

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

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.: 23-02

Motion of: Party

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

Motion for Reconsideration of Zoning Commission Order No. 23-02 and Request for Rehearing in Z.C. Case No. 23-02

Points and Authorities:

Please state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form.

(see attached Motion)

Consent: Consent was obtained by some, but not all parties

Further Explanation:

CERTIFICATE OF SERVICE

I hereby certify that on this day of , 2026

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via:

Signature: Edward Hanlon

Print Name: Edward Hanlon

Address: 1523 Swann Street NW, Washington, DC 20009

Phone No.: 3014664492 **E-Mail:** ed.hanlon.3@gmail.com



**BEFORE THE ZONING COMMISSION OR
BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA**



FORM 150 – MOTION FORM

**THIS FORM IS FOR PARTIES ONLY. IF YOU ARE NOT A PARTY PLEASE FILE A
FORM 153 – REQUEST TO ACCEPT AN UNTIMELY FILING OR TO REOPEN THE RECORD.**

Before completing this form, please review the instructions on the reverse side. Print or type all information unless otherwise indicated. All information must be completely filled out.

CASE NO.:

23-02

Motion of:

Applicant

Petitioner

Appellant

Party

Intervenor

Other _____

PLEASE TAKE NOTICE, that the undersigned will bring a motion to:

**MOTION FOR RECONSIDERATION
OF ZONING COMMISSION ORDER NO. 23-02
AND REQUEST FOR REHEARING IN Z.C. CASE NO. 23-02**

filed by Dupont Circle Citizens Association

On a separate sheet of 8 1/2" x 11" paper, state each and every reason why the Zoning Commission (ZC) or Board of Zoning Adjustment (BZA) should grant your motion, including relevant references to the Zoning Regulations or Map and where appropriate a concise statement of material facts. If you are requesting the record be reopened, the document(s) that you are requesting the record to be reopened for must be submitted separately from this form. No substantive information should be included on this form (see instructions).

Consent:

Did movant obtain consent for the motion from all affected parties?

Yes, consent was obtained by all parties

Consent was obtained by some, but not all parties

No attempt was made

Despite diligent efforts consent could not be obtained

Further Explanation: _____

CERTIFICATE OF SERVICE

I hereby certify that on this

2nd

March

,

2026

Y

I served a copy of the foregoing Motion to each Applicant, Petitioner, Appellant, Party, and/or Intervenor, and the Office of Planning

in the above-referenced ZC or BZA case via:

Mailed letter

Hand delivery

E-Mail

Other _____

Signature:

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Address:

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E-Mail:

Ed.Hanlon.3@gmail.com

BEFORE THE ZONING COMMISSION
FOR THE DISTRICT OF COLUMBIA

IN RE: *
* ZC Case No. 23-02
OFFICE OF PLANNING * (Contested Case)
*
(Map Amendment to Rezone Square 0175 *
Lot 826 and Lot 827 *
*

**MOTION FOR RECONSIDERATION
OF ZONING COMMISSION ORDER NO. 23-02
AND REQUEST FOR REHEARING IN Z.C. CASE NO. 23-02**

COMES NOW Dupont Circle Citizens Association through its below designated Representative and files this Motion for Reconsideration of Zoning Commission Order No. 23-02 and Request for Rehearing in Z.C. Case No. 23-02 and states:

The Order in 23-02, while 126 pages long, fails to address major issues in this case, including the use of 15 year old population and housing data from the 2010 Census when newer 2020 Census data was available; and, the fundamental APA and due process violation of allowing OP to submit two supplemental reports, in April 2024 and June 2024 respectively, which significantly changed OP's map amendment request but refused to allow the parties in opposition to cross-examine OP witnesses, allow the parties in opposition to call their own witnesses or put on any rebuttal evidence concerning OP's supplemental reports.

**Arbitrary and Capricious To Use 2010 Census Data
When 2020 Census Data Was Available**

Order No. 23-02 relies on the use of outdated population and housing data when more recent and reliable data on housing and population, down to the Census tract level, was available. OP's reports and testimony, which Order No. 23-02 credits, used outdated 2010 Census data to justify the upzoning request in this case.

The Commission in Order No. 23-02 completely ignored the expert testimony of Catherine Bray, a trained demographer, who both testified and submitted a report (Exhibit 590) into the record concerning

the massive data errors OP was incorporating into its application and presentation. Ms. Bray was the only demographer or statistician who testified in this case.

Exhibit 590 (Catherine Bray's Report) shows an error by OP of over 100,000 in the population estimate of the District of Columbia by the year 2030:

	July, 2025	July, 2030	July, 2035	July, 2040	July, 2045
DC Office of Planning	787,100	842,200	893,900	940,700	987,200
Metropolitan Washington Council of Governments	697,700	728,600	757,200	787,100	816,400
Difference in OP's Projection Compared to COG	89,400	113,600	136,700	153,600	170,800
Percent Error Based on Comparison to COG	12.8%	15.6%	18.1%	19.5%	20.9% ³

The order in 23-02 does not address, nor did OP in its case presentation, address Ms. Bray's testimony that OP's "methodology was significantly overestimating both the District of Columbia's population and future housing needs," *See* Exhibit 590 at 3

Also submitted into the record was Exhibit 463 which showed that OP was overestimating the District's population by almost 60,000 persons in 2020 compared to the US Census count for 2020.

The US Supreme Court in *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983) held that an agency which uses without justification outdated data when better data is available to make decisions acts in an arbitrary and capricious manner. The Supreme Court held that an agency must "examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made". *Id.* Ignoring superior, more recent data in favor of outdated data, as both OP and the Commission in its Order did, violates this duty.

