized the patient at the scene. Tr. Vol. II. pgs. 13-14, 85-88, 90-91.

According to Employee, the current protocol for administering Narcan states that "you need to have two out of three criteria. You need to have pinpoint pupils, you need to have a GCS of 13 or altered mentation, and you need to have respiratory depression." He stated that a GCS score of less than 13 was required. Employee asserted that the patient had a GCS of less than 13 and pinpoint pupils. He also stated that he was concerned about the patient's heart rate of 42 as he feared that the patient might be heading towards cardiac arrest, so he quickly grabbed Narcan from his equipment and injected the patient with Narcan. He noted that he did not talk to the patient before administering Narcan. Employee testified that he relied on information relayed to him that the patient had pinpoint pupils and altered mentation. He explained that at that point he had gathered enough information to ascertain that the patient met the requirements for an opiate overdose, which allowed him to give Narcan. Employee admitted that he administered the Narcan

through the patient's clothing. He acknowledged that this action was not consistent with Agency's protocol. Employee however explained that "It was my understanding that you can go through clothing for specific scenarios where it was the best interest of the patient… Now, I know that it was very wrong." He testified that the patient's GCS went up to 15 after he administered the Narcan. Tr. Vol. II. pgs. 14 -17, 88-89, 92-93, 98-102, 130. Employee asserted that after administering Narcan to the patient, they placed the patient on a monitor, and he continued his assessment to figure out what was wrong with the patient. Tr. Vol. II. pgs. 19-20, 26, 108-110.

Employee identified Stipulated Exhibit 25, from page 84 as Agency's transfer of care policy and he affirmed that he was familiar with that policy on October 30, 2023. Employee stated that he was also aware that intramuscular Narcan was solely an ALS modality of injection. Tr. Vol. II. pg. 103. Employee testified that the patient refused to go to the hospital. He explained that if a patient refuses to go to the hospital, they ask the patient a series of questions to ensure that the patient has the legal capacity to refuse, the medical capacity to refuse, and the situation capacity to refuse. Employee affirmed that he asked these questions and did the tests to ensure that the patient was eligible to refuse to go to the hospital. Employee cited that on the day of the incident, he thought that the BLS – Ambulance 16, was responsible for completing the refusal form since it was a BLS run. He explained that Narcan is a BLS drug, which was what was administered to the patient, but there was a disconnect because he used an ALS modality. Employee asserted that he had a disagreement with Firefighter Nguyen on who was responsible for completing the refusal paperwork and Cpt. Drucker, a supervisor, was called to the scene. Employee noted that he was not subjected to any discipline for taking the position that the BLS unit was responsible for completing the refusal paperwork. He cited that Ambulance 16 completed the refusal paperwork. Employee asserted that in December 2023, he became aware that there was an issue with the treatment he provided to the patient on October 30, 2023. Tr. Vol. II. pgs. 20-26, 103-107.

Employee affirmed being interviewed by Cpt. Barnes from Internal Affairs. He stated that he did not receive any interview preparation material such as the BWC to review from Cpt. Barnes prior to the interview. Employee cited that the interview took place within two (2) hours from when he was notified that he would be interviewed. Employee noted that he was interviewed by Cpt. Barnes on January 23, 2024, approximately three (3) months after the October 30, 2023, incident. Tr. Vol. II. pgs. 27-28.

Employee stated that during the interview, he had a conversation with Cpt. Barnes about what happened on October 30, 2023. He explained that he played back what happened in his brain, and he told Cpt. Barnes everything he remembered from the call. Employee stated that Cpt. Barnes played video footage of the incident after he finished explaining his version of the event. He highlighted that he did not know that the video footage existed prior to that moment. Employee explained that Cpt. Barnes' demeanor changed after she showed him the video footage and she asked him a lot of questions and accused him of things that weren't true. Tr. Vol. II. pgs. 29-30.

Employee identified Employee's Exhibit 3 as his 3B-Notice of Proposed Action. Tr. Vol. II. pg. 30. Employee read the first sentence under the heading 'Findings' on page 7 of this Exhibit into the record and he noted that he did not agree with the sentence because everything he said was the truth. He also identified the paragraphs in this Exhibit that highlighted every point he was accused of being willfully misleading, contradictory, or untruthful. Tr. Vol. II. pgs. 32-33.

Referring to Exhibit 8 at timecode 2 minutes and 51 seconds and Exhibit 5 from timecode 14 minutes and 32 seconds, Employee cited that the officer standing behind the patient is holding the patient up and does not let go of the patient. Also, referring to time code starting at 15 minutes and 42 seconds of Exhibit 5, Employee cited that the patient's head slumped over after the officer lets it go. Employee confirms that when he said in the interview with Cpt. Barnes that the patient was slumped over in a wheelchair and there was an officer holding his head up, that was actually accurate. Tr. Vol. II. pgs. 33-35.

While referencing Exhibit 3, Employee cited that he had a conversation with his partner, FF/EMT Peterson "who advised that the ambulance was reporting a heart rate of 42 and that the patient was pinpoint alternating." Referring to Exhibit 8 at timecode 39 minutes and 42 seconds, Employee confirmed that this was an accurate description of how he remembers the events of October 30, 2023. He noted that Cpt. Barnes did not ask him what happened when he and his partner were off camera. Employee stated that he was next to the patient and the office at 15:42 timecode, identifying his blue gloves in the video footage. He affirmed that this was approximately one (1) minute before he administered the Narcan to the patient. He confirmed that while off camera, he was able to observe his partner, FF/EMT Peterson's interaction with the patient. Tr. Vol. II. pgs. 36-39.

Employee acknowledged that he was informed on the scene that the patient kept slumping over since they arrived at the scene and Employee stated that based on this information, he concluded that the patient was sick. Citing to timecode 16 minutes and 15 seconds, a firefighter is seen using a painful stimulus to assess the patient's mentation. Employee confirmed that the patient reacted which implied that the patient was responsive to painful stimulus. Tr. Vol. II. pgs. 39-40.

Employee did not agree with the findings that he intentionally deceived Cpt. Barnes when he stated that he took a quick look at the patient, who was altered and had pinpoint pupils. He affirmed that at the time he administered the Narcan, he was convinced that the patient was altered and had pinpoint pupils Tr. Vol. II. pgs. 40-41.

Referring to Exhibit 8 starting at timestamp 4 minutes and 13 seconds (4:13), Employee noted that he did not tell Cpt. Barnes that he gave the patient oxygen during the interview. Employee cited that he did not give the patient oxygen because the patient's oxygen saturation was within normal limits when he measured it, which was contraindicated. Employee noted that he did not agree with the charge stating that he was willfully misleading because he didn't give the patient oxygen. Tr. Vol. II. pgs. 41-43.

Employee affirmed that he told Cpt. Barnes during the interview that the patient's sleeve was rolled up before he saw the body-worn camera footage. He cited that it had been approximately three (3) months since the incident occurred and about 20 runs later. He noted that he was never asked to write a report of the incident. Employee highlighted that EMTs get blood pressure readings on the non-dominant arm usually exposed, but not always. Employee noted that he was not intentionally telling a lie when he stated to Cpt. Barnes that the patient's sleeve was rolled up. He testified that "When I played it in my head, I thought the sleeve was rolled up. But evidently, I was wrong. I wasn't trying to lie or anything. It's just when I played it back in my head, I thought the sleeve was up." Tr. Vol. II. pgs. 43- 45.

Referring to Exhibit 3 starting at page 7, Employee stated that he and Firefighter Nguyen had a dispute about who should complete the refusal; a supervisor, Cpt. Drucker was called to the scene to resolve the dispute. Employee asserted that he had a conversation with Cpt. Drucker, and it was concluded that Ambulance 16 would complete the refusal, and they did that. He noted that he was not being willfully misleading, contradictory, or untruthful when he stated during the interview that Cpt. Drucker sided with him. Tr. Vol. II. pgs. 46-47, 115-116.

Referring to Exhibit 3 and upon review of Exhibit 8 starting at timecode 19 minutes and 30 seconds (19:30), Employee noted that he did not firmly dispute that he may have administered the Narcan through the patient's clothes on October 30, 2023. He affirmed that he did not know that there was BWC footage of the incident. He testified that when he stated that he could not remember whether he went through the patient's clothes, he was telling the truth. Tr. Vol. II. pgs. 47-49. Employee confirmed that as of October 30, 2023, he believed administering Narcan through clothing was consistent with the department's protocols for administering Narcan. Tr. Vol. II. pg. 51. Employee identified an email dated February 24, 2024, as an EMS morning report sent by Captain Lammert to all the 4th Battalion members working on number four. Employee read the fourth bullet point in the document into the record: "Giving IM injections through clothing appears to be a trend on the rise. This is an unacceptable practice, use trauma shears to cut a hole in the injection location and follow appropriate IM injection procedures." When asked if he knew if any of the other paramedics that were part of this trend had been disciplined, Employee said 'No'. He cited that going forward, he would not administer Narcan through clothing because it's in Agency's policies and he plans on following Agency's rules policies and not violate them. Tr. Vol. II. pgs. 53 – 54, 64.

Referring to Exhibit 3, from the bottom of page 7 to page 8, Employee noted that he did not willfully mislead the Cpt. Barnes about whether he had ever administered Narcan through clothing prior to reviewing the video footage. He also noted that he did not change his story on that point after watching the video. Employee asserted that he did not remember if he administered Narcan through the patient's clothing. Tr. Vol. II. pgs. 54-55, 113-115.

Employee stated that Cpt. Barnes asked him about the side effects of administering Narcan through clothing and he responded that the worst thing that could happen was an infection. Employee did not agree with Cpt. Barnes' assertion that his response showed a cavalier attitude and contrasted with Agency's core values of compassion, service, and integrity. Employee noted that he did not tell Cpt. Barnes that he violated Agency's core values. Tr. Vol. II. pgs. 55-58.

Employee stated that he did not know Firefighter Nguyen personally, but they've had a couple of run-ins. Employee testified that Firefighter Nguyen filed a provider complaint against him on September 20, 2023. He cited that Firefighter Nguyen's complaint against him was false and Agency did not bring charges against him for that incident. Tr. Vol. II. pgs. 58-60.

Employee confirmed that he authored Exhibit 16 from page 37, which was his ePCR. He also stated that the time is automatically recorded by the CAD system but can be changed for accuracy. He explained that the CAD is not always updated immediately, so the time might be off by a few minutes or seconds. Employee testified that normally for the ePCR, the back in service

time is not filled when he opens TripTix. Employee asserted that he was the author of Exhibit 17. Tr. Vol. II. pgs. 74-90.

7) Johnie Griffin ("Lt. Griffin") – Tr. Vol. II. pgs. 158 - 164

Lieutenant Johnie Griffin has been employed with Agency for 18 years. He testified that Employee worked with him when he was assigned to Engine 26. He noted that he was with Employee on September 30, 2023, and that Employee did not stab a patient multiple times as a painful stimulus as reported by the EMTs on Ambulance 16. Lt. Griffin did not remember Employee injecting the patient on September 30, 2023, through their clothing. Tr. Vol. II. pgs. 158-159.

8) Philip Lammert ("Cpt. Lammert") – Tr. Vol. II. pgs. 164 -193

Captain Philip Lammert is an EMS captain unit supervisor with the 4th Battalion. He explained that in this role, he assists the battalion chief in anything that's EMS related within the battalion. Cpt. Lammert confirmed that part of his role was to ensure that providers operate up to the medical director's standards. He cited that he has been a trained paramedic for approximately 20 years. Tr. Vol. II. pgs. 164-165.

Cpt. Lammert confirmed that it was okay for a medic to rely on information such as vital signs passed to them by an EMT that was already on the scene. He stated that they can take that information to start their assessment, but they're encouraged to get their own assessment done. Tr. Vol. II. pgs. 165-166.

Cpt. Lammert testified that a "heart rate of 42 is in most cases dangerously low. So, based off of other parts of the assessment, that would raise some red flags, and cause the paramedic to be concerned." When asked what Agency's protocol was for administering Narcan, Cpt. Lammert asserted that "… Narcan is indicated for suspected opioid overdose, as indicated by the altered level of consciousness, pinpoint pupils, or decreased respirations." He explained that per Protocol 9.1, the GCS of less than 13 is a required measure of altered consciousness relevant for issuing Narcan. Cpt. Lammert cited that the maximum GCS score is 15. He affirmed that it is permissible for a paramedic to assess whether a patient is altered by observing other people asking questions or interacting with the patient. Tr. Vol. II. pgs. 166-167.

Cpt. Lammert confirmed that based on the video footage, Employee had enough information to reasonably determine that this patient was altered. He explained that pinpoint pupils describe the constriction of the pupil. He stated that the pinpoint pupils are fully constricted when you look at them. Cpt. Lammert confirmed that it was permissible for a medic to rely on a report from their partner that a patient had pinpoint pupils. He testified that Employee would have done an independent assessment, "but given the situation, and the vital signs that he was given, and the fact that the patient was altered, a lot of times when we view those situations … treating the patient quickly is more important than starting over, doing the full assessment over again." Tr. Vol. II. pgs. 168, 180, 184.

When asked if under Agency's protocol, it was ever best practice for a paramedic to administer Narcan through the patient's clothing, Cpt. Lammert said 'No.' He cited that in his 20 years of experience, apart from epi pen, he has never seen medicines administered through a patient's clothes. Cpt. Lammert explained that if he was on the scene on October 30, 2023, and saw Employee administer Narcan through the patient's clothing, he would have pulled him aside after the call was over and had a discussion with Employee about how he had administered the medication and reviewed the proper procedure for administering item of medication. Tr. Vol. II. pgs. 168-170, 185-186.

Cpt. Lammert testified that Continuous Quality Improvement ("CQI") was their group under the Office of the Medical Director that provides training, feedback, and guidance for providers when needed with regards to any issues that arise, such as chart reviews, patient care etc. He cited that CQI is not intended to be punitive. Cpt. Lammert did not think termination was an appropriate response to the October 30, 2023, incident. He asserted that he believed this is a training issue "because it was a medical error in the way that the medicine was administered. And in that case it would be referred to CQI for retraining, or remediation." Tr. Vol. II. pgs. 170 -171.

Cpt. Lammert identified Employee's Exhibit 4 as "this is my morning email that I send to members working in my battalion." He asserted that the current email was dated February 24, 2024, to "every member working that day in my battalion, overtime, trades, regularly assigned people, but every member from my battalion chief, the EMS battalion chief, to all the firefighters working." Cpt. Lammert testified that the fourth bullet point in the email stated that "Giving IM injections through clothing appears to be a trend on the rise. This is an unacceptable practice. Use trauma shears to cut a hole in the injection location, and follow appropriate IM injection procedures." He explained that this issue was brought to his attention by another EMS supervisor who stated that they had seen it and wondered if Cpt. Lammert had seen it too. Cpt. Lammert asserted that "And then following that actually, was on a call with a provider that was about to do it. So, that provider was attempting to do it, and I stopped that provider, and essentially said what I've said on this. We're not doing that, it takes two seconds to cut a hole in the clothing, to wipe the skin and give an injection the way we're supposed to. I prevented it from happening, but it was right in front of me." Cpt. Lammert noted that apart from the field remediation, he did not discipline the medic or recommend that Agency pursue disciplinary action against any of the medics who were part of this trend. Cpt. Lammert cited that his email was effective in putting a stop to that practice. Tr. Vol. II. pgs. 171-174, 176-179. Cpt. Lammert confirmed that in practice, it is common for an ALS provider to administer an IM drug and then ask the BLS unit to complete the refusal. Tr. Vol. II. pgs. 176.

9) Daniel Kloss ("Cpt. Kloss") – Tr. Vol. II. pgs. 194 - 202

Captain Daniel Kloss has been employed by Agency for 17 years and he is currently assigned to Rock Platoon Number Four. His previous assignment was a Lieutenant at Engine Company 26 Number One. He affirmed that he has worked with, and supervised paramedics during his tenure with Agency. Cpt. Kloss testified that Employee was a rookie assigned to his company and he was Employee's supervisor. Cpt. Kloss cited that Employee was excited, nervous, had lots of questions, he was willing to learn and he was hardworking. Cpt. Kloss noted that on "… [Employee's] first day he hit the ground running … checked out everything, wanted to know

everything, took a lot of notes, went through the fire truck. His bedside manner was great, never had issues carrying all the equipment." Cpt. Kloss testified that Employee helped everyone in the firehouse, he had a lot of passion for the job, and he really cared about what he was doing. He cited that he trusted Employee's work as a paramedic, and he did not know if Employee had any disciplinary issues. Cpt. Kloss highlighted that Employee was receptive to correction and instructions and willing to grow. Cpt. Kloss noted that he was still at Engine 26 when Employee was removed from active duty. He asserted that he did not think anyone liked the fact that Employee was removed from active duty. He explained that initially, they were not aware of what was going on and that Engine 26 missed Employee as he was an asset. Tr. Vol. II. pgs. 194-198.

Cpt. Kloss defined a Special Report as "a document of record in whoever's words that's asked to type up." He stated that a Special Report is part of an investigation or can be requested for awards or to answer questions. Cpt. Kloss noted that he frequently instructed people to submit special reports. He confirmed that he was aware that Employee was never asked to write a special report in the current case, which he noted was not normal as Employee never got to tell his side of the story. Cpt. Kloss noted that he did not review the BWC video footage in this case and that he did not have any understanding of the incident at issue in the current matter. Tr. Vol. II. pgs. 199-201.

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10) John Busch ("FF/P Busch")– Tr. Vol. III. pgs. 9-35

Firefighter/Paramedic Busch has been a Firefighter Paramedic for approximately five (5) years. He is currently assigned to Engine 26, Platoon Number 1. He stated that Employee was also assigned to Engine 26, Platoon Number 1. He affirmed that based on his observation, Employee was a good paramedic. FF/P Busch cited that Employee was a very thorough medic, careful with his assessments, he cared about his patients, and he did the right thing. Tr. Vol. III. pgs. 10-12.

FF/P Busch confirmed that he was aware that Employee was charged with "conduct unbecoming an employee" based on his decision to administer an intramuscular dose of Narcan through a patient's clothing in October 2023. He asserted that he had not seen the BWC footage Tr. Vol. III. pg. 12. FF/P Busch acknowledged that as of October 2023, he believed that there were some circumstances where it would be appropriate for an employee to administer Narcan through a patient's clothing. He testified that this was justified in "Patients with bradycardia, severely hypoxic, severe altered mental status." FF/P Busch asserted that a patient with a heart rate of 42 qualified as bradycardic. Tr. Vol. III. pg. 13.

FF/P Busch testified that he had observed other paramedics administer Narcan through a patient's clothing quite a few times and he did not think anything was wrong with that. FF/P Busch affirmed that he had personally administered Narcan through a patient's clothing when the patient had bradycardia, altered mental status, or severe hypoxia as he believed he was acting in the best interests of the patient. He noted that he did not think he was violating Agency's core values and no one said anything until recently. FF/P Busch cited that he could not recall the first time he administered Narcan through a patient's clothing, the number of times he had done so, or the number of FEMS personnel he had seen administer Narcan through a patient's clothing. FF/P

Busch noted that if faced with the same circumstance today, he would not administer Narcan through a patient's clothing based on the recent information they received from Dr. Vitberg during 'grand rounds', which is mandatory training. Tr. Vol. III. pgs. 13-18, 26-28.

FF/P Busch affirmed that he was a trained paramedic, and he explained that the protocol for injecting Narcan was to expose the skin, clean the skin, and inject the medication. He stated that in a perfect world, exposing the patient's skin would be the preferred method to administer Narcan to a patient because they are able to clean the skin and use an aseptic technique. He explained that in a perfect world, Agency would have enough ALS hands on scene to handle every patient and do everything that's asked but in reality, you could be the only paramedic on scene, and BLS providers are not allowed to give medication. He stated that they would use the BLS partners to get vital signs, do assessments and they base their treatment on those numbers. FF/P Busch cited that physically visualizing the muscle is important if possible and if it's not a life-threatening condition. He noted that in making decisions, they must think about multiple things at once, as well as do everything that's in the best interest of the patient. FF/P Busch asserted that any life-threatening situation is time sensitive especially in an overdose situation where "… the hypoxia becomes so severe that the patient is so altered to the point where they're unconscious or they're bradycardic, or they're blue, or they're not breathing at all." He confirmed they would have to assess the patient to figure out what the criteria were. Tr. Vol. III. pgs. 18-126, 33-34.

FF/P Busch testified that "you can assess the patient walking up to them. You can see their respiratory rate. You can feel a radial pulse. There's a bunch of different things. We also have partners that we're assigned on the ambulance that can do part of that assessment for you." Tr. Vol. III. pg. 26. FF/P Busch testified that if he renders care to a conscious patient after a BLS provider has evaluated them, he will get the vital signs from the BLS care providers and base his treatment off that and what he can see. He cited that doing a reassessment will depend on the situation. He explained that a reassessment could be a visual reassessment such as counting respirations by watching or feeling a radial pulse. FF/P Busch restated that the basic assessment, vital signs would fall under BLS skills. He defined BLS as Basic Life Support and ALS as Advanced Life Support. Tr. Vol. III. pgs. 31-35.

11) Kenneth Long ("Sgt. Long") – Tr. Vol. III. pgs. 37-74

Seargeant Long has been a certified paramedic for 20 years and an ALS provider for 21 years. He's currently assigned to Truck 15, Platoon Number 1, Engine Company 26. Sgt. Long stated that he has been a sergeant paramedic since October 9, 2022. He asserted that Employee was assigned to the same Engine and that he observed Employee on several occasions. Sgt. Long testified that Employee was a good clinician, and he enjoyed Employee's treatment modality and how he treated patients. When asked if he had ever seen anything to indicate that Employee was casual or cavalier about his patient care, Sgt. Long responded "No, not to my knowledge." Tr. Vol. III. pgs. 37-39, 47.

Sgt. Long affirmed that he was aware that Employee had been charged with conduct unbecoming an employee based on a decision to administer an intramuscular dose of Narcan through a patient's clothing in October 2023. Sgt. Long testified that he has witnessed other paramedics administer Narcan through a patient's clothing in an emergent situation. He cited that

he would administer Narcan through a patient's clothing in an emergent situation because there are other drugs that they can administer through clothing. He cited that he had witnessed and was aware of other instances in which paramedics in the district administered Narcan through a patient's clothing. Sgt. Long explained that he administered IM Narcan in 2014 to a patient before they started chest compression because the patent was respiratory depressed and in a situation of borderline cardiac arrest. He confirmed that a patient with a heart rate of 42 was an emergent situation. Sgt. Long explained that if a patient's heart rate is in the 40s, then the patient is not getting enough oxygen to the heart, and their respiratory rate should be depressed. Tr. Vol. III. pgs. 41-44. Sgt. Long testified that around September during the paramedic ground round, they were notified by Dr. Vitberg that Narcan is usually not given through clothing. He stated that the issue of injecting an IM Narcan through a patient's clothing had never been talked about before. Vol. III. pgs. 44-45, 48, 58-63.

Sgt. Long explained that they were taught the proper technique for injections in controlled environments. He described a controlled environment like "… going to a doctor's office, in controlled environments… you're not really much instructed in emergency environments…" Sgt. Long noted that while he does not advocate breaking protocol without repercussion, every case is different. He testified that this current situation does not warrant a termination, but rather that it was a teachable moment. Vol. III. pgs. 48-54.

Sgt. Long testified that he did not report the incident of paramedics injecting IM Narcan through patients' clothing because there's no protocol stating that it's against the rule to inject Narcan through the patient's clothing. Tr. Vol. III. pgs. 72-73.

12) Brooks Woitas – ("FF/P Woitas") Tr. Vol. III. pgs. 76 - 100

Firefighter/Paramedic Woitas has been a paramedic for a total of eight (8) years and a firefighter paramedic with Agency for six (6) years. He is currently assigned to Engine Company 15 Platoon Number 1. He also serves as a field training officer ("FTO") with Agency and has served in this role since June or July 2023. FF/P explained that as an FTO, his role with Agency was to train new paramedics within the District of Columbia to the standards that the department requires. He stated that FTOs also retrain paramedics who have been found to be deficient in skills through the continuous quality improvement ("CQI") process. Tr. Vol. III. pgs. 77-78. FF/P Woitas described the process of becoming an FTO. He also stated that as an FTO, he observed paramedics in the field. Tr. Vol. III. pgs. 79, 85-87.

FF/P Woitas confirmed knowing Employee, citing that they have crossed paths frequently. He affirmed that he's had enough opportunities to observe Employee. He testified that Employee was a pretty good paramedic. FF/P Woitas stated that Employee was very confident, knowledgeable, comfortable with the patient care he provided. He cited that based on his experience working with Employee, Employee had a very good understanding of Agency's protocols. Tr. Vol. III. pgs. 79 -81.

FF/P Woitas affirmed that he was aware that Employee had been charged with conduct unbecoming an employee based on a decision to administer an intramuscular dose of Narcan through a patient's clothing in October 2023. He testified that he has observed paramedics

administer IM Narcan through a patient's clothing numerous times. FF/P Woitas also affirmed that he has administered Narcan through a patient's clothing when it's in the best interest of the patient. FF/P Woitas described the circumstance he would do so to include "… a situation where it's an imminent situation where the patient is crashing and the patient could potentially go into respiratory arrest, which would lead to cardiac arrest if not treated properly. Additionally, like I said, I think it's in the best interest of the patient." He described a situation where he administered IM Narcan to a patient through their clothing and he cited that he did not think he was violating Agency's protocols when he administered the IM Narcan through the patient's clothing. FF/P Woitas testified that he had never been pulled aside or told that that was against the department standards and violated patient's bill of rights. FF/P Woitas stated that the first time he was told not to administer IM Narcan through a patient's clothing was during their last grand rounds by Dr. Vitberg. Tr. Vol. III. pgs. 81-84, 88-90.

FF/P Woitas noted that between June 2023 and October 2023, he did not discuss with anyone in the medical director's office about administering IM Narcan through a patient's clothing. He cited that he did not recall notifying anyone at the medical director's office or recording in any documentation about administering IM Narcan through a patient's clothing. Tr. Vol. III. pgs. 87-89. FF/P Woitas testified that he started administering IM Narcan through patient clothing from seeing other FTOs do so and following instructions from the former medical director stating that they are to do "what's in the best interest of the patient and he will back us up." FF/P Woitas asserted that he was "fairly versed with the protocol, and I've never seen anything that … states that the clothing must be removed. There is a spot that says an aseptic technique must be used, but nothing that specifically states that clothing must be removed prior to injection of intramuscular Narcan…" He noted that the protocol specifically referenced aseptic technique. FF/P Woitas stated that he had no reason to believe that Agency's management knew that this was going on. Tr. Vol. III. pgs. 92-95.

FF/P Woitas testified that after reviewing the BWC video footage of Employee, it is their opinion that "… this is a retraining process. As … an FTO, I always tell my students, you're going to make mistakes. I have as a paramedic … I as a paramedic have made numerous mistakes on this job. And the biggest thing I take away is … can I learn from that mistake and not make the same mistake twice? And I do think this is a retraining process. I think -- in my opinion, this would be best-served as retraining and I would be willing to retrain [Employee] to department standards, if allowed to." Tr. Vol. III. pgs. 99-100.

13) Stephen Faulkner ("Cpt. Faulkner") – Tr. Vol. III. pgs. 102 – 118

Captain Faulkner had been employed with Agency for 17 and a half years. He testified that he has worked with Employee "… a couple of times when he was detailed to Medic 21, when I was still the captain of Engine 21. And I've also worked with him at a couple of special events when he was serving as an apparatus driver for the event." He confirmed that he has had significant opportunity to observe Employee at work and he would rate Employee "as a 9 or 10… And [Employee] always stood out to me as one of the ones who came in with a positive attitude and -- especially on the runs that we went on, he was proactive." Cpt. Faulkner noted that he served as Employee's direct supervisor during the shifts Employee worked at Engine 21 as medic 21. He cited that he worked with Employee a handful of times. When asked if he had seen anything in

Employee that would indicate that he was cavalier or casual about his patient care, Cpt. Faulkner said "No." Tr. Vol. III. pgs. 102-104, 116.

Cpt. Faulkner confirmed that he was aware that Employee had been charged with conduct unbecoming an employee based on a decision to administer an intramuscular dose of Narcan through a patient's clothing in October 2023. He noted that he was not aware that Employee was also charged with misleading internal affairs about those events in an interview that happened three months later. Given these charges, Cpt. Faulkner cited that his impression about Employee has not changed. He noted he did not know Employee to be dishonest. He also stated that this matter is more appropriately addressed through training. Cpt. Faulkner testified that he was aware that there are times when a provider needs to make a judgment call in the moment and that could be affected by the patient's vital signs, the patient's status, the environment etc. Tr. Vol. III. pgs. 106-110, 115.

Cpt. Faulkner testified that "… I just think it's a dangerous precedent to ever second-guess what the provider saw in a moment or assessed with his assessment, especially if the treatment given is what should have been given by the protocols. The matter of how it was done, like I said, I think that puts us back in more of a training issue, more so than a failure to perform your job… even on that note with the protocols too … when we're looking at the protocols as a framework, they give us a general … list of rules to follow based off of what we generally see in the performance of our duty, with patients presenting with certain attributes, certain signs and symptoms, and certain medical histories… It might be written, but you have to make judgment calls, and you have to be comfortable with what you decide to do. And then you have to stand behind that. And to me, if you could justify that and you did not cause harm, training issue. But to answer your question, yes, I think that was appropriate to administer that medication." Tr. Vol. III. pgs. 113- 115.

Panel Findings[6]

The Trial Board Panel made the following findings of fact based on their review of the evidence presented at the hearing:

Charge 1, Specification 1

1. Although FF/P [Employee] pled not guilty, all evidence presented led the Panel to conclude that — by on boarding medicine through his patient's clothing — the member is guilty of violating the Patient Bill of Rights as well as the Department's Mission Statement, Vision Statement and Core Values.

2. FF/P [Employee] attempted to justify his actions by stating his belief that the patient was in immediate need of medication; however, the record evidence clearly confirms that:

    a. FF/P [Employee] violated the Patient Bill of Rights by failing to perform an assessment, failing to obtain vitals, and failing to assess the patient's mental status.

[6] *Id*. at Tab 27.

b. While standing beside the patient, FF/P [Employee] stuck the patient in the left arm through clothing, then he reassigned the patient to the EMT's without even doing a secondary patient assessment — which is, again, another violation of Department policy.

c. Even as the EMT attempted to redirect FF/P [Employee], he became confrontational, took no ownership of his action, and walked away without rendering additional care after administering Narcan IM, which is an advance life support (ALS) intervention. d. FF/P Ahmed's actions showed a lack of compassion or concern for the patient, which clearly contradicts our Core Values.

3. The Panel was alarmed and concerned by FF/P [Employee's] testimonial admission that he administered medicine through clothing on multiple occasions. This practice contradicts both written policies / protocols and paramedic training that required FF/P [Employee] to use an aseptic method when giving IM medication to his patients. FF/P [Employee's] conduct in this case (as well as his general practice) was not only grossly negligent but also constitutes Conduct Unbecoming.

Charge 2, Specification 1

1. The statements FF/P [Employee] articulated during his Office of Internal Affairs administrative interview were riddled with contradictions:

   a. He claimed the patient was in a critical condition, but the video evidence painted a different picture.

   b. FF/P [Employee] adamantly denied ever administering IM medication through a patient's clothing until the video evidence was presented.

   c. The Panel was particularly concerned by the fact that FF/P [Employee] showed no accountability for his misconduct — i.e., he gave excuses that he only does this when it is an emergency or, alternatively, when he does not have the proper equipment.

2. The contradictions between his statements and the video evidence led the Panel to conclude that FF/P [Employee] purposely misled the investigators.

3. By making misleading and untruthful statements to investigators, FF/P [Employee] violated both Order Book Article VI and Rules & Regulations Article VI.

4. The preponderant evidence confirms that FF/P [Employee] neglected his duty of candor during OIA's investigation into a matter relating directly to his official duties as an ALS provider.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW[7]

Pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*,[8] OEA has a limited role where a departmental hearing has been held. According to *Pinkard*, the D. C. Court of Appeals found that OEA generally has jurisdiction over employee appeals from final agency decisions involving adverse actions under the CMPA. The statute gives OEA broad discretion to decide its own procedures for handling such appeals and to conduct evidentiary hearings.[9] The Court of Appeals held that:

> "OEA may not substitute its judgment for that of an agency. Its review of the agency decision…is limited to a determination of whether it was supported by substantial evidence, whether there was harmful procedural error, or whether it was in accordance with law or applicable regulations. The OEA, as a reviewing authority, must generally defer to the agency's credibility determinations."

Additionally, the Court of Appeals found that OEA's broad power to establish its own appellate procedures is limited by Agency's Collective Bargaining Agreement. Thus, pursuant to *Pinkard*, an Administrative Judge of this Office may not conduct a *de novo* hearing in an appeal before him/her, but must rather base his/her decision solely on the record below, when all of the following conditions are met:

> 1. The appellant (Employee) is an employee of the Metropolitan Police Department or the D.C. Fire & Emergency Medical Services Department;
>
> 2. The employee has been subjected to an adverse action;
>
> 3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
>
> 4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard*, *i.e.*: "[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing [*i.e.*, Adverse Action Panel] has been held, any further appeal shall be based solely on the record established in the Departmental hearing"; *and*
>
> 5. *At the agency level, Employee appeared before an Adverse Action Panel that conducted an evidentiary hearing*, made findings of fact and conclusions of law, and recommended a course of action to the deciding

[7] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

[8] 801 A.2d 86 (D.C. 2002).

[9] *See* D.C. Code §§ 1-606.02(a)(2), 1-606.03(a)(c); 1-606.04 (2001).

> official that resulted in an adverse action being taken against Employee (emphasis added).

There is no dispute that the current matter falls under the purview of *Pinkard*. Employee is a member of the D.C. Fire and Emergency Medical Services Department and was the subject of an adverse action (termination); Employee is a member of the International Fire Fighters Local 36, AFL-CIO MWC Union ("Union") which has a Collective Bargaining Agreement ("CBA") with Agency. The CBA contains language similar to that found in *Pinkard* and Employee appeared before an Adverse Action Panel on August 20, 2024, August 21, 2024, and October 24, 2024, for an evidentiary hearing. This Panel made findings of fact, conclusions of law and recommended that Employee be terminated for the current charges. Consequently, I find that *Pinkard* applies in this matter. Accordingly, pursuant to *Pinkard*, OEA may not substitute its judgement for that of the Agency, and the undersigned's review of Agency's decision in this matter is limited to the determination of (1) whether the Adverse Action Panel's decision was supported by substantial evidence; (2) whether there was harmful procedural error; and (3) whether Agency's action was done in accordance with applicable laws or regulations.

1) Whether the Adverse Action Panel's decision was supported by substantial evidence

Pursuant to *Pinkard*, I must determine whether the Adverse Action Panel's ("Panel") decision was supported by substantial evidence. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[10] If the Panel's findings are supported by substantial evidence, then the undersigned must accept them even if there is substantial evidence in the record to support findings to the contrary.[11]

After reviewing the record, as well as the arguments presented by the parties in their respective briefs to this Office, I find that the Panel met its burden of substantial evidence for Charge No. 1, Specification No. 1. Employee admitted during the Trial Board hearing that he administered Narcan through the patient's clothing and that this action was not consistent with Agency's protocol. He also submitted in his brief to this Office that "there is no dispute in the record that [Employee] violated Agency protocols by giving the Narcan injection through the patient's clothing."[12] The Trial Board Panel noted that all evidence presented led the Panel to conclude that Employee was guilty of violating the Patient Bill of Rights as well as the Department's Mission Statement, Vision Statement and Core Values when he administered medication through the patient's clothing. The Trial Board Panel was additionally concerned with Employee's testimony that he had administered medicine through clothing on multiple occasions. The Trial Board Panel cited that this practice contradicts both written policies / protocols and paramedic training that required Employee to use an aseptic method when giving IM medication to his patients.[13]

[10] *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003) and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).
[11] *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987).
[12] Employee's Brief at pg. 2 (February 13, 2026).
[13] Tr. Vol. II. pgs. 14 -17, 88-89, 92-93, 98-102, 130.

While Dr. Vitberg, Agency's interim medical director testified that protocols are a guide for how treatment should be rendered and that there may be situations in which a paramedic or an EMT must do something outside of what can be described or dictated in an EMS protocol, when asked if Employee administered the injection consistent with the protocols, Dr. Vitberg, said "Absolutely not." He testified that injecting Narcan through the patient's clothing was "… not compatible with our protocols." Tr. Vol. I. pgs. 235-236, 252. He explained that according to protocol and common sense, it was important to remove clothing before administering injection because the injection site needs to be exposed, and the area wiped with alcohol to avoid pushing bacteria or other contaminants on the skin surface through the skin into the muscle. Tr. Vol. I. pgs. 220 -225.

Additionally, Cpt. Drucker testified that administering Narcan through a patient's clothing is "a nuanced decision, but I think there are instances where getting something through clothing would be appropriate…" He further explained that "So if you're asking the protocol answer would be no, under no circumstances." He also stated that "I mean … there's no exception for that in protocol if that's what you're asking." And when asked if he has heard of this practice being taught at Agency, Cpt. Drucker stated that "I'm not familiar with that being taught officially in any DC Fire/EMS capacity." Tr. Vol. I. pgs. 154-157, 161, 164-166. Moreover, when asked if under Agency's protocol, it was ever best practice for a paramedic to administer Narcan through the patient's clothing, Cpt. Lammert said 'No.' Tr. Vol. II. pgs. 168-170, 185-186. Accordingly, based on Employee's own admission, and evidence presented during the Trial Board Hearing, I find that the Trial Board Panel's decision to find Employee guilty of Charge No. 1., Specification No. 1., is supported by substantial evidence.[14]

[14] Regarding Agency's assertion under Charge No. 1., Specification No. 1., that Employee did not assess the patient before administering the IM Narcan, I find that this is not supported by substantial evidence. Employee explained that his assessment of the patient started from when they were dispatched to the scene, canceled and dispatched again and this continued until he visualized the patient when they arrived at the scene. FF/P Busch testified that "you can assess the patient walking up to them. You can see their respiratory rate. You can feel a radial pulse. There's a bunch of different things." Also, Cpt. Drucker testified that he was informed by the ambulance crew that when Employee arrived, he did a "shortened assessment and gives the person Narcan." This confirms that Employee did some sort of assessment prior to injecting the patient with Narcan. Moreover, Dr. Vitberg also stated that "a lot of times you don't have to lay hands on the patient immediately." Tr. Vol. III. pg. 26. Additionally, Employee cited that his partner talked to the ambulance crew and assessed the patient while he was getting his gear. Employee explained that he and his partner then had a conversation about what was going on and his partner informed him that the patient had pinpoint eyes and his heart rate was 42 as recounted by the ambulance crew. Employee's partner, FF/EMT Peterson confirmed this when she testified that she hooked the patient to a monitor to get baseline items and that she assessed the patient when she first encountered the patient and she relayed that information to Employee before he administered Narcan to the patient. She affirmed that both she and Employee were paramedics and that in general, she would defer to Employee's medical assessment. Furthermore, Dr. Vitberg, stated that the requirement to perform an assessment on the scene is not so much an individual requirement as a requirement that the team perform together. He also stated that if he showed up as a paramedic to a scene, he would put a lot of faith in what he's told by his colleagues on the scene regarding what was going on and what needed to be done next. Cpt. Lammert confirmed that it was okay for a medic to rely on information such as vital signs passed to them by an EMT that was already on the scene. He stated that they can take that information to start their assessment, but they're always encouraged to get their own assessment done. Tr. Vol. II. pgs. 165-166. Cpt. Lammert also confirmed that it was permissible for a medic to rely on a report from their partner that a patient had pinpoint pupils. He testified that while Employee would have done an independent assessment, "… given the situation, and the vital signs that he was given, and the fact that the patient was altered, a lot of times when we view those situations … treating the patient quickly is more important than starting over, doing the full assessment over again." FF/P Busch also asserted that "we also have partners that we're assigned on the ambulance that can do part of that assessment for you." Therefore, I find that Employee did not have to conduct an independent assessment and that he could rely on his partner's assessment and the information provided by Ambulance 16. Employee also testified that after administering Narcan to the patient, they placed the patient on a monitor, and he continued his assessment to figure out what was wrong with the patient. Dr. Vitberg confirmed that sometimes there are emergencies where it's appropriate to interrupt the assessment to intervene and then continue the assessment

For Charge No. 2, Specification No. 1, I find that the record does not support the Trial Board Panel's findings. The Trial Board Panel asserted that Employee's statements to the OIA during the Affairs administrative interview were riddled with contradictions and that Employee made contradictory statements to *purposely* misled the investigators. (Emphasis added). The Trial Board Panel further noted that Employee neglected his duty of candor during OIA's investigation into a matter relating directly to his official duties as an ALS provider. This cause of action provides that "[a]ny member who *willfully* and *knowingly* makes *untruthful statements* of any kind, or who refuses, or fails to make truthful statements in a verbal or written report pertaining to his official duties as a Fire & EMS Department employee is subject to disciplinary action, including dismissal." I find that the Trial Board has not established that Employee knowingly made contradictory statements or that the alleged contradictory statements were made with the intent of willfully misleading. Moreover, Employee reiterated during the interview with OIG that his statements were based on what he could remember of the incident which occurred over almost three (3) months and approximately 20 runs since the incident occurred.[15] Therefore, based on the foregoing, I conclude that the Trial Board Panel's finding for Charge No. 2, Specification No. 1, is not supported by substantial evidence.

2) Whether there was harmful procedural error.

Pursuant to *Pinkard* and OEA Rule 634.6, the undersigned is required to make a finding of whether Agency committed harmful error. OEA Rule 634.6 provides as follows: "notwithstanding any other provision of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take the action."

Employee asserts that the Trial Board Panel committed harmful procedural error by ignoring relevant evidence about his character and intention. He also avers that Agency violated rules and regulations requiring the proper consideration and application of the *Douglas* factors[16]

after the intervention. He affirmed that this would be based on the paramedic's judgment. Dr. Vitberg also testified that if a patient is obviously intoxicated with opioid and has significant respiratory depression, it would be more appropriate to prioritize the administration of Narcan/naloxone before testing their blood glucose levels. Accordingly, I conclude that even if Employee did not perform an assessment of the patient before administering the Narcan, he was justified to rely on the assessment conducted by his partner or the information they received from the ambulance crew and that he did not violate Agency's policies when he completed his assessment after administering the Narcan.

[15] Employee also referenced portions of the BWC video footage supporting the statements he made to Cpt. Barnes during the OIG investigation. Further, when presented with evidence from the BWC video footage that was in support of the statements Employee made during the OIA investigation, Cpt. Barnes testified that while she reviewed the video footage during the investigation, she does not necessarily review them closely. She also confirmed that the BWC was pointed away from the patient at some point and that there were instances were Employee was not captured on the BWC although he was on the scene. Furthermore, Cpt. Barnes and the Trial Board Panel asserted that Employee *firmly/adamantly denied* ever administering IM medication through a patient's clothing until the video evidence was presented. (Emphasis added). The undersigned finds otherwise. Upon review of Agency's Exhibit 8, the undersigned finds that during the investigation interview, when Employee was asked if he administered Narcan through the patient's clothing, Employee stated that "to be honest with you ma'am, I do not remember. But if you have a document that says I did, maybe I did, I don't remember…" *See*. Agency's Exhibit 8 at timestamp 19:30.

[16] In *Douglas v. Veterans Administration*, the Merit Systems Protection Board ("MSPB"), this Office's federal counterpart, set forth "a number of factors that are relevant for consideration in determining the appropriateness of a penalty." Although not an exhaustive list, the factors are as follows: (1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain,

when it recommended the penalty of termination. Employee cites that the Trial Board Panel misapplied the *Douglas* factors thereby abusing its discretion, and this warrants a reversal of the penalty. Employee asserts that OEA can reverse or reduce a penalty when an agency fails to properly consider or apply the *Douglas* factor. Employee maintains that the Trial Boad Panel plainly misapplied, failed to consider and/or outright ignored several *Douglas* factors to include *Douglas* factors numbers 1, 3, 4, 6, 9, 10.

Agency on the other hand asserts that Employee statements relate entirely to whether termination was the appropriate penalty and not in support of its assertion that Agency committed harmful procedural error. I must agree with Agency's assertion. Furthermore, apart from the above statements regarding Agency's application of the *Douglas* factors and its alleged failure to consider relevant evidence about Employee's character and intention, I find that Employee has not alleged any concrete procedural errors.[17] Therefore, I conclude that there was no harmful procedural error in this matter.

3) Whether Agency's action was in accordance with law or applicable regulation

The record contains substantial evidence that Employee neglected his duties when he violated Agency's protocol for administering Narcan. Specifically, Employee admitted to administering Narcan through the patient's clothing and that it was against his paramedic training and Agency's protocol. Additionally, Dr. Vitberg testified that administering Narcan through a patient's clothing is against protocol. Therefore, the undersigned finds that there is sufficient evidence in the record to support Charge No1. 1., Specification No. 1, as such, I conclude that Agency's action was in accordance with law or applicable regulations.

