

**DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

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

---

<p>Appeal by: Courtney Bolin and William Gabler of: The Zoning Administrator's Decision to Issue Building Permit No. B2309496</p>	<p>BZA Case No.: 21231</p> <p>Virtual Public Hearing: March 12, 2025</p>
---	---

---

**D.C. DEPARTMENT OF BUILDINGS' OPPOSITION TO  
APPELLANTS' MOTION TO REOPEN OR MOTION TO STRIKE**

On March 24, 2025, Appellants filed a Motion to Reopen the Record and Alternative Motion to Strike ("Motion"). A brief was filed in support of the Motion. The purported basis for the Motion is that the Department of Buildings (DOB) and the owners of 3021 15th Street NE "presented new arguments and evidence that were not disclosed in their prehearing briefing" Motion at 1.<sup>1</sup> Appellants fail to demonstrate good cause or lack of prejudice to any party. No new arguments or evidence were presented by DOB at the hearing, and Appellants' Motion is simply an attempt to get a second bite at the apple and reiterate their previously-stated arguments. Appellants' remaining arguments are without merit. For these reasons, the Motion should be denied.

DOB opposes the requested relief because Appellants have failed to show good cause and lack of prejudice to any party in accordance with 11-Y DCMR § 602.6. Contrary to Appellants' claim in their brief, there were no new arguments or evidence in support thereof that were presented by DOB for the first time at the March 12, 2025 hearing in this proceeding. Because cross-examination questions are unknowable in advance, new information may have been elicited

---

<sup>1</sup> Appellants identify eleven alleged "new" arguments, attributing numbers 1-5, 10, and 11 to DOB. Motion at 2-8.

by Ms. Bolin in her cross-examination of Deputy Zoning Administrator Elisa Vitale. For example, during her examination, Ms. Vitale attempted to explain—for Appellants’ benefit—the relevant zoning regulations and how they work more broadly. But as noted by the Board, it is impossible to learn the nuances and intricacies of zoning during the course of a hearing. In any event, Ms. Vitale’s testimony closely tracked the pre-hearing statement filed by DOB on March 5, 2025, and it would be a strange result to grant a motion to reopen or strike based on testimony elicited by the movant during cross-examination and not otherwise advanced by the appellee in defense of the zoning determination at issue.

As demonstrated in the below table, the allegedly “new” arguments by DOB were either already presented in DOB’s Pre-Hearing Statement or instead are new arguments by Appellants.<sup>2</sup>

<b>Allegedly “New” Argument by DOB (<i>see</i> Motion at 2-8)</b>	<b>Citation to DOB’s Pre-Hearing Statement (DOB PHS), IZIS Exhibit 14</b>
DOB conceded that the accessory building meets the definition of a “detached building” but argued that the new accessory apartment is governed solely by Subtitle D § 5004.1. Hearing at 5:36–5:40.	This is not a new argument. DOB argued that the side yard provisions were not applicable and that the rear yard provision in Subtitle D § 5004.1 applied. <i>See</i> PHS at 4-5. “In this case, the accessory building is not in the side yard but rather is situated in the rear yard. ... Looking at the rear yard provisions for accessory buildings in section D-5004.1, there is no required setback from the rear lot line. Thus, there is no required setback from what is Appellants’ side lot line, which is why the accessory building was able to be placed so close to Appellants’ house and still be in compliance with the Zoning Regulations.” DOB PHS at 5.
DOB’s argument that a “detached principal building” is subject to the Regulations’ “detached building” yards requirements, but that a “detached accessory building” does not have to meet the Regulations’ “detached	This is not a new argument by DOB but rather was elicited by Appellants during Ms. Vitale’s cross-examination. In any event, it is clear from a comparison of Subtitle D sections 208.2, 208.3, and 208.4 that the plural usage of

<sup>2</sup> Appellants cite to the Federal Rules of Evidence (FRE) in their Motion. *See* Motion at 4-7. However, Appellants cite to no authority explaining why each of the several cited FRE provisions apply here before the Board.

