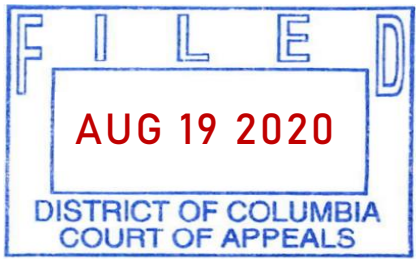
District of Columbia
Court of Appeals



No. 19-AA-1215

HILARY DOVE, *et al.*,
Petitioners,

v. **BZA 19777**

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT,
Respondent.

BEFORE: Thompson and Deahl, Associate Judges, and Nebeker, Senior Judge.

J U D G M E N T

On consideration of respondent's motion for summary affirmance, petitioners' motion for an extension of time to file their lodged opposition to the motion and the lodged reply to the opposition, petitioners' petition for review, brief, and appendix, and the record on appeal from the District of Columbia Board of Zoning Adjustments (BZA), it is

ORDERED that petitioners' motion for an extension of time to file their opposition to the motion for summary affirmance is granted. It is

FURTHERE ORDERED that respondent's motion for summary affirmance is granted. *See Oliver T. Carr Mgmt., Inc. v. Nat'l Delicatessen, Inc.*, 397 A.2d 914, 915 (D.C. 1979). Petitioners challenge the December 12, 2019, order issued by the BZA denying their appeal of the Zoning Administrator's (ZA) affirmance of a revised permit allowing the placement of three air conditioning units in the side yard of the property immediately next to theirs. We have explained that "[i]t is an established maxim of review that an agency's interpretation of its administrative regulations must be given great deference and is to be upheld by this court unless clearly erroneous or inconsistent with the regulations." *Keefe Co. v. District of Columbia Bd. of Zoning Adjustment*, 409 A.2d 624, 635 (D.C. 1979).

Petitioners have failed to establish that the BZA's order is clearly erroneous or inconsistent with the regulations. First, the BZA's interpretation of the regulation

found in 11 D.C.M.R. Subtitle B § 323.9 governing self-contained air conditioning units is consistent with the regulations because the units at issue did not "project" into the yard. *See* 11 D.C.M.R. § 323.9; *see also* 11 D.C.M.R. Subtitle B § 100.1(g) (stating that any definition not found in the regulations has the meaning given in *Webster's Unabridged Dictionary*); Webster's Third New International Dictionary of the English Language Abridged 1813 (3d ed. 1961) (defining "project" as "to jut out; extend beyond a given line; protrude"). Second, the BZA's determination that 11 D.C.M.R. Subtitle B § 324 ("Structures in Required Open Spaces") does not apply to the air conditioning units is consistent with the regulations because that section applies to "structures" and the regulations specifically define a "structure" as not being mechanical equipment. *See* 11 D.C.M.R. Subtitle B § 100.2 (explaining that a "structure" does not include mechanical equipment); 11 D.C.M.R. Subtitle B § 324. We do not address the arguments raised for the first time by petitioners in their opposition to the summary affirmance motion. *See Union Mkt. Neighbors v. D.C. Zoning Comm'n*, 197 A.3d 1063, 1068 n.6 (D.C. 2018) (explaining that we address only the issues and arguments made in the opening brief). It is

FURTHER ORDERED and ADJUDGED that the order appealed is affirmed.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Copies e-served:

John C. Letteri, Esquire

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cml