As previously noted, I also find that the record does not support Charge No 2., Specification No.1. as the record does not support a finding that Employee made contradictory statements. Even assuming Employee made contradictory statements during the OIA investigation, the record does not establish that these statements were made with the intent to willfully mislead rather than due to a lapse in memory given that almost three (3) months had passed since the incident occurred. Consequently, I conclude that Agency cannot rely on this charge to discipline Employee.

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or was frequently repeated; (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position; (3) the employee's past disciplinary record; (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability; (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties; (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses; (7) consistency of the penalty with any applicable agency table of penalties; (8) the notoriety of the offense or its impact upon the reputation of the agency; (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question; (10) potential for the employee's rehabilitation; (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

[17] Employee contends that he was never asked to write a Special Report regarding this incident. Additionally, Cpt. Barnes testified that while she directed Captain Drucker to submit a Special Report in this matter, she did not request that Employee submit a Special Report. According to Cpt. Kloss, a Special Report is "a document of record in whoever's words that's asked to type up." He confirmed that he was aware that Employee was never asked to write a special report in the current case, which he noted was not normal as Employee never got to tell his side of the story. While the record supports Employee's assertion that he was not afforded the opportunity to write a Special Report of the incident, I find that this constitutes harmless error.

Whether the Penalty was Appropriate

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of* Columbia, 502 A.2d 1006 (D.C. 1985).[18] According to the Court in *Stokes,* OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Penalties; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by agency. In the instant matter, I find that Agency does not have substantial evidence to support Charge No. 2, Specification No. 1., as such, Agency cannot rely on this cause of action to discipline Employee. However, because Agency has met its burden for the cause of action as provided in Charge No. 1., Specification No. 1., as described in D.C. Fire and Emergency Medical Services Department Order Book Article VII, § 2(f)(3), which states: "Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations, to include: Neglect of Duty,"[19] I conclude that Agency can rely on this charge to discipline Employee.

The misconduct contained in Charge No. 1, Specification No. 1, is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII, § 2(f)(3), which states: "Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations, to include: Neglect of Duty." The record shows that this is the first time Employee violated this cause of action. Pursuant to the Table of Penalties and the Table of Illustrative Actions, the penalty for a first offense for this cause of action ranges from Counseling to Removal.

Penalty Based on Consideration of Relevant Factors

As provided in *Love v. Department of Corrections,*[20] selection of a penalty is a management prerogative, not subject to the exercise of discretionary disagreement by this Office.[21] When an Agency's charge is upheld, this Office has held that it will leave the agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment. Here, Agency chose to terminate Employee despite several testimonies from several other paramedics, as well as Agency management, to include documentary evidence establishing that administering Narcan

[18] *See also. Robert Atcheson v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).
[19] *See also* 16 DPM § 1603.3(f)(3) (rev. 08/27/2012); *see also* 16 DPM § 1605.4(e) (rev. 06/12/2019).
[20] OEA Matter No. 1601-0034-08R11 (August 10, 2011).
[21] *Love* also provided that "[OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness." Citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981).

through a patient's clothing in an emergent situation was a growing trend at Agency which did not warrant a termination, but rather retraining and/or remediation.[22]

Although OEA has a "marginally greater latitude of review" than a court, it may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate.[23] The "primary discretion" in selecting a penalty "has been entrusted to agency management, not to the OEA."[24] Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the individual case.[25] OEA's role in this process is not to insist that the balance be struck precisely where the OEA would choose to strike it if OEA were in Agency's shoes in the first instance; such an approach would fail to make proper deference to the Agency's primary discretion in managing its workforce. Rather, OEA's review of an agency-imposed penalty is essentially to ensure that Agency conscientiously considered the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if OEA finds that the agency failed to weigh the relevant factors, or that Agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for OEA then to specify how the Agency's decision should be corrected to bring the penalty within the parameters of reasonableness.[26]

Here, Agency asserts that its consideration of the penalty met the standard in *Stokes v. District of* Columbia. It cites that the Trial Board Panel conducted a full examination of all the *Douglas* factors and that OEA should defer to its reasonable decision to terminate Employee. Agency avers that Employee does not raise any issues with its application of *Douglas* factors numbers 2, 7, 8, 11, 12, and as such, this Office should not disturb its unchallenged and reasonable consideration of these factors.

Citing to case law, Agency avers that *Douglas* factor No. 1 is the most important factor in assessing the reasonableness of a penalty.[27] Agency maintains that Employee's failure to provide care in a manner consistent with Agency protocol is serious and his untruthfulness violated his oath, all of which makes this factor 'aggravating.' Agency explains that regardless of Employee's subjective motivation, the Trial Board Panel found Employee's violation of protocol when he administered an unsterile injection without consent or assessment to be serious. Agency further affirms that the Trial Board Panel did not give *Douglas* factor No. 3 any weight. Regarding *Douglas* factor Nos. 4 and 5, Agency cites that although Employee asserts that the Trial Board Panel erred in its analysis, Employee has not provided any meaningful argument that the Trial Board Panel was required to consider Employee to be dependable and have confidence in his continued employment.

Citing to *Singh*, Agency contends that *Douglas* factor No. 6 should never be given too much weight or become the sole outcome determinative factor. Agency explains that it treated Employee similar to other employees in similar circumstances who were also terminated and

[22] Referring to Employee's Exhibit 4, Cpt. Lammert testified that he sent out an email on February 24, 2024, stating that "Giving IM injections through clothing *appears to be a trend on the rise*. This is an unacceptable practice. Use trauma shears to cut a hole in the injection location, and follow appropriate IM injection procedures." (Emphasis added).
[23] *See*, *Douglas v. Veterans Administration*, 5 MSPB 313, 328, 5 M.S.P.R. 280, 301(1981) (Federal Merit Protection Board case).
[24] *Id*.
[25] *Id*.
[26] *Raphel* 740 A. 2d at 945.
[27] *Singh v. U.S. Postal Services*, 2022 M.S. P. B. 15, ¶ 18 (M.S.P.B. May 31, 2022).

Employee has made no showing to the contrary. Agency states that nothing in the record suggests that it knowingly treated Employee differently as there are no testimonies in the record indicating that a senior Agency decision maker was aware that other employees acted like Employee. Agency also cites that the other circumstances described at the Trial Board Hearing are distinguishable from Employee's circumstance in that, the employee who injected Narcan through the patient's clothing did so during a cardiac arrect and was unable to find trauma shears. Whereas, Employee's patient was sitting and breathing, and Employee did not even check the patient's heart rate before administering the Narcan.

Regarding *Douglas* factor No. 9, Agency avers that Employee was on notice of Agency's expectations from Agency's clear protocols concerning patient care, Employee's training on those protocols and his paramedic education and training on how to administer IM Narcan. Agency also asserts that Employee was on notice that making a false statement was a violation of rules and that he made no arguments to the contrary, only that he did not intentionally lie. Agency further notes that the Trial Board Panel's determination that Employee could not be rehabilitated was based on the seriousness of Employee's misconduct and his failure to take responsibility for his misconduct through testimony. Agency asserts that OEA should not second guess the Trial Board Panel's determination.

Employee on the other hand argues that Agency violated rules and regulations requiring the proper consideration and application of the *Douglas* factors. Employee cites that the Trial Board Panel misapplied the *Douglas* factors thereby abusing its discretion, and this warrants a reversal of the penalty. Employee further contends that the Trial Boad Panel plainly misapplied, failed to consider and/or outright ignored several *Douglas* factors to include *Douglas* factors numbers 1, 3, 4, 6, 9, 10. Employee asserts that OEA can reverse or reduce a penalty when an agency fails to properly consider or apply the *Douglas* factors.[28] Employee explained that there is no dispute that the Narcan Employee administered helped the patient recover to the point where he was lucid enough to refuse further treatment. Employee further noted that while Agency tried to demonize his conduct, the record paints a different picture, one of Employee's good faith and patient centered actions, all of which undermines the Trial Board Panel's findings of fact regarding Employee's intention and potential for rehabilitation.

For *Douglas* factor No. 1, Employee argues that while the record shows that he violated protocol when he administered IM Narcan through the patient's clothing, he did so in good faith and with no malice or willful intent. Employee also asserts that he testified truthfully during his interview with Cpt. Barnes and, at most, innocently misremembered a small detail that had no bearing on the investigation. Employee contends that the Trial Board Panel's conclusion that his actions were intentional and that many of his statements were misleading and untruthful is a clear misapplication of *Douglas* factor No. 1. Employee further argues that the Trial Board Panel misapplied *Douglas* factor No. 3. Citing to case law, Employee explained that his lack of prior

[28] Citing to *Employee v. Office of the Chief Technology Officer*, OEA Matter No. 1601-0058-23, Opinion and Order on Petition for Review (December 18, 2025).

disciplinary action should have been a mitigating factor, instead, the Trial Board Panel found this to be neutral.[29]

Additionally, for *Douglas* factors No. 4 and 5, Employee asserts that the Trial Board summarily concluded despite unimpeached testimonies and without reasonable or meaningful explanation that Employee was not dependable. Employee stated that several witnesses, including Cpt Kloss testified on his behalf, attesting to his character and dependability, in contrast to the Trial Board Panel's findings.

Employee argues that despite the Trial Board Panel's assertion in *Douglas* factor No. 6 that the penalty of termination was consistent with the penalty imposed on others committing similar infraction, pursuant to the record, this is not true. Employee asserts that Agency's representative at the Trial Board Hearing stated that Employee's prosecution was the first of its kind. Regarding *Douglas* factor No. 9, Employee argues that the record clearly established that there was some confusion with the protocol for establishing IM Narcan, and Employee's action in this instance was not unique as other Agency members have engaged in similar conduct as evidenced by Cpt. Lammert's February 24, 2024, email to the entire Battalion, to include his chief. Employee also argues that Cpt. Drucker testified that though administering IM Narcan is not allowed per official protocol, it is a nuanced decision that there are instances where getting something through the patient's clothing would be appropriate and that the current situation would qualify as that.

Referring to *Douglas* factor No. 10, Employee contends that there are no testimonies in the record, not even from the medical director, asserting that Employee could not be rehabilitated. Employee cites that in reaching the conclusion that Employee could not be rehabilitated, the Trial Board Panel ignored the testimonies of three (3) EMS supervisors, proving that the Trial Board Panel patently misapplied *Douglas* factor No. 10. Employee also contends that this conclusion is also inconsistent with the Trial Board Panel's finding under *Douglas* factor No. 12 which the Trial Board Panel found to be neutral. Employee maintains that the Trial Board Panel's neutral finding for *Douglas* factor No. 12 provides an independent basis to believe that an alternative sanction could be appropriate. Employee explains that Cpt. Drucker testified that had he been there when Employee administered the Narcan through the patient's clothing, he would have referred Employee to peer review under Agency's CQI process. Employee also notes that Cpt. Lammert testified that he would have pulled Employee to the side and had a conversation with him. Employee also stated that according to Cpt. Lammert, this incident was a training issue and not a disciplinary issue.

In *Barry v. Department of Public Works*[30], the OEA Board held that an Agency's penalty will not be reversed unless it fails to consider relevant factors, or the imposed penalty constitutes an abuse of discretion. Therefore, even if an agency's selected penalty falls within the range allowed by law, it is not entitled to deference if the reviewing authority determines that the agency exceeded its discretionary authority. In *Employee v. D.C. Public Schools*[31], the OEA Board held

[29] *See*. *Aronson v. D.C. Fire and Emergency Medical Services Department*, OEA Matter 1601-0128-99, Opinion and Order on Petition for Review (January 26, 2007).
[30] OEA Matter No. 1601-0083-14, Opinion and Order on Petition for Review (July 11, 2017) (citing *Holland v. Department of Corrections*, OEA Matter No. 1601-0062-08, Opinion and Order on Petition for Review (September 17, 2012).
[31] OEA Matter No. 1601-0015-20, Opinion and Order on Petition for Review (January 4, 2024).

that the record was void of any evidence that the agency considered relevant factors when terminating the employee, which constituted an abuse of discretion. Similarly, in *Bryant and Love v. D.C. Department of Corrections*[32], the OEA AJ found that the agency exceeded the exercise of its managerial discretion and failed to properly consider the relevant *Douglas* factors.

In the instant matter, the undersigned finds that while the penalty of termination was within the range allowed by law, it was not based on a balanced weighing of the relevant factors and thus exceeded the limits of what is reasonable. In assessing and weighing the *Douglas* factors, and in determining the severity of Employee's conduct, Agency's improper analysis had the effect of making the conduct at issue more severe than the record supports. Thus, the undersigned concludes that Agency's weighing of the *Douglas* factors was not a reasonable assessment based on the record.

The Trial Board Panel found *Douglas* factor No. 1 to be 'aggravating'. In support of this assertion, Agency stated that

> "These are very serious offenses that relate directly to FF/P [Employee's] duties as an advance life support (ALS) provider. FF/P [Employee's] actions were also intentional. As a First Responder with more than ten (10) years of experience, FF/P [Employee] knew or should have known that the way he administered medication to his patient was inconsistent with both Department policy and his training; further, by his own admission, FF/P [Employee] testified that his misconduct was frequently repeated. FF/P [Employee] took an oath to be truthful. Yet, when being interviewed by Internal Affairs personnel, many of his statements were misleading and untruthful."

While Employee acknowledged that he violated Agency's protocol on administering IM Narcan, he testified that he did so in good faith, under the belief that he was faced with an emergent situation based on the patient assessment he received from his partner and Ambulance 16. The record supports Employee's assertion that the Narcan he administered through the patient's clothing did not harm the patient but helped the patient recover to the point where he was lucid enough to refuse further treatment. While Agency asserts that the record does not support the fact that the patient's heart rate was 40, both Employee testified that they were informed by Ambulance 16 that the patient's heart rate was in the 40s. Moreover, Agency has the burden of proof in this matter and Agency did not secure the testimony of any of the members on ambulance 16 to discredit Employee's assertion that the patient's heart rate was in the 40s. Employee further testified that he was concerned about the patient's heart rate of 42 as he feared that the patient might be heading towards cardiac arrest, so he quickly grabbed Narcan and injected the patient with it. Employee also testified that the patient had pinpoint eyes and his GCS level was below 13. Agency did not provide any evidence to the contrary.

Additionally, the record suggests that administering Narcan through patient clothing was a trend at Agency. Sgt. Long testified that he had witnessed and was aware of other instances in which paramedics in the district administered Narcan through a patient's clothing in an emergent

[32] OEA Matter Nos. 1601-0034-08R14 and 1601-0038-08R14 (November 4, 2014).

situation. Sgt. Long also confirmed that a patient with a heart rate of 42 was an emergent situation. Sgt. Long explained that if a patient's heart rate is in the 40s, then the patient is not getting enough oxygen to the heart, and their respiratory rate should be depressed. Also, Cpt. Faulkner testified that "… I just think it's a dangerous precedent to ever second-guess what the provider saw in a moment or assessed with his assessment, especially if the treatment given is what should have been given by the protocols. The matter of how it was done, like I said, I think that puts us back in more of a training issue, more so than a failure to perform your job… even on that note with the protocols too … when we're looking at the protocols as a framework, they give us a general … list of rules to follow based off of what we generally see in the performance of our duty, with patients presenting with certain attributes, certain signs and symptoms, and certain medical histories… It might be written, but you have to make judgment calls, and you have to be comfortable with what you decide to do. And then you have to stand behind that. And to me, if you could justify that and you did not cause harm, training issue. But to answer your question, yes, I think that was appropriate to administer that medication." Tr. Vol. III. pgs. 113- 115.

Further, Cpt. Lammert, Cpt. Faulkner, and Sgt. Long, all top-ranking members at Agency, and FTO Firefighter/P Woitas, testified that the current issue would be better resolved by training and not disciplinary action, thereby downgrading the severity of Employee's overall conduct in relation to the employee's duties, position, and responsibilities including *whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain*, or was frequently repeated. (Emphasis added). Moreover, Employee and multiple Agency paramedics testified during the Trial Board Hearing that they were only made aware that administering IM Narcan through a patient's clothing was a violation of Agency's protocols after the current incident and /or sometime in 2024, through Cpt. Lammert's email or during the 2024 grand rounds.

Additionally, as noted above, I find that Agency did not have cause to charge Employee with willfully misleading during his OIG investigation. In *Aguilar v. D.C. Office of Employee Appeals, et al*.[33], the Superior Court for the District of Columbia held that if a penalty was imposed based on numerous incidents of misconduct and some of those incidents of misconduct are not substantiated, the Court must "scrutinize carefully the appropriateness of the penalty imposed." Here, I find that because *Douglas* factor No. 1 was also based on the misconduct in Charge No. 2. Specification No. 1, which is not supported by the record, I find that the penalty of termination is excessive.

In assessing *Douglas* factor No. 3, the Trial Board Panel asserted that this factor was 'neutral'. It stated that Employee had no prior disciplinary history. Employee explained that his lack of prior disciplinary action should have been a mitigating factor, instead, the Trial Board Panel found this to be neutral. In *Aronson v. D.C. Fire and Emergency Medical Services Department,*[34] the OEA Board found that the employee's ten-year history, coupled with no previous adverse actions and his strong potential for rehabilitation, supported a different penalty.[35] Here, the record suggests that Employee had no adverse actions against him prior to the current action. Moreover, Employee testified that going forward, he would not administer Narcan through clothing because it's in Agency's policies and he plans on following Agency's rules policies and not violate them.

[33] 2022 CA 003383 P(MPA) (D.C. Super. Ct. March 13, 2023).
[34] OEA Matter 1601-0128-99, Opinion and Order on Petition for Review (January 26, 2007).
[35] *See also* 2007 CA 001923 P(MPA) (D.C. Super Ct. April 22, 2008).

Further, Cpt. Kloss testified that he trusted Employee's work as a paramedic, that Employee was receptive to correction instructions and that he was willing to grow.

In assessing *Douglas* factor No. 4, the Trial Board Panel asserted that:

> FF/P [Employee] has been a Department member since March 13, 2022 and, as stated above, this is his first disciplinary infraction within the past 3 years. However, given the severity of these offenses — stemming from FF/P [Employee's] blatant and serial violations of Department policy —the Panel concludes that FF/P [Employee] is not dependable.

The record supports the assertion that this was Employee's first disciplinary infraction. However, the record does not support the Trial Board Panel's assertion that Employee was not dependable. In fact, Agency's high-ranking members who supervised Employee during his tenure at Agency all testified that Employee was dependable. Cpt. Kloss testified that he trusted Employee's work as a paramedic, that Employee was receptive to correction instructions and that he was willing to grow. Cpt. Kloss asserted that he did not think anyone liked the fact that Employee was removed from active duty and that Engine 26 missed Employee as he was an asset. Tr. Vol. II. pgs. 194-198. Additionally, Cpt. Faulkner who had supervised Employee denied seeing anything in Employee that would indicate that he was cavalier or casual about his patient care. Cpt. Faulkner cited that given the charges against Employee, his impression about Employee had not changed.

In assessing *Douglas* factor No. 6, the Trial Board Panel found that:

> Based on our review of prior discipline charts provided during the hearing, the Panel concludes that the recommended penalty is consistent with those imposed on others committing similar infractions and is, likewise, consistent with the seriousness of FF/P [Employee'] infractions.

Because I have found that Charge No. 2, Specification No. 1, is not substantiated by the record, I will based my analysis on Charge No. 1, Specification No. 1. While Agency did provide records of others it claimed committed similar infractions, as Employee, I find that Agency further contradicts itself when it argued that nothing in the record suggests that it knowingly treated Employee differently as there are no testimonies in the record indicating that any senior Agency decision maker was aware that other employees acted like Employee. Agency cannot in one statement argue that it was not aware that Agency employees were administering Narcan through patient clothing prior to the current incident, and in another statement argue that the penalty levied against Employee was consistent with those imposed on other employees committing similar offenses. Additionally, explaining the seriousness of Employee's misconduct, Agency attempts to distinguish the circumstances surrounding the instant matter with that of another member who testified to administering Narcan through a patient's clothing. Agency argues that the employee who injected Narcan through the patient's clothing did so during a cardiac arrect and was unable to find trauma shears. Whereas, Employee's patient was sitting and breathing, and Employee did not even check the patient's heart rate before administering the Narcan. I find this argument to be flawed, as this would suggest that Agency's protocol does provide for an exception as to when a

member can administer IM Narcan through a patient's clothing without facing consequences, even though the record suggests otherwise. Furthermore, Employee testified that he was faced with an emergency and that with a heart rate of 42, he feared the patient was heading to cardiac arrest. Sgt. Long testified that he had witnessed and was aware of other instances in which paramedics in the district administered Narcan through a patient's clothing in an emergent situation. He did not state that cardiac arrest was required for a member to administer Narcan through a patient's clothing. Sgt. Long confirmed that a patient with a heart rate of 42 was an emergent situation. Sgt. Long explained that if a patient's heart rate is in the 40s, then the patient is not getting enough oxygen to the heart, and their respiratory rate should be depressed.

Relying on *Singh*, Agency argues that *Douglas* factor No. 6 should never be given too much weight or become the sole outcome determinative factor. The MSPB Board in *Singh* held that the proper inquiry for a disparate treatment analysis is whether an agency knowingly treated employees differently "in a way not justified by the facts, and intentionally for reasons other than the efficiency of the service." Here, although several members testified to administering IM Narcan through a patient's clothing, or being aware of other paramedics who have administered IM Narcan through a patient's clothing, the record is void of any disciplinary action against any member for such actions. Therefore, I further conclude that because this appears to be the first time Agency has commenced adverse action against a member for administering IM Narcan through a patient's clothing, and Agency has asserted that prior to the current matter no decision maker was aware of employees administering IM Narcan through a patient's clothing, *Singh* is not applicable here.

Regarding *Douglas* factor No. 9, the Trial Board Panel stated that:

> This factor is aggravating. FF/P [Employee] clearly knew that he was responsible for providing care and being truthful in a manner consistent with Department standards. FF/P [Employee] completed his probationary period and, during this time, he was responsible for reading, studying, and being tested on Department manuals and regulations. Further, FF/P [Employee] received on–going training on the Department's expectations of its Advance Life Support providers, and the Department's Core Values are referenced in training. In addition, FF/P [Employee] is a nationally registered Paramedic, who participated in paramedic preceptor evaluations and several grand rounds; thus, FF/P [Employee] had ample opportunities to pose questions / scenarios to his supervisors, the Medical Director, and other senior ALS providers concerning aseptic techniques when administering medications. Additionally, FF/P [Employee] took an oath to be truthful, and this duty clearly applied to his interview by OIA personnel. FF/P [Employee] should have known that his misconduct violated Department policy.

Here, Employee argues that the record clearly established that there was some confusion with the protocol for administering IM Narcan, and Employee's action in this instance was not unique as other Agency members have engaged in similar conduct as evidenced by Cpt. Lammert's February 24, 2024, email to the entire Battalion, to include his chief. Employee also argues that Cpt. Drucker testified that though administering IM Narcan through a patient's clothing is not allowed per official protocol, it is a nuanced decision that there are instances where getting

something through the patient's clothing would be appropriate and that the current situation would qualify as that. I agree with Employee's assertion. Moreover, other paramedics testified that prior to the current incident, it was an Agency practice to inject IM Narcan through a patient's clothing in emergent situations. FF/P Busch testified that he had observed other paramedics administer Narcan through a patient's clothing quite a few times and he did not think anything was wrong with that. These paramedics, including Employee, testified that they were not aware that administering IM Narcan through a patient's clothing violated Agency's protocol. Therefore, according to the record, I find that when the incident occurred on October 30, 2023, it was not clear to Agency's members, not just Employee, that administering IM Narcan through a patient's clothing in an emergent situation was a violation of protocol. Moreover, prior to this incident, Employee had not been warned about the conduct in question.

Under *Douglas* factor No. 10, the Trial Board Panel cited that:

> FF/P [Employee's] action of administering medication through the patient's clothing was negligent, showed a lack of compassion/empathy for his patient, and was in gross disregard of his training. The video footage showed that FF/P [Employee] willfully and knowingly failed to comply with Department policy and blatantly violated the Patient Bill of Rights —then, to make matters worse, he misled OIA personnel about his misconduct. As stated above, the Panel is particularly troubled by the fact that:
>
> > (a) video footage confirms that FF/P [Employee] administered medication through his patient's clothing without using an aseptic technique or doing an initial or secondary assessment;
> >
> > (b) FF/P [Employee] did not admit to violating Department policy, but claimed he did not know it was a violation;
> >
> > (c) FF/P [Employee] failed to do a reassessment before reassigning his patient to the Basic Life Support unit;
> >
> > (d) FF/P [Employee] unilaterally adopted this aseptic technique as his own practice and admittedly applied this practice to multiple patients; and
> >
> > (e) FF/P [Employee] not only showed no accountability for his actions but also provided untruthful / misleading information during his Internal Affairs interview.
> >
> > Rehabilitation is not possible in the circumstance.

Pursuant to the record, I find that Employee was not the only Agency member that administered IM Narcan through a patient's clothing. I also find that based on Dr. Vitberg's testimony, Employee was within his rights to rely on the assessment of his partner and that of Ambulance 16. I further find that pursuant to Dr. Vitberg's testimony, Employee was justified in

administering IM Narcan to the patient before laying hands on the patient and continuing his assessment after. Furthermore, the record does not support the Trial Board's finding that Employee did not show accountability for his action. Employee testified that now that he knows that administering IM Narcan through a patient's clothing is a violation of Agency's protocol, he would not do so again. Moreover, Employee was not the only Agency member that stated that they were not aware that administering Narcan through a patient's clothing was a violation of Agency's policy and protocol. As previously noted, the Superior Court for the District of Columbia in *Aguilar v. D.C. Office of Employee Appeals, et al.*, held that if a penalty was imposed based on numerous incidents of misconduct and some of those incidents of misconduct are not substantiated, the Court must "scrutinize carefully the appropriateness of the penalty imposed." Here, I find that Agency did not meet its burden of proof for Charge No. 2, Specification No. 1, which is also part of this *Douglas* factor analysis.

In assessing *Douglas* factor No. 12, the Trial Board Panel asserted that this factor was neutral without providing any explanation of how it arrived at this conclusion. Employee maintains that the Trial Board Panel's neutral finding for *Douglas* factor No. 12 provides an independent basis to believe that an alternative sanction could be appropriate. Employee explains that Cpt. Drucker testified that had he been there when Employee administered the Narcan through the patient's clothing, he would have referred Employee to peer review under Agency's CQI process. Employee also notes that Cpt. Lammert testified that he would have pulled Employee to the side and had a conversation with him. Employee also stated that according to Cpt. Lammert, this incident was a training issue and not a disciplinary issue. Pursuant to the record, I find that this factor should have been mitigating. Cpt. Lammert cited that his February 24, 2024, email was effective in putting a stop to the practice of administering IM Narcan through a patient's clothing. He testified that he thought training was an appropriate response to the October 30, 2023, incident. Additionally, upon review of the BWC video footage of October 30, 2023, Firefighter/P Woitas testified that in his opinion as an FTO, this would have been a retraining process. Cpt. Faulkner also asserted that this matter would have more appropriately been addressed through training. Therefore, based on the record, I find that training was an adequate, effective and alternative sanction to deter such conduct in the future by the employee or others.

In *Jones v. D.C. Public Schools Division of Transportation*[36], the AJ ruled that although the agency argued that it presented sufficient evidence to establish that its selection of the imposed penalty was not arbitrary or capricious, removal was too harsh and the record lacked a sufficient evidentiary basis for the penalty of termination. Similarly, I find that Agency did not engage in a responsible balancing of the factors it considered, and in doing so clearly exceeded the limits of reasonableness. I further find that Agency exceeded the exercise of its managerial discretion and failed to properly consider the relevant *Douglas* factors. Thus, I conclude that Agency's penalty of termination constitutes an abuse of discretion.

ORDER

Based on the foregoing it is hereby **ORDERED that:**

[36] OEA Matter No. 1601-0077-09 (January 7, 2010).

1. Agency's action of terminating Employee is **REVERSED** and Employee shall be **REINSTATED** to his previous position of record.

2. Agency shall reimburse Employee all back-pay and benefits lost as a result of the termination.

3. Agency shall file within thirty (30) days from the date this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

/s/ Monica N. Dohnji
MONICA DOHNJI, Esq.
Senior Administrative Judge

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
EMPLOYEE[1], Employee	OEA Matter No. 1601-0036-23R26
v.	Date of Issuance: May 29, 2026
METROPOLITAN POLICE DEPARTMENT, Agency	MONICA DOHNJI, ESQ. Senior Administrative Judge

Employee, *Pro Se*[2]
Anna Kent, Esq., Agency Representative

INITIAL DECISION ON REMAND

INTRODUCTION AND PROCEDURAL HISTORY

On March 21, 2023, Employee filed a Petition for Appeal with the D.C. Office of Employee Appeals ("OEA" or "Office") contesting the Metropolitan Police Department's ("MPD" or "Agency") decision to terminate her from her position of Legal Instrument Examiner ("LIE") effective March 6, 2023. Employee was terminated for: (1) "Conduct Prejudicial to the District Government - Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission"; (2) "Conduct Prejudicial to the District Government - Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position"; and (3) "Unethical or improper use of official authority or credentials."[3] On March 21, 2023, OEA issued a Request for Agency's Answer to Employee's Petition for Appeal. Agency submitted its Answer to Employee's Petition for Appeal on March 29, 2023.

This matter was assigned to the undersigned Senior Administrative Judge ("SAJ") on April 3, 2023. Following a Status/Prehearing Conference with both parties present, Agency filed a Motion to Stay Pending the Resolution of Employee's Criminal Matter. This matter was held in

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] While Employee was represented by a Union representative during the May 19, 2025, Status Conference and Employee's Brief was submitted by the Union, Employee's Union never officially entered his appearance in this matter, despite being notified to do so during the Status Conference.
[3] Employee was also charged pursuant to 6-B DCMR § 1605.5(a).

abeyance until Employee's criminal matter was dismissed on January 27, 2025. A Status/Prehearing Conference was held on May 19, 2025, with both parties present. Thereafter, the parties were required to submit written briefs. Agency's brief was due by June 9, 2025; Employee's brief was due by June 30, 2025; and Agency had the option to submit a sur-reply brief by July 14, 2025. Both parties submitted their respective briefs. Subsequently, the undersigned issued an Initial Decision ("ID") in this matter on September 5, 2025, reversing Agency's decision to terminate Employee.

Agency filed a Petition for Review on October 27, 2025. Thereafter, on January 29, 2026, the OEA Board issued an Opinion and Order ("O & O") on Petition for Review, remanding this matter to the undersigned citing that "[b]ecause the AJ failed to make findings related to 6-B DCMR § 1605.5(a), this Board cannot adequately determine if [the] Initial Decision is based on substantial evidence. Therefore, this matter must be remanded to the AJ for additional fact-finding." Accordingly, on February 4, 2026, I issued an Order setting a briefing schedule for the parties to address whether Agency had cause to charge Employee pursuant to 6-B DCMR § 1605.5(a) and if termination was an appropriate penalty for this cause of action. Both parties have submitted their respective briefs. The record is now closed.

JURISDICTION

OEA has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

1) Whether Agency had cause to charge Employee pursuant to 6-B DCMR § 1605.5(a). And if so,

2) Whether the penalty of termination was appropriate under applicable rules and regulations.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

According to the record, Employee was a Legal Instrument Examiner ("LIE") with Agency. On July 17, 2022, Employee was arrested by MPD's Violent Crime Impact Team ("VCIT"). A criminal complaint was filed against Employee on July 18, 2022, at the D.C. Superior Court, charging Employee with Carrying a Pistol Without a License (Outside Home or place of business) in violation of D.C. Code § 22-4504(a)(1). Following an investigation by the MPD Internal Affairs Division ("IAD")[4], on November 15, 2022, Agency issued a 15-day advance notice of termination to Employee, charging her with the following:[5]

Charge No. 1:

[4] Agency's Answer to the Petition at Tab 1 (March 29, 2023).
[5] *Id*. at Tab 2.

Conduct Prejudicial to the District Government - (3) Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission.

Your conduct is also described under D.C. Personnel Regulations, Chapter 16, Section 1605.5(a), An employee of the Department of Correction, Department of Youth Rehabilitation Services, or Metropolitan Police Department; an employee authorized to carry a firearm while on-duty; or a commissioned special police officer shall be deemed to have engaged in conduct prejudicial to the District of Columbia if:

(a) The employee engages in any act or omission that constitutes a criminal offense.

Specification No. 1:

On Sunday, July 17, 2022, you were arrested by members of the Violent Crime Impact Team (VCIT) in the 2300 block of 2nd Street, Northeast, for Carrying a Pistol Without a License (CPWL) outside of home or business, Possession of Unregistered Firearm (UF), Possession of Ammunition (UA) and Possession of a Large Capacity Ammunition Feeding Device (CCN# 22102272).

On July 18, 2022, you appeared before the Honorable Judith Pipe of the DC Superior Court for presentment of case #2022CF2004120. You were formally charged with Carrying a Pistol Without a License (Outside Home or Business) in violation of D.C. Code § 22-4504(a)(1). As an employee with a law enforcement agency, your actions on July 17th and the subsequent filing of formal charges against you demonstrates conduct that is in direct contravention with the goals and mission of the Metropolitan Police Department.

Charge No. 2:

Conduct Prejudicial to the District Government - (5) Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position.

Specification No. 1:

On Sunday, July 17, 2022, you were off duty [and] arrested for Carrying a Pistol Without a License (CPWL) outside of home or business, Possession of Unregistered Firearm (UF), Possession of Ammunition (UA) and Possession of a Large Capacity Ammunition Feeding Device. At the time of your arrest, you were a civilian employee of MPD, assigned to the Technical and Analytical Services Bureau, Records Division, Firearms Registration Section.

Charge No. 3:

Unethical or improper use of official authority or credentials.

Specification No. 1:

On Sunday, July 17, 2022, prior to your arrest, you advised MPD officers that you were going to "call [your] Captain." At the time of the arrest, you were a civilian employee of MPD. You made this statement in an apparent attempt to alert officers that you held a role in some capacity with law enforcement and anticipating that these officers would grant you some sort of courtesy and not take any further actions against you based on the initial traffic stop. This is a clear and improper abuse of your official credentials as an MPD employee.

On November 29, 2022, Employee's Union (NAGE) contacted Agency in response to the notice of proposed termination and the parties had a virtual meeting on December 8, 2022.[6] Thereafter, the assigned Hearing Officer issued her Notice of Hearing Officer's Administrative Review, sustaining Agency's decision to terminate Employee.[7] Subsequently, on March 6, 2023, Agency issued its Notice of Final Decision, terminating Employee from service.[8]

Agency's Position

Agency argues that Employee's appeal should be dismissed and her termination sustained because she was terminated for cause pursuant to 6-B DCMR § 1605.5(a). Agency asserts that Employee's criminal conduct was clearly depicted on the Body-Worn Camera ("BWC") footage of her stop and arrest. Agency contends that Employee acknowledged that everything in the vehicle belong to her and that she did not have a license to carry the firearm found in her vehicle during the stop. Agency avers that the police report created from Employee's arrest provides direct evidence that Employee engaged in prejudicial conduct as defined in 6-B DCMR § 1605.5(a). Agency further cited that Employee's criminal conduct remained pending for two and a half (2.5) years until January 27, 2025, when it was dismissed on the eve of the trial, at the request from the prosecutor. Agency explains that the USAO did not dismiss the case because it was unfounded, but rather because of difficulty prosecuting the case following the death of a key witness. Agency maintains that there is more than adequate proof that Employee engaged in conduct constituting a crime.[9]

Agency asserts that it did not need a conviction to find that Employee's conduct constitutes a crime under 6-B DCMR § 1605.5(a). Agency argues that the DCMR expressly identifies which disciplinary charges require conviction, and 6-B DCMR § 1605.5(a) is not one of them. Agency highlights that 6-B DCMR § 1605.5(a) is only applicable to agencies with a criminal justice mission, armed employees or commissioned special police officers ("SPO") of other District agencies. Agency also avers that Employee does not dispute that her criminal charges directly conflicted with the duties of a Legal Instrument Examiner at Agency's Firearm Registration Branch and with Agency's mission. Agency asserts that the undersigned's previous findings of

[6] *Id*. at. Tab 3.
[7] *Id*. at Tab 4.
[8] *Id*. at Tab 5.
[9] *See* Agency's Brief (February 25, 2026). *See also*. Agency's Reply (April 1, 2026).

fact in the ID support finding cause for discipline under 6-B DCMR § 1605.5(a). Agency also asserts that Employee conceded the issue of whether there was cause, as such, this Office should find that Agency had cause to discipline Employee pursuant to 6-B DCMR § 1605.5(a).[10]

Agency contends that the penalty of termination was a reasonable and appropriate penalty under 6-B DCMR § 1605.5(a). Agency explains that the type of prejudicial conduct under 6-B DCMR § 1605.5(a) is not included in the DCMR's Table of Illustrative Actions ("TIA"). Nonetheless, Agency states that 6-B DCMR § 1607.2 acknowledges that "the illustrative actions in the following table are not exhaustive and shall only be used as a guide..." Agency avers that absent an explicit DCMR penalty for 6-B DCMR § 1605.5(a), the undersigned should be guided by Agency's General Order ("GO") 120.21 which applies to MPD sworn personnel. Agency specifically cites to "any act or omission, whether occurring on or off duty, which constitutes a criminal offense, whether or not such act or omission results in a crime (other than misdemeanor traffic)." Agency maintains that engaging in conduct that constitutes a crime, even if it does not result in conviction, is cause for removal. Agency notes that all MPD employees should be held to a higher standard given the type of work and level of information they are trusted with handling. Agency contends that it weighed all the relevant factors and its judgement did not exceed the limits of reasonableness, therefor, Employee's termination should be upheld.[11]

Agency argues that the three (3) cases that Employee cited for receiving suspension and not termination for serious first offenses are distinguishable from Employee's case. Agency explains that the first case involved a cadet whose misconduct did not involve an arrest or criminal charges. Agency further notes that since the case involved a cadet, they held a 'non-career service' position, thus, Agency avers that this case did not involve a similarly situated employee or misconduct. Next, Agency states that the second case which involved a civilian MPD employee is distinguishable from the current case because that case did not involve an arrest for firearms or any felony offense like in Employee's case. Lastly, Agency asserts that the third cases involved a civilian employee and they were not accused of impersonating a police officer. Agency also notes that the employee in that case was not arrested or charged with any criminal offenses, as such the misconduct in that case is not comparable to Employee's misconduct. Agency contends that because the misconduct in the three (3) cases are not comparable to Employee's misconduct, the different penalties imposed should be unpersuasive. Agency notes that none of these three (3) cases involve similarly situated employees or factually similar misconducts.[12]

Employee's Position

Employee asserts that she does not contest Agency's general authority to discipline her pursuant to 6-B DCMR § 1605.5(a). She avers that although the record reflects that she was arrested and charged in July 2022, all the charges were dismissed prior to the trial not due to a finding that the allegations against her were substantiated. Employee cites that "she recognizes

[10] *Id*.
[11] *Id*.
[12] Agency's Reply, *supra*.

that the standard for discipline under 6-B DCMR § 1605.5(a) is not tied to criminal conviction, but instead, is a broader "conduct prejudicial" standard."[13]

Regarding the appropriateness of penalty, Employee contends that should OEA find that Agency has cause to impose discipline, the penalty imposed by Agency is unduly harsh and inconsistent with both District regulations and Agency's own practice as applied to similarly situated employees. Employee states that under 6-B DCMR § 1607, the penalty for a first occurrence for "Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position" is a 30-day suspension.[14]

Additionally, Employee contends that consistent with GO 120.21, MPD policy requires consideration of mitigating factors, the seriousness of the offense, and the employee's career record. Employee notes that her record is unblemished with consistently positive annual and quarterly reviews, and that she has received favorable evaluations from her direct supervisor throughout her tenure. Referring to the three (3) cases involving other employees, Employee argues that Agency has on at least three (3) occasions imposed a suspension rather than a termination for other employees accused of serious offenses. Employee also maintains that removing her from service without a criminal conviction or aggravating factors, especially since the case was dismissed and her unblemished service record "would be arbitrary, a departure from established practice, and inconsistent application of MPD's own discipline table." Employee cites that under the circumstances; the appropriate penalty should be no more than a 30-day suspension and not termination.[15]

Analysis[16]

Pursuant to OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021), Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Agency terminated Employee for (1) Conduct Prejudicial to the District Government - Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission and pursuant to 6-B DCMR § 1605.5(a); (2) Conduct Prejudicial to the District Government - Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position; and (3) Unethical or improper use of official authority or credentials. The undersigned issued an ID in this matter modifying the penalty levied against Employee. Agency appealed the ID to the OEA Board and on January 29, 2026, the OEA Board issued an Opinion and Order remanding this matter to the undersigned citing that "[b]ecause the AJ failed to make findings related to 6-B DCMR § 1605.5(a), this Board cannot adequately

[13] Employee's Brief on 6-B DCMR § 1605.5(a) and Appropriateness of Penalty (March 5, 2026).
[14] *Id*.
[15] *Id*.
[16] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

determine if Initial Decision is based on substantial evidence. Therefore, this matter must be remanded to the AJ for additional fact-finding." [17]

Whether Agency had cause to take adverse action against Employee

> Charge No. 1: 6-B DCMR § 1605.5(a): An employee of the Department of Correction, Department of Youth Rehabilitation Services, or Metropolitan Police Department; an employee authorized to carry a firearm while on-duty; or a commissioned special police officer shall be deemed to have engaged in conduct prejudicial to the District of Columbia if:
>
> (a) The employee engages in any act or omission that constitutes a criminal offense.

Agency argues that it is undisputable that Employee's conduct constitutes a criminal offense and that a conviction was not required to prove this cause of action. Employee does not dispute this fact. Employee provides that "she recognizes that the standard for discipline under 6-B DCMR § 1605.5(a) is not tied to criminal conviction, but instead, is a broader "conduct prejudicial" standard." Pursuant to the record and Employee's own admission, I find that this cause of action does not require a conviction, rather, an indictment, charge of any felony or criminal offense is sufficient to satisfy this cause of action. Employee was arrested, indicted, and charged with four (4) felonies, and these charges constitute a criminal offense. Moreover, Employee is employed by the Metropolitan Police Department. Accordingly, I find that Agency had cause to charge Employee pursuant to 6-B DCMR § 1605.5(a).

Whether the penalty of termination is appropriate

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of* Columbia, 502 A.2d 1006 (D.C. 1985).[18] According to *Stokes*, OEA must

[17] The undersigned finds that the use of the word "*also described under*" generally signals a connecting cross-reference to another provision section within the same regulation that provides more context or the exact same meaning or an alternate perspective. Moreover, based on my reading of 6-B DCMR § 1605.5, and Chapter 16 of the DCMR, it appears that this provision was not intended as a cause of action but rather to provide more context and/or explanation into how/when employers of some District agencies should charge their employees with '*conduct prejudicial*'. Specifically, 6-B DCMR § 1605.5 provides that "an employee of … the Metropolitan Police Department *shall be deemed to have engaged in conduct prejudicial* to the District of Columbia *if*: (a) *The employee engages in any act or omission that constitutes a criminal offense*; *or* (b) There is any credible evidence that the employee unlawfully used a controlled substance." (Emphasis added). I find that Agency may have been aware of this fact, reason why it did not list this 6-B DCMR § 1605.5 as a separate charge or provide a separate penalty for this charge in the advance notice of termination, its *Douglas* factors analysis or the final Agency decision. Nonetheless, the undersigned will make findings related to 6-B DCMR § 1605.5(a) in compliance with the OEA Board's directive.

[18] *See also. Anthony Payne v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections,* OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services,* OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections,* OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools,* OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic*

decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties. Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercise." Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.[19] Accordingly, when an Agency charge is upheld, this Office will "leave Agency's penalty undisturbed when the penalty is within the range allowed by law regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgement."[20]

In the instant case, I find that Agency has met its burden of proof for Charge No. 1, as described under 6-B DCMR § 1605.5(a):

> An employee of the Department of Correction, Department of Youth Rehabilitation Services, or Metropolitan Police Department; an employee authorized to carry a firearm while on-duty; or a commissioned special police officer shall be deemed to have engaged in conduct prejudicial to the District of Columbia if:
>
> (a) The employee engages in any act or omission that constitutes a criminal offense.

The record shows that this was the first time Employee violated this cause of action. However, the Table of Illustrative Actions ("TIA") is silent as to the penalty for violation of 6-B DCMR § 1605.5(a). Nonetheless, section 1607.2 of the regulations provides the following guidance as it relates to an agency's selection of a penalty:

> The illustrative actions in the following table are not exhaustive and shall only be used as a guide to assist managers in determining the appropriate agency action. Balancing the totality of the relevant factors established in § 1606.2 can justify an action that deviates from the penalties outlined in the table.

Beverage Regulation Administration, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

[19] *Love* also provided the following:

> [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (Citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

[20] *Id. See also. Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.

