

DC Board of Zoning Adjustment

RE: BZA Case #18888; Appeal of the Building Permit # 1309151

February 3, 2015

[draft – complete]

PETITIONER'S FINDINGS OF FACT & CONCLUSIONS OF LAW

Appeal Procedural Facts

1. On September 24, 2014, Petitioners filed BZA Appeals Case #18888. *See Exhibit #2 in BZA Case #18888.*
2. Petitioner's appeal concerns itself with two zoning spheres: Rear Yard and Rooftop requirements as found in the DC Zoning Regulations (11-DCMR).
3. Petitioner's have consistently challenged the subject project along two spheres of review: the development rules for rear yards and for rooftops. Both of these spheres of review are center to the inter-related filings and cases associated with the subject project, including BZA Case #18506,¹ Petitioner's Request for an Immediate Hearing in BZA Case #18506,² Petitioner's appeal to the DC Court of Appeals and subsequent remand dated June 5, 2014,³ and an administrative appeal filed on August 7, 2014, before the Office of Administrative Hearings (OAH),⁴ and the instant case, BZA Case #18888.
4. On January 13, 2015, the Board of Zoning Adjustment held a hearing on BZA Case #18888. All parties appeared before Commissioners.
5. At the January 13, 2015 hearing, Commissioners took up Intervenor's Motion to Dismiss the case for being untimely and for lack of merit. *See Intervenor's Exhibit #14 & #14A-E.*
6. The BZA heard arguments from all parties about Intervenor's Motion to Dismiss, but did not yet rule on the motion. *See DC Board of Zoning Adjustment Transcript, dated January 13, 2015, and hereby referred throughout this draft order as the "Transcript."*
7. At the end of the January 13, 2015, BZA Appeal #18888 hearing, the BZA asked all parties for post-hearing submissions. *See Transcript Page 115, Lines 11 to 18.*

¹ BZA Case #18506; *See Exhibit #14E, Pages 15 to 30, labeled "Attachment 2"*

² BZA Case #18506; Petitioner's Request of the BZA for Immediate Hearing dated September 29, 2014; *See Exhibit #14E, Pages 7 to 14, labeled "Attachment 1."*

³ DC Court of Appeals Case No. 13-AA-1356; DCCA Judgment dated June 5, 2014 remanding rooftop variances granted by the BZA in BZA Case #18506; *See Exhibit #14E, Pages 31 to 33, labeled "Attachment 3."*

⁴ OAH Case #2014-DCRA-00050, contending with rooftop structures of the subject project, among other complaints of violations of the DC Construction Codes.

8. As ordered, Petitioner's submit these Findings of Facts and Conclusions of Law.

Findings of Fact: Timeliness

9. Petitioner's took photographs on July 24, 2014, showing "vertical" construction was well underway at the subject site. *See Exhibit #14C, Pages 3 & 4.*
10. Petitioner's sent an email that same day, dated July 24, 2014, addressed to Respondent, DCRA, including the DC Zoning Administrator, Matthew LeGrant. *See Exhibit #14A.*
11. The Petitioner's email states that a visit to DCRA's online permit system, referred to as "PIVs", showed that DCRA had not yet issued the required building permit to the Intervenor at that time despite the fact that "vertical" construction had started at the subject site. *See Transcript, Page 56, Lines 7 to 12.*
12. Petitioner's email stresses concern about construction at the subject site given that the DC Court of Appeals summarily reversed rooftop variances granted for the subject project. *See BZA Final Order in Case #18506 shown as Exhibit #14E, Pages 15 to 30, under "Attachment 2"; See also, DC Court of Appeals Judgment remanding variances granted in BZA Case #18506 shown as Exhibit #14E, Pages 31 to 33, under "Attachment 3."*
13. It is unrefuted that Petitioner's aforementioned email dated July 24, 2014, was not responded to by anybody addressed in the email, particularly the DC Zoning Administrator (ZA). It is unrefuted that the ZA, Mr. Matthew Legrant never responded to Petitioner's alert and never wrote any letters of determination about the subject project. *See Exhibit #14E, Page 3, second and third paragraph.*
14. The Respondent, DCRA issued Permit #B1309151 to the Intervenor on this same day, July 24, 2014. *See Exhibit #2, Page 9, labeled "Attachment 2."*
15. And, on this same day, July 24, 2014, Intervenor sent notice by certified mail to the Petitioner that DCRA had issued a building permit for the subject project. *See Exhibit #2, Page 6, labeled "Attachment 2."*
16. Petitioner's first received this notice, and copy of Permit #B1309151, two days later on July 26, 2014. *See Exhibit #2, Page 7, labeled "Attachment 2."*
17. On August 4, 2014, Petitioner's visited DCRA's records office in Southwest, DC, seeking a copy of the Intervenor's project plans as approved by Respondent, DCRA. Petitioner's were not able to access the plans during this visit. *See Exhibit #14E, Pages 39 to 41, labeled "Attachment 6."*