buildings” requirements is unsupported. Hearing at 5:09–5:11.	“all detached buildings” in section 208.2 refers to all detached buildings in the R zone, not all detached buildings on a single lot. <i>Compare</i> 11-D DCMR § 208.2 (“Two (2) side yards, each a minimum of eight feet (8 ft.) in width, shall be provided for all detached buildings.”) <i>with</i> 11-D DCMR § 208.3 (“In any of the R-2 zones, one (1) side yard, a minimum of eight feet (8 ft.) in width, shall be provided for all semi-detached buildings.”) and 11-DDCMR § 208.4 (“In any of the R-3 zones, one (1) side yard, a minimum of five feet (5 ft.) in width, shall be provided for all semi-detached buildings.”).
Ms. Vitale consistently presented testimony illustrating that the Zoning Administrator’s Office departs from the Regulations’ measurement yards directives.	This is not DOB’s argument but rather a new argument by Appellants. DOB objects to Appellants’ attempt to inject new arguments through this Motion. Contrary to Appellants’ new argument, Ms. Vitale presented consistent testimony about the Zoning Administrator’s consistent application of the Zoning Regulations at issue in this case.
DOB rested its entire regulatory interpretation case on the testimony of Ms. Vitale. E.g., Hearing at 5:06–6:14. Appellees argued that Ms. Vitale is a zoning expert based on her one year of service as the Deputy Zoning Administrator and 12 years of experience working in the Office of Planning. Hearing at 5:08–5:09. Ms. Vitale represented that she was “very involved in the zoning regulation review process that resulted in the 2016 update.” Hearing at 5:08–5:09.	Again, this is not DOB’s argument but rather a new argument by Appellants attempting to belatedly call into question Ms. Vitale’s testimony. DOB did not offer Ms. Vitale as an expert witness pursuant to 11-Y DCMR § 203.9 but rather as a “public agency representative” under 11-Y DCMR § 203.11. Moreover, DOB’s position and Ms. Vitale’s testimony arises from the plain language of the zoning regulations. Appellants’ insistence that there was a “deviation” does not make it so.
DOB argued that Subtitle D, Chapter 50 has been “interpreted and applied” the same way in other instances, and that the Zoning Administrator has issued permits for entirely new accessory apartments with no setback. Hearing at 5:42–45	This is not a new argument by DOB but rather was elicited by Appellants during Ms. Vitale’s cross-examination.
DOB indicated that Appellants did not understand how to apply the Regulations with respect to a wall check report filed on the record the day before the hearing. Hearing at 3:52–3:53; BZA Ex. 21 (wall check report)	As previously argued in DOB’s PHS, the Board does not have jurisdiction to hear any claim regarding the wall check or alleged encroachment or easement. <i>See</i> DOB PHS at 7.
The 15th Street Homeowners and DOB’s representation that Appellants failed to meet their burden of proof is inaccurate. Hearing at 6:45–6:47.	As previously argued in DOB’s PHS, the Board should “deny the appeal because the Permit was properly issued as it complied with applicable side yard and rear yard

	requirements, no special exception was required, and Appellants' remaining claims are outside the Board's jurisdiction." <i>See</i> DOB PHS at 8.
--	---

In any event, Appellants' responses to the "new arguments and evidence" are mere reiterations of arguments made by Ms. Bolin at the hearing; alternatively, they address issues and regulatory interpretations that Ms. Vitale attempted to explain to Ms. Bolin in her cross-examination of Ms. Vitale.

For the foregoing reasons, the Board should deny Appellants' Motion. However, in the event the Board grants the Motion, DOB reserves its right under 11-Y DCMR § 602.7 to file a response to the supplemental material within seven days of the date of the e-mail notification of the acceptance of the supplemental material.

Respectfully Submitted,

ESTHER YONG MCGRAW  
GENERAL COUNSEL

MONIQUE BOCOCK  
INTERIM DEPUTY GENERAL COUNSEL

/s/ James Moeller  
James Moeller (DC Bar #388690)  
Assistant General Counsel  
Department of Buildings  
Office of the General Counsel  
1100 4th Street, SW, Fifth Floor  
Washington, DC 20024  
202-856-5080 (mobile)  
james.moeller1@dc.gov

### **CERTIFICATE OF SERVICE**

I certify that on March 28, 2025, a copy of the foregoing was sent via electronic mail to:

courtneyannebolin@gmail.com  
[wjgabler@gmail.com](mailto:wjgabler@gmail.com)

mmoldenhauer@cozen.com

Esther Yong McGraw, General Counsel  
DC Department of Buildings  
[dob.filing@dc.gov](mailto:dob.filing@dc.gov)

/s/ James Moeller  
James Moeller