Since the TIA is silent as to the penalty for violation of 6-B DCMR § 1605.5(a), Agency asserts that the undersigned be guided by GO 120.21 which is applicable to sworn MPD members in deciding the appropriate penalty for 6-B DCMR § 1605.5(a). While Employee is not a sworn MPD member and not covered by the GO, the undersigned will nonetheless look at both GO 120.21 and the regulations for guidance in determining whether the penalty of termination is appropriate for a violation of 6-B DCMR § 1605.5(a).

General Order Series 120.21, Attachment A, Part A-6, lists, "Engaging in conduct that constitutes a crime" as a cause of action. Here, Employee was charged with violating 6-B DCMR § 1605.5(a) - "engag[ing] in any act or omission that constitutes a criminal offense." I find that this is similar to the cause of action pursuant to GO Series 120.21, Attachment A, Part A-6. Therefore, I find that I can rely on GO Series 120.21, Attachment A, Part A-6 in deciding the appropriate penalty under 6-B DCMR § 1605.5(a). The Table of Penalties expressly states that engaging in conduct that constitutes a crime is prohibited conduct and "shall serve as the basis for discipline."

Agency argues that the Table of Penalties as found in GO 120.21 classifies "engaging in conduct that constitutes a crime" as a termination offense. I disagree. A review of the Table of Penalties under GO 120.21, requires a "*Conviction* (Engaging in conduct that constitutes a crime, other than misdemeanor traffic)." (Emphasis added). While Employee was arrested and charged with a conduct that constitutes a crime, it is undisputed that Employee was not convicted. Additionally, the record suggests that Employee was charged with a felony and not a misdemeanor traffic offense. Consequently, I find that this penalty of termination as defined in the GO is not applicable to the current matter.

Because the General Order's Table of Penalties does not provide a penalty for "a conduct that constitutes a crime" absent a conviction, the undersigned finds that the GO Table of Penalty provision is not applicable to the current matter. Therefore, the undersigned will now revert to 6-B DCMR for guidance. Upon review of the record, I find that the cause of action for 6-B DCMR § 1605.5(a) is similar to the cause of action as described in 6B DCMR §1607.2(a)(3) – "Conduct Prejudicial to the District Government - (3) *Indictment or charge of any* felony or *criminal offense* that is related to the employee's duties or his or her agency's mission." (Emphasis added). Moreover, in listing the charges against Employee, Agency listed a violation of 6B DCMR §1607.2(a)(3) and for 6-B DCMR § 1605.5(a) under Charge No. 1., not as separate charges, but with the notation – "*Your conduct is also described under* D.C. Personnel Regulations, Chapter 16, Section 1605.5(a)." (Emphasis added). Furthermore, under its *Douglas* factor No. 7, analysis, Agency cited that the maximum penalty for a first offense for Charge No. 1, (which also included a charge pursuant to 6-B DCMR § 1605.5(a)) is "enforced leave pending criminal prosecution."

The OEA Board in *Edward Morgan v. Fire and Emergency Medical Services Department*,[21] noted that:

[21] OEA Matter No. 1601-0039-13, *Opinion and Order on Petition for Review* (September 13, 2016).

> "Additionally, the D.C. Court of Appeals has consistently relied on the Table of Penalties when determining the appropriateness of an agency's penalty.[22] Furthermore, the OEA Board held in *Richard Hairston v. Department of Corrections,* OEA Matter No. 1601-0307-10, *Opinion and Order on Petition for Review* (September 16, 2014)(citing *Power v. United States*, 531 F.2d 505, 507-508, 209 Ct.Cl. 126 (1976) (citing *Daub v. United States*, 292 F.2d 895, 154 Ct.Cl. 434 (1961) and *Cuiffo v. United States*, 137 F.Supp. 944, 950, 131 Ct.Cl. 60, 68 (1955)), that there are two scenarios in which courts will not uphold the punishment imposed by the agency because of an invalid penalty. *The first is where the sanction exceeds the range of permissible punishment specified by statute or regulation*. (Emphasis added). The second scenario is where a court has determined that the discipline is so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion by the agency."[23]

The OEA Board found that the agency in *Edward Morgan v. Fire and Emergency Medical Services Department* abused its discretion when it terminated Morgan, although the maximum penalty for the first offense was a fifteen (15) day suspension. The OEA Board stated that "As the AJ held, Agency's penalty of removal exceeds the range of penalty outlined for the first offense of incompetence."

Pursuant to the Table of Illustrative Actions ("TIA"), the penalty for a first offense for 6B DCMR §1607.2(a)(3), is Enforced leave pending criminal prosecution. Agency terminated Employee while the related criminal prosecution was pending. Employee was terminated effective March 6, 2023, and the related criminal matter was dismissed on January 27, 2025. Because Agency terminated Employee instead of placing her on enforce leave while the related criminal matter was pending, I find that Agency abused its discretion as termination is not within the penalty range under 6B DCMR §1607.2(a)(3). Consequently, because termination is not within the range of penalties for similar charges under the DCMR and the GO for a violation of 6-B DCMR § 1605.5(a), I conclude that the penalty of termination must be modified.

Disparate Treatment

Employee argues that Agency has not been fair in terms of instituting discipline in the current matter. Employee referenced three (3) MPDs cases where the employees received suspensions for similar misconduct. Agency contends that because the misconduct in the three (3) cases are not comparable to Employee's misconduct, the different penalties imposed should be unpersuasive. Agency notes that none of these three (3) cases involve similarly situated employees or factually similar misconducts.

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[22] Citing *Department of Public Works v. Colbert,* 874 A.2d 353 (D.C. 2005); *Stokes v. District of Columbia,* 502 A.2d 1006 (D.C. 1985); *Brown v. Watts,* 993 A.2d 529 (D.C. 2010); *Hutchinson v. D.C. Office of Employee Appeals,* 710 A.2d 227 (D.C. 1998); and *District of Columbia v. Davis,* 685 A.2d 389 (D.C. 1996).

[23] The OEA Board in *Edward Morgan v. Fire and Emergency Medical Services Department, supra*, noted that although the decisions issued in federal circuit courts are not binding on the OEA Board, it found that they offered sound guidance regarding Table of Penalties.

OEA has held that, to establish disparate treatment, an employee *must* show that he worked in the same organizational unit as the comparison employees (emphasis added). They *must* also show that both the petitioner and the comparison employees were disciplined by the same supervisor for the same offense within the same general time period (emphasis added).[24] Further, "in order to prove disparate treatment, [Employee] *must* show that a similarly situated employee received a different penalty."[25] (Emphasis added). An employee must show that there is "enough similarity between both the nature of the misconduct and the other factors to lead a reasonable person to determine that the agency treated similarly-situated employees differently."[26] If a showing is made, then the burden shifts to the agency to produce evidence that establishes a legitimate reason for imposing a different penalty on the employee raising the issue.[27] Here, Employee made a blanket assertion that Agency has not been fair in terms of instituting discipline in the current matter. However, she did not offer any evidence in support of this allegation. Employee did not provide the nature of the misconduct, whether they were disciplined by the same supervisor for the same offense within the same general time period. Therefore, I find that Employee has not established a *prima facie* showing of disparate treatment and as such, I conclude that Employee has failed to prove that she was subjected to disparate treatment.

Penalty Based on Consideration of Relevant Factors

An Agency's decision will not be reversed unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion.[28] Agency presented evidence that it considered relevant factors as outlined in *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981), in reaching the decision to terminate Employee.[29] The *Douglas* factor analysis included in

[24] *Mills v. D.C. Department of Public Works*, OEA Matter No. 1601-0001-09, Opinion and Order on Petition for Review (December 12, 2011), citing *Ira Bell v. Department of Human Services*, OEA Matter No. 1601-0020-03, Opinion and Order on Petition for Review (May 6, 2009).
[25] *Metropolitan Police Department v. D.C. Office of Employee Appeals, et al.*, No. 2010 CA 002048 (D.C. Super. Ct July 23, 2012); citing *Social Sec. Admin. V. Mills*, 73 M.S.P.R. 463, 473 (1991).
[26] *Barbusin v. Department of General Services*, OEA Matter No. 1601-0077-15, Opinion and Order on Petition for Review (January 30 ,2018) (citing *Boucher v. U.S. Postal Service*, 118 M.S.R.P. 640 (2012)).
[27] *Id*.
[28] *Butler v. Department of Motor Vehicles,* OEA Matter No. 1601-0199-09 (February 10, 2011) citing *Employee v. Agency*, OEA Matter No. 1601-0012-82, *Opinion and Order on Petition for Review*, 30 D.C. Reg. 352 (1985).
[29] In *Douglas v. Veterans Administration*, the Merit Systems Protection Board ("MSPB"), this Office's federal counterpart, set forth "a number of factors that are relevant for consideration in determining the appropriateness of a penalty." Although not an exhaustive list, the factors are as follows: (1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated; (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position; (3) the employee's past disciplinary record; (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability; (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties; (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses; (7) consistency of the penalty with any applicable agency table of penalties; (8) the notoriety of the offense or its impact upon the reputation of the agency; (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question; (10) potential for the employee's rehabilitation; (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

the record demonstrates that Agency considered all factors in imposing the penalty in this matter. However, for the reasons stated above, I find that Agency's penalty was not within the range allowed by law, regulation, and the applicable TIA, and as such, must be modified.[30]

ORDER

Based on the foregoing, it is hereby ORDERED that:

1. Agency's adverse action of termination is hereby **REVERSED** and Employee shall be **REINSTATED** to her previous position of record.

2. Agency's penalty for violating "Conduct Prejudicial to the District Government - Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission" and 6-B DCMR § 1605.5(a) "An employee of the Department of Correction, Department of Youth Rehabilitation Services, or Metropolitan Police Department; an employee authorized to carry a firearm while on-duty; or a commissioned special police officer shall be deemed to have engaged in conduct prejudicial to the District of Columbia if: (a) The employee engages in any act or omission that constitutes a criminal offense" **is MODIFIED to Enforced Leave from March 6, 2023, to January 27, 2025**.

3. Agency's penalty for "Conduct Prejudicial to the District Government - Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position" is **MODIFIED to a THIRTY (30) DAY SUSPENSION**.

4. Agency shall reimburse Employee all back-pay, benefits lost as a result of the adverse action.

5. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

/s/ *Monica N. Dohnji*
MONICA DOHNJI, Esq.
Senior Administrative Judge

[30] Because the undersigned has already addressed the other causes of action in its September 5, 2025, ID and the OEA Board specifically remanded this matter to the undersigned "to make findings related to 6-B DCMR § 1605.5(a)…" the undersigned will not address the other charges levied against Employee in this decision.

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
	OEA Matter No.: 1601-0040-26
EMPLOYEE[1],	
Employee	
	Date of Issuance: May 20, 2026
v.	
DISTRICT OF COLUMBIA HOUSING AUTHORITY,	MICHELLE R. HARRIS, ESQ. Senior Administrative Judge
Agency	

Employee, *Pro Se*
Bianca White, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On March 6, 2026, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Housing Authority's ("Agency" or "DCHA") decision to suspend him from service for ten (10) days. Following a letter from OEA dated March 9, 2026, requesting an Answer in this matter, Agency filed a Motion to Dismiss on April 9, 2026 citing therein that OEA lacked jurisdiction over this matter because DCHA employees do not have appeal rights before this Office pursuant the Comprehensive Merit Personnel Act (CMPA). This matter was assigned to the undersigned Senior Administrative Judge ("AJ") on April 13, 2026.

On April 14, 2026, I issued an Order requiring the parties to submit briefs regarding the jurisdiction issue raised by Agency in its Motion to Dismiss. Employee's brief was due by or before May 1, 2026, and Agency's response was due by or before May 15, 2026. Employee failed to submit his brief by the required deadline. As a result, I issued an Order for Statement of Good Cause to Employee on May 6, 2026. Employee was ordered to submit a statement of good cause for his failure to adhere to the deadline set forth in the April 14th Order. Employee was also required

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

to submit his brief on jurisdiction by or before May 15, 2026. As of the date of this decision, Employee has not submitted a response as required. The record is now closed.

JURISDICTION

The jurisdiction of this Office has not been established in this matter.

ISSUE

Whether this appeal should be dismissed for failure to prosecute.

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 631.2 *id.* states:

For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 624.3 states in relevant part that "if a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

(a) Appear at a scheduled proceeding after receiving notice;
(b) *Submit required documents after being provided with a deadline for such submission*; or
(c) Inform this Office of a change of address which results in correspondence being returned."[2] (Emphasis Added)

This Office has consistently held that failure to prosecute an appeal includes a failure to submit required documents after being provided with a deadline to comply with such orders.[3] In

[2] OEA Rule 624.3, 6-B DCMR Ch. 600 (December 27, 2021).
[3] *Williams v. D.C. Public Schools*, OEA Matter 2401-0244-09 (December 13, 2010); *Brady v. Office of Public Education Facilities Modernization*, OEA Matter No. 2401-0219-09 (November 1, 2010).

the instant matter, Employee was provided notice in the April 14, 2026, and May 6, 2026 Orders that a failure to comply could result in sanctions, including dismissal. Additionally, all Orders were sent via postal mail service to the address provided by Employee in his Petition for Appeal. Employee's response to these orders was required to ensure an appropriate review and resolution of the matter. Accordingly, I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute his appeal is a violation of OEA Rule 624.3. For these reasons, I have determined that this matter should be dismissed for Employee's failure to prosecute.

ORDER

It is hereby **ORDERED** that the Petition in this matter is **DISMISSED** for failure to prosecute.

FOR THE OFFICE:

/s/ Michelle R. Harris
MICHELLE R. HARRIS, ESQ.
Senior Administrative Judge

Notice: This decision is subject to formal revision before publication in the District of Columbia Register and OEA Website. Parties are requested to notify the Office Manager of any formal errors in order that corrections may be made prior to publication. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
EMPLOYEE, Employee	OEA Matter No. 1601-0043-24
v.	Date of Issuance: May 7, 2026
D.C. DEPARTMENT OF INSURANCE, SECURITIES, AND BANKING. Agency	Joseph E. Lim, Esq. Senior Administrative Judge

Employee, *Pro Se*
Daniel Thaler, Esq. Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 22, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") appealing the Department of Insurance, Securities, and Banking's ("DISB" or "Agency") decision to terminate her from her position as a Fraud Investigator, effective March 28, 2024. Employee was terminated for the following cause of action: Unauthorized absence of five (5) workdays or more.[1] On April 22, 2024, OEA requested that Agency submit an Answer to Employee's Petition for Appeal. Agency submitted its Answer on or about May 7, 2024.

This matter was assigned to the undersigned Senior Administrative Judge ("AJ") on May 7, 2024. A Prehearing Conference was initially scheduled for August 21, 2024. However, on August 16, 2024, Employee filed a Complaint against the District of Columbia Government and against the undersigned in my capacity as an Administrative Judge ("AJ") at the Superior Court for the District of Columbia ("DCSC"), alleging mistreatment and wrongful termination and sought $1.5 million for damages.[2] On September 16, 2024, Employee also filed for a Temporary

[1] Agency Answer, Exhibit 10.
[2] *Employee v. District of Columbia Government, et. al.* Case No. 2024-CAB-005229 (D.C. Super. Ct. 2024).

Restraining Order at the Superior Court for the District of Columbia ("DCSC") against the undersigned and various other District of Columbia employees.[3] Employee also filed a Consent Motion requesting a new Prehearing Conference date. On November 14, 2024, I denied Employee's Motion for Postponement of OEA proceedings. On or about November 15, 2024, the DCSC dismissed Employee's Complaint and Request for a Restraining Order. The Prehearing Conference was held on November 19, 2024.

At the November 19, 2024, Prehearing Conference, I issued orders pertaining to discovery and held another conference on February 3, 2025, after granting Employee's request to postpone a January 31, 2025, conference. I then held a Status Conference on April 18, 2025, wherein, the parties were ordered to submit their list of witnesses and proposed dates for an Evidentiary Hearing. After I granted Employee's motion to postpone a scheduled October 29, 2025, Evidentiary hearing due to her car accident, I held a virtual Evidentiary Hearing via WebEx[4] on December 5, 2025. Both Agency and Employee presented documentary and testimonial evidence during the Evidentiary Hearing to support their positions. Documentary evidence entered into the record at the Evidentiary Hearing are noted as Exhibits in the footnotes. On January 20, 2026, Agency submitted its closing argument. Employee did not submit a closing argument. This decision is based on the documentary and testimonial evidence presented at that proceeding. The record is closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

I. Whether Agency had cause for adverse action against Employee.

II. If so, whether Employee's removal was appropriate.

POSITION OF THE PARTIES

On December 19, 2023, Agency proposed the termination of Employee's employment and issued its Final Decision on its Notice of Separation on March 21, 2024, for the following alleged charges and specifications against Employee:[5]

> 6B DCMR §§ 1605.4(f)(2), §1607.2(f)(4) "Unauthorized absence of Attendance Related Offenses: Unauthorized absence of five (5) workdays or more.
>
> Specification: You failed to attend work without proper authorization from your supervisor on the following dates: October 24, 2023 (AWOL); October 25, 2023 (5

[3] *Id.*
[4] WebEx is a software program that enables participants to engage in a hearing or meeting remotely via an electronic device.
[5] Agency Answer.

hours AWOL); November 17, 2023 (AWOL); November 21, 22, and 23, 2023 (6 hours AWOL); November 27 - December 1, 2023 (AWOL); December 4, 2023 - December 8, 2023 (AWOL); and December 11 - 14, 2023 (AWOL).

Employee responded that because Agency harassed, bullied, and intimidated her, she developed mental health issues and Agency failed to properly consider the relevant factors set forth for her charges.

Summary of December 5, 2025, Transcript:[6]

Brian Bressman ("Bressman") Tr. Pp. 13-76.

Bressman worked as the Director of Agency. He testified that there were approximately six (6) employees employed as fraud investigators under his chain of command. Bressman stated that Employee worked as a fraud investigator at Agency. He explained that fraud investigators were responsible for investigating cases of potential regulatory and fraud violations committed by individuals and entities which are regulated under district law. Bressman testified that employees working in the office instead of teleworking, allowed employees to meet with witnesses or with victims to take statements. Additionally, investigators were able to inspect areas where fraud may have occurred.

Bressman testified that he was the deciding official in the Final Agency Decision regarding Employee's termination of employment. He confirmed Employee received the Final Notice on March 21, 2024.[7] Bressman testified that the decision to terminate Employee was in accordance with 6-B D.C. Municipal Regulations ("DCMR") §§ 1605.4(f)(2) and 1607.2(f)(4). The document further provided that the cause of Employee's termination was attendance-related offenses, specifically, unauthorized absences of five workdays or more.

Employee received a Leave Restriction Notice ("LRN") on October 23, 2023, after Bressman, in his capacity as deciding official and Director of Agency's division, noted Employee's pattern of unscheduled leave abuse between July 28, 2023, and October 13, 2023.[8] The notice documented at least eighteen (18) instances when Employee incurred unscheduled leave and described how Employee's poor attendance had negatively impacted Agency's operations. The LRN, in effect from October 23, 2023, to December 8, 2023, revoked Employee's telework schedule and imposed conditions on Employee with regards to her tardiness, unscheduled annual leave, unscheduled sick leave, leave without pay, and absence without leave. Bressman testified that despite the imposition of the leave restriction, Employee's attendance did not improve.

Bressman further testified that Employee was also served a November 15, 2023, letter from Assistant Director Michael Ross ("Ross"), wherein she was informed that the medical documentation she had submitted for several absences from October 26, 2023, to November 13, 2023, were insufficient because they did not attest to her incapacitation for duty.[9] The letter warned

[6] Evidence includes witness testimonies and exhibits admitted at the hearing.
[7] Agency Exhibit 12.
[8] Agency's Exhibit 7.
[9] Agency's Exhibit 8.

Employee that further instances of AWOL would require her to submit medical documentation from her medical provider stating her capacity for work. Bressman asserted that following the issuance of that letter, Employee still failed to provide sufficient medical documentation.

Bressman noted that the December 19, 2023 Advance Notice of Proposed Removal with Attachments ("Advance Notice") was sent to Employee and which documented her AWOL from October 24, 2023, to December 14, 2023, was due to the fact that Employee failed to submit any medical documentation regarding her absence.[10] Although her absence from November 21 to 23, 2023, was covered with a medical note, the Advance Notice informed Employee that the note did not comply with her LRN as it had no information regarding her medical capacity to work. It also noted that Employee was emailed instructions on November 20, 2023, on how to rectify the insufficiency of her medical note. The Advance Notice provided email correspondence from Ross to Employee, Katrice Purdy, Marlene Simmons, Jacinda Miller, and Bressman, acknowledging receipt of Employee's November 20, 2023, medical certification note. According to Bressman, Ross provided that the certification was insufficient and did not attest to Employee's incapacity for duty. The Advance Notice also noted that on November 20, 2023, Agency retroactively granted Employee Paid Family Medical Leave from October 27, 2023, to November 15, 2023. Following the email, Employee did not return to work.

Bressman stated that all twelve *Douglas* factors were considered in the Advance Notice. He explained that the aggravating factors outweighed any mitigating factors. Under the first *Douglas* factor, "Nature and Seriousness of Conduct," it noted that Employee's conduct undermines the mission of Agency. Bressman agreed with that assessment explaining that Agency has specific policies and procedures in place and Employee was unavailable for conducting investigations and writing reports, which management concluded meant that she was not producing work. Moreover, because Employee was underperforming, her reports were not generated, her cases were not investigated and were ultimately reassigned to other employees within the group which added to their workload. Bressman said that Employee failed to complete any work.

With regard to past disciplinary action against Employee, Bressman testified that Employee was issued a notice to serve a five-day suspension on July 7, 2023.[11] He testified that on March 31, 2023, and June 6, 2023, Employee sent inappropriate emails to broad audiences. Bressman further stated that he was the deciding official for the suspension. He testified that following the suspension, Employee's communications with Agency did not improve.

An administrative review by Assistant General Counsel Enriquez regarding the instant matter noted that Employee suffered pre-existing Post Traumatic Stress Disorder ("PTSD") from her previous employer and despite explicit instructions from her LRD, Employee continued to submit inadequate medical reports for her absences.[12] On cross-examination, Bressman testified that he was not aware that Employee submitted documentation for her Family Medical Leave Act ("FMLA"). He also could not confirm that she experienced medical issues.

[10] Agency Exhibit 9.
[11] Agency's Exhibit 4.
[12] Agency's Exhibit 11.

Bressman attested that he reviewed all documentation to make his final determination. He stated that he was not aware of any recorded telephone conversations that took place between Employee and Ross. Bressman testified that when Employee was charged with Absent Without Official Leave ("AWOL"), Agency requested medical documentation to explain her absence. However, Employee failed to produce the required documents.

Katrice Purdy ("Purdy") Tr. Pp. 77-96.

As the Chief of Policy and Administration with Agency, Purdy managed the administrative functions of the office to include, but not exclusive of, human resources, performance management, risk management, procurement, budget items, and Americans with Disabilities Act ("ADA") accommodations. Purdy testified that she reviewed and signed Agency's March 24, 2023, ADA accommodation to Employee granting her telework from March 27, 2023, to May 26, 2023.[13] According to Purdy, it was standard for an accommodation to be set for a fixed duration. She also provided that when Employee's accommodation expired, Employee requested for her accommodation to be renewed; however, Purdy could not recall if the accommodation was granted.

Purdie testified that there is a limit to the amount of leave that an employee can receive for themselves and a limit that can be received for the care of a family member. She further testified that Employee received the maximum paid medical leave of ten (10) days for herself. Employee's medical leave dates covered the period from October 27, 2023, to November 15, 2023.[14] Once her leave expired on November 15, 2023, Employee was required to report to work. On cross-examination, Purdie could not recall the number of Office of Human Rights ("OHR") Complaints that Employee filed against her.

Shavon McLeod ("McLeod") Tr. Pp. 97-109.

As a Human Resource ("HR") Specialist with Agency, McLeod was responsible for handling all HR matters and was an ADA coordinator for Agency. McLeod testified that she denied Employee's ADA accommodation because she was unable to continue interviewing Employee to process Employee's request for a new telework schedule.[15] McLeod further explained that during her meeting with Employee, Employee was combative and discussed individuals who handled her case prior to McLeod.

McLeod testified that the denial letter was issued on September 12, 2023. Following the denial, Employee was required to report to work. McLeod denied discussing her personal medical conditions with Employee.

Employee Tr. Pp. 114-154.

Employee testified that she inquired about the ADA accommodations process and believed that she was receiving pushback from management because of her request. Employee stated that

[13] Agency's Exhibit 2.
[14] Agency Exhibit 6.
[15] Agency Exhibit 5.

she should have been able to request the accommodation without retaliation. Ultimately, Employee tried to ascertain why a new request was needed for her accommodation as opposed to a renewal of a previous request. Because of this, she filed several OHR[16] complaints to get help with her request. Employee stated that she did not request one hundred percent teleworking, as she wanted a renewal of her previous accommodation where she came in on Fridays. Employee said that McLeod was combative and rude during her interview and that it was McLeod who stopped the interview.

Employee stated that she decided to use her remaining leave balance and file for the Family Medical Leave Act ("FMLA"). According to Employee, Agency delayed the process of her approval of FMLA by requesting supplemental medical documentation. Employee provided that this process has financially incapacitated her. Employee also testified that she was handed her termination papers during the period that she was on FMLA. She stressed that her medical and mental condition was such that there was a time that she had to go to the emergency room almost every night.

Employee testified that during those periods of incapacitation and illness, she felt vulnerable and admitted she was feeling that way when she filed a Complaint and a Temporary Restraining Order at the DCSC against the OEA Administrative Judge and other District employees. On cross-examination, Employee testified that she submitted documentation for her medical leave. She explained that Agency requested that she produce further documentation. However, when she forwarded Agency's request to her medical providers, they were unsure of what Agency was requesting. Employee denied that Agency granted her medical leave for the maximum time of November 15, 2023. She claimed that the maximum time would have been December 2023.

Employee testified that she suffers from anxiety, post-traumatic stress disorder, and suicidal ideations. She stated that she provided documentation for the period of AWOL for the period of October 24, 2023, to October 25, 2023. She also stated that she provided documentation for November 17, 2023, November 21, 2023, and November 23, 2023. Employee further testified that she had medical documentation to support her absence from November 27, 2023, through December 1, 2023. Additionally, she stated that she possessed medical documentation supporting her intermittent absences from work on December 4, 2023, through December 8, 2023, and December 11, 2023, through December 12, 2023. When asked why she still failed to submit any medical reports that would cover her AWOL, Employee said that she already did and could not understand what else Agency is asking for.

Employee testified that included with her Advance Notice is a medical note attached to an email chain.[17] She explained that she had attached all medical notes that she had in her possession to show that she was in a legitimate facility to address her medical issues.

Employee testified that the AWOL dates were inaccurate because she was either on sick or medical leave during those periods and she informed Agency via email. She stated that she worked

[16] Employee did not elaborate, but OHR stands for Office of Human Rights.
[17] Agency's Exhibit 9.

for Agency for five or six months prior to going out on FMLA. Employee testified that she was in her position for over a year with Agency.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

I. Whether Agency had cause for adverse action against Employee.

In this matter, Agency had charged Employee with the following:

> 6B DCMR §§ 1605.4(f)(2) "Unauthorized absence," and §1607.2(f)(4) "Unauthorized absence of Attendance Related Offenses: Unauthorized absence of five (5) workdays or more**:**
>
> Specification: Whether Employee was inexcusably absent without leave from October 24, 2023 (AWOL); October 25, 2023 (5 hours AWOL); November 17, 2023 (AWOL); November 21, 22, and 23, 2023 (6 hours AWOL); November 27 - December 1, 2023 (AWOL); December 4, 2023 - December 8, 2023 (AWOL); and December 11 - 14, 2023 (AWOL).

Agency's witnesses credibly testified with supporting document records that Employee was absent without leave from her job as a Fraud Investigator at the Agency on the dates that she was charged as AWOL. Employee does not deny that she was absent from work on those days. However, Employee insisted that she had submitted doctor's notes for those days. Aside from a doctor's note covering Employee's absence from November 21, 2023, to November 23, 2023, Agency's witnesses credibly denied receiving any doctor's note for all the other days that Employee was charged AWOL. Agency's witnesses, however, assert that Employee's doctor's note for November 21, 2023, to November 23, 2023, is insufficient as it did not provide information on whether Employee was unable to work as instructed in Employee's LRN.

Although Employee insisted that she had submitted medical reports covering all the days that she was charged AWOL, she never submitted them to Agency; nor did she submit them at the hearing. Thus, based on the testimonial and corroborating documentary evidence presented, I find Agency to be more credible than Employee. I therefore find that Agency has met its burden of proof that Employee was AWOL for the dates of October 24, 2023; October 25, 2023 (5 hours); November 17, 2023; November 27, 2023 - December 1, 2023; December 4, 2023 - December 8, 2023; and December 11, 2023, - 14, 2023.

However, because Agency received a doctor's note covering the period of November 21, 2023, to November 23, 2023, I find that Agency's AWOL charge for these dates must fail. This Office has consistently held that when an employee offers a legitimate excuse, such as incapacitation due to illness for being absent without leave, the absence is excusable, and therefore, cannot serve as a basis for an adverse action.[18] I therefore find that Employee was not AWOL from November 21, 2023, to November 23, 2023, as her absence was medically excusable. Although it

[18] *Teshome Wondafrash v. Department of Human Services,* OEA Matter No. 1601-0126-96, *Opinion and Order on Petition for Review* (April 14, 2008) and *Victor Hines v. Department of Transportation,* OEA Matter No. 1601-0116-05, *Opinion and Order on Petition for Review* (February 25, 2009).

is true that the doctor's note is insufficiently informative as to Employee's ability to work on those days, Agency could have charged her for failure to comply with her LRN but failed to do so.

II. Whether the penalty of removal was appropriate.

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of* Columbia, 502 A.2d 1006 (D.C. 1985).[19] According to the Court in *Stokes,* OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Illustrative Actions ("TIA"); whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by Agency. In the instant case, I find that Agency has met its burden of proof for all its charges and specifications against Employee.

In reviewing Agency's decision to terminate Employee, OEA may look to the TIA. Chapter 16 of the DPM outlines the TIA for various causes of adverse actions taken against District government employees. The penalty for a first offense for Unauthorized Absence of five (5) workdays or more is removal.[20] In this matter, I found that Agency has proven that Employee was AWOL for more than five (5) days. Agency's choice of termination as the penalty is consistent with the language of the DPM. Therefore, I find that, by terminating Employee, Agency did not abuse its discretion.

As provided in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), selection of a penalty is a management prerogative, not subject to the exercise of discretionary disagreement by this Office.[21] When an Agency's charge is upheld, this Office has held that it will leave the agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment. I find that the penalty of removal was within the range allowed by law. Accordingly, I further conclude that Agency's action should be upheld.

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[19] *See also Anthony Payne v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections,* OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services,* OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections,* OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools,* OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

[20] DPM §1607.2(f)(4).

[21] *Love* also provided that "[OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness." citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981).

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of removing Employee is **UPHELD**.

FOR THE OFFICE:

/*s/ Joseph Lim*_____
JOSEPH E. LIM, Esq.
Senior Administrative Judge

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
EMPLOYEE[1],	
Employee	OEA Matter No. 1601-0044-24
v.	Date of Issuance: May 29, 2026
D.C. DEPARTMENT OF CORRECTIONS,	Michelle R. Harris, Esq.
Agency	Senior Administrative Judge

Employee, *Pro Se*
Madeline Terlap, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 22, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Corrections' ("Agency" or "DOC") decision to terminate him from his position as Correctional Officer. The effective date of Employee's separation from service was March 22, 2024. Following a letter from OEA dated April 23, 2024, requesting an Agency Answer, the Agency filed its Answer on May 21, 2024. This matter was initially assigned to Administrative Judge Lois Hochauser ("AJ Hochhauser") in or around June 2024. The following is representative of the procedural history in this matter conducted by AJ Hochhauser. On June 20, 2024, AJ Hochhauser issued an Order scheduling a Prehearing Conference for August 16, 2024. Following the Prehearing Conference on August 16, 2024, this matter was referred for mediation via an Order issued by AJ Hochhauser on August 19, 2024. The matter was assigned for mediation, and a mediation/settlement conference was scheduled. However, on October 31, 2024, Agency filed a declination of mediation in this matter. On March 3, 2025, AJ Hochhauser issued an Order scheduling an Evidentiary Hearing in this matter for April 10, 2025. On March 12, 2025, Agency filed a Motion for Summary Disposition. AJ Hochhauser presided over an Evidentiary Hearing held on April 10, 2025. On May 19, 2025, AJ Hochhauser issued an Order requiring the parties to submit written closing arguments by or before June 27, 2025. On June 23, 2025, Agency filed a Consent Motion to Stay Written Closing Arguments.

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

On June 24, 2025, the undersigned Senior Administrative Judge (SAJ") issued an Order notifying the parties that this matter had been reassigned to her. That Order also convened a Status Conference for July 8, 2025. Both parties appeared for the Status Conference as required. During the Conference, I explained that the matter had been reassigned and would be considered *de novo*. As a result, the undersigned would not be relying on the Evidentiary Hearing (or associated testimony/admitted exhibits) held by AJ Hochhauser. During the July 8, 2025, Status Conference, the undersigned heard the parties' oral summary of their positions in this matter. Both parties agreed that Employee had been subject to administrative leave since 2021 in this matter and was subsequently terminated following a failure to "check-in" as designated by the October 28, 2021 letter with instructions to do so. Agency also asserted during this Status Conference that the administrative leave was not at issue before this Office. Employee asserted that he had been wrongly placed on administrative leave and that Agency failed to give due consideration for his reasons for failing to check-in during the period cited in the final notice.

Accordingly, the undersigned determined that briefs were warranted in this matter. On July 8, 2025, I issued an Order requiring the parties to submit written briefs addressing whether Agency had cause for this action, whether it followed all applicable laws rules and regulations and whether the penalty of termination was appropriate. Agency's brief was due by or before August 15, 2025; Employee's brief was due by or before September 15, 2025; and Agency had the option to submit a sur-reply brief by or before September 30, 2025. That Order also scheduled a Status Conference for October 15, 2025. The parties complied with the deadlines for the submissions of their respective briefs. Further, both parties appeared at the October 15, 2025, Status Conference. The undersigned advised the parties that in review of the submissions, an Evidentiary Hearing was not warranted. Upon review of the record and submissions of the parties, I have determined that an Evidentiary Hearing is not warranted. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

1. Whether Agency had cause to take adverse action against Employee; and
2. Whether Agency followed all applicable rules, and regulations in its administration of the adverse action; and
3. If so, whether termination was the appropriate penalty under the circumstances.

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 631.2 *id.* states:

For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACT, ANAYSIS AND CONCLUSIONS OF LAW

Agency's Position

Agency avers that its action of removing Employee from service was proper due to his failure to follow instructions and unauthorized absence. Agency cites that Employee was hired as a Correctional Officer on April 23, 2018. Agency notes that on October 28, 2021, it sent Employee a letter placing him on administrative leave pending a Department of Justice ("DOJ") investigation. Agency avers that in 2021, it became aware of a DOJ investigation wherein Employee was being investigated for suspected smuggling of contraband into a D.C. Jail.[2] Agency avers that the letter placing Employee on administrative leave indicated the following: "The Administrative Leave letter instructed Employee to contact the Major's Office via telephone "between the hours of 8:30a.m. and 9:00a.m. each day Monday through Friday, during this period of Administrative Leave" to check in for attendance."[3] Agency notes "Employee's adherence to this instruction would-and did for a time- enable DOC to account for Employee's attendance while he was on paid administrative leave."[4] Agency cites that "Employee called into the Major's Office without issues for nearly two years, between October 2021 and September 2023…"[5]

Agency asserts that beginning September 25, 2023, Employee failed to call in as directed. Agency cites that "on October 19, 2023, Deputy Warden Manuel Williams sent Employee a letter (October 19, 2023 Letter) stating that Employee had failed to call the Major's Office from September 25, 2023, through October 19, 2023."[6] This letter also noted that Employee's failure to check in had resulted in an "unauthorized absence status" and that Employee had more than five days of absences. Agency further maintains that the October 19, 2023 Letter required Employee to "submit justification and documentation for his failure to check in within five days, or else adverse action would be initiated against him." Agency asserts that Employee did not respond until November 1, 2023. Agency cites that Employee responded via email on November 1, 2023, and explained that he failed to call because of the death of his aunt and his involvement in an automobile accident. Employee attached a disability form, dated October 25, 2023, from a doctor's office that stated Employee was disabled and unable to perform work duties from October 8, 2023, to October 18, 2023, due to the accident.[7]

Agency further cites that on December 1, 2023, it issued an Advance Written Notice of Proposed Removal to Employee. That Notice charged Employee with Failure/Refusal to Follow

[2] Agency's Brief at Page 1 (August 15, 2025).
[3] *Id*. at 2.
[4] *Id.*
[5] *Id.* Agency cites that the DOJ investigation was ongoing.
[6] *Id*. at Page 2.
[7] *Id.* at Page 3.

Instructions[8] and Attendance Related Offenses for being AWOL for more than five days between September 25, 2023, through October 19, 2023.[9] Agency also avers that it included copy of the administrative leave letter with the advance notice, as well as the 1199-A Notice and timesheets which reflected Employee's absences. Agency contends that its initial Notice erroneously cited that Employee was absent through November 3, 2023, but that it corrected its error in the Final Notice. Additionally, Agency notes that "although October 9, 2023, was a holiday, employees do not receive holiday pay while in administrative leave status."[10] Agency maintains that it followed all appropriate and applicable regulations in its administration of the termination action against Employee. Agency asserts that it was "permitted to place Employee on indefinite paid administrative leave pending the DOJ investigation."[11] Agency further avers that it was "appropriate for Agency to place [Employee] on paid administrative leave…the DOJ investigation could have led to a corrective or adverse action against Employee if the DOJ found that Employee was involved with smuggling contraband." Agency cites that there are "no laws or regulations [that] impose a time limit on the place[ment] of paid administrative leave [while] awaiting the conclusion of a pending investigation."[12] Further, Agency argues that its requirement that Employee call and check in daily to record his attendance was also at their discretion while Employee was on paid administrative leave. Agency maintains that there are no provisions in the CMPA to preclude them from this requirement. Agency further avers that "even if Employee were challenging his placement on paid administrative leave beginning in October 2021, or the call requirement, such challenges would undoubtedly be untimely and outside of OEA's jurisdiction."[13]

Agency contends that it had cause to discipline Employee for his failure to call the Major's Office from September 25, 2023, to October 19, 2023. Agency cites that Employee admits to his failure, but claimed his failures were excusable due to the death of his aunt and his being involved in a car accident. Agency asserts that Employee did not provide any evidence to the Hearing Officer that would excuse him from not calling as required during that time frame. Further, Agency asserts that despite Employee's claims that his car accident rendered him disabled, his medical records do not reflect that. Agency also avers that Employee's "evidence of his car accident" does not meet the "standard under *Wade v. Department of Behavioral Health*."[14] Agency contends that Employee's accident occurred on October 8, 2023, and the "disability form dated October 24, 2023, noted that Employee was disabled and unable to perform work duties from October 8, 2023, to October 18, 2023." Agency argues that this form "does not constitute clear and complete medical evidence establishing that Employee was so "medically incapacitated" that he was unable to perform his singular work duty of calling the Major's Office."[15] Agency avers that the form does not indicate any incapacity that would prevent making a phone call. Agency also asserts that "even if Employee's failure to call from October 9-18, 2023, could be excused because of his

[8] 6-B DCMR §1607.2(d)(2).
[9] 6-B DCMR §1607.2(f).
[10] *Id.* at Page 4. See footnotes 7 and 8.
[11] *Id*. at Page 5. Citing to Cf. Grant v District of Columbia, 908 A.2d. 1173, 1178 (D.C. 2006).
[12] *Id*. at Page 6.
[13] *Id*.
[14] *Id*. at Page 7. See also Agency' Sur Reply Brief at Page 4. Agency cites to *Wade v. Department of Behavioral Health*, OEA Matter No. 1601-0067-15, Opinion and Order on Review (December 18, 2018.)
[15] *Id*. at Page 8.

purported disability, Employee still failed to call and was AWOL on October 19, 2023, because the disability form did not excuse Employee from his work duties on that day."[16]

Agency maintains that Employee was AWOL for nineteen (19) days, and that "even if eight of Employee's charged AWOL days were medically excusable, that would still leave eleven days when Employee failed to call, justifying discipline for more than five days of AWOL…"[17] Agency avers that the penalty of termination was in the allowable range and was appropriate in this circumstance. Further, Agency asserts that Employee has not provided any evidence to the contrary that the penalty was unreasonable.[18] Agency notes that Employee does not provide any evidence that "Agency's *Douglas* factor analysis was flawed beyond his own conclusory or incorrect allegations."[19] Agency asserts that its *Douglas* factors were considered appropriately. For past disciplinary considerations, it noted in its final decision dated March 14, 2024, that Employee did not have discipline in the past three years, so it made that factor neutral. Agency notes that the discipline from September 2020 was considered in the December 1, 2023 Notice, but it had no impact on the final decision.[20] Agency also asserts that for the past work record factor, "Employee states that Agency was incorrect that he had spent the majority of his five-year tenure (i.e. more than two and half years) with DOC on administrative leave." Agency avers that "although Employee is correct that by December 1, 2023, the date of the Notice, Employee had only spent about two years out of his five on administrative leave, the difference of less than half a year is immaterial."[21] Agency contends that it found this factor neural and "it is not unreasonable to assume Agency still would have found factor four neutral if it had considered that Employee had only spent two years – rather than two and a half years – on administrative leave."[22]

Agency also disputes Employee's contention that mitigating factors were ignored. Agency argues that "it is true that the Notice did not mention any mitigating circumstances…however because the October 19, 2023 letter was not a notice of proposed action pursuant to 6B DCMR § 1618, Agency was not required to provide Employee with an opportunity to respond nor was Agency required to consider any response by Employee prior to issuing the Notice."[23] As such, Agency avers that it is "ultimately immaterial that the [November 1, 2023] email was not considered in the Notice because it was considered in the Final decision and found to be insufficient to mitigate Employee's misconduct." For these reasons, Agency avers that its action of terminating Employee from service should be upheld.

Employee's Position

Employee asserts that Agency has failed to show cause for discipline. Employee contends that Agency failed to consider mitigating circumstances and has a long history of discriminatory and retaliatory treatment. Employee cites that on October 28, 2021, he was placed on paid administrative leave pending a DOJ investigation. Employee avers that that investigation "yielded

[16] *Id.*
[17] *Id.* at Pages 8 -9.
[18] Agency Sur-Reply at Page 5.
[19] *Id*. at Page 6.
[20] Agency Sur-Reply at 6.
[21] *Id.*
[22] *Id.*
[23] *Id.* at Page 7.

no charges." Employee further asserts that for two years, he complied and made the daily calls while he was on paid administrative leave. He also claims that he faced discrimination. He cites that during the time he was on administrative leave, Agency withheld his pay for over a month, even though he was in compliance with the requirement to call in. He further notes that there was a prior time when Agency erroneously charged him with AWOL and that it was only resolved when his union became involved.

Employee also asserts that his initial placement on administrative leave on October 28, 2021, was mishandled. He cites that he was "accosted by four investigators and three K9 officers, stripped of gear (vest, keys, phone, badge, pepper spray, ID), denied explanation/union rep, and subjected to K9 sniffs/searches (nothing found)." Employee further asserts that he was "escorted out, followed to a car and vehicle searched without warrant." Employee contends this violated D.C. Code §1.616.54, which requires "5-day initial AL and rights…"[24] Employee avers that the calls lapsed from September 25, 2023, to October 6, 2023, due to the death of his aunt. He further asserts that the failure to call from October 8, 2023, through October 18, 2023, were due to his being involved in a car accident. Employee also argues that the Agency's decision "ignore[d] mitigation and misstated [administrative leave] as "majority" of tenure (-2.5/6years)." Employee maintains that he was hired on April 23, 2018, and was placed on administrative leave on October 28, 2021, which meant he had 3.5 years of active duty prior to the leave status. He also asserts that he was terminated on March 22, 2024, which was after the two and a half (2.5) years of Administrative Leave. Employee contends that "this factual error undermines the analysis (neutral length of service) and suggests bad faith."[25]

Employee also argues that "while [administrative leave] is permissible (6-B DCMR §1266.4) …administration must be equitable."[26] Employee avers that withholding his pay, biased discipline and the incident on October 28, 2021, are all evidence of violations of the CMPA, labor rights and are forms of retaliation. Employee also avers that Agency had no cause because his accident meets the standards under the *Wade* decision.[27] He also avers that termination is excessive and exceeds the parameters set forth in *Stokes v. District of Columbia*. Employee contends that a lesser penalty was warranted and for these reasons the termination should be reversed.

