

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

Application of National Geographic Society

Case No. 20968A

APPLICANT'S WRITTEN EXCEPTIONS TO PROPOSED ORDER DISMISSING TIME EXTENSION

Pursuant to the Board of Zoning Adjustment's ("BZA" or "Board") cover letter dated September 29, 2026, on behalf of the National Geographic Society ("NGS" or the "Applicant"), we respectfully submit the following written exceptions to the Proposed Order dismissing its request for a time extension of the order approving Application No. 20968 (the "Order"). The Applicant previously set out in its Statement in Support filed November 12, 2025 (exhibit 4 in the record) and its Waiver Request Letter filed December 1, 2025 (exhibit 6 in the record) why its time extension request was timely because the Order's stated period of validity ran from the Order's effective date rather than its final date. This exception identifies additional, independent grounds - not previously raised - that require rejection of the Proposed Order's reasoning and acceptance of the time extension request as timely filed and/or why the Board could grant the requested time extension in any event.

I. The Board Must Construe Any Ambiguity in Its Own Regulations Against Itself, Not Against the Applicant Who Relied on the Order's Plain Text

The Proposed Order concedes that the boilerplate the Board placed in the Order itself was in error, stating that "the Board regrets the erroneous reference to 'effective,' which is not specified in Subtitle Y § 702.1." This concession is dispositive of timeliness, not merely regrettable. The Order stated in bold capital letters that the two-year validity period ran from the date the Order "becomes effective" and separately advised that no order of the Board takes effect until ten days after it becomes final. A reasonable applicant reading those two provisions together - as the Board itself invited the Applicant to do by placing them in immediate sequence in the Order - would conclude precisely what NGS concluded: that the operative two-year clock began on November 18, 2023, not November 8, 2023.

The Court of Appeals has squarely held that ambiguity created by an agency's own order and rules must be resolved in favor of the party who relied on it, not against that party. In *York Apartments Tenants Ass'n v. D.C. Zoning Commission*, 856 A.2d 1079 (D.C. 2004), the Court found that the Zoning Commission's own procedural inconsistency "created ambiguity as to when the time for filing a petition for review . . . started to run," and held that "this ambiguity no doubt led [the petitioner] to rely on the later notice," reasoning that the petitioner "could have concluded reasonably" that the agency would not apply two different, conflicting rules. The Court resolved the ambiguity in the petitioner's favor and expressly reaffirmed the rule that, in

administrative law, "where we have found ambiguity, we have construed it against the government agency that drafted the language."

The same reasoning controls here because the ambiguity that NGS relied upon was not merely a procedural inconsistency in the Board's general rules; rather, it was explicit language printed in the very Order that NGS was applying to extend. The Board cannot excuse its own erroneous drafting as a unilateral basis to shorten, after the fact, the filing deadline that the Order told the Applicant it had. If the Board wishes to hold applicants to the final order date rather than the stated effective date, then it must first correct the boilerplate in its orders prospectively, not retroactively at the expense of an applicant who, in this case, did exactly what the Order told it to do.

II. Even if the Board Adheres to Its Final Order Date Reading, It Retains Authority to Revive the Order and Grant the Time Extension

The Proposed Order's dismissal of the time extension request as not timely filed does not end the matter, because the Applicant's December 1, 2025 request for a waiver pursuant to Subtitle Y § 101.9 remains independently available to the Board as a basis to grant the time extension even if, *arguendo*, the Order was no longer in effect. In other words, the Board may, under its own rules, revive an expired order to grant a time extension of it. Subtitle Y § 101.9 provides that the Board may, for good cause shown, waive any provision of Subtitle Y - including § 702.1's two-year validity period. The Proposed Order's finding that the extension request was not timely filed under the Board's final order date reading of § 702.1 does not foreclose the Board's separate, independent authority to waive § 702.1 itself and, in doing so, to revive the Order and approve the requested extension to the date of the request. Timeliness under § 702.1 and the availability of a waiver of § 702.1 are two different questions, and the Proposed Order answers only the first.

The Board has previously recognized precisely this authority. In Application No. 20086A (*Oak Park Apartments, LLC*), an applicant requested a waiver under Subtitle Y § 101.9 to allow a time extension under Subtitle Y § 705 even though the request was filed more than two years after the order was issued - a circumstance materially identical to the one presented here. Although the Board initially remarked at a public meeting that the order had expired and that there was nothing to revive, the Board did not rest on that observation. Instead, it deferred decision and expressly invited the applicant to address the Board's authority to grant a time extension after an order has expired through a waiver of § 702.1. That invitation necessarily presupposes that the Board considered its waiver authority under § 101.9 to be a live, unresolved question, notwithstanding the calendar expiration of the order being extended. The Board should not now treat as settled, against NGS, a question it treated in *Oak Park Apartments* as sufficiently open to warrant further briefing.