18. Petitioner's attempts to get a copy of the DCRA-approved project plans for the subject project lasted several weeks, as shown in email exchanges between the Petitioner, and the counsel for the Respondent, DCRA, as well as the DCRA records office representative. *See Exhibit #14E, Page 56, among others, labeled under "Attachment 6."*
19. It is unrefuted that on September 19, 2014, Intervenor delivered a copy of the DCRA-approved project plans to Petitioner's for the first time. *See Transcript, Page 60, Line 14.*
20. Five days later, Petitioner's filed BZA Appeal #18888 dated September 24, 2014. *See Point #1.*
21. Five days after filing BZA Appeal #18888, Petitioner's filed a, "Request for Immediate Hearing," dated September 29, 2014, and which was docketed as Exhibit #45 in the inter-related BZA Case #18506. The Request for Immediate Hearing asked Commissioners to address the DC Court of Appeals ordered remand of variances granting relief for Intervenor's proposed rooftop structures. *See Exhibit #14E, Pages 7 to 14, labeled "Attachment 1."*
22. Since July 21, 2014, until at least October 16, 2014, Petitioners attempted to understand how and when the BZA would administratively process the DC Court of Appeals remand of zoning relief regarding rooftop structures in BZA Case #18506. Through several email exchanges, Petitioners reached out to the Secretary of the BZA, Mr. Clifford Moy as to when BZA Commissioners would hear Petitioner's Request for Immediate Hearing. *See Exhibit #14E, Petitioner email exchanges with DCRA and the BZA Secretary, Pages 39 to 62, labeled under "Attachment 6." See emails specifically between Petitioners and Mr. Moy on Pages 47, 59 (Moy called Petitioners), and Page 62.*
23. Petitioners, Respondent, and Intervenor all participated in one, and only one hearing in OAH Case #2014-DCRA-00050, held on October 28, 2014. *See Exhibit #14E, Pages 93 to 95.*
24. Petitioner's testified to the BZA that their participation in aforementioned October 28, 2014 OAH hearing, "finally" gave them some "understanding" about why DCRA approved the subject project and its "revised" rooftop structures, but were otherwise kept, "in the dark about the rooftop structures" *See Transcript, Page 70, Lines 13 to 19; See Exhibit #14E, Petitioner email exchanges with DCRA, starting at Pages 56 to 62, labeled under "Attachment 6."*
25. Then on November 18, 2015, the BZA held a hearing and dismissed Petitioner's "Request for an Immediate Hearing" as being moot, thus closing the inter-related BZA Case #18506. *See BZA Transcript in BZA Case #18506, dated November 18, 2014.*
26. The OAH then formalized positions about the rooftop structures, among other issues, on December 8, 2014, by publishing a Final Order in OAH Case #2014-DCRA-00050, ultimately denying relief to Petitioners via the DC Construction Code (12-DCMR). *See*

public archive for the December 8, 2014, Judgment in OAH Case #2014-DCRA-00050.