ANALYSIS[28]

This Office's jurisdiction is conferred upon it by law and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-

[24] Employee's Brief (September 15, 2025).
[25] *Id*.
[26] *Id*. citing to *Grant v District of Columbia*, 908 A.2d 1173 (D.C. 2006). And D.C. Code §1-616.51.
[27] *Id*. citing to *Wade v. Dept. of Behavioral Health*, OEA No. 1601-0067-15 (2018).
[28] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See. Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

B of the District of Columbia Municipal Regulation ("DCMR") § 604.1,[29] this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating resulting in removal;
(b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
(c) A reduction-in-force; or
(d) A placement on enforced leave for ten (10) days or more.

OEA Rule § 631.2, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Further, pursuant to this OEA Rule 631.1, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue." This Office has no authority to review issues beyond its jurisdiction.[30] Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.[31]

Whether Agency Had Cause/Followed All Applicable Laws/Rules/Regulations

In the instant matter, Employee's termination was predicted by two (2) charges. First, Employee was charged with Failure to Follow Instructions/Deliberate Malicious Refusal under DPM §1607.2(d)(2). Employee was also charged with unauthorized absence under DPM §1607.2(f)(4). Both charges were assessed while Employee was on paid administrative leave, which began in 2021 pursuant to what Agency asserts was a Department of Justice ("DOJ") investigation. Agency avers that its placement of Employee on administrative leave for over two (2) years is not at issue before OEA and not in this tribunal's jurisdiction. The undersigned would agree to the extent that Employee's Petition for Appeal addresses the termination predicated by the two aforementioned charges. However, it should be noted that this is a novel matter before this Office wherein an Employee has been on paid administrative leave for an extended period and was also subsequently terminated for AWOL while on a paid leave status. This stated, the undersigned would agree that the administrative leave itself is not in this Office's jurisdiction, but that charges for which Employee's termination were levied do have a causal connection to the administrative leave action itself. To that extent, the undersigned finds that Agency's use of paid administrative leave does not align with any of the District personnel policies and complicates its administration of the instant termination action it levied against Employee.

Failure/Refusal to Follow Instructions (Deliberate/Malicious)

[29] *See also*, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.
[30] *See. Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, Opinion and Order on Petition for Review (September 30, 1992).
[31] *See. Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, Opinion and Order on Petition for Review (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, Opinion and Order on Petition for Review (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

OEA has held that a failure/refusal to follow instructions includes a deliberate or malicious refusal to comply with the rules, regulations, written procedures, or proper supervisor instructions.[32] DPM Section 1607(d)(2) includes an element of intent: the evidence must support a finding of *deliberate or malicious refusal to comply….* (Emphasis Added). In accordance with DPM §1607.2(d)(2), OEA has consistently held that the evidence presented must exhibit a deliberate or malicious act to support a charge under this DPM section.[33] Here, Agency avers that Employee failed to call in to the Major's Office Monday through Friday between 8:30am and 9:00am beginning on September 25, 2023, through October 19, 2023, as instructed. Agency asserts that from October 2021 until the September 25, 2023, date, Employee had complied with making the calls to the Major's Office each day. Agency also asserts that the Deputy Williams sent a letter to Employee dated October 19, 2023, citing to Employee's absences and noted that Employee needed to submit justification within five (5) days regarding his failure to comply, or he would face disciplinary action. Agency avers that Employee did not respond until November 1, 2023, and at that time stated that he had failed to call due to the death of his aunt and because he had been involved in an automobile accident. Agency also cited that Employee included a disability form which cited to a doctor's note that Employee was unable to perform his work duties from October 8, 2023, through October 18, 2023, due to the accident. Agency ultimately found that neither of these circumstances justified Employee's failure to call. Employee avers that he was grief stricken given that he was very close to the aunt who had passed and that he suffered injuries as a result of being in an automobile accident. Employee also asserts that he had been compliant with the requirements since October 2021, even at times where he did not receive his pay.

As was previously noted, Agency charged Employee with a deliberate/malicious failure to follow instructions. While Employee admits that he failed to call as required, he cited that the loss of his family member and personal injuries from an automobile accident that he faced during the time period were the cause of his inability to contact. The undersigned finds that the evidence presented by Agency fails to exhibit malicious or deliberate refusal of Employee to call in as required. There was nothing in any of Employee's responses to suggest that he acted in a deliberate or malicious manner, rather, he was dealing with issues that caused a lapse in his ability to do what was required. Further, the fact that Employee complied with the directive to call in for two (2) years while he was on administrative leave suggests that his failure to call in during this time period was not out of malice or deliberate in nature. As a result, I find that Agency has not met the burden of proof regarding this charge and that it cannot be sustained.

Unauthorized Absence (AWOL)

As was previously noted, Employee was placed on paid administrative leave in October 2021 for an investigation that Agency asserts was conducted by the Department of Justice. During the period of administrative leave and pursuant to a letter issued on October 28, 2021, Employee was to call Agency Monday through Friday between 8:30am and 9:00am. The record is clear that from October 2021 through September 25, 2023, Employee complied with this directive. Agency avers that beginning September 25, 2023, and through October 19, 2023, Employee failed to call and report in as required. Agency cites that "on October 19, 2023, Deputy Warden Manuel Williams sent Employee a letter (October 19th Letter) stating that Employee had failed to call the

[32] *Employee v. D.C. Fire and Emergency Medical Services* Department, OEA Matter No. 1601-0056-22 (June 22, 22023).
[33] *Employee v DC Department of Transportation*, OEA Matter No. 1601-0069-23 (September 18, 2024).

Major's Office from September 25, 2023, through October 19, 2023."[34] This letter also noted that Employee's failure to check in had resulted in an "unauthorized absence status" and that Employee had more than five days of absences. Agency further maintains that the October 19, 2023, letter required Employee to respond, and "submit justification and documentation for his failure to check in within five days, or else adverse action would be initiated against him." Agency asserts that Employee failed to response to the October 19, 2023 letter until November 1, 2023.

Agency further noted that Employee responded via email and "explained that he failed to call because of the loss of his aunt and an automobile accident…Employee attached a disability form, dated October 25, 2023, form a doctor's office that stated Employee was disabled and unable to perform work duties from October 8, 2023 to October 18, 2023, due to the accident."[35] Agency asserts that Employee's reasons for his failure to call were inexcusable. Further, Agency avers that Employee's injury claims from his car accident do not meet a standard that would preclude him from calling in as required. Employee maintains that due to the death in his family and his involvement in a car accident that he failed to call in as required. He asserts that Agency's actions failed to follow all applicable laws, rules and regulations and that there was no cause for the action. Agency maintains that it followed the appropriate actions for its use of Administrative Leave, AWOL and its decision to terminate Employee.

As was previously noted, the issue of AWOL while in a paid leave status is a novel issue before this tribunal. The District Personnel Manual (DPM) defines administrative leave in the following ways: DPM §1299.1 "Administrative leave – an *excused absence from duty* without loss of pay and without charge to annual, sick leave, or compensatory time." (Emphasis added). Similarly, DPM §1699.1 defines administrative leave as "an *excused absence with full pay* and benefits that is not charged to annual leave or sick leave."(Emphasis added). Further, pursuant to DPM § 1268 Absence without Leave ("AWOL"). AWOL is defined as "an *absence from duty* that was not authorized or approved, or for which a leave request has been denied, shall be charged on the leave record as "absence without leave (AWOL)". (Emphasis added). The AWOL action may be taken whether or not the employee has leave to his or credit."[36] Section 1268.4 also notes that "if it is later determined that the absence was excusable, or that the employee was ill, the charge to AWOL may be changed to a charge against annual leave, compensatory time, sick leave, or leave without pay as appropriate."[37] Agency asserts that it was "permitted to place Employee on indefinite paid administrative leave pending the DOJ investigation."[38] Agency further avers that it was "appropriate for Agency to place [Employee] on paid administrative leave [because the] DOJ investigation could have led to a corrective or adverse action against Employee if the DOJ found that Employee was involved with smuggling contraband." Agency asserts that there are "no laws or regulations [that] impose a time limit on the place of paid administrative leave awaiting the conclusion of a pending investigation."[39] DPM§ 1266.1 provides that "administrative leave may

[34] *Id*. at Page 2.
[35] *Id*. at Page 3.
[36] DPM §1268.1. (2019)
[37] The undersigned finds Agency's use of AWOL while Employee was effectively in a non-duty status does not appear to follow any District personnel regulations or laws. Even though there was a requirement for Employee to call in while on administrative leave, the classification of the administrative leave itself is a non-duty status. Thus, it begs the questions as to how an employee can be AWOL when they are not technically on duty. The undersigned finds that Agency could have operationally employed other options pursuant to the DPM.
[38] *Id.* at Page 5. Citing to Cf. Grant v District of Columbia, 908 A.2d. 1173, 1178 (D.C. 2006).
[39] *Id.* at Page 6.

be granted by an agency head, at his or her discretion *for up to ten (10) consecutive workdays*." (Emphasis added). Section 1266.2 provides that administrative leave *in excess ten consecutive days "may only be granted with the approval of the personnel authority*." (Emphasis added). The undersigned would note that the record is void of any such approval. As was previously cited, the undersigned agrees that the use of administrative leave is not before this tribunal. This noted, the underlying cause of action for AWOL has been charged while Employee was in this leave status. This stated, the undersigned would again note that while Agency's use of administrative leave in this matter does not align with DPM rules and regulations, this decision is relegated to causes of action itself and whether Agency followed the applicable laws rules and regulations related to the charges of Failure to Follow Instructions (Deliberate/Malicious) and AWOL.

In the instant matter, Agency cites that the relevant period of Employee's AWOL dated from September 25, 2023, through October 19, 2023. On October 19, 2023 (October 19th Letter), a letter from Deputy Williams notified Employee that he had failed to report in as required in the October 28, 2021 administrative leave letter.[40] The October 19th Letter also included a form DCSF 1199-A which noted Employee's absences from September 25, 2023, to October 6, 2023. This form does not include any information about attempts by Agency to contact Employee. Further, the record is also void of whether Agency personnel contacted Employee at any time prior to its issuance of the October 19th Letter. Here, Agency avers that Employee's response email on November 1, 2023, came after the five-day deadline prescribed in the October 19th letter. Further, Agency avers that the reasons provided by Employee for absence were not excusable. In review of the disability/injury claim following a car accident, Agency avers the medical documentation provided by Employee does not meet the *Wade* standard.[41] Agency further asserts that even if this tribunal found that the absence due to the car accident were found to be excusable, that there would still be 11 days of unauthorized absence.

In the instant matter, I find that Agency's review of Employee's medical claims is dismissive without any further exploration. Agency did not provide any evidence of alternative *medical* review or examination but simply determined that the letter provided by Employee's physician was insufficient to support claims that Employee was unable to call in as required. In review of the record, the undersigned finds that Employee provided medical documentation, including doctor's visits and physical therapy consultations regarding his injuries. Further, Employee also provided pictures of the accident, which exhibited significant damage to his vehicle to which injuries would be likely. Consequently, I find that Agency failed to give due consideration to the medical documentation provided by Employee and as such did not do an appropriate review to determine whether that time should have been applied retroactively as sick leave. As a result, I find that the time from October 8, 2023, through October 18, 2023, should have been applied as sick leave and not AWOL.

Appropriateness of Penalty/Douglas Factors

Agency avers that even if this tribunal finds that the dates from October 8, 2023, through October 18, 2023, are determined to be justifiable, that the period from September 25, 2023, though October 6, 2023, and October 19, 2023, still reflect AWOL and as a result, its penalty of

[40] Agency Brief at Attachment 4.
[41] *Wade v. Dept. of Behavioral Health*, OEA No. 1601-0067-15 (2018).

termination should be sustained. Agency further avers that it considered all the relevant *Douglas*[42] factors in its administration of the instant action. Employee avers that Agency's *Douglas* factor considerations were flawed, namely with Factors 3, 4, 5, and 11.

OEA has consistently held that "the primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office."[43] Therefore when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.[44] Further, the OEA Board has held that an Agency's penalty will not be reversed *unless it fails to consider relevant factors, or the imposed penalty constitutes an abuse of discretion*. (Emphasis added).

In the instant matter, I find that Agency failed to review any mitigating circumstances in accordance with *Douglas* Factor 11- "mitigating circumstances." While Agency concedes that it did not make those considerations, it argues that its October 19th Letter was "not a notice of proposed action." Agency further asserts that Employee's email, while not considered in the Notice, was "ultimately immaterial because it was considered in the Final Decision and found to

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[42] *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3) the employee's past disciplinary record;
4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7) consistency of the penalty with any applicable agency table of penalties;
8) the notoriety of the offense or its impact upon the reputation of the agency;
9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10) potential for the employee's rehabilitation;
11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

[43] *See*. *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Department*, OEA Matter no. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

[44] *Love* also provided the following:

> [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (Citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

be insufficient to mitigate Employee's conduct." In this matter, Employee had been on administrative leave for two (2) years. From October 28, 2021, through September 25, 2023, Employee complied with the directions in the October 28th Letter which required him to call into the major's office between 8:30am and 9:00am Monday through Friday. As was previously noted, the use of administrative leave for this length of time, coupled with the requirement to call in pending an investigation is an occurrence that has not been previously reviewed by this tribunal. It should be noted that even when disciplinary action is pending under DPM §1619, any period of administrative leave over 90 days must receive written approval by the personnel authority and is only approved in 30-day increments. Further, in disciplinary actions, the DPM requires that the Agency must be "diligently pursuing a final decision and the delay is due to circumstances beyond the agency's control."[45] If that time frame is exhausted, the employee is to return to full duty pending a final agency action. Here, Employee was on administrative leave for two (2) years *without* any final pending disciplinary action, but pursuant to an ongoing investigation.[46] (Emphasis added) For those two years, Employee complied with the directives to call every day. Consequently, the undersigned finds that Employee's longstanding compliance with these directives should have been considered as a mitigating factor in this matter.

Thus, in further consideration of *Douglas* Factor 11 "mitigating circumstances" the undersigned finds that Agency failed to consider Employee's two (2) years of administrative leave and the unusual tensions that would cause for any employee in consideration of the uncertainty of whether they would retain their job or otherwise. This stated, the undersigned would note that the issue of assessing AWOL while Employee was in an Administrative Leave Status, is also unusual.[47] Further, the undersigned would also note that the record does not reflect that Agency documented any attempts of outreach to Employee prior to the October 19, 2023 Letter. Thus, I find that Agency failed to give due weight to Employee's explanation that he was dealing with a death in the family and as such, was unable to call in as required. Employee admits his shortcoming in this regard, and in review of DPM §1268, the undersigned finds that Agency could have exercised discretion in this manner and assigned the time frame from September 25, 2023, to October 6, 2023, as leave without pay (LWOP). Thus, this leaves one (1) workday for which Employee was AWOL. The Table of Illustrative Actions cites that the penalty range for a first occurrence of an unauthorized absence of one (1) workday or more, but less than five (5) workdays, is counseling to 3-day suspension and the range for subsequent occurrences is 14-day suspension to removal. In review of the penalty range, I find that Agency's penalty of termination in this instance was excessive.

The OEA Board in *Edward Morgan v. Fire and Emergency Medical Services Department*,[48] noted that:

[45] DPM §1619. (2019)
[46] The record is void of when (or if) this investigation was ever resolved or what the result of the investigation was. This noted, the administrative leave itself is not before this tribunal.
[47] As was previously cited, administrative leave as defined by the DPM is an "excused absence from duty." AWOL is defined as "an absence from duty." Wherefore, the undersigned finds that Agency should have exercised more consideration in examining the assessment of AWOL in this circumstance given the unique status of Employee's employment given the administrative leave.
[48] OEA Matter No. 1601-0039-13, *Opinion and Order on Petition for Review* (September 13, 2016).

> "Additionally, the D.C. Court of Appeals has consistently relied on the Table of Penalties when determining the appropriateness of an agency's penalty.[49] Furthermore, the OEA Board held in *Richard Hairston v. Department of Corrections,* OEA Matter No. 1601-0307-10, *Opinion and Order on Petition for Review* (September 16, 2014)(citing *Power v. United States*, 531 F.2d 505, 507-508, 209 Ct.Cl. 126 (1976) (citing *Daub v. United States*, 292 F.2d 895, 154 Ct.Cl. 434 (1961) and *Cuiffo v. United States*, 137 F.Supp. 944, 950, 131 Ct.Cl. 60, 68 (1955)), that there are two scenarios in which courts will not uphold the punishment imposed by the agency because of an invalid penalty. The first is where the sanction exceeds the range of permissible punishment specified by statute or regulation. The second scenario is *where a court has determined that the discipline is so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion by the agency*."[50] (Emphasis added).

The OEA Board found that the agency in *Edward Morgan v. Fire and Emergency Medical Services Department* abused its discretion when it terminated Morgan, although the maximum penalty for the first offense was a fifteen (15) day suspension. The OEA Board stated that "As the AJ held, Agency's penalty of removal exceeds the range of penalty outlined for the first offense of incompetence." Here, Employee complied with the instructions from October 28, 2021, through September 25, 2023, which comprises roughly 471 workdays. As was previously noted, I find that Employee's absence from October 8, 2023, through October 18, 2023, was proven to be justifiable due to medical issues/illness as reflected in the documentation submitted. Thus, Employee's AWOL rests on the time from September 25, 2023, through October 6, 2023, and October 19, 2023. As previously noted, I find that Agency failed to appropriately follow the AWOL procedures as noted in DPM §1268 in that it did not consider the ability to retroactively applying the September 25, 2023 – October 6, 2023, dates to LWOP given Employee's documentation regarding the death in the family.

OEA has held that although an agency may present sufficient evidence to establish that its selection of the imposed penalty was not arbitrary or capricious, a penalty of termination can be considered excessive if the record does not support an "evidentiary basis" for removal.[51] In this matter, I find that Agency failed to meet its burden to sustain the charge that Employee deliberately and maliciously failed to follow instructions. Likewise, I find that Agency exceeded its managerial discretion in its failure to consider the mitigating circumstances pursuant to *Douglas* Factor 11 and failed to consider alternative leave categories as denoted in DPM §1268 regarding the AWOL charge. The undersigned would further note that the record is also void of any information to suggest that Agency did any outreach to Employee prior to October 19, 2023, which further exhibits the unusual circumstances of the two-year administrative leave status Employee was subject to at the time of Agency's assessment of AWOL against him. For these reasons, I find that Agency exceeded the exercise of its managerial discretion and failed to properly consider the

[49] Citing *Department of Public Works v. Colbert,* 874 A.2d 353 (D.C. 2005); *Stokes v. District of Columbia,* 502 A.2d 1006 (D.C. 1985); *Brown v. Watts,* 993 A.2d 529 (D.C. 2010); *Hutchinson v. D.C. Office of Employee Appeals,* 710 A.2d 227 (D.C. 1998); and *District of Columbia v. Davis,* 685 A.2d 389 (D.C. 1996).

[50] The OEA Board in *Edward Morgan v. Fire and Emergency Medical Services Department, supra*, noted that although the decisions issued in federal circuit courts are not binding on the OEA Board, it found that they offered sound guidance regarding Table of Penalties.

[51] *Jones v. D.C. Department of Schools Transportation*, OEA Matter No. 1601-0077-09 (January 7, 2010).

relevant *Douglas* factors. I further find that the penalty of removal was harsh and extraordinarily disproportionate given the totality of the circumstances. Thus, I conclude that Agency failed to appropriately follow all applicable laws, rules and regulations and its chosen penalty of termination exceeded managerial discretion. Consequently, I find that Agency's penalty of terminating Employee from service cannot be sustained.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of terminating Employee from service is **REVERSED**.
2. Agency shall reimburse Employee all back pay and benefits lost as a result of the termination.
3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

/s/ Michelle R. Harris
Michelle R. Harris, Esq.
Senior Administrative Judge

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Chief Operating Officer of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 1601-0049-24
EMPLOYEE,[1]	)	
Employee	)	
	)	Date of Issuance: May 6, 2026
v.	)	
	)	
D.C. DEPARTMENT OF TRANSPORTATION,	)	NATIYA CURTIS, Esq.
Agency	)	Administrative Judge
	)	

Charles Tucker, Esq., Employee Representative
Kathleen R. Miskovsky Black, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On May 8, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the DC Department of Transportation's ("Agency" or "DDOT") decision to terminate them[2] from their position as a Transportation Planner, effective April 9, 2024. OEA issued a letter dated May 9, 2024, requesting that Agency file an Answer on or before June 8, 2024. Agency filed its Answer to Employee's Petition for Appeal on June 7, 2024. This matter was initially assigned to Administrative Judge ("AJ") Lois Hochhauser on June 7, 2024.

On July 18, 2024, AJ Hochhauser issued an Order scheduling a Prehearing Conference for August 22, 2024. The Order further directed the parties to consult regarding the documents that should be submitted as part of this appeal. On July 25, 2024, AJ Hochhauser issued an order rescheduling the Prehearing Conference for August 27, 2024. On August 15, 2024, AJ Hochhauser issued an Order, which noted that Employee had requested a continuance of the Prehearing Conference by email, citing that more time was needed to obtain representation and other scheduling conflicts. AJ Hochhauser granted Employee's request and rescheduled the Prehearing Conference for November 8, 2024. On November 7, 2024, AJ Hochhauser issued an Order which

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Employee prefers to be addressed by name and not gender-specific pronouns; however, because Employee's name will not be published, Employee will be referenced using gender-neutral pronouns "they, them, their" etc. herein.

noted that Employee sent a courtesy copy of a Consent Motion to continue the Prehearing Conference that was scheduled for November 8, 2024, citing that they had only recently retained counsel and more time was needed to prepare.[3] AJ Hochhauser granted Employee's Motion and rescheduled the Prehearing Conference for December 3, 2024. The Prehearing Conference was held as scheduled.

On December 5, 2024, AJ Hochhauser issued a Summary and Order, which required the parties to investigate whether Employee had a pending appeal before the DC Department of Human Resources ("DCHR"), and whether that appeal was pertinent to this matter. The parties' joint submission of the outcome of the investigation was due by December 17, 2024. On January 13, 2025, Agency filed a request for extension to February 14, 2025, citing that the appeal remained under review by DCHR. On January 17, 2025, AJ Hochhauser granted the extension in an order dated January 17, 2025. On February 24, 2025, Agency submitted an additional Request for Extension to March 14, 2025, noting that DCHR had yet to issue its decision. In an order dated April 4, 2025, AJ Hochhauser granted the parties an extension to April 15, 2025. On April 14, 2025, Agency requested an additional extension to May 30, 2025, which AJ Hochhauser granted in an order dated April 21, 2025. On May 30, 2025, the parties submitted a Joint Statement Regarding the Outcome of DCHR's Final Grievance Review.[4]

This matter was reassigned to the undersigned AJ on June 11, 2025. On June 17, 2025, I issued an Order Scheduling a Status Conference for July 15, 2025. The Status Conference was held as scheduled. On July 16, 2025, I issued a Post-Status Conference Order, requiring the parties to submit briefs in this matter.[5] Agency's brief was due by August 13, 2025, Employee's brief was due by September 10, 2025, and Agency's sur-reply was due by September 24, 2025. Agency submitted its brief on August 13, 2025. Employee did not submit their brief as required. Thus, on September 17, 2025 the undersigned issued Employee an Order for Statement of Good Cause, requiring Employee to submit their brief and a statement of good cause for their failure to submit the brief as required by the order dated July 16, 2025. Employee's statement and brief were due by September 26, 2025.

On September 22, 2025, Employee filed a Consent Motion for Extension of Time to Respond and requested a five (5) day extension. On that same date, Employee also filed their brief. Thus, in an Order dated September 25, 2025, I denied Employee's Consent Motion as moot and reset the due date for Agency's sur-reply to October 9, 2025. On October 9, 2025, Agency Filed a Motion for Extension of Time to file its Sur-Reply, incorrectly citing that Employee had filed a Motion to withdraw their brief on September 22, 2025. At the time Agency filed its Motion, this Office had not received Employee's motion to withdraw.[6]

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[3] Employee's filed copy of the Consent Motion was received on November 12, 2024.

[4] Employee appealed a three-day suspension that is not the subject matter of the Petition for Appeal before OEA. (*See* the parties Joint Statement, pp. 2-3 (May 30, 2025)). Further, as that matter concerns a *grievance* and a suspension that was *less than ten (10) days*, it is thus outside the purview of OEA's jurisdiction, as suspensions for less than ten days and grievances cannot be appealed to this Office (Emphasis added).

[5] The parties were required to address whether Agency had cause for adverse action in this matter; whether Agency followed all applicable District of Columbia statutes, regulations, and laws; and whether the penalty was appropriate.

[6] Employee through his counsel emailed a copy of the Motion on October 8, 2025, and noted that a copy would be delivered to this Office. On October 16, 2025, I emailed the parties and noted that Employee's Motion had not yet been received, and

On October 20, 2025, Employee filed a Motion to Withdraw Employee's Response to Agency's Brief, citing that the brief submitted on September 22, 2026, contained citation errors. On October 22, 2025, I issued an Order Regarding the Motion to Withdraw Employee's Brief and granted the Motion. I also granted Agency's Motion for extension of time to file a sur-reply. Employee's revised brief was now due by November 12, 2025, and Agency's sur-reply was due by December 3, 2025. The parties submitted their respective briefs by the prescribed deadlines.

Upon review of the record, I determined that an Evidentiary Hearing was not warranted in this matter. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

1. Whether Agency had cause for adverse action against Employee; and
2. Whether all applicable laws, rules, and regulations were followed in the administration of the termination; and
3. If so, whether termination was an appropriate penalty under the circumstances.

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence.

Preponderance of the evidence shall mean: That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 631.2 *id.* states:

> For Appeals filed under § 604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

thus I could not rule on the Motion. I further advised the parties that once I received Agency's Motion, I would revisit the due dates for briefs.

Employee was a Transportation Planner, which is a position in the Curbside Management division of the District of Columbia's Department of Transportation ("DDOT" or "Agency"). The following are the findings of fact concerning the communications that are the basis for the adverse action in this matter, based on the record:

1. On August 18, 2023, Employee emailed their supervisor, Curbside Programs Manager Joseph Kerwin ("Kerwin") and Associate Director Haley Pickett ("Pickett"), and stated: "Haley and Joe, I have been invited to speak on a panel regarding my professional expertise in lightweight electric vehicles, which relates to my District Fleet research project of last year and previous agency, university and nonprofit work. I am requesting clearance to participate as an agency representative, please can you consider this today and also ask comms." Employee provided further details and noted that the conference would take place on a Saturday, during their own time, Employee would be paying their own way, no compensation would be received, and they were not asked to present individually, only to participate in a discussion. Employee further stated, "I believe it is valuable to the agency and our District to authorize me to participate formally, given the importance of this topic as an emerging strategy to meet so many policy objectives simultaneously and so effectively." Employee closed the email by stating, "Please let me know as the conference is requesting my identification and by bio for program materials asap." [7]

2. On August 23, 2023, Kerwin responded to Employee's email and stated: "Hi [Employee], Thank you for reaching out about this conference. At this point, the answer would be no. Curbside Management does not manage this program or effort for DDOT and would not be their appropriate representatives from DDOT to speak to these topics."[8]

3. On August 24, 2023, at 4:36 p.m. Employee emailed three members of the staff at the Office of the Deputy Mayor for Infrastructure ("DMOI"), with a subject line: "Requesting Clearance for Panel Speaking Opportunity." The email stated: "Dear Jonathan, would DMOI support my speaking on behalf of the agency and/or District (identified as DDOT staff) at a conference on this topic, on a panel along with the City of Portland, Oregon and others looking at similar potential for government fleets? You may be aware I conducted a study last year on the potential to utilize electric cargo bikes, trikes and trailers, and other lightweight electric vehicles, in place of heavier cars, trucks and vans, in our District fleet. My work was in communication with [staff at DMOI], who were excited about the potential for e-bikes to achieve a wide array of District policy goals. I have been invited to speak on a panel regarding my professional expertise in lightweight electric vehicles, which relates to my District Fleet research project of last year and previous agency, university and nonprofit work." Employee provided additional details about the conference and closed the email by stating: "I believe it is valuable to DDOT and our District to authorize me to participate formally, given the importance of this topic as an emerging strategy to meet so many policy objectives simultaneously and so effectively. No confidential information would be shared and no commitments would be made, I would simply be participating in

[7] Employee's Petition for Appeal, p. 74, 76 (May 8, 2024).
[8] *Id*. at 74.

an informational discussion. Please let me know as the conference is requesting my identification and bio for program materials asap."

4. At 4:40p.m. Jonathon R. of DMOI responded, "If DDOT approves your participation, DMOI wouldn't have any problem with it." [9]

5. On August 24, 2023, at 4:55p.m. Employee sent an MS Teams message to Acting Chief Operations Officer Neelima Ghanta ("Ghanta") and stated: "Is there any chance you would approve me to speak as a DDOT representative at a conference on my own time, about electric cargo bike potential for government fleet use? I did a one-year study on this for DDOT last year. Jonathan [R.] says DMOI would have no problem with this….Unfortunately, you should know my direct supervisors are not currently favorable as they do not see e-bikes as part of my Division's mission (although I believe they are a powerful curbside management strategy). Therefore, I'm a bit going over their head to appeal to you. Note, the conference would be on my own time, BEGA has said it would be fine if the agency authorizes and I speak properly of course. May I send you the approval request via email to consider?"[10]

6. On August 24, 2023, at 5:30p.m. Ghanta responded: "If you are representing DDOT, it has to be DDOT endorsed. Is using Cargo E bikes what DDOT is doing Going [sic] forward?"[11]

7. On August 24, 2023, Employee responded: "That is correct and that is why I am seeking your approval. Just to be clear, this is information sharing in a brief panel, possibly sharing some of my study for DDOT. I led a substantial research project last year endorsed by my COO, CAO, CPO, and my supervisor, including a survey which our PIO distributed to sister agencies. It was 20% of my work plan, so in this case, even if DDOT has decided not to use ELCVs in our field of work (which can't be entirely true, as we're expanding CaBi e-bikes a lot, and provide free membership and purchased test bikes for my study; and Council is working on e-bike incentive programs, and DOEE is currently launching the incentive program I initiated with them), we could still share our information with the growing number of cities who do wish to consider whether some fleet substitution works for them. This is low hanging fruit for climate mitigation, and many other goals, and has a lot of public support and staff support, so it makes sense to me why other cities would consider this path."[12]

8. On August 29, 2023, Ghanta responded: "I heard from team performance and your team that Cargo Bike work is not endorsed by these teams. If you are on a panel representing yourself, you can definitely participate, but if its DDOT, I need your supervisor and AD to say that to me."[13]

[9] *Id*. at 78, 79.
[10] *Id*. at 81.
[11] *Id*.
[12] *Id*.
[13] *Id*.

On November 1, 2023, Agency issued an Advance Notice of Proposed Removal, which noted that removal was being proposed pursuant to Chapter 16 of the District Personnel Manual ("DPM") §1605.4(d)-failure or refusal to follow instructions; 1605.4(d) deliberate or malicious refusal to comply with rules, regulations, written procedures or proper supervisory instructions.[14] Curbside Programs Manager Kerwin was the proposing official. This matter was assigned to a Hearing Officer who issued her recommendation on January 18, 2024, upholding Agency's decision to terminate Employee.[15] In a Notice of Final Agency Decision dated April 4, 2024, Employee was terminated from their position as a Transportation Planner effective April 9, 2024 based on failure or refusal to follow instructions; 1605.4(d) deliberate or malicious refusal to comply with rules, regulations, written procedures or proper supervisory instructions. [16] This adverse action of removal was predicated on the email and MS Teams communications outlined above.

Summary of Agency's Position

Agency asserts that that from August 18, 2023, to August 24, 2023, Employee sent a series of emails, seeking permission or approval to represent DDOT at a conference on Light Electric Vehicles.[17] Agency noted that on August 18, 2023, Employee sought permission from their supervisor Curbside Programs Manager Kerwin and Associate Director Peckett to attend the conference as a DDOT representative.[18] Agency asserts that Kerwin denied Employee's request by email on August 23, 2023, and reasoned that "[a]t this point, the answer would be no. Curbside Management does not manage this program for DDOT and would not be the appropriate representatives from DDOT to speak on these topics." Agency avers that rather than accept Kerwin's decision Employee went outside their chain-of-command and asked staff at DMOI as well as then-acting Deputy Mayor for Operations and Infrastructure Ghanta to approve Employee's participation in the conference as a DDOT representative. Agency further asserts that Employee did not include their management team on these messages. Agency further avers that Employee acknowledged in Employee's email to Ghanta that Employee's supervisors were not in favor of Employee's attendance as a DDOT representative.[19]

Agency maintains that the termination in this matter is warranted because this was the third time in two years that Employee engaged in behavior amounting to deliberate or malicious refusal to comply with rules, regulations, or proper supervisory instructions.[20] Agency noted that Employee was verbally counseled in April 2022 and received a corrective three-day suspension in October 2022 for contacting DMOI outside of Employee's assigned duties after being directed not to do so.[21] Agency asserts that even after previously being instructed not to contact DMOI, in the instant matter, Employee asked DMOI staff for their support of Employee representing DDOT at a conference on e-bikes, and even after his supervisor had denied permission. Agency avers that

[14] Agency's Answer, at Exhibit 1, page 18 (June 7, 2024) (page numbers not in the original but included for ease of reference)
[15] Agency's Answer, Exhibit 10, p. 269 (June 7, 2024)
[16] *Id*. at Exhibit 5, p. 110.
[17] *Id*. at p. 5, 6.
[18] *Id*.
[19] *Id*.
[20] Agency's Brief, p. 3 (August 13, 2025).
[21] *Id*. at p. 5.

Employee's repeated failure to follow the instructions of their management team supports a finding that the current adverse action of termination is warranted.[22]

Summary of Employee's Position

Employee maintains that Agency's decision to terminate them is fundamentally flawed. Employee asserts that the adverse action:

> "rests on three fundamental flaws: (1) it's improper reliance on a verbal counseling that cannot, under the District Personnel Manual ("DPM"), be treated as a corrective or adverse action; (2) it's reliance on an October 2022 suspension that was itself fatally tainted by violations of mandatory grievance procedures; and (3) its mischaracterization of a conference-related request as deliberate disobedience of a supervisory request, when in reality, Employee…was acting transparently, ethically, and with prior clearance from the Board of Ethics and Government Accountability ("BEGA")."[23]

Employee contends that while Agency characterized the instant conduct as Employee's third infraction of "insubordination", Employee in this instant matter did not actually disregard or disobey a supervisor's instructions. Employee asserts that they were planning to attend the conference in their private capacity, and their inquiry to supervisors was limited to whether they could identify as a representative of DDOT.[24] Employee maintains they were told that they could not attend as a representative of DDOT, which Employee respected.[25]

Employee further asserts that there was no clear supervisory instruction provided. Employee maintains that Kerwin's response to Employee's inquiry was not a "clear, unequivocal, and proper" supervisory instruction, and only stated, "at this point, the answer would be no" in response to Employee's inquiry to represent DDOT.[26] Employee maintains that Employee "received no clear directive prohibiting [Employee's] conference attendance or [Employee's] affiliation with DDOT in a research capacity. Employee cites that the conditional language used by their supervisor- "at this point, the answer would be no" -lacks the clarity required to support an insubordination charge."[27]

Employee argues that Agency improperly relied on Employee's past conduct in determining that the current conduct warranted termination. Employee avers that a verbal counseling is not a corrective or adverse action under the District Personnel Manual and thus cannot serve as the basis for the current adverse action or be counted as one of three prior occurrences of misconduct. Employee maintains that "by repeatedly invoking verbal counseling as a part of a matter of misconduct, the Agency artificially inflated the matter into a 'third

[22] Agency's Answer, pp. 7, 9.
[23] Employee' Brief, pp. 1-2 (November 14, 2025).
[24] *Id*. at p. 3.
[25] *Id.*
[26] *Id*. at p. 5.
[27] *Id*. at p. 6.

occurrence'." [28] Employee further maintains that the suspension in October, 2022, was "procedurally defective" because Employee was denied mediation and a timely grievance interview. Employee contends that because the suspension process was flawed, the suspension cannot be used to support removal.[29]

Employee additionally asserts that the penalty of termination was "excessive, arbitrary, and inconsistent with governing standards." Employee further contends that Agency misapplied the *Douglas* Factors by using "boilerplate language in evaluating Employee" and by not considering mitigating factors. Employee further maintains that they were not provided access to all relevant documents and communications necessary to support their case.[30]

ANALYSIS[31]

Whether Agency had cause for adverse action

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

> (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. *(Emphasis added).*

Pursuant to OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) Agency has the burden of proof by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Additionally, DPM § 1601.7 provides that "Each agency head and personnel authority has the obligation to and shall ensure that corrective and adverse actions are only taken when an employee does not meet or violates established performance or conduct standards…."[32] Accordingly, disciplinary actions may only be taken for cause.

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[28] *Id.* at pp. 3-5
[29] *Id.* at pp. 4-5
[30] *Id.* at pp. 7-9
[31] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").
[32] DPM §1601.7.

In this instant matter, Agency terminated Employee for failure or refusal to follow instructions: deliberate or malicious refusal to comply with rules, regulations, written procedures, or proper supervisory instructions, pursuant to DPM § 1605.4(d) and 1607.2(d)(2).

Failure or Refusal to Follow Instructions

The undersigned finds that Agency had cause for the adverse action in this matter. Employee's termination was levied pursuant to DPM § 1605.4(d)-Failure or Refusal to Follow Instructions and § 1607.2(d)(2)-Deliberate or Malicious Refusal to Comply with Rules, Regulations, Written Procedures, or Proper Supervisory Instructions. OEA has held that a failure/refusal to follow instructions includes a deliberate or malicious refusal to comply with the rules, regulations, written procedures, or proper supervisor instructions.[33] Section 1607(d)(2) includes an element of intent: the evidence must support a finding of *deliberate or malicious refusal to comply*…. (Emphasis Added). Accordingly, OEA has held that the evidence must show a deliberate or malicious act to support this charge.[34]

Here, the undersigned finds that the evidence supports a deliberate act of disobeying proper supervisory instructions. As noted above, on August 18, 2023, Employee emailed their manager Kerwin and Associate Director Pickett and requested to speak on a panel regarding Employee's expertise in lightweight electric bikes and vehicles, as an Agency representative.[35] Employee specifically stated, "I am requesting clearance to participate as an agency representative, please can you consider this today and also ask comms." It is clear from this email that Employee is asking the supervisors to grant their authorization for Employee to represent themselves as an Agency representative on a panel regarding electric bikes and vehicles. In response to Employee's request, Kerwin emailed Employee and stated: "At this point, the answer would be no. Curbside Management does not manage this program or effort for DDOT and would not be their appropriate representatives from DDOT to speak to these topics." [36] This exchange highlights that Employee requested authorization to act as a DDOT representative, and Employee's manager denied that request. Thus, I find that Kerwins' denial of Employee's request for authorization was a proper supervisory instruction.

The record also supports that Employee deliberately refused to comply with Kerwin's instruction that Employee could not represent themselves as a DDOT representative at the conference, and instead shopped for an approval of their request. Instead of accepting Kerwin's answer as the final instruction on the matter, Employee sought the approval of DMOI, and the permission of Ghanta, who was the Acting COO at the time, and thus more senior than Employee's immediate supervisors. Notably, Employee did not notify Kerwin or Pickett that Employee was still seeking authorization to speak on the panel as a DDOT representative and did not include them on the communications to DMOI or Ghanta. Employee further acknowledged that their supervisors did not approve their request to act as a DDOT representative and noted: "Unfortunately, you should know my direct supervisors are not currently favorable as they do not

[33] *Employee v. D.C. Fire and Emergency Medical Services* Department, OEA Matter No. 1601-0056-22 (June 22, 2023).
[34] *See Employee v. D.C. Department of Transportation*, OEA Matter No. 1601-0052-22 (April 12, 2023) (AJ held that Agency failed to provide substantial evidence to prove that Employee acted deliberately and failed to turn in keys as required).
[35] Employee's Petition for Appeal, pp. 74, 76 (May 8, 2024).
[36] *Id*. at 74.

see e-bikes as part of my Division's mission (although I believe they are a powerful curbside management strategy). Therefore, I'm a bit going over their head to appeal to you."[37] Notably, Employee was previously suspended for communicating with outside agencies regarding the e-bikes initiative, although Employee's management team instructed Employee to disengage from this communication.[38] Thus, the undersigned finds that Employee deliberately disregarded his management team's instruction once again by seeking approval to represent himself as a DDOT representative for a panel on e-bikes and vehicles.

In spite of Employee's efforts to circumvent Kerwin's instruction, both the staff at DMOI and Ghanta noted that permission for this request should come from DDOT. DMOI staff replied to Employee and stated: "If DDOT approves your participation, DMOI wouldn't have any problem with it." On August 29, 2023, Ghanta responded: "I heard from team performance and your team that Cargo Bike work is not endorsed by these teams. If you are on a panel representing yourself, you can definitely participate, but if its DDOT, I need your supervisor and AD to say that to me."[39] While Employee characterizes their appeal to DMOI and Ghanta as "brief internal "pings" under time pressure", it is clear from Ghanta's position that the approval for Employee's participation as a DDOT representative rested with Employee's supervisors.[40]

Employee asserts that ultimately they did obeyed their supervisor's instruction because they did not attend the conference as a DDOT representative.[41] The undersigned finds that this argument fails. Employee's attempt to circumvent Kerwin's instructions is sufficient to establish deliberate refusal to obey a proper supervisory instruction. Employee acknowledged that their … "direct supervisors are not currently favorable as they do not see e-bikes as part of my Division's mission" evidencing that Employee deliberately ignored Kerwin's instruction. Accordingly, the undersigned finds that Agency has established cause for adverse action.

Whether Agency followed all applicable laws, rules and regulations

The undersigned finds that Agency correctly invoked District Personnel Manual ("DPM") §1605.4(d) and §1607.2(d)(2) Failure or refusal to follow instructions: deliberate or malicious refusal to comply with rules, regulations, written procedures or proper supervisory instructions in terminating Employee."[42] Based on the analysis and facts above, Employee did not heed Kerwin's instructions that Employee was not the appropriate representative to represent DDOT at a conference on electric bikes. Instead, Employee deliberately ignored Kerwin's instruction and attempted to circumvent his managerial authority. Further, Agency's Proposed and Final Notices of Removal clearly outlined the DPM sections that Employee was charged to have violated and presented evidence that the act was deliberate.[43]

[37] *Id*. at 81. *See also* Agency's Answer at p. 19 (June 7, 2024).
[38] Agency's Answer, at Exhibit 1, p. 18 (June 7, 2024).
[39] Employee's Petition for Appeal, p. 81 (May 8, 2024).
[40] Employee's Petition for Appeal, p. 10 (May 8, 2024).
[41] Employee's Brief, pp. 3, 5 (November 14, 2025).
[42] DPM §1607.2(d)(2)
[43] Agency's Answer at Exhibit 1 and Exhibit 5 (pp. 18, 111)(June 7, 2024).

While Employee asserts that Kerwin's instruction was not "clear, unequivocal, and proper," [44] the undersigned finds that Employee's admission that their "…direct supervisors are not currently favorable as they do not see e-bikes as part of my Division's mission…" supports a finding that Employee understood Kerwin's instruction.[45] Employee further affirmed their understanding in their Petition for Appeal and noted that they were:

> "…asked to speak at a related conference, and asked how I would identify myself with pressure to respond quickly. Because the topic crossed over to my research, and District/agency goals, and my expertise, I asked the hostile supervisor #3 (Associate Director), and current supervisor #6 if I could identify as working at the District. When they said "not at this time" and gave a reason that didn't make sense to me, I reached further to ask our new Chief Ghanta via Teams text if she would override them."[46]

Thus, Employee's argument that the instructions were not clear or proper is incongruous with Employee's stated intent to 'override' their manager's instructions. Employee's decision to seek approval with Chief Ghanta supports the assertion that Employee refused to follow and accept Kerwin's instruction.[47]

Employee additionally provides conflicting arguments regarding the Agency's use of progressive discipline. Employee asserts that Agency did not follow the proper steps of removal because Agency did not employ progressive discipline, while also asserting that Agency improperly relied on a past verbal counseling and a past suspension in assessing the penalty for the current misconduct.[48] Concerning progressive discipline, The DPM makes clear that "[s]trict application of the progressive steps in §§ 1601.5 and 1610 may not be appropriate in every situation. Therefore, management retains the right to evaluate each situation on its own merits and may skip any or all of the progressive steps." However, I find that in this matter, Agency engaged in progressive discipline. Employee received verbal counseling in April 2022 and a corrective suspension in October 2022, both related to failure to follow instructions.[49] His suspension in October 2022 was related to his 'continue[d] pursuit of the e-bike program despite the directive from Associate Directory Peckett to disengage."[50] As a result, I find that Employee's assertion that Agency failed to engage in progressive discipline is not consistent with the record.

