



March 14, 2025

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Frederick L. Hill, Chairperson  
Board of Zoning Adjustment  
441 4th Street NW, Suite 200s,  
Washington, D.C., 20010

**Re: BZA Case No. 20183  
Department Of General Services' Motion to Reconsider**

Chairperson Hill and Honorable Members of the Board:

On behalf of the Department of General Services ("Owner"), the owner of the property that is the subject of this appeal, please find enclosed a Motion to Reconsider or, in the alternative, Request for a Technical Correction of the Final Order issued by the Board. Thank you for your consideration of this matter.

Sincerely,

COZEN O'CONNOR

A handwritten signature in blue ink, appearing to read "MM", written over a horizontal line.

By: Meredith H. Moldenhauer

LEGAL\76165261\7

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14<sup>th</sup> day of March, 2025, a copy of the foregoing Motion to Reconsider was served, via electronic mail, on the following:

District of Columbia Department Of Buildings  
c/o Esther McGraw  
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Washington, D.C. 20024  
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*Attorney for DOB*

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Knopf & Brown  
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Miguel Trindade Deramo  
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Cameron Girvin  
The Residences of Columbia Heights  
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Meridith Moldenhauer

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

**APPEAL OF  
THE RESIDENTS OF COLUMBIA HEIGHTS,  
A CONDOMINIUM**

**BZA CASE NO. 20183**

**DEPARTMENT OF GENERAL SERVICES MOTION TO RECONSIDER  
OR, IN THE ALTERNATIVE, REQUEST A TECHNICAL CORRECTION**

The Department of General Services (“DGS”), the owner of the subject property, files this Motion to Reconsider, or in the alternative, Request for Technical Correction in response to the Board’s issuance of its Final order on March 4, 2025. The procedural history of this appeal and the statutory requirements governing contested cases before the board where the majority of those rendering the final order did not personally hear the evidence, warrant reconsideration to ensure compliance with applicable regulations.

The omission of required statutory language in the Cover Letter for the Proposed Order coupled with the absence of explicit acknowledgement of consideration of the written exceptions submitted by the Appellants, raises procedural concerns. These deficiencies create uncertainty regarding the validity of the Final Order and its conformity with D.C. Official Code § 2-509(d).

If the Board does not address these issues, the Final order will remain subject to ambiguity and procedural challenge, leaving DGS without assurance that the Board’s decision complies with established legal requirements. DGS submits these motions to protect the residents of the Short Term Family Housing apartment building which was constructed pursuant to the Board’s decision in this appeal to uphold the building permit. The Board is well-positioned to resolve these concerns now by reconsidering its Final Order or by issuing a technical correction to clarify the Order’s compliance with the applicable procedural framework. Accordingly the Board should take the following actions:

1. Find that the Cover Letter's omission of the phrase "present argument" constitutes a procedural error requiring correction and issue a revised notice clarifying the opportunity for written or oral argument regarding the parties exceptions to the proposed order; and
2. Affirm that the submitted exceptions, along with any new exceptions filed or argued, were "personally consider[ed]" and explicitly acknowledge this review in a public meeting or in the revised Final Order.

## **ARGUMENT**

### **I. The Board Has the Authority to Reconsider Its Final Order Or Issue A Technical Correction**

The Board is empowered under Subtitle Y § 700.2 to reconsider a final order upon motion of a party, so long as that motion complies with Subtitle Y § 700.7, which requires that the motion identify specific errors of law, fact, or procedural irregularities and specify the relief sought. Additionally, Subtitle Y §§ 703.3 and 703.4 permits any person to request a technical correction to an order to correct omissions, errors in grammar, spelling, citation, or other non-substantive changes needed to clarify the intent of the Board when it adopted the order. These provisions provide the Board with the necessary flexibility to ensure that its decisions are procedurally sound and legally enforceable.

In this case, reconsideration or technical correction is warranted to address two procedural deficiencies: (1) the omission of required statutory language in the Cover Letter, which failed to inform parties of their right to "present argument" as mandated by D.C. Code § 2-509(d), and (2) the Board's failure to explicitly acknowledge and deliberate on the written exceptions submitted by the parties. These errors undermine the procedural integrity of the Final Order and raise questions about its validity.

Ensuring compliance with statutory requirements is critical to maintaining the Board's authority and the finality of its decisions. If left uncorrected, these procedural issues may subject the Final Order to legal challenge, further delaying resolution. Accordingly, the Board should reconsider the Final Order to confirm compliance with D.C. Code § 2-509(d) or, in the alternative, issue a technical correction to clarify the record.

**II. The Cover Letter's Omission of Required Language Should Be Clarified to Ensure Compliance with D.C. Code § 2-509(d)**

D.C. Code § 2-509(d) mandates that in contested cases where a majority of decision-makers did not personally hear the evidence, the affected parties must be given the opportunity to “file exceptions and present argument.” The Cover Letter issued by the Board with its proposed order, failed to include the phrase “present argument,” instead limiting the opportunity to the submission of written exceptions. A copy of the Cover Letter to the Proposed order is attached at **Tab A**. This omission constitutes a procedural error that undermines the validity of the Final Order.

The statutory language is clear: both the opportunity to file exceptions and the opportunity to present argument must be provided. The omission of the phrase “present argument” in the Cover Letter raises concerns that parties were not fully informed of their procedural rights under the statute. The requirement to “present argument” does not necessarily mandate oral argument, but it does require that parties be given a meaningful opportunity to provide written arguments for the Board's consideration. *See Palisades Citizen Assoc., Inc. v. District of Columbia Zoning Commission*, 368 A.2d 1143, 1145 (1997) (holding that no procedural defect under § 2-509 existed where parties were given the opportunity file “written exceptions and argument” but were denied request for oral argument).