27. Subsequent to the aforementioned OAH Judgment dated December 8, 2014, and the closing of BZA Case #18506 on November 18, 2014, Petitioners submitted a filing in BZA Case #18888, dated December 30, 2014, which clarifies the appeal, and also amends the appeal to include the rooftop zoning claims. *See Exhibit #15.*

Conclusions of Law: Timeliness

28. The BZA is authorized to hear appeals by aggrieved DC residents, after the Respondent, DC Department of Consumer Regulatory Affairs (DCRA) makes the final decision to issue a building permit. *See 11-DCMR-3100.2.*
29. Aggrieved residents, like Petitioner's, have 60 calendar days to appeal to the BZA from the date of DCRA's final decision to issue a permit, unless the Board agrees to extend this jurisdictional deadline. *See 11-DCMR-3112.2(a) & 3112.2(d).*
30. Petitioner's received noticed that DCRA made the final decision to issue a building permit for the subject site on July 26, 2014. *See Points #14 to 16 above.*
31. Petitioner's filed BZA Appeal #18888 on September 24, 2014, or within the 60 calendar days after Petitioner's received notice of building permit issuance. *See Points #20 and #1 above.*
32. However, Intervenor's Motion to Dismiss BZA Appeal #18888 argues that since Petitioner's were able to access DCRA's online permit system, entitled "PIVs", that Petitioner's ought to have known that DCRA's Zoning Administrator (ZA), Mr. Legrant allegedly gave zoning approval for the subject project on July 14, 2014. Intervenor's have not provided the BZA clear evidence proving their position on this critical jurisdictional issue of timeliness. *See Point #5 above.*
33. To support their argument, Intervenor submitted a printout of the PIVs system showing online annotations, and ultimately approval by the ZA dated July 14, 2014. The Intervenor's snapshot and printout of the PIVs site is dated August 27, 2014, nearly a month after Petitioner's testified they were on that same site. *See Points #10 to 14 above.*
34. Petitioner's have demonstrated to the BZA that when they visited the PIVs site on July 24, 2014, there weren't obvious alerts or information that indicated a building permit had been issued, let alone that the ZA gave zoning approval for the subject property. *See Points #10 to 14 above.*
35. Further, the record in this case demonstrates that Petitioner's sent an email letter, dated July 24, 2014, showing inquiry of the status of the subject building permit. The letter was addressed to representatives of Respondent, DCRA, including Mr. Matthew Legrant, the DC

Zoning Administrator (ZA). *See Point #10 above.*

36. It is unrefuted that Petitioner's never received a response from those DCRA representatives addressed in their letter, including no response by the ZA, leaving Petitioner's without any explanation of any final decisions or informing Petitioner's of any appeal rights.
37. Further, it is unrefuted that on September 19, 2014, Petitioner's first received a copy of the DCRA-approved Intervenor's design plans. *See Point #19 above.*
38. BZA Appeal #18469 and Final Order makes clear that BZA Commissioners can set the timing of an appeal to when the ZA gave approval of the subject project. However, in BZA Appeal #18469, the appeal clock starting ticking only after demonstrating that 1) parties in that case were made aware of the ZA's approval on the PIV's site, and 2) that the ZA had sent a letter to the parties explaining his/her decision to give zoning review approvals, and subsequently sending a letter offering information about the parties appeal rights.
39. In the instant case, BZA Appeal #18888, Commissioners believe that Petitioner's have shown that they were neither informed about any regulatory approvals on the PIV's site, but also never received any response or any correspondence from the ZA despite inquiring with Mr. Legrant by email about the building permit for the subject project. *See Point #13 above.*
40. Therefore, in the instant case, Petitioner's have shown they first received notice that DCRA made the final decision to issue the building permit on July 26, 2014, and therefore timely filed BZA Appeal #18888 within the 60 calendar days as required.
41. However, Intervenor further argues that even if BZA Appeal #18888 is deemed timely filed by Petitioner's, any claims regarding rooftop zoning violations is untimely because they were not listed in Petitioner's initial appeal filing dated September 24, 2014. *See Point #5 above.*
42. The BZA believes that Petitioner's expected, perhaps naively, that the efficacy of the subject project's proposed rooftop structures would be administratively reviewed and that any violations would be ordered to be changed by and through two inter-related administrative cases, one at the BZA and another at the OAH. *See Point #3 above.*
43. After the two aforementioned inter-related administrative cases concluded and final decisions were made public, Petitioner's amended their appeal in the instant case to include rooftop zoning claims, and they did so within 60 days after the final decisions were made in the above inter-related administrative cases. *See Points #25 to 27 above.*
44. Therefore, through deep participation in the several aforementioned inter-related administrative cases about the subject project, both the Respondent, DCRA and Intervenor were made well aware, and submitted arguments on Petitioner's claims about the subject project, claims contending both with the rear yard and rooftop structures. Therefore, Commissioner believe that Petitioner's amended appeal served as no surprise to any party in