Concerning the verbal counseling, while section 1612 of the DPM notes that verbal counseling is a reprimand and thus neither a corrective or adverse action, it is a step of the progressive discipline process, and "may be considered in establishing a corrective or adverse action, when the action is initiated within three (3) years of the reprimand."[51] Accordingly, I find that Agency acted properly in considering Employee's past discipline. Further, while Agency considered past discipline in assessing the penalty in the instant matter, the Table of Illustrative

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[44] Employee' Brief, p. 5 (November 14, 2025).
[45] Employee's Petition for Appeal, p. 81 (May 8, 2024).
[46] *Id*. at attachment 1, p. 9 (May 8, 2024).
[47] In advancing their argument, Employee also relies on principles of insubordination, which is no longer a recognized charge under the DPM.
[48] *Id*. at pp. 3-6.
[49] (Petition for Appeal at Exhibits 2 and 3 (pp. 59, 65)(May 8, 2024).
[50] Agency's Answer at Exhibit 1 (p. 36) (June 7, 2024).
[51] DPM § 1612.7

actions ("TIA") outlines that suspension to termination is the range for a first and second occurrence of deliberate or malicious refusal to comply with rules, regulations, written procedures or proper supervisory instructions.[52] Therefore, even if Agency did not consider Employee's past reprimand or suspension, Employee's termination would still be within the range allowed by the DPM. Consequently, the undersigned finds that Agency followed all applicable laws, rules and regulations in the instant matter.

Employee additionally asserts that they were denied their right to present evidence; however, Employee does not state with specificity what evidence was sought or how they were denied access. Further, Employee had ample opportunity to request documents from Agency and submit evidence in support of this appeal. Thus, the undersigned finds that Employee's assertion lacks merit.

Whether the Penalty of Termination was appropriate

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of* Columbia, 502 A.2d 1006 (D.C. 1985).[53] Therefore when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office. As further noted in *Love*, "…[T]he [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness."[54] Accordingly, when an Agency's charge is upheld, this Office will "leave Agency's penalty undisturbed when the penalty is within the range allowed by law regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgement."[55]

Here, the TIA notes that the penalty range for a first occurrence for the charge of failure or refusal to follow instructions: deliberate or malicious refusal to comply with rules, regulations, written procedures or proper supervisory instructions is a three (3) day suspension to removal.[56] Thus, Agency's action of terminating Employee was within the range allowed by the DPM. Further, while Employee's past findings of misconduct are not a prerequisite to determine whether the current adverse action can be sustained, I find that Employee's past documented findings of misconduct bolster Agency's position that Employee has a pattern of ignoring supervisory

[52] §1607.2(d)(2)
[53] *See also. Anthony Payne v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections,* OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009)
[54] *Love* (Citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).
[55] *Id. See also Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.
[56] DPM§ 1607.2(d)(2).

instructions, as this was not Employee's first misconduct of this variety. Agency further provided a thorough and detailed analysis to support its decision to terminate Employee.[57] Thus, the undersigned finds that the penalty of termination was not excessive, unreasonable or arbitrary. Further, Agency provided a thorough *Douglas* Factor analysis.[58] Therefore, the undersigned must leave Agency's penalty undisturbed.

Based on the foregoing, it is hereby **ORDERED** that Agency's action of terminating Employee is **UPHELD.**

FOR THE OFFICE:

/s/ Natiya Curtis
Natiya Curtis Esq.
Administrative Judge

[57] Agency's Answer at Exhibit 1 and Exhibit 5 (pp. 18, 36)(June 7, 2024).
[58] *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3) the employee's past disciplinary record;
4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7) consistency of the penalty with any applicable agency table of penalties;
8) the notoriety of the offense or its impact upon the reputation of the agency;
9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10) potential for the employee's rehabilitation;
11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the OEA's Chief Operating Officer of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. J-0041-25
	)	
v.	)	Date of Issuance: May 29, 2026
	)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	

Amos Jones, Esq., Employee Representative
Gehrrie Bellamy, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Employee is an Instructional Superintendent with the District of Columbia Public Schools. On May 20, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or the "Office") contesting the imposition of a 10 (ten) day suspension. On June 5, 2025, the District of Columbia Public Schools submitted an Answer and Motion to Dismiss. In it, DCPS asserts that Employee serves in an at-will status and cannot appeal this action to the OEA. This matter was assigned to the Undersigned on June 9, 2025. Thereafter, an Order requiring the parties to brief the issue surrounding whether the OEA may exercise jurisdiction over this matter was issued. Upon consideration and review, I decided to hold a Status Conference in order to ascertain the salients facts in this matter. During this conference, the parties asked for leave to discuss settlement of this matter. Over time, the parties were seemingly successful in coming to a settlement agreement that was fully executed by the parties on April 27, 2026. Of note, there was extended discussion over whether parts of the agreement were adhered to. Of further note, the salient portion of that agreement entails dismissing the instant matter. In order to effectuate the dismissal of this matter, DCPS forwarded a copy of the fully executed settlement agreement to the OEA on May 29, 2026. After reviewing the documents of record, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this matter should be dismissed.

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 631.2 id. States:

> For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

I am guided by the OEA rules in this matter. OEA Rule 607.11 states that "if the parties reach a settlement, the matter shall be dismissed in accordance with D.C. Official Code § 1-606.06(b)." The parties have submitted a copy of the fully executed settlement agreement that provides as follows that "[Employee] shall withdraw the OEA Appeal within five (5) business days after receiving confirmation that the Notice of Suspension has been removed from her OPF [Official Personnel File]."[1] [2] I hereby find that in accordance with this condition contained within the Settlement Agreement executed by the above captioned parties, Employee's Petition for Appeal should be dismissed in accordance with OEA Rule 607.11.

[1] See clause 4 of the Settlement Agreement between Employee and DCPS signed on April 27, 2026.

[2] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin,* 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater,* 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED.

FOR THE OFFICE:

/s/ Eric T. Robinson

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, proposes to issue an air quality permit (No. 7448) to Best Auto Shop Inc. to operate an existing automotive spray paint booth at Best Auto Shop facility located at 1800 Adams St NE, Washington DC 20018. The contact person for the facility is Mesfin B Gebreab, Owner, at (202) 699-3760 or Mesfinbestauto@gmail.com

Emissions Estimate:

AQD estimates that the potential to emit volatile organic compounds (VOC) from the automotive paint spray booth will not exceed 3.12 tons per year.

The proposed emission limits are as follows:

a. No chemical strippers containing methylene chloride (MeCl) shall be used for paint stripping at the facility. [20 DCMR 201.1]

b. The Permittee shall not use or apply to a motor vehicle, mobile equipment, or associated parts and components, an automotive coating with a VOC regulatory content calculated in accordance with the methods specified in this permit that exceeds the VOC content requirements of Table I below. [20 DCMR 718.3]

Table I. Allowable VOC Content in Automotive Coatings for Motor Vehicle and Mobile Equipment Non-Assembly Line Refinishing and Recoating

Coating Category	VOC Regulatory Limit As Applied*	
	(Pounds per gallon)	(Grams per liter)
Adhesion promoter	4.5	540
Automotive pretreatment coating	5.5	660
Automotive primer	2.1	250
Clear coating	2.1	250
Color coating, including metallic/iridescent color coating	3.5	420
Multicolor coating	5.7	680
Other automotive coating type	2.1	250
Single-stage coating, including single-stage metallic/iridescent coating	2.8	340
Temporary protective coating	0.50	60
Truck bed liner coating	1.7	200
Underbody coating	3.6	430
Uniform finish coating	4.5	540

*VOC regulatory limit as applied = weight of VOC per volume of coating (prepared to manufacturer's recommended maximum VOC content, minus water and non-VOC solvents)

c. Each cleaning solvent present at the facility shall not exceed a VOC content of twenty-five (25) grams per liter (twenty-one one-hundredths (0.21) pound per gallon), calculated in accordance with the methods specified in this permit, except for [20 DCMR 718.4]:

1. Cleaning solvent used as bug and tar remover if the VOC content of the cleaning solvent does not exceed three hundred fifty (350) grams per liter (two and nine-tenths (2.9) pounds per gallon), where usage of cleaning solvent used as bug and tar remover is limited as follows:

A. Twenty (20) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with four hundred (400) gallons or more of coating usage during the preceding twelve (12) calendar months;

B. Fifteen (15) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with one hundred fifty (150) gallons or more of coating usage during the preceding twelve (12) calendar months; or

C. Ten (10) gallons in any consecutive twelve-month (12) period for an automotive refinishing facility and operations with less than one hundred fifty (150) gallons of coating usage during the preceding twelve (12) calendar months;

2. Cleaning solvents used to clean plastic parts just prior to coating or VOC-containing materials for the removal of wax and grease provided that non-aerosol, hand-held spray bottles are used with a maximum cleaning solvent VOC content of seven hundred eighty (780) grams per liter and the total volume of the cleaning solvent does not exceed twenty (20) gallons per consecutive twelve-month (12) period per automotive refinishing facility;

3. Aerosol cleaning solvents if one hundred sixty (160) ounces or less are used per day per automotive refinishing facility; or

4. Cleaning solvent with a VOC content no greater than three hundred fifty (350) grams per liter may be used at a volume equal to two-and-one-half percent (2.5%) of the preceding calendar year's annual coating usage up to a maximum of fifteen (15) gallons per calendar year of cleaning solvent.

d. The Permittee may not possess either of the following [20 DCMR 718.9]:

1. An automotive coating that is not in compliance with Condition (b) (relating to coating VOC content limits); and

2. A cleaning solvent that does not meet the requirements of Condition (c) (relating to cleaning solvent VOC content limits).

e. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]

Note: This condition is District enforceable only.

f. Visible emissions shall not be emitted into the outdoor atmosphere from the paint booth. [20 DCMR 201.1, 20 DCMR 606, and 20 DCMR 903.1]

The permit application and supporting documentation, along with the draft permit are available for public inspection at AQD and copies may be made available between the hours of 9:00 A.M. and 5:00 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 498-8143 or stephen.ours@dc.gov. Copies of the draft permit and related technical support memorandum are also available at: https://doee.dc.gov/service/public-notices-hearings.

A public hearing on this permitting action will not be held unless DOEE has received a request for such a hearing within 30 days of the publication of this notice. Interested parties may also submit written comments on the permitting action. The written comments must include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the draft permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
stephen.ours@dc.gov

No comments or hearing requests submitted after July 27, 2026 will be accepted.

For more information, please contact Stephen S. Ours at (202) 498-8143 or stephen.ours@dc.gov.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF INTENT TO ISSUE WATER QUALITY CERTIFICATION

Notice is hereby given that, pursuant to 21 DCMR Chapters 25 and 26, and 33 U.S.C § 1341, the Regulatory Review Division (RRD) of the Department of Energy & Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue Water Quality Certification (WQC) #WQC-DC-2026-192 to the District Department of Transportation (DDOT or "Permittee"), to conduct repairs to I-395 Northbound Bridge over the Potomac River, Washington, DC. The project proposes to replace the bascule span of the I-395 NB bridge with a fixed span, the steel barriers with current MASH crash-tested barriers, and the fender and dolphin system. The contact person for the project is Jack Harper, Jacobs Engineering, Jack.Harper@jacobs.com. **Contact information to request a public hearing is included at the end of the notice.**

Proposed Aquatic Resource Impacts:

Resource Type (stream/wetland)	Classification	Impact Size (square feet)	Activity Type	Impact Type (permanent/temporary)
Potomac River	Perennial	400	Pile Driving	Permanent
Potomac River	Perennial	900	Pile Driving	Temporary

The following conditions are expected to be included in the WQC:

1. The 100% design plans must be submitted to DOEE at least 60 days before work will commence for DOEE to review, provide responses for comment, and approve, deny, or determine whether a WQC modification application is required. In-water work and work that has the potential to impact water quality standards will not be authorized to proceed without DOEE review and approval.

2. In accordance with 21 DCMR §§ 2607, 2608, 2610, and 2611, the permittee shall mitigate permanent impacts to the Potomac River via payment into the District of Columbia's Wetland and Stream Mitigation Trust Fund. The In-Lieu Fee payment amount will be confirmed upon final design review. Work cannot commence until payment is received.

3. The Permittee shall incorporate best management practices as an integral part of the performance of the work to ensure the activity will meet the Water Quality Standards of the District of Columbia and have minimal impact to the waters of the District of Columbia.

4. Any water impacted by the project shall be pumped to an appropriate treatment system in compliance with the Water Pollution Control Act of 1984, D.C. Official Code § 8-103.02 and 21 DCMR § 1104.

5. Any oil sheen or other visible evidence of hydrocarbons or other pollution generated (e.g., color changes in the water column, turbidity plumes) during any of the activities shall be immediately reported to DOEE Industrial Stormwater and Wastewater Branch at (202) 805-1355 and contained (e.g., oil boom, sorbent materials) or containerized in a sealed container in accordance with D.C. Official Code § 8-103.08.

6. All excavated (e.g., dredged) sediments and sampling sediments (e.g., within cofferdams or excess sediment samples), drill cuttings, drilling mud, and wastes (both solid and liquid) shall be contained, sampled, and analyzed for disposal at appropriate disposal sites. The wastes shall not be used as backfill material in the water body or on land, in compliance with the Water Pollution Control Act of 1984, D.C. Official Code § 8-103.02 and 21 DCMR § 1104.

7. All debris and wastewater must be captured and not enter the river. Debris and wastewater shall be contained and disposed of properly at an appropriate treatment facility to prevent materials from entering the water body in compliance with the Water Pollution Control Act of 1984, D.C. Official Code § 8-103.02 and 21 DCMR § 1104.

8. The Permittee shall obtain all necessary permits and other authorizations from appropriate federal and local offices, including permits for Stormwater Management and Erosion and Sediment Control from DOEE in accordance with 21 DCMR §§ 516-534 and 540-547. All staging and temporary activity areas not covered by any permit shall have adequate soil erosion and sedimentation measures.

9. In the District, the anadromous fish migration and spawning season is generally considered to occur between March 1 and June 30. Any activities proposed to occur in District waters during this period shall first be approved by the U.S. Army Corps of Engineers, accompanied by concurrence from commenting federal agencies, including the U.S. National Park Service, U.S. Fish and Wildlife Service, and U.S. National Oceanic and Atmospheric Administration. All of the aforementioned approvals must be submitted to and subsequently certified by DOEE Fisheries and Wildlife Division (FWD) in accordance with 21 DCMR § 1405 to ensure compliance with 21 DCMR §§ 1101 and 1104. Please contact DOEE FWD at rese.cloyd@dc.gov to request a time of year restriction waiver.

10. The Permittee shall obtain all required permits and authorizations from the U.S. National Park Service. Please contact the Right-of-Way Program Coordinator at laura_brockington@nps.gov for more information.

11. To control turbidity, sediments, and work materials (e.g., concrete, sand, lumber) in the water body:
    a. Weighted turbidity curtains must be used if sediments are being disturbed or if the Permittee uses anchored equipment such as boats or barges.

b. Weighted turbidity curtains must be used in all activity/work areas and around equipment and cofferdams, and dewatering return areas. Turbidity curtains must be kept closed during all work activity.

c. The turbidity curtains must be in place after the equipment is brought into the work area, but before the equipment is anchored (i.e., before setting anchors) and before sediment disturbing activities begin. This is necessary to prevent sediments, contaminants, and work materials (e.g., concrete, sand, lumber) from escaping the work area and being reintroduced into the water column during the work activity. Turbidity curtains must not be dragged along the bottom while moving the barge/equipment.

d. The turbidity curtains must be properly anchored. Depth and placement of the turbidity curtain must be based on manufacturer's specifications for the site conditions, and encompass the entire area of activity, including cofferdams, barges, boats, and limits-of-disturbance, plus any equipment in the water. Turbidity curtains must be able to withstand normal tidal or stream flow fluctuations.

e. In the case that the turbidity curtains and/or anchors are causing turbidity during high currents, wakes or waves, they shall be removed until conditions return that allow their beneficial use.

12. To monitor turbidity in the water body to ensure compliance with District of Columbia Water Quality Standards in 21 DCMR § 1104.8, the Permittee shall:

a. Establish background turbidity and measure turbidity by using U.S. Environmental Protection Agency (EPA) approved methods in accordance with procedures outlined in 40 C.F.R. Part 136. Background turbidity must be established daily before starting sediment disturbing activities, before equipment is anchored, and before any turbidity curtains or cofferdams are in place. Background turbidity measurements shall be taken at the following locations and depths:

i. Within 25 feet upstream and 25 feet downstream, outside of the curtains.

ii. At multiple measurement depths depending on the water body depth, consistent with the table below.

Water Depth (ft)	# Measurements Depths	Water Column Measurement Depths
<1	1	Middle
1 to 4	2	¼ from bottom and ¾ from bottom
> 4	4	¼ from bottom, middle, ¾ from bottom, surface

b. Once the operations begin, turbidity measurements must be taken at least every hour from the same locations and depths established for the background measurement throughout the duration of the sediment disturbing activities.

c. If any turbidity measurements exceed a maximum of 20 Nephelometric Turbidity Units (NTU) above background turbidity, a visual sediment plume is observed coming out of the sediment-disturbing activity location, or the turbidity exceeds the District of Columbia Water Quality Standards in 21 DCMR § 1104.8 the Permittee shall take the following actions:
   i. Immediately stop all activities and implement best management practices until there is no more sediment escaping t he sediment-disturbing activity location; and
   ii. When measured turbidity is less than or equal to the background turbidity, the Permittee may resume the work; and
   iii. Per DOEE regulations, sediment plumes must be reported to DOEE Industrial Stormwater and Wastewater Branch at (202) 897-5341 or mary.polacek@dc.gov immediately.

d. The contractor may elect to use cofferdams and local dewatering to perform work "in the dry" within the cofferdams. Should cofferdams be installed to allow for dewatering of the worksite, turbidity monitoring shall occur during cofferdam installation, initial draw down, and any maintenance dewatering.

e. Prior to opening turbidity curtains, turbidity measurements must be taken inside the turbidity curtains. The turbidity curtains must not be opened until the levels inside the turbidity curtains are below the 20 NTU maximum differential.

f. The turbidity readings must be recorded in a logbook and kept on site. In addition to the turbidity readings, records must also be kept of the date and time of the readings, and name(s) of the person(s) taking the sample and making the readings.

g. If there is no water present on any certain day during operations, that information shall be recorded in the log book.

13. Temporary impacts to the Potomac River must be mitigated in-place by restoring those resources to pre-construction condition or better.

14. The DOEE inspector may require changes or additions to the WQC based on site conditions.

15. Reporting Requirements:
    a. The Permittee shall submit written notification to DOEE RRD at least seven (7) business days before work commences in accordance with 21 DCMR § 2502.3.

b. The Permittee shall email mary.polacek@dc.gov or call (202) 897-5341 to schedule an on-site or virtual DOEE preconstruction meeting inspection at least three (3) business days before starting any sediment disturbing work.

c. If the Permittee observes any water quality standard exceedances at the site, the Permittee must notify DOEE Industrial Stormwater and Wastewater Branch immediately at (202) 805-1355, stop the work, prepare and submit a corrective action plan for review and approval, and then implement the DOEE-approved corrective action plan in accordance with D.C. Official Code § 8-103.08.

d. Throughout the duration of permitted activities, the permittee must submit weekly turbidity monitoring reports to DOEE RRD through the Surface and Groundwater System (SGS) by the close of business every Tuesday after the one-week reporting period. Reports should contain the data recorded in the logbook kept onsite, including:
    i. the date and time of each turbidity reading,
    ii. the daily background turbidity readings,
    iii. the calculated differential of each reading compared to the daily background reading,
        a. If any readings exceeded 20 Nephelometric Turbidity Units (NTU) above background turbidity, provide details on how activities were stopped, confirmation that DOEE Industrial Stormwater and Wastewater Branch was notified, and details on best management practices that were implemented until the 20 NTU maximum differential was reached.
    iv. name(s) of the person(s) taking the sample and recording the readings,
    v. location and distance of each measurement relative to the turbidity curtain or cofferdam/dewatering equipment,
    vi. depth of each reading,
    vii. notes, and
    viii. photos (as applicable).

e. The Permittee shall email mary.polacek@dc.gov or call (202) 897-5341 to provide notification of project completion.

The application for a WQC, supporting documents, and the draft WQC may be made available upon request. Interested parties wishing to view these documents should provide their names, email addresses, telephone numbers and affiliation, if any, to wetlandprogram@dc.gov.

Interested persons may request a hearing on the WQC application by submitting a request in writing within 10 calendar days of publication of this notice.

Requests for a public hearing should be addressed to wetlandprogram@dc.gov. Alternatively, requests can be submitted via mail to:

Regulatory Review Division
#WQC-DC-2026-192
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002

For more information, please contact wetlandprogram@dc.gov or (202) 536-8556.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF FOR-HIRE VEHICLES

NOTICE OF FOR-HIRE VEHICLES ADVISORY COUNCIL MEETING

The For-Hire Vehicle Advisory Council will hold an in-person meeting on Monday, July 6, 2026, at 10:00 am. The meeting will be held in person at 2235 Shannon Place, SE, 2nd floor Hearing room, Washington, DC 20020, as well as via Zoom Webinar.

The final agenda will be posted no later than seven (7) days before the For-Hire Vehicle Advisory Council Meeting on the DFHV website at www.dfhv.dc.gov.

Members of the public are invited to participate in the Public Comment Period. You may present a statement to the Council on any issue of concern; the Council generally does not answer questions. Statements are limited to five (5) minutes for registered speakers. Time and agenda permitting, nonregistered speakers may be allowed two (2) minutes to address the Council. To register, please call 202-716-3295 no later than 3:00 p.m. on July 5, 2026. Registered speakers will be called first, in the order of registration. **Registered speakers must provide electronic copies of their typewritten statements to the Advisory Council Secretary, Christina Mendoza, at christina.mendoza@dc.gov, no later than the time they are called to testify.**

DRAFT AGENDA

I. Call to Order

II. Advisory Council Communication

III. Advisory Council Action Items

IV. Department of For-Hire Vehicles staff reports

V. Government Communications and Presentations

VI. Public Comment Period

VII. Adjournment

GLOBAL CITIZENS PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER SOLE-SOURCE CONTRACT

EMPOWERK12

Global Citizens Public Charter School (Global Citizens) intends to enter into a sole-source contract with EmpowerK12 for the 2026-2027 school year with the option to extend for up to three (3) years. The decision to enter into a sole-source agreement is due to our existing partnership with EmpowerK12. Global Citizens has engaged and contracted with this vendor since July 2025 and currently plans to continue using it during the 2026-2027 school year and beyond. Specifically, EmpowerK12 provides the following unique, important, and relevant services to our school:

> **EmpowerK12 is the sole provider capable of continuing management and support of our existing Bold Improvement Portal environment, including its proprietary platform, established data integrations, historical data infrastructure, predictive analytics, and continuous-improvement processes, without disruption to ongoing operations and reporting.**

The cost for this contract should not exceed $100,000.00. Questions should be received no later than 5:00 pm on Tuesday, July 7, 2026, to Sean Flora (Chief of Staff) at sflora@globalcitizensschool.org.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Nursing ("Board") hereby gives notice of its upcoming meeting, pursuant to Section 405 of the District of Columbia Health Occupation Revision Act of 1985, D.C. Official Code § 3-1204.05 (b).

The Board meets bi-monthly on the first Wednesday of every other month from 9:00 AM to 12:00 PM. The Board meeting will take place on Wednesday, July 1, 2026. The meeting will be open to the public from 9:00 AM until 10:00 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Act of 2010, D.C. Official Code § 2-574(b), the meetings will be closed from 10:00 AM to 12:00 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The in-person meeting will be held at Department of Health, 2201 Shannon Place, SE, Washington, DC 20020.

The detailed agendas for all open (public) session meetings and videoconference and telephone information will be posted at least one business day before the meeting on the DC Health website at https://dchealth.dc.gov/node/149382

DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following property as a historic landmark in the D.C. Inventory of Historic Sites. The property is now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

Designation Case No. 26-04: The Mozart
1630 Fuller Street NW (Square 2576, Lot 62)
Designated May 28, 2026
Applicant: Jubilee Housing Limited Partnership
Affected Advisory Neighborhood Commission: 1C

Listing in the D.C. Inventory of Historic Sites provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital city, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

DISTRICT OF COLUMBIA
HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following property as a historic landmark in the D.C. Inventory of Historic Sites. The property is now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

Designation Case No. 26-05: The Ritz
1631 Euclid Street NW (Square 2576, Lot 63)
Designated May 28, 2026
Applicant: Jubilee Housing Limited Partnership
Affected Advisory Neighborhood Commission: 1C

Listing in the D.C. Inventory of Historic Sites provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital city, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

HOWARD UNIVERSITY PUBLIC CHARTER MIDDLE SCHOOL OF MATHEMATICS AND SCIENCE

NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT

Special Education Consultant

Howard University Public Charter Middle School of Mathematics and Science (HUMS) intends to enter a sole source contract with Fairgreen Consulting for contracted Special Education coaching and consulting for the 2026-27 school year. Fairgreen Consulting will support the onboarding and training of the Special Education Coordinator, manage HUMS Related Service Providers, co-lead internal professional development for special education teachers, and lead LEA-wide communication, pertaining to IDEA compliance, to external stakeholders. Fairgreen Consulting will also observe meetings, professional development, and internal document management to ensure high-quality services to all students with disabilities. HUMS anticipates that the consulting agreement will exceed $25,000.00 during its fiscal year 2026 (July 1, 2026 – June 30, 2027).

The decision to sole source is because Howard University Public Charter Middle School of Mathematics and Science previously partnered with Fairgreen Consulting for Special Education consulting services during SY 2025-2026. In school year 2025-26, consultant Fairgreen Consulting supervised and coached special education leaders, ensured compliance with IDEA and ELL regulations. It would be most effective to continue a partnership with Fairgreen Consulting in SY 2025-26. Fairgreen Consulting is uniquely qualified to continue this partnership and has a proven history in leading special education compliance and coaching special education teachers and leaders.

The Sole Source Contract will be awarded at the close of business on July 1, 2026. If you have questions or concerns regarding this notice, contact **Leslie Boler** at **leslie@hu-ms2.org** no later than **5:00 pm on June 26, 2026.**

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Governance Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Governance Committee will hold a meeting via Microsoft Teams on Wednesday, July 8, 2026, at 9:30 a.m. This meeting will **not** be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. The Chief Executive Officer and General Manager invites the public to attend the meeting via Microsoft Teams. Below is the draft agenda for this meeting. Please see the final agenda posted to DC Water's website at www.dcwater.com, which will include remote access information for this meeting.

For additional information, please contact Debra Mathis, Acting Board Secretary at (202) 787-2331or Debra.Mathis@dcwater.com.

DRAFT AGENDA

1. Call to Order	Committee Chairperson
2. Emerging Issues	Committee Chairperson
3. Agenda for Upcoming Committee Meeting	Committee Chairperson
4. Executive Session	Committee Chairperson
5. Adjournment	Committee Chairperson

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Human Resources and Labor Relations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will hold a meeting via Microsoft Teams on Wednesday, July 8, at 11:00 a.m. This meeting will **not** be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. The Chief Executive Officer and General Manager invites the public to attend the meeting via Microsoft Teams. Below is the draft agenda for this meeting. Please see the final agenda will be posted to DC Water's website at www.dcwater.com, which will include the remote access information for this meeting.

For additional information, please contact Debra Mathis, Acting Board Secretary at (202) 787-2331 or Debra.Mathis@dcwater.com.

DRAFT AGENDA

1. Call to Order	Committee Chairperson
2. Action Items	Chief People and Inclusion Officer and EVP, People and Talent
3. Other Business	Committee Chairperson
4. Executive Session	Committee Chairperson
5. Adjournment	Committee Chairperson

*This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov***.**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 20191 of DC for Reasonable Development, pursuant to 11 DCMR Subtitle Y § 302, from decisions by the Zoning Administrator, Department of Consumer and Regulatory Affairs, on August 16, 2019 to issue demolition permit D1600814 to permit the demolition of several aspects of the McMillan Sand Filtration Site and on August 27, 2019 to issue foundation permit FD1800040 to permit the foundation of a new community center, in the RA-2 Zone at 2940 North Capitol Street, N.W. (Square 3128, Lot 800).[1]

HEARING DATE: August 5, 2020
DECISION DATES: May 27, June 24, and September 16, 2020, June 16, 2021, February 28, 2024, and June 10, 2026[2]

ORDER DENYING APPEAL

This appeal was submitted on October 15, 2019 by D.C. for Reasonable Development (the "Appellant"), a "non-profit citizens association…and directly affected members who have asked to participate in this appeal," also known as DC4RD. The appeal challenged two permits that authorized certain demolition and a foundation for a new community center on a portion of the property known as the McMillan Sand Filtration Site. After a public hearing, the Board voted to deny the appeal.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda and letters dated January 22, 2020, the Office of Zoning provided notice of the appeal and of the public hearing to the Appellant, the Zoning Administrator and the Department of Consumer and Regulatory Affairs ("DCRA"), the District of Columbia as the owner of the subject property, the Office of Planning, Advisory Neighborhood Commission ("ANC") 2D, and Single Member District 2D02, the Office of

[1] As of October 1, 2022, the zoning functions formerly performed by the Department of Consumer and Regulatory Affairs were assumed by the new Department of Buildings. *See* D.C. Official Code § 10-561.01 *et seq*.

[2] The Appellant submitted three motions after the close of the public hearing. The first, submitted on September 15, 2020, was an "emergency motion" asking the Board to "delay the decision on this appeal" on the ground that "plans are still in flux" for reasons including ongoing review related to historic preservation and the Commission of Fine Arts. (Exhibit 72.) For the reasons discussed in this order, the Board did not agree with the Appellant's assertions, which largely restated its arguments in the appeal. On May 27, 2021 and February 13, 2024, the Appellant filed "emergency motions to reopen the record" (Exhibits 73A, 75). However, those requests did not seek to submit additional material to the record but sought issuance of a written order in this proceeding. The Board denied the motions at public meetings because the Appellant did not state a basis or good cause for the requests to alter or direct the actions of the Board.

Advisory Neighborhood Commissions, and to the Councilmember for Ward 2 and to the Chairman and the four at-large members of the D.C. Council. Notice was published in the D.C Register on January 17, 2020. (67 DCR 362). The Office of Zoning provided notice of the appeal and public hearing by memoranda and letters dated March 12, 2020 to ANC 1B, ANC 5A, ANC 5E, and Single Member District 5E09.[3]

Party Status. Pursuant to Subtitle Y § 501.1, the Appellant, DCRA, the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") on behalf of the District of Columbia, and the affected ANCs were automatically parties in this proceeding. The Board received no requests to intervene in the proceeding.

Appellant's Case. The appeal challenged the issuance of demolition and foundation permits on the ground that the permits "risk[] imminent and permanent harm to the historic resources at McMillan Park, a national landmark on the historic register." According to the Appellant, "issuance of the permits are far premature contradicting basic zoning codes as well as the integrated Historic Preservation law." (Exhibit 1.)

Department of Consumer and Regulatory Affairs. DCRA argued that the appeal should be dismissed as "baseless," asserting that "several of the zoning regulations cited by the Appellant do not apply to the Zoning Administrator" and that "the Appellant failed to state with any specificity how the Zoning Administrator erred in issuing the Permits [challenged in the appeal]." (Exhibit 23.)

Property Owner's Case. The Office of the Deputy Mayor for Planning and Economic Development, on behalf of the District of Columbia as the owner of the property that was the subject of the appeal, urged the Board to dismiss the appeal as outside the Board's jurisdiction. (Exhibit 24.)

ANC Report. By report dated April 21, 2020, ANC 5E indicated that, at a public meeting on the same date, with a quorum present, the ANC voted to adopt a resolution that declined to take a position on the appeal. (Exhibit 30.)

FINDINGS OF FACT

1. The property that is the subject of this appeal is a portion of the site known as the McMillan Reservoir and Filtration complex located at or near 2940 North Capitol Street N.W. (Square 3128, Lot 800).

2. By order effective on April 17, 2015, the Zoning Commission for the District of Columbia approved, subject to conditions, an application for a first-stage planned unit development

[3] The public hearing was originally scheduled for March 11, 2020 and was postponed administratively after the Appellant requested a postponement. (Exhibit 22.) On June 24, 2020 the Board denied the Appellant's "emergency motion for in-person hearing" (Exhibit 32), which was opposed by DCRA and DMPED (see Exhibits 35, 37).

("PUD"), a consolidated PUD, and a related map amendment for a portion of the site, which was filed by Vision McMillan Partners LLC and the District of Columbia through DMPED. (Z.C. Order No. 13-14, Case No. 13-14; the "initial PUD order.")[4] The initial PUD order described the proposal as "a major redevelopment project at the McMillan Reservoir Slow Sand Filtration Site, located at 2501 First Street, N.W., Washington, D.C. (Square 3128, Lot 800)," where the PUD Site was "bounded by North Capitol Street to the east, Michigan Avenue to the north, First Street to the west, and Channing Street to the south, all in the northwest quadrant of Washington, D.C." The PUD Site was "part of the larger McMillan Reservoir and Filtration complex, a 92-acre facility…listed as an individual landmark in the D.C. Inventory of Historic Site and as a Historic District in the National Register of Historic Places."

3. The PUD site comprised approximately 24.7 acres, divided into seven parcels. The first-stage PUD provided for "approval of the master plan for the PUD Site" as well as Parcels 2 and 3. The consolidated PUD involved "five of the seven development parcels," including Parcel 6.

4. Parcel 6 was delineated as the "south one-third of the PUD Site." The planned development on Parcel 6 was described as "an eight acre park…including a 6.2-acre green space, a community center building, and the South Service Court comprised of historic structures to be retained and restored."

5. The initial PUD order noted that the "first-stage PUD Application includes the master plan for the PUD Site."

> The master plan orients construction on the PUD Site around a new, two-way internal street grid, which will disperse traffic and provide cross-site connectivity….The North and South Service Courts will be divided into two-way streets and will similarly be integrated into the proposed grid system. The Service Courts will preserve the historic regulator houses, silos (sand bins), and access bays to the underground sand filtration cells associated with the landmark. The overall development is set back from all edges of the PUD Site, retaining the existing topography of the PUD Site and recreating the elevated hawthorn-lined perimeter walkway originally designed by Frederick Law Olmsted, Jr. This perimeter walkway will be a publicly accessible recreational path set inside and parallel to the public sidewalk.
>
> The North and South Service Courts divide the PUD Site into three distinct development blocks. The northern block is comprised solely of Parcel 1, [which] will be developed with the Healthcare Facility with ground-floor retail uses….

[4] A corrected order was published in the D.C. Register on April 24, 2015 to revise certain findings of fact not relevant to this appeal.

> South of the North Service Court is the central block of the PUD Site, which the Applicant will develop with the Multi-Family Grocery Building containing approximately 281 residential units and a ground-floor grocery store (Parcel 4), and the 146 moderate density Rowhouses (Parcel 5). A future phase of development will also include an approximately 173,000 square foot healthcare facility with retail on the ground floor (Parcel 3) and an approximately 334,950 square foot mixed-use building with retail on the ground floor and residential units above (Parcel 2). This central portion of the PUD Site has a land area of approximately 447,565 square feet….
>
> The southern block of the PUD Site (Parcel 6), located between Parcel 5 and Channing Street, is the Park and will include the 6.2-acre green space, the community center, and the South Service Court. The southern block will also accommodate a construction and staging area for D.C. Water….

(Z.C. Order No. 13-14 at 10-11.)

6. The initial PUD order was vacated and remanded by the District of Columbia Court of Appeals. *See, Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027 (D.C. 2016).

7. By order on remand, effective June 8, 2018, the Zoning Commission again approved the application, subject to conditions, for a first-stage PUD and consolidated PUD as well as a related map amendment.[5] (*See*, Zoning Commission Order No. 13-14(6), Zoning Commission Case No. 13-14; the "PUD order"; *affirmed, Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 211 A.3d 139 (D.C. 2019).) Pursuant to the PUD order, Parcel 6 was included in the consolidated PUD that would be "developed as an eight-acre park…including a 6.2-acre green space, a community center building, and the South Service Court comprised of historic structures to be retained and restored."

8. In a section entitled "Consolidated PUD Development Parameters," the PUD order provided the following description of the planned development of Parcel 6:

> Parcel 6, which includes the South Service Court, shall be developed as a Park including a 6.2-acre open space with a community center, as shown on the drawings prepared by EEK Perkins Eastman Architects dated April 11, 2014, marked as Exhibit 32A to the record, and as supplemented by drawings submitted on June 23, 2014, marked as Exhibit 832A in the record. The community center shall be constructed to a maximum height of 26 feet and contain approximately 17,500 square feet of GFA, or a density of approximately .07 FAR. The community center shall include gallery space

[5] The PUD order, Zoning Commission Order No. 13-14(6), made additional findings of fact and conclusions of law that "support[ed] the Commission's decision to once again approve the Application….Those findings and conclusions are supplementary to those made in the [initial PUD] order, which [were] incorporated by reference into [the second PUD] Order" except [i]n the event of any conflict" between the two orders.

with exhibits on the history of the McMillan site, a 25-meter swimming pool, a multipurpose community meeting room with a catering kitchen, outdoor gathering space, fitness studio, and locker and shower facilities. This amenity shall be open to the public and provide a user-friendly and convenient space for public gatherings and community events. The multipurpose community meeting room shall include moveable partitions to create smaller and larger spaces for gathering. Parcel 6 shall have 21 dedicated parking spaces and a dedicated loading area located in the South Service Court. (pp. 86-87.)

9. The PUD order indicated that the Master Plan "was formulated between 2006 and 2014 to maximize the quantity and quality of Comprehensive Plan goals achieved." The plan

> progressed through several iterations, beginning with the 2006 Master Plan, and evolving through iterations in 2008, 2009, 2011, 2012, and the current plan. Throughout the process, the Applicant sought and received the input of the affected ANCs, civil associations, citizen groups, and various District of Columbia agencies. As is the case with a project of this magnitude, there was no unanimity reached, but the Applicant clearly recognized the need for preserving historic elements of the site while at the same time providing significant contiguous and usable open space, substantial affordable housing, and vibrant neighborhood-serving retail, without causing adverse traffic, visual, or environmental impacts. The Applicant came to realize it could not accomplish these things in any meaningful sense without an economic driver, which became the Parcel 1 Building….The overall challenge was to satisfy the Historic Preservation Review Board ("HPRB") that the design articulated the essential characteristics of the landmark, which were a tripartite organization with two long east/west courts with above-ground features, the plinth, views across the site from First Street to North Capitol Street, and the perimeter of the Olmstead Walk. The tripartite organization is the basis of the current plan….In sum, between 2008 to 2014, open space went from six to 12 acres, historic preservation went from 18 to 24 of the above-grade structures, including the plinth. Land use also changed, originally starting with office, hotel, and residential and evolving to healthcare, residential, retail, and a community center. (pp. 32, 36.)

10. DCRA issued Demolition Permit No. D1600814 to the District of Columbia on August 16, 2019. The description of work was stated as: "This permit is for the demolition of several aspect [*sic*] of the McMillan Sand Filtration Site, located at Square 3128, Lot 0800. This includes exterior filter walls, underground cells, and above ground structures." The "Conditions/Restrictions" of the permit included that: "THE EXISTING HISTORIC STRUCTURE LOCATED ADJACENT TO SAND WASHING #11 IS NOT PERMITTED TO BE REMOVED UNDER THIS PERMIT…." (Exhibit 7.)

11. DCRA issued Foundation Permit No. FD1800040 to the Department of General Services ("DGS") on behalf of the District of Columbia Government on August 27, 2019. The

description of work was stated as: "DGS MCMILLAN FOUNDATION FOR NEW COMMUNITY CENTER." (Exhibit 7.)

12. A PUD covenant was executed on November 6, 2019 by the District of Columbia, acting through DMPED, and Vision McMillan Partners, LLC to bind them, and their successors and assigns, to construct and use the PUD Site in accordance with the order issued by the Zoning Commission in Z.C. Case No. 13-14(6). The executed covenant was recorded among the Land Records of the District of Columbia on November 26, 2019. (Exhibit 23A.)

CONCLUSIONS OF LAW AND OPINION

The Board is authorized by § 8 of the Zoning Act to "hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal made by…any…administrative officer or body in the carrying out or enforcement" of the Zoning Regulations. D.C. Official Code § 6-641.07(g)(1). Appeals to the Board "may be taken by any person aggrieved, or organization authorized to represent such person…by any decision…granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part upon any zoning regulation or map [adopted pursuant to the Zoning Act]….There shall be a public hearing on appeal." D.C. Official Code § 6-641.07(f). *See also* Subtitle Y § 302.1. The Board "has no jurisdiction to hear and decide any appeal or portion of any appeal where the order, requirement, decision, determination, or refusal was not based in whole or in part upon any zoning regulation or map." (Subtitle X § 1100.3.)

Both DCRA and DMPED filed motions asking the Board to dismiss the appeal as outside the scope of its jurisdiction. (See, Exhibits 23, 24.) The Appellant opposed dismissal of the appeal and filed a motion for "summary affirmance" of the appeal on the ground that the permits had been issued prematurely while a second-stage PUD review was still pending. (Exhibit 34). That motion was opposed by both DCRA and DMPED, which asserted that the Board's rules do not authorize the Board to grant an appeal without a hearing. (Exhibits 35, 36.)

The Board agreed with DCRA and DMPED in denying the motion for summary affirmance. After completing the public hearing, the Board concluded that the appeal must be denied. The Board did not agree with DCRA or DMPED that the appeal should be dismissed but determined that the Appellant failed to show any zoning error associated with the issuance of the two challenged permits. The appeal attempted to raise arguments that were outside the Board's jurisdiction to the extent that the Appellant alleged violations of historic preservation laws, which concerned matters that were not based in whole or in part on any zoning regulation or map and therefore were not considered by the Board. In other respects, including the Appellant's objections that the permits were issued prematurely or were based on plans not in conformance with the Commission's PUD order, the Board concluded that the Appellant did not meet its burden of proving any error in the administration of the Zoning Regulations by DCRA in connection with the issuance of the demolition and foundation permits.

In its initial statement of the appeal, the Appellant argued that the "issuance of any permits by DCRA for any work at the site associated with McMillan Park project is premature pursuant to Court directives, Historic Preservation Law, and the intersection of these with the DC Zoning Regulations." (Exhibit 2.) In support of that contention, the Appellant cited "Generally DC Code § 6–641.07 and DC Municipal Regulations Chapter 11" as well as "the integration of DC Historic Preservation Law that says an applicant cannot demolish all or parts of historic sites until financial feasibility has been determined and until a Building permit is issued pursuant to DC Code § 6–1104(h)." The Appellant quoted Zoning Commission Order No. 13-14(6) in arguing that "demolition/rehabilitation/redevelopment activities cannot start at McMillan Park given the following Zoning Regulations," that is, Subtitle X §§ 309.2, 311.1, and 311.3 and Subtitle Z §§ 702.7 and 702.8.[6]

Later, in opposing the motions to dismiss the appeal, the Appellant modified its claim that the permits had been issued prematurely by asserting that the permits should not have been issued until the Zoning Commission approved applications for second-stage PUD approvals for the McMillan site since "the PUD project and conditions may change upon Second-stage review." According to the Appellant, "the Zoning Commission must still consider and expressly provide Second-Stage approvals for the McMillan Park 'Master Plan,' 'Parcel 2,' and 'Parcel 3' before permits can be issued." The Appellant asserted that the Master Plan called for "the demolition of

[6] The appeal cited provisions in Subtitle X (General Procedures) § 309 (Planned Unit Development Approvals), Subtitle X § 311 (Implementation), and Subtitle Z (Zoning Commission Rules of Practice and Procedure) § 702 (Validity of Approvals and Implementation).

Subtitle X § 309.2: "If the Zoning Commission finds the application to be in accordance with the intent and purpose of the Zoning Regulations, the PUD process, and the first-stage approval, the Zoning Commission shall grant approval to the second.-stage application, including any guidelines, conditions, and standards that are necessary to carry out the Zoning Commission's decision."

Subtitle X § 311.1: "Following approval of an application by the Zoning Commission, the applicant may file an application for a building permit with the proper authorities of the District of Columbia."

Subtitle X § 311.2: "The Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Zoning Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Zoning Commission may have applied. Nor shall the Zoning Administrator accept the establishment of an escrow account in satisfaction of any condition in the Zoning Commission's order approving the PUD unless the order expressly authorizes an escrow.

Subtitle X § 311.3: "The Zoning Administrator shall not approve a permit application unless the applicant has recorded a covenant in the land records of the District of Columbia between the owner or owners and the District of Columbia satisfactory to the Office of the Attorney General and the Zoning Administrator, which covenant will bind the owner and all successors in title to construct on and use the property only in accordance with the adopted orders, or amendments thereof, of the Zoning Commission.

Subtitle Z § 702.7: "Following approval of an application by the Commission, the applicant may file an application for a building permit with the proper authorities of the District of Columbia."

Subtitle Z § 702.8: "The Zoning Administrator shall not approve a permit application unless the plans conform in all respects to the plans approved by the Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Commission may have applied. Nor shall the Zoning Administrator accept the establishment of an escrow account in satisfaction of any condition in the Commission's order approving the PUD."

the historic assets at the site as well as the delivery of a community center in the southeast corner of the site, among other components of the…project." Because the Commission approved only "First-Stage zoning conditions of the 'Master Plan,'" the Appellant argued that "complete PUD approval, First-Stage and Second-Stage," was required before the plans for "demolition and construction activities across the entirety of the site" could be finally approved. (Exhibit 38.)