The Board should ensure that its procedures fully comply with the statutory requirements by reissuing the Cover Letter with the language “present written exceptions and argument” and

allowing an additional 10-business-day period for parties to submit written arguments, if desired. This corrective measure would eliminate any ambiguity regarding procedural compliance and reinforce the validity of the Final Order and align the Board's process with both statutory requirements and applicable precedent. If left uncorrected, this omission may subject the Final Order to further challenge and delay.

**III. The Board Must “Personally Consider” Exceptions Submitted by the Parties to Ensure Compliance with D.C. Code § 2-509(d)**

D.C. Code § 2-509(d) requires that decision-makers in a contested case “personally consider” the written exceptions submitted by the parties before issuing a final order. This statutory mandate is not satisfied by mere passive receipt of the record; rather, it requires affirmative engagement with the arguments raised in the exceptions. *See Potomac Electric Power Company v. Public Service Commission*, 319 A.3d 392, 403 (D.C. 2024). Here, the Board's failure to explicitly acknowledge the written exceptions in its deliberations or in the Final Order raises serious concerns about whether it has met this statutory obligation.

Although *Potomac Electric Power Company v. Public Service Commission*, 319 A.3d 392 (D.C. 2024), involved a different standard—specifically, the requirement that decision-makers “personally hear the evidence” rather than “personally consider” exceptions—the reasoning applied by the court is instructive. The court in *Potomac Electric* emphasized that the D.C. Administrative Procedure Act's requirement that officials “personally hear the evidence” was not satisfied by simply reading the record. *Id.* The court reasoned that because § 2-509(d) required decision-makers to “personally hear” the evidence without providing an alternative allowing them to simply review the record, the law intended to require more than passive review. *Id.*

The same reasoning applies here. D.C. Code § 2-509(d) does not merely require that exceptions be filed; it mandates that they be “personally considered” by the decision-makers. Just as the *Potomac Electric* court held that decision-makers cannot fulfill their duty to “personally

hear the evidence” by merely reviewing the record without direct engagement, the Board cannot meet its obligation to “personally consider” written exceptions if it just passively accepts them without explicitly acknowledgement or deliberation. Here, Cammeron Girvin on February 6, 2025 filed exceptions to the Board however, these exceptions were not discussed or referenced during the Board’s vote to approve the Final Order on February 26, 2025. The absence of any discussion of the exceptions in the Board’s deliberations and Final Order creates ambiguity as to whether they were ever substantively reviewed.

Clarifying that the Board personally considered the written exceptions ensures compliance with procedural requirements and avoids unnecessary ambiguity. The purpose of § 2-509(d) is to ensure that decision-makers engage with the arguments presented by affected parties before finalizing their decision. Without an explicit acknowledgment that the exceptions were reviewed and considered, there is no assurance that the Board meaningfully weighed the arguments raised by the parties. This omission undermines confidence in the procedural regularity of the Final Order and exposes it to potential legal challenge.

To remove any doubt as to compliance with § 2-509(d), the Board should take corrective action by affirmatively acknowledging its review of the written exceptions, either in a public meeting or through an amended Final Order. Doing so would ensure clarity in the record, reinforce the legitimacy of the Board’s decision, and safeguard the Final Order from procedural challenge.

## **CONCLUSION**

DGS submits this request to ensure the denial of Appeal 20183 is properly protected by a valid and defensible Final Order. DGS seeks this clarification of the record and Final Order to protect Building Permit No. B1908601 for construction of a new building with 50 residential apartments for Short Term Family Housing. The omission of the phrase “present argument” in the Cover Letter and the Board’s failure to explicitly acknowledge the written exceptions create

procedural defects that must be addressed to ensure compliance with D.C. Code § 2-509(d). As a result, the Board should take the following two actions:

1. Correct the Cover Letter's omission of required statutory language by issuing a revised notice that includes the "present argument" language and allowing an additional 10-business-day period for written submissions.
2. Confirm that the written exceptions, and any new argument if presented, were personally considered by explicitly acknowledging their review either in a public meeting or in an amended Final Order.

Respectfully submitted,  
COZEN O'CONNOR



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*Attorney for Department  
of General Services*

# **TAB A**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**



January 23, 2025

To the Parties in Appeal No. 20183:

This letter is being sent to you on behalf of the Board of Zoning Adjustment (“Board” or “BZA”) because you are parties in this case. This appeal was submitted on October 24, 2019 by The Residences of Columbia Heights from the decision made on September 30, 2019 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue building permit B1908601, to permit a new building with 50 residential apartments for the Short Term Family Housing (STFH), in the MU-5A Zone at premises 2500 14th Street N.W. (Square 2662, Lot 205).

Following the public hearings, the Board voted on May 6, 2020 to deny the appeal. Because a majority of the current Board members did not personally hear the evidence in this case, this Proposed Order is being provided to the parties to afford you an opportunity to present written exceptions, pursuant to D.C. Official Code § 2-509(d).

Written exceptions must be filed with the Office of Zoning, and served upon the other parties, no later than 5:00 p.m. on February 6, 2025. Filings can be submitted by email to [bzasubmissions@dc.gov](mailto:bzasubmissions@dc.gov). No replies to the exceptions will be accepted.

Questions should be addressed to Keara Mehlert, Secretary to the Board of Zoning Adjustment, at (202) 727-6311, or [keara.mehlert@dc.gov](mailto:keara.mehlert@dc.gov).

Regards,



**SARA A. BARDIN**  
Director, Office of Zoning