

STATEMENT IN SUPPORT OF APPEAL

INTRODUCTION

This is an appeal of a decision by DCRA Inspector Ronald F. Fones, contained in the attached Notice of Violation and Notice to Abate--Control No. CEL1300001 (hereinafter "Notice"), that a structure on the Appellants' property that is greater than four feet in height is located in a required side yard, and is therefore in violation of the 8 ft. side yard requirement for the R-1-A zone, per Sections 2503.2 and 405.9 of the DC Zoning Regulations, 11 DCMR. Also attached is a drawing showing the location of the structure in relation to the dwelling on the property. The "required corrective action" in the Notice is to "lower the height to less than 4' or relocate to maintain 8' set back from the property line". It is evident from this language that the DCRA Inspector took the position that the structure is located within a required side yard.

The inspection that gave rise to the Notice occurred on October 24, 2012. In a meeting with the Appellants' counsel on December 10, 2012, the Zoning Administrator orally confirmed his agreement with the position taken in the Notice. The Notice itself is not dated, and the Appellants were away from their home for an extended period in the fall of 2012, but the Zoning Administrator has informed the Appellants' counsel by email (attached hereto) that the Notice was mailed to the Appellants on November 14, 2012. Therefore, this Appeal is timely filed within 60 days of notice to the owner of this property of the decision being appealed, pursuant to the instructions contained in the Notice, and applicable regulations and rulings of this Board and the DC Court of Appeals on the timeliness of appeals to the Board.

Contrary to the assertion of the DCRA Inspector and the position of the Zoning Administrator, and as further explained below and illustrated in the attachment herein, the structure is not located in a required side yard, and therefore is not in violation of either Section 2503.2 or 405.9 of the Zoning Regulations.

THE STRUCTURE IS LOCATED IN THE FRONT YARD

The structure is not located in a required side yard,¹ or even a non-required side yard, but instead is located in the front yard. The open spaces around the dwelling are comprised of a rear yard behind the dwelling, one side yard on each side of the dwelling, and a front yard in front of the dwelling. A rear yard is defined in Section 199 of the Zoning Regulations as:

"Yard, rear - a yard between the rear line of a building or other structure and the rear lot line, except as provided elsewhere in this title...."² (emphases added)

Thus, a line drawn along the wall of the rear line of the building and extending in a straight line to the lot lines on both sides defines the edge of the rear yard.

A "front yard" is not defined in the Regulations. Applying the same logic to the front of the building as to the rear, a line drawn along the wall of the furthest front line of the building and extending in a straight line to the lot lines on both sides defines the edge of the front yard.

¹ The property is zoned TSP/R-1-A. The applicable side yard requirement in this instance is 8 ft.

² This Board has previously considered and ruled upon the proper method of measurement of a required rear yard in several cases. See Appeal No. 17414 of Geraldine Rebach and Jeffrey Schonberger, at page 6, footnote 2: The Board "agrees with the Zoning Administrator that a 'rear yard' begins at the rear wall of a building and runs to the rear lot line."; Application No. 16696 of Craig and Ann Goodman, at Finding of Fact No. 17: "The existing garage is located approximately 67 feet from the rear of the dwelling. It does not occupy the required minimum 20-foot rear yard, which is measured outward from the rear line of the dwelling to the rear lot line. See § 199.1 (definition of 'yard, rear'); Tr. at 293 (July 17, 2001); Ex. 75 (attachments 1 and 7)." (emphasis added). See also Jeffrey Schonberger & Geraldine Rebach v. D.C. Board of Zoning Adjustment, No. 06-AA-1454 (D.C. Court of Appeals, January 10, 2008) at p. 5: "To begin with, the regulations define a 'yard, rear' as 'a yard between the rear line of a building... and the rear lot line, except as provided elsewhere in [Title 11],' and define the 'depth of' a rear yard as 'the mean horizontal distance between the rear line of a building and the rear lot line, except as provided elsewhere....' 11 DCMR § 199.1.1. The natural sense of these words is to establish both the starting point for measuring 'distance' as the 'rear line of a building,'... and a direction of measurement, i.e., toward the rear lot line." (emphasis added).

The definition of what constitutes a side yard is also contained in Section 199 of the Zoning Regulations:

"Yard, side - a yard between any portion of a building or other structure and the adjacent side lot line, extending for the full depth of the building or structure."
(emphasis added).

Because the side yard runs only for the full depth of the building (i.e. from the front line of the building to the rear line of the building), the front yard, then, is the area between the front line of the building and the adjacent front lot line, for the full width of the lot. By definition, a side yard does not extend beyond the front line of a building. Moreover, a yard cannot be both a side yard and a front yard.

Because there is no required front yard³ for this property, the provisions of Section 2503.2 of the Zoning Regulations regarding structures in required open spaces do not apply to this structure. The structure is located in the front yard, in front of the line extended which demarks the front line of the building. Because the structure is therefore not in the side yard, the provisions of Section 405.9 regarding residential side yard requirements do not apply to this structure.

³ Quoting from the Board's decision in Appeal No. 17414, the DC Court of Appeals has held that a front yard is "something 'the Zoning Regulations do not require in any zone district.'" Schonberger, supra, at p. 4.

CONCLUSION

For the foregoing reasons, and as will be more fully explained at the public hearing, the structure is not located in the required 8 ft. side yard, but is instead located in the front yard. The Notice should therefore be withdrawn.

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