

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

One Judiciary Square
441 4th Street NW
Washington, DC 20001

Appeal by:

**The Residences of Columbia Heights,
a Condominium**

of:

**The Zoning Administrator's Decision to
Issue Building Permit No. B1908601**

BZA Case No.: 20183

DEPARTMENT OF BUILDINGS' MOTION FOR RECONSIDERATION

Under 11-Y DCMR § 700.2 and in an abundance of caution, the Department of Buildings (“DOB”)¹ moves the Board of Zoning Adjustment (“Board”) to reconsider its final order filed in the case record on March 4, 2025 (the “Final Order”).

I. PROCEDURAL HISTORY

On September 30, 2019, the Zoning Administrator issued Building Permit No. B1908601 (the “Permit”) to the Department of General Services (“DGS”). The Residences of Columbia Heights, a Condominium (“The Residences”) filed an appeal on October 24, 2019. The Board held hearings on January 29 and February 26, 2020, and correctly voted 3-0-2 on May 6, 2020 to deny the appeal.

Because a majority of the current Board members did not personally hear the evidence in this appeal, on January 23, 2025, the Board issued a proposed final order containing findings of fact and conclusions of law, and a cover letter inviting the parties to “present written exceptions”

¹ DOB is a successor agency to the former Department of Consumer and Regulatory Affairs (“DCRA”) and came into existence on October 1, 2022. All actions in this matter prior to that date were undertaken by DCRA, but for ease of reading, this motion will refer to all DCRA and DOB actions as having been performed by DOB.

to the proposed final order pursuant to D.C. Code § 2-509(d). The Residences filed exceptions on February 6, 2025. The parties had no opportunity to present arguments related to those exceptions.

The Board met again on February 26, 2025, and voted 4-0-1 to issue the Final Order.²

II. LEGAL STANDARD

Under 11-Y DCMR § 700.7, a motion for reconsideration shall state specifically: (a) All respects in which the final order is claimed to be erroneous; and (b) The relief sought.

In contested cases like those before the Board, if a majority of those who render a final order did not personally hear the evidence, then no final order can issue until a proposed order “including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and *present argument* to a majority of those who are to render the order.” D.C. Code § 2-509(d) (emphasis added). That opportunity to “present argument” may “either be ‘oral or in the form of memoranda or briefs.’” *Palisades Citizens Ass’n, Inc. v. D.C. Zoning Comm’n*, 368 A.2d 1143, 1145 (D.C. 1977) (quoting *Woodridge Nursery School v. Jessup*, 269 A.2d 199, 202 n.14 (D.C. 1970)).

III. ARGUMENT

The Board should reconsider the Final Order to ensure compliance with D.C. Code § 2-509(d)’s procedural requirement that the parties be afforded an opportunity to “present argument” to the Board members issuing the Final Order. The plain text of the D.C. Administrative Procedures Act requires an opportunity to “file exceptions *and* present arguments.” D.C. Code § 2-509(d). The Board’s cover letter invited the parties only to file exceptions; it did not set a hearing for oral argument or invite the parties to submit briefing. In the past, the D.C. Court of Appeals has remanded cases where Section 2-509(d)’s procedures were not followed. *See, e.g., Sherman v.*

² Board member Lorna John did not participate in the February 26, 2025 vote.

D.C. Comm'n on Licensure to Prac. Healing Art, 476 A.2d 667, 669 (D.C. 1984); *see also Potomac Elec. Power Co. v. Pub. Serv. Comm'n*, 319 A.3d 392, 403 (D.C. 2024) (reiterating the requirement in a recent case). If the Board does not reconsider its Final Order, the Final Order may be subject to further challenge and delay.

To avoid that possibility, and to ensure compliance with Section 2-509(d), the Board should:

- Grant DOB's motion for reconsideration;
- Reissue the proposed final order with a new cover letter inviting the parties to file both written exceptions *and* present written argument;
- Set a briefing schedule for written arguments specifying:
 - The date The Residences must file its written exceptions and brief;
 - The date DOB and DGS must file their opposition briefs; and
 - The date The Residences must file its reply brief, if any.
- Reopen the record under 11-Y DCMR § 602.4 to allow for the submissions just described.

IV. CONCLUSION

To be sure, DOB seeks a final conclusion to this case heard five years ago and believes The Residences' appeal must be denied. But given the plain language of the D.C. Administrative Procedures Act and the D.C. Court of Appeals' case law, the Board should reconsider its Final Order, reopen the record, allow The Residences an opportunity to submit written arguments in support of its exceptions, and allow subsequent opposition and reply briefs to be filed. After that, for the reasons previously presented by DOB, the Board should vote again to deny the appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on March 14, 2025 a copy of the foregoing was sent via electronic mail to:

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