the instant case. The BZA has previously ruled that additional legal grounds for an appeal raised after the initial filing of a timely appeal are permissible amendments not subject to the 60-day time requirement. *See Appeal of Louise and Larry Smith and Mary Ann Snow and James Marsh, BZA Appeal No. 17085 (February 28, 2005).*

45. Further, Commissioners believe the Respondent, DCRA and the Intervenor have been given reasonable time for a fair review of Petitioner's amended appeal in the instant BZA Case #18888, and were given ample opportunity to engage on all of Petitioner's issues directly in writing, as well as verbally during presentations before BZA Commissioners and, during direct cross-examination of the Petitioner's at the public BZA hearing held on January 13, 2015.
46. Commissioners conclude that, despite Petitioner's amending their appeal, the ensuing administrative review of the merits of Petitioner's zoning claims in BZA Appeal #18888 have proceeded in an judicially sound method, which in no way prejudiced the rights of any party and is not otherwise prohibited by law.

By the above facts and conclusions of law, the Board of Zoning Adjustment, in a Public Vote (__ to __ to __), determines that Petitioner's BZA Appeal #18888 was timely filed on July 26, 2014, and was subsequently amended in a fair manner on December 30, 2014.

Therefore, the merits of all of Petitioner's claims shall now be evaluated and ruled on pursuant to 11-DCMR-3100.2.

Petitioner's Claims in BZA Appeal #18888

(I)(a) Rooftop Zoning Claims: Findings of Fact

47. Intervenor's subject rooftop, or "Revised Rooftop Plan" consists of multiple enclosed rooftop structures -- 9 stairwell "doghouses" and 1 elevator override structure. *See Respondent's Exhibit #16C, Pages 20 to 21, labeled under "Exhibit E."*
48. Intervenor's subject rooftop design plans, which were submitted to and approved by the Respondent, DCRA, depict an elevator over-ride structure which is taller than the rooftop stairwell structures, referred to as "doghouses" by the Intervenor. *See DCRA-approved Intervenor's design plans, Permit Set Sheet A-410, as seen in Exhibit #17, Pages 1 to 3, 8, and 11; See also Respondent's Exhibit #16C, Pages 22 to 23, labeled under "Exhibit F."*

49. It is unrefuted that the proposed design plans show walls connected to the stairwell structures, standing 12' 0" vertically from the roof. *See Respondent's Exhibit #16C, Pages 22 to 23, labeled under "Exhibit F."*
50. These connected walls are adorned with a trellis embellishment, rising up 2'6" from those walls. The trellis runs the length of the walls that it is attached to and, and from the bird's eye forms a "U" shape on the roof as highlighted in blue. *See Respondent's Exhibit #16C, Pages 20 to 23, labeled under "Exhibits E & F."*
51. The trellis does not extend out across rooftop space horizontally, and thus is not acting as a protective cover over, or as a ceiling above any rooftop space. *See DCRA-approved Intervenor's design plans, Permit Set, as seen in Exhibit #17, Pages 6, 7, and 10.*
52. The trellis is referred to as "decorative" by the DC Office of Planning.⁵
53. It is unrefuted that many rooftop mechanical structures are located on the south-west side of the roof, but which are not wholly- or partially-enclosed behind any walls or structures. *See Exhibit #17, Pages 4 and 7; See Transcript Pages 109 to 110.*
54. Photographs of the rooftop structures were taken by Petitioners from the roof of the adjacent building at 1736 Columbia Road, NW, located at the south-west side of the project site. *See Exhibit #18, Page 3; See Exhibit 22, Page 10, labeled "RTE9."*
55. It is unrefuted that Petitioner's photographs show at least one additional structure resembling a "doghouse" located on the roof, and that this structure is not enclosed within the blue "U" shaped rooftop walls. *See Exhibit #17, Pages 4 and 7l; See also Transcript Page 93, Lines 2 to 13 and Pages 109 to 110; See also Respondent's Exhibit #16C, Pages 20 to 21, labeled under "Exhibit E."*
56. The aforementioned photographed "doghouse" standing outside of the enclosing "U" shaped rooftop walls, also appears on the southwest portion of the rooftop in the DCRA-approved design plans. *See also the DCRA-approved Intervenor's design plans, Permit Set Sheet A-136, in Exhibit #17, Page 7; See also Exhibit #17, Page 6; See also Respondent's Exhibit #16C, Pages 20 to 21, labeled under "Exhibit E."*
57. And, it is unrefuted that the aforementioned photographed structure is not enclosed within the blue "U" shaped rooftop walls adorned with the decorative trellis. *See Transcript Page 98, Line 12 to Page 99, Line 13; See also Respondent's Exhibit #16C, Pages 20 to 21, labeled under "Exhibit E."*

