

DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

APPEAL OF:

Kalorama Citizens Association from
Administrative Decision of DCRA
On Permits B455571 and B455876

BZA Appeal No. 17109

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APPEAL NO. 17109 of Kalorama Citizens Association, pursuant to 11 DCMR § 3109 and 3101, from the decision of the Department of Consumer and Regulatory Affairs to issue building permits B455571, issued October 6, 2003; and B455873, issued October 16, 2003, to Montrose, LLC for construction at 1819 Belmont Road, N.W., Washington, D.C.

HEARING DATES: February 17, March 9, March 16, April 6 and April 20, 2004

DECISION DATES: June 8, June 22 and December 7, 2004

**APPELLEE'S RESPONSE TO REQUEST BY BOARD
FOR ADDITIONAL BRIEFING ON ISSUE OF SETBACKS**

Appellee hereby responds to the invitation issued by the Board during its public meeting on December 7, 2004, to further address "the question of whether a side wall of a building should or should not be considered an exterior wall if the adjacent property shares a party wall or may lawfully construct a shared party wall between buildings."

Appellee maintains its position (as reflected in the issuance of the permits in question and in Appellee's testimony and previous submissions in this appeal) that the side wall of an attached dwelling should not be considered an exterior wall if the adjacent property shares a party wall or may lawfully construct a shared party wall between the buildings.

In its appeal, Appellant alleged that the roof structure did not meet the setback requirements from exterior walls as set forth in the 1910 Height Act (D.C. Official Code §6-601.05(h) (2001)) and the Zoning Regulations at 11 DCMR §400.7 and §411.

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Appellant urged that the side walls of the 1819 Belmont Street addition were exterior walls and that the setback requirements should apply to those walls. Because the penthouse and roof structure were not set back from the side walls a distance at least equal to its height, Appellant alleged that permits were wrongly issued.¹

At the hearing on this appeal on March 16, 2004, Ms. Faye Ogunneye, Chief of the Zoning Review Branch, at the Department of Consumer and Regulatory Affairs, testified, inter alia, that DCRA reviewed and approved a penthouse and roof deck with railings pursuant to 11 DCMR §400.7 and 11 DCMR §411. Section 411 states that roof structures, including elevator penthouses, can be placed on a building as long as they meet the height and setback requirements. Pursuant to 11 DCMR §400.7(b), a roof structure “shall be set back from all exterior walls a distance at least equal to its height above the roof upon which it is located; . . .” Ms. Ogunneye testified that it is the view of the Zoning Administrator that a row house has only two (2) exterior walls, one at the front and the other at the back of the building. The sidewalls are party walls and are treated as such even if they extend above the next door neighbors’ party walls, since the next door neighbors also have the ability to build up to the height allowed in the regulations. The building at 1819 Belmont met the front and back setbacks. No setback was required for the side walls. [Tr. 3/16/04; pp.167-170]

The Zoning Regulations do not specifically define the terms: party wall, exterior wall or side wall. There is a definition of “Wall, lot line” which is defined as “an enclosing wall constructed immediately adjacent to a side lot line, but not a party wall.” While this definition might be construed to suggest that the side walls of the building

¹ Appellant made other claims of error as well.

addition at 1819 Belmont Street are not “party walls”, it also makes clear that they are not “exterior walls”.

Pursuant to 11 DCMR 199.2, where there is no definition in the Zoning Regulations, words shall have the meanings given in Webster’s Unabridged Dictionary. There is no definition of “exterior wall” in Webster’s. There is a definition of “exterior” which is simply defined as “being on an outside surface: situated on the outside.”

Webster’s does, however, define a “party wall” as “a wall which divides two adjoining properties and in which each of the owners shares the rights.” The neighboring property owners may not currently “own” the side walls to the addition at 1819 Belmont Street built above their properties, however, each neighboring owner clearly “shares the rights” to these walls, since they are entitled to build along side these walls and to close off the window spaces created by the owner of 1819 Belmont Street, N.W. This provides further support for the position of the Zoning Administrator that the side wall of an attached dwelling should not be considered an exterior wall, but rather remains a party wall even when extended above the neighboring property owner’s wall. It is the interpretation of the Zoning Administrator that the party walls, common division walls or lot line walls of a row house are not exterior walls and should not be considered as exterior walls for the purposes of the setback requirements. Therefore, the penthouse structure at 1819 Belmont was only required to be set back from the front and back exterior walls and properly met the set back requirements of 11 DCMR §400.7.

The Board has also asked the parties to consider the ramifications of the Board’s decision on future residential and commercial development in the District, as well as, whether the Board may consider those ramifications. It is the position of the Zoning

Administrator that the Board cannot properly consider whether the Zoning Administrator's interpretation of the regulations may create an anomaly in an individual case; such as, what one Board member has referred to as the "obnoxious" quality of the addition at 1819 Belmont Street, N.W. Further, the Board cannot go beyond the language and intent of the regulations to consider the ramifications of the Board's decision on future residential and commercial development in the District.²

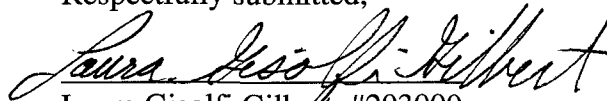
The Zoning Administrator and the Board should, however, consider the ramifications of a decision that would define the side walls of an attached dwelling or row house as "exterior walls," where: 1) the adjacent properties are in a like zone district and 2) the adjacent property owners are entitled under current regulations to build additions to their own properties that will clearly render the side walls to be "party walls" and therefore not subject to the setback requirements in the regulations. It is the position of the Zoning Administrator that such a decision would contradict the inherent uniformity and aesthetic intent of the penthouse regulations. The overall objective of the penthouse regulations, as set forth in 11 DCMR §411, is the reasonable architectural control of roof structures. The Zoning Administrator's interpretation that roof structures are not subject to the setback requirements when the walls are party, common division or lot line walls is not inconsistent with the uniform architectural symmetry inherent in the objectives of the Zoning Regulations.

The Zoning Administrator is charged with the implementation of the Zoning Regulations. The Board of Zoning Adjustment (BZA) is authorized to hear appeals by any person aggrieved by any decision of the "Inspector of Buildings" or Zoning

²It is the role of the Zoning Commission to amend the regulations as necessary to properly control and regulate residential and commercial development in the city.

Administrator granting or refusing a building permit or other administrative decision, based upon the zoning regulations or a zoning map. The Board, however, should not interfere with the Zoning Administrator's interpretation or substitute its own judgment where the Zoning Administrator's interpretation is reasonable and there has been no abuse of discretion..

Respectfully submitted,



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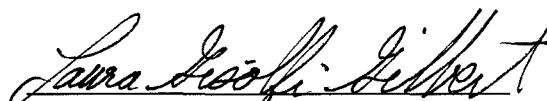
Certificate of Service

I hereby certify that a copy of the foregoing is being served on the following parties and counsel by first class mail on this 11th day of January 2005:

Appellant's counsel, Andrea Ferster, 1100 17th Street, N.W., 10th Floor, Wash., D.C. 20036;

Counsel for the Permit Holder, Carolyn Brown, Holland & Knight, 2099 Pennsylvania Avenue, N.W., Suite 100, Washington, D.C. 20006

Chairperson, ANC 1C, Alan Roth, 1845 Vernon Street, N.W., Washington, D.C.



Laura Gisolfi Gilbert, Esq.