. Allowing OP to Reopen the Record and Submit Two Supplemental Reports While Refusing the Parties in Opposition the Right to Cross-Examine OP on These New Reports Was a Fundamental Error of Law

OP is a party to this case and filed not one, but *two*, Supplemental Reports *after the Record closed*. Parties in Opposition were not allowed to ask *any* questions of OP on cross-examination about

the contents of either Supplemental Report. Parties in Opposition were also not allowed to present any rebuttal testimony regarding either of the two reports.

This discriminatory and asymmetrical treatment of parties of equal status in a contested hearing violated the most fundamental notions of fairness and due process.

On April 8, 2024 OP for the first time provided a matrix of at least 7 different zoning options for the site that OP, itself, said were not inconsistent with the Comp Plan and other policies relevant to the site. This matrix of these other zoning options for the site was new information not heretofore in the record and represented a change in position by OP from the prior presentation of its case. OP's statements in these Reports are statements by a party opponent. This was a contested hearing and other Parties had the right under the APA and Fifth Amendment Due Process Clause to cross-examine OP about these statements and the matrix of alternative zoning options for the site which OP had submitted.

The April 8, 2024 OP Supplemental Report and the June 13, 2024 Supplemental Report contained affirmative representations by OP, a party opponent, that there are at least 7 other zoning options in a matrix of options for this site, which OP' stated are "not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site..." Subtitle X Sec 500.3.

Parties in Opposition were entitled to explore these various options in cross-examination and through rebuttal testimony in furtherance of a fair and just adjudication of this case.

Both Commissioners Miller and Imamura had questions about OP's April 8, 2024 Supplemental Report and put questions to OP.

Vice Chair Miller on May 30, 2024:

"I would just add that as part of the OP submission, written submission on why the revised proposal is not inconsistent with the comprehensive plan, laying that out in one document.

If they could also include, if my colleagues are in agreement, why that -- this revised proposal is preferable to the original proposal they stated in their meeting -- in their "reopen the record request" as -- that they're responding to community concerns

at the public hearing.

But I think it would be helpful to have in --again in one document, **why this revised proposal is preferable to their original proposal.** And also why it's preferable to the alternatives -- alternative zoning possibilities presented by Office of Planning in our -- in response to our request at the hearing to have a matrix -- to include a matrix, which they did provide at Exhibit 700.

And we got that last month, prior to our -- I think our last hearing or prior to our -- well, we got it last month.

So why the -- this revised proposal is preferable to the alternatives presented in that matrix that OP provided of other zones that are less intense, but would also be not inconsistent?" See May 30, 2024 Transcript at pages 14-15

Commissioner Imamura on May 30, 2024:

"Thank you, Mr. Chairman. Vice Chair Miller does an admirable job, so I'd like to see him stay as Vice Chair Miller. **But I just wanted to comment that I appreciate the added sort of request made by Vice Chair Miller and support and align myself with his comments.**" See May 30, 2024 Transcript at page 16

OP stated in its April 8, 2024 Supplemental Report that Zones MU-5A and MU-8 could be both appropriate and compatible with the site and not inconsistent with the Comp Plan, FLUM or the Generalized Policy Map. The below table is from OP's April 8, 2024 Supplemental Report:

Option	Without Set/Step-Backs		With Set/Step-backs		Diff from MU-10 proposal	
	DU	Af DU (30%)	DU	Af DU (30%)	DU (less)	Af DU
Proposed MU-10	538	161	523	157		
MU-8 for entire site	342	103	334	100	-204	-61
MU-5A for entire site	274	82	267	80	-271	-81
MU-4 for entire site	171	51	171	51	-367	-110
Split MU-10 and MU-8	445	134	431	129	-106	-32
Split MU-10 and MU-4	377	113	363	109	-175	-52
Split MU-8 and MU-4	274	82	265	80	-272	-81
Split MU-5A and MU-4	219	66	210	64	-328	-328

The *Administrative Procedure Act* sets the parameters for a contested hearing and guarantees all parties the right to cross-examine witnesses. Movants cannot cross-examine a piece of paper.

Movants' due process rights were violated when OP placed into the record extensive newly

proffered evidence and material that “amends” the Map Amendment Application after the record was closed, thereby avoiding cross-examination. For example, all research and new data OP cited for the first time on displacement in its Supplemental Reports was available many months earlier before the record closed. This is clear this from the dates of the source materials OP cited.

The parties in opposition should have been given the opportunity to cross-examine OP and to recall their experts in rebuttal concerning OP’s April 8 and June 13, 2024 Supplemental Reports. The *Administrative Procedures Act* guarantees parties this right to rebuttal. In *Donnelly Assocs. v. D.C. Historic Preservation Review Bd.*, 520 A.2d 270 (D.C. 1987) citing *Chevy Chase Citizens Association v. District of Columbia Council*, 327 A.2d 310, 314 (D.C. 1974) (*en banc*), the Court of Appeals held the “contested case” provisions of the D.C. Administrative Procedures Act, D.C. Code Ann. § 2-509, describe “**trial type hearing[s]**” Trial type hearings require all parties be accorded the right to cross-examine, the right to put on rebuttal, the right to call witnesses.

The Commission was required by the APA to grant parties in opposition the right to ask the Applicant questions about their new positions and materials placed into the record on April 8, 2024 and June 13, 2024, after the record was closed.

For all the foregoing reasons Movant respectfully requests the Commission grant this Motion for Reconsideration of Zoning Commission Order No. 23-02 and this request for Rehearing in Z.C. Case No. 23-02.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this date one copy of the forgoing Motion was sent via email to the

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3/2/26
Date