

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Appeal No. 18257-A of Walter Parrs, et.al., pursuant to 11 DCMR §§ 3100 and 3101, from an April 8, 2011 decision of the Department of Consumer and Regulatory Affairs (DCRA) in the issuance of Building Permit No. B1104635 on April 26, 2011 and Elevator Permit No. EN 1101667 on May 9, 2011 regarding the construction of an elevator or “material lift” structure at 3307 M Street, N.W., in the C-2-A District (Square 1205, Lot 79).

HEARING DATE: November 1, 2011

DECISION DATES: November 8, 2011 and December 6, 2011

DATE OF ORDER

DENYING APPEAL: July 17, 2012

DATE OF DECISION

ON MOTION FOR

RECONSIDERATION: September 25, 2012

ORDER DENYING MOTION FOR RECONSIDERATION

On July 30, 2012, Appellants Walter Parrs, Dorina G. Kanopka, and Zdenek D. Nikodem (the “Appellants”) moved for reconsideration of the Board’s Order in this case issued on July 17, 2012. (Exhibit 39.) The Order denied Appellants’ appeal challenging the issuance of building permits by the District Department of Consumer and Regulatory Affairs (“DCRA”), and the written determination of the Zoning Administrator (“ZA”) authorizing the permits. The Board denied the appeal on each of the three grounds originally stated by the Appellants and determined it would not consider the fourth claim which the Appellants raised after the hearing was concluded.

The Motion to Reconsider requested the Board to reconsider and reverse its rulings, and find that the ZA’s determination was made in error and the permits were issued in error. Pursuant to 11

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DCMR § 3126.4, the Appellants alleged specific errors in the Board's Order. In response, on August 3, 2012, Euromarket Designs, Inc., d/b/a CB2, the lessee of the subject property and the Intervenor¹ in the proceedings, opposed the Motion for Reconsideration. (Exhibit 40.) (See, 11 DCMR § 3126.) On August 3, 2012, DCRA also filed a statement opposing the Motion for Reconsideration. (Exhibit 41.) At a decision meeting on September 25, 2012, the Board voted to deny the Appellant's Motion for Reconsideration for the reasons explained below.

The Request for Reconsideration

The Appellants have not identified any basis upon which the Board should reconsider its decision in this case. Appellants allege two errors made by the Board. However, for the reasons that follow, the Board finds that neither possesses merit.

First, it is claimed that the Board erred by upholding the ZA's determination that the proposed elevator canopy was to be located on a "roof" because the initial building permit – approved in 1989 – purportedly treated that same space as a "rear yard". Appellants merely speculate that such a determination was made and in essence seek to turn the appeal of a 2011 determination into a belated inquiry into the basis for a 1989 permit.

Whatever might have been the rationale for issuing the 1989 permit, the Board continues to have no doubt that the area occupied by the elevator canopy is a roof. As explained in its Decision, the area met the agreed upon definition of a "roof" because it constituted "the outside cover of a building." Appellants do not challenge that finding, but claim it must be ignored based upon their speculation that the ZA came to a different conclusion over two decades ago. The Board properly interpreted the evidence based upon the definition of *roof*, which the ZA may or may not have considered in 1989. Regardless of what occurred then, the evidence is plain that the elevator canopy occupies a roof and is thus a roof structure.

Appellants' second contention is the Board's determination that the northern and eastern walls are not "exterior walls" was based upon claimed *dicta* from the Board's order in *Appeal No. 17109 of Kalorama Citizens Association (November 8, 2005)* (hereafter *Kalorama*). In fact, just the opposite is true. As pointed out by DCRA (*Opposition Response*, at 2), the Board applied the "traditional" and "historic" interpretation of the term "exterior wall" under the Zoning Regulations. See, *Decision* at p. 9-10.

¹ The party will hereafter be known as "CB2" or the Intervenor.

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Appellants are correct that *Kalorama* involved party walls. Under the traditional test the walls could not be considered exterior walls because they neither abutted public space nor were “set back from the property line that abuts a yard or court,” *Kalorama* at 13. Appellant in fact accepts that test, but claimed that the yard in question could be that of a neighboring property. For the reasons stated in its Decision, the Board rejected and continues to reject Appellants’ argument because it represents a radical departure from the traditional interpretation of exterior walls.

In conclusion, the Appellants have not identified any legal or factual errors, or any other basis upon which the Board should reconsider its decision in this case. For these reasons, it is hereby **ORDERED** that the Motion for Reconsideration is **DENIED**.

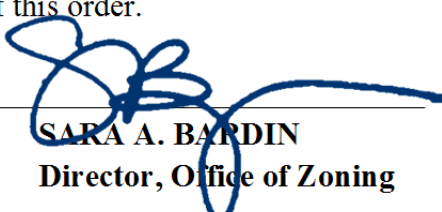
VOTE: 4-0-1 (Lloyd J. Jordan, Nicole C. Sorg, Jeffrey L. Hinkle, and Michael G. Turnbull (by absentee vote), voting to deny the Motion for Reconsideration; Rashida Y.V. MacMurray not present, not voting.)

Vote taken on September 25, 2012

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

ATTESTED BY: _____


SARA A. BARDIN

Director, Office of Zoning

FINAL DATE OF ORDER: July 2, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.