The Proposed Order declined to grant the Applicant's § 101.9 waiver request solely because it found the sole "good cause" asserted - that the request was timely - unpersuasive given the Board's final order date reading of § 702.1. However, that determination addressed only the good cause that NGS identified in its December 1, 2025 waiver letter. It does not address the additional and independent ground for good cause set forth above in Section I: that the Board's own boilerplate created the ambiguity that NGS relied upon. That ground independently supplies the good cause § 101.9 requires, regardless of whether the Board adheres to its final order date reading of § 702.1 for timeliness purposes. A waiver of § 702.1 - reviving the Order's validity for the limited purpose of allowing the Board to consider and grant the pending time extension request - remedies the identical prejudice that the Board recognized in *Oak Park Apartments, LLC* as warranting further briefing, without requiring the Board to disturb its construction of when an order becomes final.

Granting the waiver to revive the Order would not prejudice any party and causes no harm to the integrity of the Board's process. The Applicant served its November 12, 2025 extension request and its December 1, 2025 waiver request on ANC 2C, ANC SMD 2C02, and the Office of Planning, each of which had a full opportunity to weigh in. Indeed, the Office of Planning recommended approval of the extension, and ANC 2C adopted a resolution in support of it. No party has identified, and none could identify, any prejudice from the Board granting a waiver of § 702.1 to revive the Order and consider the extension on the merits under Subtitle Y § 705.2, as opposed to the prejudice NGS would suffer - the irrevocable loss of a validly granted special exception obtained after a public hearing, an ANC recommendation of support, and a favorable Office of Planning report - if the waiver is refused.

Where, as here, the consequence of refusing a discretionary waiver is the forfeiture of previously granted zoning relief, and the agency's own order and rules can reasonably be read in more than one way, the Board should exercise its § 101.9 discretion in favor of the reading that preserves a party's previously adjudicated rights rather than the one that extinguishes them based on a technical filing-date distinction the Order itself did not clearly convey. This is particularly so where, as the Board itself acknowledged, the Office of Planning and ANC 2C both independently read the Order the same way NGS did and recommended that the extension be granted. If three separate parties to this proceeding - the Applicant, the Office of Planning, and ANC 2C - independently arrived at the same understanding of when the Order expired based on the Order's own text, that is itself strong evidence of good cause for a § 101.9 waiver, whatever the outcome of the separate timeliness question under § 702.1 and § 705.2.

III. Conclusion

For the reasons set forth above, and for the reasons previously set forth in the Applicant's Waiver Request Letter and Statement in Support, the Applicant

respectfully submits that the Proposed Order's conclusion that the time extension request was untimely rests on a reading of Subtitle Y that: (1) the Board's own regulations do not compel, and that ambiguity in the Board's own order requires to be resolved in the Applicant's favor; and (2) even if adhered to, does not foreclose the Board's independent authority under Subtitle Y § 101.9 to waive § 702.1, revive the Order, and grant the time extension on the merits - a result that avoids the forfeiture of validly granted relief that the Office of Planning and ANC 2C both recommended preserving.

The Applicant respectfully requests that the Board withdraw the Proposed Order, find that the time extension request was timely filed, and proceed to consider the request on its merits under Subtitle Y § 705.2, consistent with the recommendations of the Office of Planning and ANC 2C. In the alternative, and without waiving the foregoing, the Applicant respectfully requests that the Board grant the Applicant's December 1, 2025 request for a waiver of Subtitle Y § 702.1 pursuant to Subtitle Y § 101.9, revive the Order, and grant the pending time extension request on its merits under Subtitle Y § 705.2.

Respectfully submitted,
GOULSTON & STORRS PC

/s/ _____
Cary R. Kadlecek

Certificate of Service

I hereby certify that a copy of the foregoing document was sent to the following by email on October 7, 2026:

Philip Isaiah
D.C. Office of Planning
philip.isiah@dc.gov

ANC 2C
2C@anc.dc.gov

Nancy Groth
ANC SMD 2C02
2C02@anc.dc.gov

/s/ _____
Cary R. Kadlecek