In a subsequent submission, the Appellant stated "the two key appeal issues" as allegations that (1) the Zoning Administrator erred in approving the premature issuance of the demolition and foundation permits "in contradiction of the plain reading of the DC Zoning Regulations" and without issuing any explanation of the approval, and (2) the "Zoning Regulations require recordation of land covenants before permits can be issued, yet the restrictive preservation covenants that run with the land deed now, and in perpetuity, are not found on the DCRA or BZA record." The Appellant reiterated its argument that second-stage approval of the Master Plan was required before the permits could be issued, in part because plans for the community center might be changed by the Commission of Fine Arts ("CFA"). (Exhibit 42.) The Appellant later submitted an "emergency motion" purporting to provide "recently discovered information" to support the claim that the permits were issued prematurely with respect to "the Zoning Regulations and intersecting key historic preservation requirements" associated with the PUD site. The Appellant asserted that the Commission of Fine Arts was then "in the administrative process of changing the plans for the Community Center which is part of the McMillan Master Plan and by which the Foundation Permit was erroneously issued by DCRA…." In that submission, the Appellant stated the following "facts":

> (1) The Zoning Administrator approved the DCRA issuance of the Permits and did so without providing any written Letter of Determination on the public record.
> (2) The Zoning Administrator received several emails from Appellants seeking written explanation as to why applicable Zoning Regulations did not apply to his review when approving the issuance of the Permits. The Zoning Administrator never replies to the substance of the Appellants inquiry.
> (3) The Appellants inquiry to the Zoning Administrator listed specific citations to applicable Zoning Regulations that were bypassed during the Permit review process behind closed doors at DCRA.
> (4) The Permits were issued based on the Zoning Administrator's approval founded on his position that the Permits would not contradict the Zoning Regulations in any way. Again the ZA's position is never expressed in writing at all despite requests seeking as such.
> (5) The Demolition Permit and Foundation Permits rest upon the McMillan "Master Plan" which still requires Second Stage PUD zoning review and approvals.
> (6) The covenants recorded on the record per the Zoning Regulations do not include the existing historic preservation covenants that run with the McMillan Park deed in perpetuity.
> (7) Recently discovered information shows that the US Commission of Fine Arts is still deliberating the Community Center component of the McMillan "Master Plan" and that the design as approved by the Zoning Commission is still being changed.

(Exhibit 52.)

In every appeal, the "appellant shall have the burden of proof to justify the granting of the appeal. If no evidence is presented in opposition to the case, the appellant shall not be relieved of this responsibility." (Subtitle § 1101.2.) An appellant is required to submit all information required by the appeal at the time of filing the appeal. (Subtitle Y § 302.12.) The necessary information includes a "statement of the issues on appeal," identifying the relevant subsections of the Zoning Regulations for each issue, as well as summaries of the testimony of witnesses and all statements, information, and exhibits that the appellant might want to offer in evidence at the public hearing. (Subtitle Y § 302.12(g), (h), (j).) An appeal may not be amended to add issues not identified in the statement of the issues on appeal unless the appellee impeded the appellant's ability to identify the new issues identified. ((Subtitle Y § 302.13.)

Even considering all of the Appellant's submissions throughout this proceeding, the Board was not persuaded that the issuance of the demolition and foundation permits violated any provision of the Zoning Regulations. The Board did not agree with the Appellant that an "intersection" of the Zoning Regulations and historic preservation requirements brought the Appellant's claims of violations based on historic preservation within the Board's jurisdiction.[7] The Board has the authority to hear and decide appeals in which an appellant alleges an error in an order or other decision made in the carrying out of the Zoning Regulations. The Zoning Regulations do not encompass the historic preservation statute or regulations, which are stated in separate provisions

[7] The Board finds no merit in the Appellant's contention that the Board "do[es] have jurisdiction over the CFA." (Transcript of August 5, 2020 at 56.) The jurisdiction of the Board of Zoning Adjustment is determined by the Zoning Act, which authorizes the Board to make "special exceptions to the provisions of the zoning regulations" adopted by the Zoning Commission, to interpret zoning maps and decide "disputed questions of lot lines…or similar questions as they arise in the administration of the regulations," to decide appeals of administrative decisions "based in whole or in part upon any zoning regulation or map," and to grant variances from the strict application of zoning regulations under specific conditions. D.C. Official Code § 6-641.07(d), (f), (g).

The provisions cited by the Appellant, two of which apply only to applications involving chanceries, reflect that some proposals are subject to both zoning and historic preservation review. None of the cited provisions extends the jurisdiction of the Board to matters within the purview of the Commission of Fine Arts. The Appellant cited Subtitle A § 400 (pursuant to Subtitle A § 400.1: in addition to zoning provisions, any building or structure erected after May 12, 1958 within the area of jurisdiction of the Shipstead-Luce Act or within the area of jurisdiction of the Old Georgetown Act shall be subject to the architectural review established by those acts and administered by the Commission of Fine Arts), Subtitle X § 203.6 (if an application to locate, replace, or expand a chancery use, not otherwise permitted as a matter of right, to implement the Foreign Missions Act, would require the construction, demolition, or alteration of a building located in a historic district, the alteration or demolition of a historic landmark, or the construction of a building or structure on the site of a historic landmark, the application must be referred to the Historic Preservation Review Board, and if the property is located in the Old Georgetown District it shall also be referred to the Commission of Fine Arts for the Historic Preservation Review Board and the Commission of Fine Arts to report as to whether the substantive criteria of Subtitle X § 201.9 have been met), and Subtitle Y § 405.8(c) (when a chancery application is filed, the Office of Zoning must make certain referrals, including to the Historic Preservation Review Board, if the application would require the construction, demolition, or alteration of a building located in a historic district, the alteration or demolition of a historic landmark, or the construction of a building or structure on the site of a historic landmark, and to the Commission of Fine Arts, for its review and report as to whether the substantive criteria of Subtitle X § 202.2 have been met, if the property is located in the Old Georgetown District).

of the D.C. Official Code and the District of Columbia Municipal Regulations from zoning requirements and are separately administered.

With respect to the Appellant's initial submission, the Board agreed with DCRA's assertion that most of the regulations cited by the Appellant (specifically, Subtitles X §§ 309.2 and 311.1 and Subtitle Z § 702.7) were "purely procedural and do not govern actions by the Zoning Administrator" but addressed the Zoning Commission or an applicant for approval of a planned unit development. As DCRA and DMPED both noted, the Appellant cited various zoning regulations without providing any factual support for any claim of error or explaining how the cited provisions demonstrated an error by the Zoning Administrator in approving issuance of the permits challenged in the appeal. (Exhibits 23, 24, 31.) At the public hearing, the Appellant "clarified" that some of the regulations listed in the initial statement of the appeal were not intended to reflect claims of error but to "set[] the standard by which the Zoning Administrator…[was] supposed to be reading the Regs before he approves the permits…." The clarification was offered in support of the Appellant's claim that issuance of the permits violated Subtitle Z § 702.8 on the ground that the Zoning Administrator approved the permit application without ensuring that the permit plans conformed to the plans approved by the Zoning Commission. (Transcript of August 5, 2020 at 55-56.) For the reasons discussed below, the Board concludes that the Appellant did not demonstrate any zoning error in connection with DCRA's issuance of the demolition and foundation permits challenged in this appeal. The Appellant did not show that issuance of the permits violated Subtitle Z § 702.8 or any other zoning regulation. The appeal did not specify any error made by DCRA, and the Board determined that no error occurred, with respect to Subtitle X § 309.2, which addresses the Zoning Commission, or with respect to Subtitle X § 309.11 or Subtitle X § 702.7, which indicate when an applicant may file an application for a building permit,

The Appellant repeatedly objected that the Zoning Administrator did not provide any written explanation for approving the permits despite the Appellant's request. However, the Appellant did not cite any zoning regulation that required such an explanation. The Board agreed with DCRA that the Zoning Administrator's approval of the issuance of the permits indicated a determination by the Zoning Administrator that the permits were consistent with zoning requirements.[8] The Appellant claimed to have provided the Zoning Administrator a list of "specific citations to applicable Zoning Regulations that were bypassed during the permit review process" but did not make any substantiated claims of error in this appeal or demonstrate any violation of zoning requirements in connection with the two permits.

[8] See Exhibit 31. In addition, the Zoning Administrator testified that a property owner or developer might request a determination letter "for scoping out a project prior to a permit application or certainly before a permit issuance…trying to get information about the applicability of the zoning regulations to a particular design scheme." With respect to the McMillan PUD, "there was no request from the property owner for a determination letter, nor [had the Zoning Administrator] issued one. And there's no obligation to issue a determination letter if none has been requested…." The Zoning Administrator testified that determination letters were not required or issued to third parties after a permit was issued. According to the Zoning Administrator, "there's no need to do a determination letter…after the [Zoning Administrator's] office complete[s its] zoning analysis and approve a permit application, because approval of a permit application by the Office of the Zoning Administrator indicates their determination that the permit meets zoning requirements; "the permit itself speaks to that conformance with the zoning regulations…." (Transcript of August 5, 2020 at 83-85.)

The Appellant argued that the two permits were issued prematurely before the Zoning Commission completed its approval of the second-stage PUD, including the McMillan Master Plan, and before the Commission of Fine Arts determined the final design of the community center. The Board did not agree. The Zoning Commission approved the redevelopment of the McMillan site as both a first-stage PUD for certain aspects of the project and as a consolidated PUD for other aspects, which included the construction of a new community center on a portion of the site designated as Parcel 6. Approval as a consolidated PUD did not require a separate proceeding to obtain second-stage approval.[9] Instead, approval of the consolidated PUD authorized the filing of a building permit for the project in accordance with Subtitle Z § 702.7. The Appellant did not identify any provision in the Zoning Regulations or in the Commission's order approving the PUD that required any additional proceedings before DCRA could issue permits for the consolidated PUD, including the new community center on Parcel 6.

Inclusion of the Master Plan as part of the first-stage approval did not require a different result. In its initial order, the Commission noted that the "Master Plan introduces several new streets within and access points to the PUD Site. The new street system incorporations new internal blocks that connect the VA/Washington Hospital Center to the north to the Bloomingdale neighborhood to the south, and provide multi-modal connectivity and circulation within and throughout the entire PUD Site." The initial order addressed the relevance of the Master Plan with respect to urban design, architecture, and site planning,[10] to public art,[11] and to historic preservation.[12] The Commission's subsequent PUD order, No. 13-14(6), also approved the Master Plan as part of the first-stage PUD along with Parcels 2 and 3, with the remainder of the PUD site approved as a consolidated PUD. The PUD order stated "development parameters" for the first-stage PUD that

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[9] An application for approval of a planned unit development may be filed for either a one-stage, a two-stage, or a consolidated PUD. (Subtitle X § 302.1.) In the case of a two-stage PUD (a) the first-stage application involves a general review of the site's suitability as a PUD and any related map amendment; the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed; and the compatibility of the proposed development with the Comprehensive Plan, and city-wide, ward, and area plans of the District of Columbia, and the other goals of the project; and (b) the second-stage application is a detailed site plan review to determine transportation management and mitigation, final building and landscape materials and compliance with the intent and purposes of the first-stage approval, and the Zoning Regulations. (Subtitle X § 302.2.)

A consolidated application must incorporate all the information and material required for both a first- and second-stage application into one application, with all information submitted at the time of initial filing. (Subtitle X § 302.3.) When the Zoning Commission decides whether to conduct a public hearing on a consolidated application, the Commission must determine whether the application is sufficiently clear and detailed to be considered at one proceeding. (Subtitle X § 302.4.)

[10] "The PUD will be developed substantially in accordance with the master plan prepared by EEK Perkins Eastman Architects dated April 11, 2014 (Ex. 32A1A1-32A1A26 and 32A2A1-32A2A72…) and supplemented by drawings submitted on June 23, 2014 (832A1-832A3…). Z.C. Order No. 13-14 at 21.

[11] "The Applicant will implement and follow the Master Plan Design Guidelines prepared by EEK Perkins Eastman Architects (Ex. 17C); and the Cultural DC Public Art Master Plan. (Ex. 17D10)." Z.C. Order No. 13-14 at 22.

[12] "…[E]ach of the preserved historic elements will be sensitively integrated into the PUD master plan, and will continue to convey their significance in a new setting of buildings that respect the history of the PUD Site." Z.C. Order No. 13-14 at 22.

addressed architectural plans,[13] project uses and density,[14] and building height for planned buildings on Parcels 1 through 6[15] as well as design and public art guidelines.[16] The PUD order also stated development parameters for the consolidated PUD, addressing the approved uses and sizes of new buildings on Parcels 1, 4, 5, and 6 as well as the development of Parcel 7 and the parking and loading requirements for each parcel.[17] The PUD order specified that "[t]he Applicant shall have the option to construct the Project in phases, as shown on the plans…." Phase 1 consisted of Parcels 1, 4, 5, 6, and 7; Phase II consisted of Parcels 2 and 3. The order stated deadlines for filing applications for building permits and for construction of the phases.[18] The Applicant was directed to "obtain a building permit for all the necessary public infrastructure to support the development of Parcels 1, 4, 5, 6, and 7, including all project site work…" before a certificate of occupancy would be issued for the new building on Parcel 1. The order also directed the Applicant to "obtain a building permit to construct the Community Center" and other specified

[13] "The PUD shall be developed in accordance with the Master Plan (Volume 1) and the PUD and Consolidated Stage Two (Volume 2)…supplemented by [specific drawings marked as exhibits in the record] as modified by the guidelines, conditions, and standards herein." Z.C. Order No. 13-14(6) at 85.

[14] "The PUD shall be a mixed-use development devoted to residential, retail, service, institutional, community, and medical and related office uses, as shown on the approved Master Plan." The order specified the maximum overall density of the PUD as well as its combined gross floor area. Z.C. Order No. 13-14(6) at 85.

[15] The order specified that "Parcel 7 shall be improved with the existing historic silos (sand bins) and regulator houses." Z.C. Order No. 13-14(6) at 85.

[16] The Applicant was directed to "implement and follow the Master Plan Design Guidelines…marked as Exhibit 17C to the record…and the Cultural DC Public Art Master Plan as marked as Exhibit 17D10 to the record." Z.C. Order No. 13-14(6) at 85.

[17] The order specified that "Parcel 6, which includes the South Service Court, shall be developed as a Park including a 6.2-acre open space with a community center, as shown on the drawings prepared by EEK Perkins Eastman Architects dated April 11, 2014, marked as Exhibit 32A to the record, and as supplemented by drawings submitted on June 23, 2014, marked as Exhibit 832A in the record. The community center shall be constructed to a maximum height of 26 feet and contain approximately 17,500 square feet of GFA, or a density of approximately .07 FAR. The community center shall include gallery space with exhibits on the history of the McMillan site, a 25-meter swimming pool, a multipurpose community meeting room with a catering kitchen, outdoor gathering space, fitness studio, and locker and shower facilities. This amenity shall be open to the public and provide a user-friendly and convenient space for public gatherings and community events. The multipurpose community meeting room shall include moveable partitions to create smaller and larger spaces for gathering. Parcel 6 shall have 21 dedicated parking spaces and a dedicated loading area located in the South Service Court." Z.C. Order No. 13-14(6) at 86-87.

[18] Condition E.2. of the PUD order stated: "The Consolidated PUD shall be valid for a period of two years from the effective date of Z.C. Order No. 13-14(6). Within such time, an application must be filed for a building permit for the construction of Phase I of the project…as specified in 11 DCMR § 2409.1. Construction of Phase I of the project must commence within three years of the effective date of this Order. The Applicant shall not be required to file an application for a building permit for the park on Parcel 6 or the improvements to Cell 14 on Parcel 1 until six months prior to the date that D.C. Water intends to vacate that particular portion of the Phase I PUD site. Construction of the park on Parcel 6 or the improvements to Cell 14 must commence within one year after the building permit is issued for that portion of the Phase I PUD site." Z.C. Order No. 13-14(6) at 95.
Pursuant to Condition E.3 of the PUD order, "The first-stage PUD shall be valid for a period of two years after the effective date of this Order during which time the Applicant shall file a stage-two PUD application for Phase II of the PUD. The Applicant shall provide the Commission with an update of its implementation of the TIP, and its compliance with the Community Benefits Chart and Payment Schedule, with each second stage PUD application. (Ex. 849C.)" Z.C. Order No. 13-14(6) at 95.

elements of the McMillan PUD before a certificate of occupancy would be issued for the Parcel 1 building.

Based on the foregoing, the Board concluded that nothing in the PUD order required second-stage approval of the Master Plan before any permits could be issued for the PUD site, including with respect to all the parcels included in the consolidated PUD. The PUD order described the purpose of the Master Plan and how it evolved over a period of years with input from a variety of sources. The Commission's approval of the Master Plan as a first-stage PUD established a framework and identified important elements of the McMillan project as a whole. Significant aspects of the project were simultaneously approved as a consolidated PUD with deadlines intended to ensure that the applicant pursued construction of the development expeditiously, before the Commission would address applications for second-stage approval of the aspects of the McMillan project that were approved in a two-part process. The Appellant did not demonstrate that the demolition and foundation permits were issued prematurely or that the permits were otherwise contrary to any provision in the Zoning Commission's orders or the Zoning Regulations with respect to the timing of second-stage approval of the Master Plan.

Similarly, the Appellant did not demonstrate that review by the Commission of Fine Arts precluded the issuance of permits for Parcel 6. The Appellant did not identify any zoning regulation that precluded issuance of the demolition and foundation permits until after the completion of review by the Commission of Fine Arts. The PUD order and attendant PUD covenant required the development of Parcel 6, including the community center, in conformance with the plans approved by the Zoning Commission. The Board credited the testimony of the Zoning Administrator that the demolition permit did not implicate zoning requirements because the Zoning Regulations generally do not address the removal of a structure, and the foundation permit for the community center did not authorize any above-ground construction that could be affected by CFA review.[19] (Transcript of August 5, 2020 at 81-86, 88.)

The Board was not persuaded by the Appellant's claim that the Zoning Administrator approved the permit applications despite a lack of conformity to the plans approved by the Zoning Commission. The Zoning Regulations direct the Zoning Administrator not to approve a permit application "unless the plans conform in all respects to the plans approved by the Commission, as those plans may have been modified by any guidelines, conditions, or standards that the Commission may have applied." (Subtitle Z § 702.8.) The Appellant did not identify any disparities or lack of conformity between the plans submitted as part of any permit application and the plans approved by the Commission. DCRA and DMPED both cited plans submitted in the record in asserting that the Appellant's claim of a violation of Subtitle Z § 702.8 was incorrect. (Exhibits 43, 44.) As DMPED noted, the PUD order did not specify the type or aspects of the foundation required for the new community center but stated "the basic dimensions of the building and a list of its included amenities" while also allowing flexibility with the design of the PUD in certain respects. (Exhibit 43.) The Board credited the testimony of the Zoning Administrator that the permit application illustrated the foundation of the community center and that the Office of the

[19] According to DMPED, the CFA review did not result in any changes to the planned community center, including its foundation. (Exhibits 46, 58.)

Zoning Administrator confirmed that the dimensions and location shown in the permit application were consistent with the exhibits approved by the Zoning Commission in the PUD proceeding. The Zoning Administrator explained that "CFA normally is involved with the above-grade construction, the appearance of buildings," while the foundation permit did not address the building but only the foundation at or below grade. (Transcript of August 5, 2020 at 89-90.)

Similarly, the Board found no merit in the Appellant's arguments with respect to the PUD covenant, which was recorded after the demolition and foundation permits were issued. The appeal cited a zoning provision, Subtitle X § 311.3, which states in relevant part that "The Zoning Administrator shall not approve a permit application unless the applicant has recorded a covenant…, which covenant will bind the owner and all successors in title to construct on and use the property only in accordance with the adopted orders, or amendments thereof, of the Zoning Commission." Subtitle X § 311 is part of Subtitle X (General Procedures), Chapter 3 (Planned Unit Developments). The initial provision in that section states that "Following approval of an application by the Zoning Commission, the applicant may file an application for a building permit with the proper authorities of the District of Columbia." (Subtitle X § 311.1.) Assuming that the reference to "permit application" in Subtitle X § 311.3 encompassed the applications for the demolition and foundation permits at issue in this appeal, the timing of the issuance of the permits, before the covenant was recorded, constituted a violation of zoning requirements. The Board concluded that any error resulting from the violation was harmless under the circumstances of this appeal. The Appellant did not identify any consequences from the timing, and DMPED stated that no demolition or construction work had begun yet at the PUD site at the time the PUD covenant was recorded. (Exhibit 46.)

The Appellant asserted that the violation was not remedied by the covenant recorded after the permits were issued because "the covenants that the Zoning Administrator has used to grant the permits are not complete in scope as they are missing the Historic Preservation covenants that ride with the land in perpetuity…." (Transcript of August 5, 2020 at 63-64.) This claim was also stated as an objection that "the covenants recorded…per the Zoning Regulations do not include the existing historic preservation covenants that run with the McMillan Park deed in perpetuity." (Exhibit 52.)

The Board did not agree, because the purpose of a PUD covenant recorded in accordance with Subtitle X § 311.3 is to "bind the owner and all successors in title to construct on and use the property only in accordance with the adopted orders…of the Zoning Commission." A PUD covenant is intended to ensure the development of a PUD site consistent with the decision of the Zoning Commission in approving a PUD application. With respect to the McMillan site, the Appellant did not state any claims of error concerning whether the recorded PUD covenant would bind the owner and all successors in title to construct on and use the property consistent with the PUD order issued by the Zoning Commission. Any historic preservation covenants applicable to the PUD site would be administered and enforced separately from applicable zoning requirements. The Board lacked jurisdiction to consider any allegations based on covenants related to historic preservation requirements, which were not required by any provision in the Zoning Regulations or based in whole or in part on any zoning regulation or map. Accordingly, the Board found no merit

in the Appellant's claim of zoning error based on an unsubstantiated allegation of historic preservation covenants affecting the McMillan site.

Great weight. The Board is required to give "great weight" to the legally relevant issues and concerns raised by an affected ANC. (Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A)). No ANC participated in this appeal other than ANC 5E, which submitted a report that declined to take a position, stating that resolution of the appeal concerned "issues which require legal knowledge and expertise that the ANC does not possess." (Exhibit 30.) Accordingly, the Board did not receive any statement of issues and concerns from any affected ANC in this proceeding to which the great weight requirement would apply.

Exceptions to the Proposed Order. Because a majority of the Board members participating in the issuance of this order did not personally hear the evidence in this appeal, a proposed order was provided to the parties on February 10, 2026 to afford them an opportunity to present written exceptions, in accordance with D.C. Official Code § 2-509(d). The Board received no exceptions.

Based on the findings of fact and conclusions of law, the Board concludes that the Appellant has not shown an error in the decisions made by the Zoning Administrator, Department of Consumer and Regulatory Affairs, on August 16, 2019 to issue demolition permit D1600814 to permit the demolition of certain aspects of the McMillan Sand Filtration Site or on August 27, 2019 to issue foundation permit FD1800040 to permit the foundation of a new community center, in the RA-2 Zone at 2940 North Capitol Street, N.W. (Square 3128, Lot 800). Accordingly, it is therefore **ORDERED** that the **APPEAL** is **DENIED** and the Zoning Administrator's determinations are **SUSTAINED**.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Peter A. Shapiro to DENY the appeal, one Board seat vacant)

VOTE: 4-0-1 (Gwen M. Wright, Melissa Lindsjo, Michelle Pourciau, Paul Goldstein voting to issue this Order; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 12, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Appeal No. 20232 of ANC 6C, pursuant to 11 DCMR Subtitle Y § 302, from the decision made on November 13, 2019 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Certificate of Occupancy CO2000481 permitting a non-residential floor area ratio exceeding the maximum permitted in the NC-10 Zone at 337 H Street N.E.(Square 777, Lot 52).[1]

HEARING DATE: July 1, 2020
DECISION DATES: July 8, 2020 and June 10, 2026

ORDER DENYING APPEAL

This appeal was filed on January 9, 2020 by Advisory Neighborhood Commission 6C ("ANC" or "Appellant") to challenge a decision made by the Zoning Administrator at the Department of Consumer and Regulatory Affairs ("DCRA") to issue a certificate of occupancy that allegedly permitted a non-residential floor area ratio ("FAR") in excess of the maximum permitted in the NC-10 zone at 337 H Street N.E. (Square 777, Lot 52). Following a public hearing, the Board voted to deny the appeal.

PRELIMINARY MATTERS

Notice of Appeal and Notice of Hearing. By memoranda and letters dated February 19, 2020, the Office of Zoning provided notice of the appeal and of the public hearing to ANC 6C, as the Appellant and the ANC in which the property that is the subject of the appeal is located; Single Member District 6C04; the Zoning Administrator; Lois Jones, the owner of the property that was the subject of the appeal ("Property Owner"); the Office of Planning; the Office of Advisory Neighborhood Commissions; and the Councilmember for Ward 6 as well as the Chairman and three at-large members of the D.C. Council.[2] Notice was published in the *District of Columbia Registe*r on February 14, 2020 (67 DCR 1497).

Party Status. Pursuant to Subtitle Y § 501.1, the Appellant, DCRA, and the Property Owner were automatically parties in this proceeding. The Board received no requests to intervene.

[1] As of October 1, 2022, the zoning functions formerly performed by the Department of Consumer and Regulatory Affairs were assumed by the new Department of Buildings. *See* D.C. Official Code § 10-561.01 *et seq*.

[2] The public hearing was originally scheduled for April 8, 2020. On March 11, 2020, Mayor Muriel Bowser declared a state of emergency due to the coronavirus as part of a continued effort to slow the spread of coronavirus infections. The Board suspended all public meetings and hearings scheduled through April 25, 2020 to a later date to be determined once public meetings resumed. (Exhibit 17.) The public hearing on this appeal was rescheduled as a virtual public hearing on July 1, 2020. (Exhibits 19, 20).

Appellant's Case. ANC 6C argued that a certificate of occupancy approved by the Zoning Administrator and issued by DCRA improperly permitted a commercial use of an existing building in excess of the applicable limit on nonresidential uses.

DCRA. The Department of Consumer and Regulatory Affairs asked the Board to deny the appeal because the issuance of the certificate of occupancy was consistent with zoning requirements.

Property Owner. The Property Owner urged the Board to dismiss the appeal as untimely or to deny it because issuance of the certificate of occupancy did not violate any zoning requirements. (Exhibit 22.)

FINDINGS OF FACT

1. The property that is the subject of this appeal is a corner lot located at the southwest corner of 4th and H Streets N.E. with the address 337 H Street N.E. (Square 777, Lot 52).

2. The subject property has a lot area of 1,640 square feet and was improved with a two-story building, with a basement, built around 1939. (Exhibits 18, 23.)

3. A certificate of occupancy, No. A23833, was issued on November 12, 1955 to authorize the use of the first floor of the building at the subject property as "Restaurant seating less than seventy five persons." (Exhibit 23A.)

4. On July 11, 1985, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was described as "delicatessen-no seating." The application stated the "square feet occupied" by the planned use as 100 on the first and second floors. (Exhibit 22B.)

5. On August 9, 1985, DCRA issued a certificate of occupancy, No. B142969, that authorized use of the first and second floors of the building at the subject property as "Delicatessen – no seating." (Exhibit 22B.)

6. On January 2, 1990, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was stated as "Deli" without seating. The application stated the "square feet occupied" by the planned use as 100 on the first floor. (Exhibit 22C.)

7. On February 6, 1990, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was stated as "Deli no seating." The application stated the "square feet occupied" by the planned use as 100 on the first floor. (Exhibit 22C.)

8. On March 26, 1991, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was stated as "Deli/Rest. Seating 25." The application stated the "square feet occupied" by the planned use as 100 on the first floor. (Exhibit 22C.)

9. On April 11, 1991, DCRA issue a certificate of occupancy, No. B160734, that authorized use of the first floor of the building as "Deli/Restaurant seating 25." (Exhibit 23A.)

10. On November 27, 1991, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was stated as restaurant and carryout. The application stated the "square feet occupied" by the planned use as 100 on the first floor. (Exhibit 22C.)

11. On December 8, 1992, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was stated as "Deli Rest 25." The application stated the "square feet occupied" by the planned use as 100 on the first floor. (Exhibit 22C.)

12. On December 11, 1992, DCRA issued a certificate of occupancy, No. B164355, that authorized use of the first floor of the building as "Carryout/Restaurant seating 25." (Exhibit 23A.)

13. On March 3, 1993, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was stated as "Deli & [convenience] store – no seats." The application stated the "square feet occupied" by the planned use as 250 on the first floor. (Exhibit 22C.)

14. On April 5, 1993, DCRA issued a certificate of occupancy, No. B165172, that authorized use of the first floor of the building as "Retail Convenience Store/Delicatessen – no seating." (Exhibit 23A.)

15. On November 9, 1993, DCRA issued a certificate of occupancy, No. B167067, that authorized use of the first floor of the building as "Delicatessen – no seats." (Exhibit 23A.)

16. On March 8, 1994, DCRA received an application for a certificate of occupancy to allow a business use at the subject property. The planned use was described as "delicatessen-no seats & Retail [Convenience] Store." The application stated the "square feet occupied" by the planned use as 250 on the first floor. (Exhibit 2B.)

17. On March 23, 1994, DCRA issued a certificate of occupancy, No. B168033, authorizing use of the first floor as "deli-no seats & Retail [Convenience] Store." (Exhibit 2B.)

18. On April 15, 2019, DCRA issued Building Permit No. B1908278 to the Property Owner for the subject property. The Property Owner testified that the permit was obtained to

repair damage to the building at the subject property caused by the partial collapse of a building on an adjoining lot. (Exhibit 22.)

19. The description of work stated on Building Permit No. B1908278 was: "Rebuild parapet wall along side/east of building. Work to include disassembling and reassembling existing [parapet] wall, as needed; new bricks to be chosen to match existing bricks as closely as possible." The building permit reflected that the existing and proposed use of the subject property was as a fast-food establishment involving two floors of the building. (Exhibit 22A.)

20. On November 13, 2019, the Property Owner submitted an application for a certificate of occupancy for the subject property. The application indicated that 1,500 square feet on the first floor of the building at the subject property would be occupied by a "Retail / Deli-no seats – Convenience Store" use. (Exhibit 2A.)

21. On November 13, 2019, DCRA issued Certificate of Occupancy No. CO2000481 to the Property Owner for the subject property. The description of occupancy was stated as "retail convenience store." The occupied space was stated as 1,500 square feet on the first floor of the building. (Exhibit 2A.)

22. The subject property is located in an H Street Northeast Neighborhood Mixed-Use zone, NC-10. The zone is intended to permit mixed-use development at a moderate- to medium-density with an emphasis on the provision of residential uses, particularly affordable units and reuse of upper floors. (Subtitle H § 900.)

23. The subject property is located within the Housing subdistrict of the NC-10 zone, which permits a maximum floor area ratio of 0.5 for non-residential uses. (Subtitle H § 902.1.)

CONCLUSIONS OF LAW AND OPINION

The Board of Zoning Adjustment is authorized by § 8 of the Zoning Act to "hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision, determination, or refusal" made by any administrative officer or body in the carrying out or enforcement of the Zoning Regulations. D.C. Official Code § 6-641.07(g)(1). Appeals to the Board may be taken by any person aggrieved, or organization authorized to represent that person, or by any officer or department of the government of the District of Columbia or the federal government affected by any decision granting or refusing a building permit or granting or withholding a certificate of occupancy, or any other administrative decision based in whole or in part on any zoning regulation or map. D.C. Official Code § 6-641.07(f). *See also* Subtitle Y § 302.1.

A zoning appeal may be taken only from the first writing that reflects the administrative decision complained of to which the appellant had notice. No subsequent document, including a building

permit or certificate of occupancy, may be appealed unless the document modifies or reverses the original decision or reflects a new decision. (Subtitle Y § 302.5.)

In this case, the Appellant challenged the issuance of a certificate of occupancy by DCRA on November 13, 2019 that authorized use as a "retail convenience store" in 1,500 square feet of the first floor of the existing building at the subject property. According to the Appellant, the certificate of occupancy violated the Zoning Regulations by allowing a non-residential use at a floor area ratio of approximately 0.9, greater than the 0.5 FAR permitted as a matter of right at the subject property by provisions of the NC-10 zone.

The Property Owner argued that the appeal should be dismissed as untimely because the authorized use of the subject property was reflected in a building permit that was issued on April 15, 2019, before the certificate of occupancy was issued the following November. According to the Property Owner, the building permit constituted the "first writing" of the permitted use and therefore the appeal of the subsequently issued certificate of occupancy was untimely.

An appeal to the Board must be filed within 60 days from the date the person appealing the administrative decision had notice or knowledge of the decision complained of, or reasonably should have had notice or knowledge of the decision complained of, whichever is earlier. (Subtitle Y § 302.2.) In this case, ANC 6C "first learned of the issuance" of the certificate of occupancy in "early December 2019" when a member of the ANC "quer[ied] DCRA's Property Information Verification System (PIVS) at https://pivs.dcra.dc.gov." (Exhibit 2.) The appeal was filed on January 9, 2020, within 60 days of the date in December 2019 when the ANC became aware of the certificate of occupancy issued on November 13, 2019.

Ordinarily, the building permit is the document that reflects a zoning decision about whether a proposed structure, and its intended use as described in the permit application, conform to the zoning regulations. *See, e.g., Basken v. District of Columbia Bd. of Zoning Adjustment*, 946 A.2d 356 (D.C. 2008). Under the circumstances of this appeal, however, the Board concluded that the building permit did not reflect a zoning decision and was not sufficient to put ANC 6C on notice of the authorized use of the building. The building permit was issued so that the Property Owner could make repairs to the exterior of the building; the description of work was limited to rebuilding a parapet wall. The building permit stated both the existing and proposed use as a non-residential use (fast-food establishment) on both floors of the building; however, that information was not consistent with the prior use of the building and was not sufficient to constitute notice to the ANC that DCRA had authorized a non-residential use of the entire building. The Property Owner did not demonstrate that the Zoning Administrator reviewed and approved the issuance of the building permit.[3] The Property Owner did not show when or where the building permit was posted at the subject property, or indicate that ANC 6C knew or should have known about the use information provided on the building permit. Accordingly, the Board concluded that the appeal was timely

[3] According to ANC 6C, "DCRA's own permit records show clearly that this [building permit] application was never even reviewed by the Zoning Administrator." (Exhibit 25.)

filed as a challenge to the issuance of the certificate of occupancy, the first writing of the zoning decision complained of to which the Appellant had notice.

With respect to the merits of the appeal, the Board concluded, based on the findings of fact, that ANC 6C did not meet its burden of proof to justify the granting of the appeal. (See Subtitle X § 1101.2.) The ANC asserted that the "sole issue presented in this appeal" was the non-residential floor area ratio permitted at the subject property. According to ANC 6C, the certificate of occupancy improperly authorized a non-residential FAR of 0.91 by allowing use of 1,500 square feet of space on the first floor of the building where a maximum of 0.5 FAR was permitted in the NC-10 zone under Subtitle H § 902.1. ANC 6C contended that the non-residential use of the entire first floor could not be permitted as a nonconforming aspect because "the most recent lawful nonresidential use of the property occupied far less floor area" and "there simply is no existing nonconformity." (Exhibit 25.)

The ANC argued that notes by a DCRA employee, made on the last page of the Property Owner's application for the certificate of occupancy, described the planned use as a continuation of a prior use under Certificate of Occupancy B168033, which was issued in 1994 and, according to the ANC, authorized a deli/convenience store use in 250 square feet on the first floor of the building. The ANC 6C contended that the authorized deli/retail use ceased at "some point between 1994 and 2009" and the building, "including the first floor, sat vacant for years thereafter," as shown in photographs and DCRA vacancy inspection records. (Exhibits 2D, 2E, 2F, 18.) As a result, ANC 6C asserted that the 2019 certificate of occupancy created a new nonconforming structure or alternatively a nonconforming use.[4] (Exhibit 2.)

According to ANC 6C, the 1994 certificate of occupancy had authorized a "250sf delicatessen with no seats, as clearly stated on the application form." (Exhibit 25.) The Board was not persuaded that the application for the 1994 certificate of occupancy constituted an "unambiguous public record" that limited the non-residential use of the building at the subject property to 250 square feet. The notation about size was provided by the applicant, not DCRA. The 1994 certificate of occupancy itself authorized a non-residential use on the first floor, without stating any other restriction with respect to the area that could be occupied by the authorized use. The Board credited the testimony of the Zoning Administrator that an applicant for a certificate of occupancy "fills in the square footage figure" on the application and that information is not necessarily verified or confirmed by the Zoning Administrator's office but can vary based on an applicant's own knowledge. The Zoning Administrator also testified that the applications in the record of this appeal include some that were "filled out…incorrectly historically." (Transcript of July 1, 2020 at 156, 164.)

The Board was not persuaded that the 2019 certificate of occupancy improperly "enlarged and expanded" the non-residential occupancy permitted by the 1994 certificate of occupancy in

[4] A nonconforming use or structure is one that was legally established in accordance with zoning requirements then in effect but which does not meet current zoning requirements. A use or structure that was not legally established (i.e. did not meet all applicable requirements when established) would not be permitted to remain as a nonconforming use or structure but would be considered non-compliant with zoning requirements.

violation of Subtitle C § 201.1.[5] Both certificates of occupancy authorized a non-residential use on the first floor of the building at the subject property, with the 2019 certificate also specifying a limit of 1,500 square feet as maximum area permitted for the specified non-residential use.[6] With certain exceptions not relevant to this appeal, "no person shall use any structure, land, or part of any structure for any purpose until a certificate of occupancy has been issued to that person stating that the use complies with the provisions" of the Zoning Regulations and the D.C. Construction Codes Supplement, Title 12 DCMR. (Subtitle A § 302.1.) A certificate of occupancy must be "conspicuously posted in or upon the premises to which they apply so that they may be seen readily by anyone entering the premises." (Subtitle A § 302.3.) The Board concluded that the information stated on each certificate of occupancy delineated the type and permissible location of the use then permitted at the subject property, without regard for whatever additional information was provided by an applicant in the application form. That is, the 1994 certificate of occupancy authorized the use of the first floor of the existing building as a "deli-no seats" and retail convenience store; the 2019 certificate of occupancy authorized the use of 1,500 square feet on the first floor of the existing building as a retail convenience store. Given that the area provided on the first floor of the existing building is 1,500 square feet, both the 1994 and 2019 certificates of occupancy authorized non-residential use of the same space in terms of both size and location.

The Board credited the testimony of the Zoning Administrator that the application form for a certificate of occupancy was used "universally for all uses," and that information about square footage was more relevant in some zoning contexts than others and would be scrutinized more thoroughly when necessary. In this case, the zoning review did not require an analysis of whether the proposed use would exceed the current FAR limit because the entire ground floor historically has been approved and used for non-residential purposes and "there were no changes to that ground floor" that expanded the area that could be devoted to non-residential uses. (Transcript of July 1, 2020 at 163, 170.) The Board concluded that the first floor area that has existed since 1939 (i.e. 1,500 square feet) could be devoted to non-residential use as a continuation of the existing nonconforming structure (i.e. a building that is nonconforming with respect to floor area ratio) without necessitating an analysis to determine whether the proposed use would exceed the now applicable 0.5 FAR limit on non-residential use. The Board was not persuaded that any indication provided by an applicant in an application for a certificate of occupancy created a need for greater scrutiny before the certificate was approved, because in each case the applicant intended to use the entire first floor of the nonconforming 1939 building as a non-residential use.

Similarly, the Board was not persuaded by the ANC's argument that any prior nonconforming aspect of the use of the first floor had been abandoned due to the lengthy period when the building

[5] Pursuant to Subtitle C § 201.1, nonconforming structures or uses generally "may not be enlarged upon, expanded, or extended, nor may they be used as a basis for adding other structures or uses prohibited elsewhere in the same zone district."

[6] The certificates of occupancy issued in 1994 and earlier for the subject property were printed on forms that had blanks to be completed for "suites" or "floors" of the building but not square footage. The form used in 2019 contained blanks for more detailed information about where the use would be located within the building with respect to "floor(s) occupied," "occupant load / number of seats," and "occupied square footage."

was unused. The ANC cited Subtitle C § 201.2[7] and photographs of the Property Owner's building in arguing that, even if "the nonresidential use of the Property may have exceeded the 0.5 FAR maximum in the past, no such nonconformity existed when DCRA issued the 2019 [certificate of occupancy]." According to ANC 6C, the building had been "an empty shell" since at least 2014. (Exhibits 2D, 25.) DCRA and the Property Owner disagreed, citing "a long history" of continuous use of the first floor for commercial purposes since the 1950s and a lack of evidence that the building had ever been enlarged or made smaller or that the first floor was ever devoted to residential use. (Exhibits 22, 23.)

The Board was not persuaded by the ANC's argument under the circumstances of this appeal. The specific non-residential uses authorized by the 2019 certificate of occupancy were permitted as a matter of right in the NC-10 zone and therefore were not nonconforming uses.[8] The existing building at the subject property met the zoning definition of a "nonconforming structure" because "[r]egulatory standards that create nonconformity of structures include…floor area ratio."[9] (Subtitle B § 100.2.) The building was lawfully existing at the time when the 0.5 FAR limit on non-residential uses went into effect. The entire first floor of the building has been used historically for non-residential purposes, was never converted to a residential use (which would have ended the nonconforming aspect), and was devoted to non-residential use at the time the FAR limit went into effect. The existing building became a nonconforming structure with respect to floor area ratio when the 0.5 FAR limit went into effect because the area on the first floor of the building that has been historically devoted to non-residential uses (approximately 1,500 square feet on the first floor, or 0.9 FAR) exceeded the newly enacted limit of 0.5 FAR for non-residential uses.

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[7] Pursuant to Subtitle C § 201.2, "[a]ny nonconforming use of a structure or of land, or any nonconforming structure lawfully existing on the effective date of this title that remains nonconforming, and any use or structure lawfully existing that became nonconforming on the effective date of this title, may be continued, operated, occupied, or maintained, subject to the provisions of this chapter."

[8] The uses permitted as a matter of right in the NC-10 zone include "retail" and "prepared food shop." (Subtitle H §§ 1103.1(p), 1106.1(e).)

A nonconforming use is defined in Subtitle B § 1002 as:

> Any use of land or of a structure, or of a structure and land in combination, lawfully in existence at the time this title or any amendment to this title became effective that does not conform to the use provisions for the zone in which the use is located. A use lawfully in existence at the time of adoption or amendment of this title that would thereafter require special exception approval from the Board of Zoning Adjustment shall not be deemed a nonconforming use. That nonconforming use shall be considered a conforming use, subject to the further provisions of Subtitle X.

[9] A "nonconforming structure" is defined for zoning purposes in Subtitle B § 100.2 as:

> A structure lawfully existing at the time this title or any amendment to this title became effective that does not conform to all provisions of this title or such amendment, other than use, parking, loading, and penthouse or rooftop structure requirements. Regulatory standards that create nonconformity of structures include, but are not limited to, height of building, lot area, width of lot, floor area ratio, lot occupancy, setback, court, and residential recreation space requirements.

The Zoning Regulations specify that any nonconforming structure lawfully existing on the effective date of the Zoning Regulations that remains nonconforming and any use or structure lawfully existing that became nonconforming on the effective date of the Zoning Regulations may be continued, operated, occupied, or maintained. (Subtitle C § 202.1.) The newly enacted 0.5 FAR limit would apply only to a new building or enlargement of the existing building at the subject property. The Appellant did not demonstrate that the building was ever enlarged such that the area devoted to non-residential use would exceed the size permitted before the 0.5 limit went into effect.

The Board credited the testimony of the Zoning Administrator that the 2019 certificate of occupancy did not improperly increase the area on the first floor of the building that could be devoted to non-residential use because (a) the commercial retail use authorized by the certificate of occupancy was permitted as a matter of right in the NC-10 zone and (b) the permitted FAR was based on the gross floor area of the building, which had not changed in size. The Zoning Administrator explained that because the use of the subject property was conforming and the structure was nonconforming, the fact that the building had not been occupied in a number of years was not relevant; the fact that a building might be vacant is not an issue in respect to conforming uses.[10] (Transcript of July 1, 2020 at 159.) The Board concurred that, pursuant to Subtitle C § 202.4, discontinuance may be considered evidence of a lack of intent to resume active operation as a nonconforming use, but was not relevant to the status of a nonconforming structure. The Board concluded that the Zoning Administrator reasonably determined, based on the history of certificates of occupancy issued for the subject property, that the first floor of the existing building was devoted to non-residential use when the 0.5 FAR limit went into effect, thereby creating a nonconforming structure with respect to floor area ratio because the area of the existing first floor resulted in a FAR of 0.9, greater than the 0.5 now permitted. *Accord*, Appeal No. 19370 (Historic Mount Pleasant, Inc.; September 24, 2018).[11] The nonconforming aspect of the structure may continue because the building has not been enlarged, no residential use of the first floor has ever been established, and a nonconforming structure is not subject to the provisions on abandonment or discontinuance of a nonconforming use.

