

**BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA**

**APPEAL NO. 19106 – 67 V STREET, NW
PROPERTY OWNER’S RESPONSE TO APPELLANTS’ SUBMISSIONS**

I. Introduction.

This Statement is being filed on behalf of WS Homes 67 V St. LLC (“Property Owner”), the owner of the property located at 67 V Street, NW (the “Subject Property”), in response to the Appellants’ submissions alleging Zoning Administrator error. Property Owner is automatically a party to this Appeal pursuant to 11 DCMR 3199.1.

II. Discussion of Appellants’ Allegations.

A. Building Code Issues Not Properly Before the BZA.

The Appellants have included allegations of Building Code violations involving a nonconforming situation regarding their own chimney and technical claims about the Surveyor’s Plat. Aside from the fact that the nonconforming chimney situation, if any, exists on their own property, Building Code error allegations are not properly before this Board. (12A DCMR 112.2.1.). This is more fully discussed in DCRA’s Statement and the Property Owner concurs with that analysis.

B. Non-compliant Court Allegation.

The Appellants are alleging that the Zoning Administrator erred in allowing a non-compliant court in the building permit plans for 67 V Street, NW. In an attempt to support this allegation, the Appellants have taken previous Board precedent regarding building connection trellis structures – which apply only to the function of these trellises in connecting two portions of a single building – and attempted to apply that analysis to this unrelated situation involving a trellis provided for an entirely different purpose.

A “court” is defined in the Zoning Regulations as “unoccupied space, not a court niche, **open to the sky**, on the same lot with a building, which is bounded on two (2) or more sides by the exterior walls of the building or by two (2) or more exterior walls, lot lines, or yards. A court

may also be bounded by a single curved wall of a building. (11 DCMR §199.1) [Emphasis added.]

Section 2503.1 of the Zoning Regulations provides further that: "Except for the structures and exceptions specified in this section, every part of a yard required under this title shall be **open and unobstructed to the sky from the ground up.**" [Emphasis added.]

Section 2502.1 of the Zoning Regulations provides further that: "Except for the projections and encroachments specified in this section and the exceptions in § 2503, **every part of a required yard or court or other required open space shall be open and unobstructed to the sky.**" [Emphasis added.]

All three of these provisions provide emphatically that to be considered a court – and not counted as "building area" or in lot occupancy – the area of the court must be "open to the sky" and "unobstructed." These requirements say nothing about there being a roof above the court area, and they do not provide for any percentage of allowable structure in the area above the area of the court. The Zoning Administrator has correctly determined that the terms "open to the sky" and "unobstructed" mean exactly what they say: that there shall be virtually no structure of any kind in that space. If there is such a structure – like a trellis – then that space is decidedly not "unobstructed" and decidedly not "open to the sky" and therefore does not fall under the definition of a "court." If it is not a court, it cannot be a non-compliant court.

The Appellants are using the analysis meant for building connection trellises (which is an analysis of the legitimacy of *building connections*, not of trellises). Building connection trellises are used strategically to connect two portions of a single building. They are meant to provide a roof over a "meaningful communication" between two portions of a building, in order to comply with Section 3202.3 of the Zoning Regulations, which allows only one principal building per record lot. The "meaningful communication" analysis derives from the definition of "Building" in the Zoning Regulations, which provides by negative inference that the existence of communication between separate above-ground portions of a structure serve to join those portions into one building.

In building connection matters, the Board has found that a trellis over a building connection is considered a roof if the trellis is covered 51%. A roof is required in order for the

trellis to be considered part of the building (pursuant to the definition of “building”, which begins: “a structure having a **roof**...”).

The problem with the Appellants’ analysis is that the trellis provided at 67 V Street is not a building connection trellis. It is not meant to be a roof provided as part of any meaningful communication, and it is not meant to connect two buildings. It is therefore not required to be considered a “roof” and it doesn’t make any difference whether it is considered a roof or not. The entire analysis by the Appellants regarding 51% coverage of a roof is completely off-base. It doesn’t matter whether the trellis at 67 V Street is covered 51% or not. What matters is whether or not the area that Appellants claim to be a court is “open to the sky” and “unobstructed.” By the plain language of the applicable regulations, that area is plainly not open to the sky and it is not unobstructed. It is therefore not a “court,” as such term is defined in the Zoning Regulations. Since it is not a court, it also cannot be a *non-compliant* court.

C. Lower Level Basement Allegation.

The support for this allegation isn’t entirely clear, but the Property Owner asserts that not only is the distance between the adjacent finished grade and the ceiling of the lower level less than 4 feet (at 3’8”), but there has never been any change of the earlier existing grade in the front of the building.¹

D. Surveyor’s Plat Allegation.

The Property Owner concurs with DCRA’s response to this particular allegation.

III. Conclusion.

The Appellants have failed to meet their burden of proof to show that the Zoning Administrator erred in approving the subject building permit. The Appeal should therefore be denied.

¹ At any rate, the Property Owner has the opportunity to adjust the finished grade in order to meet this requirement.

Owner's Response
Appeal No. 19106
November 13, 2015

Respectfully Submitted,

A handwritten signature in black ink, reading "Martin P. Sullivan". The signature is written in a cursive style with a large, stylized "M" and "S".

Martin P. Sullivan

Owner's Response
Appeal No. 19106
November 13, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2015, a copy of the foregoing submission was served via electronic mail to:

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Martin P. Sullivan