

**DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**
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Appeal of Walter Parrs, Dorina Kanopka, and
Zdenek Nikodem

Appeal No. 18257

DCRA'S OPPOSITION TO APPELLANTS' MOTION FOR RECONSIDERATION

The Appellee, the District of Columbia Department of Consumer and Regulatory Affairs ("Appellee" or "DCRA"), by and through undersigned counsel, respectfully submits this opposition to the Appellants' Motion for Reconsideration. Appellants' Motion must be denied as they have failed to show, under 11 DCMR § 3126.4, that the Board erred in its July 17, 2012 Order ("July 17th Order").

First, Appellants argue that the Board erred by allowing the Zoning Administrator ("ZA") to characterize a portion of the property at 3307 M St., NW (the "Property") to be a 'rear yard' when the building was constructed in 1989, and then characterize the same portion of the Property to be part of the 'roof' when reviewing the building permit for the construction of the elevator penthouse. To the extent that this argument even identifies an error, it is not an error either the ZA or the Board made during this case.

This appeal concerned ZA's determination that the construction of the elevator penthouse on the roof of the Property complied with the Zoning Regulations. In its appeal, Appellants argued that the ZA erred in concluding the structure was a rooftop penthouse and that the penthouse was not subject to a setback requirement. Further, Appellants argued that the Property

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did not have a lawful loading area. Accordingly, the hearing that was held before the Board and the resulting decision of the Board was limited to a discussion of those three issues.

In the July 17th Order, the Board ruled in DCRA's favor on all three issues and specifically stated that the issue of the legality of the permit for the construction of the building in 1989 was not before the Board. *See Appeal no. 18257 of Walter Parrs, et. al.* at p. 6 (July 17, 2012). In light of this, it is irrelevant to this appeal whether, in 1989, DCRA determined that part of the Property to be a rear yard, a roof, or something else.

The Board confirmed that the ZA was correct in determining that the construction of the elevator penthouse complied with the regulations. No issues concerning the 1989 construction were before the Board and any possible appeal of the permit approving the 1989 construction is long since time-barred. Accordingly, Appellants' attempt to raise issues from 1989 must again be rejected by the Board.

Secondly, Appellants argue that the Board erred in upholding the ZA's determination that the northern and eastern walls are not exterior walls under the Zoning Regulations. The sole basis given by Appellants as to why this finding of the Board is in error is that, according to Appellants, the Board relied on dicta from *Appeal No. 17109 of Kalorama Citizens Association* in making its decision.

Contrary to Appellants' assertion, the Board did not base its reasoning, in either this case or in *Kalorama Citizens Association*, on dicta, but rather it applied the existing "traditional" and "historic" definitions of the term "exterior wall" under the Zoning Regulations. *See Appeal no. 18257 of Walter Parrs, et. al.* at p. 10; *Appeal No. 17109 of Kalorama Citizens Association* at p. 13 (November 8, 2005). In the Motion for Reconsideration, Appellants do not argue that the Board misinterpreted or misapplied the definition of "exterior wall" under the Zoning

Regulations. Similarly, Appellants make no attempt to argue that the Board's interpretation is bad policy or contrary to law. Nor does Appellants make any attempt to offer an alternative interpretation.

Nothing submitted by the Appellants in the Motion for Reconsideration identifies an error in the Board's application of the law in this case. Consequently, the motion must be denied.

Respectfully Submitted,

IRVIN B. NATHAN
Attorney General for the District of Columbia

MELINDA M. BOLLING
General Counsel for the Department of Consumer
and Regulatory Affairs

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JAY A. SURABIAN (DC Bar # 977657)
Assistant Attorney General
Department Of Consumer and Regulatory Affairs
Office of the General Counsel
1100 4th Street, SW, 5th Floor
Washington, DC 20024
(202) 442-8403 (office)
(202) 442-9447 (fax)
jay.surabian@dc.gov

CERTIFICATE OF SERVICE

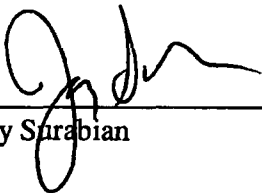
I hereby certify that a copy of the foregoing filing was served by email, this 3rd day of August 2012, to the following:

Ruthanne Miller, Esq.
Sullivan, Styles and Barros, LLP
1990 M St., NW, Suite 200
Washington, DC 20036
Via email: rmiller@ssblawfirm.com

Advisory Neighborhood Commission 2E
c/o Commissioner Ron Lewis, Chair

400 Reservoir Road, NW
Washington, DC 20007
Via email: anc2e@dc.gov; ron.lewis@anc.dc.gov

Leila Batties, Esq.
Holland & Knight
2099 Pennsylvania Ave., NW
Washington, DC 20006
Via email: Leila.batties@hklaw.com


Jay Surabian