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[10] "Any nonconforming use of a structure or of land, or any nonconforming structure lawfully existing on the effective date of this title that remains nonconforming, and any use or structure lawfully existing that became nonconforming on the effective date of this title, may be continued, operated, occupied, or maintained, subject to the provisions of this chapter." (Subtitle C § 202.1.)

"Discontinuance for any reason of a nonconforming use of a structure or of land, except where governmental action impedes access to the premises, for a period of more than three (3) years, shall be construed as prima facie evidence of no intention to resume active operation as a nonconforming use. Any subsequent use shall conform to the regulations of the district in which the use is located." (Subtitle C § 202.1.)

[11] In that case, the Board affirmed the Zoning Administrator's decision to allow a four-unit apartment house in an existing building in the R-4 zone where two units were permitted as a matter of right, because evidence indicated that the building was previously used as a legally established four-unit apartment house pursuant to a certificate of occupancy. The failure of a subsequent, interim owner to obtain permits or a certificate of occupancy to allow configuration as three units did not discontinue the nonconforming use of the property as a four-unit apartment house, in part because the long-standing practice of the Zoning Administrator has been to recognize the original certificate of occupancy as a baseline statement of the lawful use of the property.

Great weight. The Board is required to give "great weight" to the issues and concerns raised by an affected Advisory Neighborhood Commission. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)). In this case, the affected ANC is the Appellant. The Board fully considered the ANC's position in this case, but, for the reasons discussed above, did not agree that the appeal should be granted.

Exceptions to the Proposed Order. Because a majority of the Board members participating in the issuance of this order did not personally hear the evidence in this appeal, a proposed order was provided to the parties on March 4, 2026 to afford them an opportunity to present written exceptions, in accordance with D.C. Official Code § 2-509(d). The Board received no exceptions.

Based on the findings of fact and conclusion of law, the Board concludes that the Appellant has not shown an error in the decision on November 13, 2019 by the Department of Consumer and Regulatory Affairs to issue Certificate of Occupancy CO2000481 permitting a non-residential floor area ratio exceeding the maximum permitted in the NC-10 zone at 337 H Street N.E.(Square 777, Lot 52). Accordingly, it is therefore **ORDERED** that the **APPEAL** is **DENIED**.

VOTE: **3-1-1** **(**Frederick L. Hill, Lorna L. John, and Peter A. Shapiro to DENY; Carlton E. Hart opposed; one Board seat vacant)

VOTE: 4-0-1 (Gwen M. Wright, Melissa Lindsjo, Michelle Pourciau, Paul Goldstein voting to issue this Order; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 12, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX

DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20390 of Potomac Venture Group LLC, pursuant to 11 DCMR Subtitle X, Chapter 10, for a use variance from Subtitle C § 204.1 to allow the expansion of an existing non-conforming apartment house (19 units) by adding one additional dwelling unit in the cellar of a building located in the R-1-B Zone at 11 Nicholson Street, NW (Square 3383 Lots 2, 23, 24).

HEARING DATES: March 3, March 31, and April 28, 2021
DECISION DATES: April 28, 2021, and June 10, 2026

DECISION AND ORDER

This self-certified application was filed on October 9, 2020 on behalf of Potomac Venture Group LLC, the owner of the property that is the subject of the application ("Applicant"). Following public hearing, the Board voted to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated December 28, 2020, the Office of Zoning provided notice of the application and of the public hearing to the Applicant, the Office of Planning ("OP"), the District Department of Transportation ("DDOT"), Advisory Neighborhood Commission ("ANC") 4B, the ANC in which the subject property is located, Single Member District ANC 4B06, the Office of Advisory Neighborhood Commissions, the Councilmember for Ward 4 as well as the Chairman and three at-large members of the Council of the District of Columbia, the National Park Service, lessees of the subject property, and the owners of all property within 200 feet on the subject property. Notice was published in the *District of Columbia Register* on December 11, 2020 (67 DCR 14470).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 4B were automatically parties in this proceeding. The Board received no requests for party status.

Applicant's Case. The Applicant provided evidence and testimony in support of the application from Tenika Felder, the project architect and an expert in architecture, Kyle Tangney, a commercial real estate broker, and Ronald Bergman, representing the Applicant.

OP Report. By memorandum dated February 19, 2021, the Office of Planning recommended approval of the application. (Exhibit 32.)

DDOT Report. By memorandum dated February 18, 2021, the District Department of Transportation indicated no objection to approval of the application. (Exhibit 31.)

ANC 4B. At a public meeting on November 23, 2020 with a quorum present, ANC 4B adopted a resolution in support of the application. (Exhibit 14.) The ANC reiterated its support by report dated February 13, 2021. (Exhibit 30.)

FINDINGS OF FACT

1. The property that is the subject of this application is a corner lot located at the northwest corner of the intersection of Blair Road and Nicholson Street, N.W., with the address 11 Nicholson Street, N.W. (Square 3383, Lots 2, 23, and 24).

2. The subject property is generally rectangular, with 160 feet of frontage on Nicholson Street and approximately 94 feet along Blair Road. The lot area is 13,185 square feet.

3. The subject property was improved with an apartment house that is two stories and 25 feet in height. The subject property lacks side and rear yards, and the existing lot occupancy is 50 percent. (Exhibit 4.)

4. The existing building was built as an apartment house in 1937. The building contains 19 dwelling units on the first and second floors. (Exhibit 32.)

5. The southeastern portion of the cellar level is devoted to commercial use, currently operating as a grocery store in accordance with a certificate of occupancy issued in 1947. The Applicant planned to convert the use of the commercial space from grocery store to a new retail use, which the Applicant indicated could be done as a matter of right in accordance with zoning provisions governing nonconforming uses (see Subtitle B § 200.2(bb) and Subtitle C § 201.2). (Exhibit 8.)

6. The Applicant indicated that a dwelling unit was created in the cellar when the building was originally built. The cellar unit was used by the building superintendent. (Transcript of April 28, 2021 at 78.)

7. The Applicant acquired the subject property in 2001. On November 15, 2001, the Department of Consumer and Regulatory Affairs issued a certificate of occupancy, No. CO 22915, to the Applicant. The certificate of occupancy reflected a change in ownership with the approved use stated as "apartment building (19) units" occupying 11,500 square feet. (Exhibit 8, Tab C.)

8. The cellar unit occupied an area of approximately 498 square feet, with an external window. The space was conditioned, contained a bathroom, and had framing to create a bedroom as well as kitchen facilities. The Applicant indicated that the space was sufficient to function as a dwelling unit in its current condition.

9. Since the Applicant acquired the subject property, the cellar unit "has been used from time to time as living space for on-site maintenance workers." The unit was never leased to the public but was used by persons affiliated with the building staff. (Exhibits 8, 29; Transcript of April 28, 2021 at 78.)

10. The Applicant proposed to create an additional dwelling unit in the building at the subject property to allow use of the cellar unit as an apartment for lease. The Applicant did not propose to enlarge the existing building.

11. The new dwelling would be located in the existing cellar unit, located at a corner of the building adjacent to Blair Road and bounded on two sides by a staircase and a corridor. The unit would include a kitchen and full bathroom as well as a bedroom and living space. (Exhibit 35.)

12. Other rooms in the cellar accessible from the corridor include two storage rooms (one of which contains a bathroom) that are used by building staff for equipment, supplies and maintenance, two utility rooms for gas and electrical equipment, a boiler room, a second staircase, and a room containing laundry facilities for use by building residents. (Exhibits 29, 35.)

13. The area surrounding the subject property is residential in character. Nearby properties are primarily improved with detached principal dwellings although another apartment house is located on the abutting property to the north of the subject property. Some commercial and industrial uses are located in a Production, Distribution, and Repair (PDR) zone across Oglethorpe Street to the north. The Fort Circle Park is located to the north of the subject property, and areas to the east, across Blair Road, contain community gardens.

14. The subject property is located approximately 0.8 miles from the Fort Totten Metrorail station, which serves three subway lines and has a Capital Bikeshare dock. A Metrobus stop is located on New Hampshire Avenue within three blocks of the subject property.

15. The subject property and surrounding properties are located in a Residential House (R) zone, R-1-B.

16. The Residential House zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 100.1.) The provisions of the R zones are intended to (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low-to-moderate-density residential development; (b) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right

development of existing lots of record; (e) establish minimum lot area and dimensions for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 100.2.)

17. The purposes of the R-1-B zone are to (a) protect quiet residential areas now developed with detached dwellings and adjoining vacant areas likely to be developed for those purposes and (b) stabilize the residential areas and promote a suitable environment for family life. (Subtitle D § 300.1.) The R-1-B zone is intended to provide for areas predominantly developed with detached houses on moderately sized lots. (Subtitle D § 300.3.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requested a use variance, pursuant to Subtitle X § 1002.1, from Subtitle C § 204.1 to allow an additional dwelling unit in an existing non-conforming apartment house in the R-1-B zone. The Board is authorized under § 8(g)(3) of the Zoning Act to grant variance relief where, "by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. *See also* Subtitle X § 1000.1. Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning and to the report of ANC 4B, the Board concluded that the application failed to satisfy the burden of proof to warrant approval of the requested use variance.

The Applicant's apartment house was built before the effective date of the 1958 Zoning Regulations and became a nonconforming use when the subject property was zoned R-1-B. A nonconforming use is defined as a use of a structure that was lawfully established but does not conform to the use provisions for the zone where the use is located. (Subtitle B § 100.2.) A nonconforming use may continue but "shall not be extended in land area, gross floor area, or use intensity; and shall not be extended to portions of a structure not devoted to that nonconforming use at the time of enactment" of the 2016 Zoning Regulations. (Subtitle C § 204.1.)

The Applicant contended that the subject property was affected by an exceptional situation or condition arising from the confluence of factors: (1) the subject property is a large lot improved with an existing apartment house and (2) the underutilized "20th unit" on the cellar level of the existing building, which already contained the facilities of a dwelling due to its use as a "long existing on-site superintendent unit." The Applicant emphasized the existing features of the cellar space, including its external windows, framing for separate bedroom and bathroom spaces, and kitchen facilities, all of which were installed before the Applicant purchased the subject property, as well as the use "from time to time by on-site maintenance workers" although the unit was "never

leased to the public" and had not been used by the Applicant "as a superintendent space for over three years." (Exhibit 29; Transcript of April 28, 2021 at 83.) In recommending approval of the application, the Office of Planning asserted that the "subject property is exceptional in that it has…space in the cellar currently configured as a residential unit – including demising walls, a kitchen and a bathroom – that was once used as a residential unit, but is not reflected on the Certificate of Occupancy." (Exhibit 32.)

The Board concluded that the Applicant did not identify any feature of the subject property or of the existing building that exhibited any exceptional condition sufficient to warrant approval of the requested use variance. The existing apartment house at the subject property is unusual, although not unique, as an apartment house located in the R-1-B zone, where that use is not permitted as a matter of right under current zoning regulations. As a nonconforming use, the apartment house is permitted to continue as legally established. In this case, the existing building has a certificate of occupancy for 19 dwelling units. The Board was not persuaded that the lot area of the subject property, which is larger than nearby lots improved with principal dwellings, created any exceptional situation with respect to the requested use variance.

The existence of a space in the cellar of the existing apartment house that was suitable for use as an additional dwelling unit did not itself create an exceptional situation or provide a valid basis for approval of the requested use variance to allow the expansion of a nonconforming use. The space was outfitted as a dwelling by a prior owner but its use as a dwelling was not authorized by a certificate of occupancy. The creation of an unauthorized dwelling unit, even if accomplished by a prior owner, would constitute a violation of the zoning regulations and therefore would not provide a basis for approval of a use variance. Previous illegal use of a property is not relevant to the exceptional-condition inquiry for purposes of a request for a variance. *Capitol Hill Restoration Society v. District of Columbia Bd. of Zoning Adjustment*, 398 A.2d 13, 16 (D.C. 1979). The existence of a space configured as a dwelling unit did not create an exceptional condition because an applicant's desire to utilize property for a certain use generally is not by itself sufficient to create an extraordinary or exceptional situation or condition under the zoning regulations, *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972).

With respect to undue hardship, the Applicant asserted that a variance to allow an additional dwelling unit was warranted because the space occupied by the cellar unit could not be used in any manner consistent with the zoning regulations that specified the uses that are permitted as a matter of right, by special exception, or as accessory uses in the R-1-B zone. (*See* Subtitle U §§ 201.1, 202.1, 203.1, and 250.) According to the Applicant, the space was not needed for storage or building maintenance because other rooms were already available for those purposes in the cellar, and "[t]here is no demand for common storage space," which historically has not been offered to residents of the building in light of the building's "larger units that offer residents enough space for in-unit storage." (Exhibit 29.) The Applicant contended that the cellar space at issue was "uniquely suited for a dwelling" and "too small to function as an alternative type of accessory use for the apartment building, such as a common recreation room…." The Applicant argued that the uses permitted as a matter of right or by special exception in the R-1-B zone were "either not applicable due to the existing apartment building, not feasible due to the size of [the cellar unit]

and its relatively low ceiling, or would create substantial operational difficulties," especially considering that the cellar unit lacked an exterior exit and the building lacked an elevator. (Exhibit 29.) The Applicant noted that a variance would also be needed to combine the cellar space with an existing unit, and asserted that the cost of demolishing the existing dwelling facilities in the cellar space would itself constitute an undue hardship. (Exhibits 8, 29.)

The Office of Planning testified that the Applicant would face an undue hardship if the Zoning Regulations were strictly applied and "reestablishment of the residential unit were not permitted," citing the cost and inefficiency of reconfiguring the space. The Office of Planning agreed with the Applicant that "no other reasonable use would be suitable for this space, and denial of the variance would cause the space to remain un- or underutilized" because "other possible uses in the R-1 zone, such as educational, governmental or religious uses, would be incompatible with a residential building or would require more space than the 498 square feet available, and would likely require additional broader building reconfigurations for access and services." (Exhibit 32.)

Based on the evidence in the record, the Board did not agree with the Applicant or the Office of Planning that the strict application of the Zoning Regulations would result in undue hardship to the Applicant as the owner of the subject property. The cellar unit was not unused space: the Applicant indicated that the cellar unit was used "from time to time" although "there's not always a need for a maintenance person to be on-site." (Transcript of March 3, 2021 at 142.) The Board was not persuaded by the Applicant's conclusory testimony that undue hardship was created by the Applicant's inability to offer the cellar space to the public as a dwelling unit, the underutilized nature of the space, or the alleged inability to devote the space to any other reasonable use consistent with zoning requirements.

The Board did not determine that any hardship faced by the Applicant was undue or was the result of the strict application of the Zoning Regulations. The Applicant acquired the building as a nonconforming apartment house and obtained a certificate of occupancy authorizing its configuration as 19 dwelling units; the nonconforming use may continue. Based on the testimony and evidence in the record, the Board was not persuaded by the testimony of the Applicant or the Office of Planning that the conversion of the "unused" or "underutilized" cellar space to an additional dwelling unit – which would require a use variance as an expansion of the permitted nonconforming use – was the only potential use to which the space could be devoted in compliance with zoning requirements. *Compare*, *Bernstein v. District of Columbia Bd. of Zoning Adjustment*, 376 A.2d 816, 819-820 (D.C. 1977) (Board was not required, through interpretation of the zoning regulations, to legalize a use that was not legally established where that use was not in harmony with the general purpose and intent of the zoning regulations; any hardship that resulted from converting unit from an illegal use back to a legal use was self-imposed). A "mere desire to use property in a given manner, or in a manner designed to return a greater profit, does not constitute a showing of an undue hardship that will support the granting of a use variance. *Bernstein,* 376 A.2d at 820, citing *Taylor v. District of Columbia Bd. of Zoning Adjustment,* 308 A.2d 230, 236 (D.C. 1973) and *Palmer*, 287 A.2d at 540. A "use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations." *Palmer*, 287 A.2d at 542. "At some point economic harm becomes sufficient, at

least when coupled with a significant limitation on the utility of the structure." *Gilmartin v. District of Columbia Bd. of Zoning Adjustment*, 579 A.2d 1164, 1171 (D.C. 1990). The Board was not persuaded in this case that the Applicant demonstrated sufficient economic harm or a significant limitation on the utility of the structure, including the 498-square-foot area in the cellar proposed for use as an additional dwelling unit, to warrant approval of the requested use variance.

The Board did not conclude that approval of the application would result in substantial detriment to the public good. The addition of one relatively small dwelling unit in the 19-unit apartment house, without any expansion of the existing building, would not likely cause any adverse impacts on the use of nearby properties, including with respect to light, air, or privacy. The Board notes that the Office of Planning characterized the likely impacts of the creation of an additional dwelling unit in the building as "minimal" and DDOT concluded that approval of the application would "not have adverse impacts on the District's transportation network." (Exhibits 31, 32.)

However, the Board concluded that the requested use variance cannot be approved without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The subject property is improved with an apartment house, with a certificate of occupancy authorizing 19 dwelling units. The existing apartment house use is a nonconforming use in the R-1-B zone that may continue but may not be extended in gross floor area or intensity of use or extended to portions of the structure not devoted to the nonconforming use at the time of enactment of the zoning regulations, pursuant to Subtitle C § 204.1. The Applicant's proposal was not consistent with that prohibition or with the purpose and intent of the Residential House zones to provide for areas of low- to moderate-density residential development where multiple dwelling unit development is discouraged. Similarly, approval of the requested variance would not be consistent with the intent of the R-1-B zone to provide for areas predominantly developed with detached houses on moderately sized lots.

Great weight. The Board is required to give "great weight" to the recommendation of the Office of Planning. D.C. Official Code § 6-623.04. For the reasons discussed above, the Board did not agree with OP's recommendation that the application should be approved.

The Board is also required to give "great weight" to the issues and concerns stated by an affected ANC. D.C. Official Code § 1-309.10(d)(3)(A). In this case, ANC 4B indicated its support for the application in two submissions that noted the Applicant's request for a variance "to add one additional dwelling unit to an existing apartment complex." (Exhibits 14, 30.) The ANC's support was premised on the proposed location of the dwelling unit as "an underutilized cellar space within the existing apartment complex" and the ANC's conclusion that "conversion of the underutilized cellar space into a dwelling unit will not cause detriment or disturbance to the current residents or community." The Board credits the views presented by ANC 4B; however, the ANC's submissions did not address the criteria for approval of the requested use variance. Accordingly, the Board did not find the ANC's advice a persuasive reason to grant the application for a use variance from the zoning restrictions on the expansion of a nonconforming use.

Exceptions to the Proposed Order. Because a majority of the Board members participating in the issuance of this order did not personally hear the evidence in this application, a proposed order was provided to the parties on March 27, 2026 to afford them an opportunity to present written exceptions, in accordance with D.C. Official Code § 2-509(d). The Board received no exceptions.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant failed to satisfy the burden of proof with respect to the application for a use variance from Subtitle C § 204.1 to allow the expansion of an existing non-conforming apartment house (19 units) by adding one additional dwelling unit in the basement of a building located in the R-1-B zone at 11 Nicholson Street, NW (Square 3383 Lots 2, 23, 24). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: 3-2-0 (Carl H. Blake, Chrishaun S. Smith, and Anthony J. Hood voting to deny; Frederick L. Hill and Lorna L. John opposed)

VOTE: 4-0-1 (Gwen M. Wright, Melissa Lindsjo, Michelle Pourciau, Paul Goldstein voting to issue this Order; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 12, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 21017 of Phillip H. Bishop, as amended, pursuant to 11 DCMR Subtitle X § 1000 for a use variance from Subtitle U § 600.1(f)(1) and an area variance from the height requirements of Subtitle D § 5100.1 and, pursuant to Subtitle X § 901, for a special exception under Subtitle D § 5201 from the side yard requirements of Subtitle D § 5100.1(d) to allow a new two-story detached building for use as a principal dwelling on an alley lot in the R-1B zone at 2229 Rear Bunker Hill Road, NE (Square 4239, Lot 64).[1]

HEARING DATE: March 6, 2024
DECISION DATES: March 6, 2024 and June 10, 2026

DECISION AND ORDER

This application was filed on August 4, 2023 by Phillip Bishop (the "Applicant"), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to deny the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing by letters, dated September 14, 2023, to the Applicant, the Office of Planning ("OP"), the District Department of Transportation, Advisory Neighborhood Commission ("ANC") 5B, the ANC in which the subject property is located, and Single Member District 5B01, the Office of Advisory Neighborhood Commissions, the Department of Buildings, the Councilmember for Ward 5 as well as the Chairman and the at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. By letters dated September 19, 2023, the Office of Zoning provided notice of the application and of the public hearing to the Department of Public Works, DC Water, the Metropolitan Police Department, and the Fire and Emergency Medical Services Department. The Office of Zoning re-sent notices of the application and public hearing to all previous recipients by letters dated December 6, 2023, after the application was amended. Notices were published in

[1] The caption was revised to reflect that the application was amended. Consistent with referral memoranda from the Zoning Administrator, the Applicant originally requested special exceptions under Subtitle U §§ 600.1 and 601.1(f) to allow a principal dwelling on an alley lot, under Subtitle D § 5100.1(a) to allow building height greater than the maximum permitted, and under Subtitle D § 5001.1(d) to allow a building not meeting side yard requirements. (See Exhibits 4, 12.) The application was revised after the Zoning Administrator provided a revised referral memorandum (Exhibit 19). The Applicant's project was not modified.

the *District of Columbia Register* on September 29, 2023 (70 DCR 012991) and on December 15, 2023 (70 DCR 015782).[2]

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 5B were automatically parties in this proceeding**.** At a public meeting on December 20, 2023, the Board granted requests for party status in opposition to the application submitted by a group of residents living near the subject property in the 4000 block of 22nd Street N.E. or the 2200 block of Bunker Hill Road N.E. (Exhibits 20, 20A, 20B, 20C, 20D.) The parties in opposition were Bonita Beaty, Mildred Bell, Brian and Janella Ferguson, Francisco Javier Astudillo Del Pozo and Sara Arranz Ramiro, Anna Hartsfield, Taras Malta and Michelle Romo, and Stacey and Lalit Raina.

Applicant's Case. The Applicant presented evidence and testimony in support of the application, a request for the zoning relief needed to allow a new two-story detached building on an alley lot for use as a principal dwelling.

OP Report. By memorandum dated March 4, 2024, the Office of Planning recommended denial of the Applicant's request for a use variance from Subtitle U § 600.1(f)(1) to allow a residential use on an alley lot. The Office of Planning did not provide recommendations on the Applicant's requests for relief from side yard and height provisions because the Applicant's statements at Exhibits 21 and 31 indicated that the Applicant's architectural plans would be revised to eliminate the need for those areas of relief. (Exhibit 35.)

Parties in opposition. The parties in opposition argued that the application did not meet the requirements for the requested relief and that approval of the Applicant's proposal would adversely affect nearby properties. (Exhibits 34, 37.)

Persons in opposition. The Board received letters and heard testimony in opposition to the application from persons living near the subject property. The persons in opposition generally objected to the size of the Applicant's planned dwelling and contended that the application had not met the requirements for approval of the requested zoning relief.

FINDINGS OF FACT

1. The property that is the subject of this application is an alley record lot in the interior of the square bounded by Randolph Street N.E. to the south, 22nd Street N.E. to the west, Bunker Hill Road N.E. to the northeast, and Shepherd Street N.E. to the north, with the address 2229 Rear Bunker Hill Road, N.E. (Square 4239, Lot 64).

2. The subject property is irregularly shaped but generally rectangular. The alley lot is approximately 30 feet wide along the south lot line and 46.55 feet wide along the north lot line. The west and east lot lines extend approximately 69 feet and 75.65 feet, respectively. The lot area is approximately 2,850 square feet. (Exhibits 2, 19, 35.)

[2] The public hearing was originally scheduled for December 20, 2023 and rescheduled to March 6, 2024 after the application was amended.

3. The subject property is bounded by public alleys to the south and west, which are 15 and 16 feet wide, respectively. The north and east lot lines of the Applicant's lot abut the side or rear lot lines of three properties containing detached principal dwellings that front on Bunker Hill Road to the east.

4. The subject property is currently unimproved.

5. The Applicant purchased the subject property in 2008. Several years later, the Applicant decided to build a residence on the property. (Exhibit 3; Transcript of March 6, 2024 at 16-17.) Beginning in September 2020, the Applicant requested guidance from the Department of Consumer and Regulatory Affairs ("DCRA") regarding the construction of a dwelling at the subject property.[3] (Exhibit 31.)

6. The Applicant proposed to construct a new two-story detached principal dwelling, with a cellar and roof deck, at the subject property. (Exhibit 9.)

7. As planned, the dwelling would be 22 feet and two stories in height. Its building area would be approximately 1,882 square feet, resulting in a lot occupancy of approximately 66 percent. (Exhibit 19.)

8. The principal entrance to the dwelling would be located along the west alley. (Exhibit 9.)

9. The proposed dwelling would result in a rear yard of approximately 5.65 feet on the east side of the lot. A side yard of approximately four feet would be provided on the north side. Two vehicle parking spaces would be provided in a garage on the first level of the dwelling, accessible from the south alley. (Exhibits 9, 19.)

10. The proposed dwelling would have windows on each side of the building, primarily on the east and west façades. The north façade would have one window on the first floor while the south façade would have a large window on the second floor. (Exhibit 9.)

11. The dwelling would have a roof deck surrounded by a guard rail, 3.5 feet in height, and accessible via a hatch. (Exhibit 9.)

12. The area surrounding the subject property is predominantly residential, characterized by detached principal dwellings.

[3] As of October 1, 2022, the zoning functions formerly performed by the Department of Consumer and Regulatory Affairs were assumed by the new Department of Buildings. *See* D.C. Official Code § 10-561.01 *et seq*. (Department of Buildings Establishment Act, D.C. Law 23-269, 68 D.C. Reg. 4174 (April 5, 2021)).

13. The subject property is located in a Residential House (R) zone, R-1B. The Residential House zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 101.1.)

14. The Residential House zones are intended to (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; (b) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right development of existing lots of record; (e) establish minimum lot area and lot width for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 101.2.)

15. The purposes of the R-1B zone are to (a) protect quiet residential areas now developed with detached houses and adjoining vacant areas likely to be developed for those purposes; and (b) stabilize the residential areas and promote a suitable environment for family life. (Subtitle D § 101.3.)

16. The R-1B zone is intended to provide for areas predominantly developed with detached houses on moderately sized lots. (Subtitle D § 101.5.)

CONCLUSION OF LAW AND OPINION

The Applicant requested zoning relief, including a use variance and an area variance, needed to allow a principal dwelling in a new two-story detached building on an alley lot in the R-1B zone at 2229 Rear Bunker Hill Road, NE (Square 4239, Lot 64). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(3), to grant a variance "[w]here, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (See also Subtitle X § 1000.1.)

Based on the findings of fact and having given great weight to the recommendation of the Office of Planning, the Board concluded that the Applicant has not satisfied the requirements for approval of the requested variances. The Board did not find that the subject property exhibited any extraordinary or exceptional situation or condition. The subject property is not significantly

irregular in shape, exceptionally narrow or shallow, or affected by any exceptional topographical conditions.

The Applicant asserted that the subject property is larger than most in the area, is bounded by an alley, and that "the property is being utilized by neighbors as a parking lot and dumping ground." According to the Applicant, the subject property could not feasibly be developed for a permitted use because of maintenance and security issues. (Transcript of March 6, 2024 at 19, Exhibit 21.) However, the Applicant did not identify any feature of the subject property that would preclude its use in a manner consistent with zoning requirements. The Board agreed with the Office of Planning that the record in this proceeding did not provide sufficient evidence to establish that the site was not suitable for any of the uses permitted as a matter of right or by special exception in the R-1B zone. The desire to use the alley lot for a principal dwelling did not create any exceptional condition to support approval of the requested variances, because generally an applicant's desire to utilize the property for a certain use is not by itself sufficient to create an extraordinary or exceptional situation or condition under the zoning regulations. *Palmer v. District of Columbia Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (D.C. 1972).

The Board did not conclude that the strict application of the Zoning Regulations would result in undue hardship to the Applicant as the owner of the subject property. A "use variance cannot be granted unless a situation arises where a reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations." *Palmer*, 287 A.2d at 542. The Applicant noted that the R-1B zones permits several uses as a matter of right or by special exception (see Subtitle U §§ 600 and 601) but asserted that a dwelling would be a better use of the site. The Board was not persuaded by the Applicant's claim that a use variance to permit a dwelling at the subject property was needed to avoid misuse or lack of maintenance at the site.

The Applicant also claimed an undue hardship based on mistaken advice from DCRA, which the Applicant relied on in expending significant financial capital through the permitting process, making any other use of the property infeasible. The Board disagreed, because the Applicant had actual or constructive knowledge of zoning restrictions that limited the use of the subject property as an alley lot and therefore any hardship accruing to the Applicant was self-created. *Salsbery v. District of Columbia Bd. of Zoning Adjustment*, 357 A.2d 402, 404–05 (D.C.1976) (hardship was self-inflicted where applicant contracted to purchase property for non-conforming use without conditioning contract on obtaining use variance.) The Applicant's claimed hardship did not result from the location, situation, or condition of the subject property but solely from the Applicant's intent to use the alley lot for a specific purpose, a new principal dwelling, without first having obtained the necessary change in zoning. Accordingly, the Board did not conclude that any undue hardship was caused to the Applicant as the owner of the subject property as a result of the strict application of the Zoning Regulations. *See, Dwyer v. District of Columbia Bd. of Zoning Adjustment*, 320 A.2d 306 (D.C. 1974). The Applicant's claim of undue hardship was insufficient to warrant approval of the requested use variance because the Applicant was on notice of the zoning requirements that governed the permitted uses of the subject property as an alley lot and the Applicant could not reasonably have relied solely on informal guidance of DCRA to determine whether the planned use was permitted. The Applicant did not demonstrate any zoning history,

such as the issuance of a building permit later determined to have been approved in error, in support of the variance request. *Contrast*, *Oakland Condo. v. District of Columbia Bd. of Zoning Adjustment*, 22 A.3d 748, 756 (D.C. 2011).

The Board agreed with the Office of Planning that the Applicant did not demonstrate that the subject property was incapable of any use permitted as a matter of right or by special exception under the zoning regulations governing alley record lots. To demonstrate undue hardship, an applicant must prove that the property cannot be 'put to any conforming use with a fair and reasonable return arising out of the ownership thereof.' *Downtown Cluster of Congregations v. District of Columbia Bd. of Zoning Adjustment*, 675 A.2d 484, 491–92 (D.C. 1996). "An inability to put a property to a more profitable use or loss of economic advantage is not sufficient to constitute hardship." *Palmer*, 287 A.2d at 542.

Similarly, the Board did not conclude that the strict application of the Zoning Regulations would result in any peculiar and exceptional practical difficulties to the Applicant with respect to the planned height of the proposed principal dwelling at the subject property. The Applicant acknowledged that the building plans could be revised to lower the building height, consistent with zoning requirements, without impinging on the design or use of the planned dwelling.

The Board did not conclude that approval of the requested variances would result in substantial detriment to the public good. The subject property is a relatively large alley lot, and the Applicant proposed a residential use consistent with the low-density residential character of the surrounding area. The Board was not persuaded by the unsubstantiated claims made by the parties in opposition that the Applicant's proposal would impair the use of surrounding properties with respect to the availability of light, air, or privacy, or due to impacts related to noise, traffic, parking, or infringement of nearby solar facilities.

The Board agreed with the Office of Planning that approval of the requested variances would substantially impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. The Zoning Regulations state specific limitations on the use of alley lots, and principal dwellings are not permitted on alley lots in the R-1B zone either as a matter of right or special exception. The Board concluded that the intent and purpose of the zoning regulations would be substantially impaired by the approval of the Applicant's request for use and area variances because the application did not demonstrate any exceptional situation facing the subject property or any undue hardship or practical difficulty to the Applicant as the owner of the alley lot.

Special Exception. The Applicant requested a special exception under Subtitle D § 5201 from the side yard requirements of Subtitle D § 5100.1(d) to allow a new building on an alley lot that would not provide a side yard of at least five feet from a lot line abutting a non-alley lot. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in the Zoning Regulations, when, in the judgment of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance

with the Zoning Regulations and Zoning Maps, subject to specific requirements. (See Subtitle X § 901.2.)

Pursuant to Subtitle D § 5201.3, the Board may grant relief as a special exception from certain development standards, including yard requirements, to allow a new principal building on an alley record lot. (Subtitle D § 5201.3(a).) An applicant must demonstrate that the proposed new principal building will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property; specifically (a) the light and air available to neighboring properties must not be unduly affected, (b) the privacy of use and enjoyment of neighboring properties must not be unduly compromised, and (c) the proposed addition, together with the original building, as viewed from the street, alley, and other public way, must not substantially visually intrude on the character, scale, and pattern of houses along the street and alley frontage. (Subtitle D § 5201.4.)

Based on the findings of fact, the Board concluded that the application did not satisfy the requirements for approval of the requested special exception. The Applicant proposed a new two-story detached principal dwelling on an alley lot with a side yard measuring four feet from a lot line abutting a non-alley lot. The Board was not persuaded, on the basis of information included in the application, that the Applicant's project would not unduly affect the light and air available to neighboring properties or unduly compromise the privacy of use and enjoyment of neighboring properties. For example, the application did not indicate the proximity of the planned dwelling to existing dwellings on nearby properties, provide a shadow study to illustrate the impacts on light that would be created by the proposed new dwelling, or address whether the new dwelling, as viewed from a street or the abutting alleys, would substantially visually intrude on the character, scale, and pattern of houses along the street or alley frontage.

Subtitle X, Chapter 9. The Board concluded that approval of the requested special exception would not satisfy the requirements of Subtitle X § 901.2. For the reasons already discussed, the Board did not find sufficient information to conclude that the application could be approved without adversely affecting the use of nearby properties in accordance with the Zoning Regulations and Zoning Map. The Board was also unable to conclude, based on the information in the record, that approval of the application would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The application proposed a low-density residential use in the R-1B zone but did not demonstrate that the request for relief from the applicable side yard requirement would be in harmony with the Zoning Regulations and Map, including the provisions governing alley record lots.

Great weight. The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2018 Repl.).) For the reasons discussed above, the Board agreed with OP's recommendation that the Applicant's request for a use variance should be denied.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March

26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A).) The affected ANC in this case, ANC 5B, did not submit a report or otherwise participate in the proceeding.

Exceptions to the Proposed Order. Because a majority of the Board members participating in the issuance of this order did not personally hear the evidence in this application, a proposed order was provided to the parties on March 27, 2026 to afford them an opportunity to present written exceptions, in accordance with D.C. Official Code § 2-509(d). The Board received no exceptions.

Based on the findings of fact and conclusion of law, the Board concludes that the Applicant has failed to satisfy the burden of proof with respect to the requests for a use variance from Subtitle U § 600.1(f)(1), an area variance from Subtitle D § 5100.1, and a special exception under Subtitle D § 5201 from the side yard requirements of Subtitle D § 5100.1(d) to allow a principal dwelling in a new two-story detached building on an alley lot in the R-1B zone at 2229 Rear Bunker Hill Road, NE (Square 4239, Lot 64). Accordingly, it is **ORDERED** that the application is **DENIED**.

VOTE: 5-0-0 (Frederick L. Hill, Lorna L. John, Carl H. Blake, Chrishaun S. Smith, and Joseph S. Imamura to DENY)

VOTE: 4-0-1 (Gwen M. Wright, Melissa Lindsjo, Michelle Pourciau, Paul Goldstein voting to issue this Order; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 12, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT

BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 21263 of Susan M. Tamborini, Trustee, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the lot occupancy requirements under Subtitle D § 210.1, from the building area requirements for an accessory building under Subtitle D § 5003.1, and from the location requirements for an accessory building under Subtitle D § 5004.1(a) to allow a new accessory structure (deck and pergola) in the required rear yard of an existing two-story detached principal dwelling in the R-1B zone at 4632 Charleston Terrace, NW (Square 1368, Lot 54).

HEARING DATE: April 2, 2025
DECISION DATES: April 2, 2025 and June 10, 2026

DECISION AND ORDER

This self-certified application was filed on December 18, 2024 on behalf of Susan M. Tamborini, Trustee (the "Applicant"), the owner of the property that is the subject of the application. Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. In accordance with Subtitle Y §§ 400.4 and 402.1, the Office of Zoning provided notice of the application and of the public hearing, by letters dated January 3, 2025, to the Applicant, the Office of Planning ("OP"), the District Department of Transportation, the Department of Buildings, the Office of Advisory Neighborhood Commissions, Advisory Neighborhood Commission ("ANC") 3D, the ANC in which the subject property is located and Single Member District ANC 3D06, the Councilmember for Ward 3 as well as the Chairman and four at-large members of the D.C. Council, and the owners of all property within 200 feet of the subject property. Notice was published in the *District of Columbia Register* on January 17, 2025 (72 DCR 000400) and on February 28, 2025 (72 DCR 002078).

Party Status. Pursuant to Subtitle Y § 403.5, the Applicant and ANC 3D were automatically parties in this proceeding. The Board granted a request for party status in opposition to the application from Deborah James, the owner of the abutting property to the west of the Applicant's lot. (Exhibits 26, 26A.)

Applicants' Case. The Applicant provided evidence and testimony in support of the application, including from Tony Derro, the architect for the project. The Applicant requested zoning relief needed to allow a new accessory structure (deck and pergola) in the rear yard of the subject property, replacing an existing uncovered deck.

OP Report. The Office of Planning recommended approval of the requested relief. (Exhibits 27, 30.)

ANC 3D. By letter dated March 5, 2025, ANC 3D indicated that, at its regularly scheduled and noticed meeting on March 5, 2025, with a quorum present, "ANC 3D could not come to a consensus on whether to support or oppose this project." (Exhibit 22.)

Party in Opposition. The party in opposition did not object to the size of the Applicant's proposed accessory structure but expressed concerns about its proximity to abutting lots as well as about the planned roof, which "would remove the limited remaining open space in that direction" as viewed from the party's dwelling. (Exhibits 23, 26A.)

Persons in Support. The Board received letters in support of the application from persons living near the subject property. The persons in support indicated no objection to the Applicant's proposal.

FINDINGS OF FACT

1. The property that is the subject of this application is an interior lot on the south side of Charleston Terrace, NW, between Salem Lane and Kenmore Drive, with the address 4632 Charleston Terrace, NW (Square 1368, Lot 54).

2. The subject property is generally rectangular with an irregular rear lot line. The lot is 50 feet wide, with side lot lines extending approximately 100 feet on the west and 112 feet on the east side. The lot area is approximately 5,302 square feet. (Exhibit 4.)

3. The subject property is improved with a detached building devoted to use as a principal dwelling. The building is two stories in height and occupies approximately 1,960 square feet, resulting in a lot occupancy of approximately 37 percent. (Exhibits 4, 5, 20A.)

4. The subject property has an existing rear yard approximately 27.6 feet in depth. (Exhibit 4.)

5. The portion of the subject property occupied by the dwelling is relatively flat. The rear yard slopes downward away from the dwelling toward the rear lot line. The change in grade in the area that will be occupied by the new accessory structure is approximately six feet.

6. A retaining wall extends across the subject property approximately seven feet from the rear lot line. A solid wooden fence was installed above the retaining wall. (Exhibits 5, 32.)

7. The Applicant proposed to replace an existing rear deck with a new one-story accessory structure in the rear yard of the subject property designed to function as a deck and pergola. The new accessory structure will not be attached to the existing dwelling but will extend

into the required rear yard with a separation of 18 inches from the rear of the dwelling. The Applicant will construct a new deck, approximately 18 inches above grade and 40 square feet, between the dwelling and the new accessory building. (Exhibit 5.)

8. The accessory structure will be generally rectangular, approximately 15 feet, eight inches deep on the west side and 16 feet, two inches deep on the east. (Exhibits 5, 20A.)

9. The width of the new accessory structure will be approximately 38 feet, six inches, slightly wider than the existing dwelling. The eastern portion will be set back 7.7 feet from the east side lot line, consistent with the side yard provided by the existing dwelling. The western portion will be set back 3.8 feet from the west side lot line, less than the existing dwelling. (Exhibits 5, 20A.)

10. The accessory structure will not be enclosed with side walls. The majority of the deck floor will be covered by a roof that will rise approximately 11 feet, four inches above the deck floor at the center of the structure and eight feet, four inches above the floor at each end (east and west). The east and west portions of the roof will be connected by a pergola at the center. The pergola will be situated approximately 11 feet, three inches above the floor, with cross members less than 24 inches on center. (Exhibit 20A; Transcript of April 2, 2025 at 136.)

11. The highest point of the roof of the accessory building will be approximately 18 feet above grade, measured from the existing retaining wall in the rear yard. (Exhibit 20A.)

12. The southwest corner of the new accessory structure will extend to the existing retaining wall. A portion of the pergola will extend beyond the floor of the accessory structure, within 6.7 feet of the rear lot line. (Exhibit 5.)

13. The Applicant will remove the fence above retaining wall and along the east side lot line at the subject property. (Exhibits 5, 20A.)

14. A solid wood fence extends along the side lot line in common with the abutting lot to the west. (Exhibit 20A.)

15. The Applicant will install two visual screens along the west side of the accessory structure. Each screen will be three feet wide and will extend from the floor to the roof, flanked on either side by railings. (Exhibits 31A, 31B.)

16. The Applicant will maintain landscaping along the east and west sides of the accessory structure, including greenery as well as a tree. The Applicant will install planters along the south portion of the accessory structure. (Transcript of April 2, 2025 at 136.)

17. The covered portion of the new accessory structure will have a building area of 652 square feet and will increase the lot occupancy at the subject property to 49.3 percent. The

accessory structure will be located in the required rear yard of the Applicant's lot. (Exhibit 4.)

18. The lots abutting the subject property to the east and west are improved with detached principal dwellings.

19. The dwelling immediately to the west of the subject property contains a sunroom in the southeast corner of the building as well as windows that face the Applicant's lot. The sunroom is located so that its floor will be at approximately the same level as the roof of the Applicant's new accessory building. (Exhibit 20A.)

20. The lot abutting the subject property to the south fronts on MacArthur Boulevard and is located in a Residential Apartment (RA) zone, RA-1. The lot contains a multi-unit residential development in attached buildings.

21. The side wall of the building immediately to the south of the subject property contains several windows facing the Applicant's lot at a distance of approximately 12 feet. The lower windows are at approximately the same level as the Applicant's retaining wall, at least 3.5 feet below the floor of the planned accessory building. The upper window does not provide direct views of the Applicant's lot. (Exhibit 20A.)

22. Properties to the north of the subject property, across Charleston Terrace, contain detached principal dwellings. The surrounding neighborhood contains predominantly low-density residential uses.

23. The subject property is located in a Residential House (R) zone, R-1B. The Residential House zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 101.1.) The R zones are intended to (a) provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development; (b) recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city; (c) allow for limited compatible accessory and non-residential uses; (d) allow for the matter-of-right development of existing lots of record; (e) establish minimum lot area and lot width for the subdivision and creation of new lots of record; and (f) discourage multiple dwelling unit development. (Subtitle D § 101.2.)

24. The purposes of the R-1B zones are to (a) protect quiet residential areas now developed with detached houses and adjoining vacant areas likely to be developed for those purposes and (b) stabilize the residential areas and promote a suitable environment for family life. (Subtitle D § 101.3.) The R-1B zone is intended to provide for areas predominantly developed with detached houses on moderately sized lots. (Subtitle D § 101.5.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requested special exceptions needed to allow a new accessory structure (a covered deck and pergola) that will increase the lot occupancy at the subject property above the amount permitted as a matter of right, will exceed the matter-of-right limit on building area for an accessory building, and will be located in the required rear yard of an existing two-story detached principal dwelling in the R-1B zone at 4632 Charleston Terrace, NW (Square 1368, Lot 54). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific requirements. (See Subtitle X § 901.2.)

The planned accessory building will increase lot occupancy at the subject property to 49.3 percent, where 40 percent is permitted as a matter of right (Subtitle D § 210.1). The building area of the accessory building will be 652 square feet, where a maximum of 450 square feet is permitted under Subtitle D § 5003.1. In accordance with Subtitle D § 5004.1(a), an accessory building may be located within a rear yard but not in a required rear yard. In this case, the planned accessory structure will be located entirely within the required rear yard.