⁵ On page 2 of the DC Office of Planning report dated February 19, 2013, seen as Exhibit #26 on the record of the inter-related BZA Case No. 18506, under the section entitled "III. Application in Brief", planning officials describe a "decorative trellis" connecting all of the stairwell structures.

58. Further, it is unrefuted that there exist walls standing vertically 6' 0" from the roof, walls which are inter-connected with the aforementioned 12' 0" walls, but that extend out all way to the edge of the rooftop. *See also Exhibit #17, Pages 4 and 5; See also Transcript Page 93, Lines 2 to 13 and Pages 109 to 110.*

(I)(b) Rooftop Zoning Claims: Conclusions of Law

59. The DC Zoning Regulations control what may happen on the roofs of buildings in the District of Columbia, particularly as it pertains to rooftop structures and setbacks of those structures, and rooftop mechanical equipment. *See 11-DCMR-411 and 11-DCMR-770.*
60. The zoning regulations specifically say that, "All penthouses and mechanical equipment shall be placed in one (1) enclosure, and shall harmonize with the main structure in architectural character, material, and color," and that, "Enclosing walls from roof level shall be of equal height, and shall rise vertically to a roof." *See 11-DCMR-411.3 & 411.5.*
61. Intervenor argues that the walls on the roof connecting the stairwell "doghouse" structures, form one enclosure, and that the trellis on top of the walls creates a single enclosure at a uniform height, standing vertically, 14' 6" from the roof. *See Points # 49 & 50 above.*
62. However, DC planning officials consider the subject trellis as a decorative embellishment. *See Point #52 above.*
63. The difference between a decorative trellis and a trellis that is considered part of the building structure is discussed in the Final Orders of BZA Case #18263B and BZA Case #17331.
64. In the context of the above BZA Cases, the subject trellis proposed for the Intervenor's project is not a structural component, and not part of a "building," and the trellis does not serve as a "roof" covering any significant area of the rooftop.
65. Commissioners agree, that the trellis is not serving as structural component on top of the rooftop walls and therefore cannot be calculated in the height of the rooftop walls vis-a-vis the height of the stairwell "doghouses" structures and elevator override structure.

Therefore, the BZA orders the Intervenor to apply for rooftop zoning relief from 11-DCMR-411.5, or relief with regard to the required uniform height of a single rooftop enclosure.

66. According to the zoning definitions found in the Zoning Regulations, "The term structure shall not include mechanical equipment." *See 11-DCMR-199.1 – Definition of "Structure."*
67. Therefore, the rooftop exceptions for rooftop structures granted by 11-DCMR-411.17 are not

accorded to mechanical equipment located on the roof.

68. And, the DC Zoning Regulations require that “All penthouses and mechanical equipment shall be placed in one (1) enclosure,” on the rooftop. *See 11-DCMR-411.3.*
69. Intervenor's rooftop design plans show that some rooftop mechanical equipment is located behind the rooftop “U” shaped inter-connected wall structure, and some of the mechanical equipment on the south-west portion of the roof is not located behind the rooftop “U” shaped inter-connected wall structure. *See Points #53 to 57 above.*
70. Petitioner's have also demonstrated that there are multiple rooftop structures being proposed in the subject project and that these multiple structures stand at differing heights. *See Points #47 & 48 above.*

Therefore, the BZA orders the Intervenor to apply for rooftop zoning relief from 11-DCMR-411.3, or relief with regard to the zoning requirement that rooftop mechanicals shall be located within a single rooftop enclosure.

