

APPEAL NO. 18152 of Advisory Neighborhood Commission 1D

Intervenor's Response to Appellee's Post Hearing Brief

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The Appellee Brief, submitted on February 15, 2011, ignores the fact (as it must, in order to reach its desired conclusion), that Intervenor presented convincing evidence that the Zoning Administrator (ZA) erred in judging the location of the rear yard.

The brief claims that Intervenor offered no expert testimony, even though (i) the Board does not require expert testimony to interpret the Zoning Regulations and review the decisions of the ZA, and (ii) Intervenor relies principally on the expert testimony of the ZA.

Somehow, the Appellee jumps to the conclusion that "the Appellant failed to meet its burden." DCRA's counsel cannot hide behind the words of "burden" and "deference" here.

Intervenor proved at the Appeal hearing that the ZA arbitrarily and incorrectly selected the original and long recognized southern side yard as the new rear yard, in order to, as the ZA explained, "maximize the size of the addition" and better "accommodate" the property owner.

The Intervenor, who worked with the ZA during the Appeal hearing in dissecting the Zoning Regulation language of a "Rear Yard" then used this clear definition when applying it to the existing configuration of the subject property, supported by illustrative drawings, photos, and plans. The opposition counsel and ZA had no rebuttal to what is intuitively and will always be the established rear yard.

In the Appeal hearing and in its documents, as well as in its Memorandum of Points and Authorities, Intervenor laid out a list of factors that showed the accurate designation of the rear yard as that area between the rear line of the building and the western lot line.

Among the compelling evidence presented was (i) the presentation of a drawing of the subject building, which shows clearly the rear line of that building as being directly opposite the front of the building, which is symmetrically divided between 16th and Lamont Streets, referred to by the ZA as "the apex" of the building and lot at the intersection thereof; (ii) the ZA himself stated that the rear lot line is that line opposite the chosen street frontage, and Intervenor presented a drawing with perpendicular lines back from DCPL's chosen street frontage (i.e., opposite of the Lamont Street frontage), and that space included all of the western lot line, and only a small portion of the southern lot line; (iii) Intervenor presented a drawing showing that all lines drawn straight back in a perpendicular angle from the rear line of the building lead directly to, and only to, the western lot line; (iv) perhaps most convincing, Intervenor presented a plat and photos showing the configuration of all the surrounding lots on this block: the western lot line of the subject property abutted only rear yards, the southern lot line of the subject property abutted only side yards, and this configuration was consistent throughout the block.

Faced with this multitude of factors exposing the ZA's error, Appellee claims that Appellant and Intervenor "did not offer any compelling evidence as to why the ZA erred" and that the Board should simply just accept whatever the ZA says without questioning what the ZA himself termed a "judgment call."

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Intervenor imagines the Board would agree that it is the responsibility of the BZA to determine if the ZA made the correct judgment call in this case, despite Appellee's pleas for the Board to suspend its own judgment in favor of his client's, without an actual review of the factors considered in the ZA's judgment call.

Did the ZA offer any compelling evidence or testimony to rebut Intervenor's proof? Only if one considers the DCPL's desire to "maximize the addition" as compelling evidence relevant to the ZA's determination of the legal rear yard. Intervenor notes that this is obviously not relevant, and the ZA did agree that the choice of the rear yard is not, unlike the street frontage, at the whim of the property owner.

Are considerations of width calculation compelling evidence of the legal location of the rear yard? The use of this argument by Appellee exposes the desperation of the ZA and District counsel to concoct any theory at all which might confuse the only legitimate conclusion. Why would difficulty in determining width make a rear yard ineligible to be a rear yard? Would the same problem make a side yard ineligible to be a side yard?

Finally, the Appellee Brief makes another desperate argument that the ZA is actually orienting the lot in a "more traditional way" because there would arguably be side yards perpendicular to each other; but with a five-sided lot, there will obviously be a multiple of adjacent yards of some kind – this does not lead to the conclusion that the ZA can arbitrarily choose any rear yard in order to accommodate a property owner.

Plus, as the ZA testified, "orientation" of the building did not play a factor in his determination, and that changing the street frontage served as only a "minor change in designation" not "a change in the location of the entrance." This means the rear line of the building is and will always be the same, opposite the front of the building, and hence the rear yard by Zoning Regulation definitions is the area between the rear line of the building and the rear lot line.

The three completely irrelevant points offered by DCRA's counsel to counter Intervenor's appeal equate to the sum and substance of the District's attempted rebuttal to Intervenor's evidence highlighted above.

The Appellee Brief makes other broad statements that the ZA "must use his discretion" and "the ZA was well within his discretion to label the southern lot line as the rear." But Appellee provides no legal authority and no facts in support of these conclusory statements, and the ZA himself pointed out that it was a judgment call, i.e., not merely a discretionary choice.

When asked what factors led the ZA to judge the southern line over the western line as the rear lot line, he offered none at all (as detailed in Intervenor's previous submission). When pressed by the Board at the hearing, he and his counsel made the irrelevant arguments noted above.

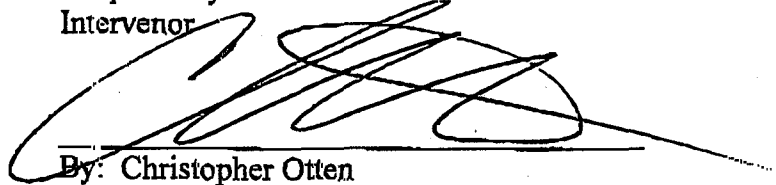
The ZA's answer to the question of what factors prompted him to choose the southern yard over the western yard was (but for a mention of nonconformities that the ZA said did not even apply here): "In the end I looked at that whole situation and I felt that... that could... that would be deemed a rear lot line as opposite the front, the frontage, of the lot."

This answer did not provide any "factors" at all and utterly failed to answer the most critical question in the Appeal. The ZA's response is merely a conclusion without support. That is because there are no factors that would tend to designate the southern lot line as the rear lot line.

The consequence for the ZA's determination is one which seems to get short shrift by DCRA's counsel in the post hearing brief. There have been three serious fires over the past thirty-six months along the residential and business corridor behind and adjacent to the library. There has been no community fire protection plan put on the table for surrounding neighbors to comment on and take ownership of. Surrounding neighbors are nervous that without a rear yard set-back, it will be even harder for emergency personnel to rescue them in an emergency. This concern has merit as currently, the Fire Department can tear down and knock over chain link fence behind the library. DCFD won't, however, be able to knock down the new brick wall of the library addition which would be squeezed and lodged in the longstanding rear yard.

The Board is not required to give blind deference to an unsupported conclusion by the ZA. This is particularly true when all other information presented by Intervenor shows that the ZA made an error in judgment (correctable by this Board) that was based on a desire to accommodate the property owner and maximize the addition, rather than on the Zoning Regulations and the facts before him.

Respectfully Submitted on Behalf of
Intervenor

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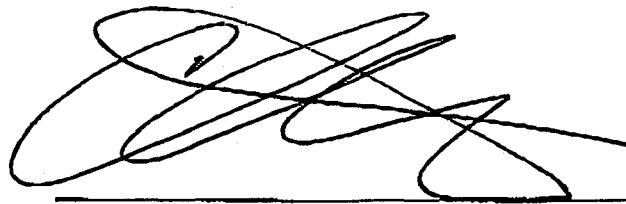
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CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2011, a copy of this submission was mailed by U.S. Mail to the following:

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2:45pm

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