Pursuant to Subtitle D § 5201.2, the Board is authorized to grant relief as a special exception from certain development standards to allow a new accessory structure to a residential building containing one principal dwelling on a non-alley lot, subject to the requirements of Subtitle D § 5201 and Subtitle X, Chapter 9. Eligible development standards include lot occupancy up to a maximum of 50 percent, the maximum building area of an accessory building, and provisions relating to rear yard, including restrictions on the location of an accessory building. (Subtitle D §§ 5201.2(a), (b), and (c).) Under Subtitle D § 5201.4, an application for a special exception under Subtitle D § 5201.2 must demonstrate that a proposed accessory structure will not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically: (a) the light and air available to neighboring properties must not be unduly affected; (b) the privacy of use and enjoyment of neighboring properties must not be unduly compromised; and (c) the proposed accessory structure, together with the original building, as viewed from the street, alley, and other public way, must not substantially visually intrude on the character, scale, and pattern of houses along the street or alley frontage. As required by Subtitle D § 5201.4(d), the Applicant submitted graphical representations including plans, photographs, and elevation and section drawings sufficient to represent the relationship of the proposed accessory structure to adjacent buildings. Based on the findings of fact, and having given great weight to the recommendation of the Office of Planning, the Board concludes that the Applicant satisfied the requirements for approval of the special exceptions requested.

The new accessory structure will not unduly affect the light and air available to neighboring properties. The accessory structure will meet applicable development standards with respect to height and will utilize an open design, without enclosing walls, that will minimize its impacts on

the availability of light and air to neighboring properties. The Applicant submitted a shadow study (Exhibit 20B) indicating that the shadow impacts of the accessory structure will be limited. Due to the sloping topography of the Applicant's lot, the accessory structure will be located lower than the dwellings on adjoining lots to the east and west. The light and air available to the building on the abutting lot to the south will not be affected by the new accessory structure given its open design and distance from the rear lot line of the subject property as well as the location of the windows on the building to the south primarily below the floor level of the new accessory structure.

The Board concludes that the planned accessory structure will not unduly compromise the privacy of use and enjoyment of neighboring properties. Views from the accessory structure will be minimized by its roof and location, lower than the dwellings on the adjoining lots to the east and west, as well as the privacy screens and landscaping that the Applicant will install around the perimeter of the accessory building. The accessory building will not provide direct views into nearby residences due to the topography of the subject property, the distances between the accessory structure and nearby dwellings, which are separated by existing rear and side yards, and the locations of windows on existing dwellings on adjoining lots, which generally do not provide direct views into the Applicant's rear yard. Views to and from the sunroom of the dwelling to the west will be limited by the roof of the new accessory building as well as the installation of screens and landscaping.

The Office of Planning noted some "potential privacy impacts" associated with the Applicant's proposal but determined that the planned accessory structure would not alter existing conditions with respect to privacy available to nearby dwellings. The Office of Planning found that the Applicant's proposal would not unduly compromise the use and enjoyment of neighboring properties with respect to privacy and therefore did not find a need to recommend that the Board require special treatment in the way of design, screening, or other features for the protection of adjacent and nearby properties, as is permitted under Subtitle D § 5201.5.[1] (Exhibit 30.)

The party in opposition expressed concerns regarding privacy, citing the proximity of the accessory structure to nearby dwellings. The Board concluded that approval of the Applicant's proposal, which includes the installation of privacy screens and landscaping to minimize views from the accessory structure, will not unduly compromise the privacy available to nearby properties. The accessory structure will be located in the rear yard of the subject property and will not enhance or create views into nearby dwellings, especially considering its location lower than the dwellings to the east and west, its roof, and the measures the Applicant will undertake to enhance privacy.

The new accessory structure, together with the original building, as viewed from a street, alley, or other public way will not substantially intrude on the character, scale, or pattern of houses along

[1] The Office of Planning suggested that the Applicant should consider "the provision of privacy screening at appropriate locations along the edge of the structure." (Exhibit 30.) The Applicant subsequently indicated an intent to install privacy screens on the west side as well as landscaping around the three sides of the accessory structure that will face adjoining properties.

the street or alley frontage. The proposed accessory structure will not be visible from any street, including Charleston Terrace, alley, or other public way.

Subtitle X § 901.2. For the reasons discussed above, the Board concludes that approval of the application will not tend to adversely affect the use of neighboring properties in accordance with the Zoning Regulations and Zoning Map, as required under Subtitle X § 901.2. The planned accessory structure will continue the residential use of the subject property as a principal dwelling without creating adverse impacts on the light, air, or privacy available to nearby properties.

The Board was not persuaded by the party in opposition that the accessory structure would adversely affect the use and enjoyment of the abutting property to the west on the ground that "the new roof would completely dominate the view" of the subject property available from the dwelling and rear yard at the abutting property. The Zoning Regulations permit the location of an accessory building in the rear yard and thus do not require that a rear yard must be maintained as open space or preclude views of an accessory structure from nearby properties. The party in opposition did not identify any adverse impacts that would arise specifically from the zoning relief requested by the Applicant.

The Board further concludes that approval of the application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map. The Applicant's proposal is consistent with the purposes of the R-1B zones to protect quiet residential areas now developed with detached houses and to stabilize a residential area and promote a suitable environment for family life. Approval of the requested special exceptions is also consistent with the intent of the Residential House zones to provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development and to recognize the importance of the preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city.

Great weight. The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04.) For the reasons discussed above, the Board agrees with OP's recommendation that, in this case, the application should be approved.

The Board is also required to give "great weight" to the issues and concerns raised by an affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)(A)). In this case, ANC 3D submitted a report that did not provide a recommendation to the Board but "transmit[ted] the arguments in support and opposition" to the application that were expressed at the ANC's public meeting. The arguments in opposition included that the degree of relief requested ("three deviations from normal zoning") created "a massive over-use of the backyard and an abuse of the applicant's neighbors," especially considering that the proposed roof "greatly increases the impact of the proposed addition," particularly with respect to the light available to the abutting property to the south and the air available to the abutting properties to the east and west. The arguments in support included that the application met "the relevant special exception criteria, namely there is

no undue impact on any neighbor's light and air," that "neighbors are not entitled to a view in the context of the special exception test," and that the "shadow study shows that there is minimal impact on neighboring properties." (Exhibit 22.)

The "great weight" requirement extends only to the issues and concerns of the affected ANC that are legally relevant to the application at issue. *See Concerned Citizens of Brentwood v. District of Columbia Bd. of Zoning Adjustment*, 634 A.2d 1234, 1241 (D.C. 1993), *citing Bakers Local 118 v. District of Columbia Bd. of Zoning Adjustment*, 437 A.2d 176, 180 (D.C. 1981). The Board credits the views expressed in the ANC's letter but, for the reasons discussed above, did not find the arguments against approval of the application persuasive advice that warranted denial of the zoning relief requested.

Exceptions to the Proposed Order. Because a majority of the Board members participating in the issuance of this order did not personally hear the evidence in this application, a proposed order was provided to the parties on March 4, 2026 to afford them an opportunity to present written exceptions, in accordance with D.C. Official Code § 2-509(d). The Board received no exceptions.

Based on the findings of fact and conclusions of law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions under Subtitle D § 5201 from the lot occupancy requirements under Subtitle D § 210.1, from the building area requirements for an accessory building under Subtitle D § 5003.1, and from the requirements for the location of an accessory building under Subtitle D § 5004.1(a) to allow a new accessory structure (deck and pergola) in the required rear yard of an existing two-story detached principal dwelling in the R-1B zone at 4632 Charleston Terrace, NW (Square 1368, Lot 54). Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown as Exhibits 20A and 31B in the record**:**

VOTE: 3-1-1 (Frederick L. Hill, Carl H. Blake, and Chrishaun S. Smith voting to approve; Gwen M. Wright opposed; one Board seat vacant)

VOTE: 4-0-1 (Gwen M. Wright, Melissa Lindsjo, Michelle Pourciau, and Paul Goldstein voting to issue this Order; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 12, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA Application No. 21386
AMW Associates, LLC
1332 Corbin Place, NE (Square 1031, Lot 170)

HEARING DATE: June 10, 2026[1]
DECISION DATE: June 10, 2026

SUMMARY ORDER

RELIEF REQUESTED. The application requests the following relief in order to construct a third story and a three-story with basement rear addition, to an existing, attached, two-story with basement, principal dwelling unit in the RF-1 zone:

- Special Exception from the rear yard requirements of Subtitle E § 207.1, pursuant to Subtitle E § 5201 and Subtitle X § 901.2 (*20 feet minimum required; 16.7 feet existing; 11.75 feet proposed*)
- Special Exception from the lot occupancy requirements of Subtitle E § 210.1, pursuant to Subtitle E § 5201 and Subtitle X § 901.2 (*60% maximum permitted; 57% existing; 68% proposed*)

The zoning relief requested in this case was self-certified. (Exhibit 18.)

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 6A, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

NOTICE OF THE APPLICATION AND PUBLIC HEARING. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

ANC REPORT. The Board received a letter from ANC 6A Chair Amber Gove noting the ANC had not voted on the updated application after revised plans were submitted to the record, but acknowledged the successful negotiations between the Applicant and neighbors. (Exhibit 43.)

[1] The Application was removed from the January 28, 2026 Expedited Review calendar, and scheduled for a public hearing on March 11, 2026. The hearing was then administratively rescheduled twice.

The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 13, 2025, at which a quorum was present, the ANC voted to support the original application. (Exhibit 16.) The ANC report raised no issues or concerns.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the application. (Exhibit 24.)

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT did not submit a report to the record.

ORGANIZATIONS IN SUPPORT. The Board received a letter in support of the application from the Capitol Hill Restoration Society. (Exhibit 27.)

PERSONS IN OPPOSITION. The Board received four letters from neighbors in opposition to the application. (Exhibits 28, 30, 40, 41.)

CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special Exception from the rear yard requirements of Subtitle E § 207.1, pursuant to Subtitle E § 5201 and Subtitle X § 901.2 (*20 feet minimum required; 16.7 feet existing; 11.75 feet proposed*)
- Special Exception from the lot occupancy requirements of Subtitle E § 210.1, pursuant to Subtitle E § 5201 and Subtitle X § 901.2 (*60% maximum permitted; 57% existing; 68% proposed*)

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibit 44 of the record, as required under Subtitle Y §§ 604.9 and 604.10.

VOTE: **4-0-1** (Gwen M. Wright, Melissa Lindsjo, Michelle Pourciau and Paul Goldstein to APPROVE; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 16, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.10, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT

BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA Application No. 21406
Consys, Inc.
2502 Martin Luther King Jr. Ave., SE (Square 5868, Lot 175)

HEARING DATE: June 3, 2026[1]
DECISION DATE: June 3, 2026

SUMMARY ORDER

RELIEF REQUESTED. The application requests the following relief in order to construct a new, detached, four-story plus penthouse and roof deck, 37-residential unit mixed-use building in the MU-4/RA-1 zones:

- Special exception from the minimum vehicle parking requirements of Subtitle C § 701.5, pursuant to Subtitle C § 703.2 and pursuant to Subtitle X § 901.2 (*5 minimum required, 5 temporary spaces existing, 0 proposed*)
- Special exception from the zone boundary line crossing a lot requirements of Subtitle A § 207.2, pursuant to Subtitle X § 901.2

The zoning relief requested in this case was self-certified. (Exhibit 19.)[2]

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 8A and 8B, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

NOTICE OF THE APPLICATION AND PUBLIC HEARING. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

ANC 8A REPORT. The ANC did not submit a report to the record.

ANC 8B REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 24, 2026, at which a quorum was present, the ANC voted to support the application. (Exhibit 33.) The ANC report raised no issues or concerns.

[1] The Application was administratively rescheduled twice from its original February 4, 2026, public hearing date.

[2] The final self-certification in Exhibit 19 added a reference to C § 701.5 for the relief request from the minimum vehicle parking requirements, with no other updates from the original self-certification in Exhibit 3.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the application. (Exhibit 26.)

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT submitted a report indicating that it had no objection to the application because it concluded that with the conditions the relief would not result in any adverse impacts to the District's transportation network. (Exhibit 27.) DDOT's recommendation included conditions that the Applicant implement the Transportation Demand Management Plan and Loading Management Plan referenced in the report. The conditions were adopted by the Board in the final order.

PERSONS IN SUPPORT. The Board received one letter from a neighbor in support of the application. (Exhibit 29.)

PERSONS IN OPPOSITION. The Board received one letter from a neighbor in opposition to the application. (Exhibit 23.)

CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special exception from the minimum vehicle parking requirements of Subtitle C § 701.5, pursuant to Subtitle C § 703.2 and pursuant to Subtitle X § 901.2 (*5 minimum required, 5 temporary spaces existing, 0 proposed*)
- Special exception from the zone boundary line crossing a lot requirements of Subtitle A § 207.2, pursuant to Subtitle X § 901.2

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibit 24A[3] of the record, as required under Subtitle Y §§ 604.9 and 604.10, subject to the following **CONDITIONS**:

1. The Applicant shall implement the Transportation Demand Management Plan and Loading Management Plan as written in the DDOT report, Exhibit 27.

VOTE: **4-0-1** (Michelle Pourciau, Paul Goldstein, Melissa Lindsjo, and Anthony J. Hood to APPROVE; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 10, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.10, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD

[3] The Applicant proposed two lobby options and at the request of the Board the Applicant verbally selected Lobby Option Two on Sheet A13 of the plan in Exhibit 24A as their final submission. The Board subsequently approved the relief pursuant to the plans in Exhibit 24A and Lobby Option 2, increasing the number of proposed dwelling units from 36 to 37.

AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA Application No. 21423
2210 5th, LLC
2210 5th Street, N.E. (Square 3622, Lot 811)

HEARING DATE: June 10, 2026[1]
DECISION DATE: June 10, 2026

SUMMARY ORDER

RELIEF REQUESTED. The application requests the following relief in order to permit an entertainment, assembly, and performing arts use (indoor golf simulator) in an existing, detached, two-story building in the PDR-2 zone:

- Special Exception under Subtitle U § 802.1(e), pursuant to Subtitle X § 901.2, to allow an entertainment, assembly, and performing arts use
- Area Variance from Subtitle U § 802.1(e)(2), pursuant to Subtitle X § 1002, to allow an entertainment, assembly, and performing arts use on a property abutting a residential use or residential zone

The zoning relief requested in this case was self-certified. (Exhibit 23.)[2]

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 5F, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

NOTICE OF THE APPLICATION AND PUBLIC HEARING. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 21, 2025, at which a quorum was present, the ANC voted to support the application. (Exhibit 21.) The ANC requested that the Board include a condition limiting the impact of noise on adjacent properties. The Board did not adopt this as a condition of the order, noting the Applicant addressed these concerns in the project layout.

[1] The hearing was administratively rescheduled from March 11, 2026 and April 29, 2026 due to the lack of a quorum on the Board.

[2] The application was amended to add an area variance from the entertainment, assembly, performing arts use requirements on a property abutting a residential use or zone of Subtitle U § 802.1(e)(2)

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the application. (Exhibit 37.)

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT submitted a report indicating that it had no objection to the application because it concluded that the relief would not result in any adverse impacts to the District's transportation network. (Exhibit 31.)

CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception and variance relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property;
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief;
- There exists an exceptional or extraordinary situation or condition related to the property;
- The exceptional condition creates a practical difficulty, in the case of an area variance, or an undue hardship, in the case of a use variance, in complying with the Zoning Regulations;
- The relief can be granted without substantial detriment to the public good; and
- The relief can be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special Exception under Subtitle U § 802.1(e), pursuant to Subtitle X § 901.2, to allow an entertainment, assembly, and performing arts use
- Area Variance from Subtitle U § 802.1(e)(2), pursuant to Subtitle X § 1002, to allow an entertainment, assembly, and performing arts use on a property abutting a residential use or residential zone

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the revised plans shown in Exhibit 27B of the record, as required under Subtitle Y §§ 604.9 and 604.10.

VOTE: **4-0-1** (Gwen M. Wright, Melissa Lindsjo, Michelle Pourciau, and Paul Goldstein to APPROVE; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 16, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.10, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX

DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA Application No. 21424
Mestawet Dejene
1703 Bunker Hill Road, NE (Square 4163, Lot 3)

HEARING DATE: June 10, 2026[1]
DECISION DATE: June 10, 2026

SUMMARY ORDER

RELIEF REQUESTED. The application requests the following relief in order to expand an existing child development home from 9 to 12 children, in a detached, two-story plus basement, principal dwelling unit with an outdoor play area in the R-1B zone:

- Special Exception under the expanded child development home requirements of Subtitle U § 251.1(b)(3), pursuant to Subtitle X § 901.2
- Special Exception under Subtitle U § 251.6, pursuant to Subtitle X § 901.2, for modification of Subtitle U § 251.3(f) to allow conduct of operations related to a home occupation outside a structure.

The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibit 11.)

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 5B, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

NOTICE OF THE APPLICATION AND PUBLIC HEARING. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on February 18, 2026, at which a quorum was present, the ANC voted to support the application. (Exhibit 20.) The ANC report raised no issues or concerns.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the application. (Exhibit 22.)

[1] The Application was administratively rescheduled twice from the original March 18, 2026 public hearing date.

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT did not submit a report to the record.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION ("OSSE") REPORT. OSSE submitted a report recommending approval of the application. (Exhibit 19.)

PERSONS IN SUPPORT. The Board received one letter from a neighbor in support of the application. (Exhibit 27.)

At the public hearing, the Board heard testimony in support from Lori Moller, Leslie Andrews, Muluwork Kenea, Cynthia Davis, and Limiat Abdulwahid.

CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property; and
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief.

DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special Exception under the expanded child development home requirements of Subtitle U § 251.1(b)(3), pursuant to Subtitle X § 901.2
- Special Exception under Subtitle U § 251.6, pursuant to Subtitle X § 901.2, for modification of Subtitle U § 251.3(f) to allow conduct of operations related to a home occupation outside a structure.

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibit 7 of the record, as required under Subtitle Y §§ 604.9 and 604.10,

VOTE: **4-0-1** (Paul Goldstein, Gwen M. Wright, Michelle Pourciau, and Melissa Lindsjo to APPROVE; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 16, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS, UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA Application No. 21428
Daniel Alexander Payne Community Development Corporation
1518 M Street, NW (Square 197, Lot 86)

HEARING DATE: June 10, 2026[1]
DECISION DATE: June 10, 2026

SUMMARY ORDER

RELIEF REQUESTED. The application requests the following relief in order to construct a 12-story plus basement and penthouse rear addition, providing 28 dwelling units, to an existing religious building in the D-6 zone:

- Special Exception from the bicycle parking requirements of Subtitle C § 802.1, pursuant to Subtitle C § 807.2 and Subtitle X § 901.2 (*1 short-term space and 9 long-term spaces minimum required; 3 short-term and 0 long-term spaces existing; 3 short-term and 0 long-term spaces proposed*)
- Special Exception from the penthouse setback requirements of Subtitle C § 1504.1, pursuant to Subtitle C § 1506.1 and Subtitle X § 901.2 (*16-foot setback required; 0 feet proposed*)
- Area Variance from the rear yard requirements of Subtitle I § 205.1, pursuant to Subtitle X § 1002 (*22.9 feet minimum required; 28.3 feet existing; 14 feet proposed*)

The zoning relief requested in this case was self-certified. (Exhibit 28, pgs. 5 and 6, (Final Revised); Exhibit 5 (Original).)[2]

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 2C, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

NOTICE OF THE APPLICATION AND PUBLIC HEARING. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

[1] The hearing was administratively rescheduled from March 18, 2026 and May 5, 2026 due to the lack of a quorum on the Board.

[2] The application was amended to include special exception relief from the bicycle parking requirements of Subtitle C § 802.1.

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on January 13, 2026, at which a quorum was present, the ANC voted to support the application. (Exhibit 17.) The ANC report raised no issues or concerns.

ANC Commissioner Nancy Groth testified at the public hearing on behalf of ANC 2C in support of the application.

OFFICE OF PLANNING ("OP") REPORT. OP submitted a report recommending approval of the application. (Exhibit 24.)

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT submitted a report indicating that the relief would not result in any adverse impacts to the District's transportation network, and that it had no objection to the application with the condition that the Board require the applicant to provide four (4) short-term bicycle parking spaces. (Exhibit 25.) The Board did not adopt this condition, as the Applicant agreed to fulfill this condition on the record.

CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested special exception and variance relief can be granted because:

- It is in harmony with the general purpose and intent of the Zoning Regulations and Map;
- It will not tend to affect adversely the use of neighboring property;
- Pursuant to Subtitle X § 901.2(c), the relief satisfies the specified conditions for special exception relief;
- There exists an exceptional or extraordinary situation or condition related to the property;
- The exceptional condition creates a practical difficulty, in the case of an area variance, or an undue hardship, in the case of a use variance, in complying with the Zoning Regulations;
- The relief can be granted without substantial detriment to the public good; and
- The relief can be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Special Exception from the bicycle parking requirements of Subtitle C § 802.1, pursuant to Subtitle C § 807.2 and Subtitle X § 901.2 (*1 short-term space and 9 long-term spaces minimum required; 3 short-term and 0 long-term spaces existing; 3 short-term and 0 long-term spaces proposed*)
- Special Exception from the penthouse setback requirements of Subtitle C § 1504.1, pursuant to Subtitle C § 1506.1 and Subtitle X § 901.2 (*16-foot setback required; 0 feet proposed*)
- Area Variance from the rear yard requirements of Subtitle I § 205.1, pursuant to Subtitle X § 1002 (*22.9 feet minimum required; 28.3 feet existing; 14 feet proposed*)

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibits 2A1 and 2A2 of the record, as required under Subtitle Y §§ 604.9 and 604.10.

VOTE: **4-0-1** (Paul Goldstein, Melissa Lindsjo, Michelle Pourciau, and Gwen M. Wright to APPROVE; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 16, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.10, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE

CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA Application No. 21440
Paul and Katherine Rosenbaum
6117 32nd Place, NW (Square 2019, Lot 8)

HEARING DATE: June 10, 2026[1]
DECISION DATE: June 10, 2026

SUMMARY ORDER

RELIEF REQUESTED. The application requests the following relief in order to construct a new, detached principal dwelling unit plus accessory apartment, in the R-1B zone:

- Area Variance from the side yard requirements of Subtitle D § 208.2, pursuant to Subtitle X § 1002 (*8 ft. minimum required on both sides; 4.96 ft. on the south side existing and proposed*)

The zoning relief requested in this case was self-certified. (Exhibit 3.)

PARTIES. The parties to this case were the Applicant and Advisory Neighborhood Commission ("**ANC**") 3/4G, the "affected ANC" pursuant to Subtitle Y §§ 101.8 and 403.5(b) of the Zoning Regulations (Title 11 of the DCMR, Zoning Regulations of 2016, to which all references are made unless otherwise specified).

NOTICE OF THE APPLICATION AND PUBLIC HEARING. The Board of Zoning Adjustment (the "**Board**") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

ANC REPORT. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 23, 2026, at which a quorum was present, the ANC voted to support the application. (Exhibit 33.) The ANC report raised no issues or concerns.

OFFICE OF PLANNING ("OP") REPORT. OP testified at the public hearing they recommended approval of the application following the submission of supplemental information from the Applicant.

OP's original report recommended denial of the application. (Exhibit 35.)

[1] The application was originally scheduled for April 1, 2026 and administratively rescheduled twice.

DISTRICT DEPARTMENT OF TRANSPORTATION ("DDOT") REPORT. DDOT submitted a report indicating that it had no objection to the application because it concluded that the relief would not result in any adverse impacts to the District's transportation network. (Exhibit 36.)

PERSONS IN SUPPORT. The Board received 15 letters from neighbors in support of the application. (Exhibits 22-28, 37-43, 46.)

CONCLUSIONS

Pursuant to Subtitle Y § 604.3, the order of the Board may be in summary form where granting an application when there was no party in opposition. As a summary order, it does not constitute binding legal precedent on the Board and shall not be considered by the Board in evaluating future applications.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested variance relief can be granted because:

- There exists an exceptional or extraordinary situation or condition related to the property;
- The exceptional condition creates a practical difficulty, in the case of an area variance, or an undue hardship, in the case of a use variance, in complying with the Zoning Regulations;
- The relief can be granted without substantial detriment to the public good; and
- The relief can be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.[2]

DECISION

Based on the case record and the testimony at the hearing, the Board concludes that the applicant has satisfied the burden of proof for the requested relief:

- Area Variance from the side yard requirements of Subtitle D § 208.2, pursuant to Subtitle X § 1002 (*8 ft. minimum required on both sides; 4.96 ft. on the south side existing and proposed*)

Accordingly, it is **ORDERED** that the application is **GRANTED** consistent with the plans shown in Exhibits 5 and 47B of the record, as required under Subtitle Y §§ 604.9 and 604.10.

VOTE: **4-0-1** (Gwen M. Wright, Paul Goldstein, Michelle Pourciau, and Melissa Lindsjo to APPROVE; one Board seat vacant)

[2] The Board's authority to grant a variance from the strict application of a zoning regulation is stated in the Zoning Act (D.C. Official Code § 6-641.07(g)(3)). In this case, the Board was not persuaded by the Applicant's estoppel argument but concluded that the application satisfied the requirements for approval of the requested area variances as set forth in the Zoning Act. "[T]he defenses of estoppel and laches are judicially disfavored in the zoning context because of the public interest in enforcement of the zoning laws." Beins v. District of Columbia Bd. of Zoning Adjustment, 572 A.2d 122, 126 (D.C. 1990) (citing Goto v. District of Columbia Bd. of Zoning Adjustment, 423 A.2d at 925) (D.C. 1980).)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 16, 2026

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS, UNLESS, WITHIN SUCH TWO-YEAR PERIOD, AN APPLICATION FOR A BUILDING PERMIT FOR THE ERECTION OR ALTERATION APPROVED IS FILED WITH THE DEPARTMENT OF BUILDINGS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 IS FILED PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.10, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA

NOTICE OF CLOSED MEETING

TIME AND PLACE: **Tuesday, June 16, 2026 @ 2 p.m.**
Virtually via WebEx

CASES ON AGENDA:

1. Application No. 21416 of Eastern Avenue Holdings III, LLC
2. Application No.21420 of Eastern Avenue Holdings III, LLC
3. Application No.20584-B of King's Creek, LLC
4. Application No.20716-A of A Street Development, LLC
5. Application No.21429 of Rachel Kohli
6. Application No.21434 of Maria Del Carmen Cabieses
7. Application No.21437 of HDR Holdings, LLC
8. Application No.21349-A of Ed Fendley
9. Application No.21430 of 1365 Perry, LLC
10. Application No.21438 of Emerald Wings, LLC
11. Application No.21441 of District Line Development, LLC
12. Application No.21447 of Christopher Boehmler

REASON(S) FOR HOLDING CLOSED MEETING (PER § 406 OF THE DISTRICT OF COLUMBIA ADMINISTRATIVE PROCEDURE ACT) (D.C. OFFICIAL CODE § 2-576): (CHECK ALL WHICH APPLY)

__X__ To receive legal advice from counsel on cases noted on the Board's agenda (listed above) for the above meeting to be held **June 16, 2026** – D.C. Official Code § 2-575(b)(4).

__X__ To deliberate upon, but not vote on, the contested cases noted on the Board's agenda (listed above) for the above meeting to be held **June 16, 2026**, for the reasons cited at D.C. Official Code § 2-575(b)(13).

BY THE BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA (Roll call vote taken at June 10, 2026 Public Hearing):

MICHELLE POURCIAU (CHAIR)	**__X__ YES**	**____NO**
PAUL GOLDSTEIN (VICE CHAIR)	**__X__ YES**	**____NO**
MELISSA LINDSJO	**__X__ YES**	**____NO**
GWEN WRIGHT, ROTATING ZONING COMMISSIONER	**__X__ YES**	**____NO**
VACANT, MAYORAL APPOINTEE		

KEARA MEHLERT, SECRETARY TO THE BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA.

BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA

NOTICE OF CLOSED MEETING

TIME AND PLACE: **Tuesday, June 23, 2026 @ 2 p.m.**
Virtually via WebEx

CASES ON AGENDA:

1. Application No. 21329 of Stephen Jackson
2. Application No. 20974-A of DC Chinatown Hotel Owner, LLC (TE)
3. Application No. 21435 of Yosef Asmelash and Mery, LLC
4. Application No. 21436 of St. Joseph's on Capitol Hill Catholic Church, Inc.
5. Application No. 21439 of 1908 Irving St., LLC
6. Application No. 21444 of Gordon Seagrave
7. Application No. 21445 of Mehmet (Onur) Ozlu and Romain Bordes

REASON(S) FOR HOLDING CLOSED MEETING (PER § 406 OF THE DISTRICT OF COLUMBIA ADMINISTRATIVE PROCEDURE ACT) (D.C. OFFICIAL CODE § 2-576): (CHECK ALL WHICH APPLY)

__X__ To receive legal advice from counsel on cases noted on the Board's agenda (listed above) for the above meeting to be held **June 23, 2026** – D.C. Official Code § 2-575(b)(4).

__X__ To deliberate upon, but not vote on, the contested cases noted on the Board's agenda (listed above) for the above meeting to be held **June 23, 2026**, for the reasons cited at D.C. Official Code § 2-575(b)(13).

BY THE BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA (Roll call vote taken at June 17, 2026 Public Hearing):

MICHELLE POURCIAU (CHAIR)	**__X__ YES _____NO**
PAUL GOLDSTEIN (VICE CHAIR)	**__X__ YES _____NO**
MELISSA LINDSJO	**absent**
JOSEPH IMAMURA, ROTATING ZONING COMMISSIONER	**__X__ YES _____NO**
VACANT, MAYORAL APPOINTEE	

KEARA MEHLERT, SECRETARY TO THE BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA.

BOARD OF ZONING ADJUSTMENT
NOTICE OF VIRTUAL PUBLIC MEETING

TIME AND PLACE: Wednesday, September 30, 2026, @ 9:30 a.m.
Via WebEx: https://dcoz.dc.gov/BZA09-30-2026
Via Telephone: 202-860-2110 Access Code: 2309 731 0594
Via YouTube: https://www.youtube.com/c/DCOfficeofZoning

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule but reserves the right to call items on the agenda out of turn.

WARD SEVEN

Application of:	**Anthony & Lindsey Hill**
Case No.:	**21497**
Address:	222 17th Place N.E. (Square 1093, Lot 70)
ANC:	**7D**
Relief:	Special Exceptions from: • the rear yard requirements of Subtitle E § 207.1 (pursuant to Subtitle E § 5201 and Subtitle X § 901.2) • the lot occupancy requirements of Subtitle E § 210.1 (pursuant to Subtitle E § 5201 and Subtitle X § 901.2)
Project:	To construct a two-story plus basement, rear addition, to an existing attached, two-story plus basement, principal dwelling unit in the RF-1 zone.

PLEASE NOTE:
This public meeting will be held virtually through WebEx for the Board to deliberate on or decide the items listed on the agenda. Public testimony is not taken at a public meeting session. Information for the public to view or listen to the public meeting is listed above and will be provided on the Office of Zoning website by the Friday before the meeting date. Visit https://dcoz.dc.gov/watchlive.

The public meeting in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11.

Expedited Review Applications:
Expedited Review applications will remain on the public meeting agenda unless a request for party status is filed in opposition, or if a request to remove the application from the agenda is made by: (1) a Board member; (2) Office of Planning; (3) an affected ANC or affected Single Member District; (4) the Councilmember representing the area in which the property is located, or

representing an area located within two-hundred feet of the property; or (5) an owner or occupant of any property located within 200 feet of the property.

The removal of the application from the Expedited Review Calendar will be announced as a preliminary matter on the scheduled decision date and then rescheduled for a public hearing on a later date. Notice of the rescheduled hearing will be posted on the Office of Zoning website calendar at https://app.dcoz.dc.gov/Home/Calendar and on a revised public hearing notice in the OZ office. If an applicant fails to appear at the public hearing, this application may be dismissed.

Individuals and organizations may also submit written comments to the Board by uploading submissions via the Interactive Zoning Information System ("IZIS") at https://app.dcoz.dc.gov/Login.aspx or sent by email to bzasubmissions@dc.gov. Written comments and/or testimony must be submitted to the record at least 24 hours prior to the start of the hearing. If you are unable to use either of these means of submission, please contact Robert Reid at (202) 727-5471 for further assistance

Modification Without Hearing Applications:
Per Subtitle Y § 703, requests for party status as well as responses and comments from non-parties are not permitted for modification without hearing cases.

FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

Do you need assistance to participate?

Amharic
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Chinese
您需要有人帮助参加活动吗？
如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件 Zelalem.Hill@dc.gov。这些是免费提供的服务。

French
Avez-vous besoin d'assistance pour pouvoir participer ? Si vous avez besoin d'aménagements spéciaux ou d'une aide linguistique (traduction ou interprétation), veuillez contacter Zee Hill au (202) 727-0312 ou à Zelalem.Hill@dc.gov cinq jours avant la réunion. Ces services vous seront fournis gratuitement.

Korean
참여하시는데 도움이 필요하세요?

특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면, 회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish
¿Necesita ayuda para participar?
Si tiene necesidades especiales o si necesita servicios de ayuda en su idioma (de traducción o interpretación), por favor comuníquese con Zee Hill llamando al (202) 727-0312 o escribiendo a Zelalem.Hill@dc.gov cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese
Quí vị có cần trợ giúp gì để tham gia không?
Nếu quí vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc Zelalem.Hill@dc.gov trước năm ngày. Các dịch vụ này hoàn toàn miễn phí.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

MICHELLE POURCIAU - CHAIRPERSON
JONATHAN GOLDSTEIN - VICE-CHAIRPERSON
MELISSA LINDSJO – MEMBER, NATIONAL CAPITOL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
KEARA M. MEHLERT, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov .

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 14-18(1)
Z.C. Case No. 14-18
Mid-City Financial Corporation
(Extinguishment of First-Stage Planned Unit Development and Related Zoning Map Amendment – Square 3954, Lots 3, 4 and 800-804; Square 4024, Lots 1, 800-804; and Square 4025, Lots 1-3, 5, and 800-803)
May 14, 2026

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held a public meeting on May 14, 2026, and considered a motion from Mid-City Financial Corporation (the "Applicant") to extinguish an approved first-stage planned unit development ("PUD") and related Zoning Map amendment for Square 3954, Lots 3, 4 and 800-804; Square 4024, Lots 1, 800-804; and Square 4025, Lots 1-3, 5, and 800-803 ("Property[1]"), approved in Z.C. Case No. 14-18, and extended pursuant to Z.C. Order Nos. 14-18B, and 14-18D. The Commission considered the request pursuant to Subtitles X and Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the "Zoning Regulations" or "ZR16", and to which all citations to the regulations herein are made unless otherwise specified). The Commission granted the motion to extinguish the first-stage PUD and Related Zoning Map Amendment.

FINDINGS OF FACT

I. PROCEDURAL BACKGROUND

1. On April 21, 2026, the Applicant filed a motion requesting the Commission extinguish the first-stage PUD and related Zoning Map amendment application that was approved pursuant to Z.C. Order No. 14-18 and extended pursuant to Z.C. Order Nos. 14-18B and 14-18D. The first-stage PUD approval was last extended in Z.C. Order No. 14-18D and is set to expire on August 1, 2027.[2] The Commission has the authority to extinguish the first-stage PUD and related Zoning Map amendment approval pursuant to Subtitle X, §310.2.

2. Z.C. Order No. 14-18 approved the development of approximately 1.9 million square feet of mixed-use development on approximately 20 acres of property in Ward 5. In that application, the Applicant noted that approval of the project provided a unique and exciting opportunity to create a new and revitalized community that corrects some of the mistakes of earlier urban planning concepts, and creates a great place for existing residents, as well as new residents. Z.C. Order No. 14-18 also approved a PUD related Zoning Map Amendment from the C-2-A and R-5-A zones to C-2-A and R-5-B zones for the Property.

3. The Applicant noted that since the Commission's approval of the last time extension request, it has exhausted all fronts to move the proposed redevelopment of the Brookland Manor Apartments forward. The Applicant has determined that the approved massive

[1] Some of the lot numbers have changed since the first-stage PUD was approved. However, the properties that are subject to the first-stage PUD and related Zoning Map amendment approval have not changed.
[2] The second-stage PUD that was approved pursuant to Z.C. Order No. 14-18A and extended pursuant to Z.C. Order No. 14-18C expired on March 4, 2026.

multiphase redevelopment of affordable housing is not financially feasible, as the costs to move the redevelopment forward are far greater than any potential returns. For these reasons, the Applicant has determined that the best path forward for the future of the Brookland Manor Apartments and its residents is to extinguish the first-stage PUD and related Zoning Map amendment approvals and sell the property to a new owner who can better meet the needs of the residents, most likely through a major rehabilitation of the existing buildings.

4. At its Public Meeting on May 14, 2026, the Commission voted to extinguish the PUD and related Zoning Map amendment approval of Z.C. Order No. 14-18, as extended by Z.C. Order Nos. 14-18B and 14-18D.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through the flexibility in building controls, including building height and density, provided that a PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; and (c) protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan (Subtitle X § 300.1).

2. Once a PUD is approved, any construction on the PUD site that is not authorized in the order approving the PUD, including development under matter-of-right standards, is not permitted until (a) the validity of the PUD order expires; or (b) the Commission issues an order granting the applicant's motion to extinguish the PUD (Subtitle X § 310.2).

3. If no application for a permit is filed, construction has not started within the period specified, or no extension is granted, the approval shall expire, and the zoning shall revert to the pre-existing regulations and map (Subtitle Z § 702.6).

4. At the time of filing any motion, a party must serve all other parties, and all parties opposing a motion shall have seven days from the service of the motion to file and serve a response (Subtitle Z §§ 407.3, 407.4).

5. The Commission finds that the Applicant served the motion to extinguish on all parties—in this case, ANC's 5C and 5B, and Brookland Manor/Brentwood Village Resident Association—on April 21, 2026, and none filed a response within seven days of service of the motion.

6. In this case, the Commission finds that the Applicant no longer intends to build the approved PUD. Thus, the Commission finds that granting the Applicant's motion to extinguish the PUD and related Map Amendment, pursuant to Subtitle X § 310.2, will allow the Property to be developed under the matter-of-right standards pursuant to the MU-4 zone (formerly the C-2-A zone) and the RA-1 zone (formerly the R-5-A zone), which are the underlying zones that exist on the Property.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby **ORDERS APPROVAL** of the motion of the Applicant to extinguish the PUD and related Zoning Map amendment approved pursuant to Z.C. Order No. 14-18 and extended pursuant to Z.C. Order Nos. 14-18B and 14-18D.

FINAL ACTION
VOTE (May 14, 2026): 5-0-0 (Anthony Hood, Gwen Wright, Robert Miller, Tammy Stidham, and Joseph Imamura to approve).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *District of Columbia Register*; that is, on June 26, 2026.

BY THE ORDER OF THE D.C. ZONING COMMISSION
A majority of the Commission members approved the issuance of this Order.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

DISTRICT OF COLUMBIA REGISTER
2026 AGENCY SUBMISSION DEADLINE SCHEDULE

The *District of Columbia Register* is published weekly on Fridays including on public holidays that fall on a Friday. The deadline for submitting notices for publication by District agencies, boards, commissions, and public charter schools is **THURSDAY**, noon of the **PREVIOUS** week. For example, the deadline for the January 16, 2026 *District of Columbia Register* is noon on Thursday January 8, 2026.

The deadline for a Register to be published during a week that has an official District of Columbia holiday is WEDNESDAY noon of the PREVIOUS week. For example, Monday, January 19, 2026 (Martin Luther King Jr. Day) is an official District of Columbia holiday therefore, the deadline for the January 23, 2026 *District of Columbia Register* is noon on Wednesday, January 14, 2026.

If an official government holiday falls on a Thursday, the deadline for submitting documents is WEDNESDAY. Because Thursday, January 1, 2026 is New Years Day, the deadline for the January 9, 2026 *District of Columbia Register* is noon on Wednesday, December 31, 2025.

Because Thursday, November 26, 2026 is Thanksgiving Day, the deadline for submitting documents for the December 4, 2026 *District of Columbia Register* is noon on Wednesday, November 25, 2026.

Documents that are uploaded after the noon deadline will be published in the next edition of the Register.

The DC Register Submission Deadline Schedule is published at the end of each Register.

The Office of Documents also publishes the Submission Deadline Schedule on the DCRegs Home page at https://dcregs.dc.gov:



Since the deadline changes for a Register to be published during a week that has an official District of Columbia Government holiday, the 2026 holiday schedule is provided here for your convenience.

2026 District of Columbia Government Holiday Schedule	
New Year's Day	Thursday, January 1, 2026
Dr. Martin Luther King, Jr.'s Birthday	Monday, January 19, 2026
Washington's Birthday	Monday, February 16, 2026
DC Emancipation Day	Thursday, April 16, 2026
Memorial Day	Monday, May 25, 2026
Juneteenth National Independence Day	Friday, June 19, 2026
Independence Day (Observed)	Friday, July 3, 2026
Labor Day	Monday, September 7, 2026
Indigenous Peoples' Day	Monday, October 12, 2026
Veterans Day	Wednesday, November 11, 2026
Thanksgiving Day	Thursday, November 26, 2026
Christmas Day	Friday, December 25, 2026

Below is the 2026 District of Columbia Register Submission Deadline schedule.

OFFICE OF DOCUMENTS AND ADMINSTRATIVE ISSUANCES
DISTRICT OF COLUMBIA REGISTER
2026 AGENCY SUBMISSION DEADLINE SCHEDULE

D.C. Register Issue		Submission Deadline	
Vol. 73/1	January 2, 2026*	Wednesday	December 24, 2025
Vol. 73/2	January 9, 2026	Wednesday	December 31, 2025
Vol. 73/3	January 16, 2026	Thursday	January 8, 2026
Vol. 73/4	January 23, 2026*	Wednesday	January 14, 2026
Vol. 73/5	January 30, 2026	Thursday	January 22, 2026
Vol. 73/6	February 6, 2026	Thursday	January 29, 2026
Vol. 73/7	February 13, 2026	Thursday	February 5, 2026
Vol. 73/8	February 20, 2026*	Wednesday	February 11, 2026
Vol. 73/9	February 27, 2026	Thursday	February 19, 2026
Vol. 73/10	March 6, 2026	Thursday	February 26, 2026
Vol. 73/11	March 13, 2026	Thursday	March 5, 2026
Vol. 73/12	March 20, 2026	Thursday	March 12, 2026
Vol. 73/13	March 27, 2026	Thursday	March 19, 2026
Vol. 73/14	April 3, 2026	Thursday	March 26, 2026
Vol. 73/15	April 10, 2026	Thursday	April 2, 2026
Vol. 73/16	April 17, 2026*	Wednesday	April 8, 2026
Vol. 73/17	April 24, 2026	Wednesday	April 15, 2026
Vol. 73/18	May 1, 2026	Thursday	April 23, 2026
Vol. 73/19	May 8, 2026	Thursday	April 30, 2026
Vol. 73/20	May 15, 2026	Thursday	May 7, 2026
Vol. 73/21	May 22, 2026	Thursday	May 14, 2026
Vol. 73/22	May 29, 2026 *	Wednesday	May 20, 2026
Vol. 73/23	June 5, 2026	Thursday	May 28, 2026
Vol. 73/24	June 12, 2026	Thursday	June 4, 2026
Vol. 73/25	June 19, 2026*	Wednesday	June 10, 2026
Vol. 73/26	June 26, 2026	Thursday	June 18, 2026
Vol. 73/27	July 3, 2026 *	Wednesday	June 24, 2026
Vol. 73/28	July 10, 2026	Thursday	July 2, 2026
Vol. 73/29	July 17, 2026	Thursday	July 9, 2026
Vol. 73/30	July 24, 2026	Thursday	July 16, 2026
Vol. 73/31	July 31, 2026	Thursday	July 23, 2026
Vol. 73/32	August 7, 2026	Thursday	July 30, 2026
Vol. 73/33	August 14, 2026	Thursday	August 6, 2026
Vol. 73/34	August 21, 2026	Thursday	August 13, 2026
Vol. 73/35	August 28, 2026	Thursday	August 20, 2026
Vol. 73/36	September 4, 2026	Thursday	August 27, 2026
Vol. 73/37	September 11, 2026*	Wednesday	September 2, 2026
Vol. 73/38	September 18, 2026	Thursday	September 10, 2026
Vol. 73/39	September 25, 2026	Thursday	September 17, 2026
Vol. 73/40	October 2, 2026	Thursday	September 24, 2026
Vol. 73/41	October 9, 2026	Thursday	October 1, 2026
Vol. 73/42	October 16, 2026*	Wednesday	October 7, 2026
Vol. 73/43	October 23, 2026	Thursday	October 15, 2026
Vol. 73/44	October 30, 2026	Thursday	October 22, 2026
Vol. 73/45	November 6, 2026	Thursday	October 29, 2026
Vol. 73/46	November 13, 2026*	Wednesday	November 4, 2026
Vol. 73/47	November 20, 2026	Thursday	November 12, 2026
Vol. 73/48	November 27, 2026*	Wednesday	November 18, 2026
Vol. 73/49	December 4, 2026	Wednesday	November 25, 2026
Vol. 73/50	December 11, 2026	Thursday	December 3, 2026
Vol. 73/51	December 18, 2026	Thursday	December 10, 2026
Vol. 73/52	December 25, 2026*	Wednesday	December 16, 2026
Vol. 74/1	January 1, 2027*	Wednesday	December 23, 2026

*Weeks with District of Columbia Government public holidays. Last Updated December 5, 2025