71. Further, Petitioner's have demonstrated that the aforementioned, 12' 0” tall, inter-connected rooftop wall structure, also consists of wall-structure components that stand 6' 0” in height and project out perpendicularly from the 12' 0” walls, extending all the way to the edge of the building rooftop. *See Point #58 above.*
72. DC Zoning Regulations require that rooftop structures be set back, “...a distance at least equal to its height above the roof upon which it is located.” *See 11-DCMR-770.6(b).*
73. Commissioners conclude that the Intervenor's rooftop inter-connected wall structure does extend to the edge of the building. Since the zoning regulations require that structures are set back the same distance as their height, the inter-connected rooftop walls are required to be setback at least 6' away from the edge of the rooftop.

Therefore, the BZA orders the Intervenor to apply for rooftop zoning relief from 11-DCMR-770.6, or relief with regard to the rooftop structure setback requirements.

(II)(a) Rear Yard Zoning Claims: Findings of Fact

74. It is unrefuted that a subterranean garage is being constructed as part of the subject mixed-use building at the subject site.
75. It is unrefuted that there is a ramp connected to the subject building, extending along the subject site's southern lot line, and serving as an entrance/exit to the subject building's

- aforementioned subterranean garage. *See Exhibit #15B, Pages 3, 4, and 6*
76. Further, it is unrefuted that the garage ramp has three walls partially surrounding it. *Transcript Page 84; Lines 15 to 22.*
77. The most southern ramp wall extends the length of the ramp along the rear property line, all the way to the 17th street property line. *See Exhibit #15B, Pages 3, 4, and 6.*
78. It is unrefuted that the garage ramp has metal beams that extend across the width of the ramp, with the beams attached as part of, and resting on all three ramp walls. *See Exhibit #18, Page 4 to 5. See Transcript, Pages 81 to 82, Page 105, starting at Line 18.*
79. It is unrefuted that these metal beams are attached to the Intervenor's ramp walls, and will serve as a platform on which will sit a generator, and accompanying exhaust vent and diesel tanks holding gas. *See Transcript, Pages 81 to 82. See also Transcript, Page 105, starting at Line 12 and Page 106, starting at Line 6. See also Transcript, Page 62.*
80. Respondent, DCRA submitted evidence showing that the ramp, and ramp platform, and the generator, and accompanying exhaust vent and diesel tanks holding gas sitting on the ramp platform, will stand 8' 6" above grade. *See Respondent's Exhibit #16C, Pages 18 to 19, labeled under "Exhibits D."*
81. The ramp, and ramp platform, and the generator, and accompanying exhaust vent and diesel tanks holding gas sitting on the ramp platform, taken together, are located in the rear yard of the subject site. *See Respondent's Exhibit #16C, Pages 18 to 19, labeled under "Exhibits D" where a yellow line demarcates the subject site's required 15' rear yard setback.*
82. It is unrefuted that the garage ramp, the three ramp walls, and the attached metal beam platform, and the generator, and accompanying exhaust vent and diesel tanks holding gas sitting on the metal platform, existing as a unified ramp structure, occupies more than half of the subject site's rear yard. *See Exhibit #15B, Pages 3, 4, and 6.*
83. The DC Office of Planning affirms that the unified ramp structure occupies "almost the entire length of the property along the south side of the lot." That is, the ramp occupies most of the rear yard of the subject site.⁶
84. Petitioner's also submitted DCRA-approved design plans showing Intervenor's have proposed a garage vent structure standing at 15' 0" above grade, as located in the most southwestern corner of the subject property. *See Exhibit #15B, Pages 6 and 7 (close-up); See also Transcript Page 61 to 62, and Page 63 starting at Line 14.*

⁶ See Page 3 of Exhibit #26 in the inter-related BZA Case #18506 which is a DC Office of Planning report dated February 19, 2013, that refers to the subject rear yard. Under "Office of Planning Analysis", subsection (a)(i), the report states, "Vehicular access to the garage would be from 17th Street and the [garage] ramp would occupy almost the entire length of the property along the south side of the lot reducing the size of the triangularly shaped garage."

(II)(b) Rear Yard Zoning Claims: Conclusions of Law

85. The DC Zoning Regulations control rear yards and structures that may be located in the required rear yards. *See 11-DCMR-199, 11-DCMR-774, & 11-DCMR-2503.*
86. For the subject site, located in a C-2-B zone district, a rear yard is required, and the minimum depth of the required rear yard is 15 feet. That is, there is a required 15' setback from the rear property line, or the southern lot line of the subject site. *See 11-DCMR-774.1.*
87. The zoning regulations define “Yard, rear,” as a yard which extends, “the full width of the lot and shall be unoccupied, except as specifically authorized in this title.” *See 11-DCMR-119 – Definition of “Yard, rear.”*
88. 11-DCMR-2503.2 sets the exception to the above definition of Rear Yard, “A structure, not including a building, no part of which is more than four feet (4 ft.) above the grade at any point, may occupy any yard required under the provisions of this title.”
89. And, the zoning regulations define a “structure,” as, “ anything constructed, including a building, the use of which requires permanent location on the ground, or ***anything attached to something having a permanent location on the ground*** and including, among other things, ... ***platforms, ... , tanks, ... , gas holders, chimneys... .***” *See 11-DCMR-119 – Definition of “Structure.”*
90. Intervenor's design plans show two structures will be located in the rear yard, and will be standing more than 4' above grade. *See Points #80, 81, & 84 above.*
91. First, the unified ramp structure, located in the rear yard, includes an attached metal platform that will hoist up a diesel-generator. Commissioners conclude that the generator itself can be considered mechanical equipment, but the generator's accompanying exhaust vent and diesel-gas tanks also sitting on the platform fall under the zoning regulations definition as structures. *See Points #80, 81, & 89 above.*
92. All together, the diesel-gas tanks, exhaust vent, and generator standing on the metal platform attached to the ramp walls, stands at least 8' 6” above grade. *See Point #80.*
93. Intervenor's have also not produced any evidence, other than verbal testimony, to refute Petitioner's exhibits showing that Intervenor's design plans include a “garage vent” standing at 15' above grade. *See Point #84.*
94. Commissioners agree that a garage vent, standing at 15' above grade can be considered a chimney structure per the definitions in the zoning regulations.

95. Commissioners conclude that Petitioner's have identified two structures, standing taller than 4' above grade located within the subject site's rear yard, in contradiction of DC Zoning Regulations . *See 11-DCMR-199, 11-DCMR-774.*

Therefore, the BZA orders the Intervenor to apply for rear yard zoning relief from 11-DCMR-119.1 and 11-DCMR-774.

96. The DC Zoning Regulations require that, “No building or structure shall occupy in excess of fifty percent (50%) of a yard required by this title.” *See 11-DCMR-199.1 – Definition of “Yard.”*
97. Commissioners also agree with Petitioners that the two aforementioned non-conforming rear yard structures also occupy more than 50% of the required rear yard. *See Points #82 & 83.*
98. Commissioners conclude that the Intervenor needs to seek relief from the zoning regulations regarding the occupation by structures in the required rear yard. *See 11-DCMR-199.1 – Definition of “Yard.”*

Therefore, the BZA orders the Intervenor to apply for further rear yard zoning relief from 11-DCMR-119.1 as it pertains to the 50% or less occupancy of the rear yard by “structures.”

CONCLUSION

For the above reasons, the Petitioner has proven that the Intervenor needs to seek zoning relief for their subject project. Thus, the BZA orders Intervenor to apply for zoning relief as it relates to rooftop structure relief and rear yard relief pursuant to 11-DCMR-3100.4.

By the above facts and conclusions of law, the Board of Zoning Adjustment, in a Public Vote (__ to __ to __), affirms the above Petitioner's claims as found in their timely filed BZA Appeal #18888.